2018 IL App (1st) 170533-U
Order filed: November 9, 2018

FIRST DISTRICT
Fifth Division

No. 1-17-0533

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Parentage of S.D.M., a Minor	)	Appeal from the
	)	Circuit Court of
(JENNIFER CHRISTENSON,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14 D 79033
	)	
	)	
SHAWN MARION,	)	Honorable
	)	Pamela E. Loza,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 ***Held***: We affirmed the order of the circuit court awarding petitioner-appellee $14,000 per month in child support, finding that the support award was based on the financial evidence presented at the hearing and did not constitute an abuse of discretion.

¶ 2 Respondent-appellant, Shawn Marion, appeals the order of the circuit court awarding petitioner-appellee, Jennifer Christenson, $14,000 per month for child support. For the reasons that follow, we affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 On January 10, 2014, petitioner filed a two-count petition to determine the existence of a father-child relationship as to her unborn child and for other relief against respondent. In count I of the petition, petitioner requested that the circuit court: (1) require respondent to submit to DNA testing; (2) determine the existence of a father-and-child relationship based on the results of that DNA testing; and (3) award her sole custody of the child, subject to respondent's reasonable visitation. Count II of the petition requested that the court order respondent to pay: (1) child support; (2) the reasonable expenses related to petitioner's pregnancy and delivery of the child; and (3) her attorney fees and costs associated with this parentage action.

¶ 5 On April 24, 2014, petitioner gave birth to S.D.M. Respondent acknowledged paternity of S.D.M. in his petition to set child support filed on May 27, 2014, and in his petition for joint custody and to establish a temporary parenting schedule filed on June 25, 2014.

¶ 6 On June 6, 2014, petitioner filed an emergency petition for child support and other relief. Petitioner's counsel, Grund & Leavitt, P.C., (Grund & Leavitt) also filed a petition for interim attorney fees and costs.

¶ 7 On July 7, 2014, the circuit court entered an interim support order requiring respondent to pay $11,000 per month in child support. The court also ordered respondent to pay Grund & Leavitt $35,000 for petitioner's interim attorney fees. The court entered additional orders on

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

May 7, 2015, and March 16, 2016, requiring respondent to pay Grund & Leavitt interim attorney fees in the respective amounts of $47,225 and $60,000. Also on March 16, 2016, the circuit court entered an order appointing Joel J. Levin as guardian *ad litem* (GAL) for S.D.M.

¶ 8 Grund & Leavitt withdrew from representing petitioner on June 30, 2016, and Beermann Pritikin Mirbelli Swerdlove, LLP (the Beermann firm), filed their appearance on her behalf. On July 29, 2016, Grund & Leavitt filed a two-count petition for setting final attorney fees and costs. Count I sought a final adjudication of the fees owed to Grund & Leavitt from petitioner. Count II sought contribution to petitioner's fees from respondent. On August 2, 2017, after being rehired by petitioner, Grund & Leavitt voluntarily withdrew count I of its petition.

¶ 9 Meanwhile, on November 17, 2016, respondent filed a petition seeking contribution from petitioner for the attorney fees he owed to his law firm, Berger Schatz, LLP (Berger Schatz), for the work it did in these proceedings.

¶ 10 The circuit court held an evidentiary hearing on the issues of allocation of parental responsibility and permanent child support over several days in October and November 2016.[2] On January 30, 2017, the court entered its "memorandum and judgment," in which it: ordered that the parties have joint parental responsibilities regarding the religion, education and extracurricular activities of S.D.M.; designated petitioner as the custodial parent for the purposes of S.D.M.'s education; awarded petitioner parental decision-making regarding healthcare decisions for S.D.M.; ordered respondent to pay petitioner $14,000 per month for child support; allocated certain child-related expenses between the parties; and allocated the parties' respective parenting time.

[2] We will address the evidence at the hearing later in this order.

¶ 11 On February 1, 2017, Mr. Levin filed a petition seeking a fee award from the parties for the work that he had performed as GAL on S.D.M.'s behalf. On February 6, 2017, petitioner filed a petition seeking further contribution from respondent for the attorney fees she still owed both of the law firms that had represented her in these proceedings.

¶ 12 On February 27, 2017, respondent filed his notice of appeal from the memorandum judgment.

¶ 13 When respondent filed his notice of appeal, the following disputed attorney-fee and GAL petitions were pending and unresolved: (1) count II of Grund & Leavitt's petition, which sought contribution from respondent for petitioner's attorney fees and costs; (2) petitioner's petition for contribution from respondent for the attorney fees that she owed to Grund & Leavitt and the Beermann firm; (3) respondent's petition for contribution from petitioner for his final attorney fees and costs; and (4) the GAL's second petition for setting final fees and costs.

¶ 14 The circuit court entered a final order on the GAL's fees on March 21, 2017. The court entered a final order on petitioner's and respondent's respective fee petitions on August 25, 2017. The court subsequently entered a final disposition of count II of Grund & Leavitt's petition on July 19, 2018. Respondent filed an amended notice of appeal from the memorandum judgment on August 7, 2018.

¶ 15 II. ANALYSIS

¶ 16 At the outset, we must examine our jurisdiction and dismiss respondent's appeal if appellate jurisdiction does not exist. See *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994).

¶ 17 Under Supreme Court Rule 301, a final judgment in a civil case is immediately appealable as of right. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). In this regard, Supreme Court Rule

303 requires that a notice of appeal must be filed within 30 days of the final judgment appealed from or, "if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending post-judgment motion directed against that judgment or order." Ill. S. Ct. R. 304(a)(eff. July 1, 2017). A notice of appeal may be amended without leave of court within the original 30-day period for filing the notice. Ill. S. Ct. R. 303(b)(5) (eff. July 1, 2017).

¶ 18 A judgment is final if it fixes absolutely and finally the rights of the parties in the lawsuit and determines the litigation on the merits so that, if affirmed, the trial court only has to proceed with the execution of the judgment. *In re Estate of Cerami*, 2018 IL App (1st) 172073, ¶31. Where the trial court has entered a final judgment as to one or more but fewer than all of the parties or claims, a party may appeal if the trial court has made "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a)(eff. Mar. 9, 2016).

¶ 19 In the present case, respondent filed his initial notice of appeal on February 27, 2017, from the memorandum judgment which allocated parental responsibilities and provided for child support. However, the memorandum judgment did not resolve the multiple disputed attorney-fee and GAL petitions discussed earlier in this order; the last of those petitions was not finally resolved until July 19, 2018, *after* the initial notice of appeal was filed. The memorandum judgment also did not include a finding under Rule 304(a).

¶ 20 Petitioner has filed a motion, which we took with the case, arguing that the appeal should be dismissed because of all the outstanding issues relating to attorney and GAL fees that were still remaining at the time respondent filed his initial notice of appeal on February 27, 2017. Petitioner makes the same argument for dismissal in her appellee's brief.

¶ 21 We deny petitioner's motion to dismiss. On August 7, 2018, pursuant to Rule 303(b)(5), respondent timely filed an amended notice of appeal within 30 days of the July 19, 2018, order disposing of the last remaining attorney fee petition, *i.e.*, within 30 days of the final judgment in the case. Respondent's amended notice of appeal seeks review of the memorandum judgment entered on January 30, 2017. As respondent's amended notice of appeal was timely filed in compliance with Rule 303(b)(5), we have jurisdiction to consider his appeal.

¶ 22 A. Evidentiary Hearing

¶ 23 Respondent only raises issues as to the court's determination of child support, and therefore we set forth only the evidence relevant to that claim.

¶ 24 Respondent testified that he began dating petitioner in 2012, but had known her for two years prior to that. During their relationship petitioner became pregnant.

¶ 25 When he began the relationship, respondent was a member of the Dallas Mavericks, a National Basketball Association's (NBA) professional basketball team. At the time of the hearing, respondent was retired, and had been last employed as a professional basketball player by the Cleveland Cavaliers in 2015. His NBA career lasted 16 years. Since his retirement, respondent has been paid to make appearances (including international appearances), run camps, and give interviews. He also had agreed to play basketball in a Legends League in summer 2017 and was to be paid $20,000 to $30,000 per any game in which he played.

¶ 26 S.D.M. is respondent's only child. Respondent stated that petitioner looks after the interests of S.D.M., and she loves and cares for S.D.M. She would not "put [S.D.M.] in harm's way." Respondent believes that by surrounding S.D.M. with her family, petitioner provides him with a beneficial structure. She has been open to respondent seeing S.D.M. and has never denied him any court-ordered parenting time. Petitioner makes sure that S.D.M. receives proper

medical care, schedules his doctor appointments, and invites respondent to those appointments. Petitioner arranges speech therapy and occupational therapy for S.D.M., who was born tongue-tied and had surgery to remedy that condition.

¶ 27 During the first five months following the birth of S.D.M, respondent gave petitioner between $5,000 and $7,000, and purchased formula, diapers, and a "thousand dollar stroller." He also authorized a real estate agent to find petitioner a residence in the River North area of Chicago with a price range between $250,000 and $300,000; however, he never secured a purchase or a lease of a residence.

¶ 28 At the hearing, respondent expressed a willingness to provide petitioner and S.D.M. with "adequate housing," and believes that the Sauganash neighborhood of Chicago where petitioner bought a house, is a good and beneficial one for S.D.M. Respondent supports S.D.M. attending a private preschool, and he would be willing to pay the fees. Respondent has no opposition to petitioner's hiring a nanny when she needs help; he has a part-time babysitter.

¶ 29 Respondent acknowledged that his net worth, as of October 24, 2016, was $65,469,040 as set forth in petitioner's exhibit number 2, which was admitted into evidence. Pursuant to a plan which he and his financial advisor had developed, respondent keeps his monthly expenditures at $90,000 to avoid utilizing his principal assets.

¶ 30 Respondent lives in a townhome in Chicago, which he purchased in 2004. In addition to his Chicago residence, respondent also owns property in Texas, Arizona, and Mexico, 12 to 14 automobiles, and two boats. Respondent has taken S.D.M. to his home in Texas.

¶ 31 Petitioner testified that she graduated from the University of Michigan with a B.A. in psychology in 2007. After graduating, she worked as a producer and reporter for a number of television stations. At the time of the hearing, petitioner performed social media management as

an independent contractor for a financial firm. She is paid $500 per month and has a flexible schedule so that she can care for S.D.M.

¶ 32 Petitioner lived with respondent for a few months in 2013 and became pregnant in August 2013. When the relationship ended in November 2013, petitioner moved to her parents' home in the Sauganash neighborhood.

¶ 33 After S.D.M.'s birth in April 2014, petitioner received $5,000 from Shawn. She did not receive any further money from him until July 2014, after the trial court ordered respondent to pay temporary child support. S.D.M. received speech therapy for approximately one year and behavioral therapy for a few months. He continues to receive occupational therapy.

¶ 34 In May 2014, petitioner and respondent discussed where she and S.D.M. should live. Petitioner wanted to find a home with a backyard in a safe neighborhood, with good schools and activities nearby. She thought that the Sauganash neighborhood would be best for S.D.M. In response, respondent contacted a realtor, who sent petitioner information about two-bedroom apartments in the south Loop. Petitioner later agreed with respondent that she should remain at her parents' home until she could save enough money to put a down payment on a house.

¶ 35 Since February 2015, petitioner and S.D.M. have lived in a leased home on North Kerbs Avenue in Sauganash. Petitioner has extended family that lives in the neighborhood, including eight cousins who are about the same age as S.D.M. At the time of the hearing, petitioner had purchased an older home on North Kilbourn Avenue in Sauganash for $387,000, which is one block from her parents' home. While living with her parents, she saved the 10% down payment for the house in large part from child support payments. Petitioner believes the total cost of the mortgage and a construction loan to cover the costs of the planned renovations of the 1,100 square foot home would be $639,000, and the monthly payment would be approximately $4,500.

¶ 36 Petitioner believes that S.D.M. is aware that the standard of living he has with his mother is different from that which he has with his father. For example, S.D.M. associates boats, certain cars, airplanes, and large houses with his father. Petitioner does not believe that her home should be the same as respondent's, but believes that S.D.M. should be comfortable with both parents and know that both parents love him.

¶ 37 Petitioner testified as to her updated financial affidavit dated October 18, 2016, (petitioner's exhibit number 12), and explained how she determined the anticipated monthly expenses relating to the North Kilbourn house ($5,455.66), and the costs of the intended renovations to that property ($250,000 to $300,000), the new appliances (purchased for $35,000) and furniture for the home. Her current monthly expenses on the Kerbs Avenue home are $5,169.58, and her total monthly expenses are between $19,811.28 and $19,961.28.

¶ 38 Petitioner testified as to her 2014 and 2015 federal individual income tax returns. She had an income of $20,702 in 2015.

¶ 39 Mr. Levin testified that he has been a lawyer for 43 years and has been representing children since 1978. Mr. Levin evaluated the best interests of S.D.M. and not the lifestyle. He believed "it was a great idea" that petitioner had purchased a home in the Sauganash neighborhood near her parents. The neighborhood has an excellent public school system, and provides petitioner with security and "a stronger ability to develop a home" for S.D.M. and herself. Mr. Levin believed that petitioner has made good decisions for S.D.M., and that "she's done a very good job."

¶ 40 At the hearing, petitioner introduced the following exhibits, which pertained to financial issues, into evidence: (1) petitioner's exhibit number 2 (a statement prepared for respondent showing his net worth, as of October 24, 2016, to be $65,489,040); (2) petitioner's exhibit

number 3 (respondent's sworn Rule 13.3.1 financial disclosure statement, showing his post-retirement 2015 gross income to have been $1,193,000, an additional $1.5 million in salary from the Cleveland Cavaliers, investment income of $120,000, $20,000 for an appearance in China, year-to-date income, as of January 31, 2016, of $140,000, a monthly gross income of $130,000, a monthly net income of $91,000, claimed monthly expenses estimated to be $84,934, and "liquid assets" in excess of $35 million); (3) petitioner's exhibit number 4 (respondent's 2015 federal individual income tax return showing that he had had a gross income of $1,921,066 in 2015); (4) petitioner's group exhibit number 5 (photographs of respondent's four-acre lakefront property and home outside of Dallas where he is building an approximately 20,000 square foot house for a total cost of about $8.4 million); and (5) petitioner's group exhibit number 6 (respondent's securities portfolio statements showing a balance of $42,148,019.15 in September 2016).

¶ 41 At the hearing's conclusion, on November 18, 2016, the parties' counsel gave their respective closing arguments. In petitioner's closing argument, she requested that monthly support for S.D.M. be set at $14,500 per month ($11,000 in child support, plus contributions to certain expenses). Respondent contended that the maximum child support should be $6,500 per month.

¶ 42 On January 30, 2017, the circuit court entered a memorandum judgment which, in pertinent part, awarded petitioner monthly child support of $14,000 from respondent. The court, in determining the amount of child support, considered whether there should be a deviation from the relevant guideline of 20% of the supporting party's net income, under section 505 of the Illinois Marriage and Dissolution of Marriage Act that was then in effect (hereinafter, IMDMA) (750 ILCS 5/505 (West 2016)). The court stated that the parties agreed that Shawn's current after-tax income was $90,000 per month and, under the 20% guideline, child support would be

$18,000 per month. The court believed that awarding the guideline amount would be within its discretion, but recognized that both parents sought a downward deviation. The court concluded that child support of $14,000 would meet the needs of S.D.M., be in his best interests, and provide a "lifestyle that the child would have enjoyed [had] the parties been together."

¶ 43 On appeal, respondent argues that the circuit court erred by awarding petitioner $14,000 per month in child support. The circuit court's award of child support is within its sound discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Moorthy and Arjuna*, 2015 IL App (1st) 132077, ¶ 41. An abuse of discretion occurs where no reasonable person would take the court's view. *Id*. Further, we allow the court's factual conclusions to stand unless they are against the manifest weight of the evidence, meaning that the opposite conclusion is apparent or the findings are unreasonable, arbitrary, and not based on the evidence. *Id*.

¶ 44 The Parentage Act provides that "[i]n determining the amount of the child support award, the court shall use the guidelines and standards set forth in Sections 505 and 505.2 of the [IMDMA]." 750 ILCS 46/801(a) (West 2016). In turn, section 505 of the IMDMA provides that where there is one child, the minimum amount of child support that the trial court should order is 20% of the noncustodial parent's income. 750 ILCS 5/505(a)(West 2016). Section 505 further provides:

> "The *** guidelines shall be applied in each case unless the court finds that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, one or more of the following relevant factors:
>
> (a) the financial resources and needs of the child;

(b) the financial resources and needs of the parents;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical, mental, and emotional needs of the child; and

(d-5) the educational needs of the child." *Id.*

¶ 45 "When dealing with a parent who has a high income, the trial court must balance the concerns that (1) a child support award should not be a windfall and (2) the standard of living that the children would have enjoyed absent the dissolution should be maintained. [Citation.] In light of the standard of living that the children would have enjoyed, child support is not to be based solely upon their shown needs." *In re Marriage of Hill*, 2015 IL App (2d) 140345, ¶ 30. Stated otherwise, "[a] child is not expected to have to live at a minimal level of comfort while the noncustodial parent is living a life of luxury." *In re Keon C.*, 344 Ill. App. 3d 1137, 1142 (2003).

¶ 46 In the present case, the circuit court, with petitioner's concurrence, departed *downward* from the guideline support of 20% for S.D.M., and awarded monthly support of $14,000, which represents about 15½ % of respondent's monthly income of $90,000. As the court noted, the guideline support would have been about $18,000 per month.

¶ 47 In awarding petitioner $14,000 per month in child support, the circuit court found that respondent "lives a very rarified life style." The memorandum judgment summarized that lifestyle as follows:

"He travels internationally extensively, has many exotic cars, has several homes and properties, a townhome in Chicago worth more than 1 million dollars, a home in Arizona, a current home in Dallas and he is in the process of constructing another home

> in Texas. [S.D.M.] has traveled to Dallas and resided in [respondent's] current Texas home which according to [respondent] is valued at 6.5 to 7 million dollars and he will visit [respondent's] new home which is being constructed and it is intended that the home will be between 10,000 and 20,000 square feet [and] have a pool, basketball court, bowling alley and is situated on four acres of lake front property. The land was purchased for 2.4 million dollars and [respondent] has spent thus far about 3 million dollars on the home construction, which is not complete. When finished it is estimated that the home will have a value in excess of 10 million dollars. [S.D.M.] will reside, at times, with his father in the new residence once it is completed. [Respondent's] many automobiles include a Porsche, a Hummer and a 2014 California Ferrari valued at about $200,000. [Respondent] has four cars in Chicago and eight to nine cars in Texas. Additionally[,] he has two boats and two jet skis. The value of his motor vehicle[s] are about $472,181 plus his boats of $42,250. His personal assets including only automobiles, boats[,] fine art and jewelry total $1,020,662."

¶ 48 All of these facts recited in the memorandum judgment were taken directly from respondent's testimony and exhibits and, thus, were not against the manifest weight of the evidence. The court's finding that respondent lives in a "very rarified life style" is also supported by respondent's self-declared net worth (as of October 2016) of $65,489,040 of which $35 million is in "liquid assets," and by the exhibits indicating that at the date of the hearing, respondent had a monthly net income of $91,000.

¶ 49 The circuit court found that petitioner has a much more modest lifestyle than respondent. The court's finding was not against the manifest weight of the evidence, where her October 18,

2016, financial affidavit disclosed that she had a net monthly income of $2,688 and total monthly expenses of $19,811.28, leaving her with a monthly debt of $17,123.28.

¶ 50 The circuit court noted that petitioner had purchased a home near her parents in the Sauganash neighborhood, and needs about $250,000 to complete the remodeling and add a playroom for S.D.M. The court determined that "[w]hat she is proposing for [S.D.M.] is appropriate, not particularly luxurious, and well thought out given the vast wealth of [respondent]." The court's finding was supported by Mr. Levin's testimony regarding the appropriateness of petitioner purchasing the Sauganash home and was not against the manifest weight of the evidence.

¶ 51 The court concluded from all the evidence at the hearing that a support award of $14,000 per month was affordable for respondent given his vast wealth, and that the award was in the best interest of S.D.M. as it was consistent with S.D.M.'s needs and with the lifestyle he would have enjoyed had his parents remained together. We find no abuse of discretion.

¶ 52 For the foregoing reasons, we affirm the circuit court.

¶ 53 Affirmed.