2014 IL App (3d) 130531-U

Order filed May 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
CAMI LYNN KACZOR,	)	Will County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0531
v.	)	Circuit No. 09-D-2317
	)	
DAVID E. KACZOR,	)	Honorable
	)	Robert J. Baron,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly considered contributions made to husband's profit-sharing plan as part of his net income for child support purposes.

¶ 2 On January 19, 2011, the trial court entered a judgment dissolving the marriage between petitioner, Cami Lynn Kaczor (Cami), and respondent, David E. Kaczor (David). The judgment incorporated the parties' marital settlement agreement (agreement), awarding Cami primary physical custody of the minor children and unallocated family support. Following the

termination of unallocated family support, the court ordered David to pay child support in the amount of 28% of his net income from his salary, an additional 28% of any employment-related income and/or bonus, and 28% of his employer-based contributions to his profit-sharing plan. David appeals the child support award, arguing the trial court improperly included his employer-based contributions to his profit-sharing plan as part of his net income for child support purposes. We affirm.

¶ 3 FACTS

¶ 4 Cami and David were married on December 1, 2001, and had two children together during the marriage, Aidan, born November 18, 2002, and Kyra, born June 17, 2005. Cami filed a petition for dissolution of marriage on December 17, 2009. On January 19, 2011, the trial court entered a judgment for dissolution of marriage, which incorporated the agreement. The agreement stated David was employed by his own practice, LaGrange Pediatrics, Ltd., as a pediatrician and was making approximately $152,000 per year. Cami was unemployed, but she was educated and trained as a registered nurse.

¶ 5 The parties' agreed to joint custody of the minor children, with Cami being the primary physical custodian. As such, the agreement provided that David would pay Cami unallocated family support in the amount of $4,000 per month for a period of 36 months. For so long as David had an obligation to pay unallocated family support, he would also pay 24% of his "net bonus/profit-sharing from his employment" to Cami for additional unallocated family support. The agreement further provided that

> "[i]n the event [David] arranges through his employment to increase his base salary each year during the [36] month period of unallocated family support via a draw/reduction from his end-of-the-year bonus/profit sharing, the amount of said

> increase in base salary shall be deemed a portion of [David's] end-of-the-year bonus/profit-sharing for the purpose of calculating the additional [24%] he is obligated to pay to [Cami] pursuant to this provision."

Upon termination of David's obligation to pay unallocated family support, his obligation to pay child support shall be recalculated based upon his "base salary and annual bonuses/profit sharing."

¶ 6 On December 28, 2012, David filed a petition to terminate unallocated family support based on allegations that Cami was cohabitating with another person in the marital home. David requested that the trial court terminate unallocated family support and enter an order setting child support.

¶ 7 On May 21, 2013, the trial court held a nonevidentiary hearing on David's petition to terminate. Specifically, the court was to determine whether David's profit-sharing plan contributions should be included in his net income for child support purposes. At the hearing, it was revealed that David was a 25% shareholder of LaGrange Pediatrics, Ltd., with three other doctors. The practice had a profit-sharing and savings plan for each of the four co-owners and all of its employees. The four co-owners would vote at the end of each year to determine the amount of corporate profits that would be distributed into each of its employees' profit-sharing and savings plans.

¶ 8 David's attorney argued the employer-based contributions to David's profit-sharing and savings plan should be deducted from David's income under section 505(a)(3)(d) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/505(a)(3)(d) (West 2012), because they qualified as mandatory retirement contributions as a condition of employment. David's attorney argued that these employer-based contributions were mandatory through the

corporation, and David did not have the right to opt out of the plan. David was only one vote out of four, and thus, he had no control over the contribution amount. Additionally, David's attorney argued that the contributions were not income to David because he could not access the funds until he borrowed against the plan or withdrew from the plan. Furthermore, the contributions did not show up on his paycheck or W-2.

¶ 9 Cami's attorney argued that the contributions to David's profit-sharing and savings plan increased his net worth and should be considered income because not only could David borrow against the plan, but he could also take money out of the plan. Cami's attorney also argued that the contributions were not a condition of employment as stated in section 505(a)(3)(d) of the Act, because David was receiving this benefit as an owner of the corporation, not as an employee. Counsel further argued the contributions should be considered income because under section 15 of the Income Withholding for Support Act income was defined to include "profit-sharing payments." 750 ILCS 28/15(d) (West 2012).

¶ 10 The trial court found that the contributions made to David's profit-sharing plan did not qualify as mandatory retirement contributions, and thus, were included in David's net income for purposes of calculating child support. The court noted that it was required to be as generous as possible in defining income for child support, and the fact that the contributions did not show up on David's W-2 or that he did not pay taxes on them, was of no consequence because the court was not restricted by the Internal Revenue Service's definition of income. The court also expressed concern regarding David's ability to manipulate the profit-sharing distributions by contributing more of his salary to the profit-sharing and savings plan.

¶ 11 On June 19, 2013, the trial court entered a written order to reflect its May 21, 2013, findings. The court ordered David to pay $1,145 every two weeks for child support, based on the

statutory percentage of 28% of David's net income from his $152,000 salary. David was also required to pay an additional 28% of any employment-related net income and/or bonus and 28% of the accredited value of his employer-based contributions to his profit-sharing plan. David appeals.

¶ 12 ANALYSIS

¶ 13 David argues the trial court improperly failed to deduct the amount of corporate profits annually distributed into his profit-sharing and savings plan when determining the amount of his net income for purposes of calculating the amount of statutory child support as required by section 505(a)(3) of the Act. 750 ILCS 5/505(a)(3) (West 2012). Although Cami has not filed a brief on appeal, the record is simple and the claimed errors are such that the court can objectively decide them without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 14 Generally, the trial court's net income determination and child support award lie within its sound discretion. *In re Marriage of Anderson and Murphy*, 405 Ill. App. 3d 1129 (2010). However, issues of statutory interpretation present a question of law, which we review *de novo*. *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Id.* The best indicator of the legislature's intent is the plain language of the statute, and when the language is clear, it must be given effect without resort to other tools of interpretation. *Id.* We may not read into the clear language of the statute exceptions that the legislature did not express. *In re Marriage of Lindman*, 356 Ill. App. 3d 462 (2005).

¶ 15 Section 505(a)(1) of the Act establishes guidelines to determine the minimum amount of child support. 750 ILCS 5/505(a)(1) (West 2012). For two children, that figure is 28% of the

noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2012). "Net income" is defined as "the total of all income from all sources," minus certain enumerated deductions. 750 ILCS 5/505(a)(3) (West 2012). These deductions include federal and state income tax, social security, "[m]andatory retirement contributions required by law or as a condition of employment[,]" union dues, health insurance premiums, prior obligations of support or maintenance, expenditures for repayment of debts, and foster care payments. 750 ILCS 5/505(a)(3)(a) to (i) (West 2012).

¶ 16 David first argues the contributions his medical practice distributes to his profit-sharing and savings plan do not qualify as "income" for child support purposes. Section 505 of the Act does not define "income," but our supreme court has given the term broad meaning, such that it includes " 'something that comes in as an increment or addition * * *: a gain or recurrent benefit that is usu[ally] measured in money * * *: the value of goods and services received by an individual in a given period of time[,]' " (quoting Webster's Third New International Dictionary 1143 (1986)) and " '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts and the like.' " *Rogers*, 213 Ill. 2d at 136-37 (quoting Black's Law Dictionary 778 (8th ed. 2004)).

¶ 17 There is a rebuttable presumption that all income, unless specifically excluded by statute, is income for child support purposes. *In re Marriage of Rogers*, 345 Ill. App. 3d 77 (2003); *Illinois Department of Public Aid ex rel. Jennings v. White*, 286 Ill. App. 3d 213 (1997). Based on this presumption and the broad definition of income, we find the contributions the medical practice distributed into David's profit-sharing and savings plan constituted "income from all sources" under the Act. Section 15(d) of the Income Withholding for Support Act defines income to include "profit-sharing payments[.]" 750 ILCS 28/15(d) (West 2012) (providing that

income excludes any amounts required by law to be withheld, including federal, state and local taxes, social security, and other retirement and disability contributions).

¶ 18 David, however, maintains that the contributions should not be considered income on two grounds, namely, because they do not facilitate his ability to support his children and there is no way to determine his net income from the contributions absent a taxable event. We conclude both arguments are unpersuasive. At the hearing, it was revealed that David could not only borrow from his profit-sharing and savings plan, but he could also withdraw from that account. Further, if the net income is truly impossible to calculate and results in an unjust child support obligation, the trial court has discretionary authority to deviate from the Act's guidelines in determining a parent's obligation. See 750 ILCS 5/505(a)(2) (West 2012). Consequently, we conclude the profit-sharing contributions as determined on an annual basis by David and the other three co-owners, represents a gain or a benefit that David received through self-employment at his own practice and constitutes income.

¶ 19 David next argues that because the contributions to his profit-sharing plan were mandatory, they qualify as a statutory deduction from his income for "[m]andatory retirement contributions required by law or as a condition of employment." 750 ILCS 5/505(a)(3)(d) (West 2012). The Act does not provide a definition of "mandatory retirement contributions," and we have been unable to find Illinois case law regarding the treatment of employer contributions to a profit-sharing plan under the child support guidelines. However, an argument similar to David's was considered and rejected by the supreme court of New Hampshire. *In re Watterworth*, 821 A. 2d 1107 (N.H. 2003).

¶ 20 In *Watterworth*, as here, the court dealt with employer-based contributions to a profit-sharing plan. *Id*. The husband was a partial owner of an orthodontic practice, which contributed

to the husband's and other employees' pension and profit-sharing plans on their behalf. The child support statute in question provided for a deduction from net income for "[m]andatory, not discretionary, retirement contributions." *Id.* at 1111. The court held that "[m]andatory, not discretionary, retirement contributions" referred to contributions the party had made to a retirement plan, not contributions that the party's employer had made on the party's behalf, noting that the other deductions that the statute referred to were those that the obligor actually paid, not amounts that were paid on his behalf. *Id.* Therefore, the court held that because the husband did not contribute out-of-pocket to his pension or profit-sharing account, the practice's contributions to these accounts could not be deducted from the husband's gross income. *Watterworth,* 821 A. 2d 1107.

¶ 21 Similarly, in the instant case, section 505(a)(3) also lists deductions actually paid by the obligor. As such, we find persuasive the fact that David's medical practice, not David himself, contributed to his profit-sharing plan. Although David argues the contributions made by his medical practice were mandatory, he provides no authority documenting these distributions were mandated by the terms of his employment with LaGrange Pediatrics, Ltd., a privately held corporation.

¶ 22 Additionally, the parties' reference to David's profit-sharing plan in their agreement referred to David's "bonus/profit-sharing from his employment" and even suggested that David could "increase his base salary *** via a draw/reduction from his end-of-the-year bonus/profit sharing." As such, we find David has been unable to establish the contributions were a condition of David's employment and beyond his influence and control. See *Baker v. Ashton*, 617 So. 2d 822 (Fla. Dist. Ct. App. 1993) (holding that husband's employer-based contributions to his joint retirement account with several doctors did not qualify as a mandatory retirement payment under

the child support act because husband's contributions were not out of his control and his participation in the plan would not affect his employment).

¶ 23 Based on the record before us, we find that the trial court properly refused to deduct the contributions made by David's medical practice to his profit-sharing and savings plan when determining David's net income for purposes of calculating child support. See *In re Marriage of Klomps*, 286 Ill. App. 3d 710 (1997) (declining to exclude sources of income not specifically listed in section 505(a)(3)).

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 26 Affirmed.