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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-21-138

JAMES DAVID APPELLANT V. BRITTANY DAVID APPELLEE	**Opinion Delivered** April 20, 2022 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72DR-19-730] HONORABLE JOHN C. THREET, JUDGE REVERSED AND REMANDED

KENNETH S. HIXSON, Judge

Appellant James David appeals from the Washington County Circuit Court's order modifying child support filed on December 8, 2020, in favor of appellee Brittany David. On appeal, James contends that (1) the circuit court erred by refusing to apply the presumptive amount of child support under the revised Arkansas Supreme Court Administrative Order No. 10; (2) the circuit court erred by purporting to apply "the same child support calculation methodology articulated in the Property Settlement Agreement"; and (3) the circuit court erred by refusing to apply the modified child-support amount retroactively to the date the motion was filed. We reverse and remand.

I. *Facts*

The parties were married on December 22, 2006, and three children were born of the marriage. A decree of divorce was filed on May 28, 2019. The decree approved and incorporated—but specifically did not merge—the parties' property, child-custody and

support agreement (PSA). According to the PSA, the parties agreed to share joint custody and equal time with the minor children. Regarding child support, the PSA provided the following in pertinent part:

> That [James] is ordered to pay child[] support in the amount of Two Thousand Four Hundred and Fifty-Eight Dollars and Fifty Four Cents ($2,458.54) per month, based upon offsetting the parties incomes, with the next payment being due on July 1, 2019, and on the 1st day of each and every month thereafter. The child support is offsetting and is calculated based upon the difference between the parties' net take home pay. Specifically, [James's] full support obligation is $2,988.54 per month (based upon a net monthly take home pay of $12,410.18), and [Brittany's] full support obligation is $530.00 per month (based upon an imputed net monthly take pay of $1,282.86 per month), yielding an offsetting support obligation of $2,458.54 to be paid by [James] to [Brittany], on a monthly basis.

Additionally, the PSA required James to provide medical insurance with the parties equally splitting any uncovered medical expenses. The parties further agreed to share the dependent tax deduction by alternating years, and James was required to pay Brittany $2,500 a month in alimony for thirty months unless Brittany remarried, cohabitated with a romantic partner, or died before the expiration of the thirty months. And the divorce decree provided in pertinent part that a "change in gross income in an amount equal to more than twenty percent (20%) or more than $100.00 per month shall constitute a material change of circumstances sufficient to petition the court for review and modification of the child support."

On March 31, 2020, less than a year after the divorce decree was entered, Brittany filed a petition for modification of child support alleging that there now existed a material change in circumstances in that James's income had increased substantially while hers had not. Therefore, she requested that child support be modified and recalculated using the same formula as the parties agreed on and used in the PSA and that the increase be made

retroactive. James filed his response praying that Brittany's petition be denied and filed a counterpetition for modification of child support also alleging that a material change of circumstances had occurred requiring a retroactive modification of child support in accordance Arkansas Supreme Court Administrative Order No. 10.

While the case wound through the court system, the Arkansas Supreme Court changed Administrative Order No. 10 dramatically. The new Arkansas Supreme Court Administrative Order No. 10 became effective for "all support orders entered after June 30, 2020" (referred to hereinafter as the "Revised Administrative Order No. 10"). *In re Implementation of Revised Admin. Ord. No. 10*, 2020 Ark. 131, at 1 (per curiam). After the Revised Administrative Order No. 10 became effective, each party filed amended petitions and added other claims, including claims for discovery violations and contempt. On the eve of the hearing, Brittany filed an amended petition, alleging that because the parties did not, and could not, anticipate the dramatic changes to Administrative Order No. 10, the PSA should be reformed due to mutual mistake, and the court should increase alimony obligations in the event child support was reduced. David filed a response essentially alleging that the court did not have jurisdiction to reform the PSA because the PSA is a contract and had not been merged into the divorce decree. After a hearing, the circuit court agreed with David and granted David's motion to dismiss Brittany's amended petition for reformation. With the exception of the competing motions to modify child support, the parties also resolved all other pending issues.

A hearing regarding the modification of child support was held on October 27, 2020. Brittany orally withdrew her petition for modification to increase child support, but the

circuit court heard evidence regarding James's counterpetition for modification to decrease child support. Both parties had introduced into evidence several exhibits, including each's affidavit of financial means, proposed child-support worksheets and reports, and the PSA.

James testified that he had filed an amended counterpetition to modify his child-support obligation on July 13, 2020, which was after the Revised Administrative Order No. 10 took effect. James requested that his child support be modified, decreasing the amount of his support under the provisions of the Revised Administrative Order No. 10 and made retroactive to the filing of his counterpetition. James testified that he had three sources of income at that time, including income from Simmons Foods, the City of Springdale, and the Arkansas Air National Guard and that his income had increased approximately $35,000. James testified that he provides medical insurance for the children, which costs $132.12 a month, and asked that he receive a deduction in the amount of $913 a month for work-related child-care expenses.[1] James maintained his position that a reduction in child support was in the children's best interest because he shared joint custody with equal time and because of the new revisions to the guidelines.

Chris Bedwell testified as an expert witness for James regarding the implementation of the Revised Administrative Order No. 10. He holds master's degrees in accounting and economics and is a certified public accountant. Mr. Bedwell testified that he is familiar with the new child-support guidelines under the Revised Administrative Order No. 10 and that he had read the "white paper" that the new guidelines were based on—"Review of the

[1]James testified that he was no longer working for Simmons Foods but that he was receiving income in a severance package and that he was looking for a new position and would still need child care.

Arkansas Child Support Guidelines Analysis of Economic Data, Development of Income Shares Chart, and Other Considerations." Mr. Bedwell further explained that he had previously testified as an expert witness regarding financial issues in other domestic-relations cases.

Mr. Bedwell testified that the white paper outlines the methodology used to arrive at the new support charts, which is based on data on family income and expenditures on children and what it actually costs to raise children rather than just giving a straight percentage of one person's income to another. He acknowledged this was a fundamental change in the way child support is calculated. Mr. Bedwell testified that the revised rule now considers the parties' gross incomes rather than net incomes and that alimony is now deducted in the calculation of gross income. He further stated that it is contemplated that adjustments are to be made in joint custody arrangements based on the number of days that the children stay with each parent.

Regarding this case, Mr. Bedwell produced his report and calculations based on his interpretation of the new guidelines, which were admitted into evidence. Mr. Bedwell used a gross monthly income for James of $18,511.64,[2] which included a deduction of the $2,500 in alimony he pays to Brittany. He then reduced that number by costs he incurred for health insurance and child care, $132.12 and $913, respectively. He did not impute any income to Brittany other than the $2,500 in alimony James paid to her. Therefore, he determined that James would owe $2,244 a month in presumptive child support as the

[2]James's *net take-home pay* as stated in the PSA at the time of the divorce on May 28, 2019, was $12,410 a month.

payor. However, Mr. Bedwell indicated that the presumptive amount needed to be adjusted to account for joint custody. Because each party has the children 182.5 nights a year, Mr. Bedwell took the presumptive amounts for each parent and multiplied it by 50 percent, arriving at an obligation of $222 per month for Brittany and $1,122 a month for James. Mr. Bedwell then netted those two numbers to "equalize the relative obligation" and recommended that James's child-support obligation be reduced from the current amount of $2,458 a month to $900 a month. Bedwell testified that he thought his methodology for cross-credit was consistent with the white paper and that his recommendation is reasonable.

Brittany testified that she and James share joint custody and stated that they had previously agreed on an amount for child support as set out in the PSA. She further testified their agreement regarding alimony was based on her need and the child-support amount that was calculated at that time. She is a full-time student at the University of Arkansas pursuing a degree in social work. Brittany explained that if the circuit court reduced James's child-support obligation to $900 as James argued, she would be unable to pay her son's tuition and that she would need to drop out of school to find employment to support the children. Brittany testified that it was her intention to finish her college degree before her alimony payments from James terminated. Therefore, she asked the circuit court to use its discretion and not reduce James's child-support obligation. Alternatively, Brittany requested that if the circuit court was inclined to grant a reduction, that the court should use the same methodology the parties agreed to in the PSA and only reduce the amount to $2,017 a month. The court recessed and invited the parties to submit posttrial briefs and set the matter for closing arguments.

The circuit court heard closing arguments on December 2, 2020. James argued that child support should be reduced to $900 as his expert witness, Mr. Bedwell, had recommended on the basis of the new guidelines under the Revised Administrative Order No. 10. Brittany argued that the circuit court should exercise its discretion as afforded under the Revised Administrative Order No. 10 and determine that it is not just or appropriate to reduce James's child-support obligation. Alternatively, she argued that the circuit court could apply the same methodology as the previous PSA in recalculating the support obligation. She explained that the court could determine what each parent would pay as if he or she were the noncustodial payor parent and then "offset" those figures. Under her submitted worksheets admitted into evidence, she calculated that James would owe $2,017 a month in child support using that methodology. Her submitted worksheets used the same income calculations as Mr. Bedwell; however, she did not include a deduction of $913 for James's alleged child-care expenses or make all the adjustments suggested by Mr. Bedwell to account for a joint-custody arrangement.

After hearing oral arguments, the circuit court initially ruled the following from the bench:

> Well, as you can imagine, there's no law on this basically. And even though it's, basically, allowing ex post facto, because as [James's counsel] pointed out, that it states, if there is a conflict then you go with the chart. So they addressed the ex post facto issue.
>
> However, I don't see how I can make the determination that it's just and appropriate when they have been laboring under this agreement that they negotiated and worked out, the law changes, and it's just to do that to her, to decrease her child support by a substantial amount when the only change in circumstance is that his income has gone up by a substantial amount.

> They had negotiated it, worked it out, based on their circumstances and -- and, you know, alimony can't be changed because it was contractual, but it's something that they agreed to based on what their circumstances were.
>
> Now, whether you make the argument that her schooling -- and this makes a windfall for her, as Mr. Hogue pointed out. She's going to get the same as they agreed to, as they gave their word that this is what we are going to do, we agreed to. And then the law changed in July of 2020. I don't think that's just. I don't think it's appropriate. I think the other factor that warrants a deviation is the fact that they negotiated this out based on what they needed. And since the time of the divorce, this is the way that it's been going.
>
> Whether it's for her to do school or what, to be in the best interest of the children; whether reducing drastically the amount of child support that they have been laboring under since the beginning of the divorce. I think it's also in the best interest of the child; therefore, I'm going to deny the modification. [Brittany's counsel], if you'll prepare an order.

James's counsel objected and questioned whether the circuit court was denying his petition to reduce child support completely or whether the court was, at least, reducing the child support to $2,017 as Brittany had articulated in her alternative argument. The circuit court admitted that it "didn't fully understand how that formula was anything more than just subtracting" and questioned if the proposed formula to reduce support to $2,017 was the same formula that they had previously agreed to in the PSA. After hearing further argument, the circuit court orally ruled that "understanding fully that that was the formula that was used by the parties to agree to, then the Court would say that it's going to go down to $2,017.68." The circuit court rejected James's request to apply the reduction retroactively and stated that it was "not going to implement the arrearage."

In its order modifying child support filed on December 8, 2020, the circuit court specifically made the following findings:

> 4. Since the entry of the last order of the court, material changes in circumstances have occurred sufficient to warrant a modification of the Defendant's

child support obligation. Said material changes include: changes in the parties relevant income; and the implementation of a new child support chart by the Arkansas Supreme Court.

5. That the Defendant argued that the child support should be set at $900 per month, based upon the July 1, 2020 revisions of Arkansas Supreme Court Administrative Order #10, and the expert testimony of Chris Bedwell. For those reasons articulated from the bench, the Judge rejected that argument. The Plaintiff first argued that the Court should decline to modify child support at all, as said modification would be unjust. For those reasons articulated from the bench, the Court rejected that argument as well.

6. The Plaintiff argued in the alternative, that the Court should apply the same child support calculation methodology articulated in the Property Settlement Agreement. The court agreed, over the objection of the Defendant, and applied that methodology. Essentially, the Court calculated the total support obligation of each party, utilizing all of the parties' total income, including regular salaries and bonuses, and subtracted the higher from the lower, and ordered the Defendant to pay the difference in child support. The child support sheet assuming that the Defendant, James David, is the non-custodial payor parent considering his total income from all sources, showing a support obligation of $2,353.34, is attached hereto as Exhibit A. The child support sheet assuming that the Plaintiff, Brittany David, is the non-custodial payor parent considering his total income from all sources, showing a support obligation of $335.66, is attached hereto as Exhibit B. Subtracting one obligation from the other yields the support obligation selected by the Court of $2,017.68 per month.

7. The Court ordered that the Defendant's child support obligation shall be modified as delineated in paragraph 6 herein, and the Defendant is ordered to pay the Plaintiff the sum of Two Thousand Seventeen Dollars and Sixty Eight Cents ($2,017.68) per month, commencing immediately, which was calculated considering all of the income of the parties.

8. Over the objection of the Defendant, the Court declined to award a retroactive child support back to the date that the request for a reduction was made, or July 13, 2020.

This appeal followed.

II. *Standard of Review*

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly

erroneous. *Symanietz v. Symanietz*, 2021 Ark. 75, 620 S.W.3d 518. In reviewing a circuit court's findings, we give due deference to that court's superior position to determine the credibility of the witnesses and the weight to be given to their testimony. *Id.* In a child-support determination, the amount of child support lies within the sound discretion of the circuit court, and that court's findings will not be reversed absent an abuse of discretion. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007). However, a circuit court's conclusions of law are given no deference on appeal. *Id.*

III. *Analysis*

In determining a reasonable amount of child support, the court *shall* refer to the most recent revision of the family-support chart. Ark. Code Ann. § 9-12-312(a)(3)(A) (Repl. 2020). That chart and its guidelines, in turn, are set forth in Arkansas Supreme Court Administrative Order No. 10. There is no way to cushion the blow; the Revised Administrative Order No. 10 which was effective for all child-support orders, including modifications, entered after June 30, 2020, is a game changer. Our task is not to question the perhaps unanticipated consequences of the revised order; rather, our task is to interpret the revised order as written.[3] Recently, in *Parnell v. Arkansas Department of Finance & Administration, Office of Child Support Enforcement*, 2022 Ark. 52, at 5–7, 639 S.W.3d 865, 868–69, our supreme court explained and outlined the following procedure to be used in calculating child support under the Revised Administrative Order No. 10 guidelines:

> Arkansas Code Annotated section 9-12-312(a)(4)(A)(i) mandates that a committee appointed by the Chief Justice of the Arkansas Supreme Court review the Arkansas Family Support Chart every four years. This court promulgated a

[3]Having said that, I would be remiss if I did not call attention to Judge Gruber's insightful concurrence filed in this case.

revised order concerning child-support obligations in 2020. *In re Implementation of Revised Admin. Ord. No. 10*, 2020 Ark. 131 (per curiam). In accordance with Act 907 of 2019, the new family support chart is based on the "Income Shares Model," which provides "that children should receive the same proportion of parental income that they would have received had the parents lived together and shared financial resources." *Id.* at 2. The new order provides that "each parent's share is that parent's prorated share of the two parents' combined income." *Id.* "[T]he pro-rata charted amount establishes the base level of child support" the payor parent must pay the payee parent. *Id.* at 3. And a "rebuttable presumption" exists that this chart-derived amount "is the amount to be awarded." *Id.*

The following sets out the relevant procedure:

> [T]he gross income of both parents shall first be determined and combined. Each parent's share of the combined total gross income is then determined based on their percentage of the combined income. Next, the basic child-support obligation is determined by looking at the Chart for the parties' combined income and the number of children they have. A presumptive child-support obligation is then determined by adding the allowed additional monthly child-rearing expenses (including health insurance premiums, extraordinary medical expenses, and childcare expenses). Each parent's share of additional child-rearing expenses is determined by multiplying the percentage of income they have available for support, which was determined in step 1. The total child-support obligation for each parent is determined by adding each parent's share of the child-support obligation with their share of allowed additional child-rearing expenses.

Id. at 13. . . .

Further, the order provides guidelines for a circuit court to follow when deciding whether to deviate from the guidelines. That section warns that "deviation from these Guidelines should be the exception rather than the rule." *Id.* In making a deviation, the court must explain its reasons in writing and should consider the following factors:

> a. Educational expenses for the child(ren) (i.e., those incurred for private or parochial schools, or other schools where there are tuition or related costs) and/or the provision or payment of special education needs or expenses for the child(ren);
>
> b. The procurement and/or maintenance of life insurance, dental insurance, and/or other insurance for the children's benefit (for health insurance premiums, see Section II.2 infra);

c. Extraordinary travel expenses for court-ordered visitation;

d. Significant available income of the child(ren);

e. The creation or maintenance of a trust fund for the children;

f. The support given by a parent for minor children in the absence of a court order;

g. Extraordinary time spent with the payor parent;

h. Additional expenses incurred because of natural or adopted children living in the home, including stepchildren if the court finds there is a court-ordered responsibility to a stepchild;

i. The provision for payment of work-related childcare, extraordinary medical expenses for the child in excess of $250.00 per year per child, and/or health insurance premiums. Ordinarily, these expenses will be divided pro rata between the parents and added to the base child support of the payor parent on the Worksheet. In that scenario, it shall not support a deviation. However, if the court chooses not to add them in the total child-support obligation, they could support a deviation; and

j. Any other factors that warrant a deviation.

Id. at 4–5.

In cases of joint custody as is the case here, the Revised Administrative Order No. 10 provides the following guidance for additional deviation:

> In cases of joint or shared custody, where both parents have responsibility of the child(ren) for at least 141 overnights per calendar year, the parties shall complete the Worksheet and Affidavit of Financial Means as they would in any other support case. The court may then consider the time spent by the child(ren) with the payor parent as a basis for adjusting the child-support amount from the amount determined on the Worksheet. In particular, in deciding whether to apply an additional credit, the court should consider the presence and amount of disparity between the income of the parties, giving more weight to those disparities in the parties' income of less than 20% and considering which parent is responsible for the majority of the non-duplicated fixed expenditures, such as routine clothing costs, costs for extracurricular activities, school supplies, and any other similar non-duplicated fixed expenditures.

In re Implementation of Revised Admin. Ord. No. 10, 2020 Ark. 131, at 16 (footnote numeral 3 omitted).

Relevant to the issues on appeal in this case, pursuant to the Revised Administrative Order No. 10, "all orders granting *or modifying child support* shall contain the court's determination of the payor's income, payee's income, recite the amount of support required under these Guidelines, and state whether the court deviated from the presumptive child-support calculation set by the Worksheet and these Guidelines." *Id.* at 4–5 (emphasis added). There is a rebuttable presumption that the amount of presumptive child support calculated pursuant to the most recent version of the family-support chart is the amount of support to be awarded in a divorce proceeding. Ark. Code Ann. § 9-14-106 (Repl. 2020).

In reviewing the circuit court's decision modifying child support in the case at bar, it is apparent that the circuit court did not fully comply with the Revised Administrative Order No. 10. The circuit court reduced child support to $2,017.68 a month and orally stated the following:

> However, I don't see how I can make the determination that it's just and appropriate when they have been laboring under this agreement that they negotiated and worked out, the law changes, and it's just to do that to her, to decrease her child support by a substantial amount when the only change in circumstance is that his income has gone up by a substantial amount.
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> They had negotiated it, worked it out, based on their circumstances and -- and, you know, alimony can't be changed because it was contractual, but it's something that they agreed to based on what their circumstances were.

While we appreciate the court's hesitancy to fully implement the Revised Administrative Order No. 10 under the facts of this case wherein an increase in James's income actually operated to reduce his child support, the Revised Administrative Order

No. 10 requires the court, among other things, to *consider* payment of child-care expenses and healthcare expenses and, in the case of joint custody, an adjustment for actual days spent with each parent.[4] It appears that the PSA formula used by the court in the case at bar does not take into consideration these new factors.[5] As such, we reverse and remand for the circuit court to comply with the Revised Administrative Order No. 10.

Having said that, we are not commenting on whether the dollar amount of child support awarded by the circuit court was actually in error. The Revised Administrative Order No. 10 allows the circuit court to deviate from the "support required under these Guidelines." Ark. Sup. Ct. Admin. Order No. 10(II)(2). Section II, paragraph 2 provides the following:

> All orders granting or modifying child support shall contain the court's determination of the payor's income, payee's income, recite the amount of support required under these Guidelines, and state whether the court deviated from the presumptive child-support calculation set by the Worksheet and these Guidelines. If an order deviates from the Guidelines amount, then the order must explain the reason(s) for the deviation. When deciding whether the Worksheet-based amount is unjust or inappropriate, the court must consider all the relevant factors, including what is in the child's or children's best interest. A deviation from these Guidelines should be the exception rather than the rule. If a court chooses to deviate from the Guidelines amount, then it must make written findings and explain the deviation. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Worksheet is correct if the court provides in the order a specific written finding that the Worksheet-based amount is unjust or inappropriate. When determining whether to deviate from the Guidelines' amount, a court should consider the following [ten factors]. . . .

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[4]While the revised order is new and there is scant guidance on how to use the new guidelines, the Revised Administrative Order No. 10 does contain a section titled "Sample Calculation." This section affords guidance to the bar and the court on how to apply the revised methodology, and it is particularly helpful in this case. We encourage the circuit court to review and consider this guidance on remand.

[5]This recitation is meant to be illustrative only and not exhaustive.

Id.

On remand, the circuit court must fully comply with the requirements set forth in the Revised Administrative Order No. 10 to determine the modified child-support amount. The resulting order shall contain the court's determination of the payor's and payee's incomes, recite the amount of support required under these guidelines, and state whether the court deviated from the presumptive child-support calculation set by the worksheet and these guidelines. If the circuit court finds that the presumptive amount of child support calculated by using the new guidelines is unjust or inappropriate, then the court must explain in writing the reasons for its deviation and should consider the factors set forth in the Revised Administrative Order No. 10.

James also argues that the modification should be retroactive to the date of the filing of his petition for modification of child support. We remand this issue to the circuit court to be considered after application of the Revised Administrative Order No. 10.

Reversed and remanded.

VAUGHT, J., agrees.

GRUBER, J., concurs.

RITA W. GRUBER, Judge, concurring. Although I agree that this case must be remanded for the circuit court to enter findings consistent with the revised Administrative Order No. 10 (Revised Order), I write to express my concern that the Revised Order may have unanticipated and unintended consequences negatively affecting the best interest of the children it is designed to protect. It is well settled that a parent has a legal obligation, independent of statute, to support his minor child. *See Pender v. McKee*, 266 Ark. 18, 28,

582 S.W.2d 929, 934 (1979). This moral and legal duty remains regardless of the existence of a support order. *In re Adoption of A.M.P.*, 2021 Ark. 125, at 8, 623 S.W.3d 571, 576.

Here, the parties had entered into an agreement in May 2019—a year before the supreme court adopted the Revised Order—resolving alimony, child custody, child support, and the division of property. Because the parties shared joint custody and equal time with their three children, they offset Brittany's chart-based obligation with James's obligation, as was a common practice in joint-custody situations before adoption of the Revised Order. *See Perry v. Perry*, 2020 Ark. App. 63, at 5, 594 S.W.3d 126, 130. The parties agreed that James would pay monthly child support of $2,458.54 to Brittany. James also agreed to pay $2500 in monthly alimony for thirty months while Brittany attended college.

Shortly after the divorce decree was entered, James began earning significantly more money—approximately $35,000 more a year. On March 31, 2020, Brittany filed a petition for modification of child support, requesting an increase because James was earning a wage "substantially higher" than he was earning when the divorce decree was entered. On April 28, 2020, James filed a counterpetition for modification relying on the same material change in circumstances on which Brittany was relying—that is, his increased earnings—but argued that it justified a decrease in his child-support obligation. The only change justifying a decrease in child support rather than an increase was the supreme court's adoption of the Revised Order. Brittany then attempted to have the court reform the parties' agreement to increase her temporary alimony, claiming she had agreed to the amount of child support as it was calculated under the old child-support guidelines. The court granted James's motion to dismiss her request for reformation because alimony was contractual under the parties'

property-settlement agreement, and the court had no power to reform it. A court may always modify child support, however, whether or not it arose from an independent agreement between the parties. *McGee v. McGee*, 100 Ark. App. 1, 6, 262 S.W.3d 622, 626 (2007) (holding circuit court retains jurisdiction and authority over child support as a matter of public policy and, no matter what an independent contract states, either party has the right to request modification of a child-support award).

The Revised Order contemplates the effect of joint custody on the payment of child support and allows the court to "consider the time spent by the children with the payor parent as a basis for adjusting the child-support amount." Ark. Sup. Ct. Admin. Order No. 10(V)(2) (2021). The Revised Order "intend[s] for the court to deviate . . . on a case-by-case basis" when the payor parent has more than 141 nights with the children. *Id.* § 10(V)(2) n.3. Here, the parties share equal time. James earns $18,512 a month (after deducting alimony). Brittany is a college student who receives $2,500 in alimony for thirty months postdivorce. Without including the disputed child-care costs argued by James, the presumed child support owed by the payor is $2,353.34. James argued that under the Revised Order, his child support should be reduced to $900 a month, citing a "cross-credit/no-multiplier" methodology he alleged arose from a "white paper" considered by the committee in adopting the new guidelines. Brittany suggested deviating by using the method the parties had initially chosen in setting child support—that is, offsetting the amount Brittany would pay against the amount James would pay, which equaled support due to Brittany of $2,017. The circuit court rejected James's argument and accepted the deviation offered by Brittany.

I have agreed to remand because the court did not "make written findings and explain the deviation" as required by section (II)(2) of the Revised Order.

But this case raises my concern that the Revised Order may significantly affect the best interest of children in perhaps unintended ways. By statute, a payor may not file a petition for modification simply because of an inconsistency between his child-support obligation and the amount of child support that would result from application of the family support chart if the inconsistency is due "solely" to a promulgation of a revision of the chart. Ark. Code Ann. § 9-14-107(c) (Supp. 2021). Here, James had an increase in income, which he claimed was a material change in circumstances justifying modification. Does the Revised Order allow payors to seek a reduction in child support—here, James requested a more than 60 percent reduction—when they have a significant increase in income? This seems, at best, inconsistent and counterintuitive. Particularly when the Revised Order encourages parties to "settle support-related disputes in a comprehensive manner," as the parties here did in 2019. Ark. Sup. Ct. Admin. Order No. 10(II).

The majority states that there is no way to cushion the blow because the Revised Order is effective for all child-support orders, including modifications, entered after June 30, 2020, and this court must interpret the Revised Order as written. *Parnell v. Ark. Dep't of Fin. & Admin., Off. of Child Support Enf't*, 2022 Ark. 52, 639 S.W.3d 865. While at this point, I am compelled to agree with the disposition in this case, the ramifications of allowing an increase of income to dictate a finding of material change of circumstances resulting in a reduction in child support is completely illogical. It is blackletter law that the best interest of the child is the polestar in every child-custody case; all other considerations are secondary.

Wilbanks v. Wilbanks, 2021 Ark. App. 91, at 5, 618 S.W.3d 440, 444. Child support is an obligation owed to the child, and even in the absence of a court order requiring a parent to support his or her minor child, a parent continues to have a legal and moral duty to do so. *McGee*, 100 Ark. App. 1, at 6, 262 S.W.3d at 626. Further, the "Income Shares Model" is based on the concept that children should receive the same proportion of parental income that they would have received had the parents lived together and shared financial resources. *In re Implementation of Revised Admin. Ord. No. 10*, 2020 Ark. 131, at 2. Does this mean that in joint-custody cases, "proportion" is parent-household specific? That is, the child lives like a prince for one week and a pauper the next? Is this in the best interest of the child? Child support is to "be used and inure solely to the use and benefit of the minor child for which it is or was ordered paid." Ark. Code Ann. § 9-14-103 (Repl. 2020). In the past, it has been used to prevent children from suffering simply because the payee parent earns significantly less than the payor.

I find it difficult to accept that a payor parent's increase in income may be used to justify a decrease in child support significantly affecting the welfare and best interest of the children.

Cullen & Co., PLLC, by: *Tim Cullen*, for appellant.

Clark Law Firm PLLC, by: *Suzanne G. Clark* and *Payton C. Bentley*, for appellee.