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2014 IL App (3d) 130069-U

Order filed March 24, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
TERESA LOUISE ILLUM,)	Kankakee County, Illinois
)	
Petitioner-Appellant,)	
)	Appeal No. 3-13-0069
and)	Circuit No. 12-D-34
)	
BRIAN DARRELL ILLUM,)	Honorable
)	Adrienne W. Albrecht,
Respondent-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court abused its discretion in determining husband's net income and ordering him to pay child support well below the statutory guidelines. Trial court did not err in classifying husband's business as nonmarital property or distributing property and debts to the parties.

¶ 2 After nearly eight years of marriage, petitioner Teresa Illum filed for divorce from respondent Brian Illum. The parties agreed on custody and visitation of their daughter and the division of certain personal property, but they did not agree on child support or the division of

other marital property and debts. Following a trial, the court ordered Brian to pay \$50 per week in child support to Teresa. The court ruled that Brian's home and business were nonmarital property that belonged exclusively to Brian and ordered both parties to pay their respective debts, including \$53,000 in student loans accumulated by Teresa. Theresa appeals the trial court's child support order, its classification of certain property as nonmarital, and its distribution of marital property and debts. We affirm the trial court's classification and distribution of property but reverse its child support award and remand for further proceedings.

¶ 3 Teresa and Brian Illum married in March 2004. At the time of the marriage, Teresa was the custodial parent of a daughter from a prior relationship, and Brian was the custodial parent of a daughter and son from a prior marriage. During the parties' marriage, Brian adopted Teresa's daughter.

¶ 4 In January 2012, Teresa filed a petition for dissolution of marriage. Teresa and Brian agreed to custody and visitation of their daughter and the division of personal property, but they did not agree about the classification of certain property, the division of marital property and debts, or the amount of child support Brian should pay. A trial was held on the contested issues.

¶ 5 At trial, Teresa testified that prior to and throughout her marriage to Brian, Brian owned a lawn maintenance and snow removal company, Affordable Lawn Care. As soon as the parties married, Teresa began helping Brian with the business. A few years later, she began attending college. Teresa ultimately earned her master's degree in social work and was hired by Illinois Mentor in Matteson, where she earned \$36,000 annually. She obtained student loans to pay for her education. She currently owes \$53,000 in student loans.

¶ 6 Teresa and her daughter moved in to Brian's house in 2002. The house is in Brian's name alone. The house has a value of approximately \$120,000, with loans totaling \$122,000.

¶ 7 Teresa moved in with her mother in southern Illinois in January 2012, following an altercation with Brian. She took a leave of absence from her job at Illinois Mentor for two months. In March 2012, she began commuting from southern Illinois to her job in Matteson. In June 2012, she obtained new employment in southern Illinois, earning an annual salary of \$25,800.

¶ 8 Teresa testified that after she separated from Brian, she borrowed \$14,000 from her mother and stepfather to support herself, pay for vehicle repairs and pay off credit card debt. She introduced into evidence a loan agreement entered into by herself, her mother and stepfather showing that she is required to pay "any money borrowed" plus 3% annual interest. Teresa testified that she still owes \$2,500 on two credit cards that are in her name alone and also owes a friend \$2,500.

¶ 9 Teresa's mother, Evelyn Andreasen, testified that she borrowed money from her life insurance policy to loan Teresa \$14,000. She testified that Teresa used \$8,654.50 to pay off her debts. Teresa used some of the money to pay monthly rent to Andreasen. Teresa and Andreasen both testified that Teresa pays \$500 a month in rent to live in Andreasen's home.

¶ 10 Brian has custody of his two children from a prior marriage. His 16-year-old daughter has been diagnosed with autism, bipolar disorder, mild retardation and ADHD. She requires constant supervision. His ten-year-old son also suffers from ADHD. Brian receives social security disability payments for his daughter of \$551 per month and monthly child support of \$318 for both children.

¶ 11 The parties provided their tax returns from 2008 to 2011. According to those returns, Affordable Lawn Care had gross income of \$43,790, and a net profit of \$12,525, in 2008. In 2009, Affordable Lawn Care had gross income totaling \$61,900 and a net profit of \$9,326. In 2010, the business had gross income of \$82,003, with a net profit of \$8,298. Finally, in 2011,

Affordable Lawn Care had gross income of \$87,754, and a net profit of \$2,518. Brian agreed that his gross income steadily increased from 2008 to 2011.

¶ 12 Brian provided bank statements for his Affordable Lawn Care accounts. The deposits in those accounts totaled \$190,870.62 in 2010, and \$203,245 in 2011. However, the tax returns for those years show that Affordable Lawn Care's gross receipts were \$87,323 in 2010, and \$92,721 in 2011.

¶ 13 Brian also provided profit and loss statements for Affordable Lawn Care from January to May 2012. Those statements showed that the company had gross receipts during those five months totaling \$61,347.50 and net income of \$28,923.41. Brian testified that he only plowed snow twice during the winter of 2012.

¶ 14 Following the testimony, the trial court issued a Memorandum of Decision. In its decision, the trial court stated as follows with respect to child support:

"Because the husband's obligation to his children by a prior marriage came first in time, the purposes of the priority of the children for support, the husband's two children of his first marriage come first, In re Marriage of Potts, 297 Ill. App. 3d 110, 115, 696 N.E. 2d 1263, 1266 (1998). Further, because each of the parties has custody of at least one child, albeit not all children of this marriage, the statutory guidelines do not apply. There are no guidelines for trial courts when custody is split between the parties or when a party is responsible for the support of other children from other marriages. In re Marriage of White, 204 Ill. App. 3d 579, 582, 561 N.E. 2d 1387, 1389 (1990)."

The trial court explained that it should make a finding as to Brian's statutory net income but found it impossible to do so because Brian's bank records "can't be reconciled." Nevertheless, the court found that Brian's deposits "have diminished greatly in 2012" because of the

"extraordinarily poor year for landscaping and snow removal." The court concluded that a child support award of \$50 per week was "equitable."

¶ 15 The trial court classified Brian's home as nonmarital property and gave no credit to Teresa because the home is worth less than what is owed on it. The trial court also classified Affordable Lawn Care and its equipment as nonmarital property with no contribution to the marital estate because there was "no evidence of appreciation of the business during the marriage" and all "debt associated with the purchase of business assets and equipment came from receipts of the business."

¶ 16 With respect to marital debt, all of the debts on Brian's home were assigned to Brian, as well as debt associated with his business and outstanding balances on several credit cards. Teresa was assigned all of her student loan debt, the balance of one credit card, the \$14,000 loan from her mother, the \$2,500 loan from her friend, and any other debt she incurred after she and Brian separated.

¶ 17 Teresa filed a motion to reconsider the trial court's decisions, after which the trial court filed a memorandum of opinion stating that it should have determined Brian's net income. To do so, the court "considered the reduction in [Brian's] deposits between 2011 and 2012 because of adverse weather conditions" and "then subtracted the expenses itemized on the 2011 Schedule C." The court found that Brian's net income was \$2,633 per month, including \$1,800 of monthly business income. The court ruled: "In light of his prior obligation to his children by a previous marriage, the Court finds the amount of child support which it ordered is reasonable and consistent with the provisions of Section 505 of the Illinois Marriage and Dissolution of Marriage Act." The court affirmed its classification of Brian's business as nonmarital property, adding that "it is the only source of income for a father lacking any special skills or advanced education." The court also affirmed its division of marital debt, finding "no error in the debt

allocation," including requiring Teresa to pay all of her student loans, because the loans "have put her in a position to maintain a career that would not have been available to her otherwise."

¶ 18

I. Child Support

¶ 19

Section 505(a) of the Marriage and Dissolution of Marriage Act (Act) sets the minimum amount of child support at 20% of the payor's net income for one child unless the trial court finds that the guidelines are inappropriate in the case before it. 750 ILCS 5/505(a)(1)-(2) (West 2012). "If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable." 750 ILCS 5/505(a)(2) (West 2012).

¶ 20

The Act defines "net income" as "the total of all income from all sources," minus deductions for state and federal income tax, social security, mandatory retirement contributions, union dues, health insurance premiums, "[p]rior obligations of support or maintenance actually paid pursuant to a court order," "[e]xpenditures for repayment of debts that represent reasonable and necessary expenses for the production of income," necessary medical expenditures, and "reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts." 750 ILCS 5/505(a)(3) (West 2012). When an obligor owns a business, it is appropriate for a trial court to subtract the day-to-day operating expenses of the business in determining the obligor's net income. *In re Marriage of Tegeler*, 365 Ill App. 3d 448, 455 (2006). Otherwise, the result would be unjust because thousands of dollars of income that the obligor does not actually possess would be imputed to him. *Id.*

¶ 21

Where it is difficult to ascertain the net income of a noncustodial spouse, the court may consider past earnings in determining the noncustodial spouse's net income for purposes of a child support award. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 706 (2006). When an obligor is self-employed and his income fluctuates from year to year, the trial court should

consider the obligor's income over several years. *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103-04 (1995). "[I]ncome averaging is an approved method to apply in determining current net income for the purpose of establishing child support." *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1025 (2003). A court should use at least three years of an obligor's income "to obtain an accurate income picture." *Freesen*, 275 Ill. App. 3d at 103.

¶ 22 A trial court's finding as to net income and its award of child support are matters within the discretion of the trial court and will not be disturbed on review absent an abuse of discretion. *Freesen*, 275 Ill. App. 3d at 104.

¶ 23 Here, the trial court determined that Brian's net monthly income in 2012 was \$2,633, which was considerably less than his income in prior years "because of adverse weather conditions" in 2012. The court then determined that a child support award of \$50 per week was "reasonable." We find that the trial court's determination of Brian's net income, as well as its child support award, to be an abuse of discretion.

¶ 24 First, the trial court abused its discretion in determining Brian's net income based solely on one year of his business income. Brian testified at trial that his income increased steadily from 2008 to 2011, but declined in 2012 because of poor weather conditions. Because Brian's income decreased significantly in 2012 compared to prior years, the trial court should have considered more than one year of income in making its determination of Brian's net income. See *Garrett*, 336 Ill. App. 3d at 1025; *Freesen*, 275 Ill. App. 3d at 103-04. Thus, we remand for the trial court to consider the average of Brian's income from the three years prior to the date of trial to determine his net income for child support purposes. See *Freesen*, 275 Ill. App. 3d at 104.

¶ 25 Additionally, the trial court abused its discretion in ordering Brian to pay only \$50 per week in child support, which was less than 10% of Brian's net income and less than half of the statutory guideline amount. See 750 ILCS 5/505(a)(1) (West 2012). The trial court found this

deviation to be appropriate because Brian has children from a prior marriage who live with him. While it is not improper for the trial court to consider Brian's obligations to those children, the trial court should also consider the support he receives for the children, including disability and child support payments, when determining the amount of child support Brian should pay to Teresa. Furthermore, we disagree with the trial court's conclusion that the statutory guidelines do not apply because Brian has custody of children from a prior marriage. While courts have stated that the guidelines are inapplicable when both parties have custody of one or more children, those cases involve split-custody arrangements where the parties' children reside with different parents. See *In re Marriage of Wittland*, 261 Ill. App. 3d 785 (2005); *In re Marriage of Steadman*, 283 Ill. App. 3d 703 (1996); *In re Marriage of Keown*, 225 Ill. App. 3d 808 (1992); *In re Marriage of White*, 204 Ill. App. 3d 579 (1990). Here, where Brian has custody of children who are not Teresa's, the statutory child support guidelines should apply. See *In re Marriage of Tatham*, 173 Ill. App. 3d 1072, 1093 (1988) (trial court did not abuse its discretion in ordering father to pay child support pursuant to statutory guidelines where he had custody of two minor children from a prior marriage).¹

¶ 26

II. Classification of Property

¶ 27

All property acquired prior to marriage is presumed to be nonmarital property. 750 ILCS 5/503(a)(6) (West 2012). The increase in value of a nonmarital asset is also presumed to be nonmarital property. 750 ILCS 5/503(a)(7) (West 2012). A trial court's determination that an

¹ The trial court also abused its discretion in ordering Brian to pay less than the statutory amount of child support without stating "the amount of support that would have been required under the guidelines." See 250 ILCS 5/505(a)(2) (West 2012). On remand, if the court decides to deviate from the statutory guidelines, it must state how much Brian would have been required to pay if the court had applied the guidelines. See *id.*

asset is nonmarital will be reversed only if it is against the manifest weight of the evidence. *In re Marriage of Leisner*, 219 Ill. App. 3d 752, 757 (1991).

¶ 28 Reimbursement may be required when one spouse contributes personal efforts to nonmarital property that result in substantial appreciation of the nonmarital property. 750 ILCS 5/503(c)(2) (West 2012); *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 507 (1993). However, if the spouse has already been reasonably compensated for the personal effort, no reimbursement is necessary. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 648 (1993).

¶ 29 Here, the trial court ruled that Brian's business, Affordable Lawn Care, is nonmarital property to which Teresa is entitled to no reimbursement. We agree.

¶ 30 Brian established and operated Affordable Lawn Care before he married Teresa. While Teresa performed work for the business during the parties' marriage, there was no evidence that her personal contributions resulted in a substantial appreciation to the business. Additionally, Teresa was compensated for the work she performed for the business during the marriage by receiving revenue from the business. We affirm the portion of the trial court's order finding that Affordable Lawn Care is nonmarital property to which Teresa is entitled to no reimbursement.

¶ 31 III. Distribution of Marital Property and Debts

¶ 32 A trial court's distribution of marital property will not be reversed absent an abuse of discretion. *In re Marriage of Stufflebeam*, 283 Ill. App. 3d 923, 929 (1996). An abuse of discretion occurs only when no reasonable person could find as the trial court did. *Id.* A court may require that debts incurred following separation be paid by the party incurring them. *Id.* However, such debts may be considered marital, and it is within the trial court's discretion to order that the other party or both parties be held responsible for paying them. *Id.*

¶ 33 Here, the trial court ordered Teresa to pay her student loan debt, as well as other debt she incurred during the marriage and after she and Brian separated. We find the trial court did not abuse its discretion.

¶ 34 Both Brian and Teresa were held responsible for a large amount of credit card and other debt. Much of the debt that was allocated to Teresa was incurred after she and Brian separated. The trial court did not err in holding her responsible for that debt. See *Stufflebeam*, 283 Ill. App. 3d at 929. Additionally, the trial court did not err in holding Teresa solely liable for her student loan debt of \$53,000, since she will be able to make use of her education to earn a living. We affirm this portion of the trial court's order.

¶ 35 The judgment of the circuit court of Kankakee County is affirmed in part, reversed in part and remanded.

¶ 36 Affirmed in part and reversed in part; cause remanded.