J-A16011-14

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

JANINA MICKUS,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
CHRISTOPHER M. McDEAVITT,	:	
	:	
Appellant	:	No. 1111 WDA 2013

Appeal from the Order entered June 4, 2013,
Court of Common Pleas, Allegheny County,
Family Court at No. FD 12-003052

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED JULY 23, 2014**

Appellant, Christopher M. McDeavitt ("McDeavitt"), appeals *pro se* from the order entered on June 4, 2013 by the Court of Common Pleas of Allegheny County, Family Division, dismissing his exceptions to the hearing officer's recommendation that he pay Janina Mickus ("Mickus") $544.85 per month in child support. After careful review, we affirm.

The relevant facts and procedural history in this case are as follows. McDeavitt and Mickus are the father and mother of Kylie Lynn Mickus ("Child"), age four (4). On January 20, 2012, Mickus filed a complaint for support. On February 21, 2012, the trial court ordered McDeavitt to pay Mickus $460.00 per month in child support. On July 19, 2012, Mickus petitioned for modification of the support order claiming that she obtained new employment at Sam's Club and began incurring $950.00 per month in

childcare costs. On September 18, 2012, McDeavitt and Mickus attended a hearing on the petition. Following Hearing Officer Annette Tierney's ("Hearing Officer Tierney") recommendations stemming from this hearing, the trial court ordered McDeavitt to make child support payments to Mickus in the amount of $938.79 per month, plus $100.00 per month on arrears. Additionally, Hearing Officer Tierney recommended that Mickus apply for subsidized child care through Child Care Information Services ("CCIS"). On October 4, 2012, McDeavitt filed exceptions to Hearing Officer Tierney's recommendations. Likewise, on October 24, 2012, Mickus filed cross-exceptions to the recommendations.

On December 19, 2012, the trial court denied all of McDeavitt's and Mickus's exceptions and cross-exceptions, save for McDeavitt's exception relating to childcare expenses. The trial court granted that exception because Mickus's $950.00 per month expense for child care was going to decrease once she qualified for the CCIS subsidy. Trial Court Order, 12/19/12, at 2-3. Thus, the trial court remanded the case to Hearing Officer Tierney for a hearing to determine the sole issue of childcare expenses.

On February 13, 2013, following that hearing and Hearing Officer Tierney's recommendations, the trial court ordered McDeavitt to reduce his child support payments to Mickus to $544.85 per month, plus $55.00 per month in arrears. Hearing Officer Tierney recommended that this change be effective from November 25, 2012, the date when Mickus began receiving

subsidized child care. Once again, McDeavitt filed exceptions on March 4, 2013 and Mickus filed cross-exceptions on March 22, 2013. On June 4, 2013, the trial court dismissed both McDeavitt's and Mickus's exceptions and cross-exceptions.

On July 2, 2013, McDeavitt filed a notice of appeal. On appeal, McDeavitt raises the following issues for our review:

> 1. Whether the trial court erred in accurately calculating all of [] Mickus'[s] income as per 23 Pa.C.S.A. [§] 4302?
>
> 2. Whether the trial court erred in calculating a reasonable amount for child care based on the net income of the parties?
>
> 3. Whether the trial court erred in the calculation of arrearages and retroactive child care expenses?
>
> 4. Whether the trial court erred in the excessive upward deviation from the guidelines in violation of the Self Support Reserve (SSR) and without sufficient evidence.

McDeavitt's Brief at 5.[1]

[1] Mickus asserts that McDeavitt has waived several of the issues that he raises on appeal because he did not file an appeal immediately following the December 19, 2012 order granting and denying exceptions. ***See*** Mickus's Brief at 9-11, 13-14, 18-19. However, our Court has held that an appeal from an order granting exceptions and remanding the case for a hearing in a support case is not a final appealable order. ***See Deasy v. Deasy***, 730 A.2d 500, 503 (Pa. Super. 1999) (holding that Mother's appeal did not lie from a final order where Mother appealed from an order granting in part Father's exceptions to the hearing officer's recommendation to enforce a separation agreement, but requiring Father to make child support payments pursuant to that agreement and remanding the case for a hearing to determine an award of child support). We therefore disagree with Mickus's

Our scope of review when considering an appeal from a child support order is as follows:

> When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

McClain v. McClain, 872 A.2d 856, 860 (Pa. Super. 2005) (internal citations omitted). "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." ***Berry v. Berry***, 898 A.2d 1100, 1103 (Pa. Super. 2006), *appeal denied*, 918 A.2d 741 (Pa. 2007).

For his first issue on appeal, McDeavitt argues that the trial court erred by failing to take into consideration all of Mickus's income. ***Id.*** at 13-19.

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argument because McDeavitt appealed from the June 4, 2013 order that denied all of the parties' remaining exceptions and cross-exceptions, which they filed after the February 13, 2013 remand hearing. Had McDeavitt appealed from the December 19, 2012 order, that appeal would not have been from a final order because that order "did not resolve all issues related to an award of child support[.]" ***See id.*** at 503.

McDeavitt believes that Mickus receives income from a trust fund that she has not disclosed to the trial court. ***Id.*** at 15. McDeavitt further complains that the trial court failed to take into consideration the fact that Mickus's father pays her rent and car payments. ***Id.*** at 15, 17-18.

"Generally, the amount of support to be awarded is based upon the parties' monthly net income." Pa.R.C.P. 1910.16-2. Our Court has stated, "[i]n considering this matter, all reasoning must begin with an evaluation of a parties' income that is available for support. The assessment of the full measure of a parent's income for the purposes of child support requires courts … to determine ability to pay from all financial resources." ***D.H. v. R.H.***, 900 A.2d 922, 930 (Pa. Super. 2006) (citation and internal quotations omitted). Therefore, "[w]hen determining income available for child support, the court must consider all forms of income." ***Berry***, 898 A.2d at 1104 (citation and internal quotations omitted); ***see*** Pa.R.C.P. 1910.16-2(a). The Domestic Relations Code defines the term "income" as follows:

> **"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.

In this case, the trial court concluded that this issue lacked merit because there is no reference to Mickus's alleged trust fund in either the September 18, 2012 or the February 13, 2013 hearing transcripts. Trial Court Opinion, 9/6/13, at 7. Based upon our review of the certified record, we agree with the trial court's conclusion and find no error in the trial court's calculation of Mickus's net income.

McDeavitt has waived his right to raise the issue of the trust fund on appeal because there is no evidence in the certified record that Mickus's alleged trust fund exists. Our Court has held that,

> [i]t is black letter law in this jurisdiction that an appellate court cannot consider anything which is not part of the record in this case. Any document which is not part of the official certified record is considered to be non-existent, which deficiency may not be remedied by inclusion in the reproduced record. It is the responsibility of the appellant to provide a complete record to the appellate court on appeal[.] Where a review of an appellant's claim may not be made because of such a defect in the record, we may find the issue waived.

Eichman v. McKeon, 824 A.2d 305, 316 (Pa. Super. 2003) (internal citations and quotations omitted). While McDeavitt has included a copy of

Mickus's mother's will, which he purports contains the alleged trust, in an appendix to his appellate brief, the will has never been made part of the certified record. ***See*** McDeavitt's Brief at Appendix T. The trial court also noted that "[t]he transcript of testimony of the September 18, 2012 hearing contains no references to a trust fund, be it on direct examination or cross-examination. Similarly, the transcript of testimony of the February 13, 2013 remand hearing contains no references to a trust fund." Trial Court Opinion, 9/6/13, at 7. Our own review of the certified record reveals that McDeavitt has never introduced evidence of the trust fund into the record before the hearing officer or the trial court. Because the alleged trust fund is not part of the certified record, we conclude that McDeavitt has waived any argument relating to the trust fund on appeal.[2] ***See Eichman***, 824 A.2d at 316.

[2] We point out that if McDeavitt believes that he has discovered new information regarding Mickus's income, specifically the trust fund, he could file a petition for modification of an existing support order with the trial court pursuant to Rule 1910.19(a). Rule 1910.19(a) states the following:

> A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. A new guideline amount resulting from new or revised support guidelines may constitute a material and substantial change in circumstances. The existence of additional income, income sources or assets identified through automated methods or otherwise may also constitute a material and substantial change in circumstances.

Pa.R.C.P. 1910.19(a).

We likewise find no error in the trial court's decision not to include the fact that Mickus's father pays her rent and car payments in the calculation of her income. Mickus did admit at the September 18, 2012 hearing that her father helps her pay her rent and car payments. N.T., 9/18/12, at 10. However, determining income for purposes of child support involves an evaluation of the parent's income available to pay for support. ***See D.H.***, 900 A.2d at 930. Therefore, the trial court correctly took into account the wages Mickus earns through working at Sam's Club,[3] and likewise, properly did not take into account the fact that Mickus's father pays her rent and car payments because that money is not available to pay for support. ***See id.***; ***see also*** N.T., 9/18/12, at 2. The calculation of income includes only payments, not gifts.

For his second issue on appeal, McDeavitt argues that the trial court erred in calculating a reasonable amount for childcare expenses. McDeavitt's Brief at 20-26. McDeavitt asserts that the amount that Mickus was paying for child care prior to receiving the CCIS subsidy was too expensive given the parties' low net income and that the issue of child care expenses was remanded to the hearing officer for that reason. ***Id.*** at 20-24. McDeavitt asserts that the trial court did not weigh all the relevant factors under Pennsylvania Rule of Civil Procedure 1910.16-6(a) when it determined

[3] Mickus works 20 hours per week at Sam's Club at $8.40 per hour, or approximately $672.00 per month. ***See*** N.T., 9/18/12, at 2.

that $950.00 per month in childcare expenses was reasonable. ***Id.*** at 20-22. McDeavitt also complains that Mickus's child care expenses are still unreasonable, even after taking into consideration the fact that she receives the CCIS subsidy. ***Id.*** at 23.

At the time of the proceedings in question, Rule 1910.16-6(a) provided:

> **(a) Child care expenses.** Reasonable child care expenses paid by either parent, if necessary to maintain employment or appropriate education in pursuit of income, shall be allocated between the parties in proportion to their net incomes and added to his and her basic support obligation. When a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the full unsubsidized cost of the child care, not just the amount actually paid by the parent receiving the subsidy.

Pa.R.C.P. 1910.16-6(a).[4] Additionally, "[p]ursuant to Pennsylvania Rule of Civil Procedure 1910.16-6(a), reasonable child care expenses are the responsibility of both the custodial and non-custodial parent." ***Portugal v. Portugal***, 798 A.2d 246, 256 (Pa.Super. 2002). As a result, "the trial court must allocate these expenses between the parties 'in proportion to their net incomes and obligor's share added to his or her support obligation.'" ***Id.***

[4] Rule 1910.16 has since been amended to state: "When a parent is receiving a child care subsidy through the Department of Public Welfare, the expenses to be allocated between the parties shall be the amount actually paid by the parent receiving the subsidy." Pa.R.C.P. 1910.16-6(a) (effective Aug. 9, 2013).

In this case, the trial court found that Mickus's childcare costs were reasonable, especially in light of the fact that she received the CCIS subsidy. Trial Court Opinion, 9/6/13, at 7-8. Thus, the trial court concluded that McDeavitt's claim that the childcare costs were still unreasonable after the remand hearing is without merit because his child support obligation was reduced from $938.79 per month to $544.85 per month. ***Id.*** at 7. After reviewing the certified record, we agree with the trial court's conclusion.

Our review of the certified record reveals that Mickus has sole physical custody of Child. N.T., 9/18/12, at 11-12. During the week, Mickus works part-time on Monday, Wednesday, and Friday and attends school all day on Tuesdays and Thursdays. N.T., 2/13/13, at 31. Additionally, at the February, 13, 2013 hearing, Mickus testified that her childcare expenses were $903.00 in September 2012,[5] $950.00 per month from October through December 2012, and $712.00 in January and February of 2013.[6] ***Id.*** at 33. Mickus began receiving the CCIS subsidy beginning the last week of November 2012, reducing her monthly child care costs to $376.17. Hearing Summary, 2/13/13, at 1. Based on that reduction, the trial court reduced McDeavitt's child support obligation from $938.79 to $544.85. ***Id.***

[5] Child did not start at Bright Horizons Daycare until September 3, 2012. N.T., 2/13/13, at 23.

[6] Mickus reduced Child's time in daycare to three days per week beginning in January 2013. N.T., 2/13/13, at 34.

Thus, in order for Mickus to work and attend school, she must pay for child care. Mickus also reduced the number of days Child spends at daycare per week and receives a CCIS subsidy, thereby decreasing her childcare costs. Therefore, we find no error with the trial court's conclusion that Mickus is paying a reasonable amount for child care and that McDeavitt should contribute to those childcare expenses. ***See*** Pa.R.C.P. 1910.16-6(a); ***Portugal***, 798 A.2d at 256.

In conjunction with this issue, McDeavitt raises two additional arguments that we find waived. First, McDeavitt questions Mickus's choice in daycare facility asserting that he should not have to pay for a more expensive facility because it is convenient for Mickus and her family. McDeavitt's Brief at 21. We recognize that "where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." ***Commonwealth v. Johnson***, 985 A.2d 915, 924 (Pa. 2009) (citations omitted). McDeavitt cites no authority and makes no argument as to why he should not have to help pay for Mickus's childcare expenses because the daycare facility is convenient for Mickus and her family, he merely makes conclusory statements that he should not have to do so. ***See id.***; ***see also*** McDeavitt's Brief at 21. Thus, McDeavitt has waived this argument.

Second, McDeavitt complains that Mickus never provided him with the documentation related to her childcare expenses that he requested through his notice to produce. ***Id.*** at 25-26; Notice to Produce, 1/28/13, at 1-3. To the extent that Mickus has not given the requested documentation to McDeavitt, we find this issue waived. McDeavitt did not raise the issue in his 1925(b) statement. ***See*** 1925(b) Statement at 1-2. Under Pennsylvania law, where an appellant is ordered to file a Rule 1925(b) statement, "[a]n appellant's failure to include an issue in his Rule 1925(b) statement waives that issue for purposes of appellate review." ***Lineberger v. Wyeth***, 894 A.2d 141, 148 (Pa. Super. 2006) (quotations, brackets, and citation omitted). Moreover, McDeavitt provides no argument and cites no authority explaining how the trial court erred by failing to compel Mickus to give McDeavitt the requested documentation. ***See Johnson***, 985 A.2d at 924. Therefore, McDeavitt has also waived this argument.

For his third issue on appeal, McDeavitt raises two allegations of error. ***See*** McDeavitt's Brief at 27-34. First, McDeavitt argues that the trial court erred in calculating the arrearages that he owes Mickus. ***Id.*** at 27-29. McDeavitt asserts that the trial court erred by failing to give him a written breakdown of the calculation of his arrearages. ***Id.*** Second, McDeavitt contends that the trial court erred by requiring him to pay for child care in July and August 2012 when Child did not begin attending Bright Horizons Daycare until September 2012. ***Id.*** at 27-34.

In support of his argument that the trial court erred by failing to give him a written breakdown on the record of his arrearages, McDeavitt relies on Rule of Civil Procedure 1910.16-5(a). ***Id.*** at 29. Rule 1910.16-5(a) states the following: "If the amount of support deviates from the amount of support determined by the guidelines, the trier of fact shall specify, in writing or on the record, the guideline amount of support, and the reasons for, and findings of fact justifying, the amount of the deviation." Pa.R.C.P. 1910.16-5(a). Whether or not the trial court put in writing the amount it deviated from the guidelines and the reason for the deviation has nothing to do with whether the trial court correctly calculated arrearages. Thus, McDeavitt's reliance on Rule 1910.16-5(a) is inappropriate.

Likewise, McDeavitt provides no evidence in his brief demonstrating that the trial court made an error in calculating his arrearages. ***See*** McDeavitt's Brief at 27-34. Because McDeavitt cites no other authority requiring the trial court to give a written account of arrearages or any evidence that the trial court made an error in calculating his arrearages, we find this argument waived. ***See Johnson***, 985 A.2d at 924.

We also conclude that McDeavitt has waived the argument in which he contends that the trial court erred by requiring him to contribute to childcare costs in July and August 2012. McDeavitt claims the trial court erred by making him pay for child care in July and August 2012 when Mickus testified at the February 13, 2012 hearing that Child did not start at Bright Horizons

Daycare until September 3, 2012. McDeavitt's Brief at 27-28; ***see*** N.T., 2/13/13, at 23. However, there is no evidence of record indicating whether or not Mickus was incurring childcare expenses from a different daycare provider in July and August 2012. As a general rule, "[a]n order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise." Pa.R.C.P. 1910.17(a). In this case, Mickus petitioned for modification of the existing support order on July 19, 2012. In his appellate brief, McDeavitt provides no further argument or supporting authority stating that based on Mickus's testimony, the trial court erred by making McDeavitt pay for child support in July and August 2012. ***See*** McDeavitt's Brief at 27-34. Rather than properly developing this claim, McDeavitt spends several more pages in his brief claiming that Mickus has lied to the trial court about the amount of income she actually earns through the trust fund that she refuses to disclose. ***See id.*** at 31-34. Therefore, we conclude that McDeavitt has waived this argument on appeal. ***See Johnson***, 985 A.2d at 924.

Finally, McDeavitt argues that the trial court erred when it left him with insufficient income in violation of the Self Support Reserve ("SSR") by ordering an upward deviation from the support guidelines without sufficient evidence. McDeavitt's Brief at 35-37. McDeavitt claims that the trial court's February 13, 2013 order left him with less than $400 worth of disposable income. ***Id.*** at 35. McDeavitt contends that an upward deviation from the

support guidelines was not warranted in this case. ***Id.*** at 36. We conclude that the trial court did not err in deciding the amount of support that it required McDeavitt to pay.

"[T]he support guidelines set forth the amount of support which a spouse or parent should pay on the basis of both parties' net monthly incomes as defined in Rule 1910.16-2 and the number of persons being supported." Pa.R.C.P. 1910.16-1(a)(1). Additionally, at the time of the proceedings in question, Rule 1910.16-2(e)(1)(B) provided: "In computing a basic spousal support or alimony *pendente lite* obligation, the presumptive amount of support shall not reduce the obligor's net income below the Self-Support Reserve of $867 per month." Pa.R.C.P. 1910.16-2(e)(1)(B).[7]

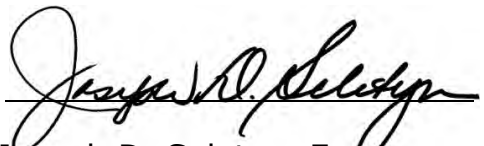
In this case, the trial court calculated McDeavitt's income at $1438.13 per month. Hearing Summary, 2/13/13, at 1. The trial court ordered McDeavitt to pay $544.85 per month in support. ***Id.*** After subtracting his monthly support obligation of $544.85 from his monthly net income of $1438.13, McDeavitt is left with $893.28 in disposable income per month, which is above the Self-Support Reserve amount of $867 per month. Therefore, McDeavitt's argument is meritless.

[7] The current version of Rule 1910.16-2(e)(1)(B) now states: "In computing a basic spousal support or alimony *pendente lite* obligation, the presumptive amount of support shall not reduce the obligor's net income below the Self-Support Reserve of $931 per month." Pa.R.C.P. 1910.16-2(e)(1)(B).

Finally, on June 27, 2014, McDeavitt filed a motion for post-argument relief in which he urged this court to compel Mickus to disclose the income from the aforementioned trust fund, stay the scheduled contempt hearing against him, and sanction Mickus and her attorney for not disclosing this information. We decline to intercede in matters that are properly raised before the trial court by means of a petition to modify support. ***See*** Pa.R.C.P. 1910.19(a). As noted above, there is absolutely no evidence of this alleged trust in the record before us. ***See supra***, p. 6-7. Thus, we have no ability to afford McDeavitt relief based on Mickus's alleged trust fund. Therefore, we deny his motion.

Order affirmed. Motion for post argument relief denied.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014