STATE OF MICHIGAN

COURT OF APPEALS

SHARMAIN MILLER,

Plaintiff-Appellee,

v

KIMANI DEON BELCHER-JOHNSON,

Defendant-Appellant.

UNPUBLISHED
January 24, 2006

No. 264186
Kent Circuit Court
LC No. 04-010854-DP

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying his motion to compel discovery and the trial court's order of filiation. We affirm the trial court's order of filiation, and dismiss the issue regarding discovery as moot.

Two months after the prosecutor's office filed a paternity complaint against defendant on behalf of the Family Independence Agency (FIA)[1] and the mother, Sharmain Miller, defendant sent interrogatories, which included document requests, to the prosecutor's office, seeking information regarding Miller's income, information concerning any other cases in which Miller receives child support, and proof of Miller's confinement expenses. When the prosecutor's office failed to respond, defendant filed a motion to compel. The trial court ultimately denied the motion.

We find it unnecessary to determine whether the trial court erred in denying defendant's motion to compel discovery, where at the subsequent evidentiary hearing the evidence that was available regarding Miller's financial status and history was disclosed and presented to the court. Defendant makes no argument that he was prejudiced at the hearing by the prosecutor's failure to respond, nor does defendant argue that there exists or may exist additional information concerning Miller's finances that was not disclosed and which would have impacted the court's ruling. Assuming that the trial court erred in denying the motion to compel and that the prosecutor's office had no legal basis to support its position, the issue is moot. "'An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor

[1] The FIA is now called the Department of Human Services.

of the party, to grant relief.'" *City of Warren v Detroit*, 261 Mich App 165, 166 n 1; 680 NW2d 57 (2004), quoting *Michigan Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997). Even were we to decide in defendant's favor in the case at bar, there is no relief to grant as the evidence regarding Miller's financial situation was presented at trial. Finding error and ordering the trial court to direct the prosecutor to respond to the interrogatories and document requests would serve no purpose.

In the order of filiation, the trial court reserved with respect to confinement costs, imputed income to defendant, and denied defendant's request for joint legal custody.

Defendant argues that the trial court erred when it reserved ruling on the issue of payment of confinement costs and expenses because the order of filiation stated that it resolved the last pending claim and closed the case. Defendant's argument is without merit. Pursuant to MCL 722.717(2), an order of filiation shall provide for the payment of necessary confinement expenses incurred by the mother as determined by MCL 722.712. The order of filiation itself and the court's ruling from the bench indicate that the court reserved ruling on the issue regarding payment of confinement expenses. The court noted on the record that it was reserving on the issue because the bill was "not able to be presented at this time," and because counsel for defendant had raised some procedural objections on the issue. We read nothing in MCL 722.712 or MCL 722.717 that precludes the court from reserving ruling on the issue until the confinement bill is available, at which point a determination can be made regarding the necessary confinement expenses consistent with MCL 722.712 and then incorporated into the order of filiation by way of amendment or other means. On a related argument, defendant contends that the court erred in failing to apportion confinement expenses and in failing to consider defendant's ability to pay such expenses. Considering that the trial court reserved ruling on this issue without defendant yet being ordered to pay any confinement expenses, we decline to address this speculative argument.

Next, defendant argues that the trial court erred in deciding to impute income to him and erred relative to the amount of income imputed; therefore, the support award must be reversed. "[A] trial court may properly take into consideration a parent's ability to work and earn money in setting the appropriate child support award." *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998), citing *Heilman v Heilman*, 95 Mich App 728; 291 NW2d 183 (1980). The Michigan Child Support Formula (MCSF) Manual provides that imputation of income "usually occurs in cases where there is a voluntar[y] reduction of income *or* a voluntary unexercised ability to earn." MCSF Manual, § 2.10(A), p 19. A trial court does not need to find that a parent has not exercised his or her ability to earn in bad faith before imputing income. *Olson v Olson*, 189 Mich App 620, 621-622; 473 NW2d 772 (1991), aff'd in lieu of lv gtd 439 Mich 986; 482 NW2d 711 (1992).

We do not read § 2.10(F)(2) of the MCSF Manual as precluding imputation of income under the circumstances of this case as there was a reduction of income to zero from the period preceding the filing of the complaint, when defendant was working, to the time the order was entered, at which time he was not employed. Moreover, the wording of § 2.10(F)(2) suggests that it is not a mandatory directive. The trial court did not err in finding that defendant, a young, intelligent, college-bound man, who recently graduated high school as the class valedictorian, had an unexercised ability to earn income. Defendant's decision to go to college is laudable. Nonetheless, every parent has a duty to support his or her child. *Macomb Co Dep't of Social*

Services v Westerman, 250 Mich App 372, 377; 645 NW2d 710 (2002), citing MCL 722.3. This duty cannot merely be shrugged off by the parent's desire to improve his or her circumstances.

With respect to the various factors subject to consideration in deciding whether to impute income and in setting the amount to be imputed, *Ghidotti, supra* at 198-199; MSCF Manual, § 2.10(E), p 19, there was evidence touching on several of the factors. The trial court found defendant to be a high-achieving individual who would be able to earn money sufficient to cover child support by working at a job while attending college. Defendant had previous experience working in restaurants. To the extent that the trial court inadequately set forth factors and grounds in support of its ruling, we find no basis to reverse where defendant himself conceded at the evidentiary hearing that he could get a job while at college and earn enough to cover the support award.[2] Reversal is unwarranted.

Finally, defendant argues that the trial court committed error when it denied his request for joint legal custody. MCL 722.717b provides that if a trial court makes a determination of paternity and there is a dispute regarding custody of the child, the court shall immediately enter an order that establishes temporary custody of the child pending a hearing on or other resolution of the dispute.[3] The record indicates that defendant never raised a claim for either sole or joint legal custody in his answer to the complaint, in any of his pretrial motions or pleadings, or in his trial brief. He did not file a counterclaim for sole or joint legal custody, nor did he suggest that there was an issue or dispute regarding custody in initial remarks to the court before the evidentiary hearing commenced. Custody was never at issue going into the hearing. Only toward the end of defendant's testimony was he briefly asked whether he wanted joint legal custody, and his counsel made the request, without discussion, in what appears to be an afterthought in closing arguments. In light of these circumstances, we are not prepared to conclude that defendant properly preserved an argument that this case involved a custody dispute.

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Janet T. Neff

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[2] We note that the court also imputed income to Miller, who was not employed, in the same amount as defendant when calculating the support award.

[3] The court may also refer the matter to the friend of the court for a report and recommendation. MCL 722.717b.