IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

J.L.B.,

Appellant,

v. Case No. 5D13-2906

S.J.B. a/k/a S.G.,

Appellee.
_____/

Opinion filed February 14, 2014

Appeal from the Circuit Court
for Orange County,
Sally D.M. Kest, Judge.

J.L.B., Brandon, pro se.

S.J.B. a/k/a S.G., Orlando, pro se.

COHEN, J.

J.L.B. ("Former Husband") appeals from the supplemental final judgment for modification of timesharing/parenting plan. We affirm in part and reverse in part.

In what is a far too frequent occurrence, Former Husband and S.J.B. ("Former Wife") have engaged in years of litigation involving their minor children. The parties' marriage was dissolved by a final judgment entered on September 17, 2008. Since then, they have filed numerous pleadings attacking the other's parental fitness. In March 2010, Former Husband filed a supplemental petition to modify the parenting plan. In that petition, he sought sole parental responsibility and, in pertinent part, alleged that Former Wife had filed a false report of abuse (presumably against him) and had violated

court orders regarding their parenting plan. Subsequently, in December 2011, he filed another supplemental petition to modify the parenting plan, this time alleging that the parties' children had been removed from Former Wife by the Department of Children and Family Services and placed into his custody. At one point in that petition he sought sole parental responsibility, and at another he merely sought a modification of the time-sharing schedule. In this context, the case proceeded to trial. At the conclusion of the trial, the court found that Former Husband met his burden of establishing a substantial change in circumstances and entered a supplemental final judgment granting him majority time-sharing. Former Husband timely appealed.

First, Former Husband argues that the trial court erred in placing the burden of proof on him to establish a substantial change of circumstances since the date of the original final judgment of dissolution. However, he did not raise this issue below. As such, he failed to preserve it for appeal. See Munnerlyn v. Wingster, 825 So. 2d 481, 484 (Fla. 5th DCA 2002).

Next, Former Husband contends that the trial court erred in setting Former Wife's child support obligation based upon three children rather than four. While the record on appeal is not entirely complete, apparently the parties adopted one child and received a stipend from the State of Georgia for over $430 per month. The trial court ordered that stipend, which had been going to Former Wife, be paid to Former Husband instead. That amount was clearly intended for the child's support and, given Former Wife's financial condition, we find no abuse of discretion in how the trial court calculated the child support. Cf. Wallace v. Dep't of Rev. ex rel. Cutter, 774 So. 2d 804, 807 (Fla. 2d DCA 2000) (holding that where children receive Social Security dependent benefits, the

benefits must be credited towards noncustodial disabled parent's child support obligation); see also Sealander v. Sealander, 789 So. 2d 401, 403 (Fla. 4th DCA 2001) (concluding that former husband was entitled to credit against child support obligation for Social Security benefits that parties' child received as a result of former husband's voluntary early retirement).

Additionally, Former Husband submits that the trial court used the incorrect date in calculating the amount of retroactive child support owed by Former Wife. Because Former Husband did not plead for retroactive child support in his December 2011 supplemental petition and the issue was not tried by consent, we decline to hold that the trial court abused its discretion in calculating the retroactive child support due.

Lastly, Former Husband argues that the trial court erred in awarding the IRS dependency exemptions to the parties in alternating years because Former Wife did not request such relief in her pleadings. We agree. See Newberry v. Newberry, 831 So. 2d 749, 751 (Fla. 5th DCA 2002) ("A trial court lacks jurisdiction to enter any judgment on an issue not raised by the pleadings." (citing Cortina v. Cortina, 98 So. 2d 334 (Fla. 1957))). Accordingly, we reverse that portion of the supplemental final judgment. We affirm in all other respects.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

PALMER and EVANDER, JJ., concur.