

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-139

TAJUANA KAY COKER HOLMAN,
APPELLANT

v.

VINCENT EVERETT COKER,
APPELLEE

Opinion Delivered 18 MARCH 2009

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. E-96-624]

THE HONORABLE JAMES SCOTT
HUDSON JR., JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

This child-support case returns to us. The parties divorced in 1997. The circuit court awarded Tajuana Holman custody of their daughter, Kristen, and ordered Vincent Coker to pay \$94.00 per week in child support. In 2005, Holman petitioned to increase support. The circuit court denied the petition. We reversed and remanded in an unpublished opinion. *Coker v. Coker*, CA 06-1232 (Ark. App. 23 May 2007). We held that the circuit court made two legal errors: it used the wrong time period in evaluating material changes in circumstances and it deviated downward from the Family Support Chart without making the required findings.

On remand, the circuit court entered a thorough order. The court found that there had been material changes in the parties' circumstances, but that it would be

unjust to follow the Chart amount for a variety of reasons. The court therefore left Coker's support obligation at \$94.00 per week. Holman appeals. There is no dispute that there have been material changes in the parties' circumstances since the 1997 divorce. Both parties have remarried and have other dependent children. The dispute is over the reasons that the circuit court gave for departing downward from the Chart. The parties agree that we review for an abuse of discretion. And we see no such error in the circuit court's careful decision to deviate from the Chart or in its detailed reasons for doing so. *Alfano v. Alfano*, 77 Ark. App. 62, 66, 72 S.W.3d 104, 106 (2002).

The Family Support Chart in Administrative Order No. 10 establishes the presumptively correct amount of support. *Dumas v. Tucker*, 82 Ark. App. 173, 177, 119 S.W.3d 516, 518 (2003). The presumption can be rebutted "if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate." Ark. Sup. Ct. Admin. Order No. 10(I). This Order includes a list of relevant factors the circuit court must consider in deciding whether to deviate from the Chart amount. These factors include: (1) food; (2) shelter and utilities; (3) clothing; (4) medical expenses; (5) educational expenses; (6) dental expenses; (7) child care; (8) accustomed standard of living; (9) recreation; (10) insurance; (11) transportation expenses; and (12) other income or assets available to support the child

from whatever source, including income of the custodial parent. Ark. Sup. Ct. Admin. Order No. 10(V)(a). This list is followed by some additional factors that the court may consider, including support required and given by the payor for dependent children, even in the absence of a court order. Ark. Sup. Ct. Admin. Order No. 10(V)(b). Finally, the circuit court may weigh all these factors as to both the custodial and non-custodial parents. Ark. Sup. Ct. Admin. Order No. 10(V)(c).

In its order on remand, the circuit court found that the Chart amount of child support would be \$142.00 per week. It then found that a downward deviation from that amount—continuing support at \$94.00 per week—was appropriate for a number of reasons. Several of those reasons came straight from the “relevant factors” listed in Administrative Order No. 10. For example, Coker has two other children living in his home that he is legally obligated to support and does support. Coker spends money on Kristen’s clothing and care during visitation—partly because Holman withholds clothes and personal items when their daughter visits Coker. Holman has moved to Texas. So Coker also spends money on transportation expenses when exercising his visitation.

The court found several other reasons for deviating downward, reasons which are not specifically listed in Administrative Order No. 10. The court recognized that Mr. Coker’s current wife has multiple sclerosis. Though she receives social-security disability benefits, her medical expenses are substantial and likely to increase. The

court also made a finding about Holman's financial situation.

Ms. Holman, though she reports no income on her affidavit of financial means, has the benefit of her current spouse's income. That income exceeds \$100,000.00 per year. Her testimony indicated that the income available to her allows her family to put approximately \$12,000.00 per year simply toward "investments." Her affidavit also indicates that she has approximately \$5000.00 available from an inheritance. She drives a luxury automobile, and concedes in argument that they live an affluent lifestyle.

Finally, the circuit court found that "it [was] in the best interest of this child that the father's financial obligation to pay child support to a wealthier household not interfere with his demonstrated willingness to travel and expend funds for his child when she is in his home."

Holman challenges several of the circuit court's reasons for deviating. First, she claims that the court erred in considering Coker's transportation expenses because he does not actually spend much money traveling to Texas. Holman bases her argument on Coker's father's testimony that he picks up and delivers Kristen about ninety percent of the time. Coker testified, however, that while his father picks Kristen up most of the time on Fridays, he takes her back to Texas most of the time on Sundays. We must and do defer to the circuit court's superior position on this credibility issue of who transports Kristen to and from Texas. *Alfano*, 77 Ark. App. at 66, 72 S.W.3d at 106.

Holman also contends that the court should not have considered the current

Mrs. Coker’s medical condition for two reasons: her health situation is not a “relevant factor” listed in Administrative Order No. 10, and Mrs. Coker receives social-security disability benefits.

We reject these arguments. First, the factors in the Administrative Order are not exclusive. Our law is long settled on this point: the Order simply gives examples of relevant facts for consideration. *Stewart v. Winfrey*, 308 Ark. 277, 283, 824 S.W.2d 373, 376–77 (1992); *Black v. Black*, 306 Ark. 209, 213–14, 812 S.W.2d 480, 482 (1991). Holman conceded this point at oral argument. Second, the circuit court recognized and considered that Coker’s wife receives some social-security disability benefits. Coker also testified that most months he does not make ends meet and has to borrow money from his father. We see no error of law in the circuit court’s consideration of Mrs. Coker’s debilitating disease, her substantial medical expenses, the likelihood that those expenses will increase, and her disability-related income in evaluating Coker’s overall ability to pay child support. And there was no clear error of fact in the circuit court’s conclusion about how all these facts weighed out.

Holman next argues that the circuit court erred in finding that she has the benefit of her new husband’s income in providing for Kristen. We disagree. As the custodial parent, Holman is charged with providing Kristen with the basics—food, clothing, shelter, and utilities. Though she does not work, Holman provides those things to her daughter; she does so through her husband’s income and the current level

of support from Coker. This fact was undisputed. And it is relevant to how much support Kristen needs from Coker. We reject Holman’s argument that the circuit court should have ignored the support-related fruit of Mr. Holman’s income. In the words of Administrative Order No. 10, Holman has “[o]ther income or assets available to support [Kristen]” because Mr. Holman’s income pays for the basic necessities in Kristen’s life in Texas. Contrary to Holman’s policy argument, the relevance of the Holman household’s finances, as one fact among many, does not equal a legal obligation by Mr. Holman to support Kristen.

Holman also attacks the court’s finding that it was in Kristen’s best interest that Coker’s obligation to pay child support to a wealthier household not interfere with his demonstrated willingness to travel and expend funds for her when she is in his home. Coker testified that if his support obligation increased, it would affect his ability to travel to visit Kristen, as well as the activities that they do when she visits. Again, transportation and recreation are legitimate considerations. Ark. Sup. Ct. Admin. Order No. 10(V)(a)(9), (11). We therefore see no error here.

Finally, Holman presses two facts that work against a downward deviation from the Chart amount. First, she argues that, because Coker can afford to contribute more than \$6,000.00 each year into a 401(k)—an amount much greater than the extra annual support Holman seeks—no downward departure was warranted. Second, Coker’s current wife also receives social-security disability benefits for her two sons.

These benefits, Holman argues, alleviate Coker's financial burden for those two dependent children. The circuit court made no specific findings on either issue. Holman did not request additional findings under Rule 52. And the court's order reflects that it considered all the evidence in exercising its discretion on the support issue. In sum, the circuit court's findings on this record rebutted the presumption that the Chart amount was the correct amount of support. And we are convinced that the circuit did not abuse its discretion by continuing Coker's support obligation at \$94.00 a week.

Affirmed.

ROBBINS and BROWN, JJ., agree.