2014 IL App (3d) 130532

Order filed August 13, 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,
KATHLEEN MEDLEY, n/k/a	)	Will County, Illinois,
KATHLEEN McGEOGHEGAN,	)	
	)	
Petitioner-Appellant and	)	
Cross-Appellee,	)	Appeal No. 3-13-0532
	)	Circuit No. 96-D-9673
and	)	
	)	
JOHNATHAN P. MEDLEY,	)	
	)	Honorable
Respondent-Appellee and	)	Robert J. Baron,
Cross-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court had the authority to apply section 513 when it awarded an increase in child support. However, we remand for the trial court to consider the child support guidelines in section 505(a) when determining child support for the applicable time period.

¶ 2 In 1999, the trial court entered a judgment dissolving the marriage between petitioner, Kathleen McGeoghegan, and respondent, Johnathan P. Medley. The judgment awarded

Kathleen primary physical custody of the minor children and child support in the amount of $215 per week. In post-judgment proceedings, Kathleen sought a child support increase. Both parties appeal the trial judge's ruling. We reverse and remand.

¶ 3 FACTS

¶ 4 Kathleen and Johnathan were married in 1986. Two twin girls were born during the marriage, Kristine and Kerry, born September 26, 1990. Kathleen filed a petition for dissolution of marriage and judgment was entered on January 8, 1999, incorporating the parties' marital settlement agreement. According to the agreement, Kathleen was awarded primary physical custody of the children, with Johnathan having reasonable visitation. Johnathan would pay $215 per week in child support. Because the children are both disabled, the support award was in excess of the statutory guidelines. The agreement provided that further support after the children reached age 18 years old was reserved for the future consideration by the court.

¶ 5 After the children turned 18, Johnathan filed a petition to terminate support. Kathleen filed a motion to strike Johnathan's petition to terminate child support, claiming that pursuant to the Act, child support did not terminate until the children completed high school or attained age 19. The motion stated that the parties' agreement had reserved the issue of child support when the children reached age 18.

¶ 6 Kathleen then filed a petition to increase child support alleging a substantial change in circumstances based on the needs of the children, the cost of living, and the increase in Johnathan's earnings.

¶ 7 On December 23, 2008, Johnathan filed a petition to suspend child support, alleging that he had been employed at UPS, but recently had been off work because he suffered three herniated discs. Johnathan claimed he was not receiving any income from his employer or

temporary total disability benefits (TTD). A year later, Johnathan filed another petition to suspend child support, stating that since his last motion, he had returned to work, but was directed by his physician to take another medical leave due to aggravation of his injuries. Johnathan alleged that he was again without income from work, and, at the time of filing the motion, he had not received any TTD.

¶ 8 On December 9, 2009, the trial court held a hearing on child support and entered a written order. The court found that commencing September 26, 2008, the two children were considered unemancipated adults, since they were fully disabled. The trial court also suspended Johnathan's child support obligation. The court ordered Johnathan to notify Kathleen immediately when he received any income or assistance and to commence paying child support. The court also ordered Kathleen to provide a supplemental income and expense affidavit.

¶ 9 On January 27, 2010, Kathleen filed an emergency petition, asserting that since September 26, 2009, she had received no child support from Johnathan. Following a hearing on Kathleen's petition, the court ordered both parties to submit income and expense affidavits. On March 24, 2010, Kathleen submitted an income and expense affidavit, averring that her monthly expenses totaled $3,947.37, while her monthly income from all sources, including the children's SSI, totaled $2,026.90. On May 18, 2010, Johnathan submitted his income and expense affidavit, averring that his monthly expenses totaled $6,604.42, while his income from all sources totaled $5,966.05.

¶ 10 On June 3, 2010, the court held a hearing on Kathleen's petition to increase child support filed December 11, 2008. At the hearing, Kathleen informed the court that she had not received any support payments from Johnathan since September 26, 2009, and that the children were each receiving $178 per month in SSI. Kathleen explained that the children's SSI benefits fluctuated

based on the amount of child support received by Johnathan. Johnathan stated that his most recent income and expense affidavit showed that he received $3,807.45 in TTD per month, which began on February 1, 2010. Johnathan also received $13,000 in TTD back pay in February 2010.

¶ 11 Johnathan argued that Kathleen's petition to increase child support should be resolved under section 513 of the Act, not section 505, because the children were disabled and over 18 years old. The trial court agreed with Johnathan, finding that child support was governed by section 513.

¶ 12 The court then determined that Johnathan should pay support of $1,200 a month, retroactive to February 1, 2010, when Johnathan began receiving TTD. The court also lifted the suspension of support payments, finding that Johnathan owed the original amount of support of $215 per week from December 9, 2009, through February 1, 2010.

¶ 13 After a brief recess, Kathleen informed the court that the amount of SSI each child received was actually $674 a month, not $178. Again, Kathleen noted that the children's SSI fluctuated based on the amount of child support they received. The court stated that the difference between the two amounts would be deducted from Johnathan's $1,200 monthly child support payment.

¶ 14 The matter was continued several times for the entry of an agreed order, but no order was entered. On November 22, 2010, the court continued the matter to determine the reduction in SSI if the court awarded child support.

¶ 15 Kathleen then filed a petition for assistance with transportation and educational expenses for the children. On May 9, 2012, the court reviewed the needs of the children and the income

and assets of the parties and ordered Johnathan to contribute $300 per month for transportation and educational expenses.

¶ 16 On June 7, 2012, Johnathan filed a motion to reconsider, reopen proofs, and conduct a hearing.

¶ 17 On June 8, 2012, the court held a hearing and entered a written order clarifying its ruling in relation to Kathleen's petition for transportation and educational expenses. The order stated that Johnathan should pay $300 per month for transportation and educational expenses, retroactive to September 26, 2008,[1] the date the two disabled children became emancipated. The child support award was in addition to the benefits the children received through SSI, in the amount of $647 per month per child. The order stated that the retroactive application would be calculated at $300 per month for 33[2] months.

¶ 18 Johnathan filed a motion to reconsider on June 7, 2012 and later submitted an income and expense affidavit. At a hearing on the motion, the court found that Johnathan waived his argument that Kathleen failed to file a section 513 pleading, because Johnathan argued the application of section 513 at the June 3, 2010, hearing, and he never objected to the lack of a written petition under section 513; Johnathan would pay $1,200 per month; that SSI received by the children would be credited against Johnathan's support obligation.

¶ 19 The trial court continued the hearing on Johnathan's motion to reconsider.

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[1] It appears that the court meant to refer to a retroactive date of September 26, 2009, based on the court's calculation from the starting date of October 1, 2009, and the fact that Kathleen did not request a modification of support until December 11, 2008.

[2] The retroactive period was actually 32 months instead of 33.

¶ 20 On October 26, 2012, Kathleen filed a motion to increase child support and expenses, claiming a substantial change in circumstances.

¶ 21 On January 11, 2013, Kathleen filed a petition for indirect civil contempt due to Johnathan's failure to pay unreimbursed medical bills. As an exhibit, Kathleen attached Johnathan's Illinois workers' compensation settlement. The settlement indicated that Johnathan received a lump-sum settlement in the amount of $157,418, which was approved on February 10, 2012. It also indicated that Johnathan was temporarily totally disabled from December 3, 2008, through May 20, 2009, and again from August 31, 2009, through January 8, 2012.

¶ 22 On June 19, 2013, the court held a final hearing on Johnathan's motion to reconsider and found that it had not received any evidence regarding the workers' compensation settlement or whether Johnathan actually received it. The court also admitted that in determining Johnathan's obligation to pay $300 per month for transportation and educational expenses, it had not considered his retirement, which occurred on February 1, 2012, and his reduced income. The court affirmed its original child support order of $1,200 per month. However, the court also said that SSI would be a full credit against Johnathan's obligation and would cancel out Johnathan's support obligation. The court stated that its intent in ordering Johnathan to pay $300 per month in transportation and educational expenses was so that support would not offset the amount of SSI the children would receive.

¶ 23 On June 20, 2013, the trial court entered a written order denying Johnathan's motion to reconsider.

¶ 24 ANALYSIS

¶ 25 The setting or modification of child support is within the trial court's discretion and will not be reversed absent an abuse of that discretion. *In re Marriage of Turk*, 2013 IL App (1st)

122486, ¶ 44. Issues of statutory interpretation present a question of law, which we review *de novo*. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 9. The primary goal of statutory interpretation is to give effect to the legislature's intent, presuming the legislature did not intend to create absurd, inconvenient, or unjust results. *Petersen*, 2011 IL 110984, ¶ 15. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Id.* When the language is clear and unambiguous, it must be given effect without resorting to other tools of interpretation. *Id.*

¶ 26 I. Section 505

¶ 27 Kathleen argues that the trial court should apply the child support guidelines in section 505(a)(1) of the Act to the period of time when the children were under age 19 and still in high school.

¶ 28 Section 505(a)(1) of the Act establishes guidelines to determine child support and provides that the minimum amount of support for two children is 28% of the noncustodial parent's net income. 750 ILCS 5/505(a)(1) (West 2008). When the parties entered into their Agreement in 1999, section 505 applied only to minor children. See 750 ILCS 5/505(a) (West 1998). However, in 2003, Public Act 92-876 amended section 505 to include children under age 19 who are still attending high school. See 750 ILCS 5/505(a), (g) (West 2004).

¶ 29 Kathleen filed her petition to increase child support pursuant to section 505 on December 11, 2008, when the children were 18 and still in high school. Section 505 of the Act is applicable to this time period. Under the 2003 amendments to the Act, the children's support for that period should be considered under the section 505(a) guidelines. On remand, the trial court should consider Kathleen's request to increase child support pursuant to the amended section 505 for the appropriate time period.

¶ 30 II. Section 513

¶ 31 The parties next dispute whether the trial court had authority pursuant to section 513 of the Act to award child support, transportation, and education expenses. Johnathan argues that because Kathleen never filed a section 513 petition, the court was without authority to award support under this section.

¶ 32 Generally, a parent's duty to support a child ends when the child reaches the age of majority. *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 832 (1999). However, pursuant to section 513 of the Act, the trial court "may award sums of money out of the property and income of either or both parties ***, as equity may require, for the support of the child or children of the parties who have attained majority" in certain instances 750 ILCS 5/513(a) (West 2008), including:

> "(1) When the child is mentally or physically disabled and not otherwise emancipated, an application for support may be made before or after the child has attained majority.
>
> (2) The court may also make provision for the educational expenses of the child or children of the parties, whether of minor or majority age ***. The authority under this Section to make provision for educational expenses extends not only to periods of college education or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 19." 750 ILCS 5/513(a)(1), (2) (West 2008).

¶ 33 A. Invited Error

¶ 34 On December 11, 2008, Kathleen filed a petition to increase child support pursuant to section 505 of the Act. However, based on Johnathan's arguments to the trial court, the parties and the court proceeded under section 513 of the Act. While a trial court's authority is usually limited to the relief sought in the pleadings (*In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 306 (2004)), we find no error in the instant case because Johnathan requested that the trial court proceed under section 513 of the Act. See *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 33 (stating that the rule of invited error prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error). Johnathan did not object to Kathleen's failure to file a section 513 pleading until his motion to reconsider the court's child support award. Because Johnathan requested that the court do so, he is precluded from arguing that the trial court improperly proceeded under section 513.

¶ 35 B. Retroactivity Under Section 510

¶ 36 Johnathan also argues that because Kathleen failed to file a section 513 petition, the trial court was without authority to award retroactive support, citing to section 510 of the Act. 750 ILCS 5/510 (West 2008).

¶ 37 Section 510(a) of the Act provides that the court may modify child support payments only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification. 750 ILCS 5/510(a) (West 2008). While the decision to award retroactive support is purely within the discretion of the trial court (*In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1119 (2004)), a retroactive modification is limited in times to installments that date back to the filing date of the petition for modification (*Petersen*, 2011 IL 110984, ¶ 18).

The purpose of this requirement is to ensure that the respondent is put on notice prior to any change being made with respect to the original child support and expense obligations. *Id.*

¶ 38 Here, Johnathan was put on notice that Kathleen was seeking a modification of support on December 11, 2008. At the June 3, 2010, hearing, the parties agreed, based on Johnathan's argument to the court, that support would be determined pursuant to section 513 of the Act. We cannot say that Johnathan was unaware that his support was going to be modified or that it would be awarded under section 513 of the Act. See *In re Marriage of Florence*, 260 Ill. App. 3d 116, 122-23 (1994) (holding that respondent was placed on notice that modified child support was sought, even though the trial court ordered relief that was not sought in the pleadings).

¶ 39 Johnathan contends that retroactive child support should be from June 3, 2010, the date the parties agreed to proceed under section 513. But Johnathan was on notice since December 11, 2008, that Kathleen was seeking modified child support. At the June 3, 2010, hearing, Kathleen informed the court that she had not received any child support payments since September 26, 2009. If we agreed with Johnathan as to the retroactive date, the children would have been without child support from September 26, 2009. The trial court must protect the best interests of the children when it determines support obligations. We find no abuse of discretion in the trial court's award of retroactive support. (*Blisset v. Blisset*, 123 Ill. 2d 161, 167 (1988)).

¶ 40 C. Further Support Issues

¶ 41 1. Timeliness of Financial Evidence

¶ 42 Johnathan argues that the trial court awarded support in 2012, based on the parties' income and expense affidavits submitted in June 2010. Though orders entered pursuant to section 513 of the Act are always modifiable, Johnathan argues that the two year delay from the hearing to the court's written order makes the order stale. Courts must evaluate a party's ability

to pay with regard to his resources at the time of the order. *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 698 (1991). In *Smith v. Smith*, 73 Ill. App. 3d 423, 426-27 (1979), the court found that entry of a judgment for child support, six years after the last hearing on the issue was unreasonable and required a new hearing. The court held that the judgment was error because it did not reflect the circumstances at the time of its entry and the judgment was immune from modification, absent a change in circumstances of the parties from those existing but not taken into account at the time of entry of the judgment. *Id.*

¶ 43 Here, the trial court conducted its hearing on support June 3, 2010, but made its support award in June 2012. It appears that since 2010, Johnathan had a workers' compensation settlement and other changes in income. Since these events occurred prior to the court's order on June 2012, the parties were unable to present evidence of their current status for two years. Although support may be modified at anytime (*In re Marriage of Loffredi*, 232 Ill. App. 3d 709, 712 (1992)), since we are remanding on other issues, the trial court, for purposes of judicial efficiency, should review any changed circumstances to modify support, as appropriate, from June 3, 2010.

¶ 44 2. Hearing Requirement

¶ 45 Johnathan argues that the trial court awarded section 513(a)(2) transportation and educational expenses without a hearing regarding such expenses. On June 3, 2010, Johnathan argued for section 513 child support due to the children's disability. Thus, it would seem that the court originally proceeded under section 513(a)(1) of the Act. Johnathan argues that Kathleen first requested transportation and educational expenses through a proposed order presented on May 8, 2012. On May 11, 2012, the trial court awarded section 513(a)(2) support.

¶ 46 Since we do not have the report of proceedings from May 8, 2012, it is unclear why the court proceeded under section 513(a)(2) when setting child support. It would appear that the court ordered section 513(a)(2) support based upon the need to maximize the children's SSI benefits. Support was proper under subsection (a)(1) and (a)(2). We agree that Johnathan was prejudiced when the court entered a support order pursuant to section 513(a)(2) without taking evidence on these matters. We remand for a hearing to be held on those issues.

¶ 47 3. Substantial Change in Circumstances

¶ 48 Johnathan argues that the trial court erred in modifying child support because Kathleen failed to establish a substantial change in circumstances pursuant to section 510 of the Act. Modification is governed by section 510 of the Act.

¶ 49 Section 510(a)(1) of the Act provides that a child support judgment can be modified only upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2008). The party seeking the modification has the burden of demonstrating that a substantial change in circumstances has occurred. *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 388 (2010). Thus, when Kathleen filed her petition for modification, she was required to establish a substantial change in circumstances. See 750 ILCS 5/510(a)(1) (West 2008).

¶ 50 Kathleen's petition alleged a substantial change in circumstances based on the needs of the children, the cost of living, and the increase in Johnathan's earnings. Based on the record before us, the court did not make a finding of a change of circumstances. Though it appears likely that Kathleen can show a substantial change in circumstances since the original child support award in 1999, the trial court must ultimately make that finding.

¶ 51 III. SSI

¶ 52 Kathleen argues that the trial court erred when it applied the case of *In re Marriage of*

Henry, 156 Ill. 2d 541, 550-52 (1993) in offsetting Johnathan's support obligation by the amount of SSI received by the children.

¶ 53 When making an award pursuant to section 513 of the Act, the trial court shall consider all relevant factors that appear reasonable and necessary, including:

> "(1) The financial resources of both parents.
>
> (2) The standard of living the child would have enjoyed had the marriage not been dissolved.
>
> (3) The financial resources of the child.
>
> (4) The child's academic performance." 750 ILCS 5/513(b)(1) through (4) (West 2012).

¶ 54 The statute specifies the factors the court must analyze in resolving a child support request, including the financial resources of the child. Kathleen claims that the trial court should have considered the children's SSI as only one factor under section 513(b) of the Act in setting child support, not as an automatic offset under *Henry*, 156 Ill. 2d at 550-52.

¶ 55 The court in *Henry* held that the Social Security Disability benefits (SSD) paid to the child satisfied the father's support obligation, because defendant's SSD was intended to replace the support a dependent child would lose upon their father's disability and was paid in part with contributions from the parent's own earnings. *Henry*, 156 Ill 2d at 550-52.

¶ 56 However, *Henry* is distinguishable from the instant case. *Henry* dealt with SSD that were paid to the child because of the father's disability. *Henry*, 156 Ill. 2d at 543. SSI payments, on the other hand, are not paid to children on parent's behalf, but are paid as a result of the children's disability. The basic purpose of the SSI program "is to assure a minimum level of income for people who are *** disabled and who do not have sufficient income and resources to maintain a

standard of living at the established Federal minimum income level." 20 C.F.R. § 416.110 (2012).

¶ 57 While we have found no Illinois cases relating to a child's SSI due to their own eligibility in the context of a child support award, other states have addressed this issue. These courts have determined that while it is appropriate to consider SSI as a financial resource of the child in weighing the equities and fairness of the circumstances of the child and parents, See *Rinaldi v. Dumsick*, 528 S.E.2d 134, 138 (Va. Ct. App. 2000); *Barker v. Hill*, 949 S.W.2d 896, 897-98 (Ky. Ct. App. 1997), SSI is intended to supplement other income, including child support, not substitute for it. See *Paton v. Paton*, 742 N.E. 2d 619, 621-22 (Ohio 2001); *Lightel v. Myers*, 791 So. 2d 955, 959-60 (Ala. Civ. App. 2000) (finding that trial court correctly refused to offset father's support obligation by the amount of SSI); *Barker*, 949 S.W.2d at 898 (finding that "there is nothing inherently unjust or inappropriate about making a father support his child, if he is able to do so, before looking to a government welfare program that is intended to supplement the resources of the needy"). We agree with these cases. SSI is not a substitute for support, but a factor to be weighed in determining child support. On remand, the trial court should consider the SSI received by the children as but one factor under section 513(b).

¶ 58 IV. Workers' Compensation

¶ 59 Kathleen also argues that the trial court failed to consider Johnathan's lump sum workers' compensation settlement in setting the support award. Since evidence of this settlement was never presented to the trial court prior to its June 8, 2012, order, the trial court did not err in declining to address it.

¶ 60 However, on remand, the parties should provide the court with evidence relating to Johnathan's workers' compensation settlement. The parties agree that this lump sum award

should be considered part of Johnathan's income for child support purposes. See *Mayfield v. Mayfield*, 2013 IL 114655, ¶ 25. We agree and direct the court to consider the lump sum as a factor pursuant to section 513(b) when setting the child support award.

¶ 61 CONCLUSION

¶ 62 The judgment of the circuit court of Will County is reversed, and the cause is remanded for further proceedings.

¶ 63 Reversed and remanded.