2013 IL App (4th) 121019-U

NO. 4-12-1019

FILED
June 28, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
CARRIE L. WEBER, n/k/a CARRIE L. REICK,	)	Circuit Court of
Petitioner-Appellee,	)	Ford County
and	)	No. 10D33
ROBERT J. WEBER,	)	
Respondent-Appellant.	)	Honorable
	)	Stephen R. Pacey,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's factual findings did not support its modification of the father's child support obligation.

¶ 2 Respondent, Robert J. Weber (Robert), appeals the trial court's decision to grant a motion to modify child support filed by respondent, Carrie L. Weber, n/k/a Carrie L. Reick (Carrie), and order him to pay $400 per month in child support for the parties' two children. On appeal, Robert argues (1) Carrie failed to establish a substantial change in circumstances sufficient to warrant modification and (2) the court erred in ordering him to pay child support because the parties share equal parenting time and responsibility for child-related expenses, have comparable statutory net incomes, and each earn sufficient income to provide for their children's reasonable needs. We reverse and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on August 7, 2004, and had two children: Ryan (born June 15, 2007) and Reed (born November 12, 2008). In July 2010, Carrie filed a petition for dissolution of marriage and Robert filed a counterpetition. On August 25, 2011, the trial court entered a judgment of dissolution in the matter and approved and incorporated the parties' joint-parenting agreement into the judgment.

¶ 5 The joint-parenting agreement provided that each party would have joint parental responsibility and retain his or her full parental rights and responsibilities. Robert and Carrie agreed to share legal and residential custody of the children and that the children would spend equal amounts of time at each parent's residence. Neither parent would be designated as the "primary residential parent." Robert and Carrie further agreed that (1) Robert's address would be listed as the children's primary contact address and would serve as the basis for which school the children would attend; (2) Robert's mother would provide day-care services for the children; (3) Carrie would carry the minor children as her dependents for health, dental, and vision insurance through her employer; and (4) the parties would equally divide the children's uncovered medical expenses, all school-related expenses, and expenses for the children's extracurricular activities. With respect to child support, the joint-parenting agreement provided as follows:

> "Both parents acknowledge an equal duty to support the minor children. Each parent shall be responsible for the ordinary day-to-day expenses related to the minor children when the children are in their care. Because the parties will have the minor children in their care an equal amount of time, have comparable incomes, and have

> provided for the payment of insurance, uncovered medical, and school and extra[]curricular expenses through other provisions of this *** agreement, neither parent will be obliged to pay child support to the other parent."

¶ 6 On April 2, 2012, Carrie filed a motion to modify child support, alleging a substantial change in circumstances since the entry of the judgment of dissolution. Specifically, she asserted she earned less income than she did when the judgment was entered while Robert's income had increased. Carrie alleged the parties' incomes were not comparable and Robert's income was greater than hers.

¶ 7 On July 3, 2012, the trial court conducted a hearing on the matter. The record does not contain a transcript of that hearing; however, the parties submitted a stipulated by-stander's report which sets forth the testimony and evidence presented at the hearing. Carrie testified that, both at the time the dissolution judgment was entered and on the date of the modification hearing, she was employed on a full-time basis as a registered nurse at Gibson Area Hospital. In 2009 and 2011, her gross income was $59,912.76 and 58,357.27, respectively. Although Carrie could not recall her gross income from 2010, she asserted it was approximately the same as her earnings in 2009 and 2011. She submitted a financial affidavit, setting forth a gross monthly income of $4,160 and monthly expenses of approximately $4,198.11.

¶ 8 Following the parties' divorce, Carrie underwent a voluntary change in shifts that reduced her work hours so that she could maximize her parenting time with the minor children. Her reduction in hours reduced her income by approximately $308 per month. However, upon accepting the shift change, Carrie utilized a form of deferred compensation called "earned time

off" to maintain her previous level of income. Once "earned time off" was applied, her monthly income did not decrease. Additionally, Carrie's hourly rate was not reduced following the judgment.

¶ 9 Carrie testified she was awarded the marital residence in the parties' divorce and continued to reside there. She refinanced to lower her monthly payment. As required by the dissolution judgment, Carrie provided insurance for the minor children through her employment and paid $143 per month for the children's medical, dental, and vision insurance.

¶ 10 Robert testified that, at the time of both the dissolution judgment and the modification hearing, he was self-employed as a farmer and owned a one-quarter interest in his family's trucking business. As of April 2012, he received approximately $1,000 per month as a dividend from the trucking business. He submitted his 2011 federal income tax return, showing gross income from farming of $721,177; total expenses of $710,805; depreciation of $129,763; and a net farm profit of $10,372. His 2009 federal income tax return was submitted during previous dissolution proceedings and showed his gross income from farming totaled $801,145; total expenses of $738,699; and his net profit was $62,446. Robert did not recall his precise income and expenses in 2010 but asserted those amounts were approximately the same as his income and expenses from 2011.

¶ 11 Robert presented evidence of debt repayments he made in 2011 for farming equipment, totaling $88,463.15. That amount included (1) $22,321.72 for a combine; (2) $8,500 for a corn head; (3) $30,450 for a tractor; (4) $19,000 for a sprayer; (5) $5,000 for a planter; and (6) $3,191.43 for a soybean head. He submitted sales invoices for each purchase of equipment and testified each item of equipment was necessary to his farming operation. Additionally, he

testified that, since the parties' divorce, he had purchased a new residence.

¶ 12 Both Carrie and Robert testified they had equal amounts of overnight parenting time with the children and that Robert's parents provided day care for the minor children at no cost. Robert submitted statutory net income calculations for each party, asserting Carrie's statutory net monthly income was $3,687 and his statutory net monthly income totaled $3,698. His calculations were based upon each party's 2011 federal income tax returns and calculated pursuant to section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505 (West 2010)). Carrie did not submit proposed net income calculations for either party.

¶ 13 On July 10, 2012, the trial court entered its decision, ordering Robert to pay $400 per month in child support. It made the following factual findings: (1) the evidence reflected no change in the parties' parenting time; (2) Carrie's gross income totaled $59,912.76 in 2009 and $58,357.27 in 2011; (3) Robert's gross income from farming was $801,145 with a net profit of $62,446 in 2009 and $721,177 with a net profit of $10,372 in 2011; (4) Carrie underwent a voluntary reduction in work hours but maintained her former salary by using "earned time off" hours; (5) Robert acknowledged that $129,763 of depreciation shown on his 2011 federal tax return was not a deduction from gross income for child support purposes but argued $88,463.15 of installment payments for farming equipment were obligations incurred for the production of income and deductible from his gross income calculations; (6) Robert's exhibits regarding his installment payments did not all confirm the payment amounts claimed; (7) Robert purchased a new residence following the dissolution; (8) Robert's calculation of child support, based on statutory guidelines after deducting his installment payments, was $1,035 per month as opposed to $3,100 per month without that deduction; and (9) there was a basis for deviation from

statutory child support guidelines if Robert's installment payments were allowed as deductions from income. The court made no express finding regarding what substantial changes in circumstances had occurred since the dissolution judgment.

¶ 14 On July 30, 2012, Robert filed a motion to reconsider the trial court's child support award, arguing the court's factual findings and legal rulings were erroneous. Specifically, he asserted the court erred by modifying his child support obligation without first requiring that Carrie establish a substantial change in circumstances. Robert also argued the court erred by mechanically applying an "offsetting" theory of child support when the parties shared equal parenting time and Carrie had not been designated as the children's primary physical custodian. Additionally, he complained that the court erred when determining his net income by disallowing or minimizing the applicability of his debt repayments for farming equipment. Further, Robert argued the court erred in failing to consider alternative options to child support, including reallocation of the tax dependency allowance or ordering him to make contributions to the children's health insurance.

¶ 15 On October 1, 2012, the trial court conducted a hearing and denied Robert's motion to reconsider. The court agreed Carrie was required to show a substantial change in circumstances and found there had been "a variety of substantial change[s] in circumstances" from the time of the judgment when no child support was ordered. The court did not specify what those substantial changes were. It also denied that there had been "any mechanical application offsetting the child support." Further, the court rejected Robert's claim that it had minimized evidence of his debt repayments, stating if they had been ignored Robert's child support obligation would have been approximately $3,100 a month and "would have resulted in

about over a $2,000 mechanical application of offsetting that he would be paying."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Robert argues Carrie failed to establish a substantial change in circumstances since the trial court entered the dissolution judgment which approved and incorporated the parties' joint-parenting agreement, requiring neither party to pay child support. Specifically, he contends the evidence presented at the July 2012 modification hearing failed to establish any material change in either the parties' financial circumstances or the minor children's needs. Robert also argues the trial court erred in ordering him to pay child support because the parties (1) shared equal parenting time and responsibility for child-related expenses, (2) had comparable statutory net incomes, and (3) each made sufficient income to provide for the reasonable needs of the minor children.

¶ 19 Pursuant to the Act, a child support order may be modified "upon a showing of a substantial change in circumstances[.]" 750 ILCS 5/510(a)(1) (West 2010)); see also *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 823, 805 N.E.2d 743, 746 (2004) ("Only after determining the threshold issue of whether a substantial change in circumstances has occurred can a court consider modifying a child support order."). The party seeking modification has the burden of demonstrating a substantial change. *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 760, 732 N.E.2d 667, 671 (2000).

¶ 20 "When determining whether there is sufficient basis to modify child support, courts consider the circumstances of the parents and the circumstances of the child." *In re Marriage of Deike*, 381 Ill. App. 3d 620, 631, 887 N.E.2d 628, 637 (2008). A trial court has

wide latitude in determining whether there has been a substantial change in circumstances that would warrant modification and "should consider not only the needs of the children and the financial status of the noncustodial parent, but also the needs and financial status of the custodial parent, the financial resources of the children, the standard of living the children would have enjoyed had the marriage continued, and the physical, emotional, and educational needs of the children." *In re Marriage of Breitenfeldt*, 362 Ill. App. 3d 668, 674, 840 N.E.2d 694, 699 (2005).

¶ 21 In *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370, 669 N.E.2d 726, 729 (1996), this court previously stated as follows regarding the appropriate standard of review in the context of a petition to modify child support:

> "We find petitions to modify payment orders of any kind require the trial court to engage in a two-step process: (1) a judicial determination on a question of fact, *e.g.*, whether there has been a material change in *** circumstances ***; and (2), if so, whether and by how much to modify the support ordered. Each of these steps calls for a different standard of review: the first, whether the trial court's factual determination was against the manifest weight of the evidence; and the second, whether its decision at step two above, being a matter for the trial court's discretion, constituted an abuse of that discretion."

¶ 22 Robert argues the facts in this case are undisputed as set forth in the stipulated bystander's report and, as a result, a *de novo* standard of review applies. He cites *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 819, 751 N.E.2d 23, 26 (2001), for the proposition that the legal

effect of undisputed facts is reviewed *de novo.* In that case, the father asserted the trial court erred as a matter of law in modifying the parties' judgment for dissolution of marriage, arguing a determination of a substantial change in circumstances could not be based on changes in financial conditions that were contemplated by the dissolution judgment. *Hughes*, 322 Ill. App. 3d at 818, 751 N.E.2d at 25.

¶ 23 We find the present case distinguishable from *Hughes* and decline to apply the standard Robert suggests. See *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 62, 981 N.E.2d 1163 (rejecting a party's request to apply a *de novo* standard of review in the context of child support modification and finding it "clear that the trial court can use its discretion in choosing how to determine child support when custody of the child(ren) is shared"). This matter involved a contested hearing, during which the parties each presented testimony and evidence. The trial court weighed the evidence presented, made factual findings, and determined modification was warranted. Under the circumstances presented here, it is appropriate to apply the well-settled standards of review as set forth in *Barnard*.

¶ 24 Here, the joint-parenting agreement provided that the parties would share equal parenting time and that neither party would be required to pay child support. The trial court approved that agreement and incorporated it into the dissolution judgment. Robert argues the record fails to show a substantial change in circumstances since the parties' divorce that would warrant modification of their original agreement. As stated, the court was required to find a substantial change in circumstances before it could exercise its discretion to modify child support. In its written order, the trial court made no such finding. At the hearing on Robert's motion to reconsider, the court noted the correct standard and found "a variety of substantial

change[s] in circumstances"; however, it did not specify what those changes were.

¶ 25 Initially, we agree with Robert that the record fails to show any change in circumstances regarding either Carrie's financial condition or the needs of the minor children. First, no evidence was presented at the modification hearing regarding the needs of the minor children or changes to those needs following the dissolution judgment. Second, although Carrie presented evidence of a reduction in her work hours, the record showed her income had not decreased after the parties' divorce. Through a deferred compensation program called "earned time off," Carrie continued to earn the same amount of money she earned at the time of the parties' divorce. On appeal, she points out that she was required to pay for the children's medical, dental, and vision insurance in the amount of $143 per month without reimbursement from Robert. However, the record reflects Carrie was ordered to carry the minor children as her dependents for health, dental, and vision insurance through her employer at the time of the dissolution judgment. As a result, those health-care expenses do not provide a basis for finding a substantial change in circumstances.

¶ 26 Carrie also argues the record supports a finding of a substantial change in circumstances with regard to Robert's finances because it shows his income increased in April 2012, when he began receiving a dividend of $1,000 per month as a result of his part ownership in his family's trucking business. She notes this was income Robert did not have at the time the trial court entered the judgment of dissolution of marriage. We agree that a substantial change in circumstances may include an increase in net income of the person providing support. See *Department of Public Aid ex rel. Schmid v. Williams*, 336 Ill. App. 3d 553, 556, 784 N.E.2d 416, 419 (2003). However, here, not only does the record fail to reflect the trial court relied upon the

dividend as a basis for its finding of a substantial change in circumstances, the record also fails to show what impact that gross dividend had on calculations of Robert's net income. We note, the court appears to have adopted Robert's income calculations which did not factor in the dividend he began receiving in April 2012, and Carrie did not submit proposed net income calculations for either party.

¶ 27 Although, in this instance, the record does not reflect "a variety of substantial change[s] in circumstances" as stated by the trial court, it does support a finding that Robert's income increased after April 2012. We acknowledge that, while the court did not make specific findings regarding what substantial change in circumstances has occurred, this court may affirm the trial court on any basis supported by the record. See *In re Marriage of Pihaly*, 258 Ill. App. 3d 851, 856, 627 N.E.2d 1297, 1302 (1994) (holding a trial court's increase in child support could be affirmed on any basis supported by the record). However, from the record in this specific case, we are unable to determine the amount by which Robert's net income increased or whether that increase resulted in a substantial change in circumstances.

¶ 28 We remand so that the trial court may make specific factual findings regarding whether a substantial change in circumstances has occurred and determine the impact, if any, of Robert's $1,000 per month dividend on his net income. On remand, the trial court may receive additional evidence from the parties that is relevant to the issues presented. See *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 820, 597 N.E.2d 847, 858 (1992) (holding that, on remand, the trial court may, if it chooses, receive further evidence relevant to a determination of the father's income and an appropriate award of child support).

¶ 29 Additionally, if on remand the trial court determines that a substantial change in

circumstances exists which warrants modification, it should consider the statutory factors set forth in section 505(a)(2) of the Act (750 ILCS 5/505(a)(2) (West 2010)). "In split custody cases a trial court may disregard the statutory guidelines in the Act and may instead consider the factors listed in section 505 of the Act." *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 708, 670 N.E.2d 1146, 1150 (1996) (citing 750 ILCS 5/505(a)(2) (West 1994)); see also *In re Marriage of Wittland*, 361 Ill. App. 3d 785, 788, 838 N.E.2d 308, 310 (2005) (holding statutory child support guidelines did not apply to the parties' split-custody arrangement); *In re Marriage of Keown*, 225 Ill. App. 3d 808, 812, 587 N.E.2d 644, 647 (1992) ("A strict mathematical application of the guidelines where there is split custody of the children is not contemplated by the statute."). "[C]ourts have a responsibility to protect the best interests of the children in child-support matters" and even in a split-custody arrangement should consider matters of child support in light of statutory factors. *Wittland*, 361 Ill. App. 3d 785, 788, 838 N.E.2d 308, 309-10. The relevant factors set forth in section 505(a)(2) of the Act include the following:

> "(a) the financial resources and needs of the child;
>
> (b) the financial resources and needs of the custodial parent;
>
> (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
>
> (d) the physical and emotional condition of the child, and his educational needs; and
>
> (e) the financial resources and needs of the non-custodial parent." 750 ILCS 5/505(a)(2) (West 2010).

¶ 30 An award of child support is not prohibited by the parties' split-custody arrangement or the fact that they share equal parenting time. In its discretion, the trial court may order child support in cases of split custody. It is not required to apply the statutory child support guidelines but should consider the factors set forth in section 505(a)(2) of the Act. In this instance, the record does not reflect the court heard evidence on all of those factors or that it considered any factor other than the parties' respective incomes in determining Robert's child support obligation. See *People ex rel. Hines v. Hines*, 236 Ill. App. 3d 739, 746, 602 N.E.2d 902, 907 (1992) (holding the trial court cannot pick out one or two factors in section 505(a)(2) on which to base its decision and not hear evidence on other relevant factors).

¶ 31 Additionally, "trial courts ought to expressly state their findings and calculations" when awarding child support. *Carpel*, 232 Ill. App. 3d at 820, 597 N.E.2d at 857. In this instance, the trial court ordered Robert to pay $400 per month in child support but the record does not show how the court calculated that figure or that there was an adequate basis for the amount ordered.

¶ 32 Here, the trial court's factual findings did not support its modification of Robert's child support obligation. We remand for rehearing so that the parties may present further evidence regarding the request for child support modification. If the trial court awards child support, it should make specific findings pursuant to section 510(a)(1), regarding the substantial change in circumstances that occurred, and section 505(a)(2) of the Act. It should also explain its child support calculation.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we reverse the trial court's judgment and remand with

directions.

¶ 35 Reversed and remanded with directions.