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2015 IL App (3d) 140716-U

Order filed October 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
JACK SPERRY,)	Knox County, Illinois.
)	
Petitioner-Appellant,)	
)	Appeal No. 3-14-0716
v.)	Circuit No. 09-D-130
)	
ANNE SPERRY,)	Honorable
)	James R. Standard,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Father's timely notice of appeal was limited to the two specifically named orders and prohibits appellate review of previous final appealable orders that were not timely filed or identified in the notice of appeal.

¶ 2 The parties entered into a marital settlement agreement (MSA) in July of 2009, which was incorporated into a judgment of dissolution entered in September of 2009. The MSA included a provision that neither party would pay child support, but petitioner Jack Sperry (father) would pay maintenance to respondent Anne Sperry (mother) in specified amounts for

three years, partially in lieu of child support. The MSA further provided that either party could seek modification of the child support provision of the MSA after three years. On July 16, 2012, the Illinois Department of Healthcare and Family Services (DHFS) filed a “Petition to Set Child Support” on behalf of mother. On September 10, 2013, the court entered a written uniform order for support requiring father to pay child support payments of \$416 every two weeks, which would be retroactive to July 20, 2012.

¶ 3 Mother died in an automobile accident on September 16, 2013, and the court entered an order terminating child support effective September 16, 2013. However, this order did not address or terminate the retroactive child support. In April of 2014, mother’s estate filed a petition to establish the amount of retroactive child support due, and the court entered an order granting judgment for retroactive arrearages in the amount of \$12,480 in favor of mother’s estate. After denying father’s motion to reconsider, father filed a notice of appeal challenging the court’s entry of the judgment on arrearages. We affirm.

¶ 4 BACKGROUND

¶ 5 On May 27, 2009, father filed a petition for dissolution of marriage against mother. The parties entered into a marital settlement agreement (MSA), filed with the court on July 16, 2009, which was subsequently incorporated into a judgment of dissolution of marriage entered on September 8, 2009. A joint parenting order was also filed on September 8, 2009, in conjunction with the judgment of dissolution.

¶ 6 The MSA provided that father’s current biweekly net income was \$1,552 and mother’s current biweekly net income was \$425. As part of the MSA, the parties agreed that father and mother would share joint custody of and equal parenting time with the parties’ children. Additionally, in section 5, paragraph 3, the child support portion of the MSA, the parties agreed

neither parent would pay child support and would deviate from the statutory guidelines based in part on the parties' agreement that father would pay maintenance to mother for three years, in the amounts of \$550 per month for the first year, \$500 per month for the second year, and \$450 per month for the third year. Father began paying maintenance in July of 2009. The MSA stated the maintenance was "partially in lieu of child support," and the waiver of the payment of child support was also due to father paying off mother's student loans, paying health insurance and daycare expenses for the children, and paying 100 percent of other uncovered medical costs for the benefit of the children. Section 4 of paragraph 5 of the MSA expressly provided that "[e]ither party may seek modification of the provisions set forth in Section 5, paragraph 3, after 3 years." Section 5 of paragraph 5 of the MSA provided that father was paying maintenance to wife partially in lieu of child support and, "given the factors set forth herein, no child support will be paid by either party."

¶ 7 On July 16, 2012, approximately three years after the filing of the MSA, but less than three years after entry of the judgment of dissolution, DHFS filed a "Petition to Set Child Support" (petition for support) on behalf of mother. The petition for support alleged the judgment of dissolution was filed on September 8, 2009, which incorporated the MSA. This petition further alleged father was ordered to pay maintenance in lieu of child support for three years, pursuant to the MSA, and the maintenance payments began in July of 2009 when the MSA was filed. The petition for support also asserted that maintenance payments would soon terminate in July of 2012.

¶ 8 The court held the hearing on DHFS's petition for support on April 30, 2013. Prior to hearing evidence, father's attorney argued that mother's petition for support was filed in violation of the parties' MSA, filed on July 16, 2009, and incorporated into the judgment of

dissolution on September 8, 2009. According to father, the MSA included the parties' agreement that no child support would be paid based on father paying for other expenses for the children and maintenance to mother. Father contended that there were no changes in circumstances sufficiently alleged in the DHFS petition for support, and the current facts of this case continued to support the premise that neither party should pay child support based on the parties sharing equal parenting time. Father also requested a continuance of the hearing on the petition for support because he wanted to file a petition for contempt against mother, since she did not wait the full three years before attempting to modify the child support provisions as provided by the MSA.

¶ 9 The court noted that the DHFS petition for support was originally filed on July 16, 2012, and the date of the current hearing was now April 30, 2013. The court determined father had more than enough time to challenge the date DHFS filed mother's petition for support, and he failed to do so in a timely manner. The court also noted that the continuances of this hearing were, in part, based on father's delays in producing discovery. The court denied father's motion to continue and proceeded to a hearing.

¶ 10 Mother testified that she originally agreed to receive no child support from father in the MSA because she would receive maintenance payments in lieu of child support for a period of three years. According to the MSA, each party had the children in their care approximately 50 percent of the time. However, mother stated she now cared for the children more than 50 percent of the time because father's scheduled time with the children was during the days when the children attended school. Mother had the children in her care every evening when father worked and on the weekends. Father kept the children with him overnight on Wednesday and Thursday evenings.

¶ 11 Mother said the maintenance payments began in July of 2009 and she received her last \$450 maintenance payment on June 30, 2012, or in July of 2012. Mother stated she worked as a teachers' aide and her gross income was \$13,000 in 2012. Mother also received \$94 weekly income as child support for a child not related to father. Mother received no other income from any source after the maintenance payments from father ended. Mother testified she received a "LINK" card and health insurance for the children through a financial assistance program. Mother also testified regarding her monthly expenses.

¶ 12 Father testified, pursuant to the 2009 MSA, he paid maintenance for three years "as opposed to paying child support," which he believed was not the same as paying maintenance in lieu of child support. Father thought he paid the last \$450 maintenance check to mother in July of 2012. Father stated he was employed as a Galesburg police officer for 14 years and earned a gross income of \$51,147 in 2012. Father discussed his monthly expenses over the years. Father worked from 3 p.m. to 11 p.m. on Friday through Tuesday every week and mother had the children in her care on those nights. Father explained his monthly expenses to the court.

¶ 13 The court took the matter under advisement. The court issued a written opinion letter on August 30, 2013. The court found the MSA was filed with the court on July 16, 2009, and was incorporated into the judgment of dissolution on September 8, 2009. Father starting paying maintenance based on the MSA from July 16, 2009, through July of 2012, when his obligation to pay maintenance terminated pursuant to the MSA. The court noted the current hearing on the petition for support was being held in 2013, well after the three-year period expired.

¶ 14 The court also found the 2009 MSA did not preclude DHFS from seeking child support on mother's behalf and the MSA did not "act as a bar to the imposition of a child support

obligation upon [f]ather.” The court found the evidence demonstrated a great disparity of incomes of each party.

¶ 15 The court noted the current child support order was not a modification of child support, but an initial order of child support, therefore, the substantial change in circumstances requirement did not apply to this case. Further, the court found the statutory guidelines for child support applied and a deviation from those guidelines was not warranted in the case at bar. The court ordered father to pay child support in the amount of \$416 “every other week” (biweekly), retroactive to the date DHFS filed the petition to set child support.

¶ 16 Consequently, on September 10, 2013, the court entered a written uniform order for support, marked as an “Initial Order,” ordering father to pay current child support payments of \$416 biweekly. The uniform order further stated “Payments Begin: July 20, 2012.”¹ The uniform order for support contained provisions for payment of the current child support and also provided:

“If there is an unpaid arrearage or delinquency equal to at least one month’s child support obligation on the termination date, then the periodic amount required to be paid for current child support prior to the termination date shall automatically continue to be an obligation toward satisfaction of the unpaid arrearage or delinquency until paid in full. This payment shall be in addition to any periodic payment required for satisfaction of the arrearage or delinquency which payments shall continue until such amounts are paid in full.”

¶ 17 Shortly thereafter, on September 20, 2013, father filed a “Motion to Vacate Notice for Withholding (Child Support),” which stated mother died in a car accident on September 16,

¹Presumably, this was the date of father’s first paycheck after DHFS filed its petition for support on July 16, 2012.

2013. Father asked the court to vacate the previous order for withholding because father now had full-time care of the children. The court entered an order on that same date granting father's motion to vacate the notice of withholding. On September 26, 2013, the court entered an amended *nunc pro tunc* order that provided, "Current child support and withholding previously ordered herein is terminated, effective September 16, 2013."²

¶ 18 On April 10, 2014, the administrator for mother's estate filed a "Petition to Establish Arrearage and Set Payment" (petition for arrearage) asking the court to determine the amount of arrearage owed pursuant to the September 10, 2013, uniform order for support. The petition for arrearage also asked the court to set a payment schedule for payment of the arrearage to mother's estate if father could not pay the arrearage amount in full *instantly*.

¶ 19 After conducting a hearing on April 29, 2014, the court found the evidence was unrefuted that, at the time of mother's death, a child support arrearage amount of \$12,480 was due and owing based on the order for support entered on September 10, 2013. Further, the court found that the subsequent September 20, 2013, order only vacated the portion of that order regarding current child support payments due to mother's death, but did not vacate arrearage amounts owed by father. Subsequently, on May 20, 2014, the court entered an order granting judgment for arrearages in the amount of \$12,480 in favor of mother's estate.

¶ 20 On June 13, 2014, father filed a motion to reconsider the judgment for arrearages to be paid to mother's estate. Father claimed the court "improperly imposed this obligation" because the judgment for arrearages violated the statutes and did not benefit the parties' two children in his care, but benefitted mother's estate for the reimbursement of funeral expenses and mother's

²The record indicates father did not appeal the initial September 10, 2013, uniform order for support within 30 days of its entry, or the *nunc pro tunc* amended order terminating only the current child support order within 30 days of that order.

other child from a previous relationship. Father's motion to reconsider also claimed that, prior to mother's death:

“[T]his court upon petition by the State of Illinois, set a child support amount prior to the time when the existing court order allowed for modifications to be made. By this Court's ruling it had abrogated the agreement of the parties which had been previously approved by the Court, in the original order entered herein, by a different Judge. [Emphasis in original.]

d. [Mother's] death did not elevate Judge Standard to Appellate Court Justice to 'reverse' the parties['] agreement that had been approved and Court ordered for over two years.”

Father's motion to reconsider asked the court to modify the May 20, 2014, order that entered judgment on the arrearages against father in the amount of \$12,480, because the original child support order entered by Judge Standard on September 10, 2013, was entered in violation of the original MSA previously approved by Judge Stewart in 2009. The court denied father's motion to reconsider on August 18, 2014.

¶ 21 Father filed his notice of appeal on September 12, 2014. In his notice of appeal, father stated he was appealing the order entered by Judge Standard on August 18, 2014, denying the motion to reconsider the arrearage order entered on May 20, 2014,³ as well as the underlying May 20, 2014, order setting arrearages and entering judgment for unpaid support.

¶ 22 Mother's estate filed a motion to dismiss the appeal, in this case, claiming this court lacked jurisdiction to consider the issue raised in father's appellate brief challenging the validity of the trial court's uniform order of support entered by Judge Standard on September 10, 2013.

³Although the order denying reconsideration was signed by the judge showing a date of August 20, 2014, the circuit clerk stamp on that order shows a date of August 18, 2014.

Mother's estate argued this order was not identified in the notice of appeal and, furthermore, was not appealed in a timely fashion. This court denied the appellee's motion to dismiss based on lack of jurisdiction arising from the notice of appeal.

¶ 23

ANALYSIS

¶ 24

On appeal, father requests this court to review Judge Standard's 2013 order finding that father could be compelled to begin paying child support once the three-year term expired for the payment of maintenance in lieu of child support as provided for in the MSA. However, father did not file a timely notice of appeal in 2013 and the notice of appeal in this case challenges the 2014 orders of the court setting the amount of unpaid child support that existed at the time of mother's death.

¶ 25

By way of review, we note Judge Standard issued an opinion letter on August 30, 2013, ordering father to comply with an initial child support order requiring him to pay \$416 biweekly, retroactive to July 16, 2012. The actual written uniform order for support, marked as an "Initial Order," was entered on September 10, 2013, requiring father to pay current child support of \$416 biweekly. The uniform order further stated "Payments Begin: July 20, 2012," but did not calculate the amount of retroactive support due.

¶ 26

We reject the notion that Judge Standard acted in the capacity of a reviewing court as appellate counsel contends. Instead, Judge Standard honored the MSA agreement, which allowed father to pay maintenance in lieu of child support for the first three years after the 2009 dissolution, and then ordered father to *begin* paying child support after his maintenance obligation terminated according to the terms of the MSA approved in July 2009. Importantly, father did not challenge the court's order by filing a notice of appeal within 30 days of September 10, 2013, the date the court entered the uniform order for support.

¶ 27 Instead, father filed a motion to vacate the September 10, 2013, order for withholding entered by Judge Standard to stop withholding for his current support due to mother's untimely death. After mother's death on September 16, 2013, father had time to file a notice of appeal, but did not do so.

¶ 28 Again, for purposes of review, we note the appeal now before us was precipitated by the actions of mother's estate in 2014, long after the 30-day window closed for father to appeal the September 10, 2013, order. Specifically, approximately six months after mother's death, mother's estate requested the trial court enter a separate written "Order Regarding Arrearage" to fix the amount of total unpaid child support owed to her estate. On May 20, 2014, the court set the fixed amount of unpaid support in the sum of \$12,480, based on the amount of biweekly statutory support ordered by Judge Standard in September of 2013.

¶ 29 Father's notice of appeal, dated September 12, 2014, indicated father was appealing only the May 20, 2014, order fixing the amount of child support arrearage at \$12,480,⁴ together with the subsequent August 18, 2014, order denying father's motion to reconsider that order.

¶ 30 Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments, or parts thereof, specified in the notice of appeal. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). We conclude the 2014 notice of appeal properly triggered the jurisdiction of our court to review the 2014 orders identified in the notice of appeal.

¶ 31 However, having invoked this court's jurisdiction to review the 2014 orders identified in the notice of appeal, father's arguments set out in his appellate briefs do not take issue with the May 20, 2014, order that determined \$12,480 of unpaid retroactive child support existed on the date of mother's death, on September 16, 2013. Similarly, father does not challenge the court's

⁴Although the order denying reconsideration was signed by the judge showing a date of August 20, 2014, the circuit clerk stamp on that order shows a date of August 18, 2014.

