

Father's Amended Motion for Modification of Child Support Denied

A Judgment of Dissolution was entered on October 5, 2016 dissolving the parties' marriage. The Judgment incorporated a Marital Settlement Agreement pursuant to which the father was obligated to pay child support for the parties' two minor children in the amount of \$1,250.00 per month. The child support amount was a downward deviation from guideline support and was "based upon a finding and agreement that the parties' parenting time and parenting responsibilities were equal." On May 4, 2018, the father filed a Motion for Modification seeking to reduce his monthly child support payment as a result of losing his job. The mother filed a Motion to Strike and Dismiss the father's Motion for Modification, which was granted by Judge Mary S. Trew on September 25, 2018. The father was granted leave to file an Amended Motion to Modify Child Support and on December 20, 2018, the mother filed a Motion for Summary Judgment and Request for Sanctions Pursuant to Illinois Supreme Court Rule 137. Judge Trew granted the mother's Motion for Summary Judgment and dismissed the husband's Amended Motion for Modification. She also entered monetary sanctions against the father.

The mother was represented by Rachel Johnson of Birnbaum Haddon Gelfman & Arnoux LLC. The father was represented by Bryan J. Wilson of Kogut Wilson LLC.

The mother sought summary judgment with regard to the father's Amended Motion for Modification. Summary judgment was appropriate when the court determined that there was no genuine issue of material fact based on the pleadings, affidavits, and depositions and that the moving party was entitled to judgment as a matter of law. 735 ILCS 5/2-1005. In deciding whether to grant summary judgment the court was required to analyze the issues in favor of the non-moving party, the father. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517 518 (1993). "The purpose of summary judgment was not to try a question of fact, but rather to determine whether one existed." "A triable issue precluding summary judgment existed where the material facts were disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts."

If the court were convinced that the movant, here the mother, had supplied sufficient facts that, if uncontradicted, entitled her to judgment, the respondent, here the father, must respond with admissible evidence creating an issue of fact. *Hotze v. Daleiden*, 229 Ill. App.3d 301 (1st Dist.), cert. denied, 146 Ill. 2d 627 (1992). Thus, numerous courts have stated that when a defendant made a motion for summary judgment, the plaintiff had an affirmative duty to present facts that set forth a cause of action. See also *Diehl v. Polo Cooperative Ass'n*, 328 Ill. App.3d 576 (2d Dist 2002) (holding that the "nonmovant need not prove its case at the summary judgment stage but must come forward with evidence that establishes a genuine issue of material fact"; *Loy v. Firestone Tire & Rubber Co.*, 168 Ill. App.3d

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503 (4th Dist. 1988); Miklos v. Caliendo, 161 Ill. App.3d 132 (2d Dist. 1987).

A genuine issue of fact was not created simply by claiming that one exists. As a general rule, a factual issue was genuine only when there was evidence to support the position" asserted by the nonmoving party. *Ralston v. Casanova, 129 Ill. App.3d 1050 (1st Dist. 1984); Carruthers v. B.C. Christopher & Co., 57 Ill.2d 376 (1974).* Furthermore, unsupported allegations in a complaint were not a question of fact unless supported in the motion for summary judgment by evidentiary facts to the contrary. *Carruthers, 57 Ill. 2d at 380* (The plaintiff's unsupported allegations in his complaint that the defendants had charge and control of the work did not raise issues where the affidavits and depositions considered in support of the motion for summary judgment contained only evidentiary facts to the contrary).

The totality of the mother's exhibits and email exchanges clearly demonstrated that the father's leaving his administrative employment position was voluntary and he chose not to pursue a classroom position either.

The father did not produce any evidence to support his position that he had to "involuntarily" resign in order to safeguard his ability to gain future employment. He did not provide any evidentiary support to counter the mother's position, which was bolstered by the information that she subpoenaed, that he resigned from his administrative position. The father's unsupported allegations did not suffice to create a genuine

issue of material fact when considered in light of the documentation the mother provided in support of her Motion for Summary Judgment which contained only evidentiary facts to the contrary. The court found that the mother had presented sufficient facts that, as they were uncontradicted by the father, entitled her to judgment.

The mother sought sanctions under Illinois Supreme Court Rule 137 alleging that the father should be sanctioned for knowingly filing false pleadings.

If a pleading violates Rule 137, then the court may sanction the attorney or the attorney's client, Ill. S. Ct. R. 137. However, this rule also grants the court the discretion regarding whether to impose a sanction, even if a violation of the rule is found. *In re Marriage of Sykes, 231 Ill. App. 3d 940, 946 (4d Dist. 1992).*

Here, the mother's Motion to Strike the father's May 4, 2018, Motion alleged that he had filed it in bad faith because he had voluntarily, self-created his "lost" job by resigning. The father filed an Amended Petition and again pled that he had been terminated from his employment. Further his Amended Petition made allegations that he did not receive severance or unemployment. Having resigned, the father was not going to receive severance or unemployment. He doubled down on his position and it was not well grounded in fact or done in good faith. He signed both of his pleadings, knowing that he had resigned not only from his administrative position, but that he also resigned from his Abbott classroom position.

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In this matter, the father's entire premise for seeking a reduction of child support, that he "lost his job", was not pled in good faith. The mother brought her Motion for Discovery Sanctions pursuant to Illinois Supreme Court Rule 219. In connection with the father's Motion for Modification of Child Support, the court's May 23, 2018, order instructed the parties as follows: "The parties were to exchange financial affidavits and corresponding documents within thirty days". Compliance with the court's order would have required the parties to exchange financial affidavits and supporting documents by June 23, 2018.

There was a failure to comply with the court's May 23, 2018, order entered under the discovery rules, and there was an order entered in regard to the mother's Motion to Compel (court order entered October 26, 2018). However, the court could not find that it would be just in these circumstances to impose attorney's fees and costs as a sanction for what may have amounted to failed attorney communications.

The court granted the mother's Motion for Summary Judgment Count I since there was no genuine issue of material fact as to the father's voluntary resignation, and also granted the mother's Motion for Summary Judgment Count II as to Rule 137 Sanctions against the father. Upon her review of the billing submitted, the father was to pay to the mother's attorneys the fees incurred to defend. In total, the father owed the firm of Birnbaum, Haddon, Gelfman & Arnoux the sum of \$10, 894.00

Comments of Attorney Rachel Johnson:

"While Motions for Summary Judgment are not frequently used in domestic relations proceedings, they should not be overlooked, as they are extremely useful in resolving dispositive issues in pre-decree and post-decree matters. In this case, the use of Summary Judgment allowed the Court to efficiently adjudicate the merits of father's post-decree pleading without the time and expense associated with an evidentiary hearing. The use of subpoenas in this case led to the unearthing of crucial evidence which had not been previously revealed through father's discovery responses. After the review of this evidence, it was undeniable that father's Motion to Modify (and subsequent Amended Motion to Modify) lacked credibility and a good faith basis to modify his support obligation."
