2016 IL App (1st) 160762-U

No. 1-16-0762

Third Division
December 21,2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF	)	Appeal from the
MARCELLA STEWART,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 98 D 16469
v.	)	
	)	Honorable
LAWRENCE STEWART,	)	Patricia Logue,
	)	Judge, presiding.
Respondent-Appellant.	)	

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not abuse its discretion in ordering respondent to contribute to daughter's college education.

¶ 2 Respondent Lawrence Stewart, a Texas resident, appeals from the trial court's granting of petitioner Marcella Stewart's motion for contribution to college expenses for the former couple's daughter. He challenges an initial order requiring him to pay $1,500 a month for a four month period and a subsequent order modifying his contribution to $6,000 a year plus $200 monthly for personal expenses following that period. He argues that the award was an

abuse of discretion because the record shows he was unable to afford such payments and does not establish that his daughter requires the funds for her education. We affirm.

¶ 3 BACKGROUND

¶ 4 The parties were married in Chicago, Illinois, on May 23, 1987. During the marriage, they had two children, Jasmine and Sierra, who had both reached the age of majority prior to the events relevant to the current appeal. On April 8, 2002, the trial court entered a judgment dissolving the parties' marriage. The dissolution order incorporated a marital settlement agreement in which the parties agreed, *inter alia*, to contribute to the college educational expenses of the children proportionate to their ability to contribute.

¶ 5 Marcella filed a motion for contribution to Sierra's college expenses on June 26, 2015. The notice for the motion did not specify a date for an appearance on the motion and proof of service was not attached. On August 31, 2015, the trial court entered an order finding that "USPS records show notice was left at Lawrence's address of record, directing him to pick up document from post office. Mr. Stewart is considered served." The court set the matter for a hearing on October 21, 2015. On that date, the trial court entered an order directing Lawrence to pay $1,500 per month to Sierra's school, Purdue University Calumet, beginning in September 2015. The order also indicated that Lawrence had not appeared, but had been given proper notice. It included findings that Sierra received a $5,775 government grant, took out $9,500 in government loans, and had a balance due to the university of $6,548.65 for the fall term.

¶ 6 Lawrence filed a motion to vacate the October 21 order on November 15, 2015. In the motion, Lawrence asserted that he did not receive notice of the motion for contribution and only learned of the order when his place of employment presented him with an order of

withholding. In an order entered on November 18, 2015, the trial court amended the October 21 order to require Lawrence to pay $1,050 a month to Purdue and $450 directly to Sierra. It denied the motion to vacate. The court then continued the matter to December 1, 2015, for an additional hearing. The December 1, 2015, date was later continued by agreement to February 18, 2016.

¶ 7 At the February 18 hearing, Lawrence testified that he had only received one mailing from Marcella regarding her motion for contribution. He had received a letter "to go to the post office to pick up mail, and when [he] went there to pick it up, they said they couldn't find it." He did not learn of the motion and the October 21 order until his place of employment informed him that they would be garnishing his wages. Lawrence worked as a college professor earning $71,883 annually from February 2010 until his department was downsized in September 2013. He was unemployed until November 2014 and collected unemployment benefits. In November 2014, he was hired as a corporate trainer earning $52,000 a year, which amounted to a net monthly income of $3,453. He also testified that his current wife was unemployed from April 2014 until February 2015. At the time of the hearing, Lawrence's wife worked in sales, earning $62,400 annually. The couple had to apply for a loan modification during their period of unemployment and also had to pay numerous medical bills for their son. They did not have a savings account.

¶ 8 Marcella testified that she was currently receiving social security disability benefits as her sole source of income. She stated that Sierra had transferred to Purdue Calumet for the 2015-2016 school term and was living on campus. Marcella paid for Sierra's application fees as well as school supplies.

¶ 9 Both parties introduced numerous financial and school records into evidence. Two financial aid documents from Purdue's website indicate the Sierra's yearly estimated cost of attendance was approximately $22,200[1]. The second of the documents breaks up that total into roughly $7,500 for tuition and fees, $1,500 for books and supplies, $8,000 for room and board, $2,100 for "personal expenses," and $100 for a loan origination fee. Further review of the admitted documents indicates that Sierra's actual charges by Purdue for the Fall 2015 semester amounted to $6,568.65, including in-state tuition, housing rent, and various fees. The stated cost does not include a calculation of costs for food, books, and supplies. For the entire academic year, Sierra received a federal Pell grant of $5,775, a state grant of $3,700, and an "Academic Honors Incentive" of $800. She also accepted $9,500 in government loans for the entire academic year. Dividing those totals between the two semesters, Sierra received grants and loans totaling $9,888 for the fall semester. Sierra received a $3,258 refund from Purdue once her financial aid was applied to the fall semester's charges. The admitted documents also included a list compiled by Sierra estimating her monthly expenses as $440.

¶ 10 Following the testimony and exhibits, the trial court stated that it found Lawrence able to afford contribution to Sierra's college education. The court filed a written order requiring Lawrence to pay $6,000 per calendar year in contribution to Sierra's college costs, as well as $200 per month for personal expenses in the months that she attends school. Thus, the court's October 21 and February orders together obligated Lawrence to pay $1,500 per month from September through December 2015, and $700 per month beginning January 1, 2016.

¶ 11 ANALYSIS

[1] Both before the trial court and in his appellate brief, Lawrence asserts, without any support, that the $22,200 figure is an estimate of out-of-state tuition and inapplicable to Sierra. This is incorrect. The record clearly explains the derivation of that figure.

¶ 12 Initially, we note that Marcella has not filed a brief on appeal. However, because we can decide Lawrence's claims without the aid of an appellee brief, we are not precluded from determining the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 Lawrence first argues briefly that his notice of Marcella's motion for contribution and the October 21 hearing was insufficient, and thus the ensuing order must be reversed. However, although he repeatedly mentions the facts surrounding the issue of notice, he fails to cite any authority to support the contention that notice was insufficient and mandates reversal. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) provides that an appellant's brief must contain contentions with citation to the authorities upon which the appellant relies. As a reviewing court, we are entitled to have the issues clearly defined, pertinent authority cited, and a cohesive legal argument presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Accordingly, Lawrence's failure to cite legal authority results in his waiver of the issue of notice. *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999) (Appellate court "is not a depository into which the burden of research may be dumped and failure to cite legal authority in the argument section of a party's brief waives the issue for review.").

¶ 14 He next contends that the trial court abused its discretion in awarding $700 per month for educational expenses in the February 18 order and in failing to amend the October 21 order's award of $1,500 per month. He argues that the awards are untenable because he lacks the financial ability to pay the ordered amounts and because the amounts exceeded Sierra's actual college costs.

¶ 15 The parties' dissolution agreement specified that they agreed to contribute to their children's college education pursuant to section 513 of the Illinois Marriage and Dissolution

Act. 750 ILCS 5/513 (West 2002). Pursuant to section 513, the trial court may make provision for expenses including, but not limited to, "room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, and living expenses during the school year and periods of recess." *Id.* In determining an appropriate award of educational expenses, the trial court should consider all relevant factors, including the parents' financial resources; the standard of living the child would have enjoyed had the marriage not been dissolved; the child's financial resources; and the child's academic performance. 750 ILCS 5/513(b) (West 2002). We review a trial court's factual findings under the manifest weight of the evidence standard, but we review the trial court's ultimate decision regarding the award of educational expenses for an abuse of discretion. See *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877-78 (2008). A factual finding is against the manifest weight of the evidence when the contrary conclusion is readily apparent or the finding is "palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence." *United States Steel Corp. v. Illinois Pollution Control Board*, 384 Ill. App. 3d 457, 461 (2008). A trial court abuses its discretion only if its ruling is arbitrary, fanciful, or unreasonable, or no reasonable person would take the trial court's view. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22.

¶ 16 Lawrence testified that he makes a net income of $3,453 monthly. Although he noted that he has various expenses, including his mortgage and medical bills for his son, those costs are shared with his current wife who earns $62,000 annually. Given his income, we cannot say that the trial court's factual finding that he could afford to pay $1,500 for the four months ending with December 2015, and $700 per month from January 2016 onward was against the

manifest weight of the evidence. Although the initial $1,500 a month did comprise a substantial fraction of Lawrence's monthly paycheck, it is not so egregiously high that the court's finding is rendered palpably erroneous and wholly unwarranted.

¶ 17 We also disagree with Lawrence's contention that his daughter "had no need for contribution." The record reveals that Sierra was charged $6,568.65 for her fall semester for her tuition, fees, and rent. She received $5,138 in grants or scholarship for that semester. That left $1,430 to be paid, in addition to books, supplies, food, and other necessary expenses. With the remaining balance for tuition and rent, and the equally necessary expenses like books and food, we cannot say that award of $6,000 in total for Sierra's fall semester, from September until December 2015, was so arbitrary or fanciful such that it was an abuse of discretion. As we find the initial award of $1,500 per month was not an abuse of discretion, clearly the $700 monthly contribution set forth by the February 18 order is also not an abuse of discretion.

¶ 18 Lawrence seems to argue that Sierra did not require contribution because when added together, her grants and her federal loans covered her college costs. He asserts this is particularly evident because Sierra received a $3,250 refund based upon her loans exceeding the amount charged by Purdue. Although Lawrence conflates Sierra's grants and loans, the critical difference is that the loans will have to be repaid. Thus although the loans help a student pay for college, they merely defer the student's need for funds; they do not erase it. Lawrence cannot evade his duty to contribute based upon the fact that Sierra's costs of education are now owed to a lender rather than the college itself. His misunderstanding regarding the loans extends to his belief that the refund shows a lack of need. It is common knowledge that loans are used not just for tuition, but to pay for related costs like books,

food, and other school-related expenses. Government loans are disbursed to institutions and then excess funds are refunded to the student to be used for this purpose. Thus, we disagree that the loans or refund show a lack of need and find Lawrence's arguments unpersuasive.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.