2018 IL App (3d) 170352-U

Order filed December 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re MARRIAGE OF MARIANNE REINECKE f/k/a CAMERON,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Petitioner-Appellant,	)	
v.	)	Appeal No. 3-17-0352 Circuit No. 01-D-87
RICHARD CAMERON,	)	Honorable Robert P. Brumund,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when determining the amount of child support arrearage. The trial court erred by failing to calculate and assess interest owed on the arrearage amount awarded by the court.

¶ 2 The trial court conducted a hearing to determine the arrearage amount respondent, Richard Cameron, owed to petitioner, Marianne Reinecke, for past due child support payments. Petitioner appeals the trial court's order fixing the arrearage amount without first making any

factual findings or calculating the interest owed on the fixed arrearage amount. The trial court's order is affirmed in part, reversed in part, and remanded with directions.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent were married on October 2, 1998. Four children were born during the marriage. The trial court entered a judgment of dissolution dated March 15, 2001. As part of the dissolution process, the parties reached marital settlement and joint parenting agreements. These agreements required respondent to pay $1000 per month in child support directly to petitioner beginning on March 15, 2001, and continuing until the children were eighteen years-of-age or graduated high school.

¶ 5 The marital settlement and joint parenting agreements do not address whether the cost for the children's extracurricular activities should be equally shared by both parents. Respondent testified that there was not a formal agreement to split the expenses for the children's extracurricular activities. Respondent asserted that the parties later verbally agreed certain expenses for extracurricular activities would be split, with respondent's share reducing the amount of child support. Petitioner's brief states "the parties agreed that they would split the fees for school and extracurricular activities, but disagreed about whether Respondent's payments counted as child support payments."

¶ 6 It is undisputed that respondent made many child support payments to petitioner after 2001, but eventually fell behind on his child support obligations. It is also undisputed that neither party kept detailed child support records.

¶ 7 In February of 2012, petitioner requested that the Will County State's Attorney assist petitioner in determining and then collecting respondent's past due child support payments. On March 1, 2012, petitioner filed a motion to determine the child support arrearage.

¶ 8 On February 6, 2013, the trial court ordered, by agreement of the parties, respondent's child support obligation to be reduced, retroactively as of May 21, 2012, to $958 per month. The trial court also issued an income withholding order for support, requiring respondent to pay the $958 per month to the State Disbursement Unit (SDU). Thereafter, for reasons unrelated to this appeal, the child support enforcement proceedings stalled.

¶ 9 After two years of delay, the trial court conducted a hearing to determine the child support arrearage. On June 25, 2015, the parties stipulated that the respondent's total child support from the 2001 judgment of dissolution was $133,905. Both parties also agreed respondent paid $26,529 to the SDU following the 2013 income withholding order.[1]

¶ 10 For purposes of the 2015 hearing, the parties could not reach an agreement on the sum of money respondent paid as child support directly to petitioner before the payments were routed to the SDU in 2013. Petitioner claimed respondent should be credited for no more than $49,929.50 for direct payments before 2013 and $26,529 to the SDU after 2013. Consequently, after combining the amounts paid from petitioner's perspective, petitioner argued the agreed amount of $133,905 should be reduced by documented payments of $76,458.50 ($49,929.50 plus $26,529), resulting in an arrearage of $57,446.50 ($133,905 minus $76,458.50).

¶ 11 Contrary to petitioner's calculations, respondent asserted his bank records revealed he paid $69,318.67 directly to petitioner. Unlike petitioner's $49,929.50 calculation, this amount purportedly included payments to petitioner and third-parties for the children's extracurricular activities. Again, both sides agreed respondent paid $26,529 to the SDU. Thus, respondent argued the evidence established he paid $95,847.67 ($69,318.67 plus $26,529) since 2001.

[1]In other portions of the briefs, both parties state that $26,971.15 was paid by respondent to the SDU. Petitioner's exhibit E indicates the difference between the two SDU amounts is one $442.15 payment. Because $26,529 was stipulated at trial, and we review the trial court's order based upon that evidence, we will use $26,529 for purposes of our limited calculations. We note, however, that the record indicates respondent actually paid $26,971.15 to the SDU.

¶ 12 In support of his contention, respondent provided bank records documenting the amount paid to petitioner and third-parties for the children's extracurricular activities. According to respondent's records, these expenses included payments by respondent for the children's school expenses, babysitting/daycare service provider, and other miscellaneous expenses for extracurricular activities. Respondent's records included checks that were duplicative, missing, or issued to an unknown or third-party payee.

¶ 13 Petitioner also sought interest on the arrearage pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2014)) (the Act). At the hearing, petitioner attempted to introduce an exhibit showing the interest owed on past due child support from March of 2001 to May of 2015. The trial court had concerns about the accuracy of petitioner's interest calculations, and denied a request to introduce this exhibit as evidence. Therefore, on June 29, 2015, the trial court stated that petitioner failed to prove the interest owed on past due child support payments since 2001. However, the trial court declined to rule on whether petitioner could later seek interest on the trial court's arrearage amount, stating:

> "THE COURT: Well, you sought *** interest on the arrears in your case. You rested. Now, the question you are asking me is whether or not once I establish an amount in arrears *** you would have the ability to come back into the Court and ask for interest on those arrears? I'm not going to rule on that. I am not going to give you a declaratory judgment. I know that you didn't establish any interest in your case, period."

¶ 14 At the close of evidence, the trial court instructed the parties to file post trial memoranda and proposed orders on final arrearage calculations by August 14, 2015. The court schedule set closing arguments for August 21, 2015. On November 3, 2015, following multiple continuances,

the trial court heard closing arguments. The post trial memoranda, referenced at closing arguments, are not contained in the record. At closing arguments before the trial court, petitioner argued for $57,419.91 in arrears, plus interest. Respondent argued for $13,978.72 in arrears without any interest. The matter was taken under advisement.

¶ 15 Nearly one year later, on September 30, 2016, petitioner filed a request for ruling. Nearly five months later, the trial court issued an order on February 8, 2017. The court's order calculated the arrearage amount at $20,819.57 and provided respondent with credit for "sums paid by him during the period following the dissolution until 5/31/15 for extra-curricular activities (not including medical contributions)." The trial court also noted the parties' failure to designate the responsibilities regarding extracurricular activities in the judgment of dissolution.

¶ 16 The trial court denied petitioner's subsequent request for an identification of the specific credits allowed when determining its $20,819.57 arrearage. Petitioner contends the trial court's arrearage was arbitrarily fixed and an abuse of discretion. The court also observed it was unclear how to calculate the proper amount of interest owed on the arrearage.

¶ 17 On March 9, 2017, petitioner filed a motion to reconsider the trial court's order. On May 23, 2017, the trial court denied petitioner's request for reconsideration.

¶ 18 The presiding trial judge, Robert Brumund, is now retired. Petitioner gave timely notice of appeal of the trial court's final February 8, 2017, order, on May 31, 2017.

¶ 19 II. ANALYSIS

¶ 20 On appeal, petitioner contends Judge Robert Brumund arbitrarily fixed the arrearage at $20,819.57. The record documents that the trial court did not reveal the court's calculations and did not include specific findings of fact supporting its conclusion on the amount of arrearage.

Petitioner also asserts the trial court erroneously failed to calculate and award statutory interest on the arrearage of $20,819.57.

¶ 21 Generally, the judicial determination of child support arrearages, as well as the allowance of interest on those arrearages, is reviewed for an abuse of discretion. *In re Marriage of Paredes*, 371 Ill. App. 3d 647, 650 (2007); *Jones v. Meade*, 126 Ill. App. 3d 897, 904 (1984). The trial court abuses its discretion when its decision is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt its view. *People ex rel. Department of Transportation v. Kotara, L.L.C.*, 379 Ill. App. 3d 276, 286 (2008).

¶ 22 By way of review, both sides agreed respondent should have paid $133,905 since 2001. Petitioner agreed respondent paid $49,929.50 to her directly and $26,529 to the SDU for a total of $76,458.50. Respondent argued his bank records documented that he had paid $69,318.67 directly to petitioner and $26,529 to the SDU for a total of $95,847.67. Thus, on appeal, this court is able to determine the parties are approximately $19,389.17 apart in the estimates for direct payments. The absence of the posttrial memorandums in the record prevent any review as to why those arrearage amounts deviate from those stated at closing arguments.

¶ 23 The first issue is whether the trial court was required to state findings of fact supporting its arrearage. The arrearage, established after the trial, was $36,600.34 ($57,419.91 minus $20,819.57) less than the amount sought by petitioner and $6,840.85 ($20,819.57 minus $13,978.72) more than respondent submitted he was obligated to pay petitioner.

¶ 24 In rendering decisions under sections 501 through 515 of the Act, which touch upon and govern situations analogous to the determination of past due child support, the case law provides that a trial court *should* make specific findings of fact or otherwise make clear the factors considered in doing so. *In re Marriage of Los,* 136 Ill. App. 3d 26, 29-30 (1985); See 750 ILCS

5/505(b), (d) (West 2014). However, where the record adequately provides a basis for a review of the trial court's decision, the failure to make specific findings of fact will not be grounds for reversal. *In re Los*, 136 Ill. App. 3d at 30. The logic of this rule applies here, and likely derives from the trial court's role when sitting as trier of fact, where it resolves evidentiary conflicts, observes witnesses, hears testimony, views exhibits, and makes careful and complete findings. See *Jaffe Commercial Finance Co. v. Harris*, 119 Ill. App. 3d 136, 142 (1983).

¶ 25 Our review of the record reveals that the trial court diverged from each party's argument concerning the proper arrearage amount. The trial court's order reflects a conclusion that the parties later agreed to share the expenses for the children's extracurricular activities, and that respondent should receive credit for "sums paid by him during the period following the dissolution until 5/31/15 for extra-curricular activities (not including medical contributions)." What is more, the trial court noted the initial failure to designate responsibilities for the cost of extracurricular activities in the judgment of dissolution. When petitioner requested specificity as to the allowed credits, Judge Brumund referenced his personal notes and consideration of the calculations provided by each party. Neither this, nor declining to make check-by-check findings of fact over a 14-year period, rises to the threshold necessary for an abuse of discretion.

¶ 26 Instead, after carefully reviewing the record, our court was able to conduct independent calculations as to the arrearage owed. Based upon our review and calculations, the trial court clearly concluded respondent was entitled to a significant reduction of the arrearage for documented and recorded expenses for the children's extracurricular activities. This conclusion was reached after sitting as the trier of fact and allowing extensive argument and briefing. Further, the trial court justified its findings by referencing its own notes and calculations, as well as those of the parties. The specific amount, calculated by the court, is detailed down to the last

penny. It does not appear to this court, based on this extensive record, that the trial court arbitrarily picked a number out of thin air.

¶ 27 It is quite clear from the record that Judge Brumund gave the parties every opportunity to provide the trial court with detailed arguments and a precise arrearage amount. Even after the trial, Judge Brumund afforded the parties the opportunity to submit additional posttrial memoranda. It is unfortunate for purposes of this appeal that the memoranda are not contained in the record. However, even in their absence, we cannot say the trial court's determination of the precise amount of arrearage was arbitrary or resulted from an abuse of discretion.

¶ 28 The second issue is whether the trial court erred by denying interest on the $20,819.57 arrearage for unpaid child support from March 2001 to May 2015. We conclude that the trial court did commit error, as interest on past due child support is mandated by the Act to avoid "reward[ing] the respondent for effectively evading his obligation of support." 750 ILCS 5/505(b) (West 2014); *In re Marriage of Thompson*, 357 Ill. App. 3d 854, 858-59 (2005); See also *Illinois Department of Healthcare and Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 487-88 (2011); *Burwell v. Burwell*, 324 Ill. App. 3d 206, 209-10 (2001).[2]

[2]Section 505(b) of the Act provides for the calculation of interest on past due support obligations, stating: "A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, *shall* accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure." 750 ILCS 5/505(b) (West 2014) (Emphasis added.)

¶ 29 As a result, petitioner is entitled to statutory prejudgment interest at the rate mandated by section 12-109 of the Code of Civil Procedure (the Code). See 750 ILCS 5/505(b) (West 2014). Namely, at the end of each month, petitioner is entitled to 1/12th of the current statutory interest rate applied to the unpaid child support balance, as provided in section 2-1303 of the Code. 735 ILCS 5/12-109(b) (West 2014).[3] Once each monthly support judgment is entered, interest is more straightforward and easily calculated. Specifically, Section 2-1303 states the statutory interest rate is 9% per annum from the date of the judgment until satisfied. 735 ILCS 5/2-1303 (West 2014)[4] Section 505(d) of the Act provides guidance pertaining to how judgments in this

[3]Section 12-109(b) of the Code provides the interest rate to be applied to the past due child support, as well as the means for determining the unpaid child support balance at the end of each month, stating: "Every judgment arising by operation of law from a child support order shall bear interest as provided in this subsection. The interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month. The unpaid child support balance at the end of the month is the total amount of child support ordered, excluding the child support that was due for that month to the extent that it was not paid in that month and including judgments for retroactive child support, less all payments received and applied as set forth in this subsection. The accrued interest shall not be included in the unpaid child support balance when calculating interest at the end of the month. The unpaid child support balance as of the end of each month shall be determined by calculating the current monthly child support obligation and applying all payments received for that month, except federal income tax refund intercepts, first to the current monthly child support obligation and then applying any payments in excess of the current monthly child support obligation to the unpaid child support balance owed from previous months. The current monthly child support obligation shall be determined from the document that established the support obligation. Federal income tax refund intercepts and any payments in excess of the current monthly child support obligation shall be applied to the unpaid child support balance. Any payments in excess of the current monthly child support obligation and the unpaid child support balance shall be applied to the accrued interest on the unpaid child support balance. Interest on child support obligations may be collected by any means available under State law for the collection of child support judgments." 735 ILCS 5/12-109(b) (West 2014).

[4]Section 2-1303 of the Code, which provides the current statutory interest rate on past due child support, states: "Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied ***. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment." 735 ILCS 5/2-1303 (West 2014).

context are entered and automatically subject to interest.[5] See 750 ILCS 5/505(d) (West 2014); *In re Marriage of Thompson*, 357 Ill. App. 3d at 860-61.

¶ 30 Ultimately, pursuant to the statutory scheme, petitioner is entitled to 1/12th of 9% on the support obligation that became due and remained unpaid at the end of each month, less exclusions, between March 2001 and May 2015. See 750 ILCS 5/505(b), (d) (West 2014); 735 ILCS 5/12-109(b) (West 2014); 735 ILCS 5/2-1303 (West 2014).

¶ 31 We acknowledge the complexities inherent in the statutory scheme. However, complexities in calculations neither override a petitioner's right to prejudgment interest on past due child support, nor excuse a trial court from engaging in calculations. Instead, upon entry of an arrearage for unpaid child support, that amount "shall bear interest" at the same postjudgment interest rate as other judgments. *Wiszowaty*, 239 Ill. 2d at 487. The difference, as noted above, is that the judgment is entered in accord with section 505(d) and automatically subjected to interest pursuant to the statutory scheme. See 750 ILCS 5/505(b), (d) (West 2014); 735 ILCS 5/12-109(b) (West 2014); 735 ILCS 5/2-1303 (West 2014).

¶ 32 Further, in some cases, trial courts have found it necessary to conduct separate hearings on the total arrearage and interest owed. See *In re Marriage of Thompson*, 357 Ill. App. 3d at 856 (Trial court held separate hearings on the issues of whether interest was owed and the specific amount in interest to be paid); *Burwell*, 324 Ill. App. 3d at 207 (Trial court awarded unpaid child

[5]Section 505(d) states: "Any new or existing support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. Notwithstanding any other State or local law to the contrary, a lien arises by operation of law against the real and personal property of the obligor for each installment of overdue support owed by the obligor." 750 ILCS 5/505 (d) (West 2014).

support accrued over 17 years before holding a hearing on what interest was owed on the arrearage amount).

¶ 33 Consequently, we remand the matter with directions for the trial court to hold a hearing to determine, following the presentation of evidence, the amount of prejudgment interest owed on the $20,819.57 arrearage accumulated from March 2001 to May 2015, per the statutory scheme. See 750 ILCS 5/505(b), (d) (West 2014); 735 ILCS 5/12-109(b) (West 2014); 735 ILCS 5/2-1303 (West 2014). In the absence of an agreement by the parties, the extensive record will aid the parties in reconstructing the basis for Judge Brumund's finding on the amount of the arrearage, as well as the monthly unpaid child support balances on which interest is applied.

¶ 34 III. CONCLUSION

¶ 35 The judgment of the circuit court of Will County is affirmed in part, reversed in part, and remanded with directions.

¶ 36 Affirmed in part, reversed in part, and remanded with directions.