2019 IL App (1st) 180931-U

SIXTH DIVISION
May 24, 2019

No. 1-18-0931

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF TIMOTHY T. CRAWFORD,	)	Appeal from the Circuit Court of Cook County
Petitioner-Appellant,	)	
	)	No. 13 D 1988
and	)	
JULIE CRAWFORD,	)	
	)	Honorable Melissa Durkin,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** We reverse the circuit court's denial of a petition to modify an order of unallocated support, because the court's determination that there was no substantial change in circumstances was against the manifest weight of the evidence. We also vacate the circuit court's finding of indirect civil contempt.

¶ 2 I. BACKGROUND

¶ 3 Timothy and Julie Crawford were married in 1993 and are the parents of four children. In 2013, Timothy filed a petition for dissolution of the marriage. On April 14, 2015, the parties

entered into a martial settlement agreement (MSA), which established Timothy's unallocated support (a combination of child support and maintenance) obligation at $8042 per month, "based upon Timothy earning the gross amount of $250,000 per year from employment and Julie earning the gross amount of $40,000 per year from employment." The MSA also required specific obligations for the children's medical and dental insurance, child care, school expenses, and extracurricular activities. The MSA provided that Timothy's unallocated support obligation was to continue indefinitely, but was reviewable after seven years. The agreement also allowed either party to petition the court for modification or termination of the unallocated support at any time.

¶ 4 In November, 2015, Julie filed a petition for rule to show cause why Timothy should not be held in contempt for failing to pay certain school and extracurricular expenses.[1] Shortly thereafter, Timothy filed a petition to modify his unallocated support obligation. According to his petition, Timothy was terminated from his job at Societe Generale, an investment bank, on December 2, 2015. He received no severance or extension of benefits. He contended that the "loss of his job [was] a substantial change of circumstances necessitating a modification of his child support obligation."

¶ 5 The next month, while the other petitions were still pending, Julie filed a second petition for rule to show cause why Timothy should not be held in contempt. She alleged that Timothy had failed to make any substantial support payments since December 4, 2015, that he had purchased a new SUV, and that he had planned vacations to California and Florida. She also alleged Timothy was receiving unemployment benefits, but had not given any of the unemployment money to her.

---

[1] The parties reached a partial settlement as to these expenses, and they are not the subject of this appeal.

¶ 6 Over the next two years, the parties engaged in protracted discovery and motion practice. In January, 2016, the circuit court ordered Timothy to "make all efforts to seek and obtain gainful full-time employment" and prepare monthly "job diaries." He was also ordered to pay Julie all of the dependent benefits that he received as part of his unemployment compensation. Various other orders throughout this period reiterated the requirement that Timothy prepare job diaries. The court also ordered him to meet with a headhunter.

¶ 7 Starting on December 5, 2017, the court conducted a four-day hearing on Timothy's petition to modify and Julie's petitions for rule to show cause. At the hearing, Timothy testified that he has a bachelor's degree from Lewis University and an MBA from the University of Chicago, Booth School of Business. He also holds several licenses related to securities and investment banking. His work history included a two-year stint as President/CEO of an investment firm, earning $250,000 per year; time as a director for another firm, earning the same pay; and time as an executive director at yet another firm, earning $125,000 per year.

¶ 8 He testified that at the time he entered the MSA, his base salary at Societe Generale had been $200,000 per year, with a possible $50,000 performance-based bonus. He further testified that on December 2, 2015, he was fired from his job at Societe Generale for not meeting business objectives. The very next day, he contacted his attorney about petitioning for a reduction of his support obligation. He received his last paycheck from Societe Generale on December 15, 2015.

¶ 9 He testified that he received no severance pay from Societe Generale. However, he received, without challenge, unemployment benefits after his termination. In March 2016, Timothy, through his LLC, began consulting as an independent contractor for a company called Verto Partners. Timothy testified that his compensation varied from project to project, and was determined by the managing director of Verto Partners. Although he was never an employee of

Verto Partners, the company's website listed Timothy as a "managing director;" his name remained on the website even after he had stopped consulting for them. Timothy testified that Verto Partners paid him approximately $40,000 between March 2016 and May 2017. As evidence of this income, Timothy produced a spreadsheet that he prepared, and his personal bank account statements showing wire transfers from Verto Partners. He also testified that certain payments had been in error, and that he had been required to return most of those funds to Verto Partners. He refused to disclose the names of any clients of Verto Partners because of an alleged non-disclosure agreement. He stopped taking on projects with Verto Partners to spend more time looking for full-time work. Timothy also testified that he consulted with a firm called LBMZ, by which he was paid $15,000 over the course of three months.

¶ 10 Timothy also testified that he briefly worked part-time for $13 per hour at House of Rental. He took that job to earn spending money while he continued his job search. Timothy testified that, during an earlier court date, the court had expressed disapproval Timothy working for such low pay. Consequently, Timothy quit his job at the House of Rental to focus more time on finding full-time work.

¶ 11 Timothy testified that, in the twelve months preceding the hearing, he borrowed or was given over $30,000 from friends and family. One of those friends also allowed Timothy to live in a house that he owns. Although he originally leased the house from his friend, they allowed the lease to expire and Timothy had stopped paying rent. In exchange for living there rent-free, Timothy testified that he performed basic upkeep, including landscaping and minor renovations.

¶ 12 Timothy testified that from December, 2015 to November, 2017, he had a total income of $86,912. He introduced demonstrative exhibits to show that, during that time, he paid Julie

$27,403.43. He also testified that he had paid $17,981.89 towards medical and dental insurance for the children.

¶ 13 Timothy testified that during the two years after his termination, he golfed numerous times, for networking and for pleasure. He primarily golfed for free at Conway Farms Country Club, where his girlfriend was a member. He did, however, pay for his own golf balls, golf gloves, and driving range time. He also golfed at various places such as Palm Desert, California and Naples, Florida. He testified that on such trips, his family or his girlfriend covered the costs of lodging, golf, and food.

¶ 14 Timothy testified that his job search included: the use of several job-search and professional websites; meeting with a headhunter; and networking at events. He testified that he had prepared job diaries before and after his stint as an independent consultant for Verto Partners. However, he did not move to admit those diaries into evidence. He testified that he had not turned down any job offers, although there was a possible $30-45,000 per year job that he did not pursue because the salary was too low. Timothy also testified that golfing is an important networking tool in his field.

¶ 15 Timothy testified that shortly before the hearing, he had taken a job at Zacks Investment Management, earning a base salary of $90,000 per year. His new compensation package included medical and dental insurance, commissions, and a possible performance-based bonus. Timothy moved to admit his employment contract into evidence, but the court denied the motion because Timothy's copy was not signed by Zacks Investment Management. He also moved to admit his 2017 W-2 form and two paystubs; the court denied the motion because discovery had been closed.

¶ 16 Julie testified that at the time she entered the MSA she was employed as a school principal, but the school had since closed. She testified that she was been unable to find another job as a school principal because she lacked proper certification. She testified that she purchased two math tutoring franchises in December, 2015, and that she now works full-time at those locations. However, she testified that she has yet to make a profit from the franchises.

¶ 17 She testified that since December, 2015, her savings had been depleted, and she had to borrow money from her father. With both Timothy and Julie unable to afford their respective shares of the mortgage on the marital home, it had fallen into foreclosure. She moved with the children into a house owned by her father.

¶ 18 The circuit court found that Timothy had not proven a "substantial change in circumstances" under section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/510(a)(1) (West 2016)), stating:

> "I am finding that there is no substantial change in the circumstances that can be proven or has been proven by any credible evidence whatsoever presented by counsel for Timothy or Timothy himself. The evidence that's been presented shows that there has been no credible substantial change or material change in the circumstances to justify any modification of the support.
>
> * * *
>
> I agree with the argument made by Ms. Lazzara on behalf of Julie that his lifestyle didn't change at all. Again, he lived the life of Riley, golfing all the time, traveling to very high-end destinations all of the time, eating out and drinking all of the time, whether it be at the country club or any of the various places identified in the Chase Bank records from Respondent's Exhibit No. 13, which

has been admitted into evidence, lived in Wilmette, golfed in Lake Forest, shopped in his neighborhood, shopped downtown, continued to go to Starbucks, didn't change anything and didn't pay her."

¶ 19 The court specifically found that Timothy was not a credible witness, and that he "has been lying about his change of employment." The court also speculated that Timothy may have been hiding assets, including unrecorded cash payments, money still owed for consulting, or offshore bank accounts.

¶ 20 The court denied the petition to modify the unallocated support. Having determined that Timothy had not proven a substantial change in circumstances, the court stated that it need not analyze the statutory factors set forth in sections 510 and 504(a) of the Act.

¶ 21 The court also entered an order finding Timothy in indirect civil contempt for failing to pay his unallocated support between December, 2015 and November, 2017. The court found that Timothy had willfully and contemptuously failed to pay $168,364.64 in unallocated support:

> "I think he spent money on a lot of things that were completely unnecessary when that money should have been expended for his children's care. I find that his failure to pay those monies was without cause or justification and was contemptuous.
>
> Mr. Crawford continued to go to Starbucks, belong to the Shave Club, go golfing, buy golf clubs, buy golf clubs, travel, eat out, on a nearly daily basis, buy a lot of items that were unnecessary, as pointed out by counsel, including some item at Syd Jerome, all at the same time that he wasn't paying his child support obligation."

¶ 22 The contempt order included a purge provision, requiring Timothy to pay $60,000 toward his arrearage, with the first $30,000 due in two days. After Timothy tendered that initial $30,000 partial purge, the court entered an order continuing the case for "contempt status" and ordering Timothy to pay $2500 per month toward his arrearage, in addition to his $8042 monthly obligation under the MSA. In a subsequent order, the court determined that Timothy also owed $14,339.82 in statutory interest on the arrearage.

¶ 23 On May 2, 2018 the court found that Timothy had paid an additional $31,725 to Julie since January 26, and that he had remained current on his unallocated support obligation. On May 2, the court entered an order stating, "[t]he Court finds Timothy to be in compliance with the 1/26/18 order." However, the court entered another order that same day indicating, "[t]he Respondent has not purged himself of the contempt finding on 1/24/2018."

¶ 24 Also on May 2, the court heard argument on Timothy's motion to reconsider and to amend his petition to conform to the proofs. Timothy argued that the court had erred in finding that there had not been a substantial change in circumstances, and in not considering Julie's income. Timothy also argued that he should be permitted to amend his petition to include allegations about Julie's employment. The court denied Timothy's motions and this appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Timothy presents the following three issues for review: (1) whether the circuit court erred in denying his petition to modify the amount of unallocated support; (2) whether the court abused its discretion in finding him in contempt; and (3) whether the court erred in denying his motion to reconsider and to amend his petition to conform to the proofs.

¶ 27 A. Modification of Support

¶ 28 Timothy first claims the court misconstrued the Act and erred by not considering the factors enumerated in section 510 or those in subsection (a) of section 504. "We review *de novo* the construction and application of the Act." *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). In construing a statute, the key objective is to effectuate the legislature's intent. *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 24. When the statutory language is clear and unambiguous, a reviewing court may not depart from the plain meaning of the words. *Id.*

¶ 29 Section 510(a-5) of the Act provides that "[a]n order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors: ***." 750 ILCS 5/510(a-5) (West 2014). The statute then lists nine factors to be considered. *Id.*

¶ 30 Although the parties do not couch their arguments in these exact terms, they dispute the proper interpretation of the statutory language: "[i]n all such proceedings" and "in proceedings in which maintenance is being reviewed." Timothy argues that language includes cases such as this, where one party files a petition to modify or terminate maintenance. Under his reading, the mere filing of a petition to modify maintenance automatically triggers the consideration of all of the factors. Then, if the court finds that there has been a substantial change in circumstances, the court has the discretion to modify or terminate the maintenance.

¶ 31 Julie, on the other hand, would have us read "all such proceedings" and "proceedings in which maintenance is being reviewed" to apply to cases where no substantial change in circumstances is necessary, or where the trial court has already found a substantial change in circumstances. Only then, she argues, must the court apply the factors to determine whether and

by how much to modify the maintenance. If the court finds that there is no substantial change in circumstances, there is no need to reach the factors.

¶ 32 Timothy argues that our supreme court definitively settled this question in *Blum*. In that case, the court stated that "[w]hen deciding whether to reduce or terminate an award of unallocated maintenance, a court must consider all of the [statutory] factors". *Blum*, 235 Ill. 2d at 41. However, that case did not involve the question of a substantial change in circumstances. In that case, the marital settlement agreement provided for "a general review of maintenance" after its initial 61-month period. *Id.* at 35. "Thus," the court reasoned, "[the husband] did not have the burden of proving a substantial change in circumstances. Rather, the trial court was required to consider the factors in sections 504(a) and 510(a-5) [citations] in determining whether to modify or terminate [the wife's] maintenance." *Id.* at 35-36. Our supreme court used the word "rather" to distinguish between the first step—determining the existence of a substantial change in circumstances—and the second step—applying the statutory factors to determine whether to modify or terminate the maintenance.

¶ 33 In this case, the MSA provided for a review of the unallocated support after a period of seven years. But unlike the husband in *Blum*, Timothy did not wait until the end of that period to seek review. Consequently, Timothy bore the burden of proving a substantial change in circumstances *before* the circuit court was required to consider all of the statutory factors. The circuit court did not misinterpret the Act when it held that it was not required to rely on the statutory factors; the determination of a substantial change is a separate step from the application of the factors. See *In re Marriage of Lasota*, 125 Ill. App. 3d 37, 42 (1984) ("modification of a maintenance award must be based upon the factors outlined in Section 504 *and* upon a showing of a 'substantial change in the circumstances of the parties.' " (emphasis added)); *In re Marriage*

of Armstrong, 346 Ill. App. 3d 818, 823 (2004) ("Only after determining the threshold issue of whether a substantial change in circumstances has occurred can a court consider modifying a child support order.").

¶ 34 Timothy also contends that the circuit court erred in finding that there was no substantial change in circumstances. Petitions to modify payment orders require the trial court to engage in a two-step process: (1) a factual determination as to whether there has been a substantial change in circumstances; and (2), if so, whether and by how much to modify the maintenance ordered. *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370 (1996). "Each of these steps calls for a different standard of review: the first, whether the trial court's factual determination was against the manifest weight of the evidence; and the second, whether its decision at step two above, being a matter for the trial court's discretion, constituted an abuse of that discretion." *Id.* A determination of fact is against the manifest weight of the evidence only when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70. Under that standard, we review all of the evidence in the light most favorable to the prevailing party. *United States Steel Corp. v. Illinois Pollution Control Board*, 384 Ill. App. 3d 457, 461 (2008). We view the circuit court's evaluation of witnesses with great deference because it is in a superior position to observe the witnesses' demeanors, resolve conflicts in the testimony, and determine the credibility of the witnesses. *People v. Gherna*, 203 Ill. 2d 165, 175 (2003). However, the circuit court's determination of witness credibility "is not conclusive and does not bind the reviewing court." *People v. Gray*, 2017 IL 120958, ¶ 35.

¶ 35 In the normal course of life, everyone will experience periodic changes in income due to economic circumstances, changes in employment, and other causes within and without their

control. We cannot find that the legislature intended that parties should be able to constantly seek judicial modification of their maintenance and support obligations whenever they experience *some* change in income. The legislature expressed that intent through its use of the word "substantial" in section 510(a)(1).

¶ 36 A *voluntary* change in employment, if made in good faith, may constitute a change in circumstances sufficient to warrant modification of a support order. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1076 (2009). Julie contends that the circuit court found that Timothy's change in employment was not undertaken in good faith. She argues that the evidence showed that even though his termination was involuntary, he voluntarily remained un- or underemployed while maintaining an unreasonably luxurious lifestyle. The court pointed to purchases of fast food, coffee, and shaving supplies, and the fact that Timothy travelled and played golf numerous times after he lost his job. These expenditures, the court held, showed that Timothy was not substantially affected by the termination and that he made insufficient efforts to find new employment. Essentially, Julie argues that failure to find adequate replacement work can transform an involuntary change in employment into a bad-faith voluntary change. However, she does not cite any authority for that contention.

¶ 37 The evidence showed unequivocally that the reduction in Timothy's salary was substantial and involuntary. The circuit court heard extensive and unrefuted evidence that Timothy was terminated from his $250,000 per year job on December 2, 2015. That evidence included not only Timothy's testimony, but also exhibits from his personnel file at Societe Generale. The evidence also showed that no voluntariness challenge was made to Timothy's application for unemployment benefits. Julie presented no evidence that the termination was voluntary, and admitted that she had no such evidence. The record simply does not support the

conclusion that Timothy's termination was voluntary. And, although the court did not allow certain evidence about his new $90,000 per year job, it did hear testimony about that job from Timothy.

¶ 38 The court specifically found Timothy to be an incredible witness as to his job search and other conduct *after* his termination, but there is no evidentiary support for the conclusion that Timothy's dramatic reduction in income was not a substantial change in circumstances. Similarly, the court speculated that Timothy may have been hiding assets. The court made reference to unrecorded cash payments, money still owed for consulting, or undisclosed offshore bank accounts. However, the record contains not a scintilla of evidence to support a finding that Timothy has any such assets. Rather, the evidence, including Timothy's bank account statements, his income tax returns, and his financial affidavits, showed that the loss of his $250,000 per year job had a dramatic impact on his finances.

¶ 39 Even taking all of the evidence in the light most favorable to the court's determination, as we must, we find that a substantial change in circumstances resulted from Timothy losing his $250,000 per year job. We reverse the circuit court's conclusion to the contrary, because it was against the manifest weight of that evidence.

¶ 40 Despite this finding, Julie argues that we need not remand this case. She contends (1) the circuit court actually did apply the statutory factors, and (2) the circuit court properly imputed Timothy's income to be the same as his pre-termination income. Both of these arguments fail because the court never actually reached either of those possible resolutions.

¶ 41 In deciding whether to modify an order of support, specific factual findings related to each statutory factor are not mandatory, and we will not reverse merely because such findings are lacking. *In re Marriage of Connors*, 303 Ill. App. 3d 219, 230 (1999). A trial court may

impute income if one of the following factors applies: "(1) the payor is voluntarily unemployed [citation]; (2) the payor is attempting to evade a support obligation [citation]; or (3) the payor has unreasonably failed to take advantage of an employment opportunity [citation]." *Gosney*, 394 Ill. App. 3d at 1077. Julie contends that a careful review of the court's findings show that it actually considered each of the relevant statutory factors, and, alternatively, that the court properly imputed Timothy's pre-termination income.

¶ 42 The court found that Timothy was not credible in his testimony about his search for employment and his post-termination spending. And although Timothy's job hunting efforts and his use of money after his termination would have been relevant to the issues of imputing income or weighing his earning capacity, the court did not actually reach those issues. In fact, the court explicitly stated that it did *not* analyze the statutory factors because it found that there was no substantial change in the circumstances. Likewise, the court explained that it did not consider Timothy's earning potential: "I don't even need to get to that, because I am finding that there is no substantial change in the circumstances." It is clear that the court neither relied on the statutory factors, nor imputed an income to Timothy. Rather, the court simply stopped its analysis once it determined that there had been no substantial change in circumstances. Because that conclusion was in error, we remand this case for the circuit court to proceed to the second step of analyzing Timothy's petition to modify by reviewing it in light of all the applicable statutory factors.

¶ 43 B. Contempt

¶ 44 Timothy next asks "[f]or an order vacating the contempt finding and arrearage of $168,364.64 plus interest." Timothy makes two basic arguments: (1) that the court erred in

finding that his failure to pay was willful and contemptuous; and (2) that the contempt order does not include a valid purge provision.

¶ 45 An important practical consideration obviates our need to reach his arguments: our holding on the petition to modify removes the factual predicate for the contempt finding. Under Illinois law, maintenance and support orders may be modified retroactively to the date of the filing of the petition for modification. 750 ILCS 5/510(a) (West 2017); see *In re Marriage of Culp*, 341 Ill. App. 3d 390, 400 (2003) (affirming retroactive modification because respondent had notice that the maintenance obligation may change as of that date). The decision to apply support modifications retroactively is within the sound discretion of the trial court. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 13.

¶ 46 The circuit court found that Timothy willfully and contemptuously failed to pay Julie $168,364.64 in unallocated support. However, this factual finding was based on the court's ultimate ruling on Timothy's petition to modify. Now that we have reversed that ruling, the arrearage is undetermined. Until Timothy's petition to modify is resolved on remand, it remains unclear whether Timothy will ultimately owe any arrears at all. And, if there are no arrears, there can be no indirect civil contempt. See *In re Marriage of Berto*, 344 Ill. App. 3d at 713 (holding that, because there was no arrearage, "there was no means left by which respondent could 'purge' himself of the alleged contempt, and accordingly, no basis to find respondent in contempt."). Consequently, we vacate the court's finding of indirect civil contempt.

¶ 47 C. Reconsideration and Amendment

¶ 48 Timothy contends that the court erred by denying his motion to reconsider and to amend his petition to conform to the proofs. His arguments primarily revolve around the notion that the

circuit court should have taken Julie's income into consideration when ruling on the petition to modify.

¶ 49 Having concluded that the circuit court erred in finding no substantial change in circumstances, we need not reach these arguments. On remand, the circuit court must apply the statutory factors—including those factors related to Julie's income—to determine whether and by how much to modify the support. See *Blum*, 235 Ill. 2d at 41. Whether the court will permit Timothy to amend his petition on remand remains within the sound discretion of the trial court. See 735 ILCS 5/2-616 (West 2016); *American National Bank & Trust Co. of Chicago v. Dozoryst*, 256 Ill. App. 3d 674, 678 (1993).

¶ 50 D. Briefing

¶ 51 We also note that twice in Timothy's reply brief he implies that he is entitled to prevail on certain issues allegedly not addressed in Julie's brief. He asserts that "Supreme Court Rule 341(h)(7) applies equally to appellees and appellants." This misstates the rule. Subsection (h)(7) of Rule 341 provides that points not argued in an appellant's opening brief are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Notably, subsection (h) of Rule 341 is titled "Appellant's Brief." *Id.* No language of that subsection indicates that appellee briefs are intended to be governed thereby. Additionally, because the appellant bears the burden of establishing reversible error, this court may affirm a trial court even without the benefit of an appellee brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). It would be absurd to conclude that an appeal is subject to automatic reversal if the appellee fails to address a specific issue in her brief, as reversal is *not* automatic if she files no brief at all.

¶ 52 III. Conclusion

¶ 53 We vacate the indirect civil contempt finding. We reverse the denial of Timothy's petition to modify, and remand to the circuit court for further proceedings consistent with this order.

¶ 54 Reversed and remanded in part; vacated in part.