STATE OF MICHIGAN

COURT OF APPEALS

MARK FOSTER,

Plaintiff-Appellant,

v

CHERYL NOFFSINGER,

Defendant-Appellee.

UNPUBLISHED
October 13, 2009

No. 291704
Arenac Circuit Court
LC No. 04-009202-DM

Before: Talbot, P.J., and Wilder and M. J. Kelly, JJ.

PER CURIAM.

In this custody and child support matter, plaintiff Mark Foster appeals as of right the trial court's denial of Foster's motion to modify parenting time and to reduce his child support obligation. Because we conclude that there were no errors warranting relief, we affirm.

With regard to Foster's motion to reduce his child support, the trial court noted that the $1,100 per month ordered under the judgment of divorce exceeded the original recommendation of the Friend of the Court (FOC) by approximately $450. The court accepted defendant Cheryl Noffsinger's representations that the total support award had been negotiated between the parties. Therefore, the trial court ordered that the "child support should be changed at this time to an amount that's set forth in the current recommendation plus $450 that was agreed to between the parties at the time of the" divorce.

Foster first argues that the trial court should have limited his child support obligation to the amount recommended under the child support formula. This Court reviews the modification of child support orders for an abuse of discretion. *Peterson v Peterson*, 272 Mich App 511, 515; 727 NW2d 393 (2006). However, any deviation from the child support guidelines is reviewed de novo as a question of law. *Id*. at 516. In addition, a divorce judgment "entered upon the settlement of the parties . . . represents a contract, which, if unambiguous, is to be interpreted as a question of law." *In re Lobaina Estate*, 267 Mich App 415, 417-418; 705 NW2d 34 (2005).

The parties' consent judgment included the following provision, entitled "Child Support":

> IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff, *Mark Foster*, shall pay through the Michigan State Disbursement Unit the sum of One Thousand One Hundred Dollars ($1,100.00) per month for the base support of

> [the] three minor children, and the sum of Zero Dollars ($0.00) per month for the ordinary health care support of the minor children, for a **total child support sum of One Thousand One Hundred Dollars ($1,100) per month.** Said child support deviates from the child support formula, a factor considered in property settlement. [Emphases in original.]

Foster characterizes the $450 additional child support as part of a "property settlement." This is in accord with the representations made at the pro confesso hearing held at the time of divorce. He argues that such settlement should be set aside as inequitable in light of the duration of the marriage and the financial status of the parties. In *Holmes v Holmes*, 281 Mich App 575, 598; 760 NW2d 300 (2008), this Court clarified that a provision for child support in excess of the guidelines must be enforced whether it is labeled a property settlement or child support if the provision is "contractual, freely negotiated, and unambiguous." The *Holmes* Court further stated, "merely because a circuit court possesses the power to modify a child support award, it may not simply ignore an unambiguous contractual provision regarding child support." *Id*. See also MCL 552.605(3).

Foster acknowledges that this Court is generally required to enforce property settlements reached through negotiations and agreement by the parties in a divorce action absent fraud, duress, or mutual mistake. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987). Nevertheless, he argues that the excess child support should be set aside because the testimony below demonstrates that neither party understood what they were agreeing to. The record does not support this argument. Foster testified at the divorce hearing that he understood that he had agreed to pay $1,100 per month in child support, that the figure exceeded the support calculations, and that the figure took into account the fact that Noffsinger was giving up any property interest she may have had in "some real property, including the business." Indeed, when the court initially misstated the amount to be paid per week, Foster corrected the court.

Moreover, Foster agreed with the court that he had reviewed the judgment of divorce with the court "a couple of times and through . . . at least one revision," and that he understood the terms. Noffsinger testified that the child support figure was arrived at through negotiation of the parties. She also stated that the support payment was "the set amount that we came up with," and that her position had been that Foster could "have everything," including the house, so long as she was given physical custody of the children.

Although both parties indicated some confusion about how the exact figure had been derived and how it deviated from the FOC recommendation, the record indicates that the parties did understand that $1,100 had been agreed to after some back-and-forth negotiation. Further, the language of the child support section of the judgment of divorce is clear on its face. The total to be paid is highlighted, and the final sentence plainly states: "[s]aid child support deviates from the child support formula." Because there were no allegations of fraud or duress, and Foster agreed to the additional amount, this Court will enforce the parties' agreement. *Holmes, supra* at 598.

Foster also argues that the provision should be set aside as ambiguous because it refers to a property award "but does not define what the amount of the award is or give any basis for it." Foster has provided no citation to authority to support his assertion that the provision was rendered ambiguous by the failure to define the amount of the award or describe its basis. A

party may not merely announce his position and then leave it to this Court to discover and rationalize the basis for his claims, nor may he give an issue cursory treatment with little or no citation of supporting authority. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Moreover, the basis for the excess can be inferred. The child support provision had language that the amount was "a factor considered in property settlement." Foster was awarded full interest in the marital home, the adjacent business, and two parcels of real property. He indicated agreement with the court's observation that Noffsinger was surrendering any potential interest she had the parties' real property, including the business, "and . . . that's all figured in" the child support award. In addition, the amount of the award can be calculated because the judgment of divorce sets forth the amount to be paid each month and sets forth how long the payments were to continue—until the minor children reach the age of 18 or graduate from high school, whichever is later, but no longer than the age of 19½.

Foster also argues that this Court should overturn the additional child support amount because it is analogous to alimony. This argument is equally unpersuasive. Under the plain language of the judgment of divorce, the parties agreed that no alimony would be paid. The language awarding $1,100 per month made reference to the property settlement, but made no reference to alimony. Foster has provided no basis for this Court to treat the excess as alimony in light of the plain language of the judgment. *Yee*, *supra* at 406.

Foster next argues the trial court erred in denying his motion to modify parenting time due to an alleged change in circumstances. This Court explained the meaning of "change of circumstances" in the context of child custody in *Vodvarka v Grasmeyer*, 259 Mich App 499, 513-514; 675 NW2d 847 (2003):

> [I]n order to establish a "change of circumstances," a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed. Again not just any change will suffice . . . there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. [Emphasis in original.]

The same standard applies for requests to change parenting time. *Terry v Affum* (*On Remand*), 237 Mich App 522, 534-535; 603 NW2d 788 (1999).

In this case, Foster based his motion for a change in custody on a "change of circumstance." However, at the hearing on the motion, he indicated that he was amending his motion to request a change in parenting time, not custody. Foster indicated that "the intent of the motion was to go to a 50/50 parenting time."

The court concluded that there were no grounds for adjusting the parenting time. And the record supports this conclusion. Foster generally expressed a strong desire to arrive at a 50/50 split, but provided no testimony related to a change in a condition surrounding the custody of the minor children. Instead, he testified that he had had some concerns related to his children's health, but that such concerns appeared to have been addressed. Foster failed to establish his allegation that "the home of the defendant is not the best place for the minor children."

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Kelly