COURT OF APPEALS

Travis Huff,
Appellant,

v.

Case # 16-AC-001

LeAnne Thompson,

Date: June 6, 2016

and

Oneida Tribe Child Support Agency,
Respondents.

Decision

This matter has come before the Oneida Judiciary, Appellate Court Judges Diane House, Chad Hendricks, and Jennifer Hill-Kelley presiding.

Introduction

This is an appeal of an Order Modifying Child Support that was issued on December 14, 2015, by the Oneida Family Court. The decision of the Oneida Family Court is hereby *affirmed.*

Background of Case

On October 17, 2013, the Respondent, Leanne Thompson (hereinafter "Thompson") filed a motion for modification of custody and/or physical placement of the youngest child of Appellant Travis Huff (hereinafter "Huff"), and Thompson, namely ARH, DOB 1/14/1998 (hereinafter "child"). On March 26, 2014, the Oneida Family Court (hereinafter "Family Court") issued an order in which Thompson was awarded primary physical placement of child, along with a decision to hold open the issue of child support. After the mandated two-year review of this child support obligation was concluded by the Oneida Tribal Child Support Agency

(hereinafter "OTCSA"), the OTCSA made a determination on October 29, 2015, that Huff's reported change in income was enough to garner application of Oneida Child Support Law §78.10-1(a), and tantamount to a "substantial change in circumstance." As a result, on November 25, 2015, the OTCSA sought to update the child support order that had been held open since March of 2014, and filed a motion for modification of child support based on this determination that a substantial change in circumstances existed. The Family Court conducted a hearing on December 10, 2015. On December 14, 2015, the Family Court entered several findings, and issued an order modifying child support in which Huff was ordered to pay weekly child support payments.

Huff filed this appeal with the Oneida Judiciary on January 5, 2016, seeking a stay and reversal of the Family Court's Order Modifying Child Support (hereinafter "Modification Order") that was issued on December 14, 2015; or in its alternative, a remand on the issue of where the child actually resides. It was determined that Huff alleged with sufficient clarity that the decision may have been arbitrary and/or capricious. The Oneida Court of Appeals asserted its jurisdiction over this matter per §150.8-2(a)(2) of the Oneida Judiciary Law, and accepted the case for appellate review on January 15, 2016.

Issues Presented

Were the findings made by the Family Court clearly erroneous? Was the decision of Family Court ordering Huff to pay child support to Thompson arbitrary and/or capricious?

Analysis

In addition to alleging an arbitrary and/or capricious decision entered by the Family Court on December 14, 2015, Huff also challenges several findings made by the Family Court.

Most notably Huff challenges the findings with regard to the child support calculation and where the child actually resides. Huff maintains that these findings are erroneous and if corrected, would alter any subsequent obligation imposed on Huff as to whether he has to pay weekly child support.

Clearly Erroneous Standard of Review

This matter involves several questions of fact, entitled to the 'clearly erroneous' standard of review. The Oneida Judiciary Law, §150.8-3(a)(1) states that:

> ". . . the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body. [R]eview shall be limited to matters of record in the case, and may reject a finding of fact only where it determines that the finding is clearly erroneous."

Were the Findings by the Family Court Clearly Erroneous?

The clearly erroneous standard recognizes the trial court as the fact finder. This requires that the reviewing or Appellate Court give great deference to the trial court's findings of fact. Even if this Court disagrees with the factual findings or would have decided the case differently under the same facts, we are not allowed to substitute our own judgment for the judgment of the original hearing body. This standard of review is "based on the premise that the original hearing body is better able to make factual determinations than the reviewing court. With so many cases turning on questions of credibility, the original hearing body is able to evaluate factors such as demeanor, facial expressions, and tone to determine if one witness is more credible than the other. Therefore, we will accept an original hearing body's credibility finding unless it is so 'inconsistent or improbable on its face that no reasonable factfinder could accept it.'" (<u>*Skolaski*</u>

v. Ninham, Docket No. 15-AC-008, October 28, 2015, citing *U.S. v. Huebner,* 356 F.3d 807, 813 (7th Cir. 2004)).

The Family Court made several findings based upon the pleadings, record, and evidence and facts presented at the hearing. These findings did not make a determination as to whether the child's physical placement had changed nor whether it should be changed. As a result, we have to accept the findings made by the Family Court that the child resides with Thompson, and the child's primary physical placement has been with Thompson since March 26, 2014.

Huff also challenges the findings made by the Family Court with regard to the correct child support calculation. To succeed, Huff must prove that the Family Court committed a clear error in calculating this amount. Again, Huff does not succeed in this argument. This Court must give proper deference to the original hearing body as the finder of fact. The Family Court considered Huff's own evidence in its calculation of child support. This Court does not see evidence where said findings are improbable and that a mistake was made by the Family Court. Based upon the foregoing, this Court finds that Huff has not met his burden of persuasion to alter the Family Court's findings. As a result, we hold that these findings were based upon the evidence presented at the December 14, 2015 hearing and were not made in error.

Arbitrary and/or Capricious Standard of Review

Under the arbitrary and/or capricious standard, the reviewing court "must consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to the evidence and facts presented. Thus, the scope of review under the standard is narrow, and a court

may not substitute its judgment for that of the original hearing body." (O-Tech Solutions v. Oneida Bingo & Casino, Docket No. 10-AC-017, December 10, 2010). What this means is that the Appellate Court must determine whether there is evidence that supports the findings; and should overturn only if the decision is contrary to the evidence and facts presented.

Was the Decision of the Family Court Arbitrary and/or Capricious?

Huff maintains the Family Court's decision contained in the Modification Order was arbitrary and/or capricious. We disagree. To maintain this argument, Huff would have to persuade this Court that the Family Court committed a clear error of judgment and failed to consider important aspects of the case that were presented during the hearing. Huff failed to meet this burden of persuasion.

During the hearing held on December 10, 2015, Huff's only argument before the Family Court was a challenge as to whether his income was being calculated correctly. In deciding this issue, the Family Court not only weighed evidence initially presented by the OTSCA as to Huff's income, the Family Court allowed Huff to come back and present his own evidence as to his income. After full consideration of what was presented by both parties, the Family Court assessed a weekly child support amount based solely upon what Huff presented as evidence of his income. The assessed amount was contrary to and lower than what was initially recommended by the OTSCA.

This Court also finds that the decision contained in the Modification Order is well reasoned and based upon the facts presented at the hearing, and was not based on upon anything other than what was presented there. During the December 10, 2015 hearing, the Family Court did not consider Huff's current argument that the child no longer resides with Thompson because

Huff did not present any evidence to the contrary. We agree with the OTCSA's position that Oneida Judiciary Law §150.8-3(a)(2) is controlling as to what this Court can consider on appeal. Oneida Judiciary Law §150.8-3(a)(2) states:

> ". . . the Court of Appeals shall not hear new or additional facts, and issues not raised in the proceedings from which an appeal is taken shall be deemed waived and shall not be considered on appeal."

This issue of a change in the child's placement was not raised in the December 10, 2015 proceedings. As a result, this Court will not consider Huff's challenge on this issue. The Family Court's consideration of child support was based on a previous determination that the child's primary physical placement is with Thompson. This finding was supported by the facts and evidence, and not challenged by Huff at the December 10th hearing.

On another issue, Huff also alleges that his due process rights were violated in that he "was without legal representation, an unfair advantage was afforded to Petitioner [Thompson], through the representation of an attorney." (Appellant's Rebuttal Brief, pg. 1). This argument is without merit in that the OTCSA, like the Guardian Ad Litem in the original placement hearing, was not representing Huff or Thompson, but appeared on behalf of, and in the best interest of the child.

Conclusion

When reviewing the actions of the trial court, the appellate court will only remand the case for further proceedings, or reverse a lower court's decision if the decision ". . . (b) violates provisions, substantive or procedural, of applicable Tribal law or applicable federal law; (c) is an administrative decision that is arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or (d) not supported by the substantial evidence on the record

taken as a whole." (Oneida Judiciary Law, §150.8-4). This Court has determined that the Family Court's findings in the Modification Order issued on December 14, 2015, were not erroneous and supported by the substantial evidence presented and taken as a whole. In addition, we further find that the Family Court decision issued on December 14, 2015 was not arbitrary and/or capricious, and that the evidence presented at this hearing supported the findings made in that decision. Based on the foregoing, we hold that Huff has not met his burden of persuasion pursuant to §150.8-3 (b), and as a result, the Oneida Family Court decision in Case No. 10CS204, dated December 14, 2015, is hereby *affirmed.*

Decision

By Order of the Oneida Judiciary Court of Appeals the Oneida Family Court Order Modifying Child Support that was issued in Case No. 10-CS-204, dated December 14, 2015, is hereby *affirmed.*

By the authority vested in the Oneida Judiciary Court of Appeals pursuant to Oneida General Tribal Council Resolution 01-07-13-B, this decision is issued this 6th day of June, 2016, in the matter of Case # 16-AC-001, *Travis Huff v. LeAnne Thompson and Oneida Tribe Child Support Agency.*

It so ordered.