2016 IL App (3d) 150636-U

Order filed September 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re MARRIAGE OF	)	Appeal from the Circuit Court
CAROLYN HALEY,	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois,
Petitioner-Appellant,	)	
	)	Appeal No. 3-15-0636
and	)	Circuit No. 13-D-206
	)	
JASON MARVEL,	)	Honorable
	)	Joseph P. Hettel,
Respondent-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in setting respondent's day care contribution at $285 per month or in admitting respondent's printout from his online Bank of America account activity. It was not against the manifest weight of the evidence for the trial court to credit $3405 of child support to the arrearage respondent owed.

¶ 2 Petitioner, Carolyn Haley, appeals from the "Judgment of Dissolution of Marriage," arguing that the trial court erred in: (1) setting the day care contribution of respondent, Jason Marvel, at $285 per month, instead of requiring respondent to pay half the cost, $928 per month;

(2) admitting a printout from respondent's Bank of America online account; and (3) giving respondent credit for an additional $3405 listed on the Bank of America printout. We affirm.

¶ 3 FACTS

¶ 4 Petitioner and respondent were married on June 29, 2010. Together they had a child, J.M. They subsequently filed for dissolution of marriage. At trial, one issue was the child support arrearage that respondent owed. Respondent testified that he paid $680 every other week to petitioner for child support, pursuant to a child support order.

¶ 5 Through the first half of 2014, respondent made his child support payments through the State Disbursement Unit (SDU). The payments made through the SDU were listed on a document printed by the clerk's office. In the latter half of 2014, respondent began making payments directly to petitioner. Respondent had not examined petitioner's record of child support payments made, but stated that he did not have any reason to dispute petitioner's records of payments made.

¶ 6 Petitioner testified and introduced a spreadsheet she had created setting forth the amount of child support that respondent had paid. Petitioner stated that she had checked her bank accounts and every check she had deposited to make sure the spreadsheet was accurate. She also noted that since the exhibit was entered into evidence, respondent had submitted an additional child support payment. Payments reflected on the spreadsheet as Northern Trust were direct payments made to petitioner by respondent.

¶ 7 The trial was continued on another day, and that morning respondent had printed a portion of his online Bank of America account, which listed payments made to petitioner for child support. He sought to admit the printout into evidence. The exhibit showed six additional payments that were not listed on petitioner's spreadsheet, totaling $3405. Respondent stated that

the child support payments were electronically transferred to petitioner. Respondent said that he would enter petitioner's address on the website, but he did not know whether the child support payments were mailed to petitioner as a check or if they were electronically transferred into her account. The printed statement showed the payee, his account, the amount, the date the money was delivered, the confirmation number of the payment, and whether or not it was processed. The court asked whether the figures in respondent's printout were different than those in petitioner's spreadsheet, and petitioner stated, "I believe he's claiming payments that we haven't received. It would be his burden to provide proof of payments in something other than a bank statement which is easy enough to alter or photoshop."

¶ 8 Petitioner objected to respondent's bank printout, stating, "[the exhibit] is a purported bank record but it's not authenticated and, therefore, I've got to object to it. We dispute receipt of the support payments alleged on the exhibit." Respondent stated, "It just goes to the credibility of [the spreadsheet] that she created." The court then stated:

> "If foundation is established, which I don't think it has been yet specifically–do you want to go through it counsel?
>
> ***
>
> *** What it is, where it came from, how he manipulated his – that's not the right word. How he brought up the payee that is used in there. It looks somewhat similar to an account system that I have in my own account where you write in the payee's name and it gives you all the checks that you sent to that payee. But the witness needs to establish these things."

¶ 9 Respondent stated that he created the report that morning by accessing the Bank of America website. He logged into his account with an account name and password. He then went

to "the bill payee section" and clicked on petitioner's name. A report was then generated, which showed the payment activity to petitioner. The first column designated the payee, which was petitioner. There was also a confirmation number to show that the transaction was completed. The status on each payment indicated that it was processed, except for one, which stated that it was "in process." Respondent stated that he prescheduled the payment to payout on a specific day. Respondent further stated that for each of the payments, he went into his Bank of America online account and ordered the transactional payments to occur. To the best of his knowledge, all of the transactions listed on the printout went to petitioner, and he authorized each of the transactions. He was never notified that any of the payments were not made. Respondent never physically wrote checks, and the document did not contain check numbers. He authorized the payments online, but was not aware of how the payments were transferred to petitioner.

¶ 10 Respondent again moved to admit the printout. Petitioner again objected, stating:

> "Your Honor, if it's a bank record and it's a hearsay document he can't authenticate a record of the bank.
>
> Secondly, if it's a document that he created then it's self-serving.
>
> Proof of payment is a cancelled check, an SDU record, a clerk's certified report of payment or a receipt. A screen grab that is subject to being photoshopped and altered is not proof of payments.
>
> In addition, this document does not indicate that any money was received. Processed means apparently something like the order was processed, it doesn't mean the money was received."

¶ 11 The court stated:

> "Counsel, as it relates to a bank document, it's not a bank document, it's a document that was purportedly based on the testimony produced by the witness. Doesn't matter if it's self-serving, the Court takes in self-serving testimony.
>
> Certainly, the best way to do this would be a contemporaneous view of [respondent] going on the Internet in front of me, pulling it up, putting in his password and doing this so we could tell that there was no way for it to be altered.
>
> I'm going to admit the document. Obviously, the best way would be to get the information from the third party source. So over objection it will be admitted for the purposes of demonstrating his testimony regarding the payments that were paid to [petitioner] out of the Bank of America."

¶ 12 Petitioner then stated:

> "Your Honor, I'm going to further object. We have had asked for [respondent's] bank statements which he has refused to give us and has yet to provide us hard copies of the monthly bank statements rather than an alterable screen grab which is based on information that he inputs. Then we would know if this money actually came out."

Respondent then stated that he had tendered petitioner the bank statements. The court asked if petitioner had anything to show that they did not receive the bank statements, to which petitioner replied: "I was not complaining about not getting them, my problem is this isn't proof of payment and he doesn't have a bank statement that is proof of payment either. It's a self-generated document."

¶ 13 The court stated: "I agree with you it's a self-generated document. We all know how it's generated. I don't agree with you that it's subject to manipulation in some sort in the nefarious

sense this time, not just the processing sense, it is subject to that." Petitioner then said, "For example, Judge, where it says child support, [minor], the bank didn't enter that information, [respondent] did. In the first column. The bank doesn't know what the check is for. So this is clearly–he enters something and then prints it out." The court overruled the objection.

¶ 14 The court then stated:

> "I want to explain to you what I believe that exhibit represents. In my mind, it's no different than an exhibit that was produced by hand, having reviewed his bank statements and just made a cumulative list of what he believes that he paid in the way of child support.
>
> What he used is the same thing that I use to do my checking account which is to enter a payee, give it a name or nickname, and if I want a history I click on history and it will tell me what the computer says that I sent in the way of checks. I don't get cancelled checks, apparently he doesn't either, and if you want to capture the image you have to print it out during a time period in which the image is available to you. In my case, three months. After that I can't get an image. ***
>
> * * *
>
> *** I'm just giving you some background what in my personal experience that I know about this kind of banking."

¶ 15 Petitioner then stated, "Judge my concern is that any document capable of being altered can't be trusted from this witness given what happened in the 2012 tax returns."[1] The court then stated that petitioner was welcome to cross-examine respondent.

¶ 16 On cross-examination, respondent stated that he printed the Bank of America exhibit from his computer. When asked how the bank knew that the money to be transferred was child support, respondent stated, "The bank didn't know, I entered it as a category in a one time set up to process the payment." He said he also entered the amount and the dates that he wanted the payments to be sent. He believed that the payments were sent, but did not know whether they were received. He had not provided cancelled checks because the payments did not come to him as cancelled checks, but as electronic withdrawals from his account. He did not receive cancelled checks.

¶ 17 Petitioner then showed respondent a check, which respondent agreed was a check that said it was from him to petitioner. Respondent stated that he did not "know what [his] bank [did] on the other side." He agreed that he did not bring any cancelled checks to prove his child support payments. Respondent objected to admitting the check for lack of foundation as the check was from Northern Trust, which objection was sustained. Respondent stated that he did not have an account at Northern Trust and he did not know if Bank of America was affiliated with Northern Trust. The check corresponded with a child support payment that came out of respondent's account.

¶ 18 Another issue at trial was respondent's contribution to J.M.'s day care costs. Petitioner testified that she resided in Chicago in a single family home that she rented with her significant

[1]Petitioner testified that respondent had told her that he had misstated his income on his tax return so that the child support obligation to his former wife would be based on a lesser amount of income, and then after giving his former wife the original tax return, he filed an amended tax return which included his full income. Respondent denied doing so.

other. She paid $5105 a month for rent. She moved to Chicago for employment and "to get away from stalking." She stated that there were no business analysis software project management jobs around Ottawa. When she worked previously, petitioner had to commute from Ottawa to Oakbrook.

¶ 19 Once petitioner began working in Chicago, she had about four days to arrange for child care for J.M. She did a Google search, and called 10 to 15 different places. She decided on the Chalk Preschool, which was convenient for her, as it was on her way to work and not too far from where she lived. Chalk Preschool cost $1856 per month. She looked for cheaper options, but balanced the cost with the location and quality of the facility. She requested that respondent reimburse her for half of the preschool cost.

¶ 20 Based on the evidence submitted by both parties, the court found that respondent netted $4557 every other week, and assumed that 28% of that amount would be paid to his former wife (not petitioner) as child support, yielding a remaining net for support of $3281. Respondent's financial affidavit listed his monthly expenses as $6656, of which $2400 was a child support payment to his former wife. The court further found that petitioner made about $4000 every other week from her work as an independent contractor. From that $4000, she had to pay all of her taxes and social security contributions, leaving her with about $6000 per month. Her total monthly expenses equaled $11,095, which included her rent, child care expenses, and the mortgage and taxes on her house in Ottawa that she had not been able to sell.

¶ 21 In its written opinion, the court created its own document in which it combined the child support payments listed on petitioner's spreadsheet with those listed on respondent's exhibit and the SDU payments, denoting which payments were listed where. The court gave respondent credit for all the payments listed. The court went through the SDU payments, and then stated:

"[Petitioner] submitted as Petitioner's Exhibit #2, her own record of payments made by [respondent] directly by checks processed through her Northern Trust Account. This totals an additional $8,144.00. Additionally, [petitioner] testified that after Petitioner's Exhibit #1 was admitted and before the May 7, 2015 Court date, she received an additional payment of $688.00. [Respondent] testified and offered Respondent's Exhibit #6, a printout of his Bank of America online payment activity. While the Court agrees with the Petitioner that [respondent] 'had a very poor recollection as to what he had paid,' his sworn testimony along with [petitioner's] own records corroborate in part Respondent's Exhibit #6. [Respondent] will be given credit for six additional payments totaling $3,405.00."

¶ 22 The court further required respondent to pay $285 towards J.M.'s day care expenses, stating:

"While [respondent] did not offer any alternative suggestions regarding daycare, [petitioner's] request of $928.00 per month for daycare is unreasonable. There is no doubt that [petitioner] did a thorough search of pre-school and daycare option[s]. Despite the fact that she chose Chalk for the appropriate reason that it was the best alternative for her and J.M., this Court cannot order an amount that represents an additional 65% increase in child support. There is no doubt that Chicago was [petitioner]'s best option for employment. However, it is her choice to live in the city. That choice has caused her expenses to increase greatly. [Respondent] is ordered to pay $285.00 per month for his contribution to these

pre-school and daycare expenses. This amount represents approximately 20% of his current child support obligation."

¶ 23 ANALYSIS

¶ 24 On appeal, petitioner argues the trial court erred by: (1) setting respondent's day care contribution at $285 per month; (2) admitting the printout of respondent's online Bank of America activity; and (3) giving respondent credit for the additional $3405 of child support payments listed therein. Because we find that the trial court considered the specific facts and circumstances of the case, including the credibility of the witnesses and the exhibits, we cannot say the trial court abused its discretion in setting the day care contribution or in admitting the printout, nor was it against the manifest weight of the evidence to give respondent credit for the child support payments listed in the printout.

¶ 25 First, petitioner argues that the trial court abused its discretion by setting respondent's monthly day care contribution at $285, instead of requiring respondent to pay half of the cost, $928 per month. A trial court has discretion to award contribution to day care expenses above statutory child support guidelines, and such award will not be disturbed absent an abuse of discretion. *In re Marriage of Serna*, 172 Ill. App. 3d 1051, 1054 (1988); *In re Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 19. "[A]n abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52.

¶ 26 Here, the trial court agreed that petitioner had thoroughly searched the available day care options and found the option best available for her. It further found that Chicago was petitioner's best option for employment. However, the court determined that it was petitioner's choice to live in the city, a "choice has caused her expenses to increase greatly." The court's opinion clearly

shows that the court considered the incomes and expenses of each of the parties, as well as the facts and circumstances of the case. We cannot say that it was an abuse of discretion for the trial court to set respondent's day care contribution at $285. Further, petitioner has not pointed to any case law in which an abuse of discretion has been found regarding the division of day care expenses by the trial court. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002) (" 'A court of review is entitled to have the issues clearly defined and to be cited pertinent authority.' ") (quoting *Canteen Corp. v. Department of Revenue*, 123 Ill. 2d 95, 111 (1988)).

¶ 27 Second, petitioner argues that the trial court erred in admitting the printout from respondent's online Bank of America account. Evidentiary rulings are within the sound discretion of the trial court. *Smith v. Illinois Central R.R. Co.*, 2015 IL App (4th) 140703, ¶ 43. "The exclusion or admission of evidence by the circuit court is reviewed under an abuse of discretion standard and will not be reversed absent an abuse of that discretion." *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 452 (2004).

¶ 28 Here, both petitioner and respondent testified regarding the child support that had been paid. Respondent testified that, to make the child support payments, he would log into his Bank of America online account and schedule a payment to be made to petitioner and afterwards he could go online and view a cumulative list of all the payments that had been scheduled, the date they had been scheduled, a confirmation number, and whether or not the payment had been processed. He also sought to admit into evidence a printout confirming this information, which was admitted by the trial court.

¶ 29 The trial court did not admit the printout as a business record. Instead the printout was admitted as a self-serving document based on the testimony of the witness. The record reflects

that the trial court found respondent's testimony regarding the procedure in which he made his child support payments to be credible and that the document he admitted was not subject to "manipulation in some sort in the nefarious sense." Petitioner was then given the opportunity to cross-examine respondent and his printout. Though the best way to get the information included in the spreadsheet and the printout would have been through a third-party source, it was not an abuse of discretion for the trial court to admit respondent's printout.

¶ 30 Third, petitioner argues that it was against the manifest weight of the evidence for the court to give respondent credit for the additional $3405 of child support payments reflected in the Bank of America printout. "The determination of the amount of a child-support arrearage is a factual issue; therefore, we will disturb the decision of the trial court only if the decision is contrary to the manifest weight of the evidence." *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 389 (2002).

¶ 31 Both parties presented evidence of the payments that had been made. Petitioner's spreadsheet included the SDU payments and a list of the direct payments she believed respondent had made. Respondent's printout included the direct payments listed on petitioner's spreadsheet and also reflected an additional $3405 in payments not logged on petitioner's spreadsheet. Based on the testimony of respondent and the fact that petitioner's spreadsheet corroborated in part the respondent's printout, the court concluded that respondent's printout was accurate and gave respondent credit for the additional $3405 in payments. Viewing the record as a whole, we cannot say it was against the manifest weight of the evidence for the court to do so.

¶ 32 In closing, we would be remiss if we did not call attention to the fact that petitioner's last two arguments would not even be an issue had respondent made his child support payments through the SDU, as required by a previous court order dated January 13, 2014. We admonish

both parties that failure to comply with an order of the trial court exposes the violating party to a potential contempt finding. See *In re Marriage of Reimer*, 387 Ill. App. 3d 1066, 1076 (2009).

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court of La Salle County is affirmed.

¶ 35 Affirmed.