2019 IL App (2d) 180701-U
No. 2-18-0701
Order filed August 12, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CHAD J. CONNELLY Petitioner-Appellee, and JODIE M. CONNELLY, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 15-D-640 Honorable Christopher Lombardo, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in reducing father's child support obligation based upon his loss of employment and in denying mother's petition for attorney fees.

¶ 2 Petitioner, Chad J. Connelly, and respondent, Jodie M. Connelly, were married for over 18 years and had three children. Upon the dissolution of their marriage, the parties entered into a marital settlement agreement that required Chad to make certain child support payments until the emancipation of their youngest child. The agreement precluded modification of child support, except it could be reduced if Chad lost his employment.

¶ 3 Chad lost his job and was unemployed for four months. He petitioned for a decrease in child support based on the interruption of employment. By the time the court ruled on the petition, the two older children were emancipated, but the youngest child still was under age 18. The court granted the petition and modified Chad's support obligation prospectively, according to the statutory support guideline for one child. The court denied Jodie's petition for attorney fees.

¶ 4 Jodie appeals the reduction in child support and the denial of fees. She argues that (1) the reduction was barred by the terms of the marital settlement agreement; (2) even if the agreement permitted the modification, there was no change in circumstances that would warrant modification; and (3) even if a change of circumstances occurred, the trial court should have deviated upward from the statutory support guideline for one child. She also argues that the court should have granted her fee petition based on the disparity in the parties' incomes. We affirm.

¶ 5 I. BACKGROUND

¶ 6 Chad and Jodie were married on November 22, 1997, and they had three children: Ka. C., A.C., and Ky. C. On April 7, 2015, Chad initiated dissolution proceedings. A joint custody order specified that parenting time would be divided equally. A judgment of dissolution was entered on January 12, 2016, at which time Ka. C. was 16, A.C. was 15, and Ky. C. was 13.

¶ 7 The judgment incorporated the marital settlement agreement which required Chad to pay $1500 per month in maintenance for 10 years and $2500 in monthly child support. The agreement stated in part that "[b]oth parties agree that the child support sum above shall not be modified even after emancipation of the parties' two older children, except downwards in the event that [Chad] experiences the loss of his employment." In August 2016, eight months after

the judgment, Chad lost his employment. He was unemployed for four months before obtaining new, comparable employment.

¶ 8 On December 15, 2017, a year after starting his new job, Chad petitioned for a reduction in child support. At the time, the parties' three children still were under the age of 18, but Ka. C. had recently married.

¶ 9 On June 6, 2018, Jodie petitioned for contribution to her attorney fees that she incurred as a result of Chad's child support modification petition. On July 3, 2018, she further petitioned for contribution to the children's health insurance expenses and for an *increase* in child support. She alleged a substantial change in circumstances in part because she had taken a new job "with greater opportunity for wage growth," but also with a more expensive health care plan.

¶ 10 On July 30, 2018, the court heard the opposing petitions, and although there is no transcript of the hearing, Jodie filed a bystander's report of the proceeding. See Ill. S. Ct. R. 323 (eff. July 1, 2017) (when a verbatim transcript is unavailable, the appellant may file a substitute in the form of a bystander's report or an agreed statement of facts).

¶ 11 At the time of the hearing, Ka. C. was married and about to start her final year of college, and A.C. was about to begin college in Tennessee. Both were over 18 years old, and Jodie does not dispute that they were emancipated for purposes of calculating child support. Ky. C. was 16 years old and spending equal time with her parents.

¶ 12 For several years before the dissolution judgment, Chad worked at Kraft Foods with an annual income of about $210,000, which was comprised of $160,000 in salary and $50,000 in bonuses. As a result of involuntarily losing his employment in August 2016, Chad received severance and unemployment benefits and was required to cash in his accrued deferred compensation benefits. His aggregate income in 2016 was $423,823.

¶ 13 Chad began working for US Foods in December 2016. His salary in 2017 was $158,566, but he received no bonus that year. At the time of the hearing, his income was about $214,000, which was comprised of a salary of $164,000 and a performance bonus of $50,000.

¶ 14 The settlement agreement had required Chad to fund section 529 college savings plans from his bonuses and stock options from Kraft Foods. He funded the plans continuously since the marriage dissolution. College expenses that were not covered by the 529 funds were to be "borne by the minor children."

¶ 15 The settlement agreement had required Jodie to pay up to $500 for the children's extracurricular and educational expenses until their emancipation. She was also required to pay all medical insurance premiums for the children until they turned 23 years old, provided they attended college. At the hearing, Chad agreed to assume all these expenses.

¶ 16 Jodie testified that her income had increased from $13,009 in 2015 to $30,936 in 2018. At the time of the dissolution, she received her own pension and 80% of the equity in the marital residence. Chad continued to pay $1500 per month in maintenance plus $2500 in child support. The parenting time also still was allocated equally.

¶ 17 In a written order on July 30, 2018, the trial court found that there had been a substantial change in circumstances in that Ka. C. had recently married and A.C. was starting college in the fall. The court also noted the parties' equal parenting time arrangement. The court found the provision barring child support modification to be against public policy and unenforceable.

¶ 18 The court ordered child support in the amount corresponding to the statutory guideline for one child. For the purpose of calculating support, the court found Chad's monthly income to be $13,325, while Jodie's monthly income was $4078, including $2578 in salary and $1500 in maintenance. Jodie does not dispute these amounts. Inputting the values into a "family law

software plan," the court calculated Chad's obligation to be $509 per month for Ky. C., and Jodie does not dispute the court's arithmetic. The court also ordered the statutory guideline to apply to any bonus Chad might receive. The court denied Chad's request to make the ruling retroactive to the date of his petition.

¶ 19 The court granted parts of Jodie's motion by agreement. The court ordered Chad to maintain his current medical insurance coverage for A.C. and Ky. C. until they reached the age of 23. Chad was also ordered to pay the cost of all agreed-upon extracurricular activities and educational expenses for Ky. C. up to $500 per month until her emancipation. The court denied Jodie's petition for attorney fees, noting that she had not presented any billing invoices. This timely appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Jodie appeals the reduction in Chad's child support obligation. A modification of child support may be allowed only upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a) (West 2018). A trial court's ruling on a petition for a modification of child support is typically reviewed for an abuse of discretion, which means that it will not be disturbed unless deemed arbitrary, fanciful, or unreasonable. *In re Marriage of Fisher*, 2018 IL App (2d) 170384, ¶ 23.

¶ 22 A. Settlement Agreement

¶ 23 Jodie argues that the reduction in child support conflicts with the parties' intent as expressed in the settlement agreement. The trial court found the child support modification clause of the settlement agreement to be unenforceable, but we need not reach the issue of whether the term is against public policy because we conclude that the ordered child support is consistent with the contract provision. See *Taylor, Bean, & Whitaker Mortgage Corp. v.*

Cocroft, 2018 IL App (1st) 170969, ¶ 60 (appellate court is not bound by the reasoning of the trial court and may affirm on any basis in the record, regardless of whether the trial court relied on that basis or its reasoning was correct).

¶ 24 "A marital settlement agreement is construed in the manner of any other contract, and the court must ascertain the parties' intent from the language of the agreement." *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). The primary objective when construing the language of a contract is to give effect to the intent of the parties, which is discerned from the language of the contract. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). If the words in the contract are clear and unambiguous, they must be given their plain, ordinary and popular meaning, but if the language of the contract is susceptible to more than one meaning, it is ambiguous. *Thompson*, 241 Ill. 2d at 441. However, a contract is not rendered ambiguous merely because the parties disagree on its meaning. *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 153 (2004). Rather, ambiguity exists only if the term is susceptible to more than one reasonable interpretation. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417 (2006). The interpretation of a marital settlement agreement is reviewed *de novo* as a question of law. *Blum*, 235 Ill. 2d at 33.

¶ 25 Jodie does not contest the court's finding that Ka. C. and A.C., having attained the age of 18, were emancipated for child support purposes. However, she argues that the agreement precludes the reduction in child support because the parties intended to extend Chad's support obligation to the adult children beyond their emancipation. A provision for the support of a child ordinarily is terminated by emancipation of the child, but may be extended if "agreed in writing or expressly provided in the judgment." 750 ILCS 5/510(d) (West 2018).

¶ 26 Jodie disregards the exception to the provision barring child support modification. The settlement agreement expresses the parties' intent not to modify the support obligation "even after emancipation of the parties' two older children, *except downwards in the event that [Chad] experiences the loss of his employment.*" (Emphasis added.) The plain and ordinary meaning of this language indicates that the parties contemplated reducing the support obligation if Chad lost his employment. Jodie does not dispute that Chad lost his employment involuntarily after the judgment.

¶ 27 Jodie makes the related argument that the provision shows that the parties did not view the emancipations of Ka. C. and A.C. to be a substantial change in circumstances that would warrant a reduction in support. The parties restricted modification to a situation where Chad lost his employment. But once that condition was met, the parties did not specify what would qualify as a change in circumstances under the statute. Chad's child support obligation related to Ka. C. and A.C. would ordinarily terminate upon their emancipation, and the trial court could consider whether that contributed to a change in circumstances.

¶ 28 B. Change in Circumstances

¶ 29 Jodie alternatively argues that, even if the agreement did not preclude modification of child support, the evidence did not support a finding of a change in circumstances. Jodie emphasizes that Chad was unemployed for only four months, his income in 2016 was $423,823, and his income before and after the employment interruption was about the same. Jodie insists that the child support modification was inequitable and damaged the children's best interests. We disagree.

¶ 30 Despite the evidence that the interruption in Chad's employment did not significantly diminish his income, there was ample evidence to support the child support reduction. First, the

two older children were already emancipated on the effective date of the modification. Ka. C. was married and nearing the end of her college career, and A.C. was about to begin college in Tennessee. Second, Jodie does not dispute that the court calculated child support according to the statutory guideline for one child. Third, the court mitigated the negative effect of the reduction by delaying its effective date by seven months. Rather than making the order retroactive to the date of Chad's petition, December 15, 2017, the court made it effective on July 30, 2018, the date it was entered. Fourth, Chad agreed to assume other significant expenses that previously had been Jodie's responsibility under the agreement. He agreed to pay the health insurance expenses of A.C. and Ky. C. until they turned 23 years old and Ky. C.'s extracurricular expenses up to $500 per month until her emancipation.

¶ 31 Under these circumstances, we conclude that the trial court did not abuse its discretion in reducing child support to the statutory guideline for one child. The modification was not arbitrary, fanciful, or unreasonable. See *In re Marriage of Fisher*, 2018 IL App (2d) 170384, ¶ 23.

¶ 32 C. Attorney Fees

¶ 33 Finally, Jodie appeals the denial of her petition for attorney fees. Section 508(a) of the Illinois Marriage and Dissolution of Marriage Act provides that a court "may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2018). Section 508(a) gives the court the authority in a dissolution proceeding to equalize the relative positions of the parties, thereby diminishing any advantage one spouse may have over the other due to a disparity in their respective financial resources. *In re Marriage of Pagano*, 154 Ill. 2d 174, 183 (1992).

¶ 34 Section 508(a) directs that contribution to attorney fees may be ordered from an opposing party in accord with section 503(j) of the Act (750 ILCS 5/503(j) (West 2018)). Pursuant to section 503(j)(2), in deciding the petition for contribution, the trial court must consider the factors for property distribution set forth in section 503 (750 ILCS 5/503 (West 2018)) and for maintenance set forth in section 504 (750 ILCS 5/504 (West 2018)). 750 ILCS 5/503(j)(2) (West 2018). In determining an award of attorney fees, the trial court considers the relative financial circumstances of the parties, including the allocation of assets and liabilities, maintenance, and the parties' relative earning abilities. *In re Marriage of Tworek*, 2017 IL App (3d) 160188, ¶ 18. We review a trial court's ruling regarding contribution for attorney fees in a dissolution proceeding for an abuse of discretion. *Tworek*, 2017 IL App (3d) 160188, ¶ 18.

¶ 35 Jodie argues that the denial of her petition was premature and without the requisite evidentiary findings. However, we agree with Chad that the record is devoid of any evidence of Jodie's fees or their reasonableness.

¶ 36 Jodie's petition alleged that, as of May 29, 2018, her fees and costs exceeded $4,500 and would increase through the July 30, 2018, hearing. The petition referred to a written contract for counsel's representation in the child support matter, but no contract was attached to the fee petition or presented at the hearing. The petition also alleged that the services rendered and rates charged by counsel were "reasonable and necessary," but the record contains no invoices showing work completed or corresponding charges.

¶ 37 Acknowledging these deficiencies, Jodie claims that the ongoing nature of the proceedings made it impossible to present a complete evidentiary record to support the petition. However, the record contains *no* information to support her claim. Chad accurately points out that the record lacks a retainer agreement specifying the scope of counsel's representation or his

rates. The record lacks billing statements from which the trial court could have assessed the work and reasonableness of the rates charged. The bystander's report confirms that Jodie did not present any invoices at the hearing on her petition. If Jodie had presented any relevant evidence available to her, she could have updated it with documentation of the fees incurred as a result of the July 30, 2018, hearing. See 750 ILCS 5/503(j)(1) (West 2018) ("A petition for contribution, if not filed before the final hearing on other issues between the parties, shall be filed no later than 14 days after the closing of proofs in the final hearing or within such other period as the court orders."). Jodie simply failed to present an evidentiary basis on which her petition could be granted. The court did not abuse its discretion in denying the fee petition.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the order modifying Chad's child support obligation and denying Jodie's petition for attorney fees.

¶ 40 Affirmed.