2015 IL App (5th) 140533-U

NO. 5-14-0533

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TIMOTHY HOPPER,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Johnson County.
	)	
v.	)	No. 12-F-22
	)	
CARLA SHIPMAN-HADEN, n/k/a Carla Haden,	)	
	)	Honorable
	)	James R. Williamson,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in failing to order retroactive child support, in ordering petitioner to pay $600 per month in child support, or in ordering respondent to reimburse petitioner for one-half of daughter's health insurance premiums. The trial court did, however, err in ordering daughter's last name changed from respondent's to petitioner's.

¶ 2 Respondent, Carla Shipman-Haden, now known as Carla Haden, appeals from an order of the circuit court of Johnson County establishing custody, visitation, child support, and a name change for the unmarried parties' minor daughter, I.H., born on June 27, 2011. The issues raised on appeal are: (1) whether the trial court erred in failing to order retroactive child support and in ordering petitioner to pay $600 per month child

support; (2) whether the trial court erred in ordering respondent to reimburse petitioner for one-half of I.H.'s health insurance premiums; and (3) whether the trial court erred in ordering I.H.'s last name changed from respondent's to petitioner's. We affirm in part, reverse in part, and remand with directions.

¶ 3 FACTS

¶ 4 I.H. was born on June 27, 2011. The parties were not married, have never married, and petitioner was not listed as the father on the birth certificate. On November 5, 2012, petitioner filed a petition to establish paternity, custody, and visitation. After the parties reached an agreement pertaining to some matters, a temporary order was entered on November 7, 2013.

¶ 5 The temporary order specifically states petitioner is the natural father of I.H. and, as such, he should have weekly visitation with I.H. of at least four hours per week. The order further provides that the parties agreed to $600 per month as temporary support payment to be paid by petitioner directly to respondent. The issues of child support arrearage and permanent support were reserved.

¶ 6 A final hearing was held on April 22, 2014, during which petitioner explained respondent was married to another man when I.H. was born, and petitioner was not sure if he was the father. Petitioner admitted he was the biological father after a paternity test confirmed he is I.H.'s father. According to petitioner, respondent and I.H. lived with him the first year of I.H.'s life, and he paid the bills. He testified it was respondent who chose to leave, but that respondent and I.H. came back to live with him at various times when respondent was not getting along with her husband. Petitioner was seeking one weekend

of visitation per month and three longer periods of visitation based upon his work schedule. Petitioner testified he earned approximately $64,000 per year gross and $48,000 net at his job with Procter & Gamble. He testified that over the course of the last two years he worked many hours of overtime, but would no longer be able to do that because of visitation with I.H.

¶ 7 Respondent's husband, George Haden, testified he considers I.H. his daughter and treats her as such. He testified respondent works 30 hours a week, 3 days of 10-hour shifts, taking care of an elderly patient. According to Haden, respondent and I.H. never lived with petitioner. Haden works at a prison and carries health insurance for the family.

¶ 8 Respondent testified she never lived with petitioner and the longest period she stayed with petitioner "would be like a week." She testified she cannot make decisions with petitioner, and she was opposed to joint custody. She testified petitioner never offered to pay child support and stated she was seeking retroactive support and wanted 20% of petitioner's net income.

¶ 9 The parties submitted written closing arguments. On August 7, 2014, the trial court entered an order for parentage, custody, visitation, and child support in which it ordered that petitioner be added to I.H.'s birth certificate and I.H.'s last name be changed to petitioner's last name, despite the lack of any request by either party for a name change. The trial court also ordered child support to "continue at the current rate of $600[ ] per month" and denied retroactive support. The trial court ordered petitioner to provide health insurance for I.H. and respondent to reimburse petitioner each month for one-half of that expense. The trial court also ordered all medical expenses not covered by

insurance to be shared equally by the parties. The trial court awarded respondent sole custody, with visitation to petitioner as requested. Respondent filed a motion to reconsider, which the trial court denied, except that it added the order be amended to allow respondent to have I.H. on Christmas Day. Respondent filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 I. Support

¶ 12 The first issue we are asked to address is whether the trial court erred in failing to award retroactive child support and in ordering petitioner to pay $600 per month in child support. Respondent contends the trial court abused its discretion in failing to award retroactive child support and in awarding monthly child support that amounts to less than 20% of petitioner's net salary. Petitioner responds it was he who initiated the action to be considered the father of I.H. and to establish custody and visitation and respondent failed to file an answer, responsive pleading, or counterpetition requesting support, thereby waiving the issue of any automatic retroactive child support. Petitioner insists the permanent award of $600 per month, the amount stipulated to by the parties in the temporary order, was within the discretion of the trial court.

¶ 13 The trial court has discretion to award child support retroactively if doing so is just and reasonable. *In re Marriage of Rogliano*, 198 Ill. App. 3d 404, 410, 555 N.E.2d 1114, 1118 (1990). While the established guidelines provide that a noncustodial parent pay 20% of his or her net income for the support of one child (750 ILCS 5/505(a)(1) (West 2012)), we note that this is a guideline and not set in stone. Respondent insists the

permanent award of $600 per month was a deviation from the statutory guideline and petitioner should have been ordered to pay more; however, we point out the November 7, 2013, temporary order was a stipulation between the parties in which petitioner agreed to pay $600 per month in child support and respondent agreed to accept that amount. Given the somewhat bizarre circumstances of this case, where respondent was married to a man other than petitioner when I.H. was born and that man testified he considers I.H. his own daughter and even has I.H. on his employer-sponsored health insurance plan, we cannot say the trial court abused its discretion in failing to increase the agreed-upon amount.

¶ 14 Likewise, under the circumstances presented here, we cannot say the trial court abused its considerable discretion in failing to order retroactive child support. As petitioner points out, he was the only one who filed pleadings in this matter. He sought to establish *inter alia* paternity, custody, and visitation. Respondent failed to file a responsive pleading or a counterpetition requesting support. We also point out that there was a discrepancy in the testimony of the parties. Petitioner testified respondent and I.H. lived with him the first year of I.H.'s life, while respondent denied that assertion. Respondent stated she never lived with petitioner for more than a week at a time. Considering all of the circumstances, we cannot say the trial court abused its discretion in refusing to award retroactive child support.

¶ 15 II. Health Insurance

¶ 16 The next issue we are asked to address is whether the trial court erred in ordering respondent to reimburse petitioner for health insurance premiums. Respondent contends there is no authority for the trial court's order requiring her to reimburse petitioner for

health insurance premiums and such order flies in the face of statutory authority. We disagree.

¶ 17 The duty to provide health insurance plays a significant role in a parent's current and future support obligations. *Franson v. Micelli*, 172 Ill. 2d 352, 356, 666 N.E.2d 1188, 1189 (1996). Because petitioner, the noncustodial parent, has health insurance through his employer, he is required under section 505.2(b) of the Illinois Marriage and Dissolution of Marrige Act (Act) to provide contribution upon the request of respondent. 750 ILCS 5/505.2(b) (West 2012). However, after reviewing the statute, we agree with petitioner that there is nothing in the language of section 505.2 of the Act which prevents a trial court from deciding how the premiums will be paid or from ordering the parties to share equally in the cost of such health insurance premiums. Under the circumstances presented here, we find the trial court was within its discretion to order respondent to reimburse petitioner for half the amount of I.H.'s health insurance premium.

¶ 18 III. Name Change

¶ 19 The final issue we are asked to address is whether the trial court erred in ordering I.H.'s last name changed from respondent's to petitioner's. Respondent contends the trial court was without authority to order I.H.'s last name changed where there was no request for a change. We agree.

¶ 20 With regard to being named as the father, petitioner requested only the following specific relief in his November 12, 2012, petition:

> "A. For entry of a[n] Order naming Timothy Hopper as the father of the minor child, [I.H.].

B. That the birth certificate of the minor child reflect the Petitioner as the biological father of the minor child[.]"

Nowhere in the petition did he ask that I.H.'s last name be changed to his own. Furthermore, our review of the record shows that petitioner never requested or argued that I.H.'s last name be changed from respondent's to his.

¶ 21 Our supreme court has specifically stated that "a change in a minor's surname shall be allowed only when the court finds that the change is in the best interests of the minor." *In re Marriage of Presson*, 102 Ill. 2d 303, 308, 465 N.E.2d 85, 87 (1984). Here, the trial court made no such finding, and we fail to see how it would be in I.H.'s best interest to have her name changed to that of the noncustodial parent four years after her birth and without a request by petitioner for such a change. Accordingly, we agree with respondent that the trial court erred in ordering I.H.'s last name to be changed to petitioner's last name.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the support and health insurance determinations of the judgment of the circuit court of Johnson County, but we reverse the name change and remand with directions for the circuit court to vacate that portion of its order.

¶ 24 Affirmed in part, reversed in part, and remanded with directions.