2016 IL App (1st) 133789-U

THIRD DIVISION
January 27, 2016

No. 1-13-3789

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAURA L. DOGGETT,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 2008 D 000875
	)	
DAVID J. DOGGETT,	)	The Honorable
	)	Mark J. Lopez
Respondent-Appellant.	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in determining child support for respondent's adult, disabled children based on the court's application of the factors set forth in section 513(b) (750 ILCS 5/513(b) (West 2012)) of the Illinois Marriage and Dissolution of Marriage Act. Affirmed.

¶ 2 This appeal arises from a dissolution of marriage proceeding. On appeal, respondent David J. Doggett contends, among other things, that the trial court erred in its rulings in regards to a modified child support petition filed by petitioner Laura L. Doggett. Specifically, respondent contends that the trial court erred in failing to apply the factors set forth in section

513(b) (750 ILCS 5/513(b) (West 2012)) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) in determining respondent's support for his adult, disabled children, namely their reasonable needs and expenses. Respondent also contends that the trial court erred by refusing to relieve respondent of alleged false stipulations regarding his income. In addition, respondent contends that the trial court erred in applying the "nullity rule" on his *pro se* motion to reconsider. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. After more than 20-years of marriage, petitioner initiated divorce proceedings against respondent. The marriage produced two children, and although both were passed the age of majority at the time of judgment, it was agreed that they were not emancipated due to a diagnosis of Fragile X syndrome. On September 14, 2009, the parties entered into a divorce settlement agreement, which provided that petitioner would be the children's plenary guardian and respondent would pay the statutory mandated support in the sum of $2,300 per month. See (750 ILCS 5/505) (West 2012)).

¶ 5 In January 2011, cross-motions for modified child support commenced. Following a hearing, the trial court determined that the reasonable needs and expenses of the children amounted to $3,000 per month. In addition, the court found that respondent earned 65% greater income than petitioner and the children's combined resources. Therefore, the trial court concluded that based on the change in circumstances and "the record of the income and resources of both parties, as well as the two adult disabled children . . . 65% contribution from [respondent was] appropriate, which [the court] calculate[d] to be $1,950 per month," plus 65% of the uncovered medical expenses. In November, however, respondent filed a second petition to

modify support, alleging that since petitioner's expenses had been reduced in the interim period, namely a reduction in petitioner's mortgage, respondent should be obligated to pay less. Petitioner, in turn, filed a counter-petition alleging that respondent's income had increased in the interim, and thus, respondent should be contributing more to the support of their disabled children.

¶ 6 According to the record, the parties partook in considerable motion practice and respondent had engaged four different attorneys and even represented himself *pro se*. Respondent repeatedly failed to comply with discovery, and on June 14, 2012, he accepted a finding of contempt and the court ordered his full compliance within 14 days. Shortly thereafter, petitioner filed a 508(b) (750 ILCS 5/508(b) (West 2012)) petition for indirect criminal contempt and the trial court ordered respondent to pay $750 to petitioner within 30 days as a sanction for his failure to comply with discovery. Respondent then filed a *pro se* motion to reconsider, claiming he was unable to make the payment. The court ruled against respondent, who then produced a check for the said amount to petitioner's counsel.

¶ 7 On October 23, 2012, a hearing on the cross-petitions to modify support commenced and was continued on several occasions. Finally, on September 24, 2013, the trial court issued its ruling denying respondent's petition to modify child support and granting petitioner's petition to increase child support (September Order). Consequently, petitioner filed a motion for a modified uniform order for support because the trial court did not dispose of all claims. The court granted petitioner's order for modification. On October 22, 2013, respondent filed a special filing requesting the trial court issue a 304(a) finding, which the court granted on November 5, 2013. Respondent appealed.

¶ 8 ANALYSIS

¶ 9 Respondent first contends that the trial court erred in failing to apply the factors set forth in section 513(b) (750 ILCS 5/513(b) (2012)) of the Marriage Act in determining respondent's support for his adult, disabled children, namely their reasonable needs and expenses. Initially, we reject respondent's contention that this issue is one of statutory construction which would require us to conduct a *de novo* review. A trial court has broad discretion in determining the necessity for and the amount of child support, and its decision will not be set aside unless the trial court abused its discretion or its order is contrary to the manifest weight of the evidence. *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 832 (1999). We also observe that we do have jurisdiction over this appeal contrary to petitioner's suggestion. The September Order was not a final order as petitioner filed a subsequent motion requesting that the trial court modify the order because it failed to address all claims. See *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990), ("a 'claim' is any right, liability or matter raised in an action" and an order is not appealable if it does not resolve all claims). Thus, respondent's appeal was timely.

¶ 10 Under the Act, the trial court:

> "(a) *** may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the support of the child or children of the parties who have attained majority in the following instances:
>
> (1) When the child is a person with a mental or physical disability and not otherwise emancipated, an application for support may be made before or after the child has attained majority.
>
> (b) In making awards under paragraph (1) or (2) of subsection (a), or pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and necessary, including:

(1) The financial resources of both parents.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

(3) The financial resources of the child.

(4) The child's academic performance." 750 ILCS 5/513(a)(1), (b) (West 2012).

¶ 11 We disagree with respondent and find the trial court adequately applied section 513(b) factors in making its determination. Petitioner testified that both children suffered from Fragile X syndrome, which stunted their mental growth somewhere in the neighborhood of a primary school grade child. Since petitioner was employed, she relied on third-party caregivers to supervise the children. The children needed to be constantly stimulated for their own enjoyment and safety, participating in the Special Olympics and excursions to museums and the zoo. Consequently, petitioner's monthly expenses had increased since June 2011, including membership and park district fees, dinners, groceries, transportation, medical expenses, babysitters and gifts. In addition, petitioner testified that she was solely responsible for the care of the children as respondent had not exercised his visitation with the children in years and provided no financial or emotional support for the children outside his court ordered financial obligation. The trial court "[found] [petitioner's] testimony credible and [found] that [petitioner's] concern [was] appropriate and necessary," noting that petitioner maximized all her financial resources for the support of the children. In turn, the trial court found respondent's testimony as a whole "incredible." See *Chandler v. Maxwell Manor Nursing Home, Inc.*, 281 Ill. App. 3d 309, 318-19 (1996) (it is well-established that credibility determinations should be left to the trier of fact who is in the best position to observe the witnesses, their demeanor, and assess

their relative credibility when there is conflicting testimony on issues of fact); *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006).

¶ 12 Based on the above findings, the trial court found increased support appropriate because respondent's income had risen and the additional support would help meet the reasonable needs, expenses and safety requirements of the children. The trial court concluded that "the sole responsibility of the daily care of the children [fell] on [petitioner]" and petitioner's ability to provide her children with the necessary support was made possible by the financial support she received from respondent. The trial court also noted that if the divorce had not taken place, there would be greater financial resources and parental time available to the children. See *In re Marriage of Bussey*, 108 Ill. 2d 286, 297 (1985) (the supreme court declined to accept the argument that a child is only entitled to receive support for his "shown needs" and "suffer because the custodial parent has a limited income"). Thus, we cannot say the trial court abused its discretion in determining that 28% of respondent's net income would be appropriate at $2,625.28 per month. And while we agree with respondent that section 505(a)(1) (750 ILCS 5/505) (West 2012)) refers to minor children, the trial court was within its sound discretion to apply the suggested 28% after considering all the section 513(b) factors in making its determination. See 750 ILCS 5/513(b) (West 2012).

¶ 13 Furthermore, contrary to respondent's assertion the record suggests that the trial court did in fact consider and apply the children's resources toward their reasonable needs and expenses. Respondent relies on case law involving support for college tuition and expenses, which is completely distinguishable from the current situation involving two adult disabled children with Fragile X syndrome. *Cf. In re Marriage of Stockton*, 169 Ill. App. 3d 318, 327-29 (1988) (it was error to apportion the child's needs and responsibilities for his college education on the ratio of

the parents' gross incomes); *Westerberg v. Stephens*, 76 Ill. App. 3d 119, 123 (1979) (the reviewing court reversed the trial court's determination ordering the husband to pay increased child support and additional educational expenses since the present cost of the child's education could be amply covered by the child's own salary); *Singer v. Singer*, 70 Ill. App. 3d 472, 475-76 (1979) (denial of the wife's request to order the husband to pay the children's college expenses was not an abuse of discretion where there appeared to be no surplus to which the children would have had access had there been no divorce). Moreover, it was reasonable for the trial court to decline to factor in respondent's obligation to his fiancé and latter-born child. See *In re Marriage of Potts*, 297 Ill. App. 3d 110, 115 (1998) ("[a] divorced spouse's obligations to the first family must be met before the obligations to the second family can or will be considered"). Accordingly, the trial court's ruling was not an abuse of discretion and its findings were not against the manifest weight of the evidence. See *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 205 (2006) (the trial court has wide discretion in awarding child support and we shall not disturb the circuit court's award absent an abuse of that discretion).

¶ 14 Respondent next contends that the trial court erred by refusing to relieve respondent of alleged false stipulations regarding his income. Illinois courts favor stipulations that are designed to simplify, shorten, or settle litigation and save costs for the parties. *In re Marriage of Ealy*, 269 Ill. App. 3d 971, 974-75 (1995). A court may reject an otherwise valid stipulation only if it is fraudulent, unreasonable, or in violation of public policy. *Opper v. Brotz*, 277 Ill. App. 3d 1024, 1028 (1996). A court will not relieve parties from a stipulation in the absence of a clear showing that the matter stipulated to is untrue, and then only when an objection is seasonably made. *In re Marriage of Troske*, 2015 IL App (5th) 120448, ¶ 34. A trial court's decision to

accept a stipulation will not be disturbed absent a manifest abuse of discretion. *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1163 (2007).

¶ 15 Here, the record suggests these stipulations were specifically agreed upon by both parties' counsel and respondent failed to make a seasonable objection or demonstrate to the trial court that the stipulations were false. Respondent further fails on appeal to point to anything in the record to demonstrate that his counsel was "duped into signing" the stipulations, respondent was precluded from presenting evidence, or that the "trial court refused to review briefs" on the matter. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (the argument must contain citations to "pages of the record relied on"). Thus, respondent's argument fails and we cannot say the trial court abused its discretion or that its findings were unreasonable or against public policy. See *In re Marriage of Troske*, 2015 IL App (5th) 120448 at ¶ 34 ("[t]o overrule a stipulation, a party must make a timely objection and demonstrate that the stipulation is untrue or unreasonable").

¶ 16 Respondent also contends that the trial court erred in applying the "nullity rule" on his motion to reconsider the court's order, among other things, requiring respondent to pay a 508(b) monetary sanction (750 ILCS 5/508(b) (West 2012)). We first observe that respondent fails to provide us with a cohesive legal argument, cite to relevant legal authority, and continuously fails to cite to the record in violation of Illinois Supreme Court Rule 341(h)(7). See Ill. Sup. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument portion of brief shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on, and points not argued are waived); *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 227 (2007) (the party forfeited an issue on appeal because the party "failed to cite pertinent authority in support of its argument"). In addition, at the time respondent filed his *pro se* motion he had new legal counsel of record and filed no *pro se* appearance. Thereafter, when

respondent filed his *pro se* appearance and response brief to his previous attorney's motion to withdraw, he still retained his new counsel of record. Thus, for the trial court to allow respondent to represent his own interests unbeknownst to petitioner and counsels of record would have been against the spirit of the efficient and proper administration of justice. See *J.P. Morgan Mortgage Acquisition Corp. v. Straus*, 2012 IL App (1st) 112401, ¶ 15 ([t]his also comports with commonsense considerations for the efficient and proper administration of justice to assure the court and parties are properly apprised of the parties and their representation). Furthermore, respondent provides no law to support the proposition that in a civil case there is an exception to the general rule that prevents litigants from filing *pro se* motions when they are represented by counsel, and in any event, respondent's motion fails to sufficiently raise any issue of ineffective assistance of counsel for the trial court to consider. *Cf. People v. White*, 322 Ill. App. 3d 982, 987 (2001) (the criminal defendant may not simultaneously proceed *pro se* and by counsel, however, there is an exception as it contravenes human nature to expect counsel to adequately argue his own ineffectiveness).

¶ 17 Finally, we reject respondent's following contentions: (1) the trial court's finding that he was responsible for an unreasonable delay of proceedings is against the manifest weight of the evidence; (2) the trial court abused its discretion in rewarding petitioner attorney fees and failing to hold a hearing under § 508(a), (b); (3) the trial court erred in the calculation of petitioner's net income by failing to take into account gifts she received from her father; and (4) the trial court abused its discretion in finding that the reduction of the mortgage expense was not a valid basis for modification. Respondent repeatedly fails to cite to the record and provide cohesive legal arguments to support his remaining contentions in strict violation of our supreme court rules. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795,

804 (2009) (this court has held that the failure to elaborate on an argument or cite persuasive and relevant authority results in waiver of that argument). Thus, respondent has forfeited these contentions on appeal and we need not consider them further. See *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011) ("[a]rguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone"); *Vallis Wyngroff Business Forms, Inc. v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 94 (2010) (same). Notwithstanding forfeiture, we do note that the record before us does suggest respondent delayed the proceedings by repeatedly failing to comply with discovery and we cannot say the trial court's finding was against the manifest weight of the evidence.

¶ 18 CONCLUSION

¶ 19 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.