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2015 IL App (3d) 140423-U

Order filed July 29, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

In re MARRIAGE OF)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
ANGELA M. HONEA, n/k/a FANDEL)	Peoria County, Illinois.
)	
Plaintiff-Appellant,)	Appeal No. 3-14-0423
)	Circuit No. 09 D 589
v.)	
)	The Honorable
BRYON K. HONEA, JR.,)	Katherine S. Gorman,
)	Judge, Presiding.
Defendant-Appellee.)	
)	

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Holdridge concurring in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in failing to find that defendant-appellee's income tax refunds are computable additional income for child support.

¶ 2 Plaintiff-appellant, Angela M. Honea, n/k/a Fandel, filed a petition for adjudication of indirect civil contempt against defendant-appellee, Bryon K. Honea, Jr., seeking to have him relinquish his 2010, 2011, and 2012 tax return documents and have the refund amounts computed as additional income for child support payments pursuant to the terms of their marital

settlement agreement (the agreement). The trial court found that Bryon's tax refunds were not the additional income referenced in the agreement because it was not one of the specified funds to be used in computing the additional support required by the agreement and it was not clear if the matter was actually addressed when the settlement was drafted. We reverse and remand.

¶ 3

FACTS

¶ 4

Angela and Bryon were married but later divorced on July 15, 2010. They have since remarried other individuals. The parties have one child who was born on December 11, 2009. Bryon also has sole custody of a child from a previous relationship whom he annually claims as a dependant for tax exemption purposes. He also has another child with his current wife.

¶ 5

At the parties' divorce proceedings, the court accepted the agreement Angela and Bryon had negotiated through their respective counsel. Among other things, the agreement included terms relevant to their child's custody and support. Angela retained custody of the child and Bryon had visitation. The relevant portions regarding child support stated the following:

"III. Child Support

1. Payment. BRYON shall pay to ANGELA the sum of \$142.00 as basic child support each week, commencing with the Friday immediately following the birth of the child, i.e., December 11, 2009. This amount is based on BRYON's normal base net income of \$710 per week at Nelson Tree Service. BRYON shall also pay, as additional support, 20% of any net income of any kind (including accumulated benefits paid upon separation) that he receives in excess of this base net income, including but not limited to overtime or bonuses from Nelson. Further, the amount of

support shall be re-determined based upon BRYON's new job with Wright Tree Service, which commenced the week ending July 9, 2010.

5. Dependency Exemption. ANGELA shall be entitled to the income tax dependency exemption for the child as custodial parent, but BRYON shall be entitled to the exemption for odd-numbered tax years (2011, 2013, etc.) provided in each case that he has paid his support on a reasonable timely basis and is current in his child support as of the end of the tax year in question. ***

6. Documentation of Additional Income and Payment of Support. To document his additional net income, BRYON shall, at least quarterly provide ANGELA with copies of all of his paystubs not previously provided, along with available documentation and itemization of any other income, along with calculation of additional net income and the child support due thereon.***"

On October 12, 2010, the base weekly support amount increased to \$160.00 in accord with the aforementioned term in the agreement.

¶ 6 Though disputed by Bryon, Angela states that in May 2013 she sent a letter to Bryon stating that his tax refunds would be considered income. She told him that to comply with the agreement he would need to provide copies of his tax returns for the years following the agreement and pay 20% of the refunded amounts as child support. When that and a subsequent letter were answered in the negative, Angela filed a petition for adjudication of indirect civil

contempt on June 26, 2013, against Bryon. She alleged that Bryon had not provided documentation of his income in the manner established in the agreement. Such documentation was provided thereafter including Bryon's tax returns.

¶ 7 At the hearing on the matter on September 9, 2013, Angela argued that Bryon's tax refunds constituted additional net income as defined in the agreement and that he had therefore failed to pay the agreed 20% in child support from that income. Bryon countered that his tax refunds or any part thereof were not "net income" within the meaning of the agreement.

¶ 8 The issue was presented to the court through oral argument from the parties respective counsel based only on the language of the agreement and section 505 of the Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/505 (West 2010)). No parol evidence was submitted or testimony given.

¶ 9 The court issued its opinion on September 16 declining to find that Bryon's tax refunds were the additional income referenced in the agreement. It held:

"A reading of the provision, negotiated with both sides having the benefit of counsel, reflects rather specifically the funds that are to be used in the computation of the additional support. It does not include income tax refunds; one would have to speculate about whether the parties addressed that. The plain language of the judgment certainly does not suggest that it was specifically addressed. It is not clear whether it was addressed in computing the base child support. Given the language and resulting dispute, there is uncertainty. The court is not going to hold [Bryon] in contempt

nor does it find it appropriate to include income tax refunds in the computation of the additional child support."

¶ 10 Angela moved for the court to reconsider on October 16. Her motion included an affidavit discussing how the determination for Bryon's child support from his base net income and additional income considered the tax withholding but did not factor in the possibility of a refund which is still income. After a hearing, the trial court denied the motion on April 22, 2014. Angela timely appealed.

¶ 11 ANALYSIS

¶ 12 The issue before this court is whether the trial court erred in not finding Bryon's income tax refunds appropriate for computation as additional net income for child support pursuant to the term in the agreement. First we determine whether Bryon's income tax refunds are net income pursuant to the Marriage Act which governs the agreement.

¶ 13 When charged with statutory interpretation our standard of review is *de novo*. *Molter Corp. v. Amwest Surety Insurance Co.*, 267 Ill. App. 3d 718, 721 (1994). Courts should construe a statute in a way that avoids absurd, unreasonable, unjust or inconvenient results. *In re Mary Ann P.*, 202 Ill. 2d 393, 406 (2002).

¶ 14 Section 505(3) of the Marriage Act provides, in relevant part, that:

" 'Net income' is defined as the total of all income from all sources, minus the following deductions:

(a) Federal income tax (*properly calculated withholding* or estimated payments);

(b) State income tax (*properly calculated withholding* or estimated payments)" (Emphases added.) 750 ILCS 5/505(3) (West 2012).

¶ 15 The plain language of the statute dictates that net income is the remainder income after, *inter alia*, taxes are properly calculated and withheld. 750 ILCS 5/505(3)(a)(b) (West 2012). "Properly calculated withholding is, by definition, withholding that coincides with actual tax owed on one's gross income." *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 391 (2002). Tax deductions from a person's regular and/or bonus employment income(s) – paychecks received monthly, quarterly, or other – are estimated withholdings based on general algorithms. I.R.C. § 3402 (2011); 35 ILCS 5/502 (West 2012). A person's annually required individual tax return filing provides the actual tax that was/is to be paid from his or her total income received *effectuating a proper calculation of their withholding*. See I.R.C. § 31.6011(a)-4 (2012); 35 ILCS 5/502 (West 2012). If the calculations show an over withholding due to those general tax deductions, a tax refund is issued reflecting the net income inaccurately withheld. *Id.* Illinois case law pursuant to this section of the Marriage Act has held that this disparity should be considered when determining how much a person has to pay in child support. *Ackerley*, 333 Ill. App. 3d at 391 (2002); *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 732-33 (1996).

¶ 16 Moreover, the Marriage Act clearly states that " '[n]et income' is defined as the total of all income from all sources, minus *** deductions." 35 ILCS 5/505(a)(3) (West 2012). A person's tax refund is income that was over withheld and is subject to deductions, specifically, state income tax and prior obligations of support or maintenance. 35 ILCS 5/505(a)(3) (b), (g) (West 2012); *Topic 203 - Refund Offsets for Unpaid Child Support, Certain Federal and State Debts*,

and Unemployment Compensation Debts, INTERNAL REVENUE SERVICE (June 26, 2015), <http://www.irs.gov/taxtopics/tc203.html>.

¶ 17 Further if consideration is not given, an opportunity to "hide" income and lower child support payments through tax withholdings could be created. *Pylawka*, 277 Ill. App. 3d at 733. If Bryon's reasoning is followed, a child support obligor could manipulate his or her monthly tax withholdings preventing an accurate accounting of his net monthly income for support purposes by simply authorizing additional funds to be withheld. *Id.* I.R.C. § 3402 (2011) (line six of a person's W-4 allows for subjective additional amounts from a person's income to be withheld). The obligor would then be able to recoup these additional funds later in the form of a tax refund. If such funds are not considered income, the child is cheated out of a portion of the support required of the obligor. Such a possibility flies in the face of the legislative intent to ensure that an obligor takes complete fiscal responsibility for his or her minor(s). See 750 ILCS 5/505 (West 2012); IL S. Tran. 1999 Reg. Sess. No. 44 (statement of Sen. Steve Rauschenberger on child support collection).

¶ 18 Bryon's subsequent arguments that he should not have to pay child support from his tax refunds are all without merit. An agreement to alternate years in which the child is claimed as a dependent for tax purposes does not change the fact that Bryon's tax refund, regardless of the year, is net income that can be computed for child support purposes. This finding is also notwithstanding Bryon's claim of other dependants on his tax returns. The statute makes no provisions for an obligor's net income – including additional income received through tax credits for one child and not another – to be child specific. Further, contrary to Bryon's additional argument, this finding remains constant even in cases, such as this one, that involve parties who have remarried and/or have additional dependants with other individuals. *Department of Public*

Aid ex. rel. Schmid v. Williams, 336 Ill. App. 3d 553, 557 (2003). The statute does not, and it should not, decrease or limit an obligor's fiscal support and responsibility for his or her minor(s) due to new or preexisting additional offspring or new marital relationships. The Marriage Act, therefore, provides that Bryon's tax refund is net income that could be computed for support to his child.

¶ 19 Now in evaluating the parties' marital agreement as it relates to this finding that Bryon's tax refund is computable net income for child support, we review *de novo* the trial court's assessment of a marital settlement agreement, as a matter of law. *In re Marriage of Shores*, 2014 IL App (2d) 130151 ¶24-15. The marital agreement between the parties specifically notes under the section for payment of child support a set amount for Bryon's weekly support obligations from his "normal base net income." Thus our finding regarding Bryon's tax refunds is parol evidence that cannot be used to modify this unambiguous term of the parties' fully integrated marital agreement. *Kendall v. Kendall*, 71 Ill. 2d 374, 377 (1978) ("without any uncertainty or ambiguity" in the text of the contract or party intent, parol evidence cannot be used to alter the "conclusively presumed *** whole agreement of the parties *** included in the writing"); *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992) (marital settlement agreements are contracts and are subject to the same rules of construction as applied to any contract).

¶ 20 This term also makes this case distinguishable from the cases cited by Angela as they all involve either uncertainty in the actual term for the net income support provided by the obligor or petitioned for changes to those parties' marital agreement as it relates to net income. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 45-46 (determined initial child support payments with uncertain income amounts); *Williams*, 336 Ill. App. at 554 (obligee petitioned to modify child support order to include tax refund); *Ackerley*, 333 Ill. App. at 390-91 (2002) (involved

initial calculation of support from bonuses per marital agreement term); *Pylawka*, 277 Ill. App. at 730 (obligee petitioned to increase child support pursuant to tax refund).

¶ 21 Nevertheless, the trial court erred in not viewing Bryon's tax refunds as the agreement's *additional* net income that the parties also agreed would be computed for child support. Under the same section of the agreement outlining Bryon's weekly support obligation from his net income, Bryon also has to pay "as additional support, 20% of *any* net income of any kind." Under the section for documentation of additional income and payment support, he agreed to provide Angela with any other available documentation and itemization of *any* other income as well as the calculations for the agreed 20% child support due from that additional net income. The trial court determined that the additional income sources actually mentioned under the payment section – overtime and bonuses – in the agreement constituted the exhaustive list of sources contemplated by the parties. However, the agreement clearly states that those income sources are included in what should be considered "any net income" but consideration is "not limited to" them. Moreover, those sources are noted as being from Nelson Tree Service, a company the agreement acknowledges that Bryon was leaving for Wright Tree Service.

¶ 22 In review of the child support section in its entirety, the use of the term "any" in several locations to reference the source for additional net income to be assessed for child support shows that Bryon and Angela recognized that there may be other sources outside of those listed. As we have already determined, Bryon's tax refund is net income. This net income is income in addition to Bryon's "normal base net income." Thus it is required under the agreement to be assessed 20% for child support. Accordingly, the trial erred in finding Bryon's tax refunds were not additional net income subject to this assessment.

¶ 23

CONCLUSION

¶ 24 The judgment of the circuit court of Peoria County is reversed and remanded.

¶ 25 Reversed and remanded.