2015 IL App (4th) 130565-U

NOS. 4-13-0565, 4-13-0756 cons.

FILED
January 27, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
KIMBERLY JO REEDER-WARD,	)	Circuit Court of
Petitioner-Appellee,	)	Clark County
and	)	No. 10D34
TIMOTHY DARRELL WARD,	)	
Respondent-Appellant.	)	Honorable
	)	Tracy W. Resch,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in reducing respondent's child support obligations retroactive to July 26, 2012.

(2) The trial court did not err in accepting a final accounting and ordering the distribution of funds being held in escrow from the sale of the marital home.

¶ 2 On December 28, 2011, following the dissolution of the marriage of petitioner, Kimberly Jo Reeder-Ward, and respondent, Timothy Darrell Ward, Timothy filed a petition for reduction of his child support obligation. On March 8, 2012, the trial court ordered the marital home sold to Kenneth Halcomb, owner and President of H&R Properties, Inc., for $330,000. On April 6, 2012, the court ordered the proceeds from the sale to be held in escrow (the escrowed funds) by Kimberly's attorney, Kevin R. Kuykendall, until further order of the court.

¶ 3 On June 6, 2013, the trial court entered an order reducing Timothy's child support from $390 per week to $162 per week. The trial court held the reduction was retroactive to July

26, 2012, the last date the payment at $390 per week was paid out of the escrowed funds. On July 30, 2013, the trial court accepted Kimberly's final accounting and entered an order for the distribution of the escrowed funds.

¶ 4 Timothy appeals, arguing the trial court abused its discretion in reducing his child support obligations retroactive to July 26, 2012. He contends the reduction should have been retroactive to December 28, 2011, the date he filed his motion to modify child support. Timothy additionally argues the trial court abused its discretion in approving Kimberly's final accounting, which refunded part of the purchase price for the marital home to the buyer without prior approval of the court or agreement of the parties. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In May 2010, Kimberly filed a petition for dissolution of marriage, and on December 1, 2011, the trial court entered a written dissolution judgment. In its order, the trial court (1) set Timothy's permanent child support at $390 per week and (2) ordered the sale of the marital home by public auction, with the stipulation that both parties could solicit offers prior to the auction. Timothy appealed several portions of the judgment, and this court affirmed the trial court's dissolution order on November 14, 2012, in *In re Marriage of Ward*, 2012 IL App (4th) 111149-U.

¶ 7 On March 8, 2012, the court ordered the marital home sold to Halcomb for $330,000. Timothy refused to sign the deed to the property, and on April 6, 2012, the court directed Kuykendall to prepare a judicial deed for the court to sign in lieu of Timothy's signature. The trial court then ordered Kuykendall to hold the proceeds from the sale in escrow. Timothy again appealed, and this court affirmed in *In re Marriage of Ward*, 2013 IL App (4th) 120365-U.

¶ 8 The facts surrounding both the dissolution and the sale of the marital home have been stated at length in our previous orders and need not be repeated here.

¶ 9 A. Child Support Payment Effective Date

¶ 10 On December 28, 2011, Timothy filed both an appeal of the dissolution judgment and a petition for reduction of his child support payments. In his petition, Timothy alleged a change in financial circumstances as a result of his business, Petro-Junction, closing on October 21, 2011. A hearing on Timothy's petition was stayed pending the result of his appeal.

¶ 11 On July 11, 2012, Kimberly filed a petition for rule to show cause. On July 25, 2012, the trial court held Timothy in contempt for willfully failing to pay child support. The court explained, "[Timothy] did not present any evidence of efforts he has made to find work. *** [T]here is no evidence he has sought regular employment of any kind." The court noted the marital home sold for "$300,000 [*sic*]" and ordered $10,825—the amount Timothy owed in child support as of June 26, 2012—paid out of the escrowed funds to "purge" the contempt finding.

¶ 12 On April 18, 2013, the trial court held a hearing on Timothy's petition to modify child support. At the hearing, Timothy testified his only source of income since Petro-Junction shut down in October 2011 was from selling random personal items. He further testified he had reinstated his plumbers and steamfitters union membership, but he was still waiting to hear about any potential work. He also submitted an affidavit showing a significant amount of outstanding debt. Kimberly testified Timothy had told her "no judge could make him work," and "[i]f for some chance [a judge] did make him work, he could guarantee he would not work above minimum wage because the days of supporting [her] were over." The trial court asked both parties when the child support payments were current through. Kuykendall responded Timothy

was current through July 26, 2012, as a result of the court's July 25, 2012, contempt order. Timothy's attorney stated:

> "Well, Your Honor, part of that is the reason we are here, is that the [c]ourt applied, as I understand it, out of the proceeds of the [marital home], the sum of $10,025 [*sic*], I believe it was, and that made him current at that time based upon the $390 a week, $10,285 in July of 2012.
>
> I did not do the calculations, but it was my understanding that that was applied to bring him current; however, that's at [$]390 a week. It does not take him back to December of 2011, and before we did anything more with the distribution, the [c]ourt wanted to determine what the child support would be as of December of 2011."

¶ 13 At the conclusion of the evidence relating to Timothy's request for a reduction in child support, the trial court stated:

> "THE COURT: Based on the evidence that's been presented, the [c]ourt makes the following findings: Mr. Ward is unemployed and has been largely unemployed since Petro[-]Junction closed. It closed, according to his testimony, on October 21, 2011.
>
> Mr. Ward has no other substantial source of earned income. The [c]ourt does not know—[i]n fact, he has no other source of earned income. The [c]ourt does [not] know what informal

sources of support Mr. Ward has. His testimony on that subject was vague and unspecific.

Mr. Ward has substantial debt as he testified and as is shown in paragraph 31 of the financial affidavit that he filed today. Mr. Ward has no assets of any significant value. Mr. Ward is physically able to work, and he has work skills and work experience that should have permitted him to acquire employment these past couple of years, but he has not, and he has given no persuasive explanation for his failure to obtain employment.

Prior to the commencement of this dissolution, Mr. Ward had a significant income and acquired significant assets. After the dissolution proceedings commenced, Mr. Ward ceased to make comparable earnings, and in fact, represented that his income has been—has not been such as to permit him to pay regular child support. The [c]ourt has enforced child support by ordering the sale of assets.

Mr. Ward is waiting for employment through the pipefitter's [*sic*] union, but there is no evidence suggesting that he is going to be called to a union job in the foreseeable future. The global financial crisis probably did negatively impact Mr. Ward's ability to earn money by operating a private business[.] *** Petro[-]Junction failed as an ongoing business.

***

Mr. Ward has the ability to earn a living and pay child support. Precisely how much he might make would be dependent upon his level of effort. He's not disabled, and there are jobs he could obtain and perform. He has substantial business experience. He has substantial skills that have in the past permitted him to earn a good living.

***

Ms. Ward-Reeder's testimony that Mr. Ward told her that he did not intent [*sic*] to pay child support is consistent with Mr. Ward's failure to pay child support throughout the course of this case. The evidence is consistent.

Mr. Ward is well able to earn an amount sufficient to pay child support in a sum of not less than $162 per week based upon the support standards set by statute. The [c]ourt is imputing to Mr. Ward income in an amount sufficient to pay that amount, assuming Mr. Ward acts in good faith in obtaining new employment. A net income under the child support standards of $30,000 per year would support a child support award of $162 per week.

The [c]ourt is going to order, is going to grant the motion and reduce child support effective July 26, 2012, to $162 per week[.]"

¶ 14 B. Accounting and Distribution of Funds

¶ 15 On December 1, 2011, in its written dissolution judgment, the trial court ordered the marital home to be sold at public auction, with the stipulation that both parties could solicit offers prior to the sale. The property was appraised by a real estate appraiser at $265,000, and Halcomb submitted an offer and signed a contract to purchase agreement (Contract) for $330,000—125% above the appraisal value. The Contract contained a provision allowing for the refund of a portion of the purchase price ($3,367.35 per acre) for four acres of the property as a result of a possible clouded title.

¶ 16 On March 8, 2012, the trial court ordered the property sold to Halcomb on the terms of the Contract. In an order dated April 6, 2012, the trial court instructed Kuykendall to hold the proceeds from the sale in escrow until further order, as Timothy's appeal of the dissolution judgment was pending before this court.

¶ 17 At a hearing on July 25, 2012, Kuykendall indicated he had refunded a portion of the $330,000 purchase price to Halcomb. He explained Halcomb had requested a survey of the property as a result of the potential cloud on the title, and the survey had revealed several (later identified as 10) fewer acres than were stated in the Contract. As a result of the loss in acreage, Kuykendall explained he had refunded the price per acre stated in the Contract.

¶ 18 On November 14, 2012, this court affirmed the dissolution judgment (*Marriage of Ward*, 2012 IL App (4th) 111149-U), and on December 24, 2012, Kimberly filed an amended petition to distribute the escrowed funds. On April 26, 2013, Timothy filed an objection to the amended petition to distribute funds, alleging (1) the Contract did not provide for a survey or guarantee acreage, and therefore, the purchaser was responsible for the entire $330,000 amount, and (2) neither Kimberly nor Kuykendall petitioned the trial court to approve a refund.

¶ 19 On June 6, 2013, the trial court held a hearing on the amended petition and objection to the amended petition. Kuykendall admitted the court had not ordered the survey, but he explained (1) the Contract contained a per-acre price; (2) the sale probably would not have gone through without the survey; and (3) even without the refunded money, Halcomb's bid was still the highest bid "by far." Timothy's attorney asked the court to look at the language of the Contract and deny Kimberly's petition because the marital property was not subject to survey and the Contract contained a per-acre price with regard to only four acres.

¶ 20 The trial court explained, "the only thing the court is doing is distributing money that is presently held in escrow[.] *** That is and always has been the court's scenario." The court then addressed Timothy's attorney and stated, "[t]he court believes that essentially you have filed a complaint. You've asserted a cause of action. I will not characterize the cause of action, but it is in the nature of a complaint alleging that somebody has committed a tort or a breach of contract. You're going to have to litigate it, if you want to maintain it. It is not an objection that the court is going to consider for purposes of distribution."

¶ 21 On July 22, 2013, Kimberly filed her accounting of distributed funds, and on July 30, 2013, the trial court entered an order accepting the accounting and ordering the distribution of the escrowed funds.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Timothy argues the trial court erred in (1) not reducing his child support payments retroactive to the date he filed his petition for modification, and (2) approving a final accounting which refunded part of the purchase price for the marital home to the buyer of the property. Before we address Timothy's arguments, we note his attorney has submitted a brief

which fails to comply with Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), which states, in relevant part, the argument section of an appellant brief "shall contain the contentions of the appellant and the reasons therefor, *with citation of the authorities and the pages of the record relied on*." (Emphasis added.) Timothy's brief violates Rule 341(h)(7) in two regards.

¶ 25 First, the brief's argument wholly fails to cite any page of the record relied upon. A violation of this portion of Rule 341(h)(7) is especially troubling when the record consists of multiple volumes and several years of consolidated proceedings. Second, although Timothy's brief *does* cite case law to support various propositions, it fails to cite any authority this court finds helpful in determining the outcome of the issues on appeal. We have frequently reminded parties "this court is not a depository into which the appellant can dump his burden of argument and research." *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139. However, because Timothy is not responsible for the errors of his attorney, we will proceed with our analysis of his appeal. See *Pilat v. Loizzo*, 359 Ill. App. 3d 1062, 1064, 835 N.E.2d 942, 944 (2005).

¶ 26 We also note Kimberly has failed to file an appellee brief. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained, "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." Because we conclude the record is simple and the issues can be decided without the aid of an appellee brief, we will proceed on the merits.

¶ 27 A. Modification of Child Support

¶ 28 On April 18, 2013, the trial court reduced Timothy's child support payment to $162 per week and held the reduction retroactive to July 26, 2012, the date the trial court ordered

Timothy's child support arrearage paid from the escrowed funds. Timothy argues the modification of his child support obligation should be retroactive to December 28, 2011—the date he filed his petition for modification—because his financial position remained unchanged between the date of his petition and the date of the reduction. We reject this argument.

¶ 29 Under section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/510(a) (West 2012)), "the provisions of any judgment respecting maintenance or support *may* be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." (Emphasis added.) "The modification of a child support obligation is a judicial function, administered exclusively by the court as a matter of discretion." *Blisset v. Blisset*, 123 Ill. 2d 161, 167, 526 N.E.2d 125, 127 (1988). An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422, 671 N.E.2d 654, 657 (1996).

¶ 30 At the April 18, 2013, hearing, the trial court asked both parties for the date Timothy's child support payments were current through. The court was reminded it had ordered an arrearage paid out of the escrowed funds on July 26, 2012—an act we remind Timothy purged his contempt finding. Section 510(a) of the Dissolution Act does not say a trial judge *must* reduce payments as to installments accruing subsequent to notice of the filing of a motion to modify; it says a trial judge *may* reduce payments as to those installments. 750 ILCS 5/510(a) (West 2012). Here, the court reduced Timothy's payment retroactive to July 26, 2012—the date his current child support arrearage began. We do not find a reduction retroactive to this date to be an abuse of discretion.

¶ 31 B. Approval of Kimberly's Final Accounting and Distribution

¶ 32 On July 30, 2013, the trial court entered an order accepting Kimberly's accounting and approving the distribution of the escrowed funds. Timothy argues the trial court abused its discretion in approving the final accounting and ordering the distribution because the escrow agent, Kuykendall, refunded a portion of the purchase price to the buyer without the approval of the court or an agreement between the parties. We disagree.

¶ 33 This court will not overturn a trial court's decision regarding the distribution of marital assets absent an abuse of discretion. *In re Marriage of Benz*, 165 Ill. App. 3d 273, 285, 518 N.E.2d 1316, 1322 (1988). An abuse of discretion occurs only where no reasonable party would take the view adopted by the trial court. *Id.*

¶ 34 Timothy contends the accounting should not have been approved because an escrow agent can be held liable for disbursing escrowed funds incorrectly (citing *International Capital Corp. v. Moyer*, 347 Ill. App. 116, 123-26, 806 N.E.2d 1166, 1172-74 (2004)). While this is true, we agree with the trial court that any claim Kuykendall disbursed funds incorrectly was a collateral matter not before the court on Kimberly's petition to distribute funds. As the trial court noted, the issue before the court was whether to approve the final distribution of the escrowed funds in accordance with its original judgment of dissolution. The dissolution judgment was affirmed, the escrowed funds were accounted for, and the trial court ordered the distribution in accordance with its original judgment. Timothy's attorney has cited no authority, nor can we find any, as to why a trial judge should not order the release of funds under these circumstances.

¶ 35 The only additional support Timothy provides for his argument is "the intent of the [Dissolution] Act is clear: both parties are considered owners of the marital property, and neither party's ownership interest can be extinguished absent agreement of the parties or a ruling

of the court." As authority for this proposition, he cites sections 502(a) and (b), which discuss marital settlement agreements (not at issue in this case), and section 503(i), which states a trial court "may make such judgments affecting the marital property as may be just and may enforce such judgments by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court." 750 ILCS 5/502(a), (b), 503(i) (West 2012).

¶ 36 Neither of these sections of the Dissolution Act support Timothy's contention that the trial court abused its discretion in accepting Kimberly's accounting or in distributing the escrowed funds. On the contrary, pursuant to section 503(i) of the Dissolution Act, the trial court exercised its authority to terminate Timothy's ownership interest in the marital property when it ordered the property sold to Halcomb in March 2012. Timothy appealed that order, and this court affirmed. We find no abuse of discretion in the court's decision to now distribute the proceeds from the sale.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment.

¶ 39 Affirmed.