Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Sep 03 2009, 9:05 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

DAVID R. PHILLIPS
Valparaiso, Indiana

ATTORNEY FOR APPELLEE:

BRIAN M. SMITH
Law Offices of Brian M. Smith, P.C.
Merrillville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL ENGLAND,	)	
	)	
Appellant/Respondent,	)	
	)	
vs.	)	No. 64A03-0902-CV-40
	)	
LORI ENGLAND, n/k/a LORI ALICEA,	)	
	)	
Appellee/Petitioner.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable William E. Alexa, Judge
The Honorable Katherine Forbes, Magistrate
Cause No. 64D02-9010-DR-2571

September 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary and Issue

Michael England ("Husband") appeals a child support arrearage order entered in favor of Lori Alicea ("Wife"). The sole issue is whether the trial court erred in calculating his accumulated child support arrearage. We affirm.

Facts and Procedural History

On June 21, 1991, the trial court entered a decree dissolving Husband and Wife's marriage. The trial court awarded Wife custody of the couple's two minor children and ordered Husband to pay $150.00 per week in child support.

On November 25, 1998, Wife filed a verified petition for rule to show cause why Husband should not be held in contempt of court for failure to pay child support. On December 16, 1998, the trial court entered an order finding Husband in contempt and ordering him to continue to pay $150.00 in weekly child support. Appellant's App. at 32.

On March 17, 1999, Husband filed a petition for modification of child support. On April 13, 1999, the trial court entered an order that provided in part,

> That [Husband] shall be allowed to pay the reduced sum of Seventy-five Dollars ($75.00) per week in support and those payments shall commence on April 23, 1999. This is in no way to be construed as a modification of the underlying support order in this cause and the order is an interim order only and so long as [Husband] complies then he may avoid any contempt proceedings in this cause.

Appellee's App. at 7. When Husband failed to appear at the June 1, 1999 hearing, the trial court dismissed Husband's petition for modification and issued a warrant for his arrest. On June 9, 1999, the trial court heard evidence and entered an order providing in part, "That

[Husband's] ongoing obligation commencing June 1, 1999, will be One Hundred Fifty Dollars ($150.00) per week." *Id.* at 9.

On October 4, 1999, Wife filed a second rule to show cause, alleging that Husband had failed to pay child support as ordered. The trial court held a hearing on April 4, 2000, and entered the following order on July 21, 2000:

> 1. That [Husband] shall continue to pay the sum of $100.00 per week as and for his support obligation and the sum shall be paid by way of wage withholding. [Husband] shall execute a wage withholding through his employer. If [Husband] should change employers then it should be his responsibility to execute a new wage withholding with any new or subsequent employers without further proceedings of this Court.
>
> 2. That a preliminary figure of $300.00 is set as arrearages that have accumulated since the date of the last order and that amount is subject to further evidence. Repayment of this amount shall be considered at the next hearing in this cause.
>
> 3. That at the next hearing on this cause [Husband] shall present a plan to the Court as to how he expects to repay the large arrearages in this cause.
>
> 4. That a preliminary arrearage figure is set at $30,868.50 as of March 31, 2000 subject to independent computation by [Husband] or his counsel.
>
> 5. [Husband], by counsel, advises the Court that he intends to file a petition for modification in this cause and all other matters shall be considered at that time.
>
> 6. That if [Husband] fails to file this petition for modification then this cause is set for further proceedings on October 17, 2000 at 1:30 p.m.

Appellant's App. at 40.

When Husband failed to file a petition for modification, the trial court held its October 17, 2000 hearing. When Husband failed to appear at the hearing, his counsel withdrew, and the trial court issued an order that included the following:

> 2. That under the circumstances of this case [Husband] shall continue to be allowed to pay the sum of $100 per week in support with the understanding that this in no way modifies his prior order of $150.00 per week.
>
> 3. [Husband] shall now pay an additional $50.00 per week to be applied against arrearages in support and the wage withholding previously ordered in this cause shall be increased to the sum of $150.00 per week with $100.00 [to] be applied towards his temporary current support obligation and $50.00 being applied toward arrearages in support.

Id. at 41.

On February 11, 2008, Wife filed a petition to determine the amount of child support arrearage. On April 28, 2008, Husband filed a motion to emancipate and modify child support. On September 8, 2008, Wife filed a motion to establish interest on child support arrearage. At the October 28, 2008 hearing on all outstanding motions, the parties stipulated that their minor children were emancipated as of January 25, 2008, and that Husband's child support obligation terminated as of that date. Wife claimed that Husband's total arrearage was $27,063.50, and Husband claimed his arrearage to be $6,613.50.

On January 6, 2009, the trial court issued an order providing in pertinent part,

> 10. This Court now finds that the orders entered by this Court on July 21, 2000 and October 17, 2000 did not modify the underlying child support obligation previously set by this Court at $150.00 per week.
>
> 11. This Court further finds that there was no petition for modification of child support before it on July 21, 2000 or October 17, 2000 as [Husband] failed to file a petition for modification as required under the

law and as directed by the Court on July 21, 2000. Further, retroactive modification of the underlying support obligation would be contrary to the law and public policy.

12. This Court further finds that upon entry of the October 17, 2000 Order, [Husband] failed to file a motion to correct errors or appeal the order, and now seeks to have the child support modified retroactively, which is hereby denied.

13. That as a result, the Court now grants [Wife's] request and finds [Husband] in child support arrears in the amount of Twenty-seven Thousand Sixty-three Dollars and 50/100 ($27,063.50) as of October 28, 2008 as set forth on Exhibit "2" submitted by [Wife's] counsel.

14. [Husband's] request to have child support arrearages set at Six Thousand Six Hundred Thirteen Dollars and 50/100 ($6,613.50) pursuant to Petitioner's Exhibit "3" is hereby denied.

Id. at 6. Husband now appeals.

Discussion and Decision

Husband contends that the trial court erred in calculating his total support arrearage at $27,063.50. Decisions regarding child support rest within the trial court's sound discretion. *A.G.R. ex rel. Conflenti v. Huff*, 815 N.E.2d 120, 126 (Ind. Ct. App. 2004), *trans. denied* (2005). We will reverse only when the trial court abuses its discretion or acts contrary to law. *Id*. Here, the trial court's support order included extensive findings. On review, we will disturb the judgment only where there is no evidence to support the findings or the findings fail to support the judgment. *Dedek v. Dedek*, 851 N.E.2d 1048, 1050 (Ind. Ct. App. 2006). Husband therefore must establish that the trial court's findings are clearly erroneous, meaning that the record leaves us firmly convinced that a mistake has been made. *Id*. We do

not defer to conclusions of law, and the judgment is clearly erroneous if it relies on an incorrect legal standard. *Id*.

Husband essentially claims that the trial court misconstrued the language of the July 21, 2000 support order.[1] We interpret judgments in the same manner as contracts. *Firestone v. Am. Premier Underwriters, Inc.*, 891 N.E.2d 151, 154 (Ind. Ct. App. 2008), *trans. denied*. The construction and interpretation of contract provisions is a function for the courts, and we therefore apply a de novo standard of review. *Overholtzer v. Overholtzer*, 884 N.E.2d 358, 361 (Ind. Ct. app. 2008). Unless the terms are ambiguous, they will be given their plain and ordinary meaning. *Id*. Where the terms are clear and unambiguous, they are conclusive, and we do not resort to extrinsic evidence. *Id*. If a judgment is ambiguous, we determine its meaning by examining the entire judgment. *Gilbert v. Gilbert*, 777 N.E.2d 785, 790-91 (Ind. Ct. App. 2002). Particular words cannot be isolated from the judgment but must be considered as part of the whole. *Id*. at 791. As such, we attempt to read the provisions of the judgment so as to render all provisions effective and not merely surplusage. *Id*. Terms are not ambiguous merely because the parties disagree as to their proper interpretation. *Ogle v. Ogle*, 769 N.E.2d 644, 647 (Ind. Ct. App. 2002), *trans. denied*. A judgment is ambiguous when it would lead two reasonable persons to different conclusions as to its effect and meaning. *Gilbert*, 777 N.E.2d at 790.

[1] Husband relies on the July 21, 2000 order as support for his premise that his weekly child support obligation was reduced to $100.00. However, when the trial court issued its October 17, 2000 order specifically listing his weekly obligation as $150.00, he did not file a motion to correct error or a notice of appeal.

Husband contends that the January 6, 2009 order constitutes an unlawful retroactive modification of his support obligation as stated in the July 21, 2000 order. *See Whited v. Whited*, 859 N.E.2d 657, 661-62 (Ind. 2007) (reiterating the long-standing rule prohibiting retroactive modification of child support obligation after it has accrued). The court that issues the dissolution decree retains exclusive and continuing responsibility for modifications and related matters concerning child support. *Fackler v. Powell*, 839 N.E.2d 165, 167 (Ind. 2005). The dissolution court is in the best position to conduct such fact-sensitive inquiries concerning substantial and continuing or changed circumstances affecting support in a given case. *Id*. When a party seeks clarification and enforcement of such orders, the interests of judicial efficiency and comity are best served by returning to the dissolution court, where the necessary and usual powers essential to effectuate the dissolution include the court's power to interpret its own decrees. *Id*. Here, the same magistrate issued the orders in 1998, 1999, 2000, and 2009. Thus, in issuing its 2009 order, the trial court was called upon to interpret its own prior decrees.

Husband contends that the trial court erred in calculating his child support arrearage at $27,063.50. He bases his claim on the premise that the trial court's July 21, 2000 order constituted a modification of his weekly support obligation from $150.00 to $100.00.[2]

[2] The parties do not dispute the arrearages accruing before April 7, 2000, or the sums Husband actually paid. Thus, Exhibits 2 and 3 present identical figures except for the figures representing the arrearages accruing from April 7, 2000 to the January 25, 2008 emancipation date. Wife relies on Exhibit 2, which states the amount for that time period as $61,350.00, and Husband relies on Exhibit 3, which states the amount for that time period as $40,900.00. The difference is based on 409 weeks multiplied by a different factor: Wife's asserted weekly support amount of $150.00, Pet. Ex. 2, versus Husband's asserted weekly support amount of $100.00, Pet. Ex. 3.

However, the 2009 order clearly states that "the orders entered by this Court on July 21, 2000 and October 17, 2000 *did not modify the underlying child support obligation previously set by this Court at $150.00* per week." Appellant's App. at 6 (emphasis added). This unambiguous language led to the trial court's calculation of arrearages from April 7, 2000 to January 25, 2008 as the product of the number of weeks (409) times $150.00.

The language of the trial court's prior orders supports a finding that Husband's $150.00 weekly support obligation was never modified. The 1991 dissolution decree states that "[Husband] shall pay to [Wife] the sum of $150.00 per week" for child support. Appellant's App. at 32. The December 16, 1998 order states that Husband "was previously ordered to pay the sum of One Hundred Fifty Dollars ($150.00) per week for the support of his minor children" and is now held "in contempt of court by reason of his failure to pay support as previously ordered." Appellee's App. at 3. When Husband petitioned for modification in 1999, the trial court ordered that he "shall be *allowed to pay the reduced sum* of Seventy-Five Dollars ($75.00) per week in support," but also stated, "This is in *no way to be construed as a modification* of the underlying support order in this cause and the order is an *interim order only*." *Id*. at 7 (emphases added).

The trial court's 2009 order specifically references its July 21, 2000 and October 17, 2000 orders. Husband argues that the July order acted as a modification of his weekly support obligation. However, he had not filed a petition for modification at that time. Instead, Wife had filed a motion for rule to show cause why Husband should not be held in contempt of court for nonpayment. Thus, the hearing was a contempt hearing, not a

modification hearing. Husband relies on isolated language in paragraph one of the July order, stating that he "shall continue to pay the sum of $100.00 per week as and for his support obligation." Appellant's App. at 40. However, the order also states that Husband "advises the Court that he *intends* to file a petition for modification" and that "*if [Husband] fails to file this petition* for modification then this cause is set for further proceedings on October 17, 2000." *Id*. (emphases added). Thus, the October hearing occurred because of Husband's inaction following the July order. As such, we construe the July order in conjunction with the October order. Husband in fact failed to file a petition for modification as specified in the July order, and the October hearing ensued. Notably, Husband failed to appear. The October order clarifies the trial court's prior intent regarding the $100.00 payments referenced in the July order. This order states that "under the circumstances of this case [Husband] *shall continue to be allowed* to pay the sum of $100.00 per week with the *understanding that this in no way modifies the prior order of $150.00 per week*." *Id*. at 41 (emphases added). The order also states that Husband shall "pay an additional $50.00 per week *to be applied* against arrearages … with $100.00 [to] be *applied* toward his temporary current support obligation." *Id*. (emphases added).

In sum, the trial court did not modify Husband's support obligation in its July 21, 2000 order. Rather, it referenced Husband's *intent* to file a motion for modification. The October 17, 2000 hearing took place because Husband did *not* file a petition for modification following the July 21, 2000 order. Thus, both the language and the surrounding circumstances make it clear that his weekly support obligation remained at $150.00. The trial

court's actions in temporarily allowing less than full payment and in allowing Husband to apply a portion of his payments toward arrearages were merely interim accommodations intended to benefit both parties. As such, the trial court properly applied the $150.00 weekly figure in calculating Husband's total arrearages. Accordingly, we affirm.

Affirmed.

MAY, J., and BROWN, J., concur.