2019 IL App (4th) 190088-U

NO. 4-19-0088

FILED
September 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| *In re* MARRIAGE OF | ) | Appeal from the |
| KATHLEEN E. GREEN, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Calhoun County |
| and | ) | No. 16D7 |
| CHRISTOPHER GREEN, | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | Charles H.W. Burch, |
| | ) | Judge Presiding. |

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court reversed and remanded for further proceedings, finding the trial court erred in calculating respondent's child-support obligation.

¶ 2 In March 2018, the trial court entered a judgment of dissolution of marriage between petitioner, Kathleen E. Green, and respondent, Christopher Green, and ordered Christopher to pay $935 per month in child support. After Christopher sought to reduce his child-support obligation, the court ordered him to pay $1606 per month. Christopher filed a motion to reconsider, and the court reduced the amount to $812.53 per month.

¶ 3 On appeal, Christopher argues the trial court erred in calculating his child-support obligation. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In September 1993, Christopher and Kathleen were married in Madison County, Illinois. Four children were born during the marriage, including S.G., born in 1995; W.G., born

in 2000; E.G., born in 2002; and L.G., born in 2007. In May 2016, Kathleen filed a petition for dissolution of marriage, asking Christopher to pay maintenance, child support, and the children's post-high-school educational expenses.

¶ 6 In March 2018, the trial court entered a judgment of dissolution of marriage. In its order, the court noted S.G. was emancipated, W.G. was not emancipated for child-support purposes, and E.G and L.G. were minors. Along with the division of property, the court ordered Christopher to pay $1000 per month in maintenance. As for child support, the court ordered Christopher to pay $935 per month, starting in April 2018. The award was subject to review and modification upon W.G.'s emancipation and graduation from high school.

¶ 7 In June 2018, Christopher filed an amended motion to reduce his child-support obligation, stating there had been a substantial change in circumstances in that W.G. had become emancipated. Kathleen admitted W.G. had been emancipated but asked that "new income figures be utilized" in the calculation of a new award of support.

¶ 8 Following a hearing, the trial court found Christopher's child-support obligation should be modified and ordered him to pay $1606 per month. In arriving at that amount, the court's calculation sheet listed Christopher's obligation as $954 with an additional $652 for his share of the health insurance.

¶ 9 Christopher filed a motion to reconsider, arguing the trial court erred in failing to account for a "health insurance deduction premium" that he receives for his children. Specifically, he stated the court apportioned two-fifths of the family health insurance premium, based on the number of minor children over the number of children covered, instead of giving him the entire deduction. Christopher claimed the court's analysis was flawed "because the monthly premium paid remains the same no matter how many children are on the plan."

Christopher stated his health insurance premiums increased to $867.49 per month, and since the applicable statute required the amount to be apportioned by the income of the parties because he had less than 147 overnights, he argued he was entitled to receive a 40% reduction of the original $847.49, or $350, and his support obligation should have decreased to $604 per month.

¶ 10 In December 2018, the trial court held a hearing on the child-support obligation. The court first stated it had a "lengthy discussion" with counsel in chambers and came to the conclusion its prior support award was erroneous. The court further stated a discrepancy arose as to how to allocate Christopher's health insurance premiums—Christopher stated it should be calculated based on two children, while Kathleen stated it should be calculated based on four children. The court allowed counsel to submit further authority in support of their arguments.

¶ 11 Relying on section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505 (West Supp. 2017)) pertaining to the calculation of child support, Kathleen stated the cost of the insurance cannot be determined as to what portion was attributable to any one particular child. Because there were four children covered, Kathleen claimed the insurance premium is to be divided by the total number of persons covered by the policy.

¶ 12 The trial court found the applicable statute required health care costs to be allocated by dividing by four, the number of persons covered. Thus, the court set Christopher's support obligation at $812.53 per month, retroactive to May 25, 2018.

¶ 13 Christopher filed a motion to reconsider, arguing section 505(a)(4)(D) of the Act (750 ILCS 5/505(a)(4)(D) (West Supp. 2017)) governs the allocation of health care costs and the amount of $867.49 per month would be the same for one child or four children. Kathleen also filed a motion to reconsider, arguing the insurance plan costs $867.49, there are four children

covered under the plan, and thus it would be appropriate to divide the amount by the four children.

¶ 14 The parties filed an agreed statement of facts concerning matters held in chambers on December 7, 2018. The parties agreed Christopher's monthly health care cost for his family plan totaled $867.49. Christopher's two minor children are on the policy as well as his two emancipated children, for a total of four. The total cost would be the same for one person or multiple people.

¶ 15 At the hearing on the motions to reconsider, the trial court stated the issue centered on whether Christopher's monthly support obligation should be based on four children ($812.53) or two children ($658.55). In denying the motions to reconsider, the court concluded Christopher should pay $812.53 per month in child support. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 A. Lack of an Appellee's Brief

¶ 18 Initially, we note Kathleen has not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. On the other hand, if the appellant's brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court's judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 19 B. Child-Support Calculation

¶ 20 Christopher argues the trial court misinterpreted the plain language of section

505(a)(4)(D) of the Act (750 ILCS 5/505(a)(4)(D) (West Supp. 2017)) in setting the child-support amount at $812.53 per month. We agree.

¶ 21 On appeal from a bench trial, this court will not disturb the trial court's factual findings unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890, 931 N.E.2d 285, 290 (2010). However, the interpretation of a statute is a question of law that is reviewed *de novo*. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 18, 990 N.E.2d 1144; see also *In re Marriage of Hundley*, 2019 IL App (4th) 180380, ¶ 48, 125 N.E.3d 509 (stating "when reviewing the legal effect of undisputed facts and a trial court's interpretation of a statute, courts apply a *de novo* standard of review").

¶ 22 Section 505(a)(4)(D) addresses health care costs in connection with a child-support obligation and states as follows:

> "The amount to be added to the basic child support obligation shall be the actual amount of the total health insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the health insurance premium shall be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the health insurance policy. This amount shall be added to the basic child support obligation and shall be allocated between the parents in proportion to their respective net incomes." 750 ILCS

5/505(a)(4)(D) (West Supp. 2017).

¶ 23 Once the health insurance premium for the child is calculated, section 505(a)(4)(E) (750 ILCS 5/505(a)(4)(E) (West Supp. 2017)) provides as follows:

> "After the health insurance premium for the child is added to the basic child support obligation and allocated between the parents in proportion to their respective incomes for child support purposes, if the obligor is paying the premium, the amount calculated for the obligee's share of the health insurance premium for the child shall be deducted from the obligor's share of the total child support obligation. If the obligee is paying for private health insurance for the child, the child support obligation shall be increased by the obligor's share of the premium payment. The obligor's and obligee's portion of health insurance costs shall appear in the support order."

¶ 24 In the case *sub judice*, the parties agreed Christopher's personal health care cost is $0 and the monthly health care cost for his family plan is $867.49. The parties also agreed the two minor children and the two emancipated children were covered under the policy and the total cost "would be the same for one person or multiple people."

¶ 25 In looking at the first sentence of section 505(a)(4)(D), "[t]he amount to be added to the basic child support obligation shall be the actual amount of the total health insurance premium that is attributable to the child who is the subject of the order." 750 ILCS 5/505(a)(4)(D) (West Supp. 2017). Here, the parties agreed the total monthly health care cost was $867.49 and that amount, while it went toward covering four people, would be the same if

only one person fell under the plan. As the amount was available and verifiable, the total cost of the premium need not have been divided by the total number of persons covered by the policy. Instead, as Kathleen paid none of the health care cost, Christopher should have received credit for the full amount.

¶ 26 We find the Second District's decision in *In re Aaliyah L.H.*, 2013 IL App (2d) 120414, 1 N.E.3d 80, to be instructive. There, the trial court ordered the respondent to add his daughter to his health insurance plan. *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 3, 1 N.E.3d 80. The respondent had another child that he was required to support, and another court deducted all of his health insurance premiums from his gross income. *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 4, 1 N.E.3d 80. The premiums were the same whether there was one child or two children on the plan. The petitioner's counsel argued the respondent should not receive credit for the insurance premiums since he already received the deduction for the other child. *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 7, 1 N.E.3d 80. The trial court agreed and stated the respondent could not deduct the premiums. *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 8, 1 N.E.3d 80.

¶ 27 On appeal, the respondent argued the trial court erred in failing to deduct the health insurance premiums in calculating his net income. *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 10, 1 N.E.3d 80. In looking at a prior version of the statute before us, the Second District found section 505(a)(3)(f) (750 ILCS 5/505(a)(3)(f) (West 2012)), which defines net income and notes health insurance premiums are deductions, "allows for the deduction of health insurance premiums for dependents, without limitation." *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 14, 1 N.E.3d 80. Further, the statute "does not indicate that the deduction can be taken only if the premium increases for adding the child at issue to the plan." *Aaliyah L.H.*, 2013 IL

App (2d) 120414, ¶ 14, 1 N.E.3d 80. In finding the trial court erred in calculating the respondent's net income, the appellate court held the respondent "is entitled to deduct the health insurance premiums he pays even though there is no additional cost for adding [his daughter] to his plan, which covers himself and his dependents." *Aaliyah L.H.*, 2013 IL App (2d) 120414, ¶ 16, 1 N.E.3d 80.

¶ 28 Here, Christopher pays $867.49 per month for his family health care plan, and that amount costs the same for one child as it does for two, three, or four children. As stated, Kathleen does not pay anything toward the health care costs. As such, Christopher is entitled to a deduction of the full amount. To find otherwise would give Kathleen a windfall, since Christopher would be paying for the entirety of the children's health care and then a portion of that amount (the portion that was not deducted) would go to Kathleen in child support. We find the trial court erred in its calculation. Accordingly, we reverse its judgment and remand for further proceedings consistent with this order.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 31 Reversed and remanded for further proceedings.