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2018 IL App (3d) 170652-U

Order filed February 14, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

ERIK C. WOYTOWYCH,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-17-0652
)	Circuit No. 11-F-506
LENA H. BADAMI,)	
)	Honorable
Respondent-Appellee.)	Elizabeth Dow
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly ordered petitioner father to pay child support, day care and medical expenses he owed respondent for the care of their child.

¶ 2 Petitioner Erik Woytowych was ordered to pay arrearages for child support, day care and medical expenses for the son he had with respondent Lena Badami, despite his claims of inability to work. He appealed. We affirm.

¶ 3 **FACTS**

¶ 4 Petitioner Erik Woytowych and respondent Lena Badami had a son together in 2007. They ended their relationship in 2011, and Woytowych petitioned for joint legal custody and sought a preliminary injunction requiring Badami to return to Illinois with the child. The court granted Woytowych's request and Badami and the child moved back to Illinois from Nebraska. The court also awarded Badami temporary custody and Woytowych parenting time. In June 2011, in a separate case, the court entered an order of protection against Woytowych, with Badami as the protected person. In July 2011, on Badami's motion, the trial court ordered Woytowych to pay \$380 per month in temporary child support, based on his claimed gross 2010 income of \$31,300. In September 2011, Badami petitioned for day care and medical expenses.

¶ 5 A trial took place, and in May 2013, the trial court entered a parenting order granting sole custody to Badami and requiring Woytowych to pay \$400 per month in child support, day care expenses, and once the child was in school, 50% of after school care costs. Woytowych was also ordered to pay 50% of the child's insurance and uncovered medical expenses. He was also awarded parenting time. Woytowych ceased paying court-ordered expenses for his son in September 2014. In February 2015, he sought a reduction in child support and other ordered expenses. He claimed that he was only able to work part-time because he had to care for his parents who were involved in an automobile accident; that it was a slow season for his business; and that his son was with him almost 50% of the time. The trial court dismissed Woytowych's motion to modify the parenting agreement on Badami's motion.

¶ 6 Woytowych stopped paying child support in September 2015. In December 2015, he moved to temporarily suspend child support. The basis for this motion was that he suffered a lung infection in September and two broken ribs in December and was unable to work. Woytowych did not support his motion with any documentation. In February 2016, Badami filed

a petition for rule to show cause for Woytowych's failure to pay child support and other court-ordered expenses for his son.

¶ 7 Woytowych moved to substitute or disqualify the trial court judge, alleging bias. The motion to disqualify was heard by another judge and denied. He also filed motions challenging his son's uncovered medical and day care expenses, arguing they were not reasonable and necessary. Woytowych responded to Badami's rule to show cause. He admitted he stopped paying child support in September 2015 but maintained that it was not done willingly as he was unable to work due to injury and illness. Attached to his response was a doctor's note regarding a rib injury and medical records for a follow-up for the rib injury, a right arm injury and a puncture wound injury to his hand. He also attached the emergency room records for both the rib and puncture injuries. In addition, he attached his bank records as support for his claim of child support payments and lack of income.

¶ 8 In March 2016, Woytowych moved to modify child support. The reasons offered for modification were that his business was slow; he could not work a lot because he was caring for his parents; he was injured, could not work and had no income; and that based on his approximate monthly income of \$1,200, the ordered \$400 child support was greater than the statutory 20%. He sought a reduced child support amount of \$225 per month. Also in March 2016, Woytowych appealed the denial of his motion to substitute. This court dismissed his appeal. In April 2016, the court dismissed his challenges to medical and day care expenses due to Woytowych's failure to appear. In May 2016, the court dismissed his petition for rule to show cause, also for his failure to appear. The court later vacated the dismissals.

¶ 9 In May 2016, Badami sought child support and child support arrearages from a personal injury settlement Woytowych received for his slip and fall accident. He settled the claim in June

2016 for \$30,000. His share of the proceeds amounted to \$20,275. In August 2016, the trial court rejected Woytowych's claim that the proceeds were not income but accounted only for his pain and suffering and medical expenses. In July 2016, Woytowych moved to modify child support. He offered the same arguments as in his request to temporarily suspend child support: that the economy was poor; he had to care for his parents; he suffered injuries affecting his ability to work; and his monthly income was reduced to \$1,200, making \$400 in child support above the 20% statutory amount required. The trial court denied his motion in August 2016. The same month, it ruled on Badami's petition for rule to show cause, finding Woytowych's failure to pay the ordered child support and expenses *prima facie* evidence of contempt. The court noted that Woytowych's medical records established that by September 21, 2015, his lungs were clear and his hand injury was treated only with a topical antibiotic cream. The court also referenced the records regarding Woytowych's fractured ribs.

¶ 10 The court acknowledged Woytowych's evidence that his parents allowed him and his wife to live rent-free beginning in October 2014 and also paid his truck note, and that his wife paid the utilities. The court further noted that Woytowych and his wife took a car trip to Florida in December 2015 and a 16-day honeymoon to Hawaii in April 2016, while he failed to pay child support or expenses for his son. The court concluded that despite testimony from Woytowych's mother that she and his father paid for the honeymoon and his claim that his pregnant wife had to carry their luggage, Woytowych's "ability to take repeated long distance trips belies his arguments that he has been unable in any way to meet his support obligations." The court also found that Woytowych paid for his wife's clothes and online dating service out of his business account. The court considered that although Woytowych's wife said she reimbursed him for these expenses, they were "nonessential expenses" he was able to pay while he did not pay child

support. The trial court ordered Woytowych to pay past due amounts for child support, and uncovered medical and day care expenses.

¶ 11 On September 9, 2016, the trial court denied Woytowych's challenge to the uncovered medical expenses, finding they were incurred prior to any of his claims of inability to work. The court also dismissed for want of prosecution Woytowych's petition for rule to show cause, motion to modify child support, and motion to challenge daycare expenses due to Woytowych's failure to appear for the hearing. The court set the following purge amounts: \$5,520 in child support arrearages; \$6,050 in day care arrearages; and \$1,222.50 in uncovered medical expenses, with one-half to be paid in 14 days and the remaining half to be paid within 30 days. The court also sentenced Woytowych to 14 days in the county jail, with the mittimus stayed for a little more than 30 days.

¶ 12 On September 16, 2016, the court entered an order in which it found the settlement proceeds from Woytowych's slip-and-fall accident constituted income for child support purposes and ordered Woytowych pay \$4,055 in child support from the proceeds and \$12,792.50 in arrearages. The order superseded the payment provisions in the September 9 order. The court also ordered Woytowych to remain current on all child support and expenses and again sentenced him to 14 days in the county jail, with the mittimus stayed until an October 11, 2016, court date.

¶ 13 Woytowych sought and was granted a waiver of court fees by the trial court. In his waiver application, he indicated that he supported one adult and six children who lived with him. Woytowych appealed the finding that the settlement constituted income. This court dismissed the appeal. On October 11, 2016, despite Woytowych's failure to pay current child support, the court

did not execute the mittimus but held that Woytowych submit the three current payments due within two days or a warrant would issue for his arrest.

¶ 14 In April 2017, Woytowych again moved to temporarily suspend child support and child-related payments based on a new injury he suffered to his leg that he claimed affected his ability to work. In May 2017, the trial court granted his motion and suspended child support and other payments for the months of April and May, with the suspended amounts to accrue. Also in May, Woytowych was arrested for domestic battery and Badami sought to restrict visitation. The trial court granted Badami's motion and temporarily suspended Woytowych's parenting time.

¶ 15 In June 2017, the court ordered Woytowych to attend the county work services program daily until he secured fulltime employment. On July 7, 2017, the court ordered Woytowych to pay and remain current on all child support and child-related expenses. On July 20, 2017, Woytowych filed an emergency motion to reconsider the July 7 order, arguing that he presented testimony at the July 7 hearing regarding his medical issues that prevented him from working, including anxiety, stress and depression because of the proceedings; that he was taking various medications "that affect him of different levels such as anti-anxiety medication and heart medication"; that he was under the care of various doctors, including a sleep specialist, who also provided medication; and that he should not be working due to his medical conditions and medications, as well as his injured leg for which he was in physical therapy. He further provided that he obtained fulltime employment pursuant to the court's directive but suffered a seizure on the job on July 12, 2017, which necessitated an overnight hospital stay. Woytowych asserted he was unable to drive for three months, could not be alone "24 hours a day", be on a ladder or a roof; or ride a bike or rollerblade. On July 18, he fell off his bicycle while intoxicated and fractured his clavicle.

¶ 16 The trial court struck the motion due to improper form and Woytowych filed a second emergency motion to reconsider, setting forth substantially the same arguments as in the stricken motion. He attached to his motion his discharge instructions that stated he should not drive for three months, or drive or operate machinery while taking pain medication, and to follow up with his internist and a neurologist. He was prescribed Tylenol or Advil, referred for outpatient alcohol treatment, and instructed to follow up with his primary care physician or orthopedic doctor. He was also instructed not to drive, ride a bike, or operate machinery until he was rechecked.

¶ 17 Also in July 2017, Badami filed a notice of her intent to relocate to Nebraska. On August 2, 2017, she filed an emergency petition of intent to relocate. She submitted that Woytowych had only paid \$400 in child support since January 2017, that his parenting time had been suspended since May, and that he had not paid any expenses since December 2016. On September 1, 2017, the trial court granted Badami's motion to relocate and denied Woytowych's motion to suspend child support. It entered judgment in favor of Badami for \$10,244.77, which included \$2,400 in outstanding child support, \$2,134.50 in daycare expenses, and \$680.37 for medical and vision insurance, and \$4,993.75 in attorney fees, to be paid in full within 30 days. Woytowych was also ordered to remain current on all previously ordered support obligations. Woytowych timely appealed.

¶ 18 ANALYSIS

¶ 19 Woytowych raises two issues on appeal. He argues that the trial court was biased against him and that it erred in denying his motion to reconsider its denial of his motion to suspend child support and other expenses.

¶ 20 We begin with the observation that Woytowych did not provide a complete record on appeal by failing to include a complete report of proceedings. It was Woytowych's burden to supply the record on appeal, and because he did not, we will presume the trial court rulings were in accord with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 21 A similar procedural error by Woytowych renders this court without jurisdiction to consider his claims of judicial bias. A hearing on his motion to disqualify or substitute the trial judge was held before a different judge, who denied the motion on March 17, 2016. Woytowych did not include the denial of his motion to recuse or substitute in the notice of appeal and therefore we cannot consider the issue of judicial bias. Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017) (notice of appeal shall specify judgment being appealed); *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010) (reviewing court lacks jurisdiction to review judgments not specified in notice of appeal or inferred from it).

¶ 22 The other issue Woytowych raises on appeal is the denial of his motion to reconsider the trial court's order denying his motion to suspend child support and other ordered payments. He argues that the trial court ignored his medical issues that affected his ability to work and relied on other legal matters not before it to rule against him.

¶ 23 Child support may be modified on showing of a substantial change in circumstances. 750 ILCS 5/510(a)(1) (West 2016). A voluntary change in employment done in good faith which results in diminished financial circumstances may constitute a change in circumstances. *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 369 (1996). In deciding whether a change of employment was made in good faith, the court looks at "whether the change was prompted by a desire to evade financial responsibility" for supporting the child. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1076-77 (2009). The party seeking modification carries the burden to

demonstrate a substantial change in circumstances. *In re Marriage of Lyons*, 155 Ill. App. 3d 300, 304-05 (1987). This court will not reverse a trial court's determination regarding whether a voluntary change in employment warrants a modification of child support unless it was an abuse of discretion. *In re Marriage of Rash & King*, 406 Ill. App. 3d 381, 388 (2010).

¶ 24 As with his claims of judicial bias, Woytowych's failure to provide a complete record on appeal hinders our ability to review his claims. Because he did not present a complete record, we again presume the trial court's denial of his motion to modify child support was proper. The common law record includes Woytowych's pleadings and supporting documentation, such as medical records and bank account summaries. He submits these documents support his claim of inability to work. It was the trial court's province to review his materials and assess his credibility. It found that Woytowych's supposed inability to work was not supported by the evidence. For example, the court observed that Woytowych and his wife took a more than two-week honeymoon to Hawaii and that he paid various expenses for her at the same time he was not paying for his son based on his supposed lack of ability to pay. Similarly, while arguing he could not work because of the need to care for his parents, he also insisted his parents were available to provide day care for his son as justification for his failure to pay the child's day care expenses.

¶ 25 In addition, Woytowych has asserted a number of physical and medical problems he submits prevented him from working. The trial court found the medical records did not support his claims, with the exception of a two-month period when the court temporarily suspended payments. Woytowych stopped paying uncovered medical and day care expenses for his child in September 2014 and child support in September 2015. The court did not find any of his reasons for failing to support his child were valid until the court temporarily suspended payments for

April and May 2017. The medical issue at that time cannot serve to erase the arrearages that predate the April and May 2017 medical issue. As stated above, the trial court considered that Woytowych was not credible regarding the reasons he submitted for his failure to support his son. The trial court's credibility decisions were supported by the evidence. It was within the trial court's discretion to determine whether he should be allowed to defer the support payments. We find it did not abuse its discretion when denied Woytowych's motion to modify child support as he did not establish a substantial change of circumstances warranting modification.

¶ 26 Woytowych also complains the trial court improperly considered other legal matters he had pending, such as domestic battery charges against him, in rejecting his requests for modification. We disagree. Throughout the pendency of the case, Woytowych repeatedly raised visitation issues and his wife also sought visitation with the child when Woytowych was in jail on the domestic battery charges. Woytowych's parenting time was suspended indefinitely due to his criminal conduct and Badami's concern for the safety of their son. Badami also sought to relocate with their son, making the battery case against Woytowych relevant and necessary to the court's decision regarding the best interests of the child. 750 ILCS 5/609.2 (West 2016); *In re P.D.*, 2017 IL App (2d) 170355, ¶ 17 (court to consider best interest factors in determining request to relocate). We find that the trial court's consideration of Woytowych's battery charges was not improper.

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

¶ 28 Affirmed.