2017 IL App (4th) 160429-U

NOS. 4-16-0429, 4-16-0537 cons.

FILED
March 3, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
CHRIS C. CRONINGER,	)	Circuit Court of
Petitioner-Appellant,	)	Macon County
and	)	No. 14D58
MERIELLE V. de DIOS-CRONINGER, n/k/a	)	
MERIELLE de DIOS,	)	Honorable
Respondent-Appellee.	)	James R. Coryell,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in (1) denying petitioner's motion to modify his child support and maintenance obligation and (2) requiring him to pay prospective attorney fees to respondent.

¶ 2 In November 2014, the trial court entered a judgment of dissolution of the marriage between petitioner, Chris C. Croninger, and respondent, Merielle de Dios-Croninger, and ordered Chris to pay child support and maintenance. In May 2015, Chris filed a motion to modify his support and maintenance obligation, which the court denied. In November 2015, Chris filed another motion to modify his support and maintenance obligation, which the court also denied. Chris appealed that order. In June 2016, Merielle filed a motion for an award of prospective attorney fees to defend Chris's appeal. In July 2016, the court granted the motion and ordered Chris to pay $6,600 in attorney fees.

¶ 3 On appeal, Chris argues the trial court erred in (1) denying his motion to modify

his support and maintenance obligation and (2) requiring him to pay prospective attorney fees. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in February 2002, and two children were born during the marriage. In February 2014, Chris filed a petition for dissolution of marriage. At the time of the petition, Chris worked as a police officer for the City of Decatur and part-time as a hospital security guard. Merielle worked part-time at Menards.

¶ 6 In November 2014, the trial court entered the judgment of dissolution of marriage. The court awarded Merielle sole custody of the children, subject to Chris's right of reasonable visitation. The court ordered Chris to pay biweekly child support in the amount of $659 and maintenance in the amount of $150 per week.

¶ 7 A. Motion To Modify Support and Maintenance

¶ 8 In May 2015, Chris filed a motion to modify support and maintenance, stating he had been terminated from his employment as a police officer and, as a result, would be unable to work part-time with the security department at the hospital. Chris stated he was unable and without sufficient resources to pay maintenance or child support and the job loss constituted a substantial change in circumstances to justify a reduction.

¶ 9 In August 2015, the trial court conducted a hearing on the motion to modify. Chris testified he worked as a police officer for approximately five years. During that time, he incurred several disciplinary actions. He was suspended for one day in May 2012 for violating four police procedures and policies. In December 2012, Chris was suspended for three days for violating three police procedures and policies. In August 2013, Chris was suspended for three days for violating four police procedures and policies. In June 2014, Chris was suspended for 20

days for violating six police procedures and policies. In February 2015, Chris was suspended for 30 days for failing to have a vehicle towed from an accident scene before he went off duty to attend a party at the Police Benevolent Club. Chris admitted he checked the box on the crash report indicating the vehicle had been towed when it had not. Chris was found to have violated 13 police procedures and policies. In May 2015, Chris was accused of violating 12 police procedures and policies, including a threat to harm, shoot, or kill a fellow officer. As a result of this accusation, Chris was told by the chief of police to resign or be fired. On May 15, 2015, Chris submitted a resignation letter, stating he intended "to pursue other opportunities."

¶ 10 Chris testified he was on track to make at least $70,000 in gross income in 2015 had he remained employed as a police officer. He admitted he would still be a police officer had he not violated police policies. After he resigned, he attempted to find work with the Macon County sheriff's department and the Lincoln police department.

¶ 11 Following the hearing, the trial court ruled on the motion to modify. The court found Chris's "own conduct placed him in the position he was in" and he chose to resign from his position. The court concluded Chris's job loss was "not a fortuitous event, but a resignation compelled by his own conduct." The court denied the motion to modify. Chris did not appeal this order.

¶ 12 In November 2015, Chris filed another motion to modify maintenance and child support. He stated he was then employed at Archer Daniels Midland (ADM) at an income "substantially different" than when he worked as a police officer. Chris stated his employment with ADM constituted a substantial change in circumstances and his maintenance and child support obligations should be modified.

¶ 13 In April 2016, the trial court conducted a hearing on the motion to modify. Chris

testified he no longer worked at ADM, which was a temporary position. He began working as a police officer with the Auburn police department in March 2016. He stated his gross pay was $632.55 per week. On cross-examination, Chris stated he did not have enough money to pay his outstanding bills. He testified he had earned or been given $33,050 between May 2015 and January 2016, but he did not pay any money toward child support or maintenance during that time. He earned $4,362.91 in income from his ADM employment, but he did not pay any money toward his support obligations out of that sum.

¶ 14 Merielle testified the child-support arrearage amounted to $16,092.96, and the maintenance arrearage amounted to $6,600. Since May 2015, Chris had only paid $300 in child support.

¶ 15 In May 2016, the trial court issued its written ruling. The court denied the motion to modify, finding "[t]he only change in circumstances came about because [of Chris's] own behavior." The court also found Chris in contempt for failing to pay his support obligation. In June 2016, Chris appealed the court's ruling in case No. 4-16-0429.

¶ 16 B. Petition for Prospective Attorney Fees

¶ 17 In June 2016, Merielle filed a petition for an award of prospective attorney fees to defend the appeal pursuant to section 508(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/508(a)(3) (West 2014)). She stated she had insufficient income or assets to afford the attorney fees necessary to defend Chris's appeal. She sought an award of prospective attorney fees in the amount of $6,600.

¶ 18 At the hearing on the petition, Merielle testified her average gross income was $1,885 per month and Chris's average gross income was $3,100 per month. She stated her desire to defend Chris's appeal, but she had no money to pay her attorney.

¶ 19 In July 2016, the trial court entered an order awarding prospective attorney fees to defend the appeal. In awarding Merielle the sum of $6,600 for her prospective attorney fees, the court required Chris to pay a lump sum of $3,000 within 60 days of June 21, 2016, and then $500 per month thereafter until the total sum had been paid. Chris appealed the court's ruling in case No. 4-16-0537. On appeal, we granted his motion to consolidate the cases.

¶ 20 II. ANALYSIS

¶ 21 A. Motion To Modify Maintenance and Child Support

¶ 22 Chris argues the trial court erred in denying his motion to modify support and maintenance. We disagree.

¶ 23 An order for child support and maintenance may be modified "upon a showing of a substantial change in circumstances[.]" 750 ILCS 5/510(a)(1), (a-5) (West 2014). A "substantial change in circumstances" "means that either the needs of the spouse receiving maintenance or the ability of the other spouse to pay that maintenance has changed." *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198, 951 N.E.2d 524, 531 (2011). In considering whether maintenance should be modified, a trial court may consider, *inter alia*, "any change in the employment status of either party and whether the change has been made in good faith." 750 ILCS 5/510(a-5) (West 2014).

¶ 24 The party seeking modification has the burden of demonstrating a substantial change in circumstances. *In re Marriage of Multry*, 314 Ill. App. 3d 756, 760, 732 N.E.2d 667, 671 (2000). "Additionally, where a modification has been sought more than once, the trial court is to consider only the facts that occurred since the last modification hearing and to alter the award only upon showing of a substantial change in circumstances since that date." *Anderson*, 409 Ill. App. 3d at 198-99, 951 N.E.2d at 531. "A trial court's determination that there has been

a substantial change in circumstances to warrant the modification lies within its discretion and will not be disturbed absent an abuse of discretion." *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 194, 785 N.E.2d 1058, 1065 (2003).

¶ 25 In its May 2016 ruling, the trial court relied on this court's opinion in *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 805 N.E.2d 743 (2004). In that case, the trial court ordered David Armstrong to pay child support in 1997. *Armstrong*, 346 Ill. App. 3d at 819, 805 N.E.2d at 743. At the time of the dissolution, David made $90,000 per year at Papa John's Pizza. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744. David left his job in March 2000 and began working at Pizza Magia, where his annual income was $60,000. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744. David filed a petition to modify, but the court denied it, finding he did not change jobs in good faith. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744. David did not appeal the May 2000 order denying modification. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744.

¶ 26 In September 2002, David filed another petition to modify, claiming he had been involuntarily terminated from Pizza Magia. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744. In December 2002, he began working at Quality Dining, Inc., at an annual salary of $66,661.56. *Armstrong*, 346 Ill. App. 3d at 820, 805 N.E.2d at 744. In May 2003, the trial court denied the petition, finding no substantial change in circumstances since May 2000. *Armstrong*, 346 Ill. App. 3d at 821, 805 N.E.2d at 744-45.

¶ 27 On appeal, this court stated " '[t]he issue on a petition for modification of child support is whether there has been a material[, *i.e.*, substantial,] change in the circumstances of the parties since the previous order.' *Nordstrom v. Nordstrom*, 36 Ill. App. 3d 181, 184, 343 N.E.2d 640, 642 (1976)." *Armstrong*, 346 Ill. App. 3d at 822, 805 N.E.2d at 745. The court then

continued, in part, as follows:

> "In many cases, the previous order will be the original judgment. However, that is not true here. David seeks to have this court test whether there has been a substantial change in his income using as a beginning point the July 1999 order, when he was earning an annual gross income of $90,000. That order, which denied him relief based on the court's finding that his change in employment was in bad faith, cannot be the benchmark for determining the existence of changed circumstances.
>
> The order finding that David was not entitled to a reduction because of his bad faith, which order was not appealed, is *res judicata*. As such, his reduction in income from $90,000 per annum to $60,000 is of no effect. That David subsequently lost his employment at Pizza Magia does not absolve him of the bad faith previously found. Had the bad-faith, voluntary termination of his position at Papa Johns not occurred, we must assume he would still be earning the larger salary. ***
>
> Likewise, David's unsuccessful attempt to show changed circumstances as to his income from the time he left the employ of Papa John's cannot be used to establish a benchmark against which his income should now be compared. While future adjustments of support are not precluded under these circumstances, they cannot automatically be based on a reduction from David's Papa John's

Pizza salary." *Armstrong*, 346 Ill. App. 3d at 822, 805 N.E.2d at 745-46.

This court concluded the trial court did not err in finding a substantial change in circumstances had not occurred between May 2000 and May 2003. *Armstrong*, 346 Ill. App. 3d at 822, 805 N.E.2d at 746.

¶ 28 In the case *sub judice*, Chris was making approximately $82,000 per year as a police officer and security guard at the time of the dissolution in November 2014. In May 2015, Chris filed his first motion to modify his child support and maintenance obligation based on his resignation from the police force. In August 2015, the trial court denied the motion. Chris did not appeal this order.

¶ 29 In November 2015, Chris filed his second motion to modify, claiming he was employed at ADM at an income substantially different than when he worked as a police officer. At the April 2016 hearing on the motion, Chris testified he no longer worked at ADM but had accepted a position as a police officer in Auburn. Chris stated he made $632.55 per week, which would amount to $32,892.60 per annum. In May 2016, the trial court denied the motion, and Chris has appealed this order.

¶ 30 As this court stated, the issue on a motion to modify a child support or maintenance obligation " 'is whether there has been a material[, *i.e.*, substantial,] change in the circumstances of the parties since the previous order.' " *Armstrong*, 346 Ill. App. 3d at 822, 805 N.E.2d at 745 (quoting *Nordstrom*, 36 Ill. App. 3d at 184, 343 N.E.2d at 642). Here, the trial court entered its "previous order" in August 2015, when Chris went from earning $82,000 per year as a police officer to essentially nothing after his resignation. That order is *res judicata*, and the $82,000 figure cannot be used as a benchmark to compare his current income, which is

$32,892.60. As the evidence showed Chris was better off in April 2016 than he was at the time of the previous order in August 2015, the trial court did not err in finding a lack of a substantial change in circumstances.

¶ 31 B. Prospective Attorney Fees

¶ 32 Chris argues the trial court abused its discretion in requiring him to pay prospective attorney fees. We disagree.

¶ 33 Section 508(a)(3) of the Dissolution Act (750 ILCS 5/508(a)(3) (West 2014)) provides, in part, as follows:

> "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. *** Awards may be made in connection with the following:
>
> * * *
>
> (3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders."

¶ 34 "The party seeking an award of prospective attorney fees should request fees in a specific amount and present evidence in support of the need and propriety of that amount of fees." *In re Marriage of Krane,* 288 Ill. App. 3d 608, 619, 681 N.E.2d 609, 617 (1997); see also *In re Marriage of Talty*, 166 Ill. 2d 232, 242, 652 N.E.2d 330, 335 (1995) (stating "a prospective award of fees should be made only upon a record adequate to support the award"). Awards of prospective attorney fees "rest in the sound discretion of the trial court and will not be disturbed

on appeal absent an abuse of that discretion." *In re Marriage of Pittman*, 213 Ill. App. 3d 60, 63, 571 N.E.2d 1196, 1198 (1991). An abuse of discretion will be shown "only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005).

¶ 35 In this case, Chris does not take issue with the amount of attorney fees awarded to Merielle. Instead, he claims his ability to pay those fees was not established. At the hearing, Merielle testified she wanted to defend the appeal, but she had no money or assets to do so. She also stated she could not borrow the money and her mother could not provide her with any money to help. Merielle testified she was awarded an interest in Chris's individual retirement account (IRA) in the dissolution judgment. Of the $31,000 in the IRA, Chris was supposed to receive the first $6,500, and then the remaining balance would be split between them. Merielle stated it was Chris's responsibility to split the IRA and she had yet to receive any money.

¶ 36 Chris did not testify, but his counsel asked the trial court to take judicial notice of his financial affidavit. His counsel also expressed his frustration that the money from the IRA had yet to be distributed, stating he thought the process had been completed. The court stated it had no evidence as to how Chris was paying for his appeal but noted the IRA would provide "some cash."

¶ 37 The evidence indicated the trial court considered the financial resources of the parties. Merielle had insufficient funds to pay her attorney fees in defense of Chris's appeal. Considering the IRA money, the record indicates Chris had the financial resources available to assist Merielle in paying those fees. We find the court did not abuse its discretion in requiring Chris to pay $6,600 to Merielle to assist her in defending this appeal.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.