

2012 IL App (2d) 111158-U
No. 2-11-1158
Order filed December 26, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ANGELA K. GEISLER,)	of Du Page County.
)	
Petitioner-Appellant,)	
)	
and)	No. 09-D-524
)	
JEFFREY L. GEISLER,)	Honorable
)	Paul A. Marchese,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hutchinson concurred in the judgment.

ORDER

Held: After husband’s employment was terminated, his “Paid Time Off” distribution was excess income subject to child support and maintenance pursuant to the Judgment of Dissolution of Marriage.

¶ 1 Petitioner, Angela K. Geisler, appeals from the trial court’s August 18, 2011, order denying her “Petition for Finding Respondent [Jeffrey L. Geisler] in Indirect Civil Contempt” for failure to pay child support and maintenance, and from the October 18, 2011, order denying her motion for reconsideration. Angela argues that Jeffrey’s lump sum payout received from earned and unused “Paid Time Off” is excess income subject to child support and maintenance under the provisions of

the “Judgment for Dissolution of Marriage.” Additionally, Angela argues that the payout should be considered net income subject to child support under section 5/503(3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(3) (West 2010)). Finally, Angela asserts that mandatory interest on the unpaid child support amount should have accrued beginning March 30, 2011. We reverse and remand for further proceedings.

¶ 2

I. BACKGROUND

¶ 3 On July 16, 2010, the parties’ marriage was dissolved, and on July 29, judgment was entered, awarding child custody, child support and maintenance, and dividing property. Regarding child support, the “Judgment for Dissolution of Marriage” provided, in pertinent part:

“D. Child Support shall be paid by HUSBAND in the amount of 32% of his income, payable to wife based upon a base salary of \$140,000 less statutory deductions, in addition, child support shall be paid on any net amount received by husband *in excess of his base salary* up to and including \$300,000 within 10 days of receipt; ***.” (Emphasis added.).

Regarding maintenance, the judgment provided:

“N. Maintenance:

a) The WIFE shall be awarded rehabilitative maintenance for a period of 48 months in the amount of \$2,400 per month which shall terminate at the end of the 48 month period;

c) In addition to the maintenance, the WIFE will be awarded 30% of the HUSBAND’s pre-taxed income in excess of his

base, less any amount paid in child support, up to and including \$300,000 ***.”

¶ 4 On October 27, Jeffrey’s employer notified him that his employment would be terminated at the end of 2010. He was provided with a severance package which continued to pay him his annual base salary of \$140,000 through September 2011. In February or March 2011, Jeffrey received a lump sum payout of his “Paid Time Off” (P.T.O.) that had accrued from 2010.¹ The payout amounted to \$9,692.00, plus restricted stock, deferred income and a bonus.² Petitioner learned of the payout in April 2011 and, on May 19, filed her “Petition for Finding Respondent in Indirect Civil Contempt” for his failure to pay child support and maintenance on the lump sum payout.

¶ 5 On June 9, the trial court entered an Order for a Rule to Show Cause. On August 18, 2011, a hearing was held. Jeffrey testified that his employment ended in December 2010; that in the middle of January 2011 he received approximately \$9,300 in “accrued but unpaid time off from 2010”; and he shared this amount with his attorney but did not inform Angela of its existence.

¶ 6 Angela testified that P.T.O. was not addressed in the judgment of dissolution; in March 2011 she discovered that Jeffrey received the P.T.O. payout through subpoenaed documents, and she was asking for the P.T.O. to be includable income for purposes of child support and maintenance calculation.

¹At the hearing on the Rule to Show Cause on August 18, 2011, Jeffrey that testified he received a paycheck dated March 4, 2011, that included payment of the bonus. Angela testified that he received the “P.T.O. payout” on February 3, 2011.

²Only the P.T.O. amount is at issue in this appeal.

¶ 7 In its ruling, the trial court relied on *In re Marriage of Abrell*, 386 Ill. App. 3d 718, 724 (2008), which held that accumulated sick and vacation days are not marital property, and therefore, not subject to support obligations. The court denied Angela's petition, reasoning that:

“the Court at the time of the dissolution *** couldn't have given that out because it was a nonmarital asset at the time of the judgment. The Court could not have done so. *** If it was a nonmarital asset at the time of the judgment of dissolution of marriage, if it was speculative at that time and then he receives payment for it after the fact, it's clearly a nonmarital asset.”

On October 18, the trial court denied Angela's motion to reconsider. Angela timely filed this appeal.

¶ 8 II. ANALYSIS

¶ 9 Before addressing the merits of this appeal, we note that Jeffrey, as appellee, has failed to file a brief in this court. Because we find the issue presented is straightforward, we may decide this case without Jeffrey's brief, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133 (1976) (holding that a reviewing court should decide the merits of an appeal where the record is simple and the claimed error is such that a decision can be made easily without the aid of an appellee's brief). See *In re Marriage of Duffy*, 307 Ill. App. 3d 257, 259 (1999).

¶ 10 Whether P.T.O is income is a question of law subject to *de novo* review. See *In re Marriage of Abrell*, 386 Ill. App. 3d 718, 724 (2008) (“[W]hen no disputed facts or issues of witness credibility are at issue, a *de novo* standard of review will be applied.”).

¶ 11 Angela argues that the “lump sum payout” of \$9,692 that Jeffrey received was “excess income” subject to child support and maintenance contemplated in the “Judgment for Dissolution of Marriage.” She relies on several cases to support her position. *In re Marriage of Lindman*, 356 Ill. App. 3d 462 (2005), held that although the husband's IRA was part of the property settlement,

disbursements from it were properly included as income for purposes of calculating child support. Similarly, in *In re Marriage of Klomps*, 286 Ill. App. 3d 710 (1997), disbursements from a military pension were properly viewed as net income for child support purposes, even though the pension had been previously allocated between the parties as part of the property settlement incident to divorce. Finally, in *In re Marriage of Colangelo*, 355 Ill. App. 3d 383 (2005), the court held that the husband's stock distributions met the definition of "income" for purposes of determining child support. Although these cases relate to the determination of income for child support calculations, the principles of realized profit are the same. Once Jeffrey's P.T.O. was liquidated and paid out in addition to, rather than in lieu of, his salary, it became an emolument of his employment; in other words, it became excess income as contemplated by the "Judgment for Dissolution of Marriage."

¶ 12 In making its ruling, the trial court relied on *Abrell*, 386 Ill. App. 3d 718, which answered the question of "whether sick days and vacation days accumulated during the marriage constitute marital property." *Id.* at 724. The court concluded that accumulated sick-leave and vacation days were not marital property; rather, they were "a substitute for wages when, and if, the employee is unable to perform his duties." *Id.* at 730. Further, the court stated, if accumulated days remained unused when the employee retired, they would have a cash value. Therefore, we find *Abrell* is inapposite, because it addressed the question in terms of unused days, not P.T.O. that was already liquidated and paid out, as was the case here.

¶ 13 We determine that Angela was entitled to maintenance and child support based on the P.T.O. payout pursuant to the provisions of the judgment of dissolution. Therefore, we do not address her second argument that the P.T.O. should be considered net income for purposes of child support under the Act.

¶ 14 We further determine that interest on the unpaid amounts of maintenance must be assessed. Section 12-109(a) regarding “Interest on judgments” provides “(a) Every judgment except those arising by operation of law from child support orders shall bear interest thereon as provided in Section 2-1303.” 735 ILCS 5/12-109(a) (West 2010). Section 2-1303 provides that “Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied ***.” 735 ILCS 5/2-1303 (West 2010).

¶ 15 Section 12-109(b) regarding interest on child support amounts provides that the “interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month.” The statute provides further guidelines for calculating the interest. 735 ILCS 5/12-109(b) (West 2010).

¶ 16 Angela asserts that interest on the unpaid amount is mandatory at a rate of 9% and “should begin within 10 days of Jeffrey’s receipt of his P.T.O. and begin accrual on March 10, 2011.” She requests that this court reverse the trial court’s ruling “with direction to award her \$4,405.60 with statutory interest to begin on March 10, 2011.”

¶ 17 We hold that the P.T.O. distribution to Jeffrey was excess income subject to child support and maintenance pursuant to the Judgment of Dissolution of Marriage. We reverse the trial court’s ruling and remand for the trial court to calculate amount of child support and maintenance arrearages, and to determine the proper amount of interest, to be computed commencing 10 days from the date Jeffrey received the P.T.O.

¶ 18

III. CONCLUSION

¶ 19 For the reasons stated, we reverse the judgment of the trial court and remand for further proceedings.

¶ 20 Reversed and cause remanded with directions.