2018 IL App (4th) 170786-U

NO. 4-17-0786

FILED
August 1, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Parentage of J.C.	)	Appeal from the
	)	Circuit Court of
(Tammy L. Musselman, f/k/a Tammy L. Cowles,	)	DeWitt County
Petitioner-Appellee,	)	No. 97F1
v.	)	
Mark R. Cowles,	)	Honorable
Respondent-Appellant).	)	Karle Eric Koritz,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in awarding petitioner $3975.48 on her motion to enforce against respondent.

¶ 2 In April 2016, the circuit court entered an order directing respondent, Mark R. Cowles, to pay 40% of the out-of-pocket college educational and medical expenses for his daughter, J.C., to petitioner, Tammy L. Musselman, f/k/a Tammy L. Cowles. In July 2017, Musselman filed a motion to enforce the April 2016 order and included a list of specific costs she alleged Cowles failed to pay. In September 2017, the circuit court held a hearing on the motion. The court ordered Cowles to pay Musselman a total of $3975.48, payable within 30 days.

¶ 3 Cowles appeals, arguing (1) he already paid $120 for J.C.'s fall 2015 college semester and $1515.53 for her spring 2016 semester, (2) the trial court abused its discretion in

ordering Cowles to pay Musselman his 40% of J.C.'s student loan, and (3) he already paid $331.86 for J.C.'s medical bills.

¶ 4 I. BACKGROUND

¶ 5 In September 1994, the circuit court granted Cowles and Musselman a divorce. J.C. was born in 1995. This case originated as an action to establish parentage. In January 1997, the trial court entered a joint-parenting agreement between Musselman and Cowles. The court ordered Cowles to provide child support and reimburse Musselman for medical expenses. The court modified the agreement as J.C. grew and situations changed.

¶ 6 In April 2014, Musselman filed a petition for support for educational expenses. The petition stated J.C. applied to Millikin University, was accepted, and planned to start attending in fall 2014. Musselman sought contribution from Cowles for educational expenses. Cowles filed a motion to dismiss Musselman's petition for educational expenses. The court denied this motion.

¶ 7 In December 2015, the trial court held a hearing on the petition for educational expenses. Cowles argued he should not have to pay for J.C.'s college education at Millikin when other colleges provided similar educational opportunities but at a lesser cost. The court found the cost of attending Millikin was comparable to the alternatives Cowles offered, and Cowles was responsible for some of the educational expenses. In April 2016, the court ordered Cowles to pay, retroactively as to the December 2015 ruling, 40% of J.C.'s out-of-pocket educational and medical expenses.

¶ 8 Cowles appealed this decision, arguing the trial court abused its discretion in its order because he presented less expensive alternatives. *In re Marriage of Cowles*, 2016 IL App (4th) 160348-U, ¶ 27 (Dec. 29, 2016) (unpublished order under Supreme Court Rule 23). This

court affirmed the trial court's order. This court found several factors, including Millikin's willingness to provide accommodations to help J.C. overcome her obstacles to learning, supporting the trial court's decision. It also noted J.C. compensated for the higher cost of tuition by earning scholarships and other financial assistance. This money offset the cost of tuition at Millikin to such a degree as to make it comparable to the alternatives presented by Cowles. The court found no abuse of discretion as a result.

¶ 9 In July 2017, Musselman filed a notice to enforce the April 2016 order and included a list of specific costs she alleged Cowles failed to pay. In September 2017, the circuit court held a hearing on the motion.

¶ 10 The circuit court heard testimony from Musselman and Cowles' partner, Kelly Cummings, regarding the sums at issue. Both Musselman and Cowles admitted several exhibits into evidence to demonstrate to the court what had and had not been paid. The parties presented the circuit court with a series of checks and no accounting system. Cummings testified as to her system of accounting for paid expenses, but she did not indicate the system was shared between the parties. Additionally, Cowles presented evidence he did not use the memo lines on the checks to indicate which expenses he paid and which he contested. Cummings testified Cowles paid some expenses in full but said he was not responsible for the full portion of other expenses Musselman sent him. Both parties presented calculations and arguments in support of what they thought was owed. The circuit court reduced the initial amount Musselman sought to reflect amounts Cowles contested and the court identified as having already been paid. The court ordered Cowles to pay $3975.48. It also instructed Cowles, going forward, to pay 40% of loans J.C. takes out in order to pay for her tuition balance directly to Musselman.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Cowles argues the circuit court abused its discretion in awarding Musselman (1) $120 for J.C.'s fall 2015 semester and $1515.53 for her spring 2016 semester, alleging he has already paid these amounts; (2) $3635.60 toward J.C.'s student loans, which Cowles argues is unfair; and (3) $331.86 for medical bills Cowles alleges he already paid.

¶ 14 Musselman has not filed a brief in this case. Failure on the part of the appellee to respond does not bar review of the case. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131, 345 N.E.2d 493, 494 (1976). If the court can decide the issue by referring to the record and without the aid of an appellee brief, "the court of review should decide the merits of the appeal." *Id.* at 133. The record on appeal contains all of the exhibits the parties admitted into evidence by the circuit court during the September 2017 hearing, which the circuit court used to come to its decision. We will review these exhibits to determine whether the circuit court erred.

¶ 15 A. Standard of Review

¶ 16 We note Cowles has failed to file a brief in compliance with several Illinois supreme court rules. We will reach a decision on the merits based on the record and appellant's brief but that does not relieve the appellant of the responsibility of citing to the record and relevant authority. "The appellate court is not a repository into which an appellant may foist the burden of argument and research." *Lindemulder v. Board of Trustees of the Naperville Firefighters' Pension Fund*, 408 Ill. App. 3d 494, 501, 946 N.E.2d 940, 947 (2011). Illinois Supreme Court Rule 341(h) governs the contents of an appellant's brief. It states "reference shall be made to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Rule 341(h)(7) requires Cowles to provide argument with citation to the authorities upon which he

relies. Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016). If citations to the record or supporting authority are incorrect, "[w]e will not sift through the record or complete legal research to find support for [the] issue." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6, 960 N.E.2d 1226. "Issues that are ill-defined and insufficiently presented do not satisfy the rule and are considered waived." *Id.* A litigant's *pro se* status does not excuse him from complying with appellate procedures as specified by our supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010).

¶ 17 Rule 341(h)(3) requires Cowles to provide this court with the "applicable standard of review for each issue, with citation to authority []." Ill. S. Ct. R. 341(h)(3) (eff. Jan. 1, 2016). Cowles contends the appropriate standard of review for an award of educational expenses is an abuse of discretion. *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877, 892 N.E.2d 11, 16 (2008). On appeal, Cowles objects to the amount awarded, not the award of educational expenses itself. This court heard that issue on an appeal from the April 2016 order. *Cowles*, 2016 IL App (4th) 160348-U, ¶ 2. What Cowles disputes are the circuit court's factual findings as to what he owed Musselman. This court reviews factual findings under the manifest-weight-of-the-evidence standard. *Keller*, 382 Ill. App. 3d at 877. A finding is against the manifest weight of the evidence if, upon review of the entire record, the opposite conclusion is clearly evident. *Cisco Trucking Co., Inc. v. Human Rights Comm'n*, 274 Ill. App. 3d 72, 75, 653 N.E.2d 986, 989 (1995).

¶ 18 B. Fall 2015 and Spring 2016 Tuition

¶ 19 Cowles alleges the circuit court, at the September 2017 hearing, awarded Musselman double recovery for his 40% of tuition payments for the fall 2015 and spring 2016

semesters. Cowles cites *In re Salmonella Litigation*, 249 Ill. App. 3d 173, 183, 618 N.E.2d 487, 493 (1993), for the proposition double recovery is contrary to public policy.

¶ 20 Cowles' reliance on this case is misplaced. In *Salmonella Litigation*, the plaintiff suffered from salmonella poisoning from drinking defendant's contaminated milk. *Id.* at 175. The parties entered into a settlement, and the court refused to award defendant an amount it claimed plaintiff recovered from insurance. *Id.* The court held the doctrine of double recovery "should not apply *** because a settlement is a contract which governs the plaintiff's recovery." *Id.* at 183. *Salmonella Litigation* does cite several cases to illustrate the purpose behind the denial of double recovery but all of those cases involve tort claims. *Id.* at 182-83. This case deals with an award of educational expenses. Cowles has presented no case law on which to support his argument.

¶ 21 In our review of the record, if the evidence before the circuit court was so clear as to indicate an opposite conclusion, we will amend the award. See *Cisco Trucking*, 274 Ill. App. 3d at 75. "The burden rests upon the appellant to provide a sufficient record to support a claim of error." *In re Marriage of Karen Delk*, 281 Ill. App. 3d 303, 307, 666 N.E.2d 683, 685 (1996).

¶ 22 Cowles cites the December 2015 hearing in the record in support of his argument he paid $120 for the fall 2015 semester. The page he cites deals with the arrearage amount the court identified and split up into monthly installments. The court specifically states on the previous page that it is not doing "an offset or reduction with respect to the [f]all 2015 semester[.]" The court explicitly did not include that amount in its arrearage figure. After adding up all of the figures from the December 2015 hearing regarding past educational expenses except the $120, this court determines the total to be the same as the trial court's award. Contrary to Cowles' argument and citation to the record, Musselman never conceded she received the $120

for the fall 2015 semester. The evidence does not demonstrate the circuit court, in its September 2017 award, erred by ordering Cowles to pay $120 to Musselman for fall 2015 tuition expenses.

¶ 23 In regard to the spring 2016 payment, it would have been helpful to this court if Cowles cited to the September 2017 hearing and the specific pages dealing with the spring 2016 amount. This court does not bear the burden of researching and digging through over a thousand pages of the record, although we did so. Cowles claims he has already paid what was owed for spring 2016. Musselman maintains Cowles has only paid a portion of what was owed. The circuit court subtracted the amount Cowles paid but awarded Musselman the remainder of Cowles' 40%.

¶ 24 Cowles argues the record indicates he paid his 40% of Musselman's out-of-pocket tuition costs and owed her nothing more. We disagree. Both parties presented exhibits on the issue. We question both parties' exhibits as Cowles and Musselman prepared several of them by hand. The dates on the exhibits range from the beginning of the spring 2016 semester to one with a time stamp from July 29, 2016. The circuit court, in its ruling, pointed out the ideal solution: better record keeping on both accounts. The parties presented conflicting evidence, and the circuit court made the determination it thought was correct. After reviewing the same evidence, we are not convinced the circuit court's ruling was against the manifest weight of the evidence as the opposite conclusion is not clearly evident.

¶ 25 C. Loan Repayment

¶ 26 Cowles argues he should not have to pay his portion of J.C.'s education loan to Musselman. He argues he should have to pay when the loan becomes due. Cowles argues it is not fair to pay the loan money to Musselman. He says he cannot be sure what she is doing with the money. He argues she should use the money he has already paid. To this point, the money

already paid is owed to Musselman because she made the up-front payments on expenses. Anything Cowles paid Musselman is to offset costs already incurred. Cowles also argues he should not have to make loan payments at all. This court addressed the issue of an award of educational expenses in Cowles' appeal from the April 2016 order. *Cowles*, 2016 IL App (4th) 160348-U, ¶ 37.

¶ 27 Cowles cites *Keller*, 382 Ill. App. 3d at 877, to support his contention he should not have to pay Musselman directly. This case, as previously discussed, deals with the initial award of educational expenses and whether the award was an abuse of discretion. Cowles appeals the judgment directing him to pay Musselman. Cowles, as the appellant, is responsible for providing the court with clearly defined issues and a meaningful argument. *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1. He has not provided the court with any case law to support his argument against making loan payments to Musselman.

¶ 28 The circuit court, in its ruling on the issue of loan payments, said as follows:

> "If Mr. Cowles thought he shouldn't have had to pay [the loan], he could have brought that the attention of the Court, he could have asked for clarification of the order if he genuinely believed it was not an out-of-pocket expense. There was nothing except ignoring the request to pay the 40 [%] of the out-of-pocket expenses from what I can see. So the Court doesn't consider that to be action taken in good faith and so the Court will order Mr. Cowles to pay 40 [%] of the loan. *** And so Mr. Cowles will have to pay 40 [%] of that loan as long as Ms. Musselman provides documentation that the loan was applied toward educational expenses. ***

> If that money was applied to something else he can bring that to the attention of the Court."

Cowles, in his appeal from the April 2016 order, did not raise the issue of making payments on J.C.'s loan. Instead, he ignored those payments completely. Nothing in the record indicates Musselman failed to apply the payments to the loan. The circuit court expressly directed Cowles on how to navigate this issue: he must look at the documentation for the loan provided by Musselman, determine whether a payment was made, and if he, in good faith, believes the money is not being properly applied, bring the issue before the circuit court with the appropriate documentation.

¶ 29 Cowles cites nothing in the record or in terms of case law concerning the circuit court's ability to direct him to pay his portion of the loan to Musselman. The circuit court illustrated the proper mechanism to dispute this order.

¶ 30 D. Medical Expenses

¶ 31 In his third argument, Cowles maintains he already paid the amount due for J.C.'s medical expenses. Cowles cites no authority whatsoever to argue the circuit court erred in awarding Musselman medical expenses other than his claim he has already paid these amounts. Cowles cites three pages in the record multiple times in this section of his argument to show the court he has paid this amount. The pages Cowles cites are pages in Cowles' financial affidavit, which does not demonstrate he paid these amounts. We cannot determine other pages Cowles ought to have cited.

¶ 32 Cowles argues, "it seems to be an abuse of discretion on the trial court's order to take the word of the testimony at face value without any backup evidence to support testimony." He cites no authority for this proposition. Further, both parties had the opportunity to be heard by

the court. Both parties admitted exhibits for the court's consideration. This point was specifically argued in the circuit court, and the court decided in Musselman's favor. Because nothing in the record demonstrates this finding was against the manifest weight of the evidence, we will not disturb the circuit court's ruling. We also remind the parties of the importance of good recordkeeping, as did the circuit court when it stated "there's poor recordkeeping—and certainly I think Mr. Cowles is mostly to blame for the poor recordkeeping." The court, at any level, cannot guess for what purpose Cowles made each payment. To avoid this confusion in the future, we, like the circuit court, recommend a system of reference numbers, specifically in the memo line of checks.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the circuit court's judgment.

¶ 35 Affirmed.