Court of Appeal, Fourth Appellate District, Division Two - No. E078948

S283118

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of ENIAS BAGANIZI and BEATRICE M. UWAMARIYA.

ENIAS BAGANIZI, Respondent,

v.

BEATRICE M. UWAMARIYA, Appellant;

SAN BERNARDINO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, Respondent.

The petition for review is denied.

GUERRERO

Chief Justice

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

In re the Marriage of ENIAS BAGANIZI
and
BEATRICE M. UWAMARIYA.

E078948

(Super.Ct.No. FAMSS805778)

The County of San Bernardino

ENIAS BAGANIZI,
Respondent,
v.
BEATRICE M. UWAMARIYA,
Appellant;
SAN BERNARDINO COUNTY
DEPARTMENT OF CHILD SUPPORT
SERVICES,
Respondent.

THE COURT

Appellant's petition for rehearing is DENIED.

RAMIREZ

Presiding Justice

cc: See attached list

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Marriage of ENIAS BAGANIZI and BEATRICE M. UWAMARIYA.	
ENIAS BAGANIZI, Respondent, v. BEATRICE M. UWAMARIYA, Appellant; SAN BERNARDINO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, Respondent.	E078948 (Super.Ct.No. FAMSS805778) OPINION

APPEAL from the Superior Court of San Bernardino County. Charles Fuertsch, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Beatrice Uwamariya, in pro. per., for Appellant.

Law Offices of Indu Srivastav and Indu Srivastav for Respondent, Enias Baganizi.

No appearance for Respondent, San Bernardino County Department of Child Support Services.

I. INTRODUCTION

In 2010, the trial court entered a status only judgment terminating the marriage of Enias Baganizi (husband) and Beatrice Uwamariya (wife). However, the trial court continued to enter orders related to husband's child support obligations for husband and wife's child. On December 15, 2021, wife filed a request for order seeking to modify child support, determine arrears, and obtain an award of attorney fees. The trial court held a hearing on wife's request for orders and denied the request. Wife appeals from the order denying her requests.

The nature of wife's claims of error are difficult to decipher on appeal. However, we conclude that our jurisdiction on appeal is limited to the order identified in wife's notice of appeal, limit the scope of our review to this order, and affirm the order finding no error in the record before us.

II. FACTS AND PROCEDURAL HISTORY

Husband and wife share one child. In 2008, husband filed a petition seeking to nullify his marriage to wife (Fam. Code, §§ 2210, 2250), resulting in entry of a status only judgment terminating their marital status in 2010. Thereafter, the trial court continued to enter orders related to husband's child support obligations related to his

child. In October 2021, the trial court entered its final order modifying husband's child support obligation.[1]

On December 15, 2021, wife filed another request for order, seeking to modify child support, obtain a determination of arrears, and obtain an award of attorney fees. Wife's supplemental declaration in support of her request explained that she was seeking "an advance for $10,000 for attorney fees" to continue litigating the issues.

On April 4, 2022, the trial court held a hearing on wife's request for order. At the time of hearing, wife admitted that her child had already graduated from high school and already reached 18 years of age prior to the filing of her request for order. With respect to the issue of arrears, a representative for the San Bernardino County Department of Child Support Services informed the court that its records indicated husband's support obligations had been paid in full. In response, wife conceded that her purported request for a determination of arrears was actually a request to retroactively modify prior child support orders to create a new arrears balance. Finally, the trial court observed that wife was not represented by an attorney for purposes of her request for order and, as a result, wife had yet to incur any attorney fees to justify an award of fees. At the conclusion of the hearing, the trial court denied each of wife's requests. Wife appeals from this order.

[1] The trial court ruled on a request to modify child support at a hearing held on September 3, 2021, but a formal written order was not entered until October 7, 2021.

III. DISCUSSION

A. *Scope of Appellate Jurisdiction*

Initially, we clarify the scope of our appellate jurisdiction in this appeal. Portions of wife's appellate briefs suggest she seeks to challenge numerous child support determinations,[2] including the last order modifying child support entered in this case on October 7, 2021.[3] For the reasons set forth below, we conclude that we lack appellate jurisdiction to review these extraneous issues and orders.

First, wife's notice of appeal in this case identified only the trial court's order entered on April 4, 2022, as the order subject of this appeal. Thus, we do not have appellate jurisdiction to review challenges related to any prior orders. (*Faunce v. Cate* (2013) 222 Cal.App.4th 166, 170 ["We have no jurisdiction over an order not mentioned in the notice of appeal."]; *In re J.F.* (2019) 39 Cal.App.5th 70, 78 [It "goes ' "beyond liberal construction" to view an appeal from one order as an appeal from a "further and different order." ' "].)

Second, wife's notice of appeal in this case was filed on May 3, 2022, which is more than 180 days after entry of the last order modifying child support, which was entered on October 7, 2021. Thus, even if the notice of appeal had identified any of the

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[2] Wife argues that she "does not agree with the guidelines calculation results used to determine the amount of [] child support for 11 years . . . ."

[3] At times, wife refers to this order by the date on which the trial court held a hearing and made its ruling instead of the date the formal order was entered. However, the record discloses that the formal written order referenced by wife was entered on October 7, 2021.

prior child support orders, we would still lack jurisdiction to review them because her appeal from these orders would be untimely. (Rules of Court, rule 8.104; *New Davidson Brick Co. v. County of Riverside* (1990) 217 Cal.App.3d 1146, 1149 ["[T]he filing of a timely notice of appeal is *jurisdictional* with respect to our authority to consider a case."].)

Finally, wife cannot create appellate jurisdiction by seeking to attack the prior orders in an appeal from a subsequent, unrelated order. Each order modifying child support obligations made after entry of judgment is a separately appealable order pursuant to Code of Civil Procedure section 904.1. (*County of Los Angeles v. Patrick* (1992) 11 Cal.App.4th 1246, 1250 [order modifying child support is appealable as an order after final judgment]; *In re Marriage of Padilla* (1995) 38 Cal.App.4th 1212, 1216 [order denying request to modify child support is immediately appealable].) " 'A party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order.' " (*City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485, 490-491; *In re Marriage of Padilla*, at pp. 1215-1216 [appeal from an order modifying child support cannot be used to challenge separate child support order entered months earlier].)

Thus, we decline to consider the merits of wife's arguments seeking to challenge any prior child support orders and limit the scope of our review to wife's challenge to the trial court's April 4, 2022 order.

B. *The Trial Court Did Not Abuse Its Discretion in Denying the Request To Modify Child Support or Request To Determine Arrears*

" 'An order of child support "may be modified or terminated at any time as the court determines to be necessary." ' " (*Swan v. Hatchett* (2023) 92 Cal.App.5th 1206, 1214; Fam. Code, § 3651, subd. (a).) " 'The burden of proof to establish changed circumstances sufficiently material to support an adjustment in child support rests with the party seeking modification.' " (*Swan*, at p. 1214.) " '[A] determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found from examining the record below.' " (*Ibid.*; *In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 384.) "Under an abuse of discretion standard, we review the trial court's legal conclusions de novo and its factual findings for substantial evidence, and we reverse its application of the law to the facts only if it was arbitrary and capricious." (*Swan*, at p. 1215.)

We have reviewed the record in this case and have found no basis to conclude the trial court abused its discretion in denying wife's request to modify child support. Wife filed her request for an order modifying child support in December 2021. At the time of hearing, wife admitted that, at the time she filed her request, her child had already turned 18 years of age and had graduated from high school. Given these facts, the trial court had no discretion to grant wife's request to modify child support. " ' "[D]etermination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule." ' " (*In re Marriage of*

Bodo, supra, 198 Cal.App.4th at p. 384.) By statute, a court-ordered child support obligation continues only "until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first." (Fam. Code, § 3901, subd. (a)(1); *In re Marriage of D.H. & B.G.* (2023) 87 Cal.App.5th 586, 595.) Because the trial court had no statutory authority to modify child support at the time wife made her request, its denial of wife's request cannot be considered an abuse of discretion.

Additionally, we find no abuse of discretion in the trial court's denial of wife's request to determine arrears. At the time of the hearing, the Department of Child Support Services informed the trial court that its records showed husband had fully paid his child support obligations and, in response, wife conceded that her request for arrears was actually a request to retroactively modify prior child support orders to create a new arrears balance. As the trial court correctly noted, a support order may only be made retroactive to the date of the filing of the motion requesting the modification. (Fam. Code, § 3653, subd. (a); *In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1051-1052; *Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 26 [A trial court may modify a support order and make it retroactive " 'to the filing date of the motion, but no earlier.' [Citation.] 'The filing date . . . establishes the outermost limit of retroactivity.' "].) " 'The Legislature has established a bright-line rule that accrued child support vests and may not be adjusted up or down. [Citations.] If a parent feels the amount ordered is too high—or too low—he or she must seek prospective modification.' " (*Ibid.*)

Thus, the outermost limit of retroactivity for any modification order would have been December 2021, when wife filed her request for order in this case. Any

modification order made retroactive to December 2021 could not have created a new arrears balance in favor of wife, since her child had already been emancipated prior to this date, and husband's child support obligations had ceased by operation of law. Given these circumstances, we also find no abuse of discretion in the trial court's denial of wife's request for determination of arrears.

C. *The Trial Court Did Not Abuse Its Discretion in Denying Wife's Request for Attorney Fees*

Litigants to a proceeding for nullity of marriage may request an award of attorney's fees in "whatever amount is reasonably necessary" for "the cost of maintaining or defending the proceeding during the pendency of the proceeding." (Fam. Code, § 2030, subd. (a)(1).) "A motion for attorney fees in a marital dissolution action is left to the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. [Citations.] ' "[T]he trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." ' " (*In re Marriage of Huntington* (1992) 10 Cal.App.4th 1513, 1523.)

In this case, the trial court observed that wife was not represented by an attorney for purposes of the request for order that was presently before the court. Thus, it was reasonable for the trial court to conclude that wife had not accrued any past attorney fees to justify an award. Further, because wife admitted that her child had already been emancipated at the time of hearing, it was also reasonable for the trial court to conclude that the issue did not require any further litigation that would justify an "advance" of

attorney fees in anticipation of future litigation. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823-824 [Where no motion was pending before the court, the wife "did not have an immediate need to hire counsel for those proceedings," and the trial court did not err in denying a request for fees.].) The trial court's denial of wife's request for attorney fees was reasonable in light of the evidence in the record, and we find no abuse of discretion warranting reversal.

IV. DISPOSITION

The order is affirmed. Respondent husband to recover his costs on appeal.

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FIELDS
J.

We concur:

RAMIREZ
P. J.

MILLER
J.

Additional material from this filing is available in the Clerk's Office.