

2013 IL App (1st) 113728-U

FIRST DIVISION
DATE: March 25, 2013

No. 1-11-3728

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF DIANE WHELAN KEZON,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
and)	No. 99 D2 30207
)	
PETER KEZON,)	Honorable
)	Jeanne M. Reynolds,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment ordering respondent to pay petitioner child support arrearages is affirmed. Respondent failed to pay the amounts required by a marriage settlement agreement. Respondent failed to present sufficient evidence from which the court could establish whether the trial court in the marriage dissolution proceeding had reviewed the marriage settlement agreement to determine whether some of its terms were unconscionable. The agreement does not have conflicting terms. Respondent forfeited the contention that petitioner's claim should be barred by *laches*.

¶ 2 Respondent Peter Kezon (Peter) appeals, *pro se*, from an order of the circuit court of Cook County that he pay petitioner Diane Whelan Kezon (Diane) child support arrearages of \$186,618.78 plus 9% interest. Peter contends: he has already paid all the child support he is

obligated to pay under Illinois law; the trial judge in the dissolution of marriage action between the parties should have modified unconscionable terms concerning child support in the marital settlement agreement; Diane drafted the marital settlement agreement and therefore ambiguities in the agreement should be construed against her; and because Diane failed to object to lower support payments made by Peter, she should be barred from recovering any arrearages because of the doctrine of *laches*.

¶ 3 The parties were married on May 12, 1979. They had three children: Annie, born on March 29, 1983; Jordan, born on March 30, 1986; and Trevor, born on May 31, 1989. The parties, both acting *pro se*, obtained a judgment for dissolution of marriage on June 14, 1999. The judgment includes a settlement agreement (the Agreement) which, *inter alia*, provides for support payments for the children. Article III of the Agreement covers child support issues. Section 3.1 provides that Peter shall pay \$5,000 per month as child support for the three children. It also provides that every year, on or about January 15, Peter will review with Diane his average salary and commission income for the past three years. Peter agreed to pay Diane the greater of one-third of his income or \$5,000 per month as child support for the following year. Section 3.2 of the Agreement provides that as the children become emancipated, Peter's obligations for child support shall be modified "in accordance with the Illinois Marriage and Dissolution of Marriage Act upon request of [Peter] in determination by a court of competent jurisdiction." Section 3.2 also provides that the parties shall confer to determine the appropriate amount in accordance with statutory guidelines. Section 3.3 states that Peter's obligation to pay child support shall commence upon the effective date of the Agreement and shall continue until the emancipation of the child in question. Section 3.4 defines emancipation as the first of the following events:

- A. The child's death;
- B. The child's attaining the age of twenty-two (22) years or completion of a college education, whichever later occurs,

but in no event beyond the child's twenty-third (23rd) birthday;

- C. The child's maintaining a full-time residence outside the home of the parent having primary care of the child, exclusive of a residence at a secondary school, camp, or similar facility;
- D. The child's obtaining full-time employment, exclusive of his employment during school vacation periods; or
- E. The child's marriage.

¶ 4 Pursuant to these provisions, Peter paid Diane child support payments of \$5,000 per month from July 1, 1999, through April 2008. However, Peter then unilaterally reduced those payments to \$3,333 per month from May 2008 through October 2008. Peter stopped making any child support payments to Diane from November 2008 till May 2011. Diane does not seek any child support payments from Peter after May 2011, when their youngest son, Trevor, graduated from college.

¶ 5 In August 2011 Diane sought to recover Peter's arrearages in child support by filing three citations to discover assets against Peter, his employer, and his bank. In response, Peter filed a motion to set proper arrearages, in which he claimed that he had overpaid his child support payments in the amount of \$39,811.36. Peter admitted that he had made payments in the amounts we have outlined. But, citing to the Agreement, which he attached as an exhibit, he asserted that he was entitled to a reduction of one-third of the child support payments as each child became emancipated. Diane responded by filing a motion for judgment on the pleadings in which she claimed that Peter owed her \$186,618.78 plus 9% interest, based upon the Agreement and his admissions in the motion to set proper arrearages. These admissions, which Peter does not dispute on appeal, were that he had unilaterally reduced the amount of the child support

payments, and then eliminated them, without seeking court approval. The circuit court held for Diane, issuing an order finding that Peter did not meet his obligation to petition the court in order to modify child support. The order denied Peter's motion to set proper arrearages and granted Diane's motion for judgment on the pleadings. The court entered judgment for Diane and against Peter in the amount of \$186,618.78, plus interest at 9% beginning May 10, 2011. Peter has appealed from this judgment order.

¶ 6 Peter's first contention on appeal is that he paid all the child support that he was required to pay to Diane. This contention is refuted by the Agreement, which sets out Peter's child support obligations. In his motion to set proper arrearages, Peter admitted that he unilaterally reduced his payments and then stopped them altogether. These actions violated the Agreement, which was made part of the judgment of dissolution of their marriage. The terms of the Agreement provided that Peter would pay \$5,000 per month in child support for the first year. After that, he was to pay one-third of his monthly income or \$5,000, whichever was greater, as child support unless the parties agreed to modify that amount and submitted their modification agreement to the trial court.

¶ 7 Peter alternatively contends that the trial judge in his marriage dissolution case should have reviewed the child support provisions of the Agreement to determine if they were unconscionable. But Peter has not included in the record on appeal a report of those proceedings, which occurred nearly 14 years ago. Without that report of proceedings, or a properly certified bystander's report, we cannot determine whether the trial judge did review those provisions. Nor can we tell from this record whether the \$5,000 monthly payments were within statutory guidelines. 750 ILCS 5/505 (West 2010). If the judge did make findings concerning the child support payments, he was permitted to include those in his oral findings. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108 (2000). Such findings would be found in the transcript of proceedings, which we do not have before us. A party is required to provide the

reviewing court with a sufficiently complete record to support his claims of error, and absent such a record, we will presume that the trial court's orders conformed with the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422. Accordingly, we find no merit to Peter's contention.

¶ 8 Peter next contends that the Agreement has conflicting terms concerning his child support obligations upon the emancipation of his children. A settlement agreement should be construed as any other contract would be. *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). Section 3.2 of the Agreement provides that as the children become emancipated, the parties shall confer to determine what Peter's payments will be, in accordance with statutory guidelines. Then, upon Peter's request, the matter shall be submitted to the appropriate court. Section 3.3 provides that Peter's support obligations shall continue until the emancipation of each child. We do not find these provisions to be in conflict. Section 3.3 provides that Peter's support obligation to each child terminates when that child becomes emancipated. Until the last child is emancipated, there will still be a need to determine whether changed circumstances support a different child support payment, and section 3.3 sets out the procedure for that determination. Peter contends that we should construe the Agreement as allowing him to immediately deduct a *pro rata* share of his child support payment when a child becomes emancipated, without conferring with Diane and without submitting the change to the court. But this construction would mean that section 3.2, which requires consultation between the parties and submission to the court, is superfluous. We are charged with construing the Agreement, as with any contract, so that every provision has meaning. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 123 (1992). Peter asserts that we should determine any ambiguity against Diane because she drafted the Agreement. There is no evidence that Diane drafted the Agreement; in her brief she asserts that Peter drafted it. In any event, we have found no ambiguity requiring construction of the Agreement.

¶ 9 Peter's final contention is that the doctrine of *laches* should bar Diane from contending that he has failed to make all requisite child support payments. *Laches* is an equitable doctrine which provides that a litigant may not assert a claim when the litigant's unreasonable delay in making that claim prejudices the other party. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 401 (2004). Peter asserts that because Diane delayed in challenging his reduced child support payments from May 2008 until August 2011, when she filed citations to discover Peter's assets, he was prejudiced because he could have obtained a court order to reduce his payments beginning in 2008. Peter's claim of prejudice is speculative; it is not clear what payments he would have been making had he utilized the procedures mandated in the Agreement. Also, he had the use of the money he should have paid Diane, starting in November 2008 when he stopped making any payments. In any event, there is no indication in the record that Peter made this claim in the trial court and therefore he has forfeited it. *People v. Wells*, 182 Ill. 2d 471, 490 (1998).

¶ 10 For the reasons set forth in this order, we affirm the judgment of the circuit court.

¶ 11 Affirmed.