2019 IL App (3d) 180575-U

Order filed December 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF DANIEL R. WALKER, Petitioner-Appellant, and KRISTIN L. WALKER n/k/a KRISTIN L. BANNON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal No. 3-18-0575 Circuit No. 14-D-1241 Honorable David Garcia, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion by granting respondent's motion to modify the judgment for dissolution of marriage with respect to child support.

¶ 2 Two years after the parties' dissolution of marriage, respondent, Kristin L. Walker n/k/a Kristin L. Bannon, sought to modify her child support obligation to petitioner, Daniel R. Walker, as previously agreed in the parties' marital settlement agreement. The circuit court granted

respondent's request and reduced her child support obligation from $800 to $443 per month. Petitioner appeals.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on January 16, 2010. Shortly after the marriage, petitioner was involved in a dirt bike accident. He has been unable to work since the accident.

¶ 5 On June 17, 2015, the parties' marriage was dissolved by order of the circuit court of Will County. The order of dissolution incorporated the parties' marital settlement agreement (MSA). Under the MSA, respondent agreed to pay petitioner $800 in child support, but petitioner waived his right to receive maintenance and a share of retirement benefits from respondent.[1] [2]

¶ 6 Further, Article III, paragraph 1, of the MSA documents the fact that respondent's child support obligation constituted "approximately 28% of [respondent]'s net income through her current employment." This same provision also indicates the parties' stipulation that once both children are "enrolled in a full time course of education," child support "shall be reduced to an amount equal to the difference between 28% of [respondent]'s net income and 28% of [petitioner]'s net income."

¶ 7 On August 18, 2017, respondent filed a motion to modify the judgment for dissolution of marriage with respect to child support. Respondent invoked the "full time course of education" provision contained in Article III, paragraph 1, of the MSA. In addition, respondent pointed out that our legislature, effective July 1, 2017, amended section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) to redefine and recognize shared physical care in the determination of guideline child support. See 750 ILCS 5/505 (West Supp. 2017).[3]

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[1]The parties have two children, who were ages 6 and 4 at the time of the dissolution of marriage.
[2]Petitioner was not represented by counsel in the final stages of executing the MSA.
[3]Section 505 of the Act was amended in both January and July 2017.

¶ 8 Between August 28-30, 2018, respondent's motion to modify her child support obligation was subject to a hearing before the circuit court.[4] Respondent testified that her original child support obligation accounted for the fact that the children, who were not "enrolled in a full time course of education" when the MSA was executed, would spend more time being supervised by petitioner while respondent was at work during the day. However, according to respondent, the parties agreed that once the children became "enrolled in a full time course of education" and were not staying with petitioner during the workday, the parties intended for the MSA to reduce child support to represent a return to "fifty-fifty" parenting time.

¶ 9 For purposes of calculating her income as part of a child support reduction, respondent asked the circuit court to consider her teaching salary and distributions received from her grandmother's landholding company, Kramer Properties, LLC.[5] As for petitioner, respondent asked that the circuit court consider his social security disability benefits, a $4000 check petitioner received from respondent for attorney fees, and petitioner's ability to earn income.

¶ 10 In contrast, petitioner, despite his agreement to the terms of the MSA, argued respondent's original child support obligation was an unlawful "downward deviation" from the Act. Further, the "full time course of education" provision of Article III, paragraph 1, of the MSA, which reduces child support to "the difference between 28% of [respondent]'s net income and 28% of [petitioner]'s net income," was contrary to the Act, voidable, and unconscionable.

¶ 11 At the hearing, respondent submitted evidence showing she had a pretax monthly gross income of $5870, which included $5037 from teaching and $833 from Kramer Properties, LLC.

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[4]Respondent proceeded *pro se* and petitioner was represented by counsel.

[5]Under the MSA, respondent was awarded her interest in Kramer Properties, LLC, as nonmarital property. According to her Schedule K-1s, respondent received distributions from Kramer Properties, LLC, in the amount of $5500 in 2015, $4000 in 2016, and 10,000 in 2017.

Respondent indicated this represented her entire income and acknowledged that her income has increased since the parties' marriage was dissolved. However, upon further examination, the circuit court learned respondent receives additional sums of money from Kramer Properties, LLC. The implication was that respondent's grandmother gave her monetary gifts.

¶ 12 Petitioner's monthly gross income was $2676, which is the sum of $1876 from social security disability benefits and $800 from child support. Petitioner evidenced that his and the children's personal expenses totaled $135 and $244 per month, respectively. Petitioner's monthly living expenses totaled $2611.75 and his monthly debts totaled $955.91. Thus, petitioner's monthly net income was $1078.76 less than his monthly living expenses and debts.

¶ 13 After the hearing, the circuit court announced its factual findings on the record. The circuit court found respondent "credible, very credible," but stated it "didn't find [petitioner] credible." The circuit court also stated it "heard no evidence at all" that Article III, paragraph 1, of the MSA was void due to respondent's original child support obligation being a "downward deviation" from the Act. The circuit court stated "I didn't hear anything, no testimony at all on that it was a downward deviation. And even if it was, you know, it was an agreement they made." As for the "full time course of education" provision of the MSA, the circuit court stated "[t]here was an agreement made in the judgment stating that when the kids were in school, that they would come back and redo the child support. That was their agreement, *and I think that together is a substantial change in circumstances*." (Emphasis added.)

¶ 14 On September 5, 2018, the circuit court entered a written order granting respondent's motion to modify the judgment for dissolution of marriage with respect to child support. The order recognized that the parties agreed respondent's child support obligation was modifiable and could be reduced once the children became "enrolled in a full time course of education." The

circuit court found that this provision was enforceable and rejected petitioner's unproven contention that there was any "downward deviation" from the Act. Nonetheless, since section 505 of the Act was amended, effective July 1, 2017, the circuit court found "child support *** shall be determined in accordance with the current Act and not the formula stated in paragraph 1 of Article III." The circuit court viewed the default formula under the MSA's "full time course of education" provision as "basically the formula that the [S]tate is using now."

¶ 15 The circuit court found respondent's "gross income" included her earnings as a teacher, an average of the distributions received from Kramer Properties, LLC, and an average of the monetary gifts received from her grandmother. Petitioner's income was found to include the social security disability benefits received for himself and the parties' children. The circuit court also found the evidence did not establish petitioner was "presently disabled and could not work." Ultimately, the circuit court entered an order reducing respondent's child support obligation from $800 to $443 per month. Petitioner timely appealed on September 26, 2018.

¶ 16 II. ANALYSIS

¶ 17 Initially, respondent has forgone her right to file a brief. Under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, we are left with "three distinct [and] discretionary options," including: (1) if justice requires, advocating for respondent or searching the record to sustain the circuit court; (2) deciding the merits if the record is simple and the issues are easily decided; or, (3) reversing the trial court for *prima facie* error supported by the record. See 63 Ill. 2d 128, 133 (1976); *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 76. Here, the issues can be easily decided on a simple record, so we proceed under *Talandis's* second option. See *Talandis*, 63 Ill. 2d at 133.

¶ 18 The circuit court's order modifying child support, and finding that there was a substantial change in circumstances supporting a modification, will not be disturbed absent an abuse of discretion. *Swanson v. Swanson*, 51 Ill. App. 3d 999, 1000 (1977); *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶¶ 15-16. Here, the circuit court found petitioner failed to prove respondent's original child support obligation was a "downward deviation" from the Act. The circuit court also found the "full time course of education" provision of Article III, paragraph 1, of the MSA, came to fruition and created a substantial change in circumstances.[6] This finding was supported by evidence showing petitioner no longer cared for the children during the workday.

¶ 19 Further, based upon this substantial change in circumstances, the circuit court applied section 505 of the Act, effective July 1, 2017, after finding the default formula under the "full time course of education" provision of the MSA was "basically the [same] formula that the [S]tate is using now." The circuit court clearly believed this accomplished the result anticipated by the parties for the "full time course of education" provision when executing the MSA.

¶ 20 In sum, the circuit court had "wide latitude" to determine whether there was a substantial change in circumstances warranting a modification of child support. See *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 13. After our careful review of the record, we cannot conclude no reasonable person would agree with the circuit court's decision. See *id*. ¶ 16. Thus, we conclude the circuit court did not abuse its discretion by reducing respondent's child support obligation from $800 to $443 per month. See *Swanson*, 51 Ill. App. 3d at 1000.

[6]Section 510(a)(1) provides: "An order for child support may be modified *** upon a showing of a substantial change in circumstances." See 750 ILCS 5/510(a)(1) (West Supp. 2017).

¶ 21 III. CONCLUSION

¶ 22 The judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.