2014 IL App (1st) 140345-U
No. 1-14-0345
December 16, 2014

SECOND DIVISION

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

FIRST DISTRICT

JOHN S.,	)	Appeal from the Circuit Court
	)	Of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 86 D 81009
	)	10 D 81082
SHANA L.,	)	
	)	The Honorable
Respondent-Appellant.	)	Sharon Johnson,
	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court abused its discretion when it ordered a mother with little income to pay retroactive child support to the father of her children, when the father had adequate income to support the children and the record did not show that the mother had resources from which to pay the award.

¶ 2 The trial court awarded custody of Z.S. and K.L. to their father, John S. The court ordered Shana L., the mother of the children, to pay John S. child support from the poverty-level income Shana L. earned. The court ordered John S. and Shana L. to split equally the

legal fees for the representation of the children, and the court awarded John S. retroactive child support from the date of the filing of his custody petition until the date of the child support order. In this appeal from the order for retroactive child support and the payment of the children's legal fees, we find that the court did not fully consider the relative financial circumstances of the parties and Shana L.'s ability to pay the amounts awarded. Therefore, we reverse the orders and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 Shana L. gave birth to Z.S. on June 12, 2006, and to K.L. on March 4, 2008. John S. acknowledged paternity of both Z.S. and K.L. On January 18, 2011, John S. filed a petition for custody of Z.S. and K.L. Shana L. responded with her own petition for custody. The trial court awarded temporary custody to John S. John S. and Shana L. exchanged some financial information. The court appointed the Public Guardian to represent Z.S. and K.L. in custody proceedings.

¶ 5 The Guardian reported to the court that John S. lived with his wife and children in a suitable home in Bolingbrook. The Guardian recommended leaving the children in John S.'s custody.

¶ 6 In an order dated September 5, 2013, the trial court said that Shana L. "is not stable as far as her living environment and the Court is not sure where [Shana L.] will reside in the next three or four months." The court observed that John S. had health insurance for the children through his employer, and he could provide a stable home for the children. The court found that Shana L. earned $1,000 per month from her employment, and Shana L.'s mother also

gave Shana L. $100 each month. Based on Shana L.'s income of $1,100 per month, the court ordered Shana L. to pay John S. $308 each month as child support.

¶ 7 The Guardian filed a motion for an award of attorney fees. The court heard arguments concerning the Guardian's fees and retroactive child support on December 20, 2013, with Shana L. appearing *pro se*. According to the bystander's report the court approved, Shana L. admitted that she had not paid the child support ordered on September 5, 2013. John S. argued that Shana L. had enjoyed more than $1,100 per month in income, because Shana L. had collected public aid assistance after January 2011, when John S. took custody of their two children. The court found that the parties owed the Guardian a total of $2,600, and it ordered each to pay the Guardian $1,300. The court also ordered Shana L. to pay retroactive child support at the rate of $308 per month for the period from January 2011 through September 2013, for a total of $10,164, plus interest of $914.76.

¶ 8 Shana L. filed a motion to vacate the orders for the Guardian's fees and retroactive child support. She alleged that she received less than $1,100 per month in income, and John S. earned about $50,000 per year, while his wife earned more. In a petition to modify child support, Shana L. swore that she lost her job and had no income. The court denied the motion to vacate the prior orders for retroactive child support and Guardian's fees. Shana L., still *pro se*, now appeals.

¶ 9 ANALYSIS

¶ 10 In her notice of appeal, Shana L. lists the orders for Guardian's fees and retroactive child support as the orders from which she appeals. She does not list the order for future child support on the notice of appeal. John S. has not filed an appellee's brief. The Guardian has

filed a brief addressing only the order for Guardian's fees. We find the record sufficient to address the issue of retroactive child support, despite the absence of an appellee's brief. See *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342 (1996).

¶ 11 Retroactive Child Support

¶ 12 This court will not disturb the trial court's award of retroactive child support unless the trial court abused its discretion. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 37. The trial court here set child support at 28% of Shana L.'s income, in accord with statutory guidelines. See 750 ILCS 45/14(b), 5/505(a)(1) (West 2012). "The statutory guidelines create a rebuttable presumption that child support in the guideline amount is appropriate." *Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 35.

¶ 13 We find useful guidance in *In re Marriage of Cook*, 147 Ill. App. 3d 134 (1986), and *In re Marriage of Cornale*, 199 Ill. App. 3d 134 (1990). In *Cook*, Rita Cook earned $22,500 per year, and Marvin Cook, who had custody of the couple's child, earned $36,000 per year. The trial court applied section 505 guidelines, awarding Marvin nearly 20% of Rita's income for child support. See *Cook*, 147 Ill. App. 3d at 136; 750 ILCS 5/505(a)(1) (West 2012). The appellate court reversed holding that the trial court abused its discretion because it had not fully taken into account both parties' financial circumstances and Rita's ability to pay. *Cook*, 147 Ill. App. 3d at 136-37.

¶ 14 Similarly, in *Cornale*, Janice Cornale earned $34,000 per year and David Cornale, who had custody of the couple's child, earned $50,000 per year. The court set Janice's child support at $90 per week, about 10% under the statutory guideline amount. *Cornale*, 199 Ill. App. 3d at 137. The appellate court held,

> "Although the trial court acted correctly in deviating from the statutory guidelines, we conclude that it did not deviate from them far enough.
>
> At the time of the hearing, David was earning approximately 50% more than Janice. In addition, David possessed more investments than did Janice. Because the financial resources of David were far greater than those of Janice, the trial court abused its discretion in ordering Janice to pay $90 per week in child support." *Cornale*, 199 Ill. App. 3d at 137.

¶ 15 The court particularly noted that David had sufficient income to support the child. *Cornale*, 199 Ill. App. 3d at 137-38.

¶ 16 Here, Shana L. has less income than either Rita Cook or Janice Cornale, and John S. earns as much as either Marvin Cook or David Cornale. The income disparity which required deviation from the guidelines in *Cook* and *Cornale* demands a greater deviation from the guidelines here. Applying the reasoning of *Cook* and *Cornale* to retroactive child support, we reverse the award of retroactive support here and remand for an award that better accommodates the financial resources of the parties.

¶ 17 Guardian's Fees

¶ 18 In determining the proper allocation of fees for a child's legal representation, the court must consider the circumstances of both parents, including their financial resources. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 147. This court will not reverse the award of fees unless the trial court abused its discretion. *In re Custody of McCuan*, 176 Ill. App. 3d 421, 428 (1988). In *McCuan*, as here, the trial court found that the parties owed the child's legal representative about $2,600 in fees, and the court split the award, ordering the mother to

pay about $1,300. In *McCuan*, as here, the mother had no job, and the court apparently ordered her to pay fees as punishment for misconduct. The trial court in *McCuan* described the mother as "lawless, almost totally depraved, unambitious, and dishonest." *McCuan*, 176 Ill. App. 3d at 424. The appellate court held, "The record indicates a substantial disparity between the abilities of the parties to pay the fees. The defendant was unemployed and had no assets. The plaintiffs had substantial income from two separate jobs. We thus hold that the facts and circumstances of the defendant's case demonstrate that the trial court abused its discretion in apportioning the plaintiffs' obligation to pay the fees, and we reverse the judgment of the trial court on this issue." *McCuan*, 176 Ill. App. 3d at 428. Following *McCuan*, we also reverse the award of Guardian fees and remand for reconsideration of the award in light of Shana L.'s financial resources.

¶ 19 CONCLUSION

¶ 20 We find that the trial court abused its discretion when it ordered a mother who had lost her job, a job that paid only $1,000 per month, to pay more than $11,000 for retroactive child support and half of the fees for legal representation of the parties' children to the gainfully employed father of the children. We remand for further proceedings in accord with this order.

¶ 21 Reversed and remanded.