2018 IL App (1st) 172525-U

FOURTH DIVISION
December 20, 2018

No. 1-17-2525

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re PARENTAGE OF ASHLEY T., JAMES T., CHRISTOPHER T., and RYAN T., Minors,	)	Appeal from the Circuit Court of Cook County
(Laura Boozer,	)	
Petitioner-Appellee,	)	
and.	)	No. 03 D 80678
James Tufano,	)	
Respondent-Appellant,	)	Honorable Mary C. Marubio, Judge Presiding.
The Illinois Department of Healthcare and Family Services,	)	
Intervenor-Appellee).	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of circuit court of Cook County denying a motion to modify or vacate an administrative child support order where the appellate record is inadequate and the appellant forfeited various arguments by failing to raise them before the circuit court.

¶ 2 James Tufano (James) appeals from an order entered in 2017 by the circuit court of Cook County denying his motion to modify or vacate an administrative child support order entered in

2002. He contends on appeal that the trial court erred in denying his motion and in failing to make specific findings to support the denial. The Illinois Department of Healthcare and Family Services (Department), as intervenor, argues that the inadequacy of the record on appeal precludes our review of James' arguments and that he forfeited his arguments by failing to raise them before the circuit court. For the following reasons, we affirm the judgment.

¶ 3 BACKGROUND

¶ 4 James and Laura Boozer (Laura) shared a residence and had a physical relationship for almost twenty years; they never married. Laura gave birth to four children during that time. Shortly after the youngest child, Ryan, was born in 2000, James signed a voluntary acknowledgement of paternity.

¶ 5 After Laura moved with the children to Douglas County in late 2003, James filed a complaint to determine parentage of the four children in the circuit court of Cook County. As a result of DNA testing, it was determined that James was the biological father of the three older children, but not Ryan. The parties each filed custody petitions and subsequently signed an agreed parenting order, entered on March 9, 2006. The order provided, in part, that both parties were advised of their legal right to challenge Ryan's paternity, but they had decided that James would be named Ryan's father. In a separate agreed order entered on the same date, the court provided that James was to pay $800 per month in child support for the four children. The order indicated that his child support obligations terminated on the later of April 24, 2018, or Ryan's graduation from high school.

¶ 6 In August 2016, James filed a motion to modify or vacate an administrative support order which had been entered by default in a separate proceeding by the Department[1] on October 31,

[1] The order was signed by an authorized representative of the Illinois Department of Public Aid, which is now the Department. See 305 ILCS 5/10-1 (West 2016).

2002. The administrative support order indicated that James had received a notice to appear for an interview on that date but had failed to appear or to provide sufficient financial information regarding his ability to support Ryan. James was ordered to pay $300 per month (and $60 per month on any delinquency) to the Department as support for Ryan. According to James' motion, a certified mail receipt reflecting delivery of the notice on October 4, 2002 – which purportedly included his signature – was actually signed by Laura. James thus asserted that the administrative support order was entered without personal jurisdiction over him and was void *ab initio*. James asserts Laura never mentioned the administrative support order during the subsequent judicial proceedings regarding parentage and child custody. James asserted that Laura was seeking double payment and/or attempting to avoid repayment of funds she had received directly from the Department. The Department filed a petition to intervene, which was granted.

¶ 7 After a hearing which Laura did not attend, the circuit court entered an order on June 19, 2017, denying the motion to modify or vacate the administrative order. The order indicated that the circuit court had reviewed the certified mail receipt and considered James' testimony to be too general, self-serving, and unreliable. The order also provided that the circuit court attempted to make findings in open court but was repeatedly interrupted by James' counsel.

¶ 8 In a motion for reconsideration, James again argued that the administrative support order was entered without notice and was thus void. He stated that he first became aware of the order when the Department initiated collection services more than a decade after its 2002 entry.[2] James represented that he was forced into a repayment plan for amounts he did not owe because of the threat of jail or loss of his driver's license. According to James, the enforcement of the

[2] The record includes a Department spreadsheet reflecting $14,819.25 in payments by James, which appear to have been made through income withholding ($332.30 in 2007), financial institution data matching ($1,183.95 in 2010), and regular payments (totaling $13,303 from 2013 through 2016).

administrative support order was unconscionable as he and Laura had already fully litigated the parentage, custody, and support issues. In its response to the motion, the Department argued that James failed to present any newly discovered evidence, changes in the law, or errors in the circuit court's previous application of existing law.

¶ 9 After a hearing before another judge on the motion for reconsideration, the circuit court entered an order on September 28, 2017, denying the motion. James timely appealed.

¶ 10 ANALYSIS

¶ 11 James contends on appeal that the circuit court's denial of his motion to modify or vacate the administrative support order was against the manifest weight of the evidence. As discussed below, we agree that the manifest weight of the evidence standard is applicable.

¶ 12 We initially note that "[p]roper service is a prerequisite for a court to acquire personal jurisdiction over a party, a dispute over personal jurisdiction presents a question of law, and rulings as to questions of law are considered *de novo*." *Jayco v. Fraczek*, 2012 IL App (1st) 103665, ¶ 3. Based on James' motion to modify or vacate the administrative support order, the fundamental issue in this case, however, does not appear to have been a legal question, *e.g.*, whether the Department's service of the notice by certified mail was a proper method of service under applicable law. See *id.* ¶¶ 1-3 (holding that the question of whether a patient could use certified mail to deliver notice of his motion to adjudicate a health care provider's lien was a legal question, involving interpretation of Health Care Services Lien Act (770 ILCS 23/10(b) (West 2006) and other statutes and rules). As framed by his motion, the circuit court was required to make a *factual* determination regarding whether James actually signed the certified mail receipt.

¶ 13 "A trial court's findings of fact will not be disturbed on review unless those findings are

against the manifest weight of the evidence." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). A decision is against the manifest weight of the evidence only when the findings appear to be arbitrary, unreasonable, or not based on the evidence, or an opposite conclusion is apparent. *Id.* at 155.

¶ 14 As the appellant, James has the burden to present a sufficiently complete record of the circuit court proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Absent an adequate record preserving the claimed error, we must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law. *Corral*, 217 Ill. 2d at 157. Any doubts arising from the incompleteness of the record are resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 15 In the instant case, the record on appeal does not include a transcript, a bystander's report, or an agreed statement of facts regarding the hearing wherein the court considered James' motion to modify or vacate the administrative support order. *E.g.*, *Webster v. Hartman*, 195 Ill. 2d 426, 433 (2001). See Ill. S. Ct. R. 323 (eff. July 1, 2017). Although the record contains the transcript of the hearing on the motion for reconsideration, the transcript provides no substantive details regarding the earlier hearing.

¶ 16 James asserts that the only evidence tendered to the court to demonstrate service was the certified mail receipt "signed by an L. Tufano." Because he and Laura shared a residence at the time of the purported service, he suggests that Laura signed the receipt and thus he was not served with the notice by the Department. Based on our review of the certified mail receipt, however, we do not necessarily share his conclusory assessment that the initial in the challenged signature was "L" and not a "J." Furthermore, the circuit court expressly found James' testimony during the hearing to be too general, self-serving, and not reliable. "[B]ecause the trial

court is in the best position to weigh the evidence and determine witness credibility, its determination is afforded great deference." *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 40.

¶ 17 Without a transcript or some other record of the circuit court proceedings, we are unable to determine whether the trial court's decision was against the manifest weight of the evidence. We cannot review the claimed error to determine whether the trial court's factual findings were against the manifest weight of the evidence, or consider the legal effect of its factual findings. See *Corral*, 217 Ill. 2d at 157. We thus affirm the judgment of the circuit court. In the interest of completeness, however, we will briefly address James' remaining contentions on appeal.

¶ 18 James contends that "Laura went into the Administrative Order process with unclean hands." Although James speculates that Laura knew Ryan was not his biological son, we do not know what arguments or evidence, if any, were presented to the circuit court during the hearing on James' motion to modify or vacate the administrative support order regarding this issue. See *id.* Furthermore, while James argues that the administrative support order was never mentioned during the circuit court proceedings leading up to the March 9, 2006, orders, we are unable to review the accuracy of this contention in the absence of any transcripts or other reports of the various proceedings from 2003 through 2006. *Id.*

¶ 19 In any event, based solely on our review of the record presented herein, there does not appear to be a basis to conclude that Laura's conduct rose to the level of fraud or bad faith needed for the doctrine of unclean hands to apply. See *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 60 (2009). As the Department accurately observes, given James' allegation in his initial complaint to determine parentage that he and Laura engaged in sexual intercourse up until June 2003, Laura may have honestly believed that James was Ryan's biological father.

We further note that Ryan signed a voluntary acknowledgement of paternity in April 2000, shortly after Ryan's birth, which generally is the equivalent of adjudication of the parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent. *People ex rel. Department of Public Aid v. Smith*, 212 Ill. 2d 389, 406 (2004) (providing that "a man who signs a voluntary acknowledgment of paternity specifically agrees to forego any further inquiry into whether he is the child's biological father and to assume the responsibility for being a parent to the child"); *In re Parentage of G.E.M.*, 382 Ill. App. 3d 1102, 1109 (2008) (noting that "fatherhood is not always created by pure genetics, and "[c]onsent is as legally binding on a parent as a DNA determination"). See also 750 ILCS 46/305 (West 2016).

¶ 20 James also advances multiple arguments on appeal based on purported deficiencies in the administrative proceedings or the judicial proceedings. First, he claims that the enforcement provisions of Article X of the Illinois Public Aid Code (Code) (305 ILCS 5/10, *et seq*.) are designed to locate an "absent" parent, which he was not. Second, James claims that the circuit court "never made a finding" that his signature was on the challenged certified mail receipt or that service was effectuated. Third, he contends that "[a]t no time was proof ever provided that the administrative order was delivered to [him] via registered or certified mail immediately after its entry."

¶ 21 As a preliminary matter, there is no indication that James raised any of the foregoing arguments in the circuit court, and thus such arguments are forfeited. *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14. An unsuccessful party may not advance a new theory of recovery on appeal. *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 21. The purpose of our forfeiture rules is to encourage parties to raise issues in the circuit court, thus ensuring both that the circuit court is provided an opportunity to correct any errors prior to

appeal and that a party does not secure a reversal through his inaction. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 14. Even if considered, his contentions lack merit.

¶ 22 James asserts that it was improper to procure an administrative support order against him when his location was known and he was not an absent father. Article X of the Code addresses "Determination and Enforcement of Support Responsibility of Relatives." While certain provisions of the Code reference an "absent parent," the focus of Article X – when viewed in its entirety – is the enforcement of the support obligations of "responsible relatives," such as James. *E.g.*, *Thomas v. Illinois Department of Healthcare and Family Services*, 2016 IL App (1st) 143933, ¶ 17 (addressing enforcement of a lien against a responsible relative's personal property pursuant to section 10-25.5 of the Code (305 ILCS 5/10-25.5 (West 2012)). We decline to limit the reach of Article X solely to absent parents, as James suggests. *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567 (2007) (noting that "[w]e may not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent").

¶ 23 James also contends on appeal that the circuit court failed to make specific findings to support the denial of his motion, including a failure to find that service was proper or improper. In support of this proposition, he cites *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1010 (1990), wherein the appellate court concluded that the circuit court was required to hold an evidentiary hearing on a motion for sanctions and "make specific findings which will then form the basis for its ultimate decision." This holding was expressly rejected by *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶¶ 16-19, wherein our supreme court concluded that Supreme Court Rule 137 imposes no requirement on a circuit court to explain its reasons for denying a motion for sanctions. In any event, James does not cite any authority mandating the inclusion of express

factual findings in the order he challenges herein.

¶ 24 Even if factual findings were required, the order denying James' motion did include certain findings. The order provided that the court had reviewed the certified mail receipt and had considered James' testimony, which it found to be too general, self-serving, and unreliable. Furthermore, the order provided that the circuit court attempted to make findings in open court but was interrupted numerous times by James' counsel.

¶ 25 Finally, James contends on appeal that "[a]t no time was proof ever provided that the administrative order was delivered to [James] via registered or certified mail immediately after its entry." See 305 ILCS 5/10-7 (West 2002). However, James did not advance specific arguments addressing the service of the administrative support order in his motion to modify or vacate the order. He instead challenged the service of the *notice* from the Department, which preceded the entry of the challenged order. With no transcript or other record of the hearing on James' motion to modify or vacate, we cannot know whether he provided testimony or raised arguments regarding service of the administrative support order. See *Corral*, 217 Ill. 2d at 157.

¶ 26 In conclusion, while James contends that the circuit court "heard testimony and had evidence brought to its attention that was never controverted," the inadequacy of the record on appeal precludes our effective review. Furthermore, any arguments not presented to the circuit court are deemed forfeited. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 14. For the reasons set forth above, we affirm the judgment of the circuit court denying his motion to modify or vacate the administrative support order.

¶ 27 CONCLUSION

¶ 28 The judgment of circuit court of Cook County is affirmed in its entirety.

¶ 29 Affirmed.