2015 IL App (5th) 140253-U

NO. 5-14-0253

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
BARBARA STOECKLIN,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-211
	)	
JOHN STOECKLIN,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court improperly modified child support without hearing evidence on disputed questions of fact.

¶ 2 The respondent, John Stoecklin, appeals the circuit court's order modifying his obligation to pay child support to the petitioner, Barbara Stoecklin. For the reasons set forth below, we reverse the circuit court's order modifying child support, and we remand the cause for an evidentiary hearing.

¶ 3 BACKGROUND

¶ 4 On September 12, 2012, the circuit court entered a judgment of dissolution of marriage incorporating a partial marital settlement agreement and a child custody and joint parenting agreement. Pursuant to the partial marital settlement agreement, the parties agreed to share joint custody of their minor son, Tyson, and agreed that "no child support shall be paid one to the other." When judgment was entered, both parties were employed on a full-time basis by their jointly-founded business, Senior Med Services, Inc., doing business as Uvanta Pharmacy of Southern Illinois (Uvanta).

¶ 5 On December 4, 2012, Barbara filed a petition for modification of child support. In her petition, Barbara alleged that in January 2011, John had notified her that he was no longer comfortable having her come to Uvanta to work, and she therefore began working from home. Barbara alleged that John thereafter notified her that she could no longer act as the pharmacist-in-charge without being on-site, that she was thereby forced to resign from her obligations as pharmacist-in-charge, and that John unilaterally cut her pay by 15%. Barbara further alleged that John's income was substantially greater than her income. Barbara thereby requested that the court modify the judgment of dissolution of marriage and award her child support. In his answer to Barbara's petition for modification of child support, John stated that Barbara had voluntarily resigned her position with Uvanta. On October 31, 2013, the parties appeared before the circuit court and agreed to thereafter submit written argument to the court.

¶ 6 On December 2, 2013, Barbara filed her memorandum in support of her petition to modify child support. Barbara asserted that John had failed to reimburse her for Tyson's

expenses and that she had uncovered financial information which suggested that John had improperly paid his personal expenses with corporate funds, serving to increase his disposable income. Barbara acknowledged that she had resigned as pharmacist-in-charge in October 2012 and had incurred a 15% reduction in her salary. Barbara asserted, however, that on November 4, 2013, she had been terminated from her employment with Uvanta and that she no longer received any employment wages. Barbara contended that this good-faith voluntary change in employment constituted a substantial change in circumstances justifying a modification of child support. Barbara attached to her memorandum her employment agreement, Uvanta shareholder meeting minutes, prescription checklists, her notice of termination, attorney letters, income and expense affidavits, an income tax return list, a list of Tyson's 2012 and 2013 expenses, an affidavit of attorney fees, and answers to interrogatories.

¶ 7 In John's memorandum in opposition of Barbara's petition for modification of child support, John alleged that despite her termination, Barbara continued to receive distributions from Uvanta in a net amount of approximately $297,000 yearly. John further alleged that Barbara's discharge from her position as a pharmacist at Uvanta was the direct result of her willful and intentional failure to report to work at the business location. John asserted that, despite Barbara's contentions to the contrary, employment activity logs showed that Barbara was not more productive than any other employee. Citing facts from April through July 2013, John argued that Barbara's actions were not in good faith and did not support a modification of child support. John attached to his memorandum Barbara's letter of resignation as pharmacist-in-charge, correspondence

regarding Barbara's work attendance, Uvanta employee warnings to Barbara, a list of prescriptions checked by pharmacist, and a list of Tyson's expenditures.

¶ 8 In Barbara's reply to John's memorandum in opposition to her petition for modification of child support, Barbara asserted that it was "necessary to respond to [John's] specific allegations of her misconduct" to determine whether her employment changes were made in good faith. Barbara contradicted John's assertions that she was not more productive than most of the other pharmacists, including him. Barbara further contended that her efforts to find employment were restricted by the noncompetition terms of her employment contract. Barbara asserted that she had "fully refuted [John's] claims of bad faith." On February 13, 2014, in John's response to Barbara's reply to John's memorandum, John asserted that many of Barbara's statements in her memorandum were simply not true.

¶ 9 On February 27, 2014, the circuit court entered a docket order stating that "[a]fter review[ing] the memoranda filed by both parties," along with the file and the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505, 510 (West 2012)), it found no sufficient basis to deviate from the Act's child support guidelines and thereby ordered John to pay Barbara $2,048 per month as child support.

¶ 10 On March 12, 2014, John filed a motion to reconsider, arguing, among other contentions, that there had been no evidence that Tyson's expenses supported the awarded child support. In his motion to reconsider, John requested a hearing regarding the issues. In her response, Barbara noted that no evidentiary hearing was held because the parties had agreed to submit memorandums without the necessity of hearing. Barbara

nevertheless contended that there was "[n]o evidence *** that suggest[ed] any bad faith motive" on her part in resigning her pharmacist-in-charge title or in resigning her employment. On May 28, 2014, after hearing arguments, the circuit court entered an order stating that it had found a substantial change of circumstances in that Barbara's discharge from employment was not voluntary or of her own free will. The circuit court ordered John to pay $2,048 per month for child support. On May 30, 2014, John filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, John argues that there was no good-faith change in Barbara's circumstances that would necessitate a modification of child support. Barbara counters that there was a good-faith change in her circumstances and that her reduction in pay and termination of employment constituted a substantial change in circumstances to support modification of child support.

¶ 13 Section 510(a)(1) of the Act allows the trial court to modify a previous child-support order where the party seeking the modification shows a substantial change in circumstances warrants relief. 750 ILCS 5/510(a)(1) (West 2012); *In re Marriage of Rash*, 406 Ill. App. 3d 381, 388 (2010). In modifying the child support obligation, the circuit court considers the factors delineated in section 505 of the Act, namely, the financial resources and needs of the child and parents, the physical, mental, emotional, and educational needs of the child, and the standard of living the child would have enjoyed had the marriage not been dissolved. 750 ILCS 5/505 (West 2012).

¶ 14 Motions to modify child support are decided on the individual facts and circumstances of each case. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1020 (2003). In this context, the court has stated:

> "[P]etitions to modify payment orders of any kind require the trial court to engage in a two-step process: (1) a judicial determination on a question of fact, *e.g.*, whether there has been a material change in the financial circumstances of the parties, or whether a party acted in good faith in voluntarily changing employment; and (2), if so, whether and by how much to modify the support ordered." *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370 (1996).

See also *Kuwik v. Starmark Star Marketing & Administration, Inc.*, 156 Ill. 2d 16, 27 (1993) (whether a party has acted in good faith is a question of fact).

¶ 15 Barbara argued below that her motivations to resign her title were made in good faith because she was forced to resign when she was continually denied access to certain records and was asked to work from home, even though a pharmacist-in-charge was required to be physically present at the pharmacy for at least eight hours per week. Barbara argued that she had no bad-faith motive behind her termination of employment, as she was involuntarily terminated under John's direction. Barbara contended that her employment was terminated even though she was far more productive than any other employee. Barbara contended that because she acted in good faith in resigning her employment, she showed a substantial change of circumstances that warranted modification of child support. John countered below that Barbara failed to show a substantial change of circumstances because she continued to receive distributions from

Uvanta and because her discharge resulted from her intentional work failures, which were not made in good faith.

¶ 16 Clearly, Barbara's statements contradicted John's regarding issues of fact which would determine if, and to what extent, modification of child support was necessary. Because the parties clearly contested the facts which would determine whether a modification in child support was appropriate, and if so, to what degree, an evidentiary hearing was required where evidence, rather than allegations, could be adduced by both parties. See *Workforce Solutions v. Urban Services of America, Inc.*, 2012 IL App (1st) 111410, ¶ 43 ("in contested matters, a trial is required"); *Weinert v. Weinert*, 105 Ill. App. 3d 56, 60 (1982). Yet, the circuit court held no evidentiary hearing on the disputed facts.

¶ 17 By declining to hold an evidentiary hearing on the factual issues raised in Barbara's petition, the circuit court failed to develop an adequate record upon which to base its findings that Barbara acted in good faith when her employment was terminated and that there was a material change in the financial circumstances of the parties. In modifying John's child support obligation, the circuit court also failed to develop an adequate record regarding Tyson's, Barbara's, and John's resources and needs, along with the standard of living Tyson would have enjoyed had the marriage not been dissolved, to support its finding that modification was appropriate but deviation from the Act's child support guidelines was unnecessary. See 750 ILCS 5/505(a)(2) (West 2012). By declining to hold an evidentiary hearing on the disputed factual issues, the circuit court failed to develop an adequate record upon which to base any of its factual findings and rendered meaningful appellate review of its findings of fact impossible. See *People v.*

Witte, 115 Ill. App. 3d 20, 30 (1983) ("by refusing to hold an evidentiary hearing on factual issues raised in defendant's motion, the trial court failed to develop an adequate record upon which to base its finding *** [and] render[ed] meaningful appellate review of its finding of fact impossible"); see generally *In re R.C.*, 195 Ill. 2d 291, 299 (2001) ("One might wonder how we will determine whether the statute is unconstitutionally vague as applied ***, when there has been no fact-finding in [this] case. The question answers itself–we cannot.").

¶ 18 The court's failure to hold an evidentiary hearing was an abuse of its discretion. See *In re Marriage of Burbridge*, 317 Ill. App. 3d 190, 193 (2000). For this reason, we must reverse the circuit court's judgment and remand the cause to the circuit court for an evidentiary hearing on the merits of Barbara's petition.

¶ 19 CONCLUSION

¶ 20 For the reasons stated, we reverse the judgment of the circuit court of Williamson County, and we remand the cause for an evidentiary hearing on Barbara's petition to modify child support.

¶ 21 Reversed and remanded.