

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

W.L.F.,

Appellant

v.

C.A.F.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1247 MDA 2012

Appeal from the Order Entered June 5, 2012
In the Court of Common Pleas of Cumberland County
Domestic Relations at No(s): PACSES No. 624110738

BEFORE: BOWES, GANTMAN and OLSON, JJ.

MEMORANDUM BY OLSON, J.

FILED MAY 07, 2013

Appellant, W.L.F. (hereinafter "Father"), appeals from the order entered on June 5, 2012, which granted in part and denied in part Father's petition for an upward modification in the child support obligations of C.A.F. (hereinafter "Mother"). We affirm.

Father and Mother married in 1991, had two children together, and then separated in 2008. Currently, one child remains a minor and this minor child lives primarily with Father.¹

In 2009, Father filed a complaint against Mother for child support. Following a hearing, Mother was ordered to pay Father a certain amount per

¹ As a minor child is involved in this case, we identify the parties by their initials so as to protect the child's identity. We have modified the caption accordingly.

month in child support. On April 1, 2010, the trial court entered an order modifying Mother's child support obligations. This April 1, 2010 order declared that – for the parties' one minor child – Mother was required to pay Father \$366.13 per month in child support. Order, 4/1/10, at 3.

In June 2010, Mother received a \$165,000.00 inheritance from her late grandfather's estate. The inheritance was derived from the liquidation of various annuities that were within Mother's grandfather's estate and was paid to Mother in "three [separate] checks [that] added up to \$165,000.00". N.T. Hearing, 12/7/11, at 28-29. One year later, Mother received another \$100,000.00 inheritance from her grandfather's estate. Again, this \$100,000.00 sum was derived from cashing in annuities that were within the grandfather's estate.² *Id.* at 29.

When Father discovered that Mother had received the inheritance, Father filed a petition, in the court of common pleas, to modify the existing support order. As Father claimed, Mother's inheritance justified an upward modification in Mother's support obligations. Moreover, Father claimed, since Mother's inheritance derived from the liquidation of annuities, the

² As Mother rightly observes, there is no evidence as to whether Mother received the inheritance as a result of a specific or a general devise. In other words, there is no evidence as to whether the grandfather devised to Mother the annuities or simply a sum of money. Further, there is no evidence as to the substance of the annuities or whether Mother had any control over the liquidation of the annuities prior to distribution.

entire inheritance should be considered "income" for purposes of calculating Mother's child support obligations. Father's Petition for Modification of an Existing Support Order, 2/24/11, at 2. The parties proceeded to a hearing before a support master, during which time the above evidence was presented.

On December 16, 2011, the support master issued a thorough report and recommendation, wherein the master recommended that Father's modification petition be partially granted. As the master explained:

The law is clear in Pennsylvania that the corpus of an inheritance does not constitute income for support purposes. ***Humphreys v. DeRoss***, 790 A.2d 281 (Pa. 2002). . . . [Therefore,] both the [\$165,000.00] received by [Mother] in [2010] and the \$100,000.00 received by her as part of her inheritance in [2011] do not constitute income for support purposes. However[,] the interest generated by these funds does constitute income as conceded by [Mother] and the funds may [also] be considered in determining whether [an upward] deviation from the guideline support amount is appropriate.

Support Master's Report and Recommendation, 12/16/11, at 3.

To determine Mother's basic child support obligation, the master thus recalculated the parties' net monthly income – without including the corpus of Mother's inheritance in her income.³ ***Id.*** The master determined that,

³ As was proper, within Mother's income available for support, the master included the interest generated by the principal. ***See Humphreys***, 790 A.2d at 288 ("the **corpus** of an inheritance is not included in a payor's income available for support") (emphasis added).

under the support guidelines, Mother's basic support obligation was \$365.00 per month. ***Id.*** at 4. After calculating the guideline amount, the master concluded that the circumstances of this case – particularly Mother's large inheritance – justified both a modification of the existing support order and a deviation from the support guidelines. ***Id.***; ***see also*** Pa.R.C.P. 1910.16-5 (deviation from the support guidelines); ***Humphreys***, 790 A.2d at 288 (“although the corpus of an inheritance is not included in a payor's income available for support, it may be considered when [determining whether the circumstances justify an upward deviation from the support guidelines]”). The master, therefore, granted Father an upward deviation from the support guidelines and recommended that Mother pay \$400.00 per month in child support. Support Master's Report and Recommendation, 12/16/11, at 4.

Father filed timely exceptions to the master's report and claimed that the master “erred in determining that the monies received by [Mother] from an annuity were not income” for purposes of calculating Mother's basic support obligation. Father's Exceptions, 1/4/12, at 1 (internal quotations omitted). By order entered June 5, 2012, the trial court essentially adopted the master's report and dismissed Father's exceptions. Trial Court Order, 6/5/12, at 1. Father then filed a timely notice of appeal to this Court.

Father numbers two claims on appeal:⁴

⁴ The trial court ordered Father to file and serve a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate (Footnote Continued Next Page)

[1.] Did the [trial] court commit an error of law by not including the annuity received by [Mother] as income pursuant to 23 Pa.C.S.A. § 4302?

[2.] Did the [trial] court err in its reliance on [**Humphreys v. DeRoss**, 790 A.2d 281 (Pa. 2002)] in determining that an annuity was excluded as income since it was an inheritance?

Father's Brief at 4.

The above two claims are interrelated; as such, we will consolidate the claims and discuss them as one.

As our Supreme Court has declared:

In our appellate review of child support matters, we use an abuse of discretion standard. A support order will not be disturbed on appeal unless the trial court failed to consider properly the requirements of the Rules of Civil Procedure Governing Actions for Support, Pa.R.C.P. 1910.1 *et seq.*, or abused its discretion in applying these Rules. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will . . . discretion is abused. This is a limited role and, absent a clear abuse of discretion, the appellate court will defer to the order of the trial court. A finding of abuse is not lightly made but only upon a showing of clear and convincing evidence.

Christianson v. Ely, 838 A.2d 630, 654-655 (Pa. 2003) (internal citations and quotations omitted). The interpretation of a statute or a Rule of Civil Procedure is an issue of law. Thus, as to such issues, "our scope of review is

(Footnote Continued) _____

Procedure 1925(b). Father complied and preserved the two claims he currently raises on appeal.

plenary[] and our standard of review is *de novo*.” **Kronstain v. Miller**, 19 A.3d 1119, 1123 (Pa. Super. 2011) (internal quotations and citations omitted).

Further, we note:

An award of support, once in effect, may be modified *via* petition at any time, provided that the petitioning party demonstrates a material and substantial change in their circumstances warranting a modification. **See** 23 Pa.C.S.A. § 4352(a); **see also** Pa.R.C.P. 1910.19. The burden of demonstrating a “material and substantial change” rests with the moving party, and the determination of whether such change has occurred in the circumstances of the moving party rests within the trial court’s discretion.

Plunkard v. McConnell, 962 A.2d 1227, 1229 (Pa. Super. 2008).

On appeal, Father claims that the trial court erred by only partially granting his petition to modify the prior support order. According to Father, the trial court should have considered the entirety of Mother’s \$165,000.00 inheritance as income available for support.⁵ Father concedes that Mother received this money from an inheritance and that, in **Humphreys**, our Supreme Court specifically held that the corpus of an inheritance is not encompassed within the statutory definition of “income” available for

⁵ As explained above, Mother received a \$165,000.00 inheritance in 2010 and then received a \$100,000.00 inheritance in 2011. Moreover, the trial court concluded that neither sum could be considered in determining Mother’s income available for support. Now on appeal, Father claims only that the trial court erred when it excluded the \$165,000.00 inheritance from Mother’s income available for support. Father’s Brief at 8. Thus, Father has waived any claim of error with respect to the \$100,000.00 inheritance.

support. Father's Brief at 5 and 10. However, Father claims that Mother's inheritance derived from annuities and, since the statutory definition of "income" includes "annuities," Father contends that **Humphreys** is inapplicable and that Mother's inheritance must be considered income available for support. We conclude that **Humphreys** applies to the case at bar and that Father's claim on appeal fails.

Section 4302 of the Domestic Relations Code defines the term "income" in the following manner:

"Income." Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers' compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source.

23 Pa.C.S.A. § 4302.

Notwithstanding the expansive language used above, in **Humphreys**, our Supreme Court held that the statutory definition of "income" does not include the corpus of an inheritance. **Humphreys**, 790 A.2d at 287-288.

In ***Humphreys***, while the father was paying child support to the mother under a court order, the father received a lump sum inheritance of approximately \$83,000.00. Claiming that the inheritance constituted a drastic increase in the father's income, the mother filed a petition to modify the father's child support obligations. The trial court concluded that the father's inheritance constituted "income" under section 4302 and, thus, the trial court increased the father's child support obligations accordingly. We affirmed the trial court's order and the father appealed to the Pennsylvania Supreme Court. ***Id.*** at 283.

On appeal, our Supreme Court reversed our determination and broadly held that the statutory definition of "income" does not include the corpus of an inheritance. ***Id.*** at 287. In arriving at this conclusion, the ***Humphreys*** Court acknowledged that the corpus of an inheritance potentially fell within three general categories of "income" listed within section 4302. ***Id.*** at 284-285. Indeed, the corpus of an inheritance could potentially fall within the general categories of: 1) "income from an interest in an estate or trust;" 2) "other entitlements to money or lump sum awards, without regard to source, including lottery winnings;" and 3) "any form of payment due to and collectible by an individual regardless of source." ***Id.***; ***see also Humphreys***, 790 A.2d at 288 (Castille, J. dissenting). Nevertheless, the Supreme Court concluded that – because "inheritance is one of the most common means by which wealth is transferred" and because the legislature did not specifically list "the principal of an inheritance" in the definition of

income – “it [was] logical to assume that the legislature did not intend to include the principal [of an inheritance]” in the definition of income.

Humphreys, 790 A.2d at 285. Further, although the statutory definition of income includes “lump sum awards,” the **Humphreys** Court reasoned that it would be unfair to include a lump sum inheritance in a payor’s income.

According to the **Humphreys** Court:

Including an inheritance in income available for support does not reflect how families in which parents live together treat inheritances. In an intact family, the receipt of a lump sum is likely to be used for purchases, investments or savings, and not for meeting living expenses. Therefore, considering the entire inheritance as income available for support is contrary to the purposes of the support guidelines . . . which is to ensure that “persons similarly situated [] be treated similarly.”

Id. at 286.

Father attempts to avoid **Humphreys** by claiming that Mother’s \$165,000.00 inheritance derived from the liquidation of annuities. According to Father, since section 4302 specifically lists “annuities” as “income,” Mother’s inheritance must be considered income for support purposes. Father’s claim fails.

During the evidentiary hearing, Mother testified that she received her \$165,000.00 inheritance in the form of, what was essentially, a lump sum payment. Indeed, Mother testified that, in June 2010, she received her inheritance in the form of “three [separate] checks [that] added up to \$165,000.00.” N.T. Hearing, 12/7/11, at 28. Moreover, although the corpus

derived from the liquidation of various annuities that were within her grandfather's estate, there was no evidence as to: whether Mother was devised the annuities or a general sum of money, when the annuities were liquidated, or who decided to liquidate the annuities. Since Father petitioned the court to modify the support order, Father had the burden of demonstrating a "material and substantial change" in the circumstances, so as to warrant a modification in the support order. **Plunkard**, 962 A.2d at 1229. The evidence at the hearing did not demonstrate anything other than Mother received a lump sum inheritance of \$165,000.00 in cash. As such, the facts of this case fall squarely under the holding of **Humphreys** and Father's claim fails.

Moreover, even if Mother had liquidated the annuities, Father's claim would still fail. **Humphreys** concerned a pure matter of statutory interpretation and, in that decision, our Supreme Court categorically held that "the legislature did not intend to include the principal [of an inheritance]" in the statutory definition of income. Further, although **Humphreys** concerned a lump-sum monetary inheritance, we can arrive at no principled distinction between the corpus of an inheritance that is in the form of a lump sum of money and the corpus of an inheritance that is in the form of a monetary annuity. Certainly, the form of an asset cannot alter the fact that the asset was transferred by way of inheritance – and **Humphreys** categorically holds that the corpus of an inheritance is not included in the statutory definition of income. Thus, even if Mother had liquidated the

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annuities, the corpus of the asset would still not constitute income for support purposes.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 5/7/2013