



Missouri Court of Appeals
Southern District
Division Two

MEGAN B. WITHERSPOON,)
)
Respondent,)
) No. SD37131
vs.)
) FILED: March 29, 2022
JUAN THURMOND,)
)
Appellant.)

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable J. Ronald Carrier, Judge

AFFIRMED

Juan Thurmond (“Father”) appeals from the circuit court’s judgment on his amended motion to terminate and abate child support and determine his child support arrearages (the “Motion for Determination”) under the child support order in the paternity judgment entered against him on November 20, 1998 (the “Paternity Judgment”). In a single point, Father claims that the circuit court erred in determining that Father owed past due child support because the Paternity Judgment ordering Father to pay such child support was void ab initio in that the circuit court lacked personal jurisdiction over Father at the time the Paternity Judgment was entered.¹

¹ In his point relied on, Father asserts two independent claims of circuit court error with separate and distinct standards of review—abuse of discretion and misapplication of law. Because Father’s point groups together multiple independent claims, it is multifarious in violation of Rule 84.04. *Fowler v. Missouri Sheriffs’ Ret. Sys.*, 623 S.W.3d 578, 582–83 (Mo. banc 2021). Rule 84.04 briefing requirements are mandatory, and therefore, a noncompliant point relied on preserves nothing for appellate review. *Id.* We prefer, however, to reach the merits of

Because the trial court did not misapply the law in determining that Father waived that claim, we affirm the trial court's judgment.

Factual and Procedural Background

Megan B. Witherspoon ("Mother") filed in the circuit court a Petition for Determination of Father-Child Relationship, Order of Child Custody and Visitation, Order of Child Support, and Reimbursement of Birthing Expenses ("Petition"). Personal service on Father of the summons and Petition was unsuccessful, so Mother filed a Rule 54.17, Missouri Court Rules (1998), application for service by publication stating under oath by affidavit that personal service was not obtained on the Father. Mother's affidavit stated Father "absconded or absented himself so that ordinary process of law [could] not be personally served upon him and [Father]'s present address is unknown and [Father] has concealed himself as to avoided [sic] service." The court ordered service by publication on Father and proof of publication of such service was thereafter filed with the court.

On November 17, 1998, Mother appeared with her attorney on her petition before the court. Father did not appear and was found to be in default. Three days later, on November 20, 1998, the court entered the Paternity Judgment finding Father to be the natural father of Kylei Jordan Witherspoon ("Child"). Mother was awarded sole legal and physical custody with Father receiving periods of supervised visitation. Father was ordered to pay \$537.00 per month in child support to Mother and to reimburse Mother \$967.60 in birthing costs and \$172.20 in medical expenses incurred on Child's behalf.

every appeal that comes before us, if briefing deficiencies do not impede appellate review. *Anglin Family Investments v. Hobbs*, 375 S.W.3d 244, 249 (Mo.App. 2012). In Father's argument under his point, the abuse of discretion claim appears to be superfluous and the gravamen of his claim appears to be misapplication of the law, so we *ex gratia* address that claim.

All Rule references are to Missouri Court Rules (2021) unless otherwise stated.

Between 1998 and March 2019 Father took no action in the case. In March 2019, Father filed his initial Motion for Determination in the circuit court and then filed his amended Motion for Determination in July 2020. Both parties filed and responded to discovery requests and participated in case management conferences. A trial was held on Father's amended Motion for Determination on February 2, 2021. After the close of the evidence, the court left the record open for the parties to submit legal briefing regarding the retroactive application of statutory college expense requirements.

On February 23, 2021, the court *sua sponte*, in a docket entry, raised concerns that the Paternity Judgment was entered without personal jurisdiction over Father because there was no service on him other than by publication. The court ordered the parties to submit written legal briefs on the personal jurisdiction issue.²

Thereafter, on April 20, 2021, the circuit court entered its judgment on Father's amended Motion for Determination. In its judgment, the court found that Father was entitled to certain credits in calculating the amount of past-due child support owed under the Paternity Judgment, and that Father owed \$2,852.72 for reimbursement to the State of Missouri. Additionally, the court found and stated in its Judgment:

4. It is well settled that service by publication does not result in personal jurisdiction over the [Father] but the acting [c]ourt would have in rem jurisdiction. The law is clear that a [d]efendant may consent to the personal jurisdiction of the [c]ourt. Missouri Supreme Court Rule 55.27 provides instruction to a [d]efendant wishing to assert an objection based on lack of personal jurisdiction. Supreme Court Rule 55.27(g)(1) provides details on the waiver or preservation of such a defense. To be clear, the waiver provisions as to jurisdiction over the person set forth in Rule 55.27(g)(1) do not apply when a [d]efendant does not appear as in the present case. However, the [d]efendant may consent to personal jurisdiction if the [d]efendant appears before the Court and has not timely raised the issue.

² Only Father filed a Memorandum of Law with the trial court regarding personal jurisdiction.

5. In the present case [Father] clearly learned of the judgment against him in 1999 as payments were being made either voluntarily or otherwise. At no time did [Father] contest his paternity of [Child] and [Father] made some attempts to establish a relationship with said [Child]. On March 8, 2019, [Father] filed his [Motion for Determination] [on] his child support obligation and filed his Amended [Motion for Determination] on July 28, 2020. In neither motion did [Father] raise the objection that the original [c]ourt lacked personal jurisdiction and the resulting judgment was void ab initio. The issue was raised by the [c]ourt as it is the [c]ourt's duty to determine its jurisdiction sua sponte.

6. This [c]ourt finds that the filing of [Father]'s [Motion for Determination] [on] his child support obligation constitutes an appearance before the [c]ourt, seeking affirmative relief from the [c]ourt without ever raising the defense of lack of personal jurisdiction and is a consent to the jurisdiction of the [c]ourt. The [Father]'s conduct was inconsistent with any belief that the [c]ourt was without personal jurisdiction.

Father filed a motion to amend the court's judgment, which was never ruled upon by the court. Father timely appeals.

Standard of Review

The Court defers to the circuit court's factual findings and will reverse the judgment only if it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. *Hope's Windows, Inc. v. McClain*, 394 S.W.3d 478, 481 (Mo.App. 2013) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). "If the issue is one of law, this Court reviews *de novo* to see if the circuit court misapplied the law." *JAS Apartments, Inc. v. Naji*, 354 S.W.3d 175, 182 (Mo. banc 2011).

Discussion

In his point relied on, Father claims that the circuit court

misapplied the law in its judgment determining that [Father] owed past due child support, because the judgment upon which the past due child support amount is

based, was void ab initio, in that the trial court lacked the requisite personal jurisdiction over [Father] at the time to enter a valid judgment for child support.

In his argument supporting his point, however, Father concedes that the circuit court, in its judgment, “determined that [Father] had waived his claim that the [Paternity Judgment] is void because he did not act or raise the issue earlier.” Father then shifts his claimed circuit court error from that asserted in his point relied on—the Paternity Judgment was void ab initio—to “[t]he trial [c]ourt, however, did err when it determined that [Father] nevertheless waived the issue by not acting sooner or raising the issue earlier.” “Arguments advanced in the brief but not raised in the point relied on are not preserved, and will not be addressed by this court.” *Ziade v. Quality Bus. Sols., Inc.*, 618 S.W.3d 537, 544 (Mo.App. 2021) (quoting *Burg v. Dampier*, 346 S.W.3d 343, 354 (Mo.App. 2011) (citing Rule 84.04(e)). Nevertheless, even if preserved for appellate review, Father’s claim of circuit court legal error in making its waiver determination because the Paternity Judgment was void ab initio misses the mark and has no merit.

“A claim of lack of personal jurisdiction may be waived when a defendant makes no motion or pleadings on the issues but otherwise subjects himself to the jurisdiction of the court.” *C.J.G. v. Missouri Dept. of Soc. Servs.*, 219 S.W.3d 244, 248 (Mo. banc 2007). In *C.J.G.*, our Supreme Court recognized and held that a waiver of personal jurisdiction may occur after a personal judgment is entered, even if the circuit court lacked personal jurisdiction at the time the judgment was entered. *Id.* at 249. In support, the *C.J.G.* court cited to *In re Marriage of Dooley*, 15 S.W.3d 747 (Mo.App. 2000) for the proposition in *Dooley* that “Husband moved to vacate ‘default judgment against him on various grounds other than lack of personal jurisdiction over him[.] Accordingly, he waived his right to challenge the default judgment on the basis of lack of personal jurisdiction[.]’” and also cited to *Wood v. Wood*, 716 S.W.2d 491, 494

(Mo.App. 1986) for the proposition that ““by a general appearance entered after judgment personal jurisdiction can be waived and can no longer be questioned[.]”” *Id.*

Here, Father entered his general appearance in the trial court and otherwise subjected himself to the circuit court’s jurisdiction when he filed his initial Motion for Determination on March 8, 2019. In that motion, he affirmatively asserted that the Paternity Judgment awarded child support “to Mother payable from Father in the amount of \$537.00 a month,” without raising any personal jurisdiction challenge to the entry of that judgment or seeking in any manner to have it set aside for lack of personal jurisdiction. Indeed, Father affirmatively invoked the circuit court’s jurisdiction by requesting in his motion that the court “terminate child support” and “abate child support” as ordered in the Paternity Judgment “such that the arrearage amount reflect the termination from the appropriate date as determined by the Court.”

During the ensuing three years of litigation thereafter, Father propounded discovery requests to Mother, responded to discovery, applied for continuances, participated in the court’s case management conferences, and filed an amended Motion for Determination, all without any mention of, or objection to, the circuit court’s lack of personal jurisdiction to enter the child support order in the Paternity Judgment.

The trial transcript reveals that during trial, Father never raised a lack of personal jurisdiction challenge to the child support order in the Paternity Judgment.³ Even after the court held the record open so the parties could submit legal briefing on the retroactive application of the revised statutory college expense requirements, Father did not raise any lack of personal jurisdiction claim.

³ Father contends otherwise, but his references to the trial transcript do not support his contention.

The first time the issue of the circuit court's personal jurisdiction over Father to enter the child support order in the Paternity Judgement arose in this case was when the court *sua sponte* raised it by docket entry after trial and post-trial briefing was completed. In that docket entry, the court granted the parties over three weeks to file legal briefing concerning the personal jurisdiction issue before issuing its judgment. Thus, it is undisputed that Father affirmatively initiated the instant proceeding and took an active and affirmative part in its prosecution for over three years, before he first raised his lack of personal jurisdiction claim in his second post-trial Memorandum and then again, in his post-trial motion to amend the judgment.

As this Court affirmed in **Wood**, "Missouri cases hold that by a general appearance after judgment [personal] jurisdiction can be waived and can no longer be questioned. **Wood**, 716 S.W.2d at 494. We reaffirmed such a waiver in **Dooley**, holding that:

Here, Husband availed himself of the procedural opportunity provided by Rule 74.06(b) to attack the dissolution court's default judgment against him on various grounds other than lack of personal jurisdiction over him. No challenge was made in his motion to vacate based on lack of personal jurisdiction over him. Accordingly, he waived his right to challenge the default judgment on the basis of lack of personal jurisdiction.

Dooley, 15 S.W.3d at 753. As noted above, both cases have been relied upon and cited with approval by the Supreme Court of Missouri for those very propositions. **C.J.G.**, 219 S.W.3d at 249. Here, as conceded by Father, the circuit court determined that he waived his claim that the circuit court lacked personal jurisdiction to order him to pay child support when it entered the Paternity Judgment "by not ... raising the issue earlier." Based upon our de novo review of the record on appeal, the circuit court's waiver determination was not a misapplication of law. See **C.J.G.**, 219 S.W.3d at 248; **Dooley**, 15 S.W.3d at 753; **Wood**, 716 S.W.2d at 494.

Father's point is denied.

Decision

The circuit court's judgment is affirmed.

GARY W. LYNCH, C.J. – OPINION AUTHOR

MARY W. SHEFFIELD, P.J. – CONCURS

JENNIFER R. GROWCOCK, J. – CONCURS