No. 126802

IN THE SUPREME COURT OF ILLINOIS

SANDRA D. DAHM-SCHELL,	)	On Petition for Leave to Appeal
	)	from the Illinois Appellate Court,
Respondent-Appellee,	)	Fifth Judicial District,
	)	Case No: 5-19-0099
v.	)	
	)	There on appeal from the Circuit
MARK R. SCHELL,	)	Court of St. Clair County, Illinois, Hon.
	)	Patricia Kievlan presiding, Case No:
Petitioner-Appellant.	)	18-L-61

BRIEF OF SANDRA D. DAHM-SCHELL/APPELLEE

ORAL ARGUMENT REQUESTED

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A. Whether Mark's argument to exclude his distributions/withdrawals from his inherited retirement accounts is contrary to the legislature's definition of "income" in Section 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act and cases in Illinois that have previously addressed the issue of whether retirement account withdrawals are income for the purpose of calculating child support and maintenance.

B. Whether Mark's mandatory and any voluntary withdrawals from his inherited retirement money, which was never before included in prior calculations of his child support or maintenance, should be included in said calculations under Sections 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act (The Act).

C. This Court's opinion in *McGrath v. McGrath* supports a finding in the instant case that Mark's inherited IRA money that is distributed to him or withdrawn by him should be considered income in calculating child support. *McGrath v McGrath*, 2012 IL 112792, 970 N.E. 2d 12.

STATEMENT OF THE CASE

Sandra Schell and Mark Schell were married on November 7, 1992 and have five children. Mark inherited more than $615,000.00 from his deceased mother in 2014 and 2015. Sandra filed for dissolution in 2014. The trial court entered a Judgment of Dissolution of Marriage on October 11, 2016. In successive judgments, the trial court included the dividends Mark earned on his inherited accounts when it calculated the maintenance and child support awarded to Sandra. The trial court did not include any of Mark's inheritance or distributions Mark received from his mother's retirement accounts in its calculations of child support and maintenance. On or about March 28, 2017, Mark filed a Petition to Modify Child Support (and maintenance) requesting a decreased amount for both. On September 5, 2018, the trial court entered an Order declining to include Mark's inherited mandatory retirement distributions as income in the maintenance and child support calculations. At the parties' request, the trial court entered an order of certified question on February 18, 2020, which the Appellate Court re-framed to advance the ultimate termination of the parties' litigation on the issue of child support and maintenance, as follows:

"Whether mandatory distributions or withdrawals taken from an inherited individual retirement account (IRA) containing money that has never been imputed against the recipient for the purposes of maintenance and child support calculations constitute 'income' under 750 ILCS 5/504 (b)(3) and 750 ILCS 5/505 (a)(3)." The Appellate Court answered the question in the affirmative and vacated the trial court's order of September 5, 2018, with instructions to recalculate Mark's required child support and maintenance amounts. On appeal to this Court, Mark seeks to have the money

distributed or withdrawn from the accounts he inherited, which are sums not earned by him and never before included in his child support and maintenance calculations, excluded from his income for the purpose of said calculations.

ISSUE PRESENTED

I. WHETHER "GROSS INCOME" AND "NET INCOME", AS DEFINED IN SECTION 504 AND 505 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT INCLUDES DISTRIBUTIONS OR WITHDRAWALS TAKEN FROM A PARTY'S INDIVIDUAL RETIREMENT ACCOUNT WHEN SAID INDIVIDUAL RETIREMENT ACCOUNT CONTAINS MONEY RECEIVED VIA INHERITANCE AND SAID INHERITANCE HAS NOT PREVIOUSLY BEEN IMPUTED TO THE PARTY AS INCOME FOR THE PURPOSE OF CALCULATING CHILD SUPPORT AND MAINTENANCE.

A. Whether Mark's argument to exclude his distributions/withdrawals from his inherited retirement accounts is contrary to the legislature's definition of "income" in Section 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act and cases in Illinois that have previously addressed the issue of whether retirement account withdrawals are income for the purpose of calculating child support and maintenance.

B. Whether Mark's mandatory and any voluntary withdrawals from his inherited retirement money, which was never before included in prior calculations of his child support or maintenance, should be included in said calculations under Sections 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act (The Act).

C. This Court's opinion in *McGrath v. McGrath* supports a finding in the instant case that Mark's inherited IRA money that is distributed to him or withdrawn by him should be considered income in calculating child

support. *McGrath v McGrath*, 2012 IL 112792, 970 N.E. 2d 12.

STATUTES INVOLVED

Sec. 504/ Maintenance

750 ILCS 5/504 (b)(3)

"Gross income. For purposes of this Section, the term "gross income" means all income from all sources, within the scope of that phrase in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included." (West 2018).

Sec. 505. Child support' contempt; penalties.

750 ILCS 5/505 (a)(3)(A)

"As used in this Section, "gross income: means the total of all income from all sources, except "gross income" does not include (i) benefits received by the parent from means-tested public assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, and the Supplemental Nutrition Assistance Program or (ii) benefits and income received by the parent for other children in the household, including, but not limited to, child support, survivor benefits, and foster care payments. Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent's gross income for purposes of calculating the parent's child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid to the other party for the child. "Gross income" includes maintenance treated as taxable income for federal income tax purposes to the payee and received pursuant to a court order in the pending proceedings or any other proceedings and shall be included in the payee's gross income for purposes of calculating the parent's child support obligation" (West 2018).

STATEMENT OF FACTS

On October 11, 2016, the trial Court entered a Judgment of Dissolution of Marriage in case No: 14-D-637 in St. Clair County, Illinois. C-376. The parties were married in November 7, 1992 and had five children, three of which were not emancipated. C-377. On the date of dissolution, Mark was 56 years old, worked as a civil-structural engineer for William Tao & Associates, and earned $105,169.00 per year. C-382. Respondent's gross monthly income at the time was approximately $8,800 per month from his employment and the monthly interest ($462.33) he was paid from an inheritance of approximately $614,000.00 that he received from his mother in 2014 and 2015. C-382. The parties stipulated in Court that the inheritance was Mark's non-marital property. C-384. The Court did not include Respondent's inheritance as income in its initial calculations of child support or maintenance, only his dividend earnings on the inherited retirement accounts Mark had received from his mother. C-382. In its Amended Judgment and Rulings entered on December 18, 2017, and Second Amended Judgment and rulings entered on December 28, 2017, the trial court ordered only that "the dividends from his inheritance shall be considered and added to his monthly income for maintenance and child support purposes.", and did not address any mandatory withdrawals Mark would receive from the inherited accounts. C-505, C-512.

On March 28, 2018, prior to entry of the Amended and Second Amended Judgments by the trial Court, Mark filed a Petition to Modify Child Support, which, though not in the title, requested a modification of his maintenance obligation, as well. C-427. On page 2 of Mark's Financial Affidavit prepared on March 21, 2018, in support of his Petition to Modify Child Support (and maintenance), Mark claimed that his gross

income for 2017 was $104,341.00. E-62. This included Mark's claimed gross monthly income of $7,800.00 from his regular employment, and his claimed additional income as follows:

Interest income:	$1.67
Dividend income:	$743.92
Distributions and draws:	$894.25 (from the inherited investment accounts)

E-62, E-63. According to Mark's Financial Affidavit, his total monthly income, including both dividends and distributions/draws was $9,439.84, or $113,278.08 per year, of which $10,731.00 per year could be attributed to distributions/draws from the inherited retirement accounts he had received. E-63. According to Mark, he would receive the withdrawals from the accounts he inherited from his mother, then transfer that money to a retirement account in his name only. R. 21. It was Mark's position at trial that his mandatory withdrawals of $894.25 per month from the inherited money should not be considered income for the purpose of calculating child support and maintenance. R 19-21. Sandra argued at hearing that moneys Mark withdrew from the inherited money, which had never before been included as income to determine his child support and maintenance obligations fell within the statutory definition of "income " in the "Dissolution Act" and must be included. R-62,63. R-69, R-73.

On September 5, 2018, the trial court entered an Order declining to include Mark's inherited mandatory retirement income when calculating maintenance and child support. (A-44/ Appellant's Brief). On October 5, 2018, Sandra filed a Motion to Reconsider/Clarify the Court's ruling of September 5, 2018 C-561; Sandra then filed a motion containing multiple counts on November 27, 2018, Count III, par. 2 of said

motion requested a modification of child support based upon inclusion of Mark's mandatory withdrawals from his inherited accounts when calculating income for the purpose of child support. C-571. On January 29, 2019, the Court denied Sandra's motion to reconsider/clarify and set all remaining issues for trial. C-594. Sandra attempted to appeal the Court's ruling under SCR 303, but said appeal was dismissed with leave to proceed under Supreme Court Rule 308 under conditions prescribed by the Appellate Court. (A-50/ Appellant's Brief).

On March 18, 2020, Sandra filed her Application for Leave to Appeal under Rule 308, and on June 2, 2020, the Appellate Court granted said Application. A-46, 50/Appellant's Brief. After briefing and oral argument, the Fifth District Appellate court reversed the decision of the trial court and answered the following question in the affirmative:

"Whether mandatory distributions or withdrawals taken from an inherited individual retirement account (IRA) containing money that has never been imputed against the recipient for the purposes of maintenance and child support calculations constitute 'income' under 750 ILCS 5/504 (b)(3) and 750 ILCS 5/505 (a)(3)." (West 2018) A-16/ Appellant's Brief)

The Appellate Court also instructed the trial court to re-calculate Mark's child support and maintenance obligations to include his withdrawals and distributions of inherited sums. Id. Mark filed his Petition for Leave to Appeal to the Illinois Supreme Court on December 30, 2020, which was granted on March 24, 2021. A-16/Appellant's Brief)

ARGUMENT

I. MARK'S DISTRIBUTIONS OR WITHDRAWALS TAKEN FROM HIS INHERITED RETIREMENT ACCOUNTS RATHER THAN EARNINGS OR INCOME PREVIOUSLY IMPUTED TO HIM IN CALCULATING CHILD SUPPORT OR MAINTENANCE CONSTITUTE "GROSS INCOME" AND "NET INCOME", AS DEFINED IN SECTION 504 AND 505 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT.

A. Mark's argument to exclude his distributions/withdrawals from his inherited retirement accounts runs contrary to the legislature's definition of "income" in Section 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act and is unsupported by prior cases in Illinois that have addressed the issue of whether retirement account withdrawals are income for the purpose of calculating child support and maintenance.

In his brief to this Court, Mark has incorrectly identified the issue as "Whether mandatory retirement withdrawals or distribution are income for purposes of calculating child support and maintenance." (Brief of Appellant filed, p. 9). Framing the issue without identifying the withdrawals/distributions as sourced by inheritance, Mark has excluded the pivotal fact that distinguishes this case from those preceding it that have addressed the issue of retirement withdrawals as income in determining child support/maintenance. Mark suggests that "a conflict of laws exist between the first, second, third, fourth, and now fifth districts on this issue". This is simply not correct, because the pivotal fact that Mark avoided in his statement of the issue, the

distribution/withdrawal of inherited retirement money, has not been decided before. There is no "conflict of laws" based upon decisions by the appellate courts in Illinois if the analysis of income vs retirement withdrawals for each case is applied to the facts now before this Court. The sums of money Mark is now privileged to receive from his inherited accounts, whether by distribution or mandatory withdrawal, were never earned by Mark and socked away for a rainy day; They are bountiful gifts that enhance his wealth, altogether void of the possibility that even one penny of said sums was previously factored into his child support/maintenance obligations, as the money was acquired and owned by his mother prior to her death. Because Mark's withdrawals and distributions from his inherited retirement accounts are of pure benefit to him, akin to a gift, Mark's reliance on those cases whose facts include retirement/savings accounts accrued through the efforts of obligors fails, as the following analysis shows.

B. Mark's mandatory withdrawals from his inherited retirement money was never included in prior calculations of his child support or maintenance and therefore is defined as income to be included in said calculations under Sections 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act (The Act).

"Net income" is defined in section 505(a)(3) of the Act as "the total of all income from all sources." 750 ILCS 5/505(a)(3) (West 2006). "[T]he General Assembly has adopted an expansive definition of what constitutes `net income.'" *In re Marriage of Rogers*, 213 Ill.2d 129, 136, 289 Ill.Dec. 610, 820 N.E.2d 386 (2004). In *Rogers*, this Court considered the issue of whether cash gift and "loans" received by a father from his family qualified as income under Section 505 of the

Act and recognized the Illinois' legislature's expansion of its definition of income for the purpose of calculating child support. "The best indicator of the legislature's intent is the plain language of the statute. When the statutory language is clear, it must be given effect without resort to other tools of interpretation." *Rodgers*, citing *Metzger v. DaRosa,* 209 Ill. 2d 30, 35, 805 N.E. 2d 1165 (2004). The Court further noted that "income" is simply "something that comes in as an increment or addition ***a gain or recurrent benefit that is usually measured in money . . .." *Rodgers* at 820 N.E. 2d 390. This Court also rejected the proposition that the Internal Revenue Code did not determine what would be "income" under The Act. *Id.* at 390.

The Court concluded that father's "income" included the annual gifts he received from his parents, regardless of whether they were taxed by the IRS. "They represented a valuable benefit to the father that enhanced his wealth and facilitated his ability to support . . . ." *Id.* at 390. Referring to the "plain and ordinary language of section 505(a)(3)", this Court opined that "no further authority is necessary. . . the circuit courts need not await interpretation by a court of review before giving the statute effect." *Id.* at 391. In the case now before the Court, the analysis of facts in relation to the statutory language of 505(a)(3) (now modified to "gross income", is much simpler. Unlike the situation in *Rodgers*, Mark's receipt of the mandatory withdrawals/distributions is not contingent upon ongoing generosity of a parent; Mark inherited as his own property approximately $614,000.00 in 2014 and, according to his trial testimony, receives the equivalent of more than $800.00 per month in mandatory withdrawals that will continue indefinitely. Applying this Court's analysis in Rodgers, Mark's position is untenable; Pursuant to the trial Court's Supplemental Judgment of Dissolution entered in The money from which

his mandatory distributions/withdrawals are paid was established in 2015, exists indefinitely, and has never been included as income in any child support or maintenance awards to Sandra to date. Further, in its Judgment of Dissolution entered on October 11, 2016, the trial court noted that "Mark will receive additional monies through his inheritance after the sale of property held in trust at some unknown time in the future. A-29/Appellant's Brief. In its Amended Judgment and Rulings. . . .entered on December 18, 2017, the trial court ordered that the dividends from his inheritance be considered and added to his monthly income for maintenance and child support purposes, but did not address his distributions, mandatory withdrawals, or whether the inheritance itself could be considered as income for the purposes of child support and maintenance. A-37, 39/Appellant's Brief. At no time has Mark's income for the purpose of child support and maintenance calculations included any portion of his mandatory withdrawals from the inheritance that he received, with the minimum amount of such withdrawals each year totaling more than $10,000.00. The unearned fortune that Mark inherited in 2014 has been mistakenly excluded to date by the trial court in calculating his income under Section 505. As interpreted within the confines of fact- driven cases previously decided in the State of Illinois, Section 505(a)(3) requires that Marks' mandatory withdrawals from his inherited IRA be added to his income when calculating child support/maintenance.

The Act creates a rebuttable presumption that gains and benefits that enhance a non-custodial parent's wealth and facilitates that parent's ability to support a child is income for child support purposes, unless specifically excluded by the Act. *In re Marriage of Sharp*, 369 Ill. App. 3d at 280, referring to this Court's opinion in *In re*

Marriage of Mayfield, 2013 IL 114655. In *Fortner v Fortner*, the Fifth District Appellate Court affirmed the trial court's ruling that the net proceeds from a wrongful death settlement was income for the purpose of calculating child support, identifying the Act's overriding purpose to make reasonable provisions for the support of minor children, which requires a broad and expansive definition to meet that purpose. *Fortner v Fortner*, 2016 IL 150246 (5th Dist.). In *Fortner*, the Court noted that the settlement funds "increased the (father's) resources and improved his standard of living, thus constituted income as defined in the Act." As demonstrated by other decisions in Illinois analyzing "income" under the Act on a case by case basis, the expansive trend to include multiple, diverse sources of wealth as income in calculating child support/maintenance currently includes the following:

1. Deferred compensation: *Posey v Tate*, 275 Ill. App. 3d 822 (1995);
2. Pension payments: *People ex rel. Myers v. Kidd*, 308 Ill. App. 3d 593 (1999);
3. Military allowance: *In re Marriage of McGowan*, 265 Ill. App. 3d 976 (1994);
4. Gift from parents: *In re Marriage of Rogers*, 213 Ill. 2d at 137 (2004);
5. Lump-sum workers compensation case, *In re Marriage of Dodds* 222 Ill. App. 3d 99, 103 (1991);
6. IRA disbursements, *In re Marriage of Lindman*, 356 Ill. App. 3d at 466 (2005)
7. Income to trust beneficiary, *In re Marriage of Sharp*, 369 Ill. App. 3d 271 (2006);
8. Payor who withdrew IRA funds he received in divorce property settlement had to include those funds as income for child support purposes when liquidated, rejecting an argument of "double counting". *In re Marriage of Eberhardt*, 387 Ill.

App. 3d 226 (2008);

9. Money withdrawn from savings account created by payor was not income for the purpose of calculating child support. *In re Marriage of McGrath*, 2012 IL 112792.

10. Distributions from a retirement savings and payment plan created by payor is considered income in calculating child support. *Spitler v Spitler*, 2015 Il App (2) 140872

11. Wrongful death settlement constitutes income for the purpose of calculating child support. *Fortner v Fortner*, 2016 Il. App (5th) 150246

12. Net proceeds from a personal injury settlement attributable to damages for pain and suffering and disability is income for child support purposes. *In re Marriage of Plowman*, 2018 IL App (4th) 170665

13. Withdrawals from non-marital trusts qualifies as income for the purpose of child support and maintenance calculations. *In re Marriage of O'Connor*, 2018 IL App (2d) 160982.

14. Winning lottery after divorce judgment is income for purposes of allocating support. *In re Marriage of Broughton*, 2018 IL App (3d) 170403;

15. IRA withdrawals are not income, except for that portion representing interest and appreciation. *In re Marriage of O'Daniel*, 382 Ill. App. 3d 845 at 850 (2008);

16. *In re Marriage of Lindman* and *In re Marriage of O'Daniel* not necessarily in conflict because each allows for the possibility that a portion of IRA withdrawals would constitute income. *In re Verhines*, 2018 Ill. App. 2d 171034.

Although expanding the reach of the statutory definition of income, none of the

cases cited above have confronted the issue now before this Court, which potentially expands the scope of "income" to include inherited investments and and the additional wealth those investments may generate. A key purpose of the Dissolution Act is to ensure "reasonable provisions for *** minor children." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 280, 860 N.E. 2d 539 (2006). This Court has recognized as income those "gains and benefits that enhance a non-custodial parent's wealth and facilitate that parent's ability to support a child." *In re Marriage of Mayfield*, 2013 IL 114655, ¶16. The facts of the case now before the Court strongly favor another expansion of the definition of "income" under Sections 504 and 505 of the Act to include the wealth a payor inherits and any additional increments in wealth generated by that inheritance.

C. This Court's opinion in *McGrath v. McGrath* supports a finding in the instant case that Mark's inherited IRA money that is distributed to him or withdrawn by him should be considered income in calculating child support. *McGrath v McGrath*, 2012 IL 112792, 970 N.E. 2d 12.

As noted by the Fifth District in its opinion in this case, the Illinois Supreme Court's analysis of the facts and interpretation of Section 505(a)3 in *McGrath* gives guidance in deciding cases involving withdrawals or distributions from an IRA, although it didn't address IRA withdrawals. A-7/Appellant's Brief. As noted by Justice Moore in his opinion, the facts of *McGrath* were unique because the unemployed parent was using his savings to "maintain a lifestyle in which his household expenses were similar to the petitioner's for a household of three." A-7/Appellant's Brief. For purpose of this appeal, the following portion of this Court's opinion in *McGrath* is significant as it makes the source of the funds withdrawn from the payor's account pivotal to its decision to exclude

savings withdrawals from income in calculating child support. "The money in the account already belongs to the account's owner, and simply withdrawing it does not represent a gain or enefit to the owner. The money is not coming as an increment or addition, and the account owner is not 'receiving' the money because it already belongs to him." *Id.* At 970 N.E. 2d 16. Thus, without stating the obvious, McGrath recognizes double-dipping that could occur as a consequence of including as income account withdrawals of sums a payor invested and which may have already been included in child support calculations. Based upon the *McGrath* analysis, Mark cannot reasonably argue that his distributions and withdrawals from inherited money he never previously owned, and which is indisputably an increment and addition to his wealth should be excluded as income when calculating his child support and maintenance obligations under Sections 504 and 505 of the Act. In his argument to this Court, Mark fails to address how his inheritance of the money at issue impacts application of this Court's ruling in *McGrath.* Instead, he sidesteps to an argument that any withdrawal, should the investment lose value, would not increase Mark's wealth. Not only does this speculative argument fail for lack of evidentiary support in the record, it avoids the reality that Mark never contributed any money to the inherited account, thus any withdrawal that he receives from the account increases his pre-inheritance wealth.

As shown by the decision in *Lindman*, Illinois courts long ago declared that distributions from retirement accounts, such as IRA's can be considered income for child support purposes. *In re Marriage of Lindman*, 356 Ill. App. 3rd 462 (2d Dist., 2005). The *Lindman* court relied on *In re Marriage of Klomps* in support of its opinion. 286 Ill.App.3d 710, 221 Ill.Dec. 883, 676 N.E.2d 686 (5th Dist., 1997). In Klomps, the payor

argued that his military pension should be excluded as income for child support purposes. The Court opined: "If we were to allow retirement income to be excluded from net income when setting child support merely because those benefits, prior to their receipt, were used to determine an equitable distribution of the parties' marital property, we would be adding provisions to the Act that do not exist. We will not twist the clear meaning of the Act to invent an otherwise nonexistent rule that would be contrary to the purpose of making 'reasonable provision for spouses and minor children' during and after litigation. *In re Marriage of Klomps*, 286 Ill.App.3d at 716-17,676 N.E.2d 686.

Although in *In re Marriage of O'Daniel*, 382 Ill. App. 3d 845 (2008) the Fourth District disagreed with *Lindman* and found that distributions from a retirement account should not be considered income, the decision hinged on the account having been self-funded by the payor. As in *O'Daniel*, a defense to including periodic withdrawals from savings and investment accounts as income is the source of the funds from which the distributions and withdrawals are made. Payors have typically argued the injustice that will result if the payor's earnings, now invested in the account/savings, were included in income at the time they were initially received or earned, only to be included as income as second time upon withdrawal or distribution from a savings or retirement account. In the case before this Court, Mark Schell can make no such argument; He neither earned nor accumulated the funds that are now being distributed to him from his mother's former IRA account, thus there is no risk of "double-dipping" from his funds. The accounts Mark inherited and the distributions he now receives merely benefit him and add to his wealth, which is the very interpretation the Illinois Supreme Court has taken from the definition of income in the Dissolution Act. *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004). It is

inconceivable that the legislature and Courts of Illinois, who authored and accepted the definition of "income" codified in Section 505 and interpreted by the Court of this State intended that children and a spouse in need of maintenance be deprived of the benefits afforded by lavish enhancement of unearned wealth such as that received by Mark Schell in 2014.

Whether a payment or award to a non-custodial parent falls within the definition of income is a question of law, subject to de novo review. *In re Marriage of McGrath*, 2012 IL 112792. The definitions of "gross income" contained in the maintenance and child support statutes applicable to this case are interchangeable, with the exception that maintenance payments in pending proceedings shall not be included in calculating income. Gross income means the total of all income from all sources, with a few specific exceptions that do not apply to the facts of this case. 750 ILCS 5/504 (b-3), (West 2016); 750 ILCS 5/505(a)(3), (West. 2016). Since he inherited over $614,000.00 from his mother during 2014 and 2015, Mark has enjoyed the vast benefits of this unearned wealth to the exclusion of his children and former spouse. At trial, Mark claimed that the mandatory distributions he was required to take each year from what was formerly his mother's IRA did not constitute income because they were mandatory. Whether unearned wealth is received voluntarily or by mandate does not determine whether it should be included as income for the purpose of calculating child support and maintenance. That issue has been decided by the Illinois legislature in 750 ILCS 5/505(a)(3) (West 2016), which broadly defines net income as "the total of all income from all sources, except "certain specified deductions", none of which are at issue in the case before the Court. Prior to entering the Judgment of Dissolution and establishing child support and

maintenance, the trial Court never addressed whether the more than $615,000.00 in inherited income that Mark received between 2014 and 2015 should be calculated into his income for 2014 and 2015, the years in which the funds were transferred into retirement accounts in his name. In the trial Court's supplementary judgments entered between October, 2016 and December, 2017, the Court found that the dividends paid on the invested money should be included in Mark's income, but did not address whether Mark's mandatory withdrawals from the inheritance should be considered Mark's income for child support and maintenance purposes. With the exception of the dividends earned on the money, the Court did not include any of Mark's inheritance when it calculated his child support and maintenance obligation.. The money the trial Court excluded from these calculations consisted of draws and distributions, with the minimum amount each year totaling more than $10,000.00. The unearned bounty that Mark had the good fortune to inherit, has been mistakenly ignored or excluded to date by the trial Court in calculating his income under Section 505. Now that Mark seeks to decrease his child support and maintenance even further, the more than $10,000.00 per year that Mark receives in mandatory withdrawals from his inheritance should be considered as income to him under the statutory definitions contained in 5/504 and 5 /505, as interpreted within the confines of fact- driven cases previously decided in the State of Illinois.

Also contrary to Mark's assertions at trial, the classification of Mark's inheritance as non-marital property in the Judgment of Dissolution did not create an exclusive category that precluded the funds from being included in his statutory income. The Illinois Supreme Court has spoken clearly on this issue: Income "includes gains and benefits that enhance a non-custodial parent's wealth and facilitates that parent's ability to

support a child. *In re Marriage of Mayfield*, 2013 IL 114655, citing *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004). The Dissolution Act creates a rebuttable presumption that such gains or benefits is income for child support purposes unless specifically excluded by the statute. *In re Marriage of Sharp*, 369 Ill. App. 3d at 280. An overriding purpose of the Act is to make reasonable provisions for the support of minor children, which requires a broad and expansive definition to meet that purpose. *Fortner v. Fortner*, 2016 IL 150246. In *Fortner,* the Fifth District Appellate Court affirmed a ruling that the net proceeds from a wrongful death settlement was income for the purpose of calculating child support. The Court noted that, although the trial court had not called the settlement proceeds "income", the funds "increased Rob's resources and improved his standard of living." The mandatory retirement distributions Mark receives from his inherited money meet this criteria. Directly pointed to the present issue, the Fifth District acknowledged in a footnote appended to its opinion in *Fortner* that "the statutory definition of income is broad enough that it would likely include an inheritance." *Id.* In light of the Court's analysis and commentary in *Fortner* and the litany of cases that continue to expand the definition of income contained in the Dissolution Act, Mark's inherited income that includes his mandatory distributions and withdrawals should be deemed income for the purpose of calculating child support and maintenance:

CONCLUSION

The trial court's decision to decline to include Respondent's inherited, mandatory retirement withdrawals as income in calculating child support and maintenance was properly reversed by the Appellate Court for the Fifth District. The definition of Section 505 income includes all gains or benefits that increase a parent's wealth and facilitates that parent's ability to support his/her child, with few exceptions, none of which apply in this case. Mark has offered no sound factual or legal basis for his position that the massive sums he has received in inheritance from his mother should be excluded from his income when calculating child support and maintenance. Rather, Mark has frame the issue and his argument in a manner that conceals the very nature of the money at issue–an inheritance. Rather than address the elephant in the room, Mark, by omission of this fact, relies on cases that provide support for excluding money where double dipping may occur, when he knows that his inherited mandatory distributions and his voluntary withdrawals from the inheritance were never considered in calculating his child support obligation. Further, Mark's assertion that the non-marital status of his inheritance somehow exempts it from income calculations in determining child support and maintenance is contradicted by the very language of Section 505. Allowing a non-custodial parent to withhold significant, windfall sums to the detriment of his wife and children is not what the legislature intended when it enacted Section 505. If the decision of the Fifth District Appellate Court is reversed, Mark and other non-custodial parents may continue to deprive their children of the benefits of a lifestyle enhanced by significant wealth from inheritance. This is exactly the type of injustice that the legislature intended to prevent when it defined "gross income" as the "total of all income

from all sources", with the few exceptions that are irrelevant under the facts of this case. For all of the reasons set forth herein, Sandra Schell respectfully requests that this Court affirm the decision of the Fifth District Appellate Court and find that a non-custodial parent's inheritance shall be included as income for the purpose of calculating child support and maintenance in the State of Illinois.

By: /s/ Rhonda D. Fiss
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CERTIFICATE OF COMPLIANCE WITH ILLINOIS SUPREME COURT RULE 341(c)

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 21 pages.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Appellee's Motion for Extension of Time to File Brief was submitted for filing to the Illinois Supreme Court Clerk's Office by Electronic means on June 8, 2021, and that a copy of same was sent by electronic means to opposing counsel's email address provided below:

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Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the above are true and correct.

/s/ Rhonda D. Fiss
RHONDA D. FISS

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