2019 IL App (3d) 180568-U

Order filed August 21, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

NICOLE JONES	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellee,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-18-0568
	)	Circuit No. 12-F-265
DAVID DUYVEJONCK,	)	
	)	Honorable Clarence M. Darrow,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding no substantial change in circumstance occurred to support modification of father's child support obligation.

¶ 2 Respondent-father, David Duyvejonck, appeals the trial court's judgment denying his petition to decrease his child support obligation. David presented evidence that he exercised more overnights than the settlement between himself and petitioner-mother, Nicole Jones, provided, thereby changing his status within the statutory guidelines. We affirm.

¶ 3 I. FACTS

¶ 4 The parties were never married. In 2012, Nicole initiated an action to establish a parent/child relationship and receive child support from respondent for the parties' two minor children. In January 2014, the trial court ordered David to pay $1041 in child support monthly. In April 2014, the court entered a joint parenting agreement regarding all remaining issues. It allocated approximately 126 overnights to David per year.

¶ 5 In March 2018, David filed a petition seeking, *inter alia*, a modification of his child support obligation. David contended that he was exercising significant parenting time in excess of what was allocated in the agreement.

¶ 6 In August 2018, the court heard arguments on the petition. Nicole denied the extent to which David had additional overnights but agreed he exercised more time than that for which the agreement provided. She said, "Any time he says he wants the kids, if it doesn't interfere with school, then I'm in agreement." She continued, "I've always worked with him. *** I've never kept the kids from him." David averred that he exercised, at a minimum, 20 additional overnights per year.

¶ 7 The court denied David's petition in regard to the modification of child support. Although the court found David exercised additional parenting time, it declined to make a finding that there had been a substantial change in circumstances regarding parenting time. It reasoned that there was no evidence that Nicole was attempting to evade responsibility for caring for her children. Rather, she always granted David any additional time he sought. The court believed if it allocated David the additional parenting time, Nicole would be less likely to grant David's request for parenting time lest she face the possibility of another petition for modification. Specifically, the court stated, "I'd hate to have her on guard for the next decade plus of these *** children's lives to worry that she's going to be in court and getting zinged on

her child support because she triggered—she inadvertently tripped over the 146 [days]." To further explain its decision to find no substantial change in circumstances, the court went on to state, "[B]ased on the fact that [Nicole] is obligated to pay the day-care support, I'm not going to find that there's a substantial change in circumstances." In its order, the court found David's additional parenting time "[did] not constitute a substantial change in circumstances in light of the fact that [David] is not contributing to the children's daycare expenses, and other evidence included in the record."

¶ 8 II. ANALYSIS

¶ 9 David phrases the issue on appeal as whether the trial court abused its discretion in refusing to consider his overnights. More accurately, we must consider whether the trial court erred in finding that no substantial change of circumstances occurred to warrant the modification of child support. Nicole did not file a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 10 Under the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), the trial court may modify a child support obligation upon a showing of a substantial change in circumstances. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 53; 750 ILCS 5/510(a)(1) (West 2018). "A substantial change in circumstances typically means that the child's needs, the obligor parent's ability to pay, or both have changed since the entry of the most recent support order." *In re Marriage of Verhines & Hickey*, 2018 IL App (2d) 171034, ¶ 79. "The burden of showing a substantial change in circumstances sufficient to justify a modification of a child support award is on the party seeking the relief." *In re Marriage of Kern*, 245 Ill. App. 3d 575, 578 (1993). "Trial courts have wide latitude in determining whether a substantial change has

occurred and should consider not only the needs of the child and the financial status of the noncustodial parent, but also the needs and financial status of the custodial parent." *In re Marriage of Riegel*, 242 Ill. App. 3d 496, 498 (1993). A finding of a substantial change in circumstances is a factual issue that will not be disturbed absent a finding that it is against the manifest weight of the evidence. *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 370 (1996). "Only after determining the threshold issue of whether a substantial change in circumstances has occurred can a court consider modifying a child support order." *In re Marriage of Armstrong*, 346 Ill. App. 3d 818, 823 (2004). For this reason, David applies the wrong standard of review in his brief. The trial court here never considered modification because it declined to find a substantial change in circumstances.

¶ 11 The substance of this appeal revolves around whether the court erred in finding no substantial change in circumstances to warrant modification of David's child support obligation, despite David exercising more overnights than the agreement allocated. The Marriage Act provides:

> "Shared physical care. If each parent exercises 146 or more overnights per year with the child, the basic child support obligation is multiplied by 1.5 to calculate the shared care child support obligation. The court shall determine each parent's share of the shared care child support obligation based on the parent's percentage share of combined net income. The child support obligation is then computed for each parent by multiplying that parent's portion of the shared care support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support

> paying the difference between the child support amounts." 750 ILCS 5/505(a)(3.8) (West 2018).

David takes issue with the fact that the trial court acknowledged he exercised 146 or more overnights in a year but declined to modify his support obligation. Initially, our review of the record shows that the trial court found David "right on the cusp" of exercising 146 or more overnights per year. The court stated David might "on average" exercise 20 additional nights.

¶ 12 David does not cite any factually similar cases where a reviewing court has reversed a trial court for failing to find a substantial change in circumstances. We were unable to find a case that was not focused on a change of financial resources. See *In re Marriage of Heil*, 233 Ill. App. 3d 888, 892 (1992); *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 20; *Armstrong*, 346 Ill. App. 3d at 822-23.

¶ 13 In *Armstrong*, the father filed a petition to modify his child support payments to the mother, citing the mother's increased income. *Armstrong*, 346 Ill. App. 3d at 820. The trial court declined to make a finding of a substantial change in circumstances because the father's income also increased. *Id.* at 821. The reviewing court agreed with the trial court, finding that the trial court's determination was not against the manifest weight of the evidence. *Id.* at 822-23.

¶ 14 The trial court here declined to find a substantial change in circumstances occurred for various reasons. The court declined to find a substantial change in circumstances regarding Nicole's daycare responsibility and declined to modify that aspect of the original order. As in the trial court's balancing of factors in *Armstrong*, the court here ruled Nicole would continue to bear the burden of those costs which informed its finding David's additional overnights did not give rise to a substantial change in circumstances. Also, David's additional overnights were of his own initiative. Nicole stated that any time David asked to have the children, as long as it did

not interfere with school, she said yes. She wanted the children to have as much time with their father as he wanted to have. The court sought to avoid a finding that could result in Nicole preventing the children from spending time with their father in fear of ending up in court on additional petitions to modify child support. The court wanted to disincentivize a "cynical approach" to parenting driven by financial concerns. A trial court has wide latitude in determining whether a substantial change in circumstances occurred. See *Marriage of Riegel*, 242 Ill. App. 3d at 498. The trial court's finding no substantial change in circumstances was not against the manifest weight of the evidence.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 17 Affirmed.