2025 IL App (4th) 241134-U

NO. 4-24-1134

FILED
June 3, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
RACHEL L. LAMB,	)	Circuit Court of
Petitioner-Appellee,	)	Greene County
and	)	No. 16D39
THAD A. LAMB,	)	
Respondent-Appellant.	)	Honorable
	)	Daniel K. Wright,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices Vancil and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's modification of the parties' divorce decree to establish child support was reversed as against the manifest weight of the evidence, where the party seeking child support failed to introduce evidence showing a substantial change in circumstances since the decree was entered.

¶ 2 Petitioner Rachel L. Lamb and respondent Thad A. Lamb were divorced in October 2017; as part of the divorce, the parties agreed that neither party would pay child support for their two minor children. Rachel subsequently filed a petition to establish child support, which the trial court granted in August 2024. On appeal, Thad argues that the court's decision is against the manifest weight of the evidence. We agree and reverse.

¶ 3 I. BACKGROUND

¶ 4 A. The Divorce Proceedings

¶ 5 1. *Pleadings and Discovery*

¶ 6 The parties were married in February 2013, and Rachel filed for divorce in August

2016 pursuant to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2016)). Her petition for dissolution of the marriage alleged that she was a dental hygienist at Prairie Dental in Springfield, Illinois, and that Thad was employed at Bob Lamb Co., Inc. (Bob Lamb Co.). Thad's answer to Rachel's petition admitted these allegations.

¶ 7 In May 2017, Rachel sought discovery into Thad's finances, including by serving a subpoena on Bob Lamb Co. for financial information on Thad, to include:

> "1. Wages, bonuses, shareholder distributions and any other monetary compensation paid by [Bob Lamb Co.] for 2012, 2013, 2014, 2015 and 2017 [*sic*] year-to-date.
>
> 2. Documents showing how much [Bob Lamb Co.] pays for vehicle payment, gasoline purchases, vehicle insurance premiums, health insurance premiums, dental insurance premiums, vision insurance premiums, retirement benefits, cellular phone service, and any other benefits they pay for on behalf of Thad for the years 2015, 2016 and 2017 year-to-date."

The documents Rachel received in response to this request do not appear in the record, but it is clear that Bob Lamb Co. complied with the subpoena because in July 2017, Rachel's attorney certified pursuant to Illinois Supreme Court Rule 204 (eff. July 1, 2014) that she served Thad's former attorney with a copy of the documents she received. There is no indication in the record that Bob Lamb Co.'s response was deficient.

¶ 8 2. *The Prove-Up Hearing and Divorce Decree*

¶ 9 On October 13, 2017, Judge James Day conducted a prove-up hearing and entered a divorce decree dissolving the parties' marriage pursuant to the Act. The terms of the divorce are set forth in a marital settlement agreement (MSA) and parenting plan for the parties' two children,

then ages two and four. Under the parenting plan, the parties share custody of the children, with equal parenting time.

¶ 10 The MSA provides that "[n]either party shall pay child support directly to the other based upon the allocation of other expenses on behalf of the children set forth herein and because the parties are equally sharing parenting time and responsibilities [for] the minor children." The MSA requires Thad to maintain health insurance for the children through his employer and to pay any premiums; otherwise, the MSA generally provides for an equal division of medical, educational, and child care expenses, including expenses for extracurricular activities. Each party claims one of the children as a dependent for tax purposes. We refer to this overall arrangement of custody and expenses as the parties' "waiver of child support."

¶ 11 The recitals in the MSA include the following:

> "[T]he parties acknowledge that each of them is somewhat and relatively familiar with the wealth, property, estate and income of the other. Further, the parties have each expressed a strong desire to expedite and conclude this matter and thereby proceed with the preparation, execution and entry of an Agreed Judgment for Dissolution of Marriage at the earliest possible moment. Consequently, the parties have each directed their respective attorneys, if they have one, to forego any formal or other informal discovery procedure in this cause, which would, in the opinion of the parties, unnecessarily extend this proceeding. The parties therefore each believe that they are adequately conversant and knowledgeable about the wealth, property, estate and income of the other and that they therefore do not believe that *further discovery* would assist them in making a determination concerning any matter set forth in this [MSA]. Furthermore, each of the parties herein waives any claim

> whatsoever against his or her respective attorney, if they have one, the attorney representing the other party, if there is one, as well as the other party, for the failure to conduct formal discovery or attempt to ascertain any information other than what has been revealed to each attorney by his or her respective client or voluntarily conveyed or made known by opposing counsel; provided further that such action is being taken by each of the parties against the advice of their attorneys, if they have one." (Emphasis added.)

We will refer to this provision as the parties' "waiver of discovery," but we note that for Rachel, it was a waiver of *further* discovery in light of the Rule 204 certification showing that she had already exercised her right to obtain information about Thad's compensation from Bob Lamb Co.

¶ 12 The divorce decree stated that Judge Day "heard evidence, and being fully advised in the premises," found that the MSA and parenting plan were "fair and reasonable," and he ordered that they would be "binding upon each of the parties." The record on appeal does not include a transcript of the prove-up hearing or otherwise indicate what specific evidence was heard at the prove-up hearing. Although Judge Day subsequently entered an agreed order clarifying the parties' parenting plan, the provisions of the October 2017 divorce decree regarding child support have never been set aside and had not been modified before the trial court entered the modification order under review in this appeal.

¶ 13 B. The Petition to Establish Child Support

¶ 14 1. *Pleadings and Discovery*

¶ 15 On February 17, 2023, Rachel filed a petition to establish child support pursuant to section 510(a)(1) of the Act (750 ILCS 5/510(a)(1) (West 2022)), which allows the provisions of a divorce decree regarding child support to be modified "upon a showing of a substantial change

in circumstances." See *In re Marriage of Wittland*, 361 Ill. App. 3d 785, 787-88 (2005) (holding that modification under section 510(a) includes the establishment of child support even when the parties previously waived child support). In the petition, Rachel sought child support based on the statutory guidelines for shared care (750 ILCS 5/505(a)(3.8) (West 2022)) and alleged that "[t]here have been substantial changes in circumstances since the entry of the parties' [MSA] in that [Thad] has had a substantial increase in pay compared to [Rachel], and the expenses for the children have increased due to the passage of time." Thad filed an answer denying these allegations.

¶ 16 In discovery, Rachel sought and obtained information from Bob Lamb Co. about Thad's compensation from 2019 to 2024, but she did not seek information about Thad's income from 2018 or earlier. Apart from this change to the time frame, her discovery requests used the same language as before. *Supra* ¶ 7. Rachel also obtained information about Thad's bank account, including bank statements and copies of certain checks deposited into the account.

¶ 17 2. *The Modification Hearing*

¶ 18 Because Judge Day had retired, the case was eventually reassigned to Judge Daniel Wright, whom we will refer to as "the trial court." The court held a hearing on Rachel's petition in June 2024.

¶ 19 Thad testified that since 2016, he had worked for Bob Lamb Co., a corporation jointly owned by himself, his mother, and his two brothers. According to Thad, his weekly gross income was $1,330, suggesting a total weekly income of $69,160 over 52 weeks. A 2023 payroll check register from Bob Lamb Co. shows that Thad received a weekly "Amount" of $732.02, with a "Gross" of $1,330 followed by several negative entries including "Fed_Income," "Soc_Sec," "MEDICARE," and "St_Income."

¶ 20 A May 2024 payroll check register similarly shows a weekly "Pay Amt" of $1,330 and "Amount" of $740.66, followed by several negative entries, including the four just mentioned. Thad's bank statement from May 2024 confirms that he received deposits from Bob Lamb Co. in the amount of $740.66 on the dates shown on the May 2024 payroll check register; the bank statement also shows a deposit of $16,772, which Thad testified was a rebate for solar panels that had been installed on his home, and a deposit of $23,382, which Thad testified was a tax refund.

¶ 21 Thad's Internal Revenue Service Form W-2 (W-2) for 2023 shows that he received $101,860 in wages, tips, and other compensation (*i.e.*, "taxable compensation") from Bob Lamb Co. in 2023 and that Bob Lamb Co. withheld $16,752.40 in federal income tax, $6,315.32 in Social Security tax, $1,477.23 in Medicare tax, and $5,042.33 in state income tax. An entry in the 2023 payroll check register confirms that Bob Lamb Co. withheld these amounts and shows that Thad was paid a gross annual income of $117,460 for 2023, which is $48,300 more than it would have been if he had only received his total weekly income of $69,160.

¶ 22 Thad testified that the discrepancy between his total weekly income and gross annual income resulted from an approximately $50,000 bonus he received from Bob Lamb Co. in August 2023. According to Thad, he expected to receive a bonus in 2024 and had received similar bonuses of $60,000 in 2019; $45,000 in 2020; $40,000 in 2021; and $25,000 in 2022. Based on these figures, Thad's average bonus from 2019 to 2023 was $44,000. Thad also stated that Bob Lamb Co. reimburses him for all expenses he incurs for his cell phone and the vehicle he drives, which was confirmed by records from Bob Lamb Co.

¶ 23 Thad's earlier W-2s from Bob Lamb Co. show that he earned taxable compensation as follows: $107,720 in 2019; $129,990 in 2020; $94,085 in 2021; and $81,025 in 2022. Based on these figures, Thad's average taxable compensation from 2019 to 2023 was $102,936. At no point

did Rachel's attorney or the trial court ask Thad about his pre-2019 income; consequently, there is no evidence of his pre-2019 income in the record.

¶ 24 Rachel testified that she still works as a dental hygienist approximately 30 to 35 hours per week, earning $37 an hour. A pay stub shows that she worked at Southern Illinois Pediatric Dentistry in Edwardsville in 2023, and her W-2 shows that she earned $56,301 in taxable compensation, along with $2,612 in medical benefits. Rachel's tax returns show a total amount of taxable compensation from her W-2s of $48,646 in 2021 and $51,384 in 2022. It is unclear whether there is any connection between Rachel's current employer and Prairie Dental, and there is no evidence of Rachel's pre-2021 income in the record.

¶ 25 On direct examination by her attorney, Rachel testified as follows:

> "Q. When we looked at that bank account, did you know what those large deposits were for?
>
> A. No.
>
> Q. Did you know he was getting money from the solar company?
>
> A. No.
>
> Q. Did you know those amounts had anything to do with coming from the solar company?
>
> A. No.
>
> Q. Did we believe those were bonus amounts?
>
> A. I don't think you guys knew what it was."

At no point was Rachel asked (1) what she *used to* believe, at the time of the 2017 divorce, Thad was earning in 2017 or (2) what she *currently* believed, at the time of the 2024 hearing and with the benefit of hindsight, Thad was earning in 2017.

¶ 26 When asked how the children's expenses had increased since 2017, Rachel noted increases in the costs of the children's medical care and extracurricular activities.

¶ 27 At the close of evidence, Thad moved for a directed finding in his favor, arguing that Rachel had failed to make the necessary showing of a substantial change in circumstances. During argument on the motion, Rachel's attorney said:

> "Another thing I believe we also showed when we gave the testimony was that Thad Lamb received around $23,000 this year which was something that we didn't know about until we were provided last night with [the] bank statements for solar panel[s]. We knew he had solar panels installed but *we didn't know that he was receiving this much income* and, quite frankly, [it] wasn't something I even included in my calculation so I believe there is a substantial change in circumstances from when we did our agreement in 2017 up until now ***." (Emphasis added.)

¶ 28 The trial court denied the motion and directed the parties to file written closing arguments on Rachel's petition. Although it is clear from the court's order that it received written closing arguments from both parties, only Thad's closing argument appears in the common-law record. Written closing arguments "are helpful in understanding what arguments and evidence the trial court considered in reaching its judgment and should be included" in the common-law record. *In re Marriage of Lach*, 2024 IL App (2d) 220230-U, ¶ 74, *appeal denied*, 244 N.E.3d 270 (Ill. 2024). "We caution attorneys and court staff to take measures to ensure that these records are properly filed and preserved for review." *Id.*

¶ 29 3. *The Modification Order*

¶ 30 In August 2024, the trial court entered an order awarding Rachel child support.

(Although the court noted that it had reviewed an audio recording of the June 2024 hearing, it said nothing about reviewing an audio recording or transcript of the October 2017 prove-up hearing before Judge Day.)

¶ 31 The trial court addressed the parties' waiver of discovery as follows:

> "Rachel testified that she was not, in fact, aware that Thad received substantial income in the form of periodic bonuses and reimbursed/covered personal expenses (or at best mixed personal/business expenses) by Thad's employer, [Bob Lamb Co.], at the time of the Separation Agreement. The Court finds Rachel's testimony credible on this issue and the evidence established that Thad has received substantial and continuing income in these areas for years.
>
> The [waiver of discovery in] the Separation Agreement supports Rachel's position that she was not fully aware of all sources of Thad's income at the time as a result of the parties' mutual desire to resolve the matter quickly, *without discovery*. Because the Court's paramount consideration in all child support matters is the needs of the parties' children, the Court will not construe the parties' omission of discovery against the current needs of the children years after. *** The Court finds this factor, among others discussed below, weighs in favor of a finding that there has been a substantial change of circumstances, *i.e.* Thad's income was not fully disclosed to Rachel in 2017 and she later became aware of the sources of income not previously disclosed to her." (Emphasis in original.)

¶ 32 Having carefully reviewed the transcript, we find that the trial court can only have been referring to the portion of Rachel's testimony where her attorney asked her about the large deposits seen on Thad's 2024 bank statements, *i.e.*, the tax refund and the rebate for solar panels

(*supra* ¶ 25), because there was no other point where Rachel was asked about Thad's income. (Although Rachel's attorney stated, "we didn't know that he was receiving this much income" (*supra* ¶ 27) and makes similar contentions on appeal, we note that attorneys' arguments must be disregarded to the extent they are unsupported by the evidence. *Doe v. Bridgeforth*, 2018 IL App (1st) 170182, ¶ 64; see Illinois Pattern Jury Instructions, Civil, No. 1.01(C)[13] (rev. Jan. 2011).

¶ 33 The trial court cited several cases for the propositions that (1) an increase in the supporting parent's ability to pay child support can constitute a substantial change in circumstances in and of itself and (2) courts can presume that the children's needs as they get older and the cost of living increases. See, *e.g.*, *In re Marriage of Connelly*, 2020 IL App (3d) 180193, ¶ 20. The court went on:

> "Thad's testimony was either intentionally evasive or genuinely confused about the sources and amount of his income in response to questions from counsel for Rachel. Significantly, the Court must determine whether there has been a 'substantial change in circumstances' since 2017 when the prior judgment was entered, yet Thad presented no evidence of his income in 2017 or 2018. The Court construes this gap in information against Thad as he is the party with the best access to information regarding his income for 2017 and 2018.
>
> When the varying and substantial amounts of periodic bonuses and all categories of expenses reimbursed or paid by Thad's employer from 2019-2023 are considered, the Court concludes that his ability to pay child support has increased since 2017. Rachel testified that the children's expenses have increased, although she was unable to provide specific amounts. The Court, pursuant to the foregoing authority, may presume the children's expenses have increased since 2017 by virtue

of inflation and increased needs of children as they age and become involved in more activities as Rachel testified they have. Accordingly, the Court finds there has been a substantial change in circumstances since 2017."

¶ 34 Finally, the trial court examined the parties' current incomes. For Thad, the court used his average compensation from Bob Lamb Co. from 2019 to 2023. The court started with the average taxable compensation of $102,936 from Thad's W-2s as his "base salary," to which the court added Thad's average bonus of $44,000 based on his testimony. The court then added Thad's average "employer reimbursements/value of in-kind fuel contributions/direct payment of costs reducing personal expenses," and "attribute[d] an average gross annual income to Thad in the amount of $173,985.86 for the purpose of child support calculation." For Rachel, the court noted that her "written closing argument state[d] that her current gross annual income [wa]s $58,914.12."

¶ 35 Based on these amounts, the trial court awarded Rachel $795.97 in monthly child support, retroactive to the date of Rachel's petition, with payments beginning in September 2024 to include an additional $150 per month until the arrearage was satisfied.

¶ 36 Thad appealed.

¶ 37 II. ANALYSIS

¶ 38 The parties' dispute on appeal centers on whether the trial court erred in finding that a substantial change in circumstances warranted modification of the MSA. "The trial court's determination of whether a substantial change in circumstances has occurred is one of fact and will not be disturbed unless against the manifest weight of the evidence." *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 674 (2005). "A decision is against the manifest weight of the evidence when an opposite conclusion is apparent or when the court's findings appear to be

unreasonable, arbitrary, or not based on evidence." *In re Marriage of Verhines*, 2018 IL App (2d) 171034, ¶ 51.

¶ 39 The parties also disagree about some aspects of the relevant legal standard. "When determining whether [the trial] court applied the incorrect legal standard, we must *** ascertain the correct legal standard, which is a question of law subject to *de novo* review." *In re Marriage of Trapkus*, 2022 IL App (3d) 190631, ¶ 22. To the extent that our analysis concerns the proper interpretation of the Act or other statutes, our review is also *de novo*. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 9.

¶ 40 We resolve the legal issues in the context of the trial court's factual findings regarding (1) Thad's purported failure to disclose the sources of his income to Rachel in 2017; (2) the children's needs; and (3) the parties' incomes, which we address in turn.

¶ 41 A. Thad's Purported Nondisclosure

¶ 42 1. *Child Support Agreements*

¶ 43 It is well established that minor children's parents have a duty to support them that survives dissolution of marriage. See *Foote v. Foote*, 22 Ill. 425, 491 (1859) ("By law, it is the bounden duty of the father to provide for the support of his own offspring, and having the means he can be compelled to do so."). "The duty of support owed to a child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child." 750 ILCS 5/505(a) (West 2022). Furthermore, "a child support award may provide for more than the child's basic needs, so as to approximate the standard of living the child would have enjoyed had the parties stayed married," provided that "a child-support award is not meant to be a windfall." *In re Marriage of Izzo*, 2019 IL App (2d) 180623, ¶ 28; see *Foote*, 22 Ill. at 491 ("Yet such as the

[father] has, be it much or little, must be resorted to, out of which to provide a fund for the children.").

¶ 44 The Act explicitly provides that a judgment dissolving marriage "shall not be entered unless *** the court has considered, approved, reserved or made provision for *** the support of any child of the marriage entitled to support." 750 ILCS 5/401(b) (West 2022); see *Foote*, 22 Ill. at 492 ("It is *** the duty of the court decreeing a divorce, under our statute to provide for the children ***."). Furthermore, the Act provides that "[t]he Illinois Department of Healthcare and Family Services shall adopt rules establishing child support guidelines" (750 ILCS 5/505(a)(1) (West 2022)); the guidelines generally call for an award of child support that is paid in a fixed dollar amount at a fixed interval. See *id.* § 505(a)(5) (providing that "[t]he final order in all cases shall state the support level in dollar amounts" unless "the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the [supporting parent's] net income is uncertain as to source, time of payment, or amount").

¶ 45 Under the guidelines, child support is allocated between parents with equal parenting time in an amount based on each "parent's percentage share of combined net income," with "the parent owing more child support paying the difference between the child support amounts." *Id.* § 505(a)(3.8). When the trial court decides to determine child support based on the guidelines, they "shall be used as a rebuttable presumption for the establishment or modification of the amount of child support," provided that the court may "deviate from the child support guidelines if the application would be inequitable, unjust, or inappropriate." *Id.* § 505(a)(3.4).

¶ 46 Alternatively, the trial court may decline to apply the guidelines altogether:

> "The court shall determine child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would

be inappropriate, after considering the best interests of the child and evidence which shows relevant factors including, but not limited to, one or more of the following:

(A) the financial resources and needs of the child;

(B) the financial resources and needs of the parents;

(C) the standard of living the child would have enjoyed had the marriage *** not been dissolved; and

(D) the physical and emotional condition of the child and his or her educational needs." *Id.* § 505(a)(2).

¶ 47 The Act specifically allows the trial court to enter a divorce decree containing an agreed-upon child support arrangement in a marital settlement agreement. See *id.* § 502. The terms of the child support agreement are binding and enforceable but "may be modified upon a showing of a substantial change in circumstances." *Id.* § 502(f); see *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 36 ("[P]arties may not make the child-related terms of their agreements nonmodifiable."); see also *Foote*, 22 Ill. at 492 ("[Child support] matters always remain under the control of the courts, and subject to any alterations that varying circumstances may render necessary.").

¶ 48 2. *Res Judicata*

¶ 49 A divorce decree is a final judgment, and "[u]nder the collateral attack doctrine, a final judgment rendered by a court of competent jurisdiction may only be challenged through direct appeal or procedure allowed by statute and remains binding on the parties until it is [set aside] through such a proceeding." *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 189 (2010); see *In re Marriage of Schauberger*, 253 Ill. App. 3d 595, 603 (1993) (noting that a court may set aside a divorce decree under section 2-1401(a) of the Code of Civil Procedure

(735 ILCS 5/2-1401(a) (West 2022)). In addition, courts have equitable power to take some actions in the context of child support proceedings "even without a section 2-1401 petition on file," although courts must exercise these equitable powers with caution. *Clark v. Lay*, 2022 IL App (4th) 220101, ¶¶ 50-51.

¶ 50 In the present case, Rachel did not seek to set aside the October 2017 divorce decree *retrospectively* by alleging that her waiver of custody resulted from fraudulent concealment on Thad's part or a unilateral mistake on her part; she sought to establish child support *prospectively* by alleging that a substantial change in circumstances since the decree's entry warranted its modification. This is significant for two reasons, the first of which is that Rachel's approach avoided the stringent procedural requirements for setting aside a judgment based on fraud or mistake, which generally requires a party to plead factual allegations with particularity (see *Van Dam v. Van Dam*, 21 Ill. 2d 212, 218 (1961); *cf. Stephens v. Hamilton*, 81 F.2d 324, 326 (7th Cir. 1936)) and prove those allegations by clear and convincing evidence (*In re Marriage of Johnson*, 237 Ill. App. 3d 381, 394 (1992); see *Sheldon v. Colonial Carbon Co.*, 116 Ill. App. 3d 797, 800 (1983)).

¶ 51 The second reason is that "courts of Illinois have consistently held that those facts which were the basis of the original decree become *res judicata* and that changed circumstances justifying modification of support must occur *since the date of the decree*." (Emphasis added.) *Sullivan v. Sullivan*, 98 Ill. App. 3d 928, 932 (1981). The application of *res judicata* presents a question of law that we review *de novo*. See *Pace Communications Services Corp. v. Express Products, Inc.*, 2014 IL App (2d) 131058, ¶ 15 ("[T]he application of both 'true *res judicata*' (claim preclusion) and collateral estoppel (issue preclusion) are legal questions, which we review *de novo*.").

¶ 52 *Res judicata* generally means that "[a] petitioner cannot use a [petition] to modify as a vehicle for launching a collateral attack on the accuracy of the evidence upon which the court relied in formulating its [decree]." *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 819 (2001); see *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶ 51 (declining to reopen a divorce decree despite a party's waiver of discovery in reliance on an inaccurate yet nonfraudulent affidavit by the opposing party). Nevertheless, "[w]hile the concept of *res judicata* does apply to modifiable orders, it must be carefully applied." *In re Marriage of Waldschmidt*, 241 Ill. App. 3d 7, 11 (1993); *cf. Pasenelli v. Pasenelli*, 2002 WY 159, ¶¶ 8-9 (recognizing the tension between the children's best interests and society's interest in the finality of judgments entered on child support agreements). For instance, we have held that "the well-established limitations on the relief a petition to modify child support can provide" may give way in "extraordinary circumstances in which *both* the interests of a minor *and* the integrity of court proceedings are at stake." (Emphases added.) *Clark*, 2022 IL App (4th) 220101, ¶ 52.

¶ 53 Here, the trial court found that "Thad's income was not fully disclosed to Rachel in 2017," *i.e.*, the date of the decree; this finding of nondisclosure amounts to a collateral attack on the waiver of discovery in the decree. See *Goldsmith*, 2011 IL App (1st) 093448, ¶ 51. Although the court's finding that Rachel "later became aware" of the purported nondisclosure at first seems to suggest a changed circumstance, this finding also rests on a collateral attack on the waiver of discovery; by concluding that Rachel became aware of information *after* she waived discovery, the court necessarily concluded that she was unaware of that same information *when* she waived discovery. See *id.*; see also *Apollo Real Estate*, 403 Ill. App. 3d at 188 ("Courts should be liberal in recognizing a *** collateral attack on a judgment[.]"). Nevertheless, the court refused to "construe the parties' omission of discovery against the current needs of the children years after"—

in other words, to apply the doctrine of *res judicata*—"[b]ecause the Court's paramount consideration in all child support matters is the needs of the parties' children." The court noted, " 'Parents may not bargain away their children's interests.' " (quoting *Blisset v. Blisset*, 123 Ill. 2d 161, 168 (1988)).

¶ 54 Unlike in *Clark*, the trial court rested its decision solely on the interests of the children, declining to find that Thad consciously failed to disclose his income or that Thad was responsible for any potential deficiencies in Bob Lamb Co's discovery responses. *Clark*, 2022 IL App (4th) 220101, ¶ 52 (noting "the presence of obvious fraud"); see *id.* ¶ 38 (addressing the requirements for showing fraudulent concealment). The absence of fraud is noteworthy because it means that Thad has a legitimate interest in the finality of the decree, including the provisions of the decree that are no longer modifiable. *Settlement Funding, LLC v. Brenston*, 2013 IL App (4th) 120869, ¶ 33 (explaining the theory that "a decision produced by a fraud on the court is essentially not a decision at all and never becomes final").

¶ 55 Because a parent's "lack of diligence should not prejudice the minor children" (*Legan v. Legan*, 69 Ill. App. 3d 304, 308 (1979)), we leave open the possibility that in an exceptional case, a trial court might decline to apply the doctrine of *res judicata* even in the absence of fraud or a section 2-1401 petition in order to "cause to be done whatever may be necessary to protect [the children's] interests." *Clark*, 2022 IL App (4th) 220101, ¶ 50 (citing *Clarke v. Chicago Title & Trust Co.*, 393 Ill. 419, 429 (1946); *Mason v. Truitt*, 257 Ill. 18, 25 (1912)). In such a case, the court would have to conclude that, at the time it entered judgment on the child support agreement, its conclusion as to what was in the children's best interests was so patently incorrect that the children "are manifestly entitled to some relief" from the judgment, despite any countervailing interests in finality. *Mason*, 257 Ill. at 25; see *In re J'America B.*, 346

Ill. App. 3d 1034, 1042 (2004). But even when minors' interests are involved, *res judicata* is the rule rather than the exception. *Cload ex rel. Cload v. West*, 328 Ill. App. 3d 946, 954 (2002). In general, legitimate interests in the finality of even an arguably incorrect judgment give way only in the face of a clear and convincing showing that to apply *res judicata* would "be fundamentally unfair" (*id.* at 953) or "result in manifest injustice" (*St. Paul Fire & Marine Insurance Co. v. Downs*, 247 Ill. App. 3d 382, 389 (1993)).

¶ 56 The trial court's approach here seems to suggest that when deciding whether to modify the divorce decree entered by Judge Day, it could disregard Judge Day's finding that a waiver of child support was in the children's best interests at that time, which is not the law. At a bare minimum, the court should have *acknowledged* Judge Day's approval of the parties' waivers of discovery and child support; indeed, it is noteworthy that the court cited *Blisset*, where the supreme court's concern was that, unlike here, the parents' purported attempt to "bargain away their children's interests" *had not received the trial court's approval*, meaning the parties were still bound by the court's prior decision of what was in the children's best interests. *Blisset*, 123 Ill. 2d at 168 ("[P]arents may create an enforceable agreement for modification of child support only by petitioning the court for support modification and then establishing, to the satisfaction of the court, that an agreement reached between the parents is in accord with the best interests of the children.").

¶ 57 The public policy of Illinois is that child support disputes should be settled amicably when those settlements are in the children's best interests (see 750 ILCS 5/502(a) (West 2022)), and we are reluctant to characterize an ordinary waiver of discovery as an attempt to "bargain away *** children's interests" of the kind described in *Blisset*, where "[the mother] dropped charges then pending against [the father] for past-due support, and [the father] agreed to relinquish his right

to visitation with the children in the future." *Blisset*, 123 Ill. 2d at 165, 168. The agreement reached in *Blisset* was neither amicable nor approved by the court, but assuming the court had found it was in the children's best interests to exonerate their father from his duty of support and allow him to vanish from their lives completely, we have no trouble seeing how that approval could have been fundamentally unfair to the children at the time.

¶ 58 In this case, it is easy enough to conclude, with seven years' hindsight, that Rachel may now regret foregoing additional discovery about the parties' income—her own and Thad's—to resolve any genuine confusion about his income and *potentially* receive a child support payment if his income was greater than what was shown in Bob Lamb Co.'s initial discovery responses. Instead, Rachel chose to accept the discovery she had already obtained in order to avoid prolonging the kind of contentious divorce proceeding the legislature intended for parents to resolve amicably when possible. Judge Day concluded that Rachel's choice was appropriate under the circumstances; we cannot hold on this record that Judge Day's conclusion was manifestly unjust.

¶ 59 In short, we emphasize that a trial court should be exceptionally cautious about undermining its own judgments in the absence of a proper request by a party; even when the court itself is unwilling to defend its own judgment, a party relying on the judgment should usually be afforded an opportunity to defend it in response to a collateral attack by the court. See *Clark*, 2022 IL App (4th) 220101, ¶ 49 (noting that the court acted *sua sponte* only after the parties had litigated the relevant issues). The principle requiring *res judicata* to be "carefully applied" to modifiable orders means that courts must exercise care not just when they apply *res judicata*, but when they decline to apply it as well. *Waldschmidt*, 241 Ill. App. 3d at 11.

¶ 60 3. *The Court's Findings*

¶ 61 Assuming for the sake of argument that the trial court could have declined to apply *res judicata* on the facts as it found them, we also hold that those findings are unsupported by the evidence.

¶ 62 First, the trial court stated that the October 2017 MSA "supports Rachel's position that she was not fully aware of all sources of Thad's income at the time as a result of the parties' mutual desire to resolve the matter quickly, *without discovery*." (Emphasis in original.) However, the court's reference to "the parties' omission of discovery" failed to account for the fact that Rachel had *already obtained discovery* from Bob Lamb Co. three months earlier in response to her discovery request that specifically mentioned "bonuses" and asked "*how much* [Bob Lamb Co.] pa[id] for vehicle payment, gasoline purchases, vehicle insurance premiums, health insurance premiums, dental insurance premiums, vision insurance premiums, retirement benefits, [and] cellular phone service." (Emphasis added.) Absent evidence to the contrary, the court was required to presume that Bob Lamb Co. fully responded to this discovery request. See *Chicago Title & Trust Co. v. First Arlington National Bank*, 118 Ill. App. 3d 401, 413 (1983); see also *Muslim Community Center v. Village of Morton Grove*, 392 Ill. App. 3d 355, 358 (2009) ("In the case of a collateral attack on a judgment, all presumptions are in favor of the validity of the judgment attacked[.]"). In any event, Rachel's discovery request *itself* strongly indicates that she was aware of the only likely source of Thad's income, as well as the various forms his income might take, including reimbursements for expenditures on his vehicle and cell phone.

¶ 63 Nevertheless, the trial court effectively found that there was contrary evidence by crediting Rachel's purported testimony "that she was not, in fact, aware that Thad received substantial income in the form of periodic bonuses and reimbursed/covered personal expenses (or at best mixed personal/business expenses) by Thad's employer, [Bob Lamb Co.], at the time of the

[MSA].” But see *Muslim Community Center*, 392 Ill. App. 3d at 359 (noting that the presumption in favor of the validity of a judgment cannot be rebutted by extrinsic evidence in a collateral attack proceeding). While we afford considerable deference to a trial court’s findings regarding witness credibility (*In re Z.L.*, 2021 IL 126931, ¶ 82), we cannot find evidentiary support for this finding even by fully crediting Rachel’s testimony.

¶ 64 As noted above, the only portion of Rachel’s testimony that even arguably addressed Thad’s income was when her attorney asked her about the large deposits appearing on Thad’s 2024 bank statements, *i.e.*, the tax refund and the rebate for solar panels. Rachel’s counsel asked, “Did we believe those were bonus amounts?” and she answered, “I don’t think you guys knew what it was.” Even assuming Rachel was including herself when referring to “you guys,” we cannot see how her lack of knowledge of what these non-bonus deposits were in 2024 shows a lack of knowledge that Thad was receiving bonuses and reimbursements in October 2017.

¶ 65 Accordingly, we hold that the trial court’s finding that “Thad’s income was not fully disclosed to Rachel in 2017,” in addition to being barred by *res judicata*, is against the manifest weight of the evidence.

¶ 66 B. The Children’s Needs

¶ 67 1. *A Substantial Change in Circumstances*

¶ 68 Because the trial court has broad authority to approve agreements that are in the children’s best interests under the circumstances, it stands to reason that the court must also have some authority to modify those agreements when they are no longer in the children’s best interests. See *Blisset*, 123 Ill. 2d at 168. Indeed, we have held that a trial court can “modify” child support by imposing a child support obligation on one party even where, as here, the parties agreed that

neither of them would be obligated to pay child support due to an equal division of custody. *Wittland*, 361 Ill. App. 3d at 787-88.

¶ 69 However, the Act allows for a modification of child support *only* "upon a showing of a substantial change in circumstances," except in specific situations not present in this case. 750 ILCS 5/510(a) (West 2022); see *In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 306 (2004) ("[T]he circuit court has no authority to modify child support obligations until a petition for such modification is filed ***."). The party seeking modification bears the burden of producing evidence and persuading the court that circumstances have substantially changed (*Verhines*, 2018 IL App (2d) 171034, ¶ 51), although the party opposing modification may introduce evidence and attempt to persuade the court that circumstances have not substantially changed.

¶ 70 Apart from prohibiting retroactive modifications without notice (750 ILCS 5/510(a) (West 2022)), the Act does not express a preference for any particular kind of modification. See *In re Marriage of Waller*, 339 Ill. App. 3d 743, 749 (2003) ("We have declined to read into section 510(a) an exception for certain types of modifications. *** A modification is a modification."). If the court concludes that modification is appropriate, it must again "apply[ ] the child support guidelines unless [it] makes a finding that application of the guidelines would be inappropriate" using the nonexclusive list of factors in the Act. 750 ILCS 5/505(a)(2) (West 2022); see *Verhines*, 2018 IL App (2d) 171034, ¶ 51.

¶ 71 As such, we have held that consideration of the section 505(a)(2) factors is also appropriate in determining whether a substantial change in circumstances has taken place:

> "Trial courts *** should consider not only the needs of the children and the financial status of the noncustodial parent, but also the needs and financial status of the custodial parent, the financial resources of the children, the standard of living

> the children would have enjoyed had the marriage continued, and the physical, emotional, and educational needs of the children." *Breitenfeldt*, 362 Ill. App. 3d at 674.

See *Wilson v. Wilson*, 166 Ill. App. 3d 1035, 1037-38 (1988) (quoting Ill. Ann. Stat. ch. 40, ¶ 510, Historical and Practice Notes, at 133 (Smith-Hurd Supp. 1987)). Indeed, "[t]he law is clear that only some change in circumstances *of any nature* that would justify equitable action by the court in the best interests of the child is required." (Emphasis in original.) *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 35 (1997).

¶ 72 We note that since 2022, section 510(a)(1) has also stated:

> "Contemplation or foreseeability of future events shall not be considered as a factor or used as a defense in determining whether a substantial change in circumstances is shown, unless the future event is expressly specified in the court's order or the agreement of the parties incorporated into a court order. The parties may expressly specify in the agreement incorporated into a court order or the court may expressly specify in the order that the occurrence of a specific future event is contemplated and will not constitute a substantial change in circumstances to warrant modification of the order[.]" 750 ILCS 5/510(a)(1) (West 2022).

Rachel's petition was filed after this statutory change, which arguably overturns long-standing case law regarding some of the key issues in this case (see, *e.g.*, *In re Marriage of Stadheim*, 170 Ill. App. 3d 19, 24-25 (1988)), but at no point before the trial court or this court has either party addressed it. Indeed, the proper interpretation of the amended statute appears to be a question of first impression before this court. See *In re Marriage of Alpert Knight*, 2024 IL App (1st) 230629,

¶ 25 (applying the former version of the statute to a petition filed before the amendment took effect); *In re Marriage of Svec*, 2024 IL App (2d) 220461-U, ¶ 27 (same).

¶ 73 " 'The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.' " *National Aeronautics & Space Administration v. Nelson*, 562 U.S. 134, 147 n.10 (2011) (quoting *Carducci v. Regan*, 714 F. 2d 171, 177 (D.C. Cir. 1983)). Because both parties have relied on cases applying the prior statute and neither party has suggested that the amendment limited what the trial court could "consider[ ] as a factor or used as a defense in determining whether a substantial change in circumstances [wa]s shown," we assume solely for purposes of this appeal that all factors and defenses presented to the trial court were "expressly specif[ied]" in the MSA (750 ILCS 5/510(a)(1) (West 2022)), rendering an interpretation of the amended statute unnecessary. See *Pielet v. Pielet*, 2012 IL 112064, ¶ 56 ("[C]ourts should refrain from deciding an issue when resolution of the issue will have no effect on the disposition of the appeal presently before the court."); see also *In re Estate of Mercier*, 2011 IL App (4th) 110205, ¶ 15 (noting that a trial court's judgment is presumed to be in conformity with the law).

¶ 74 2. *The Presumption of Increased Needs*

¶ 75 a. Fixed Monthly Payments

¶ 76 Over the years, this court has endorsed competing interpretations of the statutory requirement of showing changed circumstances when addressing what was historically the "typical" child support arrangement, where one parent (the "supporting parent") was paying child support in a fixed dollar amount at fixed intervals to the other parent (the "custodial parent"), who had a majority of parenting time with the child. In most appeals involving this typical arrangement, the custodial parent had petitioned the trial court to increase the supporting parent's monthly

payment, although we occasionally addressed instances where the supporting parent had petitioned the trial court to decrease the monthly payment.

¶ 77 When considering whether the trial court should have increased a fixed monthly payment, we have sometimes endorsed a flexible standard. "*Typically*, a substantial change in circumstances means the child's needs, the [supporting] parent's ability to pay, *or both* have changed since the entry of the most recent support order." (Emphases added.) *In re Marriage of Wengielnik*, 2020 IL App (3d) 180533, ¶ 13; accord *Waller*, 339 Ill. App. 3d at 750. Under the flexible standard, the children's needs and the supporting parent's ability to pay are simply the most important of the section 505(a)(2) factors. *In re Marriage of Daniels*, 115 Ill. App. 3d 173, 176 (1983). At other times, we have endorsed a strict standard: "An increase in child support is justified *only* when the needs of the children *and* the earnings of the supporting parent have been increased." (Emphases added.) *Addington v. Addington*, 48 Ill. App. 3d 859, 863 (1977); accord *In re Marriage of Adams*, 348 Ill. App. 3d 340, 343 (2004).

¶ 78 Under both standards, however, we have found that an increase in the supporting parent's income constituted a substantial change in circumstances *despite* a lack of evidence that the child's needs increased. See, *e.g.*, *In re Marriage of Scott*, 72 Ill. App. 3d 117, 124 (1979). In *Addington*, 48 Ill. App. 3d at 863, we addressed this apparent contradiction by explaining that, under the strict standard, "where [the supporting parent's] increased ability to pay is demonstrated, a proper basis for establishing increased need is that since the entry of the original support provision, the children have grown older and the cost of living has risen."

¶ 79 This presumption of increased needs means that a custodial parent seeking to increase a fixed child support payment is not required to introduce any evidence that the children's needs have increased; instead, the trial court may take judicial notice that time has passed since it

entered the prior child support order. See, *e.g.*, *Schmerold v. Schmerold*, 88 Ill. App. 3d 348, 350 (1980) (finding three years sufficient to invoke the presumption); *Adams*, 348 Ill. App. 3d at 343 (same). *Contra In re Marriage of Glickman*, 211 Ill. App. 3d 792, 796 (1991) ("[A]n actual increase in the children's living expenses must be shown, rather than a mere increase in the cost of living generally.").

¶ 80 Although the presumption of increased needs began with the strict standard, it has been applied under the flexible standard as well, whether the custodial parent was seeking to increase payments (see, *e.g.*, *In re Marriage of Riegel*, 242 Ill. App. 3d 496, 499 (1993)) or the supporting parent was seeking to decrease payments (see *Connelly*, 2020 IL App (3d) 180193, ¶¶ 26, 28). As such, a supporting parent seeking to decrease a fixed child support payment may be required to introduce evidence showing that an increase in the custodial parent's income has not been "offset by the presumed increase in the cost of raising children." *Id.* ¶ 20.

¶ 81 Of course, some minimum amount of time must pass before the presumption of increased needs carries any weight; indeed, the most widely used measure of the cost of living, the Consumer Price Index, is updated only once per month. See *Consumer Price Indexes Overview*, U.S. Bureau of Labor Statistics, https://www.bls.gov/cpi/overview.htm (last visited May 14, 2025). If increased needs would have to be shown with evidence one day after the prior order but not seven years after the prior order, at what point would the heightened evidentiary burden go away?

¶ 82 Given that section 510(a) of the Act simply requires only a "subsequent" "showing of a substantial change in circumstances," without distinguishing between increases and decreases in existing child support payments (750 ILCS 5/510(a)(1) (West 2022); see *Waller*, 339 Ill. App. 3d at 749), we find it difficult to square section 510(a)(1) with a time-sensitive evidentiary burden.

Compare 750 ILCS 5/510(a)(1) (West 2022) with *id.* § 610.5(a) (providing that, with specific exceptions, "no motion to modify an order allocating parental decision-making responsibilities, not including parenting time, may be made earlier than 2 years after its date"). If the legislature had wanted to make child support orders presumptively modifiable after three years, it could easily have done so, but it did not. See *DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497, 510 (2006) ("If a statute, as enacted, seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to this court."); *cf.* Kan. Stat. Ann. § 23-3005(a) (West 2014) ("If more than three years ha[ve] passed since the date of the original [child support] order or [previous] modification order, a material change in circumstance need not be shown.").

¶ 83 b. The Present Case

¶ 84 In the present case, the trial court decided to employ the flexible standard as well as the presumption of increased needs. Rachel argues that this decision was correct, whereas Thad argues that the court should have employed the strict standard instead. We disagree with the trial court and the parties for the simple reason that this case does not involve an increase or decrease in a fixed monthly payment, which is a prerequisite for applying either standard. See *Wengielnik*, 2020 IL App (3d) 180533, ¶ 13; *Adams*, 348 Ill. App. 3d at 343.

¶ 85 Accordingly, the question is simply whether there has been "some change in circumstances *of any nature* that would justify equitable action by the court in the best interests of the child" based on an overall consideration of the section 505(a)(2) factors. (Emphasis in original.) *Singleteary*, 293 Ill. App. 3d at 35. This means that increases in the supporting parent's ability to pay or the children's needs, whether presumed or shown with evidence, are factors but cannot be dispositive as to whether there has been a substantial change in circumstances under

section 510(a). See 750 ILCS 5/505(a)(2) (West 2022); *Wilson*, 166 Ill. App. 3d at 1038 ("[C]hild support obligations may be increased pursuant to section 510 of the Act based upon the supporting parent's increased ability to pay, *regardless of whether the child's needs have also increased*." (Emphasis added.)); see also *In re Marriage of Turk*, 2014 IL 116730, ¶¶ 31-32 (indicating that sections 505 and 510 would allow the trial court to increase a fixed child support payment from the custodial parent to the noncustodial parent, which would rarely make sense when the children's needs and the noncustodial parent's ability to pay child support have both increased).

¶ 86 And while we have expressed some skepticism about the presumption of increased needs, we need not resolve when it should apply in general, if ever, because the trial court erred by applying it here. See *Pielet*, 2012 IL 112064, ¶ 56. Recall that Rachel relied on the presumption to justify the equitable action of establishing child support, *i.e.*, departing from the parties' 50/50 division of the children's expenses. But in this specific context, the presumption of increased needs told the trial court nothing about (1) whether to rebalance the 50/50 division and (2) if so, whether to tip the balance in Rachel's favor.

¶ 87 Taking groceries as an example, the presumption of increased needs rests on the premises that (1) as the cost of living increases, the price for same amount of groceries will increase and (2) as the children get older, they will eat more, so the amount of groceries purchased will increase, even if the price of groceries stays the same. Based on these two premises, the trial court can reasonably presume that the dollar cost of the children's grocery bill will increase over time.

¶ 88 The first problem is that these premises cannot apply when the parties' child support arrangement is unaffected by fluctuations in the cost of living. *Cf. Connelly*, 2020 IL App (3d) 180193, ¶ 25 (noting that fluctuations in the supporting parent's income did not constitute a substantial change in circumstances when the parties' MSA automatically adjusted child support

based on a fixed percentage of that income). Here, the parties have agreed to an equal division of the children's basic expenses, which would include half of the grocery bill. No matter how much the dollar cost of the grocery bill goes up due to the increased cost of living, half of the grocery bill will always go up by half of that amount. Put another way, each party is effectively paying the other $0 in child support; even if the trial court can take judicial notice that the purchasing power of an $800 child support payment has substantially decreased over time due to inflation, the court must also take judicial notice that the purchasing power of a $0 child support payment never decreases.

¶ 89 The second problem is that the presumption of increased needs makes sense only when there is already a custodial parent and a supporting parent. Even if the trial court can presume that the dollar cost of the grocery bill has gone up by some amount, say $200 per month, the court must presume that Rachel is paying $100 more per month when the children are with her and Thad is paying $100 more per month when the children are with him. Therefore, if the court can presume that *Rachel's* extra $100 expenditure means that Thad should start *paying* an additional $100 in child support, the court must also presume that *Thad's* extra $100 expenditure means that he should start *receiving* an additional $100 in child support, getting Rachel no closer to showing a substantial change in circumstances. See *People v. Steading*, 308 Ill. App. 3d 934, 940 (1999) ("A fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence."); *Nordstrom v. Nordstrom*, 36 Ill. App. 3d 181, 185 (1976) ("Increased expenditures due to inflation apply to [the supporting parent] as well as to [the custodial parent].").

¶ 90 3. *Evidence of Increased Needs*

¶ 91 Even though the presumption of increased needs cannot support the trial court's decision in this case, *evidence* of the children's increased needs could still suffice. See *In re*

Marriage of Putzler, 2013 IL App (2d) 120551, ¶¶ 29-33 (addressing the presumption as well as the evidence). Here, the court considered the evidence and found that "the children's expenses have increased since 2017 by virtue of inflation and increased needs of children as they age and become involved in more activities as Rachel testified they have."

¶ 92 We agree with Thad that ordinary increases in these expenses fail to provide evidentiary support for the trial court's finding that there had been a substantial change in circumstances warranting modification because the MSA provided that these expenses were to be divided equally. See *In re Marriage of Fazioli*, 202 Ill. App. 3d 245, 251 (1990) (finding no substantial change in circumstances when one parent had "not shown any specific increased needs of the children for which [the other parent] was not already voluntarily paying"). Accordingly, we hold that this finding is against the manifest weight of the evidence.

¶ 93 C. Thad's Ability to Pay Child Support

¶ 94 1. *Determining Substantiality*

¶ 95 As explained above, an increase in one parent's ability to pay child support since the prior order can still constitute a substantial change in circumstances under section 510(a) because it affects the standard of living the children would have enjoyed if the marriage had not been dissolved. 750 ILCS 5/505(a)(2)(C) (West 2022); see *Wilson*, 166 Ill. App. 3d at 1038. Consistent with the language of the statute, of course, the increase must be "substantial," as opposed to "relatively small." *In re Marriage of Durdov*, 2021 IL App (1st) 191811, ¶ 22. Furthermore, we have found that an increase in one parent's income is less likely to constitute a substantial change in circumstances when the other parent's income has also increased. *Connelly*, 2020 IL App (3d) 180193, ¶ 28.

¶ 96 Although the term substantial does not lend itself to numerical precision or a categorical rule, we have historically used the percentage increase in the supporting parent's income as a rough metric. See *Durdov*, 2021 IL App (1st) 191811, ¶ 22 (collecting cases). This approach makes the most sense when the supporting parent is not responsible for maintaining the children's standard of living except through the child support payment. See *Connelly*, 2020 IL App (3d) 180193, ¶ 29 (noting that the parent with sole custody was responsible for maintaining the children's standard of living); see also *In re Marriage of Bussey*, 108 Ill. 2d 286, 297 (1985) ("A child is not expected to have to live at a minimal level of comfort while the [supporting] parent is living a life of luxury. [Citations.] The child should not suffer because the custodial parent has a limited income.").

¶ 97 However, in the context of shared custody, the children enjoy *both parents'* standard of living, as the legislature recognized by crafting a unique formula for offsetting child support obligations in this context. See 750 ILCS 5/505(a)(3.8) (West 2022)), *Contra Bussey*, 108 Ill. 2d at 297-98 ("[T]he noncustodial parent [wa]s obviously 'enjoying' a standard of living far above that of the child."). For example, if one parent has a nicer television than the other parent, their children can still watch that nicer television up to 50% of the time.

¶ 98 Therefore, a better approach in the context of shared custody resembles the legislature's approach: consider whether there has been a substantial change in (1) one parent's percentage share of the parties' combined income and/or (2) the percentage of time the children spend with each parent and, therefore, enjoy that parent's standard of living. See 750 ILCS 5/505(a)(3.8) (West 2022). While this kind of metric should not be used exclusively (see *In re Marriage of Stockton*, 169 Ill. App. 3d 318, 328 (1988)), it does provide a good starting point for considering the threshold question of whether there has been a substantial change in the overall

standard of living the children would have enjoyed if the marriage had not been dissolved. In this case, it also helps demonstrate why the trial court's finding of a substantial change in circumstances is unsupported by the evidence.

¶ 99 Here, Thad has custody of the children 50% of the time, so they enjoy his standard of living 50% of the time; it is undisputed that this percentage has not changed since October 2017. As such, we need only consider whether there has been a substantial change in Thad's share of the parties' combined income since October 2017. We first address the trial court's findings regarding the parties' current incomes, and then we address whether Thad's share has substantially changed.

¶ 100 2. *The Parties' Current Incomes*

¶ 101 With respect to Thad's current income, the trial court's approach was generally appropriate, with one obvious exception: it is clear that the $101,860 in taxable income on Thad's 2023 W-2 was not Thad's "base salary" but also accounted for his $50,000 bonus in some way, *i.e.*, there is no reason to suspect that the bonus was nontaxable or otherwise not reportable on Thad's W-2. Consequently, the court erred by concluding that Bob Lamb Co. actually paid Thad $151,860 in 2023. While we agree with the court that it is difficult to disentangle the financial documents in the record, Thad testified that his gross income in 2023 was $1,330 per week, along with a bonus of approximately $50,000, which is consistent with Bob Lamb Co.'s 2023 payroll check register showing that it paid Thad $1,330 per week plus $48,300, *i.e.*, $117,460. Without more information about the nature of the deductions shown on the payroll check register, we cannot say for certain why only $101,860 of that income was reported as taxable on Thad's 2023 W-2, but the tax withholdings shown on both documents are consistent, which gives no reason to question Bob Lamb Co.'s accounting practices.

¶ 102 The trial court's conclusion that Bob Lamb Co. actually paid Thad a total salary and bonus of $151,860 in 2023, *i.e.*, that its payroll records are off by $34,400, has no basis in the evidence. Furthermore, because the court used this 2023 information when extrapolating Thad's salary and bonuses from 2019 to 2022, we conclude that the trial court erred by again adding Thad's average bonus of $44,000 to the average taxable income computed from his W-2s. Assuming without deciding that the trial court's approach can be corrected simply by fixing this apparent double counting, Thad's imputed average income of $173,985.86 should only have been $129,985.86.

¶ 103 Turning to Rachel's income, the trial court used the $58,914.12 figure stated in her written closing argument, but in this context as in others, "closing arguments are not evidence." *Bridgeforth*, 2018 IL App (1st) 170182, ¶ 64. Because Rachel is the appellee and her written closing argument is missing from the record, we will construe any deficiency in the record in her favor (see *Lach*, 2024 IL App (2d) 220230-U, ¶ 74), but we cannot go so far as to construe the absence of her written closing argument as *evidence*.

¶ 104 Rather than simply relay what was stated in Rachel's written closing argument, the trial court should have stated how it relied on the admitted evidence, which included Rachel's own tax documents and her testimony that she earned an hourly income of $37 and worked approximately 30 to 35 hours per week. However, we note that the court's conclusion does find support in the evidence because Rachel's 2023 W-2 shows that she earned $56,301.51 in taxable income, along with $2,612.61 in medical benefits, for a total of $58,914.12; therefore, we presume that Rachel's written closing argument was based on this calculation and that the trial court adopted that calculation as its own.

¶ 105 3. *Did Thad's Income Substantially Increase?*

¶ 106 While we have found fault with some aspects of the trial court's findings, the evidence still leads to the inescapable conclusion that there is a sizeable discrepancy between the parties' current incomes. Assuming that in 2023 Thad earned $129,985.86 and Rachel earned $58,914.12, then Thad earned 69% of the parties' income despite paying just 50% of the children's expenses. As we have explained before, " 'when one parent earns a disproportionately greater income than the other, that parent clearly should bear a larger share of the support.' " *Clark*, 2022 IL App (4th) 220101, ¶ 41 (quoting *In re Keon C.*, 344 Ill. App. 3d 1137, 1143 (2003)). But see *Stockton*, 169 Ill. App. 3d at 328 (finding error where the trial court apportioned a child's educational expenses between the parents based *solely* on the ratio of their gross incomes). That said, it is not our role to decide in a vacuum whether Thad should bear a larger share of the children's support; we take cases as they come to us.

¶ 107 Here, the question is whether there has been a substantial change in circumstances, but as Thad points out, any attempt to ascertain how the parties' incomes have *changed* since the October 2017 divorce decree runs headlong into the lack of *evidence* of their incomes from October 2017 or earlier. Rachel argues that this lack of evidence is a red herring in light of the more recent evidence of their grossly disparate incomes, but in fact, it is the heart of the matter. Rachel's burden was not to show that *Thad's* current income is substantially higher than *her* current income; Rachel's burden was to show that Thad's *current* income is substantially higher than Thad's *former* income. See *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 822 (2004) (rejecting a party's attempt to set a benchmark for changed income other than the previous child support order).

¶ 108 In October 2017, Judge Day conducted a prove-up hearing and entered a final judgment, concluding that the parties' choice to equally divide the children's expenses in lieu of child support was in the children's best interests under the circumstances. See 750 ILCS

5/505(a)(2) (West 2016). The divorce decree said that Judge Day heard evidence and was fully advised in the premises; "[i]n such a situation, unless there is a contrary indication in the order or in the record, it is presumed that the court heard adequate evidence to support the decision that was rendered." (Internal quotation marks omitted.) *Foutch v. O'Bryant*, 99 Ill. 2d 389, 394 (1984). Neither this court nor the trial judge who conducted the hearing on Rachel's petition has any record of the prove-up hearing or any other indication of what evidence was heard, so we must presume that the court was fully advised as to "the financial resources and needs of the parents." 750 ILCS 5/505(a)(2)(B) (West 2016). *Contra Clark*, 2022 IL App (4th) 220101, ¶ 56 (affording greater deference to the trial court because it "was intimately familiar with the income of the litigants given the ongoing nature of the proceedings").

¶ 109 In any event, the increase since 2017 had to be *substantial*. *Durdov*, 2021 IL App (1st) 191811, ¶¶ 21-22. Because we have so little insight into the trial court's October 2017 decision, we can appreciate the temptation to speculate that the court divided the children's expenses equally because the parties' incomes were roughly equal at that time, in other words, that Thad's income was closer to 50% of the parties' income. But speculation based on a lack of evidence is not evidence. See *People v. Davis*, 278 Ill. App. 3d 532, 540 (1996) ("If an alleged inference does not have a chain of factual evidentiary antecedents, then within the purview of the law it is not a reasonable inference but is instead mere speculation."). The absence of evidence regarding the parties' incomes at the time of the decree was not simply a "gap in information" but a failure of proof that the court should have "construe[d]" against the party with the burden of proof: Rachel. See *People v. Smith*, 248 Ill. App. 3d 351, 358 (1993) ("[T]he party who generally seeks to change the status quo *** should be expected to bear the risk of failure of proof or persuasion.").

¶ 110 The trial court's decision to base its conclusion on Thad's access to information regarding his income is puzzling. The court cannot have faulted Thad for failing to produce this information *in discovery* because Rachel never sought discovery about his 2018 income and had already obtained discovery about his 2017 income from Bob Lamb Co. See Ill. S. Ct. R. 219(c) (eff. July 1, 2002) (allowing this kind of sanction only when there is a failure to comply with a discovery order or rules). Furthermore, the court cannot have faulted Thad for failing to take the stand—he did—or answer questions about his 2017 income because neither Rachel nor the court asked him about it. See 750 ILCS 5/505(a)(6) (West 2022) (relaxing certain evidentiary requirements only when the supporting parent fails to comply with a discovery order and "is not present at the hearing to determine support despite having received proper notice").

¶ 111 In sum, there is no evidence in the record to support the trial court's finding that Thad's income has substantially increased since the divorce decree, either in absolute terms or as a percentage of the parties' shared income. Consequently, the court's conclusion that there has been a substantial change in circumstances is against the manifest weight of the evidence.

¶ 112 III. CONCLUSION

¶ 113 Because the trial court erred in finding that there had been a substantial change in circumstances warranting modification of the divorce decree, the court necessarily erred by modifying the decree to establish child support. Accordingly, we reverse the trial court's judgment.

¶ 114 Reversed.