

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

K.S.,

Appellee

v.

T.R., JR.,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1913 MDA 2013

Appeal from the Order entered October 16, 2013,
in the Court of Common Pleas of Cumberland County,
Domestic Relations Division, at No(s):
00528 S 2013, PACSES 216114037

BEFORE: PANELLA, OLSON, and MUSMANNO, JJ.

MEMORANDUM BY OLSON, J.:

FILED APRIL 04, 2014

T.R., Jr., ("Father") appeals from the order entered on October 16, 2013, which affirmed a July 11, 2013 order directing Father to pay support to K.S. ("Mother") for his male child, J.M.S. (born in November of 2006) ("Child"), after Father failed to appear for genetic testing as directed in an order entered on September 23, 2013. We affirm.

In its opinion entered on December 18, 2013, the trial court set forth the following factual background and procedural history:

According to the sparse record which must now be relied upon, Mother is a Japanese citizen who presently resides in Japan. Father is an American citizen [who] presently resides in Mechanicsburg, Cumberland County, Pennsylvania. The parties were married on [November 4,] 2006 in Ebina-City, Kanagawa, Japan. Both parties seem to agree that the marriage was a result of an impending childbirth rather than love. The parties are the parents of [Child,] who was born [in November of 2006.]

The child was born abroad but acquired United States citizenship at birth as established by documentary evidence presented to the Consular Service of the United States in Tokyo, Japan on [April 5,] 2007. The parties have been living separately since 2009. A Complaint in Divorce was filed in May 2013 in the Court of Common Pleas of Cumberland County. [A] divorce decree has been entered in this matter.

Trial Court Opinion, 12/18/2013, at 2.

The trial court set forth the support proceedings that led to the instant appeal as follows.

Plaintiff Mother filed a Complaint for Child support on [June 11,] 2013[,] alleging Defendant Father has neglected his duty to support or sufficiently support a child. An [o]rder of [s]upport on behalf of Mother against Father for the support of [Child] was entered on [July 11,] 2013. An appeal of that Order was filed on [July 31,] 2013 [by Father, requesting a hearing *de novo* before the trial court]. Father contested paternity based on fraud committed by Mother and demanded a paternity test; additionally, Father argued that Japanese law has effectively terminated Father's parental rights regarding the child so he should not be held liable for child support. Proceedings were held before the Support Master on [September 19,] 2013. Mother appeared telephonically and was represented by counsel. Father was personally present together with his attorney. Mother testified that [Father] was the father of [Child]. Father testified that he had reasons to believe he was not the father. Father's counsel made several attempts to set up an argument regarding a termination of Father's parental rights according to Japanese law, but Mother's counsel objected each time[,] and said objections were sustained.

Following the hearing, the Support Master drafted a proposed order which the [trial court] signed on [September 23,] 2013; the [o]rder of [c]ourt scheduled a hearing *de novo* before the Support Master[,] and directed the parties to engage in genetic testing. After the [trial c]ourt was advised that Father failed to appear for the genetic testing as directed in the [September 23,] 2013 order, the [July 11,] 2013 [o]rder of [s]upport was affirmed as a final order [on October 16, 2013].

Id. at 1-2.

On October 28, 2013, Father filed a notice of appeal. On November 19, 2013, this Court entered an order designating the appeal as a Children's Fast Track matter, directing Father to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b), within ten days of the order. Father complied, filing his concise statement on November 26, 2013.

In his brief on appeal, Father raises one issue, as follows:

Whether the trial court erred by entering a final order of support when appellant Father's parental rights were effectively terminated by operation of Japanese law?

Father's Brief, at 6.

Father argues that Child resides in Japan with Mother, and that, under Japanese law, he does not have any rights to Child and can take no action to obtain enforceable rights in relation to Child. Father contends that his situation is equivalent to that of a father against whom an order has been entered in Pennsylvania terminating his parental rights under the Adoption Act, 23 Pa.C.S.A. §§ 2501, 2521, and 2558. Father contends that a parent in Pennsylvania is no longer obligated to pay child support after the entry of an order terminating his parental rights. Under this theory, he argues that the Support Master erred in refusing to permit him to develop testimony on the issue, and that the trial court erred in entering a support order against him.

Our standard of review for child support matters 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.

Mencer v. Ruch, 928 A.2d 294, 297 (Pa. Super. 2007); **see also R.J.K. v. S.P.K.**, 77 A.3d 33, 37 (Pa. Super. 2013); **V.E. v. W.M.**, 54 A.3d 368, 369 (Pa. Super. 2012).

Father cites only one case to support his argument, **Kimock v. Jones**, 47 A.3d 850 (Pa. Super. 2012). **See** Father's Brief, at 9. We find that case is distinguishable. In **Kimock**, the father of the subject child filed a petition to terminate his child support obligation, asserting that a custody order that awarded the mother sole legal and physical custody, and limited the father's contact with the child was tantamount to a termination of his parental rights, so that he no longer had to pay child support. This Court rejected the argument, concluding that the father could not use his own misconduct and its ramifications to escape his absolute duty to support his child. **Kimock**, 47 A.3d at 858.

Father acknowledges that the panel in **Kimock** did not rule in favor of the father's argument, but he asserts that the instant appeal is distinguishable on the basis that he did not cause the estrangement between

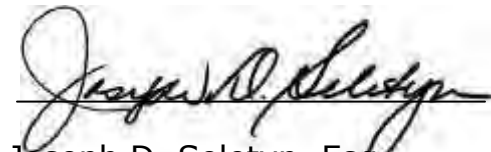
Child and him, but, rather, the estrangement is through operation of Japanese law. **See** Father's Brief, at 9-13. This Court is not persuaded by Father's assertion. We agree with the trial court that Father failed to prove circumstances to permit him complete relief from his child support obligation. **Kimock**, 47 A.3d at 858.

Having thoroughly reviewed the record in this matter, we affirm the order of the trial court affirming the prior child support order on the basis of the well-reasoned trial court opinion.

Finally, Mother filed an application for an extension of time to file her appellate brief. Father filed his brief on January 21, 2014. Mother filed her brief within 30 days of that date pursuant to Pa.R.A.P. 2185. Thus, we deny Mother's request as moot.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/4/2014