2018 IL App (3d) 170021-U

Order filed January 3, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
GERI T. MORGAN, n/k/a GERI T. FOX,	)	Will County, Illinois,
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0021
	)	Circuit No. 14-D-2051
and	)	
	)	
MICHAEL S. MORGAN,	)	Honorable
	)	David Garcia,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not have authority to order the respondent to pay retroactive child support when the petitioner never filed a motion to modify child support.

¶ 2 The respondent, Michael S. Morgan, appeals from the circuit court's judgment ordering him to pay the petitioner, Geri T. Morgan, now known as Geri T. Fox, retroactive child support dating back to the filing of her motion to set child support. On appeal, Michael argues that the court abused its discretion because Geri never filed a motion to modify child support.

¶ 3 FACTS

¶ 4 We only provide a limited background in this case, as the only issue on appeal pertains to retroactive child support.

¶ 5 The parties were married in February of 1995. On December 9, 2014, Geri filed a petition for dissolution of marriage. At the time the petition was filed, the parties had three children of ages 7, 12, and 14 years old.

¶ 6 On November 20, 2015, the court entered a judgment for dissolution of marriage. The parties entered into a Martial Settlement Agreement (Agreement) that settled all of the disputes between them. The Agreement provided, that during the weeks Michael received unemployment compensation, he shall pay 32% of that income to Geri for child support. However, because Michael was neither employed nor receiving unemployment compensation when the Agreement was entered, the court did not set child support.

¶ 7 On March 22, 2016, Geri filed a motion to set child support, arguing that she believed Michael was employed or otherwise receiving income and able to provide child support.

¶ 8 On April 6, 2016, Michael responded to Geri's motion to set child support. Michael denied being employed but admitted that he was receiving unemployment compensation. Michael stated, that upon receipt of his first payment, his counsel notified Geri's counsel of that payment and he voluntarily began paying her $167 per week for child support. Michael requested that the court order him to pay 32% of his income for child support.

¶ 9 On April 11, 2016, the court entered an agreed order, wherein Michael was ordered to pay 32% of his income to Geri. The court's order stated that Michael was not present at the hearing because he found employment.

¶ 10 On December 6, 2016, the issue of retroactive child support for 2016 was brought to the

court's attention for the first time. Geri argued the court should order Michael to pay child support retroactive to the filing date of her March 2016 motion to set child support because she intended the 32% figure to represent 32% of Michael's average income over the past three years—not 32% of his current income—since his income at that time was significantly less than previous years. (We note that the agreed order merely stated Michael was to pay "32% of any income" and neither the court's April 2016 order nor the parties' November 2015 Agreement mention his three-year-average income.) Michael argued that Geri was not entitled to retroactive child support dating back to the filing of her March 2016 motion to set child support because (1) the court's April 2016 order ordered him to pay 32% of any income and he paid 32% of his income since that order was entered and (2) her motion simply requested to set child support—it did not request arrearage or retroactivity.

¶ 11 On December 8, 2016, the court entered a written order. The court ordered Michael to pay Geri $3300 for retroactive child support, dating back to March 22, 2016, the date Geri filed her motion to set child support. Michael appeals.

¶ 12 ANALYSIS

¶ 13 We must first address Michael's request for this court to strike Geri's *pro se* brief. Her brief contains a background section, citations to the record, an explanation of the court's decision that Michael appeals, and a short conclusion stating the precise relief sought. However, her brief ends there. Her brief fails to comply with Illinois Supreme Court Rule 341(i) (eff. Jan. 1, 2016) because it does not contain points and authorities and an argument section. In Michael's reply brief, he argues that this court must strike her brief for failure to comply with Rule 341(i).

¶ 14 It is well settled that the Illinois Supreme Court Rules apply equally to both represented and *pro se* litigants. See *Multiut Corp. v. Draiman*, 359 Ill. App. 3d 527, 534 (2005). "While

reviewing courts are open to all persons who seek redress of their grievances, a party's decision to appear *pro se* does not relieve that party from adhering as nearly as possible to the requirements of the rules of practice enunciated by our supreme court." *McCutcheon v. Chicago Principals Ass'n*, 159 Ill. App. 3d 955, 960 (1987). Because Geri has failed to comply with these procedural requirements, we grant Michael's request, and we strike her brief. However, since the record in this case is simple and the claimed error can easily be decided without the aid of an appellee's brief, we will proceed with our review on the merits. See *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008).

¶ 15 Michael argues that the circuit court *abused its discretion* when it ordered him to pay retroactive child support because Geri never filed a motion to modify child support. It is true that a trial court's decision regarding the retroactivity of child support is usually reviewed for an abuse of discretion. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 13. However, when the issue presented is one of law, and the facts and the credibility of witnesses are not an issue, our review is *de novo*. *Id.* In this case, the issue presented for our review is whether Geri was required to file a motion to modify child support to give the court authority to order Michael to pay retroactive child support. This is a question of law that involves the interpretation of a statute and application of the statute to undisputed facts. Thus, our review is *de novo*. See *id.*

¶ 16 A trial court is authorized to order retroactive child support payments pursuant to section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act). *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 33. Section 510(a) of the Dissolution Act states, "the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification." 750 ILCS 5/510(a) (West 2016). Thus, under the plain language of the statute, the

filing of the motion for modification is the earliest date to which retroactive modification applies. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 18; see *In re Marriage of Henry*, 156 Ill. 2d 541, 544 (1993) (child support is entirely statutory in origin and nature and the legislature has made it clear, that without a motion to modify child support, a circuit court has no authority to retroactively modify a child support order). This procedure is in place to put the respondent on notice prior to the court ordering him to pay increased child support. *In re Marriage of Pettifer*, 304 Ill. App. 3d 326, 328 (1999).

¶ 17 In this case, Geri never filed a motion to modify child support. Nonetheless, the court ordered Michael to pay retroactive child support dating back to the filing of her motion to set child support, wherein she argued that she believed Michael was employed or otherwise receiving income and able to provide child support. This order was made in error because a court does not have the authority to order a party to pay retroactive child support if a motion to modify child support was never filed. See 750 ILCS 5/510(a) (West 2016); see also *Henry*, 156 Ill. 2d at 544. In fact, it is unclear from the record how the issue of retroactive child support was brought to the court's attention on December 6, 2016. Regardless, even if Geri filed a motion to modify child support, the court erred when it ordered retroactive child support dating back to the filing of the motion to set child support because the filing of the motion for modification is the earliest date to which retroactive modification applies. See *Petersen*, 2011 IL 110984, ¶ 18.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we vacate the judgment of the circuit court of Will County ordering Michael to pay $3300 for retroactive child support because it did not have authority to do so under section 510(a) of the Dissolution Act. We otherwise affirm the court's judgment.

¶ 20 Affirmed in part and vacated in part.