2017 IL App (1st) 161901-U

Nos. 1-16-1901 & 1-16-2073 (Consolidated)

Order filed November 3, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF MARY ELLEN McGRATH,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
and	)	No. 06 D 8453
	)	
MARTIN McGRATH,	)	Honorable
	)	Jeanne Cleveland Bernstein,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in determining the noncustodial father's child support obligation by deviating upward from the statutory guidelines. The circuit court properly gave the father credit for social security dependent disability benefits, which did not replace the father's child support obligations and did not result in a windfall to the petitioner mother.

¶ 2 Respondent Martin McGrath appeals the circuit court's order that he pay $4,500 a month in child support for his two minor children, with credit for the $1,262 monthly Social Security Disability Insurance (SSDI) benefits the children receive due to Martin's disability. He contends

that the circuit court did not follow on remand the Illinois Supreme Court's instructions when calculating his child support obligation. He argues the circuit court erroneously rejected his argument that his SSDI dependent benefits satisfied his support obligation and resulted in a windfall to petitioner Mary Ellen McGrath. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 This cause is before this court again on the issue of Martin McGrath's child support obligation. He and Mary Ellen McGrath had twin children, and the circuit court entered a judgment dissolving the marriage in September 2007. The judgment provided that Mary Ellen would be the custodial parent, and she and Martin agreed to contribute to their children's various expenses. Because Martin was unemployed at that time, the issue of child support was reserved.

¶ 5 Mary Ellen subsequently petitioned the circuit court to determine child support, and in February 2010 the circuit court ordered Martin to pay $2,000 per month in child support. The circuit court reached that amount by including the $8,500 he withdrew from his savings account on a monthly basis in the calculation of his monthly net income. Martin appealed and argued that the circuit court had miscalculated his income and consequently miscalculated his child support obligation. This court affirmed the judgment of the circuit court.

¶ 6 Our supreme court granted Martin leave to appeal, and noted in its 2012 opinion that the "trial and appellate courts were rightly concerned that the amount generated by [Martin's] actual net income was inadequate, particularly when the evidence showed that [he] had considerable assets and was withdrawing over $8,000 from his savings account every month." *McGrath v. McGrath*, 2012 IL 112792, ¶ 16. However, our supreme court reversed the lower court rulings and held that savings account withdrawals are not income and, thus, should not be included in

the court's calculation of a parent's net income for child support purposes. *Id*. ¶ 18. Our supreme court remanded the cause to the circuit court with the following instructions:

> "The trial court should calculate [Martin's] net income without regard to amounts that he regularly withdraws from his savings account. The court may then consider whether 28% of this amount is inappropriate based on, *inter alia*, [Martin's] assets. If the court determines that the amount is inappropriate, it should make the specific finding required by section 505(a)(2) [of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act), 750 ILCS 5/505(a)(2) (West 2010)] and adjust the award accordingly." *Id*.

¶ 7 Upon remand to the circuit court, Martin's financial situation had changed. Specifically, he had inherited from his father an IRA worth $115,000 and assets in a trust worth $1.2 million. Martin also became qualified for SSDI benefits, received a $112,499 retroactive payment, and began receiving monthly benefits. As the custodial parent, Mary Ellen received a $51,376 lump sum retroactive SSDI dependent payment for the benefit of the twins and $1,262 in monthly benefits thereafter.

¶ 8 Martin filed an emergency motion to restrain Mary Ellen from spending the SSDI funds, arguing that she should not receive the dependent benefit on behalf of the children and he was entitled to reimbursement. Martin also moved the court for reimbursement of the $15,000 he originally had paid pursuant to the initial child support order in February 2010 and all his payments towards the twins' expenses since December 2008. He stopped paying his portion of his twins' expenses and argued that Mary Ellen, who earned over $250,000 per year, should be the sole contributor to the twins' support. He argued that the children would have had a modest

lifestyle if the marriage had endured and there was no justification to increase his child support beyond the statutory minimum child support guidelines.

¶ 9 An evidentiary hearing was held, and in April 2016 the circuit court issued a written decision. Mary Ellen filed a motion to clarify that decision, which the circuit court granted in June 2016. According to that decision, Martin's December 2014 disclosure statement indicated he had a 2014 gross income of $37,951, a stock account worth $514,499, a mortgage-free residence in Glenview, a 100% vested IRA worth $1,018,971, an inherited IRA worth $116,154, and a $19,797 annuity. Although the circuit court did not believe the figures reported in Martin's 2014 tax return, if those figures were taken as true, then his monthly child support obligation under the 28% statutory guideline amount would be only $317. The circuit court considered the $317 amount inappropriate based on Martin's assets and improved financial condition and believed it would be unconscionable to deem the $1,262 monthly SSDI benefit sufficient to satisfy Martin's total contribution for the twins' support. Specifically, since 2012, Martin experienced a $1,667,503 increase in the value of his estate, which currently was valued at over $3,600,309. Although he attempted to downplay the significance of his financial gain, the circuit court drew negative inferences from his failure to completely disclose his financial resources and found that his assertions about his financial resources were not credible.

¶ 10 The court noted that Mary Ellen's position had not improved since the divorce. She had a mortgage on her home, had not been able to amass savings like Martin, and had been forced to bear most of the cost of supporting the twins. Her monthly living, personal, dependent children, and medical/orthodontist expenses had increased. Her funds on deposit in her money market account had decreased, she drove a 2005 BMW x5, and carried a debt for attorney fees due to this incessant litigation.

¶ 11 The circuit court also considered the needs of the twins, who were 14 years old and participated in extracurricular activities, including music lessons and dance classes. Also, one child was a special needs child diagnosed with bipolar disorder, ADHD, and schizophrenia defective disorder, which resulted in substantial medical expenses. This child attended a supervised physical therapeutic day school and required the daily services of a nanny. Although Mary Ellen sent Martin monthly statements for the twins' expenses, fully broken down and with proof of payment, Martin failed to pay his share of the expenses. As the twins matured, their interests in activities, clothes, makeup, etc. increased, which increased their expenses in addition to increased school costs.

¶ 12 The circuit court concluded that it would be unconscionable to find that the $1,262 monthly SSDI dependent benefit relieved Martin of paying out-of-pocket child support. Accordingly, the court set his child support obligation at $4,500 a month with credit for the $1,262 SSDI dependent benefit. Thus, the court ordered him to pay $3,238 a month directly to Mary Ellen on behalf of the twins. The trial court also ordered Martin to pay this same amount in retroactive child support since January 2016, with credit for $117,158 in SSDI dependent payments.

¶ 13 Martin filed a timely appeal.

¶ 14 II. ANALYSIS

¶ 15 Before we address Martin's arguments on appeal, we first address Mary Ellen's "affirmative defenses," which argue that Martin's failure to comply with Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017) is so egregious that his appellate brief should be stricken and his appeal dismissed. Specifically, Mary Ellen contends that Martin's statement of facts fails to

comply with the requirement of Rule 341(h)(6) to "contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with the appropriate reference to the pages of the record on appeal." Also, Mary Ellen contends that Martin's argument section fails to comply with the requirement of Rule 341(h)(7) to "contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Mary Ellen argues that Martin continually fails to cite the record to support his statement of facts, which is not accurate and contains improper argument and irrelevant statements.

¶ 16 We agree with Mary Ellen that Martin's statement of facts contains irrelevant, inaccurate and unsupported statements and includes improper argument. Furthermore, Martin fails to properly and consistently cite the pages of the record to support the factual allegations contained in his argument. Also, he fails to cite to relevant authority to support his argument. However, because Martin's violations of Rule 341 do not hinder or preclude this court's review, we do not strike his brief or dismiss his appeal. See *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009).

¶ 17 On appeal, Martin argues that the circuit court failed to follow the supreme court's mandate because it did not calculate his net income and incorrectly deviated from the statutory guidelines. Martin also argues that the SSDI dependent payments should replace his out-of-pocket child support payments. Martin complains that the $4,500 child support award seems to have been pulled out of thin air, could not have been based upon the needs of the children, and instead results in a significant windfall to Mary Ellen.

¶ 18 Martin argues that this court should review the circuit court's ruling *de novo*. We disagree. His appeal does not present an issue of statutory interpretation or raise a question of

law. This appeal involves the determination of Martin's child support obligation, which is a matter that lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37. An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Dwan*, 108 Ill. App. 3d 808, (1982). We also acknowledge in cases where credibility is at issue that the "trial court is in the best position to review the evidence and to weigh the credibility of the witnesses." *In re Marriage of Bates*, 212 Ill. 2d 489, 515-16 (2004). Accordingly, the circuit court's findings of fact are reviewed under the manifest weight of the evidence standard. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342 (1996). "A finding of fact is against the manifest weight of the evidence where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent or the fact finder's finding is palpably erroneous and wholly unwarranted." *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997).

¶ 19 Section 505(a)(1) of the Dissolution Act (750 ILCS 5/505(a)(1) (West 2010)) establishes guidelines to determine the minimum amount of child support to be paid by the noncustodial parent. *In re Keon C.*, 344 Ill. App. 3d 1137, 1141 (2003). Section 505(a) of the Dissolution Act creates a rebuttable presumption that a specified percentage of a noncustodial parent's income represents an appropriate child-support award. *Id.* In the case of two children, the minimum amount of support is 28% of the noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2010). The trial court must award the guideline amount of support unless the court (1) makes a finding, after considering the best interests of the child, that the application of the guidelines would be inappropriate; (2) states the amount of support that would have been

required under the guidelines, if determinable; and (3) indicates the reason for the variance from the guidelines. 750 ILCS 5/505(a)(2) (West 2010).

¶ 20 We find that the circuit court followed the supreme court's mandate and did not abuse its discretion in deviating upward from the guideline amount when determining Martin's child support obligations. According to the record, Martin failed to fully disclose his financial resources and the circuit court did not find his testimony credible. However, based upon Martin's incomplete disclosure, the circuit court stated that 28% of his monthly net income for child support purposes was only about $317. This figure is consistent with Martin's 2014 disclosure statement, which indicated that his gross annual income was $37,954.32, his required deductible expenses were $24,493.56, and so his net annual income for purposes of child support was $13,460.76 or $1,121.73 per month, 28% of which was $314. We reject Martin's assertion that the trial court failed to state a determinable amount of child support that would have been required under the guidelines.

¶ 21 When the court considered the evidence about Martin's assets, it found that his testimony was not credible and the information he provided was not accurate. Accordingly, the court relied instead on his tax returns, disclosure statements, and other financial documents to assess his financial resources. The court noted that Martin had a stock account valued at $514,499 and currently owned mortgage free a residence he had purchased for $419,000. He was 100% vested in an IRA worth $1,018,971, had an inherited IRA worth $116,154, and had an annuity worth $19,797. The court found that Martin's position had been enhanced since the divorce and the 2012 proceedings. Although he still was unemployed, he now qualified for SSDI

benefits and had inherited over $1 million dollars from his father in the form of a trust for him and his beneficiaries. In total, Martin's estate had increased by more than $1,600,000.

¶ 22 In addition to Martin's considerable assets, the court also considered, consistent with section 505(a)(2) of the Dissolution Act, the best interests of the children, their financial resources and needs, the financial resources and needs of the parents, the standard of living the children would have enjoyed if the marriage had not been dissolved, and the physical and emotional condition of the children and their educational needs. 750 ILCS 5/505(a)(2) (West 2010). The court noted that the twins lived in an affluent suburb and attended an affluent high school. One child required significant psychological treatment, a special school, and around-the-clock care. The court stated that the twins deserved to participate in activities like the other children in their community, have access to better clothes and shoes, and eventually have access to a car. When the court examined the financial resources of the custodial parent, it found that Mary Ellen's position had not improved since the divorce. She had a mortgage on her home, been forced to bear the expenses to support the twins, and paid for most of the costs of the nanny and the twins' medical and orthodontist expenses. She had not been able to amass savings like Martin had. Further, she saw a significant increase in her monthly living expenses, her personal expenses, her miscellaneous expenses, and the expenses for minor dependent children.

¶ 23 The circuit court was not required to make specific findings in its order regarding the dollar amount of Martin's income or the twins' actual needs because the statute does not require it. *Melamed v. Melamed*, 2016 IL App (1st) 141453 ¶ 33. Rather, the court only needed to "provide a reason or reasons for its deviation, which it did." *Id.* Based upon its findings, the court adjusted the award to require Martin to pay $4,500 in monthly child support with credit for the

$1,262 monthly SSDI dependent benefit. The circuit court clearly followed the supreme court's mandate on remand, and we find no abuse of discretion in its child support determination.

¶ 24 Martin cites *In re Marriage of Henry*, 156 Ill. 2d 541, 548 (1993), to support his assertion that the SSDI dependent benefits satisfied his child support obligation. Martin's reliance on *Henry*, however, is misplaced. In *Henry*, the noncustodial father was ordered in 1981 to pay $50 per week in child support for his two children but by 1987 his arrearages totaled nearly $10,000. *Id*. at 543, 552. In October 1987, the father was found disabled, and his one dependent child began receiving a $421 monthly SSDI benefit. *Id*. In 1989, the father, whose wages were being garnished and tax refunds were being applied toward his arrearages that exceeded $13,000, wrote to the court and asked that his child support be modified. *Id*. The court held that the SSDI dependent benefits paid to the child could satisfy the father's support obligation because his SSDI was intended to replace the support the dependent child lost upon the father's disability and was paid in part with contributions from the father's own earnings. *Id*. at 550-52.

¶ 25 Contrary to Martin's argument on appeal, *Henry* does not stand for the blanket proposition that any time an SSDI dependent payment is made, the noncustodial parent's child support is deemed satisfied. Rather, *Henry* provides that when SSDI dependent payments are being made, that amount should be credited against the noncustodial parent's child support obligation. See *In re Marriage of Mitter*, 2015 IL App (1st) 142695, ¶ 13 (where the noncustodial father received social security and his child received $1,083 in social security dependent benefits, that benefit should have been credited to the father's $2,286 child support obligation); *In re Marriage of Rogers*, 283 Ill. App. 3d 719, 721 (1996) (where the noncustodial father's child support was $1,000 per month and his children received $300 per month in SSDI

dependent benefits, the father was entitled to credit for past and future SSDI dependent payments). Here, the record establishes that the trial court properly applied *Henry* to the instant case because the court's child support order gave Martin the accurate amount of credit for both his current and past child support payments.

¶ 26 Finally, Martin argues that the circuit court's child support award is unreasonable, does not reflect the lifestyle the children would have had if the parents had remained married, and can only be considered a windfall. He contends that Mary Ellen's financial condition has improved over the past eight years and the twins do not face a diminished standard of living without him because he cannot work and receives only disability benefits.

¶ 27 Section 505(a) of the Act limits a court's child support award to the standard of living the child would have enjoyed if the marriage had not been dissolved, and any award in excess of such amount would be an abuse of discretion. *Henry*, 156 Ill. 2d at 548. However, a "child is not expected to have to live at the minimal level of comfort." *In re Bussey*, 108 Ill. 2d 286, 297 (1985).

¶ 28 The circuit court's child support award does not result in a windfall to Mary Ellen. If the parents had remained married, Martin still would have been unemployed but the parents' assets would not have been diminished by years of litigation and the costs of maintaining two households. The twins would have enjoyed the benefits of a stay-at-home parent and his estate worth over $3.5 million. Mary Ellen earns a substantial income, but one child has major mental health needs and Mary Ellen is not required to provide for the twins alone. Both parties have a duty to support their children. *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 447 (1993). The trial court did not abuse its discretion when it ordered Martin to pay $4,500 in child support, with credit for SSDI dependent payments, to ensure that he met his duty to support his children.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.