

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LYUDMILA DYACHENKO,

Appellee

v.

SERGI VITIAZ,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1951 EDA 2013

Appeal from the Order June 28, 2013
in the Court of Common Pleas of Montgomery County
Domestic Relations at Nos.: 2009-27747;
2009-37495;
PACSES No. 831111121

BEFORE: SHOGAN, J., STABILE, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED JUNE 25, 2014

Appellant, Sergi Vitiaz (Father), appeals *pro se* from the order entered in this child support case for the support of his three children with Appellee, Lyudmila Dyachenko (Mother). We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them here.

Father raises one question for our review:

Is [Father] entitled to an accurate review and reconsideration of June 28, 2013 Support Order and previous unappealable Orders from 2010, 2011 and 2012 (**See** 718 EDA

* Retired Senior Judge assigned to the Superior Court.

2013) given the supplemental case information, documents and testimony presented or refuted in [c]ourt and in full docket records, in order to have a true, meaningful and realistic support order obligations for his children, and whether [sic] the [c]ourt so abused its discretion from the support guidelines, that the case of extremely inflated Order must be revisited and reversed, by now applying applicable child support law, and in full consideration to the guidelines, facts presented, both by testimony and on record, via formal pleadings/exhibits?

(Father's Brief, at unnumbered page 7).

Briefly summarized, Father claims a "gross abuse of discretion." (*Id.*). In addition to objecting to the amount of child support, he challenges the trial court's imputation of income to him, based on its review of the financial information and tax records which he submitted. Father argues he makes substantially less than the trial court concluded he did. (*See id.* at unnumbered page 12).

Our standard and scope of review for an order of child support is well-settled:

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.

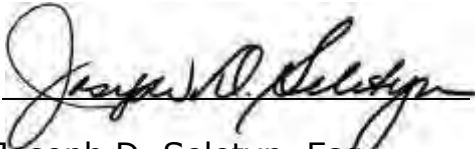
Kimock v. Jones, 47 A.3d 850, 854 (Pa. Super. 2012) (citations omitted).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court we conclude that there is no merit to the issues Father has raised on appeal. The trial court opinion properly disposes of all the questions presented. (**See** Trial Court Opinion, dated August 23, 2013 and filed 8/27/13, at 3-8) (concluding that the trial court: (1) properly imputed earning capacity to Father for the years 2009 to the date of the final order; (2) properly credited Father's mortgage adjustment; (3) correctly directed payment of child support to the Pennsylvania State Collection and Disbursement Unit; (4) imputed proper earning capacity to Father; (5) properly applied procedural rules Pa.R.C.P. 1910.16-1 through 1910.16-6 in determining child support; (6) did not violate Pa.R.C.P. 1910.17–1910-21; (7) properly assessed the weight and credibility of the evidence presented; (8) properly determined that Father had the earning capacity to make the required support payments; (9) properly set a 20% increase in the amount ordered until all arrearages are paid in full; (10) properly included findings of facts and procedural history supported by the record in the order; (11) properly determined that Father's appellate objections to evidentiary rulings during trial were waived for vagueness; (12) properly decided that Father's current appeals from prior support orders were now time-barred; rejecting Father's assertion that all prior support orders were temporary; (13) properly imputed income and earning capacity to Father based on bank deposits and other financial

documents submitted; and (14) properly assessed Father's credibility based, *inter alia*, on inconsistent financial documentation). Accordingly, we affirm on the basis of the trial court's opinion, which we incorporate and attach for reference.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/25/2014

J- A12039-14

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA-
FAMILY DIVISION

LYUDMILA DYACHENKO : NO. 09-37495
 : PACSES NO. 83111121
 v. : 1951 EDA 2013
 :
SERGI VITIAZ :

OPINION

DANIELE, J.

AUGUST 23, 2013

Defendant-Appellant (“Father”) has filed an appeal from our child support Order entered on June 28, 2013. Our Order includes the relevant procedural history, findings of fact, and discussion. We incorporate our Order entered on June 28, 2013 into this Opinion.


For the reasons provided in this Opinion, as well as the Order entered on June 28, 2013, we believe our Order was proper. We respectfully request the Superior Court to affirm our Order entered on June 28, 2013.

Relevant Procedural History

Father commenced the most recent child support proceeding on February 10, 2012 by filing a Petition to Modify Support in the Domestic Relations Office (“DRO”).

Prior to the most recent child support filing, we had entered final support Orders in this case. We entered a final Order on October 7, 2010. Thereafter, Father filed a Motion for Reconsideration of that Order, which we denied. Pursuant to Father’s Petition to Modify Support filed on December 9, 2010 in the DRO, we entered a final Order on July 7, 2011. We entered a Corrected Support Order¹ on September 20, 2011.

Father did not file an appeal from these final Order


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Mark Levy - MontCo Prothonotary

¹ The only correction to the Order entered on October 7, 2010 was made to reflect that the mortgage deviation portion of that Order was suspended and vacated as of October 1, 2010 rather than October 1, 2011.

CM

Pursuant to Father's February 10, 2012 Petition to Modify, the Support Master issued a recommendation dated April 11, 2012. Father filed support exceptions to this recommendation on May 3, 2012.

We conducted a hearing on Father's support exceptions on August 29, 2012. We entered a Temporary Support Order on August 30, 2012. This Order provided, in part, that if Father makes timely payments of the full amount (\$1,053.50/month) for a period of six months, on March 1, 2013 the Order would be made final retroactive to February 10, 2012.

On September 12, 2012, we entered an Amended Temporary Support Order that amended the Order entered on August 30, 2012 to reflect that the Order concerned three children rather than one child.

On March 4, 2013, Father filed an appeal to the Superior Court (718 EDA 2013) from the Temporary Support Order entered on August 30, 2012. On March 21, 2013, the Superior Court issued an Order that quashed that appeal as a final order had yet to be entered.

As Father had failed to make the required payments pursuant to the Temporary Order entered on August 30, 2012, we conducted a continued hearing on May 7, 2013. On June 28, 2013, we entered a final Support Order with respect to Father's Petition to Modify that he filed on February 10, 2012.

On July 12, 2013, Father filed a timely appeal of the June 28, 2013 Order, as well as a Petition to Reconsider the Order of June 28, 2013.

Pursuant to our Order directing Father to file a Concise Statement of the Matters Complained of on Appeal ("Statement"), Father filed his Statement on August 6, 2013.

Discussion

The parties have three children together: (1) Victor (DOB: 3/12/01), (2) Maxim (DOB: 4/4/05) and (3) Daria (DOB: 9/24/07).

In his first appellate issue, Father alleges that we erred by imputing to him an incorrect earning capacity for the years 2009 to the present.

Initially, we reiterate that Father failed to appeal from our past final Orders. Thus, he cannot now claim that we erred in the earning capacity that we imputed to him as far back as 2009.

Regarding his current income, our Order entered on June 28, 2013 explains in detail that the documents offered by Father as proof of his income are inconsistent with each other. Invoices he provided to the Court do not match his 2012 tax return. We questioned whether Father provided all his invoices to the Court. During the course of the hearing, we commented that Father's numbers did not add up, and he failed to provide an explanation for his inconsistent numbers.

In light of the discrepancies in Father's documents, the Court concluded that he had not produced all relevant documents in an effort to evade his tax and/or support obligations.

Father alleges in his second issue that we erred by not giving the mortgage adjustment credit to him in the most recent Order or any past temporary Orders.

Again, as we stated in the discussion *supra* regarding Father's first appellate issue, Father did not appeal from our past final Orders so his issues regarding the mortgage adjustment are waived. Furthermore, our most recent final Order of June 28, 2013 did not relate to a mortgage adjustment.

Father alleges in his third issue that we did not give any weight to his payments or financial contribution towards his children or for the purchase of items benefiting the children. However, 23 Pa.C.S.A. §4325 provides that an order of support shall direct payment to be made to the domestic relations section for transmission to the obligee. Our Orders have directed that

Father make his support payments directly to the Pennsylvania State Collection and Disbursement Unit ("Pa SCDU").

Next, Father argues that we erred in that our calculations do not reflect the actual income for Father in the current year or years past.

Our Order of June 28, 2013 thoroughly detailed how Father has continually provided inconsistent documents to this Court. The record reflects that we have imputed a proper earning capacity to Father.

Father's fifth issue is that we erred by not following Pa.R.C.P. 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-4, 1910.16-5, and 1910.16-6 from 2009 to the present time as the June 28, 2013 Order makes reference to as far back as 2009 and temporary orders since then.

Our Order of June 28, 2013 only makes reference as far back as 2009 to provide a procedural history of this case. Our Order entered on June 28, 2013 only considered evidence from the filing of Father's Petition to Modify on February 10, 2012 through the hearing of May 7, 2013.

Despite Father's contentions, we properly applied the rules provided in Pa.R.C.P. 1910.16-1 through 1910.16-6. Furthermore, the only temporary support entered in this case was the Order entered on August 30, 2012.

In his sixth appellate issue, Father claims that we erred by not following Pa.R.C.P. 1910.17 through 1910.21. Father claims that we failed to give attention to filings presented by Father through properly filed documents.

Father's sixth issue is vague and unsubstantiated. He does not specifically allege the manner in which we failed to comply with Pa.R.C.P. 1910.17 through 1910.21.

Pa.R.C.P. 1910.17 concerns, in part, the effective date of a support order and notification by the parties of any changes in circumstances. We do not understand why this rule is at issue.

Our Order of June 28, 2013 clearly provided that its effective date was February 10, 2012, which is the date that Father filed his Petition to Modify.

Pa.R.C.P. 1910.18 provides that subsequent proceedings to modify or terminate a support order shall be brought in the court which entered the order. Again, we do not believe this rule is at issue. The record demonstrates that subsequent proceedings to modify have been brought in Montgomery County.

Pa.R.C.P. 1910.19 provides that the trier of fact may modify or terminate a support order based on the evidence presented. The record reflects that we have properly entered support orders based upon the evidence before the Court.

Finally, Pa.R.C.P. 1910.20 and 1910.21 relate to enforcement of support orders, including income withholding. Father's allegation that we have failed to comply with these rules is vague.

As far as Father's contention that we did not accept the evidence presented by Father through properly filed documents, we refer the Superior Court to our Order of June 28, 2013 which details that Father has continually provided this Court with inconsistent documents.

Father's seventh issue is that we did not give any consideration to his truthfulness in his representations to the Court, including financial documents/records/taxes.

The trier of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part, or none of the evidence. *Commonwealth v. Robertson-Dewar*, 829 A.2d 1207, 1211 (Pa. Super. 2003).

Father has provided inconsistent documents. It is within our discretion to determine that these documents are not credible.

Next, Father claims that we erred by ordering him to pay tens of thousands of dollars immediately without considering that he is financially unable to do so.

Our Support Orders have been entered based upon the evidence presented. We have concluded that Father's earning capacity allows him to make the required support payments.

Father argues in his ninth issue that we erred by directing that the Order may be increased without hearing by 20% a month until all arrearages are paid in full because Father does not have the financial ability to comply with such payments.

We have concluded that Father has the ability to make such payments based upon our finding with respect to his earning capacity. Father failed to appeal from our prior final Support Orders that established his earning capacity. Father cannot complain now that our finding as to his earning capacity back to 2009 was erroneous. The record supports our finding that Father has the ability to make his support payments.

In his tenth issue, Father alleges that we erred by attaching the "Relevant Procedural History" and "Findings of Fact/Discussion" that do not reflect the facts of this case.

In our Order of June 28, 2013, we included a "Relevant Procedural History" and "Findings of Fact/Discussion" to specifically indicate to the parties how we arrived at our Support Order. In fact, we also included our Support Order entered on October 7, 2010 to provide a detailed background history of the case.

The evidence of record supports our Order of June 28, 2013.

Father's eleventh issue is that we erred in overruling his objections, sustaining objections of Mother, and denying documents provided by Father throughout this case.

This claim is vague. Father has not cited to any specific instances of how we erred regarding sustaining or overruling objections. Therefore, he has waived any such claims on appeal.

With respect to his claim that we erred in denying documents provided by Father, it should be crystal clear from this Opinion and the Order of June 28, 2013 that Father's documents are inconsistent and incredible.

Father's twelfth issue is that we erred by making all of his prior support orders temporary, which prevented Father from appealing these excessive high support orders.

As we have indicated *ad nauseam*, the only temporary support order entered in this case was the Order entered on August 30, 2012. It should be noted that the Temporary Support Order entered on August 30, 2012 inured to the benefit of Father as we gave him an opportunity to reduce his support payments so that the children had the benefit of regular support payments. However, Father has continued to attempt to shirk his financial duties to his children by arguing for an even lower support amount.

This Court has not prevented Father from appealing prior Support Orders. Father failed to appeal from the final Support Orders entered on October 7, 2010 and July 7, 2011. Father is foreclosed from appealing those Orders now.

Father's next issue is that we erred by concluding that any deposits into his bank account(s) are considered income despite the various Motions to Reconsider and Petitions for Modification that presented evidence to the contrary.

This Court has painstakingly analyzed Father's financial documents, including tax returns, invoices, deposits, etc. as evidenced by the Order of June 28, 2013. Father's documents are inconsistent. The record supports this Court's Support Orders.

Father's final issue is that we erred by incarcerating him several times despite his testimony that he was unable to financially comply with the amounts of the Orders and mounting arrears.

As indicated in *Robertson-Dewar, supra*, the credibility of witnesses is for the trier of fact to determine. This Court has determined that Father is not particularly credible as he continually provides this Court with inconsistent financial documents. Our finding as to Father's earning capacity is proper given his experience and past earnings.

Conclusion


For the reasons provided in this Opinion and the Order of June 28, 2013, we believe our Order was proper. We respectfully request the Superior Court to affirm our Order entered on June 28, 2013.

BY THE COURT:


RHONDA LEE DANIELE, J.

Copy of this Opinion mailed
to the following on 8/23 /2013:

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Domestic Relations Office (Interoffice mail)
Superior Court Prothonotary (First-class mail)
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Secretary