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2019 IL App (3d) 180229-U

Order filed June 21, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
EDWARD C. SAVANT,	)	Will County, Illinois.
	)	
Petitioner-Appellant,	)	
	)	Appeal No. 3-18-0229
and	)	Circuit No. 08-D-2243
	)	
MICHELE M. SAVANT,	)	
	)	Honorable David Garcia,
Respondent-Appellee.	)	Judge, Presiding.

PRESIDNG JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in calculating Edward's retroactive overpayment or future child support obligation.

¶ 2 In April 2018, the trial court entered a final judgment on petitioner, Edward C. Savant's, petition for modification of child support and made a Rule 304(a) finding. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Edward appeals, challenging the court's method of calculating his modified child support obligation. Specifically, he asserts that the trial court erred in calculating his (1)

retroactive child support obligation, (2) overpayment of child support, and (3) future child support obligation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2010, the trial court dissolved the marriage of Edward and respondent, Michele M. Savant. At that time, the court ordered Edward to pay child support for the parties' three minor children, E.L.S., N.A.S., and E.M.S. In September 2015, the court modified Edward's child support obligation because E.L.S. turned 18 years of age and graduated high school.

¶ 5 In November 2017, Edward lost his job. Earlier that month in anticipation of his imminent unemployment, he filed a petition for modification of support asserting a substantial change in his circumstances.

¶ 6 In January 2018, Edward received a severance payment in the amount of $178,433, which equaled one year of his current salary. After deductions, he received the sum of $90,189. He also received a final paycheck in the amount of $9951 of which he received $7413 after deductions. From December 16, 2017, through January 27, 2018, Edward received gross unemployment benefits in the amount of $4058. He made approximately $7512 in child support payments from December 8, 2017, through February 16, 2018.

¶ 7 In January 2018, the trial court held a hearing on Edward's petition for modification. During the hearing, the parties discussed at length how Edward's child support obligation based on his severance pay should be calculated. Edward asserted that because his severance payment represented 52 weeks' salary, his support obligation should be paid going forward on a month-to-month basis. Michele disagreed, arguing that Edward's support obligation based on that severance pay should be considered as bonus income and calculated as a one-time payment.

Ultimately, the court agreed with Michele, finding that Edward's severance pay was more akin to a "bonus" that he received immediately, rather than 52 weeks of prepaid salary.

¶ 8 In April 2018, the trial court entered its written decision setting forth the terms of Edward's child support modification. In relevant part, the court (1) ordered Edward to pay Michele a lump sum of $23,796 for child support based on his severance pay, (2) found that Edward overpaid Michele for child support in the amount of $4286, and (3) ordered Edward to pay $281 in child support every other week beginning in February 2018. The court also made a Rule 304(a) finding. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Edward appeals.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Edward challenges the trial court's calculations of his (1) retroactive child support obligation, (2) overpayment of child support, and (3) future child support obligation.

¶ 11 Initially, we note that Michele did not file a brief in this case. Nonetheless, we will address the merits of the appeal because the record is straightforward and the claimed errors can be easily decided without the aid of an appellee's brief. *Lynn v. Brown*, 2017 IL App (3d) 160070, ¶ 7.

¶ 12 A trial court's child support award is reviewed for an abuse of discretion. *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 24. An abuse of discretion exists when the trial court's decision is arbitrary, fanciful, or when no reasonable person would take the view adopted by the trial court. *People v. Olsen*, 2015 IL App (2d) 140267, ¶ 11.

¶ 13 A. Edward's Retroactive Child Support Obligation

¶ 14 Edward challenges the trial court's calculation of his retroactive child support obligation, *i.e.*, his child support obligation based on his severance pay, on multiple grounds. Specifically, he asserts that the court erred by (1) ordering him to pay a lump sum payment, (2) refusing to

consider one of the parties' dependent's upcoming emancipation in calculating his payment, (3) using an annualized, rather than a monthly methodology to calculate said payment, (4) compounding his sources of income, (5) using standard rather than individualized deductions, and (6) failing to use the Illinois Department of Healthcare and Family Services' (DHFS) tables and schedules.

¶ 15 1. *Lump Sum Payment*

¶ 16 Initially, we note that Edward is estopped from challenging the trial court's general decision ordering him to pay a lump sum payment. At the hearing on his motion for modification, Edward stated that he had no objection to paying his severance support obligation in a lump sum. He merely argued that there should be a "step-down" because Michele is only entitled to child support for two children until June 2, 2017, when their middle child graduates high school. Thus, based on his actions in the trial court, he may not take issue with this portion of the court's order on appeal. See *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007) ("A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court.").

¶ 17 We note that Edward mischaracterizes the trial court's order as being one that ordered him to pay child support one year in advance. The record clearly shows that the trial court treated Edward's severance pay as extra income rather than 52 weeks' prepaid salary. Having determined that the severance pay constituted a "bonus," the court calculated his lump sum obligation without a "step-down" for the parties' middle child because the child support obligation on Edward's "bonus" was owed immediately for income already received rather than for salary paid in advance. Based on our review of the record, we find that the trial court appropriately treated the severance pay as extra income. Edward is receiving unemployment;

nothing prevents him from obtaining gainful employment tomorrow. As such, we find Edward's contention that the trial court erred in failing to account for the July 2018 emancipation of one of the parties' children to be without merit.

¶ 18 2. *Annualized Support Methodology*

¶ 19 We also reject Edward's contention that the trial court erred in calculating his lump sum support obligation using an annualized support methodology. Edward argues that the court should have used Family Law Software to calculate his contribution, as he is a "high income earner." Section 505(a)(3.5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(3.5) (West 2018)) addresses child support obligations for high income earners. It provides:

> "Income in excess of the schedule of basic child support obligation. A court may use its discretion to determine child support if the combined adjusted net income of the parties exceeds the highest level of the schedule of basic child support obligation, except that the basic child support obligation shall not be less than the highest level of combined net income set forth in the schedule of basic child support obligation." *Id.*

¶ 20 Here, because the parties are considered high income earners under the Act, the trial court had discretion to determine what a fair amount of child support would be based on Edward's "bonus." The court calculated what Edward's monthly child support obligation would have been by adding his gross annual income of $178,433 ($14,869 per month) and Michele's gross annual income of $60,409 ($5034 per month) to come up with Edward's monthly child support obligation of $1983. It then multiplied Edward's monthly child support obligation by 12 to arrive at the lump sum amount of $23,796. We note that in 2017, Edward's monthly support obligation

required him to pay 28% of any net bonuses he received. In other words, the trial court's calculation of Edward's child support obligation based on his severance pay is less than the $25,253 he would have paid under the prior terms. Based on the above, we find that the trial court properly used its discretion in using an "annualized support methodology" to calculate his lump sum payment.

¶ 21 3. *Compounding the Support Obligation*

¶ 22 Edward next asserts that the trial court erroneously calculated his retroactive child support obligation by compounding his individual support obligations for each element of his annual income (*i.e.*, severance pay, income from employment, and unemployment), then adding the results together to determine his overall retroactive support obligation. He maintains that, "[w]hile this approach would have been appropriate under the repealed Section 505 of the Act, it is clearly erroneous under the new Section 505 of the Act." We note that Edward fails to cite to that portion of the record which supports his contention on this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (an appellant must include a citation to the pages of the record relied on). Further, we see no evidence of improper compounding in the court's written order. Thus, we decline to address this contention on the merits.

¶ 23 4. *Standardized Versus Individualized Deduction*

¶ 24 Edward argues that the trial court erred by using standardized, rather than individualized deductions to calculate his retroactive support obligation based on the new section 505(B) of the Act. In construing section 505(B), our primary objective is to ascertain and give effect to the legislature's intent. We assign language its plain and ordinary meaning to determine legislative intent. *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 23. We view the statute as

whole, construing words and phrases in relation to one another. *Southern Illinoisan v. Illinois Department of Public Health,* 218 Ill. 2d 390, 415 (2006).

¶ 25 Section 505(B) of the Act provides:

> "As used in this Section, 'net income' means gross income minus either the standardized tax amount calculated pursuant to subparagraph (C) of this paragraph (3) or the individualized tax amount calculated pursuant to subparagraph (D) of this paragraph (3) *** The standardized tax amount *shall* be used unless the requirements for an individualized tax amount set forth in subparagraph (E) of this paragraph (3) are met." (Emphasis added.) 750 ILCS 5/505(a)(3)(B) (West 2018).

¶ 26 Subsection (E) provides, in relevant part:

> "In lieu of a standardized tax amount, a determination of an individualized tax amount *may* be made under items (I), (II), or (III) below. ***
>
> * * *
>
> (III) Evidentiary hearing. If the court determines child support in an evidentiary hearing, whether for purposes of a temporary order or at the conclusion of a proceeding, item (II) of this subparagraph (E) does not apply. In each such case (unless item (I) governs), the individualized tax amount shall be as determined by the court on the basis of the record established." (Emphasis added). *Id.* § 505(a)(3)(E).

¶ 27 Section 505(B) first provides that the court *shall* calculate "net income" using a standardized tax amount "unless the requirements for an individualized tax amount set forth in

subparagraph (E) *** are met." *Id.* § 505(a)(3)(B). The legislature, in subparagraph (E), uses the permissive "may" when describing situations in which the court can use an individualized deduction. "[T]he word 'shall' is commonly deemed mandatory [citation] and 'may' is generally deemed discretionary." *The Bigelow Group, Inc. v. Rickert*, 377 Ill. App. 3d 165, 170 (2007). Edward argues that the trial court erred in using the standardized deduction rather than the individualized deduction. However, a plain reading of the statute, giving words their ordinary meaning, shows the court had discretion to use the individualized deduction but was not mandated to do so. As such, and without evidence from the record indicating otherwise, this decision was not an abuse of discretion.

¶ 28 5. *Deviation from the Illinois DHFS' Tables and Schedules*

¶ 29 Lastly, we reject Edward's contention that the trial court erred by failing to use the Illinois DHFS' tables and schedules. Edward argues that the court "ignored the clear and unambiguous mandate" of the new section 505 of the Act which requires "that the trial court use only the schedule of child support obligations promulgated by the Illinois Department of Healthcare and Family Services." However, in an earlier section of his brief he states, "[t]he new Section 505 of the Act mandates the use of the Department's tables and schedules only if the parties' combined net incomes are $30,024.99 per month or less. If the parties[']combined incomes are above $30,024.99 the trial court must seek other guidance" typically from third-party software. In an earlier section of his brief, Edward went on to explain the validity of the Family Law Software and why the court should use it, stating that the software's method is the one "that most conforms to the intent of the new Section 505 of the Act." Edward takes issue with the lack of foundation for the software and the court's use of that software absent the court's explicit reasoning for its reliance. But Edward has already advocated for the software's

reliability and credibility; we find no abuse of discretion in the court's decision to accept respondent's report.

¶ 30 B. Propriety of the Trial Court's Calculation of Edward's Overpayment of Support

¶ 31 Edward next challenges the trial court's calculation of his overpayment of support. Specifically, the court found that Edward overpaid Michele $4285.88 in child support through February 28, 2017. Edward contends that the court should have found he overpaid Michele $7694.59. He bases this argument using the same assumptions discussed and dismissed in section 3 above. The trial court found Edward's one-time severance payment more akin to a bonus than 52 weeks prepaid salary. Furthermore, it is unclear from the trial court's order that any combination of past child support payments total the $7694.59 Edward repeatedly claims. The trial court's calculation of overpayment was not an abuse of discretion.

¶ 32 C. Propriety of the Trial Court's Calculation of Edward's Future Support Obligation

¶ 33 Finally, Edward takes issue with the trial court's calculation of his future child support obligation. He states, "[t]he trial court calculated Edward's future support obligation based solely on his unemployment benefits as if these benefits were his only source of income for that period. But the trial court had already awarded child support based on Edward's severance pay of 52 weeks of income." Edward's argument fundamentally relies on his mischaracterization of his severance pay as 52 weeks' prepaid income. The court found, with evidentiary support, that Edward's severance pay was a bonus. The court did not, as Edward argues, "order[] Edward to pay 12 months of support at one time." Edward's argument is without merit. The court did not abuse its discretion in basing Edward's future child support obligation off of his unemployment benefits alone.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 36 Affirmed.