STATE OF MICHIGAN

COURT OF APPEALS

CHARLES TODD INNISS, Plaintiff-Appellant,	UNPUBLISHED March 19, 2013
v	No. 307349 Wayne Circuit Court
NICOLENA J. INNISS, a/k/a NICOLENA J. STUBBS, Defendant-Appellee.	LC No. 05-527237-DM

Before: JANSEN, P.J., and FITZGERALD and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order enforcing the parties' consent judgment of divorce. We affirm.

On October 15, 2007, the trial court entered a consent judgment of divorce that ordered plaintiff to assume the debt of "[t]he American Express Card in Defendant's name, to the extent that the charges represent expenditures made on behalf of the Todd Group, not [sic] exceed five thousand ($5,000) dollars. If the parties [c]annot agree to this amount, the question shall be submitted to B. Michael Grant, CPA, whose decision shall be binding upon the parties." The judgment also ordered plaintiff to pay 70% of the childcare expenses for the parties' children.

On July 16, 2009, defendant filed a motion to enforce the consent judgment of divorce. As relevant to this appeal, defendant asserted that plaintiff owed her $6,298.50 in childcare expenses and $5,000 for the American Express credit card account. In addition to requesting that plaintiff be ordered to immediately comply with the terms of the judgment and pay these amounts, defendant requested attorney fees and costs.

On March 30, 2011, the trial court entered a stipulated order providing that charges made on the American Express credit card on behalf of plaintiff's business, The Todd Group, be determined by the court, rather than submitted to binding arbitration. The court ordered the parties to "submit post-hearing briefs (to include Exhibits, requests for recovery, comprehensive arguments, supporting monetary requests on Exhibits submitted)."

In his post-hearing brief, plaintiff contended that defendant provided less than $3,200 in receipts regarding the American Express account and that defendant was given at least $4,000 to reimburse her for expenditures made on behalf of plaintiff's business. Plaintiff relied on an

American Express credit card statement that showed a $3,000 payment made on the account by plaintiff. With regard to the childcare expenses, plaintiff asserted that he should not have to pay these expenses because defendant unilaterally altered the children's childcare arrangements, which resulted in greater expense for one child and a subpar situation for the other child.

Defendant filed an amended bill of particulars. Defendant's attorney itemized his fees and costs for the proceedings beginning with defendant's motion to enforce the consent judgment of divorce, which totaled $22,042.37.

Following an evidentiary hearing, the trial court entered an opinion and order on defendant's motion to enforce the consent judgment. With regard to the American Express account, the court found that defendant had provided receipts totaling $3,600 for items associated with plaintiff's business, and that these receipts were for purchases dated prior to the date on which plaintiff's business issued a $3,000 check payable to American Express that was credited to defendant's American Express account. The court awarded defendant $600, "the difference between the approximately $3,600 in receipts submitted and the $3,000 payment made to American Express by plaintiff's company in May 2005." With regard to the childcare expenses, the court stated that "Plaintiff's remedy, if he were upset with Defendant's decision, was to contest the decision and request a Lombardo hearing, not to withhold payments required under the judgment." Accordingly, the trial court concluded that plaintiff owed defendant for his proportionate share of the childcare expenses and awarded defendant $4,971.30 for childcare expenses.

I. AMERICAN EXPRESS DEBT

Plaintiff contends that the trial court erred by failing to credit plaintiff with an additional $1,000 payment he made toward the debt owed by plaintiff on defendant's American Express credit card account. Plaintiff also argues that the trial court erred by finding that plaintiff's business charges on defendant's American Express credit card totaled $3,600, rather than $3,400.

For an issue to be properly preserved for appellate review, it must be raised before, and addressed and decided by the trial court. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Plaintiff did not assert in the trial court that the court erred in finding the charges on the American Express credit card made by plaintiff's business, the Todd Group, totaled $3,600. Therefore, this aspect of the issue has not been properly preserved for review and is not properly before this Court on appeal. *Petrus v Dickinson Co Bd of Comm'rs*, 184 Mich App 282, 288; 457 NW2d 359 (1990). Furthermore, plaintiff simply argues in his brief on appeal that the receipts submitted to the trial court for these charges are "clearly" less than $3,600, and "estimates" that the charges are "closer" to $3,400. Plaintiff does not point to any clear evidence that supports his argument, and he has not provided this Court with Exhibit 13, which was admitted in the trial court and which contained the receipts used to determine the debt in question.

This Court reviews a trial court's decision to enforce a consent judgment for an abuse of discretion. *Trendell v Solomon*, 178 Mich App 365, 369-370; 443 NW2d 509 (1989). "Findings of fact are reviewed for clear error. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, on the whole record, is left with a definite and firm

conviction that a mistake has been made." *Bynum v ESAB Group, Inc*, 467 Mich 280, 285; 651 NW2d 383 (2002).

The trial court noted in its opinion that "Exhibit 13 references a check written to Defendant by Plaintiff, but does not specify an amount. Testimony did not clearly establish that a $1,000.00 check was received by Defendant. Therefore, the Court will not adjust the $3,000.00 already credited to Plaintiff's [sic] by an additional $1,000.00." The evidence reveals that defendant did not recall receiving any reimbursement toward the American Express credit card account from plaintiff. Plaintiff has not identified any evidence that supports his assertion that he made an additional $1,000 payment toward the account beyond a note defendant wrote referencing a check for "around" $1,000 from the Todd Group. This evidence does not clearly establish that plaintiff made an additional $1,000 payment toward the account. Therefore, the trial court did not abuse its discretion by failing to credit plaintiff an additional $1,000 toward his debt owed to defendant for the American Express credit card account. *Bynum*, 467 Mich at 285.

II. CHILDCARE EXPENSES

Plaintiff argues that the trial court should have considered defendant's unilateral decisions regarding the welfare of the parties' children and her violation of the joint custody provision when determining plaintiff's liability for childcare costs.[1] It appears that plaintiff is challenging the trial court's order mandating that he pay for the children's childcare costs, not the separate resolution or decision made regarding school selection for the children.[2] The consent judgment of divorce requires plaintiff to pay 70 percent of the children's childcare expenses. Plaintiff acknowledged that he is responsible for 70 percent of the children's childcare expenses. He further acknowledged that he had not made any payments toward children expenses since the entry of the consent judgment of divorce.

The plain language of the consent judgment of divorce requires plaintiff to pay 70 percent of the children's childcare expense and does not provide plaintiff with an option to withhold payments if he is unsatisfied with the children's school or daycare placements. Plaintiff has failed to show that the trial court abused its discretion by requiring plaintiff to pay for 70% of the childcare expenses. Furthermore, plaintiff does not support his argument with any legal

[1] Defendant raises a jurisdictional challenge regarding this issue on appeal based on the misconstruction that plaintiff is challenging an order regarding the alleged resolution of school/daycare selection. However, plaintiff is challenging the provision in the trial court's order enforcing the consent judgment of divorce requiring him to pay for childcare because he is unhappy with and allegedly did not consent to the school/daycare selection. Therefore, defendant's jurisdictional challenge is without merit.

[2] Plaintiff raised several separate motions in the trial court regarding school selection for the parties' children. Plaintiff contested defendant's selection of school and daycare placement for the parties' children. It is unclear whether a resolution or decision was made regarding school selection. Plaintiff's last motion to determine school selection for the children was dismissed on September 13, 2011, with prejudice because plaintiff withdrew the motion.

authority and, therefore, has abandoned the argument that it was reasonable for him to refuse to pay since defendant made a unilateral decision allegedly in violation of the party's joint legal custody provision. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) ("[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.").

III. POST-JUDGMENT ATTORNEY FEES AND COSTS

Plaintiff argues that the trial court erred by awarding defendant attorney fees and costs associated with the motion to enforce the consent judgment of divorce because defendant did not allege sufficient facts to establish plaintiff's ability to pay the attorney fees. We disagree.

This Court reviews for an abuse of discretion a trial court's award of attorney fees and costs. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008); *Myland v Myland*, 290 Mich App 691, 701; 804 NW2d 124 (2010). "Findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error; questions of law are reviewed de novo." *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007).

The Michigan Court Rules provide as follows regarding awarding a party attorney fees and costs:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
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> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
>
> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply. [MCR 3.206(C).]

This Court has interpreted this rule and applied it to domestic relations cases as follows:

> It is within the discretion of the trial court to award attorney fees in domestic relations cases. A party to a divorce action may be ordered to pay the other party's reasonable attorney fees if the record supports a finding that such financial assistance is necessary to enable the other party to defend or prosecute the action. An award of legal fees is also authorized where the party requesting the fees has been forced to incur them as a result of the other party's unreasonable conduct. The party requesting the attorney fees has the burden of showing facts sufficient to justify the award. [*Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007) (quotation marks and citations omitted).]

Where a party's yearly income is less than the amount the party owed in attorney fees, the party sufficiently demonstrated an inability to pay the attorney fees. *Myland*, 290 Mich App at 702; *Stallworth*, 275 Mich App at 288. Also, this Court has ruled that where a party's income was more than double what the opposing party earned in a year, the party's ability to contribute toward the opposing party's attorney fees was demonstrated. *Stallworth*, 275 Mich App at 288-289.

The trial court awarded defendant attorney fees under MCR 3.206(C)(2)(a), based on defendant's necessity and plaintiff's ability to pay the attorney fees. The trial court ruled as follows:

> As stated in the bill of particulars submitted in Defendant's post-hearing brief, Defendant owes over $20,000.00 in attorney fees and costs associated with this matter. The Court finds that Defendant is unable to bear this expense. Defendant testified that her 2010 income was approximately $18,000.00, and that her current husband was recently laid off. Although Defendant is supposed to receive $755.00 per month in child support from Plaintiff, Defendant testified without rebuttal that Plaintiff has a current child support arrearage of $4,500.00, and typically waits until the arrearage reaches $3,000.00 - $5,000.00 before making a small payment on the arrearage. Additionally, Defendant is now being sued for the AT & T credit card debt that is Plaintiff's responsibility under the divorce judgment.
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> The Court finds that Plaintiff has an ability to pay attorney fees. Plaintiff testified that his annual income as a practicing attorney was "about $50,000.00". Significantly, Defendant testified credibly that Plaintiff has lived a comfortable lifestyle since the judgment of divorce. Defendant testified that she observed several new acquisitions at Plaintiff's home (the former marital home) since the judgment of divorce: several flat screen TVs, a new Ipad, a Nikon camera, new lawn furniture, new skiis [sic], a full-sized trampoline, a gazebo, and an elaborate pond with waterfall in Plaintiff's backyard. Other than explaining that the camera was a gift from Plaintiff's father, Plaintiff did not rebut this testimony. Plaintiff elaborated that the backyard pond, which Plaintiff testified utilized a $200.00 battery and contained koi fish, was a project Plaintiff worked on with the children. Although the home in question has since been foreclosed upon, Plaintiff recently purchased a 3000 square-foot home for cash with a $106,000 "loan" from his father. Plaintiff's father also made an additional $14,000.00 available at Plaintiff's request for renovation of the home. Plaintiff's father testified that no legal document had been signed for the "loan". On a subsequent day of testimony, Plaintiff claimed that he and his father had drafted and signed a mortgage and promissory note, but it had not yet been recorded. Plaintiff provided no documentation of the "loan". The record supports the conclusion that Plaintiff has an ability to pay attorney fees.

Plaintiff argues that defendant did not demonstrate plaintiff's ability to pay the attorney fees. Plaintiff further argues that the trial court erred by not making an inquiry regarding his monthly expenses when determining his ability to pay defendant's attorney fees. However,

plaintiff has not supported his argument with legally binding authority. Defendant clearly established her inability to pay the attorney fees, given that the fees were over $20,000 and defendant's yearly income was $18,000. *Myland*, 290 Mich App at 702; *Stallworth*, 275 Mich App at 288. Furthermore, the trial court properly considered plaintiff's $50,000 salary, the lack of evidence of a $106,000 "loan" from plaintiff's father to purchase a home, and evidence of plaintiff's ability to purchase several luxuries when determining that plaintiff had the ability to pay the attorney fees. See *Stallworth*, 275 Mich App at 288-289. Plaintiff has failed to demonstrate that the trial court abused its discretion by determining plaintiff had the ability to pay defendant's attorney fees and awarding her the fees.

Affirmed.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly