

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CA 09-1059

KEVIN F. BUEHNE

APPELLANT

V.

REBECCA ELLEN BUEHNE

APPELLEE

**Opinion Delivered** May 5, 2010

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. DR-2007-0984-4]

HONORABLE JOHN R. SCOTT,  
JUDGE

AFFIRMED

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**COURTNEY HUDSON HENRY, Judge**

In this domestic-relations case, appellant Kevin Buehne appeals the order of the Benton County Circuit Court requiring him to pay his former wife, appellee Rebecca Buehne, child support in the amount of \$32,970, based on monies appellant received upon the sale of nonmarital property following the divorce. Appellant contends that the trial court erred by failing to consider the tax basis in the property and the taxes owed on the transaction in calculating the amount of net income generated from the sale. We affirm.

The parties in this case divorced in August 2008. The decree incorporated the parties' property settlement agreement, in which appellee was granted custody of their three children. The parties also agreed that appellant would retain, as nonmarital property, land located in Kansas that he inherited from his grandfather. In terms of child support, the agreement provided that appellant would pay the sum of \$217 per week. Additionally, the parties agreed

that “[Appellant] shall pay [Appellee] twenty-six percent (26%) of his net income received from his non-marital land.” The agreement required appellant to make this payment of child support on a quarterly basis and to provide appellee with proof of the gross and net income earned from the property.

In December 2008, appellant filed a motion to reduce his child-support obligation, claiming that he was earning less income. Appellee countered with a motion for contempt, alleging that appellant had failed to abide by various provisions in the property settlement agreement, including the requirement for appellant to pay and report the income from the Kansas property. The record reflects that appellant finalized the sale of this property in December 2008.

At the hearing held in March 2009, the parties offered evidence pertinent to appellant’s request for a decrease in child support and appellee’s motion for contempt. As for the Kansas property, the parties agreed to submit the issue to the court based on exhibits and post-hearing briefs. The exhibits included a settlement statement showing that appellee received \$131,881.59 from the sale of the property and a schedule from appellant’s tax return reflecting the tax basis in the land of \$70,650.

In his brief, appellant argued that none of the proceeds should be considered income for purposes of child support. In support of this position, appellant referred the trial court to our decision in *Southerland v. Southerland*, 75 Ark. App. 386, 58 S.W.3d 867 (2001). In that case, the parties agreed that the husband would pay as child support fifteen percent of any

bonuses that he received. The parties were employed by the same company and both held stock option agreements from the company, which they considered worthless and did not divide in the divorce. Subsequently, the company for whom they worked was purchased by another company, and they each received a lump-sum payment associated with their stock. The wife argued that the payment to the husband was a bonus, and thus income, and that she was entitled to fifteen percent of the husband's lump-sum payment as child support. We affirmed the trial court's ruling denying the wife's claim. We held that the stock was akin to a marital asset that increased in value after the divorce, rather than bonus income that would be subject to the fifteen percent child-support provision contained in the decree. In his brief, appellant argued that, like *Southerland*, the trial court should find that the sale was not income. As proof that the property had increased in value, appellant pointed to the difference between the tax basis in the property and the sale price.

In response, appellee asserted that the sale proceeds constituted income for purposes of child support, citing the supreme court's decisions in *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002), and *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005). In *Ford*, the supreme court noted the expanded definition of income contained in Administrative Order No. 10 as meaning any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest. Further, the court observed that the definition of income was intentionally broad and designed to encompass the

widest range of sources consistent with this state's policy to interpret the term broadly for the benefit of a child. Based on this definition, the supreme court concluded that the wife's gift from her grandparents, a certificate of deposit, and a retirement payment all fell within the broad range of the wife's sources of income for child support purposes. In addition, the court overruled all prior decisions of the court of appeals inconsistent with its opinion. In *Evans*, the supreme court used the same analysis to hold that monetary judgments also fit the definition of income for child support.

In a letter opinion, the trial court ruled that the proceeds from the sale was income for purposes of child support in keeping with the decisions in *Ford* and *Evans*. The trial court thus awarded appellee twenty-five percent of the sale price.<sup>1</sup> Appellant now appeals from the order setting forth the trial court's ruling on this issue and the other matters litigated at the hearing.

On appeal, appellant points out that the property settlement agreement entitled appellee to a portion of the "net income" derived from the sale, and he argues that the trial court erred by not calculating the net income. Appellant argues that the trial court should have arrived at the net income by deducting from the sale price both the tax basis in the property and the taxes owed on the transaction. In making these arguments, appellant candidly concedes that he did not present them to the trial court, and he further notes that

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<sup>1</sup> The trial court awarded appellee twenty-five percent of the sale price as opposed to twenty-six percent as designated in the property settlement agreement. This discrepancy is not explained or challenged in this appeal.

he offered no evidence regarding the taxes that he paid. Indeed, our review of the record reflects that appellant's sole argument below was that none of the proceeds should be considered as income.

As a rule, we do not address issues that are raised for the first time on appeal. *Martin v. Hallum*, 2010 Ark. App. 193, 374 S.W.3d 152. In *Roberts v. Yang*, 2010 Ark. 55, 370 S.W.3d 170, the appellant in that divorce case argued that the trial court erred by not determining the value of assets as of the time of the divorce, as required by law. The supreme court refused to address that issue because it was not raised below. The court observed that it was incumbent on the parties to raise arguments initially to the trial court and to give that court the opportunity to consider them, so as not to place the appellate court in the position of reversing a trial court for reasons not addressed by that court. Further, the supreme court remarked that de novo review does not mean that the appellate court can consider new issues on appeal when the opportunity presented itself for them to be raised below and that opportunity was not seized. More recently, the supreme court reiterated these principles with regard to the requirement of a contemporaneous objection in the case of *Lamontagne v. Arkansas Department of Human Services*, 2010 Ark. 190, 366 S.W.3d 351. Accordingly, we decline to address the new arguments raised by appellant in this appeal, and we summarily affirm the trial court's decision.

Affirmed.

HART and ROBBINS, JJ., agree.