

APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

In re Marriage of O'Daniel, 382 Ill. App. 3d 845

889 N.E.2d 254 (Ill. App. Ct. 4th Dist. 2008) · No. No. 4-07-0250 · Decided June 2, 2008

SUMMARY

The Illinois Appellate Court, Fourth District, affirmed postjudgment orders modifying child support and addressing health insurance, contempt, and attorney fees in the dissolution of Jerome and Susan O'Daniel's marriage. The court held that the trial court did not abuse its discretion by excluding self-funded IRA principal withdrawals and certain rental income from child-support calculations, declining to hold Jerome in contempt for failing to maintain health insurance during unemployment, or awarding Susan \$900 in attorney fees.

CASE DETAILS

COURT	Appellate Court of Illinois, Fourth District
WRITING FOR THE COURT	Justice McCullough; Justice Knecht; Justice Cook
JURISDICTION	Illinois
DECIDED	June 2, 2008
DOCKET	No. 4-07-0250
DISPOSITION	affirmed
PROCEDURAL POSTURE	Susan O'Daniel appealed postjudgment orders modifying the parties' judgment of dissolution, challenging the calculation of child support, the refusal to hold Jerome O'Daniel in contempt for failing to maintain health insurance, and the amount of attorney fees awarded to her.
STANDARD OF REVIEW	Modification of child support, contempt determinations, and the amount of attorney fees are reviewed for abuse of discretion. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court.
PRECEDENTIAL VALUE	published precedential Illinois appellate opinion
PARTIES	Susan B. O'Daniel v. Jerome B. O'Daniel, Jr.

TOPICS

- child support
- family law procedure
- appellate procedure
- standard of review
- spousal support

PRACTICE AREAS

family law

child support

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion in calculating Jerome O'Daniel's child-support obligation by excluding his IRA withdrawals, rental-property income, and unemployment compensation and by deducting or estimating health-insurance premiums.
2. Whether the trial court abused its discretion by declining to hold Jerome O'Daniel in contempt for failing to maintain health insurance for the children during periods of unemployment.
3. Whether the trial court abused its discretion in the amount of attorney fees awarded to Susan O'Daniel.

HOLDINGS

1. Withdrawals of an individual's own IRA contributions are not income for purposes of calculating child support because the money already belonged to the individual and the withdrawal produces no gain; only interest or appreciation earned by the IRA would constitute income.
2. The trial court did not abuse its discretion by excluding the rental-property income or unemployment compensation from the child-support calculation under the circumstances presented.
3. The trial court did not abuse its discretion in setting the child-support amounts or in using a \$720 monthly COBRA-premium figure.
4. The trial court did not abuse its discretion by finding that Jerome's failure to provide medical insurance during periods of unemployment was not willful and by declining to hold him in contempt on that basis.
5. The trial court did not abuse its discretion by awarding Susan \$900 in attorney fees and denying her request for additional fees.

KEY QUOTATIONS

"We nevertheless still choose to review this case on its merits." (at 257)

"When an individual withdraws money he placed into an IRA, he does not gain anything as the money was already his. Therefore, it is not a gain and not income." (at 258)

FACTUAL BACKGROUND

Jerome and Susan O'Daniel's marriage was dissolved in 1995, and they had four children, three of whom were minors during the relevant period. Jerome experienced layoffs and periods of unemployment, received unemployment compensation, withdrew funds from an IRA, earned or received rental-property-related funds, and later obtained new employment. The trial court calculated child support using employment-based net income, declined to count the IRA withdrawals and rental-property income as additional income, found Jerome's failure to maintain health insurance was not willful given his financial circumstances, and awarded Susan \$900 in attorney fees.

PROCEDURAL HISTORY

The trial court entered a September 2006 postjudgment order modifying child support and addressing health insurance, contempt, and attorney fees. After both parties moved to reconsider, the trial court entered a February 2007 postjudgment order reaffirming its rulings. Susan appealed both orders; Jerome filed no appellee's brief, but the appellate court reviewed the merits and affirmed.

DISPOSITION

affirmed

CASES CITED

- First Capitol Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 131-33, 345 N.E.2d 493, 494-95 (1976)
- Posey v. Tate, 275 Ill. App. 3d 822, 825, 212 Ill. Dec. 69, 656 N.E.2d 222, 224 (1995)
- In re Marriage of Lindman, 356 Ill. App. 3d 462, 291 Ill. Dec. 969, 824 N.E.2d 1219 (2005)
- In re Marriage of Rogers, 213 Ill. 2d 129, 289 Ill. Dec. 610, 820 N.E.2d 386 (2004)
- In re Marriage of Olsen, 229 Ill. App. 3d 107, 117, 171 Ill. Dec. 39, 47, 593 N.E.2d 859, 867 (1992)
- In re Marriage of Powers, 252 Ill. App. 3d 506, 508-09, 191 Ill. Dec. 541, 543-44, 624 N.E.2d 390, 392-93 (1993)

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