2018 IL App (2d) 170305-U
No. 2-17-0305
Order filed March 30, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE of A.A.,	)	Appeal from the Circuit Court
	)	of Du Page County.
a minor.	)	
	)	
	)	No. 15-F-0721
	)	
	)	Honorable
(Peter A., Petitioner-Appellant v.	)	Thomas A. Else,
Genevieve H., Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner failed to timely appeal from the agreed allocation judgment; conversely, while petitioner did timely appeal from child-support judgment, his challenges lacked merit.

¶ 2 Petitioner, Peter A., appeals from orders of the trial court concerning the parties' daughter, A.A. The first order Peter challenges is an agreed joint parenting order, which allocated the parties equal decision-making responsibility and parenting time. The second order Peter challenges set the amount of his child support after a trial. As we explain, we lack jurisdiction to review the first order; the second order, however, is affirmed.

¶ 3 In June 2014, Genevieve H. gave birth to a daughter, the minor A.A; the following day, Peter signed a voluntary acknowledgement of paternity. After A.A.'s birth, the parties lived together in Naperville for roughly a year. In October 2015 however, the parties separated; Genevieve and A.A. left the Naperville residence and moved in with Genevieve's parents in Allendale, Michigan. Thereafter, Peter filed a complaint to "Establish Paternity" and for a determination of parental responsibilities and parenting time. Peter also sought and received an emergency order of protection. In response, Genevieve filed an emergency petition which sought temporary custody, exclusive possession of the Naperville residence, and for supervised visitation for Peter and A.A.

¶ 4 In November 2015, an interim agreed order was entered which (1) vacated Peter's emergency order of protection, (2) temporarily allocated primary parental responsibilities to Genevieve (*i.e.*, for A.A. to live with Genevieve in Michigan), and (3) temporarily allocated parenting time to Peter for visitation in Illinois. The court also appointed a guardian *ad litem* for the minor. The remaining matters were taken under advisement.

¶ 5 After the interim agreed order was entered, Genevieve filed a petition seeking child support. The petition alleged that Genevieve was unemployed while Peter was gainfully employed as a corporate recruiter and that he had failed to contribute to A.A.'s childcare costs and medical expenses since the parties' separation. Peter subsequently filed a counter-petition seeking support from Genevieve. These matters, too, were taken under advisement.

¶ 6 On June 21, 2016, the court issued orders compelling the parties to exchange financial information and set a trial date for September 14, 2016. On June 29, 2016, Peter's attorney sought leave to withdraw. On July 28, 2016, the court granted Peter's counsel leave to withdraw; however, the September 14th trial date remained extant.

¶ 7 On September 7, 2016, attorney Alia M. Caravelli entered her appearance on behalf of Peter. The September 14th trial date was stricken and continued to October 18, 2016. On October 7, 2016, however, Peter entered his *pro se* appearance; then, on October 11, 2016, attorney Caravelli filed a motion seeking leave to withdraw as Peter's counsel. An order dated October 14, 2016, indicates that Peter "agree[d]" to attorney Caravelli's withdrawal in open court, and further noted that Peter "has filed an [a]ppearance on his own behalf." Although there is no transcript from this court date, the court's order states that the October 18th trial date "shall stand."

¶ 8 On October 18, 2016, instead of proceeding to trial, the parties presented a partial judgment and joint parenting agreement to the court. The court inquired about Peter's self-representation and the partial agreement as follows:

> "THE COURT: Ok. And Mr. [A.], I understand that you are representing yourself *pro se*. Your lawyer withdrew last Friday. Nonetheless, this is what you want to do, right?
>
> MR. [A.]: Yes, that's correct."

On the assumption that the joint parenting agreement would be entered, the parties agreed that the only remaining issues for trial included child support as well as A.A.'s medical expenses and daycare costs. There was also a pending fee petition from one of Genevieve's prior attorneys. In addition, Genevieve's trial counsel gave notice that, based upon Peter's noncompliance with multiple discovery requests, Genevieve would be asking the court to impute income to Peter at trial. That discussion went as follows:

> "THE COURT: How complex are the financial issues?
>
> MS. NAJERA (Genevieve's counsel): I don't think very complex. The only thing is that we are asking for an imputation of [his] income based on history and based on some bank statements.

MR. [A.]: I think that might be a little bit of an understatement. We had an issue with a 2014 tax return apparently, and now the IRS is involved. I just found that out myself a couple [of] days ago.

THE COURT: How is the IRS involved? What does that mean? Are they auditing you?

MR. [A.]: Well, no. In 2014, Genevieve and I had filed a joint return, and then I went to file my taxes in 2015 and it was held back because Genevieve had then later filed an independent return and they want to know how that happened.

THE COURT: How did you manage to file a joint return? Were you ever married?

MR. [A.]: No but we were living together and she was using my health insurance and it fell under the –

THE COURT: Were you domestic partners?

MR. [A.]: No.

THE COURT: Well, how did you -- well, okay, it's none of my business I guess how you filed a joint return. Do whatever you want. Anyway, the issue is what is your income. So do we know what his income is?

MS. NAJERA: I'm asking you to impute it based on history.

THE COURT: Well, this is going to take a while.

MR. [A.]: A status date would be great, and then the trial date so that we make sure we have everything that we need for it.

THE COURT: I'm just going to give you a trial date. We are just going to storm right ahead and do a trial date. We are going to do [the pending] fee petition at the same time. How about December 15 at 1:30?

MR. [A.]: *That should work fine, your Honor*." (Emphasis added.)

After the colloquy, the joint parenting agreement was entered, which allocated equal decision-making responsibility and equal parenting time—in alternating weeks—to both parties. After some additional discussion of the fee petition, the court reiterated that the trial date on the remaining support issues would be December 15, 2016, at 1:30 p.m., to which Peter replied, "Thank you."

¶ 9 On December 14, 2016, the day before trial was scheduled, Peter filed an "Emergency Motion to Continue." The motion generally stated that Peter had only recently received records from Genevieve's bank and that "[a]s of today," he "spent just over $46,000.00 in legal fees and expenses related to this case and have borrowed close to $55,000.00 for the same." On December 15, 2016, the parties appeared in court for trial. After some preliminary discussions, the following conversation occurred:

> "MS. NAJERA: Okay. I feel I need to tell the Court, Mr. [A.] sent me an emergency motion at 4:27 [p.m.] yesterday. I don't know that it was filed, but he is asking for a continuance, which we are objecting to. It was an emergency motion.
>
> THE COURT: Okay. No. 1, you didn't give me a copy of your emergency motion. No. 1.
>
> No. 2, even if you had given me a copy of your emergency motion, you have to give two days' notice on an emergency motion, which you didn't do. [See 18th Judicial Circuit Local Rule 6.08.]
>
> No. 3, I haven't seen the emergency motion; but does it contain a Rule 15 affidavit [(see 18th Judicial Circuit Local Rule 15.10)] setting forth why it's an emergency?
>
> MS. NAJERA: No, Your Honor.
>
> THE COURT: *** That's the third reason. Emergency motion denied."

With that, the parties proceeded to trial.

¶ 10 At trial, Genevieve explained that she had since moved from her parents' home in Michigan to Lisle, Illinois, and that she obtained a marketing job earning approximately $40,000 in salary. During the direct examination of Genevieve, Peter stipulated to the admission of his comprehensive financial statement from June 2016. Genevieve testified that daycare expenses for A.A. were $268 per month, and that there were approximately $7,800 in medical bills from A.A.'s birth and post-natal care, which she had paid. (Genevieve provided exact figures, but we have rounded for the reader's convenience. We also note that, with the exception of the cover sheet for Peter's financial statement, the trial exhibits—including the parties' complete financial statements and supporting documents—were *not* included in the record on appeal.)

¶ 11 Peter testified that he "run[s] a business consulting company primarily focusing on staffing." According to Peter, his June 2016 comprehensive financial statement showed that his expenses were $5,217 per month. Peter claimed that he had an "amended one," "along with [his] bank statements," but that he had not tendered this information to opposing counsel or to the court. According to Peter, he "never *** filled out" a "full one[.]" After Genevieve rested, Peter testified on his own behalf. In response to the court's questions about his financial statement, Peter stated that he had exaggerated his monthly expenses on the statement he submitted because he was trying to cast himself in "a better light" and that he "never thought" he would be "defending" his financial statement before the court. Peter also asserted that he had custody of his daughter "most of the time" and that he was "taking care of her daily [expenses]." Peter further stated that he believed A.A.'s child support should be offset by his attorney fees, GAL fees, and money he had been asked to repay the State (allegedly for the wrongful receipt of unemployment benefits).

¶ 12 When it was pointed out by the court that Peter and Genevieve had equal parenting time (to counter Peter's assertion that he paid for "most" of A.A.'s expenses), Peter was essentially nonresponsive. Instead, Peter stated that he had only agreed to the joint parenting arrangement "because [he] just wanted this thing to be over with" and that "[his] expenses with diapers and the food and so forth" were accurate because he was "in fact, providing that care to [A.A.] that often." Peter then testified that he had incurred $8,000 in uncovered medical expenses for A.A. since he filled out his financial statement. When the trial court expressed alarm and inquired into the child's welfare, noting that $8,000 in uncovered medical expenses for a child would indicate a serious matter, Peter was similarly nonresponsive. Peter did state that A.A. "bumped her head" at daycare, "went to the emergency room" and "ended up getting stitches ***." When the court inquired further, Peter stated that A.A. was covered under his health insurance and Genevieve's insurance; the court noted that Peter had not tendered any of these alleged medical bills to Genevieve. Peter then noted that he had filed a counter-petition for support, and stated that he felt he was entitled to receive money from Genevieve. Then, Peter abruptly stated that he was "done" testifying on his own behalf. Genevieve's counsel declined to cross-examine Peter and Peter rested his case from the witness stand.

¶ 13 Based on Peter's financial statement and additional evidence submitted to the court, the court imputed that Peter's income was $53,299, and that his net income for child support purposes was $35,712. The court set Peter's child support payments at $600 per month, ordered Peter to continue to contribute half of A.A.'s daycare expenses, to maintain A.A. on his health insurance, and that any uncovered medical expenses or extracurricular activities would be split fifty-fifty. This award was made retroactive. The court also ordered Peter to pay $120 per month until A.A.'s prior medical bills were paid in full, and denied Peter's counter-petition for support.

The trial court noted that it would be inclined to award Genevieve attorney fees, finding that Peter had "prolonged unreasonably" the resolution of this case; however, Genevieve's counsel (a Du Page Legal Aid attorney) declined to request fees.

¶ 14 Peter subsequently filed a motion to vacate the support order. After a hearing, the court denied the motion. Peter then filed a timely notice of appeal on April 20, 2017. In his notice of appeal, Peter claimed that he would ask this court to reverse the December 15, 2016, child-support judgment as well as agreed parenting judgment entered on October 18, 2016.

¶ 15 Because of the nature of case described in Peter's notice of appeal, this was treated as an accelerated matter under Illinois Supreme Court Rule 311, and under Rule 311(a)(5), we are required to issue our disposition within 150 days of the filing of the notice of appeal. That time has come and gone. Despite having designated this case as an accelerated appeal, we note that Peter serially failed to comply with this court's scheduling orders, as well as local and Supreme Court rules governing the form and content of his pleadings. As a *pro se* litigant, we extended Peter several courtesies—including extensions of time and leave to file pleadings and briefs *instanter*—largely because Peter told us that he had difficulty submitting the record on appeal, accessing the record electronically, and electronically filing motions and briefs. While we suspect these obstacles were not as significant as Peter may have claimed (he was able to electronically file many documents without any problem at all, including his reply brief) we could not, without more, dismiss this appeal. Instead, however, we were forced to wait an unreasonably long time to decide this case as briefing was not completed until March 14, 2018, nearly eleven months after Peter's notice of appeal was filed. We do not take the demands of Rule 311 lightly; however, under the circumstances, we determine that there was "good cause" to

relax the rule's requirements in favor of a complete resolution of this case on the merits, for the parties, as well as for A.A.

¶ 16 We first address Peter's challenge to the joint parenting agreement. According to Peter, the trial court should not have entered the agreed order—both because of the order's "ambiguous language" and the fact that Peter's attorney, Alia Caravelli, was granted leave to withdraw four days before the agreement was entered. The bases for Peter's challenge, however, are irrelevant. The agreed allocation judgment was entered on October 18, 2016. The judgment was a final, independently appealable order under Supreme Court Rule 304(b)(6), which must be appealed, if at all, within 30 days, or within 30 days after the entry of the order disposing of the last pending motion directed against that judgment. See *In re Marriage of Harris*, 2015 IL App (2d) 140616, ¶ 14; see also *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 10. Here, Peter never filed a post-judgment motion directed at the October 18, 2016, allocation judgment and did not file a timely notice of appeal within 30 days. Instead, Peter's notice of appeal on April 20, 2017, was timely as to the denial of his motion to reconsider the support judgment; but that notice was also 154 days too late to challenge the allocation judgment. Were this issue before us, we might point out that, particularly in the context of an agreed judgment, it would offend all notions of fairness to allow a party to request to proceed in one manner in the trial court and later contend on appeal that the course of action was in error. See generally *People v. Harding*, 2012 IL App (2d) 101011, ¶ 17. Nevertheless, because we lack jurisdiction to review the allocation judgment, we will not address Peter's arguments concerning that judgment.

¶ 17 We briefly turn then to Peter's challenges to the child-support judgment, which was the only judgment effectively before us on Peter's notice of appeal. We find each of Peter's arguments for reversal of this judgment lacks merit. Peter's first contention is that the trial court

abused its discretion when it allowed attorney Caravelli to withdraw on October 14, 2016. Ordinarily, pursuant to Illinois Supreme Court Rule 13(c)(2), an attorney's notice of withdrawal must inform a party that he or she has 21 days to obtain substitute counsel or file his or her own appearance. See also Illinois Rule of Professional Conduct 1.16(b)(1). Attorney Caravelli's motion to withdraw, filed on October 11, 2016, did not contain the 21-day notice required by Rule 13(c)(2); however, it did not have to. On October 7, 2016, Peter entered his *pro se* appearance; thus, four days before attorney Caravelli sought to withdraw, and seven days before she was given leave to withdraw, Peter had already informed the court that he would be representing himself. Accordingly, there was no violation of Rule 13 here.

¶ 18 Moreover, we note that an order dated October 14, 2016, indicated that Peter "agree[d]" to attorney Caravelli's withdrawal in open court, and further stated that Peter "ha[d] filed an [a]ppearance on his own behalf." In his appellate brief, Peter states that this order "is simply false." While there is no report of proceedings from the October 14th court date, we will not, on party's mere say so, overlook the clear pronouncements of a signed court order. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 394 (1984). In addition, in the transcribed proceedings from October 18, 2016, Peter stated that he indeed wished to represent himself; he stated that he agreed to the entry of the joint parenting order, *and* he stated that he agreed to the trial date of December 15, 2016. In sum, Peter had more than sufficient notice of the critical events in this case. Under the circumstances, there was no violation of Rule 13 and there was absolutely no prejudice to Peter when the trial court allowed attorney Caravelli leave to withdraw. See *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶¶ 19-25 (explaining that adequate notice is all Rule 13 requires).

¶ 19 Peter's next contention is that the trial court erred in denying his "emergency" motion to continue the December 15 trial date. As the trial court noted, Peter's motion failed to comply

with the service and notice requirements of the circuit's local rules. Equally important, Peter has never explained how there was "sufficient cause" for a continuance under Supreme Court Rule 231. Accordingly, we determine that the trial court did not abuse its discretion in denying Peter's motion for a continuance. See *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 36.

¶ 20 Peter's final contention is that the trial court erred when it ordered him to pay child support (1) at all, and (2) based on the court's calculation of his net income. As to his first point, Peter maintains that he is the "custodial parent" or in the alternative, because the parties have equal parenting time, that he should not have to pay any child support to Genevieve. In this regard, Peter overlooks the plain language of the relevant support statutes, which require the court to consider the resources of *both* parents, and not just the "custodial" parent, when determining child support. See 750 ILCS 5/505 (West 2016); 750 ILCS 46/801 (West 2016).

¶ 21 With respect to the trial court's calculations, we note that net income is defined as the total of all income from all sources minus certain deductions. 750 ILCS 5/505(a)(3) (West 2016). In Illinois, trial courts have the authority and discretion to impute income to a noncustodial parent for purposes of determining child support. *In re Marriage of Adams,* 348 Ill. App. 3d 340, 344 (2004).

¶ 22 Although Peter claims the trial court erred in calculating his net income, Peter does not tell us *how* the trial court erred in its calculations, if at all. Accordingly, the argument is forfeited as Peter has failed to identify any specific defect in the order. *Cf.* Ill. S. Ct. R. 341(h)(7) (explaining that points not argued and supported with citation to authority are waived). In addition, we note that because we lack the exhibits that were before the trial court, we have no meaningful basis on which to review the trial court's determination of Peter's income. As mentioned before, we do not have Peter's comprehensive financial statement, which was

admitted into evidence; only the cover page of the statement appears in the secured record. As the appellant, it was Peter's responsibility to tender those exhibits to this court. See *Foutch*, 99 Ill. 2d at 393. In the absence of the trial evidence, we must presume that the trial court's net-income calculation "was in conformity with the law and was properly supported by evidence." *Id*. Moreover, in the absence of any developed argument or assignment of error, we have no reason to scrutinize, let alone second guess, the trial court's judgment. See generally *People v. Givens*, 237 Ill. 2d 311, 323 (2010) ("while this court will examine the record for the purpose of affirming a judgment it will not do so for the purpose of reversing it") (internal quotation marks omitted).

¶ 23 In sum, we cannot address Peter's challenge to the agreed allocation judgment, as we lack jurisdiction to do so. However, with respect to the child-support order, the judgment of the Circuit Court of Du Page County is affirmed.

¶ 24 Affirmed.