

Cite as 2023 Ark. App. 185
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-22-45

NATHAN JENNINGS

APPELLANT

V.

JESSICA JENNINGS

APPELLEE

Opinion Delivered April 5, 2023

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. 70DR-20-281]

HONORABLE EDWIN KEATON,
JUDGE

REVERSED AND REMANDED

BART F. VIRDEN, Judge

Appellant Nathan Jennings and appellee Jessica Jennings were granted joint custody of their one minor child (MC). Nathan appeals from the divorce decree entered October 7, 2021, in which he was ordered to pay Jessica \$514 a month, with the parties being “equally responsible” for daycare and preschool expenses.¹ Nathan argues that the trial court did not properly calculate his child-support obligation considering that the parties share true joint physical custody of MC. He further argues that the trial court’s method of calculating child support improperly accounts for additional child-rearing expenses. We recognize that the version of Arkansas Supreme Court Administrative Order No. 10 in effect when the divorce decree was entered provides little guidance in determining child support when parents share

¹We are using rounded figures pursuant to Ark. Sup. Ct. Admin. Order No. 10(IV), paragraph 3 (2020).

joint physical custody of a child.² We must nevertheless reverse and remand for additional consideration and findings.

I. *Administrative Order No. 10*

On April 2, 2020, the Arkansas Supreme Court adopted and implemented the revised Administrative Order No. 10 concerning child-support obligations.³ The revised guidelines and family-support chart are based on the Income Shares Model, a 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. Order No. 10*, 2020 Ark. 131, at 2 (per curiam).⁴ The guidelines and accompanying worksheet “assume that the parent to whom support is owed (payee parent) is spending his or her calculated share directly on the child.” *Id.* at 2. “For the parent with the obligation to pay support (payor parent), the pro-rata charted amount establishes the base level of child support to be given to the payee parent.” *Id.* at 2.

The following outlines the procedure to be used in calculating child support under the 2020 guidelines:

²On December 6, 2022, we certified this case to the Arkansas Supreme Court pursuant to Ark. Sup. Ct. Rule 1-2(b)(1), (4), (5), and (6). The supreme court accepted the case for its docket on January 19, 2023, by a 6–1 vote; however, on February 21, the supreme court rescinded its earlier acceptance. We are now deciding this case.

³What we refer to as the “2020 guidelines” shall be used for all support orders entered after June 30, 2020.

⁴The Arkansas Supreme Court has since revised Administrative Order No. 10—effective October 6, 2022 (hereinafter referred to as the “2022 guidelines”).

[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. Lastly, the payor receives a credit for the additional child-rearing expenses that the payor is paying out of pocket, resulting in their presumed child-support order.

Id. at 12.

The 2020 guidelines assume that the payor parent has the minor child overnight in his or her residence less than 141 overnights per calendar year. *Id.* at 4. In cases of joint custody, the following guidance is provided 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.

Id. at 12.

II. Trial Court's Findings

Here, the trial court attached two separate worksheets as exhibits to the divorce decree. On the first worksheet, Nathan is listed as the “paying parent,” and Jessica is listed as the “receiving parent.” On the second worksheet, Jessica is listed as the “paying parent,” and Nathan is listed as the “receiving parent.” The trial court stated in the decree that “[t]he child support amount is calculated by taking the difference between the child support obligations contained in the worksheets attached hereto.” The following information is reflected by the worksheets.

Nathan’s gross monthly income is \$7,656.01, and Jessica’s is \$4,240.78. The family-support chart provides that a gross combined monthly income of \$11,896.79 means that the basic child-support obligation for one child is \$1,198 a month. Of the parties’ gross monthly income, Nathan makes 64.35 percent of the total, and Jessica makes 35.65 percent. Nathan’s basic child-support obligation is therefore \$771, while Jessica’s is \$427. The trial court found that the total additional child-rearing expense for MC is \$455. The trial court noted that each party currently pays \$207.50 for daycare and that Jessica also pays \$40 a month for health insurance for MC. Considering the income percentages above, Nathan is responsible for \$293 of the additional expenses, and Jessica is responsible for \$162. The trial court then added Nathan’s basic obligation of \$771 to his prorated share of the expenses in the amount of \$293 for a total child-support obligation of \$1,064. Then the trial court gave Nathan a \$207.50 credit for MC’s daycare expense. The presumed child-support order with Nathan as payor is \$856, while the presumed order with Jessica as payor is \$342 (with Jessica receiving

a \$247.50 credit). The trial court then subtracted Jessica’s presumed child-support obligation from Nathan’s and ordered Nathan to pay the difference, or \$514.

III. *Standard of Review*

This court reviews domestic-relations cases de novo, but we will not reverse the trial court’s findings unless they are clearly erroneous. *Smith v. Smith*, 2022 Ark. App. 514, 656 S.W.3d 198. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.* When the amount of child support is at issue on appeal, the appellate court will not reverse a trial court’s order absent an abuse of discretion. *Grynwald v. Grynwald*, 2022 Ark. App. 310, 651 S.W.3d 177. An abuse of discretion generally occurs when the trial court’s discretion is applied thoughtlessly, without due consideration, or improvidently. *Id.* Whether the trial court’s findings are clearly erroneous turns largely on the credibility of witnesses, and the appellate court gives special deference to the superior position of the trial court to evaluate the witnesses, their testimony, and the child’s best interest. *Id.* As to issues of law, however, we give no deference to the trial court; rather, we review issues of law de novo. *Smith, supra.*

IV. *Nathan’s Argument*

A. Basic Child Support

Nathan argues that, if this had *not* been a true joint-custody arrangement, then his basic child-support obligation would be \$771 a month (or 64.35 percent of the parties’ gross monthly income). Before considering additional child-rearing expenses—which Nathan

thinks should be considered separately—Nathan has been ordered to pay Jessica \$344. Nathan asserts, however, that this is inequitable considering that the parties share true joint physical custody of MC.

According to Nathan, the trial court should have determined the amount of support needed for MC and divided it in half. If a parent's pro rata share is less than one-half of the amount necessary to support the child, then the trial court should order the payor parent to make up the difference. Using numbers, the chart provides for \$1,198 for the support of one child with the parties' gross monthly income. Half of that is \$599. Because Jessica's pro rata share of the obligation was only \$427—less than what is necessary—Nathan would have to supplement that amount, thus paying her \$172, so that she would have the necessary \$599 to support their child.

Nathan contends that, by ordering him to pay \$344, the trial court has awarded child support in an amount that exceeds the family-support chart. Nathan argues that he will spend \$599 on MC while in his care (his one-half) *and* will pay Jessica \$344 in basic child support, *and then* Jessica will pay her pro rata share of \$427. He claims that support for MC is then $\$599 + \$344 + \$427$, which equals \$1,370—more than the \$1,198 provided for by the family-support chart. Nathan argues that he is effectively paying child support in the amount of \$943 ($\$599 + \344) despite the fact that he has MC in his care half of the time.

B. Additional Child-Rearing Expenses

Nathan also argues that, by including his pro rata share of the child-rearing expenses, or \$293, in the total child-support obligation and offsetting that against Jessica's total, the

trial court has ordered him to pay *more* than his pro rata share because he must still pay \$207.50 directly to the daycare provider. Nathan further argues that the child-rearing expenses should be considered separately because MC will soon no longer need daycare, yet the daycare expense is already included in his total child-support obligation.⁵

V. Discussion

The trial court had the parties complete a worksheet showing each as a payor and simply concluded that “[t]he child support amount is calculated by taking the difference between the child support obligations contained in the worksheets attached hereto.” It appears that the trial court relied exclusively on the worksheets and the general guidelines, but, as noted earlier, the worksheet and guidelines presume that Nathan, as the payor parent, has MC *less than* 141 overnights in his residence. In short, the record is unclear whether the trial court considered that Nathan and Jessica spend an equal amount of time with MC.⁶ Nathan has MC for 182 overnights, as does Jessica. Arguably, the more overnights Nathan has with MC, the lower his child-support obligation should be because the expenses for MC’s basic needs increase with the additional time that Nathan has MC with him, and Nathan is paying those expenses directly while MC is in his care.

⁵MC was born in December 2017.

⁶While we do not necessarily subscribe to Nathan’s argument on appeal given that he is essentially suggesting an alternative method for calculating support, his formula would tend to achieve, at least in the case of a true joint-physical-custody situation, a result not contrary to the overarching purpose of the Income Shares Model, which is to equalize the financial resources being made available to the child.

Here, there is no indication that the trial court considered the shared-custody adjustment,⁷ which is a deviation for which written findings are required.⁸ Footnote 3 in Administrative Order No. 10 under shared-custody adjustment provides that

[t]he Guidelines intend for the court to deviate (in an amount to be determined) on a case-by-case basis when the payor parent has more than 141 nights with a child(ren). This discretionary deviation shall also apply when the parents each have the child(ren) for approximately 50% of the time.

Ark. Sup. Ct. Admin. Order No. 10(II) n.3.

Because it appears that the trial court mechanically applied the math from the worksheets and did not take into account the fact that Nathan has MC in his care for 182 overnights, we reverse and remand for additional consideration and findings not inconsistent with this opinion.

Reversed and remanded.

BARRETT and HIXSON, JJ., agree.

The Ballard Firm, P.A., by: *Andrew D. Ballard*, for appellant.

Stone & Sawyer, PLLC, by: *Phillip A. Stone*, for appellee.

⁷As noted earlier, the supreme court has again revised Administrative Order No. 10 and, specifically, made changes to the shared-custody adjustment. Unfortunately, the change is not particularly helpful in this case because the 2022 guidelines still assume that the payor parent has the child for less than 141 overnights—despite the fact that, effective in 2021, there is now a rebuttable presumption that joint custody is in the best interest of the child. Ark. Code Ann. § 9-13-101(a)(1)(A)(iv)(a) (Supp. 2021). We do note, however, that the 2022 guidelines continue to provide that a deviation is contemplated when the parties share equal or near equal time with the child.

⁸See Ark. Sup. Ct. Admin. Order No. 10(II), paragraph 2 (2020).