2012 IL App (4th) 120252-U

NO. 4-12-0252

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 2, 2012
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of	)	Appeal from
TRACY D. PAGLIARA,	)	Circuit Court of
Petitioner-Appellant,	)	Adams County
and	)	No. 08D45
CAROL A. PAGLIARA,	)	
Respondent-Appellee.	)	Honorable
	)	Mark Drummond,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, rejecting the petitioner's claim that the trial court erred by failing to modify his child-support obligations based upon his substantial-change-in-circumstances claim.

¶ 2 In July 2011, petitioner, Tracy D. Pagliara, filed a motion to modify the trial court's judgment for dissolution of his marriage from respondent, Carol A. Pagliara, in which the court incorporated the parties' marital settlement agreement. Specifically, Tracy sought modification of the settlement provisions related to his child-support obligations based upon a substantial change in circumstances—namely, a significant reduction in income. Following a March 2012 hearing, the court denied Tracy's motion.

¶ 3 Tracy appeals, arguing that the trial court erred by denying his motion to modify, given that he demonstrated a substantial change in circumstances. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 As part of their April 2008 dissolution of marriage, Tracy and Carol reached an amicable agreement as to their respective postmarriage responsibilities. The trial court incorporated the parties' agreement into its judgment of dissolution.

¶ 6 The parties' agreement contemplated joint custody of their three minor children, 16-year-old Dominic, 14-year-old Nicholas, and 5-year-old Louis. Carol would retain primary residential custody and Tracy would enjoy substantial visitation. As to child support, the parties agreed to the following provisions:

> "1. That commencing on [May 1,] 2008, Tracy shall pay as and for the support and maintenance of the parties' minor children, the sum of $13,000.00 per month, commencing on [April 15,] 2008, and continuing each month thereafter until such time as the parties' child, Dominic, attains his majority, graduates from high school and commences his college education in August[] 2009. Commencing in August[] 2009, Tracy's child support obligations shall be reduced to the sum of $10,000.00 per month, which shall be paid each month until such time as the parties' child, Nicholas, attains his majority, graduates high school and commences his college education in August[] 2011. Commencing in August[] 2011, Tracy's child support obligation shall be reduced to the sum of $5,000.00 per month for the support of the parties' child, Louis, and shall continue until such time as Louis attains his majority,

graduates from high school and commences his college education in August[] 2021. Carol agrees not to petition for modification of the child support from Tracy for an eight-year period following the entry of Judgment of Dissolution of Marriage.

2. That the parties, in establishing Tracy's child support obligations hereunder, have taken into consideration the facts that Tracy's income, including his bonus income, varies substantially; the payment by Tracy of the private school educational expense of the children; the agreement of Tracy to provide automobiles and the costs attendant with the automobiles for the children; the agreement of Tracy to make payment of the children's entire college education; the agreement of Tracy to cover the costs of the children's health care needs; as well as the needs of the children and the parties hereto. The parties have made the determination of child support based upon the 2007 income of Tracy. All child support payments shall be made through the Clerk of the Circuit Court. In addition, Tracy shall pay and be responsible for the costs of the Clerk of the Circuit Court to process said payments. No Order for Withholding shall issue unless Tracy is 30 days in arrears in his child support payment.

3. That Tracy shall maintain the children as covered dependents on his health insurance coverage provided through his

employer. Tracy shall maintain the insurance coverage for the benefit of the children through the completion of their undergraduate college education, provided that they qualify to be covered by the insurance coverage provided by his employer. Tracy shall make payment of any medical, dental, orthodontic, opthalmological, pharmaceutical and/or counseling expenses incurred on behalf of the children not covered by said insurance. Tracy shall provide Carol with copies of all insurance forms, claim forms, insurance cards and procedures in order to allow Carol to obtain benefits for the children during the time the children are in her custody. The parties shall adhere to the insurance procedures in obtaining benefits for the children.

4. That Tracy shall provide an automobile of his choice for each child to use at the time they obtain their license to drive until the completion of their college education. Tracy shall pay and be responsible for the expenses associated with the operation of said vehicles including the automobile insurance on the vehicles.

5. That Tracy shall pay and be responsible for the children's tuition and educational expenses to attend Quincy Notre Dame High School and St. Peter's Grade School.

6. That Tracy shall be the custodian of the children's educational account funds including any Section 529 Plans. In the

event of Tracy's inability to continue as custodian of said Plans, Carol shall be the successor custodian of the educational accounts or Section 529 Plans. Tracy shall provide copies of the statements on said custodial accounts to Carol at least as often as annually. In the event any educational accounts are held in Carol's name, she shall transfer the educational accounts to Tracy as custodian.

7. That Tracy shall pay and be solely responsible for each child's college educational expenses including books, tuition, room, board, fees and necessary living expenses for the children to complete their undergraduate college education. Any scholarships or grants received by the children shall be applied to the college expenses."

¶ 7 At the time of the parties' divorce, Tracy served as general counsel for a Quincy, Illinois-based company. The parties' 2007 income tax return showed that Tracy had earned $1,925,080. One month after the trial court's entry of judgment for dissolution of the parties' marriage, the Chief Executive Officer of the company retired, and in August 2008 the company terminated Tracy's employment. (Neither party presented any evidence—and neither party claims—that Tracy's termination was voluntary or in bad faith.)

¶ 8 Tracy received a severance package and remained unemployed for 16 months. Nevertheless, Tracy continued to meet his support obligations during this time. After hiring a job-placement firm, Tracy became employed as interim general counsel for a Dallas, Texas-based company. Three months later, Tracy accepted a position as general counsel with a Tulsa,

Oklahoma-based company.

¶ 9 In July 2011, Tracy filed a motion to modify child support, asserting that a substantial change in circumstances had occurred. At the February 2012 hearing on Tracy's motion, Tracy testified that his new base salary was $300,000 per year. Tracy also presented a budget to the trial court that reflected a $10,550 monthly deficit. Tracy explained that he was "living out of his retirement." On cross-examination, however, Tracy acknowledged that he received a bonus as well; Tracy's 2011 W-2 form showed an income of $806,133 (part of that income was in the form of "restricted stock," which he was required by the company to hold).

¶ 10 Tracy further testified regarding his expenditures on behalf of the children. Namely, Tracy outlined the expenditures he incurred (1) visiting the children in Quincy every other weekend and (2) continuing to maintain an additional home in Quincy. Tracy added that he attended every college football game in which Dominic played, incurring additional expenses in that pursuit.

¶ 11 Tracy also presented testimony from a certified public accountant who testified that as Tracy's income declined, Carol's spending increased. The accountant also testified that Carol invested approximately $623,000 between 2008 and 2011. The trial court admitted an exhibit that showed that Carol's net worth at the end of 2011 was $1,755,400.

¶ 12 Carol testified that her expenses showed a shortfall of $300 per month after giving up her membership at the country club. As for the testimony from the accountant regarding her spending habits, Carol acknowledged that she had not adjusted her spending in response to Tracy's reduction in income.

¶ 13 On this evidence, the trial court denied Tracy's motion to modify as follows:

"The [c]ourt's considered the evidence and the arguments. The [c]ourt appreciates counsel's organizing this case so that I can come to a decision without taking it under advisement, so I could not have a more complete record as to the situation between the parties.

If you sensed my frustration from time to time, it's mainly due to the fact that we're dealing with the top one percent of the population in this case. Usually[,] I find myself telling two people with combined income of $50,000 that I can't keep them in the life-style to which they have become accustomed when they divorce, and that's not the case here.

I've been asking [Tracy's attorney] mainly if any of the cases cited are settled cases for which there is a marital settlement agreement, because I believe that once there is a marital settlement agreement it's a different analysis. *** The petition was filed February 14, 2008, and in what is a remarkably fast settlement for a case such as this, the parties entered into an agreement three months later, April 2008, and they are certainly to be applauded for that[.] So [Tracy] entered into this settlement, and it doesn't matter for whatever reasons he entered into the settlement, and the purpose of settling cases is so parties will know what they have and what their obligations are going forward.

The court must construe settlement agreements between divorced parties so as to give effect to each of its provisions and avoid constructions which would render provisions superfluous. ***.

In addition, *** it's been stated that when parties to marital dissolution actions agree to settle a dispute by modifying the underlying judgment or marital settlement agreement, the trial court should enforce the agreement unless it's unconscionable.

Statutory bias in favor of allowing parties to craft their own resolution of disputed issues should apply with equal force whether the dispute arises before the dissolution or as part of a later post-decree enforcement action. And here's the key: As the parties are in the best position to evaluate their own circumstances[, they] should be allowed to resolve their disputes by agreement, even if the trial court would not or could not order the same resolution.

And folks, I will tell you that I could not and would not order what you agreed to back in April of 2008. Going through this, as an example, I could not and would not order the provision that child support is non-modifiable on her side for a period of eight years; I could not do that. I could, but I would not have entered an order which is basically a *carte blanche* post-18 educational support order which would provide that the father pay

all of the college expenses simply due to the fact that one of the children was so young that we would have to be looking almost a decade into the future to determine that. I would not have ordered maintenance for a 13-year period at which time it would have stopped. What I would be looking at is it was a 23-year marriage, and I would probably have set a maintenance amount that would be what we call permanent maintenance, but it is always modifiable based upon circumstances. And you've made this, it appears to me, the maintenance, non-modifiable.

So you agreed to a variety of things that I either could not or would not have done. And that is good, because she knew what she had going forward and he knew what he had going forward.

It is his petition, and it is his burden to prove to me that I should do what he's asking me, and, quite frankly, I struggled with the requirement that I construe this entire agreement as a whole, because what he's asking me to do is to modify Article Two, Section 1, but not do anything with Article Two, Section 2. Article One, Section 1 is the per dollar per month amount that he wants the [$]5[,]000 lowered. Article Two, Section 2, is what, for want of a better phrase, I'll call the *carte blanche* amount for which he is totally in control on this. I realize it's expensive for him to agree to *carte blanche* *** pay for college expenses. Quite frankly, I don't

know what we would be doing if she were in court wanting to enforce Article Two, Section 2 by telling me that one child wants to go to Stanford at $50,000 a year and another child wants to go to Harvard at $50,000 a year and to force him to pay $100,000. Fortunately, I don't have that in front of me. I have the mirror image of that in front of me, and that is him wanting me to change one section but not the section in which he was in control. Now, *** it's for the benefit of everyone the amount of money that he spends on coming up here, going to every game and buying the cars for the children.

$1,600 on a computer I don't believe is covered under this, $26,000 for a car, $18,000 for a car, and my point is that he's totally in control of these expenditures, and I find it hard to reduce her child support because I believe, if there's a reduction that needs to be made, the reduction can be on his *carte blanche* where he has more control over their costs.

Now, sir, *** [m]ake no mistake about it *** she and your children know that the reason that they're able to enjoy the life-style that they enjoy is due to you. I mean *** through your skill, through your intelligence, through your work ethic have put this family into a stratosphere that you might be in the 1/10th of one percent of families in the United States, so *** I simply do not

believe that I can parse out, as you've requested, to change one section of what you all agreed to and disregard the other section especially when the other section is something that you are totally in control of and especially when we're talking about the delta we're dealing with, because if I would grant your petition back to the date you filed and lower it from [$]5[,]000 to [$]2[,]000, it would be a savings of $52,000, taking into account the 5 months in 2011, the 12 months in 2012, and the months up to when your maintenance reduces in 2013. And given the stratosphere in which your income is, [$]52,000 is, in the scheme of things, not a lot of money.

Savings could be had, if you are having to dip into resources. Dominic may not have needed a car worth [$]26,000. Maybe a $10,000 car would have been just as good. Nicholas, instead of [$]18,000, maybe a $10,000 [car] would be just as good. And what I'm saying is that, instead of cutting the amount that she bargained for, I would rather see savings on the *carte blanche* that you've been very generously giving the kids.

I hope that we don't go down this road, because I really don't want to involve the children in this, and they shouldn't be involved in this, but, sir, if you are reimbursing her for things that are not covered, you can stop doing that.

> Ma'am, considering he's got the only oar in the water on finances, I would not be submitting expenses which are not covered under Article Two, Section 2.
>
> * * *
>
> So, folks, you struck a bargain back in 2008, and I haven't seen, by a preponderance of the evidence, sufficient change in circumstances for me to alter the bargain that you struck in 2008.
>
> So the petition for modification is denied. Each party shall pay their own fees."

¶ 14 This appeal followed.

¶ 15 II. TRACY'S CLAIM THAT THE TRIAL COURT ERRED BY DENYING HIS MOTION TO MODIFY CHILD SUPPORT

¶ 16 Tracy argues that the trial court erred by denying his motion to modify, given that he demonstrated a substantial change in circumstances. Specifically, Tracy contends that (1) the court erroneously used a "different analysis" because the case involved a marital settlement agreement, (2) the court erred by finding that a 60% reduction in income was insufficient to constitute a substantial change in circumstances, (3) the court improperly focused on sections of the marital settlement agreement that were not at issue, and (4) the court's ruling violated the express terms of Illinois law and public policy. We address Tracy's contentions in turn.

¶ 17 A. The Trial Court Used the Proper Standard

¶ 18 Tracy first asserts that the trial court erred by using a "different analysis" because this case involved a marital settlement agreement. The basis for Tracy's claim in this regard is

that in rendering its judgment from the bench, the court made the following statement:

> "I've been asking [Tracy's attorney] mainly if any of the cases cited are settled cases for which there is a marital settlement agreement, because I believe that once there is a marital settlement agreement it's a different analysis."

We are not persuaded.

¶ 19 We have quoted the trial court's findings in this case at length to demonstrate that, contrary to Tracy's claim, the court did not utilize a "different," or "improper," analysis because the case involved a marital separation agreement. Essentially, Tracy posits that the court found that because the parties had entered into a contract, it was powerless to modify the terms of its judgment despite the change in circumstances. That is simply not the case. Read together, all of the court's comments preceding its ruling demonstrate that it understood the substantial-change-in-circumstances standard (see 750 ILCS 5/502(b), 510(a)(1) (West 2010) (child support established by a marital settlement agreement may be modified upon a showing of a substantial change in circumstance) and would have been willing to modify its judgment if it determined that such a change in circumstances had occurred. Indeed, a fair reading of the court's comments reveals that the court was referring to what documentation it was going to use to determine whether a substantial change in circumstances had occurred—namely, the parties' marital settlement agreement.

¶ 20 Given that the trial court used the proper analysis in this case, we reject Tracy's contention to the contrary.

¶ 21 B. The Trial Court Did Not Err by Finding That No Substantial Change in Circumstances Occurred

¶ 22 Tracy next asserts that the trial court erred by finding that a 60% reduction in income was insufficient to constitute a substantial change in circumstances. We disagree.

¶ 23 As we have previously explained, when, as here, a marital settlement agreement is incorporated into a judgment, the underlying agreement itself remains modifiable with respect to terms involving child support (750 ILCS 5/502(b) (West 2010)); and an order for child support may be modified or terminated upon a showing of a substantial change in circumstances (750 ILCS 5/510(a)(1) (West 2010)). The burden of proof, however, is on the moving party. *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 388, 941 N.E.2d 989, 995 (2010). "A change in the circumstances of the obligor parent does not necessarily constitute a substantial change in circumstances for purposes of a modification of child support." *Id.*

¶ 24 Once a substantial change in circumstances has been shown—for example, when an obligor demonstrates that his income has been significantly reduced—the trial court may proceed to consider a modification of child support in accordance with the factors set forth in section 505(a)(2) of the Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a)(2) (West 2010)). The court will consider the financial resources and needs of the child, *the financial resources and needs of the custodial parent*, the standard of living the child would have enjoyed had the marriage not been dissolved, the physical and emotional condition of the child and his or her educational needs, and the financial resources and needs of the noncustodial parent. 750 ILCS 5/505(a)(2) (West 2010). "A petition to modify child support must be decided on the facts and circumstances of each case." *Rash and King*, 406 Ill. App. 3d at 388, 941 N.E.2d at 995.

Modification of child support rests within the sound discretion of the trial court, and we will not disturb its decision absent an abuse of that discretion. *In re Marriage of Bussey*, 108 Ill. 2d 286, 296, 483 N.E.2d 1229, 1233 (1985).

¶ 25 A thorough review of the trial court's findings in this case shows that the court determined that, given Tracy's extraordinarily high annual income, it need not determine whether a substantial change in his percentage of income had occurred because the income he was making at the time of the hearing—approximately $800,000 per year—did not justify a modification of child support in accordance with the factors set forth in section 505(a)(2) of the Act. In short, the court determined that the circumstances in this case did not justify a reduction of child support from $5,000 per month to $2,000 per month—as Tracy requested—in light of his annual income. Implicit in the court's judgment is its agreement that an initial "substantial change" occurred—namely, a reduction in Tracy's income—but that change was not sufficient to justify a modification of the support Tracy had agreed to pay. We do not consider that an abuse of the court's discretion.

¶ 26 C. The Trial Court Did Not Improperly Focus on Certain Sections of the Settlement Agreement

¶ 27 Tracy further asserts that the trial court improperly focused on sections of the parties' marital settlement agreement that were not at issue. Specifically, Tracy posits that the court improperly considered his obligations related to his "ancillary support" provisions—namely, those provisions related to paying for, among other things, the children's cars and college expenses. We disagree.

¶ 28 Here, the trial court noted, in deciding whether to modify child support, that Tracy

spent more than he was required to spend on the children, as follows:

> "Savings could be had, if you are having to dip into resources. Dominic may not have needed a car worth [$]26,000. Maybe a $10,000 car would have been just as good. Nicholas, instead of [$]18,000, maybe a $10,000 [car] would be just as good. And what I'm saying is that, instead of cutting the amount that she bargained for, I would rather see savings on the *carte blanche* that you've been very generously giving the kids. "

Essentially, what the trial court was pointing out was that Tracy could make up the $3,000 per month—or $52,000 total—"shortfall" in his budget by reducing the amount of support he paid under other provisions of the marital settlement agreement that Tracy could control. Because, as previously explained, the court was required to consider, among other things, the financial resources and needs of the custodial parent (750 ILCS 5/505(a)(2) (West 2010)), the court's recommendations as to how Tracy could remedy his budget shortfall—including the expenses Tracy outlined that were related to travel and keeping a house of his own in Quincy—was entirely appropriate.

¶ 29 D. The Trial Court's Judgment Did Not Violate Illinois Law or Public Policy

¶ 30 Finally, Tracy asserts that the trial court's ruling violated the express terms of Illinois law and public policy. Tracy posits that "[t]he trial court's language suggesting that it was required to 'construe this entire agreement as a whole' *** and that 'a different analysis' applies *** contravenes the language of both Illinois statute and Illinois case law." For the reasons we have previously outlined, we disagree.

¶ 31 Reading the trial court's findings as a whole, we conclude that the court did not, as Tracy suggests, believe it could not modify the parties' agreement regardless of the circumstances. As previously discussed, the court did not utilize an improper standard because the case involved a marital separation agreement. Indeed, the record shows that the court clearly understood the substantial-change-in-circumstances standard (see 750 ILCS 5/502(b), 510(a)(1) (West 2010) (child support established by a marital settlement agreement may be modified upon a showing of a substantial change in circumstance) and would have been willing to modify its judgment if it determined that a change in circumstances had occurred.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment.

¶ 34 Affirmed.