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ARKANSAS COURT OF APPEALS

DIVISIONS I & IV
No. CV-22-272

THOMPSON MANER APPELLANT V. KATHRYN MANER APPELLEE	Opinion Delivered May 3, 2023 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72DR-13-1985] HONORABLE JOANNA TAYLOR, JUDGE AFFIRMED IN PART; REVERSED IN PART

STEPHANIE POTTER BARRETT, Judge

This is a second appeal in a child-support modification case. Appellant Thompson Case Maner (Case) appeals the Washington County Circuit Court's order ordering him to continue paying $7000 a month in child support for his two children with appellee Kathryn Maner (Katie). Case makes two arguments on appeal: (1) the circuit court lacked authority to enter the child-support order; and (2) the circuit court erred by failing to apply the chart-based presumptive amount of child support. We affirm the circuit court's authority to act in this matter, but we hold that the circuit court's calculation of child support is clearly erroneous, and we reverse on that point.

I. *Facts*

In *Maner v. Maner*, 2021 Ark. App. 472, 639 S.W.3d 368 (*Maner I*), we held that the circuit court erred in dismissing Case's motion to reduce his child-support obligation on the basis that there was no material change in circumstances; we reversed and remanded the case to the circuit court for further consideration. At the time he requested the modification, Case was paying $7000 a month in child support. On remand, the circuit court took no further evidence; the parties submitted proposed orders to the circuit court. Case's proposed order reduced his child-support obligation from $7000 a month to $1858 a month, retroactive to July 1, 2020. Katie's proposed order, which the circuit court entered on January 28, 2022, found it was in the children's best interest for Case's child-support obligation to remain at $7000 a month. An amended order was filed on February 1, 2022, to correct a scrivener's error. Case filed a notice of appeal on February 15.

Later on the afternoon of February 1, after signing the amended order on appeal, Circuit Judge Joanna Taylor filed an order of recusal in this case. The reason given for the recusal was that the administrative plan for the Fourth Judicial District provided that she would recuse from all pending domestic-relations cases not having related orders of protection, and those cases would be assigned to other divisions.

On February 15, Case moved to vacate the January 28 and February 1 orders pursuant to Rules 60 and 59(a)(6) of the Arkansas Rules of Civil Procedure. Case based his Rule 60 argument on the fact that his counsel had only recently learned that the Fourth Judicial District's administrative plan provided that on December 31, 2021, Judge Taylor would recuse from all pending domestic-relations cases not having related orders of protection.

Case argued that the administrative plan automatically recused Judge Taylor from hearing his case as of December 31, 2021, and she therefore lacked the authority to enter the January 28 and February 1, 2022 orders. Under Rule 59(a)(6), Case argued that there was no evidence to support a refusal to decrease his child-support obligation, given that there had been a significant reduction in his income and that there was no evidence to support an upward deviation in the chart child-support amount. This motion was not ruled on by the circuit court. Case filed a second notice of appeal on March 15 to include his deemed-denied motion.

As set forth in *Maner I*, when Case and Katie divorced in December 2013, they agreed to share joint custody of their minor sons, with Case paying $8809 a month in child support—$8000 to Katie, and $809 into a trust for the children. The parties agreed that if Case's child support was reduced, the trust payments would terminate, and all child support would be paid directly to Katie. The parties further agreed to split the costs of the children's Montessori school and any agreed upon summer camps as well as the cost of the children's health-insurance premiums and any medical bills not covered by insurance.

In May 2019, the parties entered an agreed order modifying Case's child-support obligation to $7000 a month due to a material change in circumstances. The parties further agreed to equally split the costs of airfare for the children to travel to tennis tournaments; the fees for tennis tournaments; tennis memberships and lessons; School of Rock fees; school lunches and field trips; and any other agreed-upon extracurricular activities.

Case filed the current motion to decrease his child-support obligation in January 2020; Katie then filed a counterpetition to decrease the amount of her child-support setoff. In the October 1, 2020 order dismissing both petitions for failure to show a material change in circumstances, the circuit court found each party paid approximately $200 a month in health-insurance premiums for the children; over the last fourteen months the noncovered medical and dental expenses had totaled $914, with each parent responsible for one-half; and the parties had spent a total of $22,872 in the last fourteen months for the children's cell phones and extracurricular activities, with each party being responsible for one-half. Even though the circuit court found that the incomes of both parties had decreased—Case's from $62,484.50 a month in 2018 to $53,468.08 a month in 2019, and Katie's from $12,779 a month in 2018 to $10,911 a month in 2019—it determined that was not a material change of circumstances sufficient to modify child support. After this court reversed and remanded that finding in *Maner I* for further consideration, the circuit court ordered Case's monthly child-support obligation to remain at $7000.

II. *Authority to Enter Child-Support Order*

Case first argues that the order entered by Judge Taylor on January 28 and the amended order entered on February 1, 2022, are void because the Fourth Judicial District's administrative plan provided that on December 31, 2021, Judge Taylor would recuse herself from all pending domestic-relations cases that did not have related orders of protection, which their case did not have. He contends that Judge Taylor was automatically recused

from their case as of December 31, 2021, pursuant to the administrative plan, and therefore, she did not have authority to enter orders in this case after that date. We disagree.

Arkansas Supreme Court Administrative Order No. 14 regulates the administration of the circuit courts in Arkansas. Subsection 3 of that administrative order requires each judicial district, by majority vote, to adopt an administrative plan for the assignment of cases; subsection 4 provides that each judicial district's administrative plan be approved by the supreme court.

The Fourth Judicial District's administrative plan, effective January 1, 2022, specifically provided, "On December 31, 2021, to implement the above redistribution of the pending Division 7 domestic relations cases, Judge Taylor will recuse from all pending domestic relations cases that do not have related order of protection cases. . . ." *Maner I* was handed down by this court on December 1, 2021; the mandate issued on January 4, 2022, reversing and remanding the case to circuit court. Case moved for entry of final order on January 24, 2022, attaching his proposed order; the circuit court instead entered Katie's proposed order on January 28, and the amended order on February 1.

Case contends that administrative orders are equivalent to court rules, and therefore, the same standard of review applies to the construction of administrative orders as applies to construction of court rules—it is a question of law, which is reviewed de novo. *Mullenix v. Mayberry*, 2023 Ark. App. 139, ___ S.W.3d ___. He argues that in construing Administrative Order No. 14's language and giving the words their ordinary and usually accepted meaning, Judge Taylor was recused from the case as of December 31, 2021.

We hold that Judge Taylor had the authority to rule in this case. All of the sections of Administrative Order No. 14 must be read together, and subsection (3)(c)(1) provides that there must be a plan for recusals, and the recusal process shall be consistent with the requirements of Administrative Order No. 16. That order provides that a judge recusing himself or herself from a case shall file an order of recusal; then the case-management system will randomly assign the case to another judge. Therefore, the administrative plan did not automatically recuse Judge Taylor from the present case; by the mandates of Administrative Order No. 16, she was not recused until she signed an order of recusal, and that did not occur until after she entered the order now on appeal. We affirm on this point.

III. *Upward Deviation of Child-Support Obligation*

Case also argues that the circuit court erred in deviating upward from the chart-based presumptive amount of child support. We hold that the circuit court abused its discretion in deviating upward from the presumed chart-support amount, and we reverse that decision.

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. *David v. David*, 2022 Ark. App. 177, 643 S.W.3d 863. On appeal, we give due deference to the circuit court's superior position to determine the credibility of the witnesses and the weight to be given their testimony. *Id.* In determining child support, the amount of support lies within the sound discretion of the circuit court, and those findings will not be reversed absent an abuse of discretion, but a circuit court's conclusions of law are given no deference on appeal. *Id.*

This court held in *Maner I* that Case had established a material change in circumstances—a substantial decrease in his income—and the circuit court was clearly erroneous in finding he failed to establish a material change in circumstances and dismissing his motion to decrease his child-support obligation. We held that in determining whether there has been a change in circumstances warranting a modification of support, the circuit court "should consider remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change in custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and the child-support chart." *Maner I*, 2021 Ark. App. 472, at 4–5, 639 S.W.3d at 371 (citing *Hall v. Hall*, 2013 Ark. 330, at 5, 429 S.W.3d 219, 222).

On April 2, 2020, the Arkansas Supreme Court adopted a revised Administrative Order No. 10, making changes in the child-support guidelines that are to be used for all support orders entered after June 30, 2020 ("2020 guidelines").[1] The 2020 guidelines and revised family-support chart are based on the Income Shares Model, which is grounded in 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 (per curiam). It is presumed that the chart amount of child support is the appropriate amount to be awarded, although

[1]The Arkansas Supreme Court has revised Administrative Order No. 10 again, effective October 6, 2022. Because this order was entered prior to that date, the 2020 guidelines will be used in the analysis of the proper amount of child support.

that presumption may be rebutted. Ark. Sup. Ct. Admin. Order No. 10(II) (2020). The 2020 guidelines calculate child-support amounts for a combined parental gross income of up to $30,000 a month, and the child-support obligation for incomes exceeding that amount shall be determined by using the highest amount in the guidelines. *Id.* The circuit court "may then use its discretion in setting an amount above that to meet the needs of the child and the parent's ability to provide support." *Id.* The 2020 guidelines assume the payor parent has the minor children overnight in his or her residence less than 141 overnights per calendar year. *Id.*

If an order deviates from the chart amount, the order must explain the reason(s) for the deviation in writing, considering all relevant factors, including what is in the children's best interest. Ark. Sup. Ct. Admin. Order No. 10(II)(2). A deviation from the guidelines should be the exception rather than the rule. *Id.* When determining whether to deviate from the chart amount, the circuit court should consider the following factors:

> (a) educational expenses for the children;
> (b) the procurement and/or maintenance of life insurance, dental insurance, and/or other insurance (not health-insurance premiums);
> (c) extraordinary travel expenses for court-ordered visitation;
> (d) significant available income of the children;
> (e) the creation or maintenance of a trust fund of 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 house, 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 in excess of $250,000 per year per child, and/or health-insurance premiums, if not added to the total child-support obligation; and

(j) any other factors that warrant a deviation.

Id. In cases of joint or shared custody, where both parents have responsibility for the children for at least 141 over nights per calendar year, after the parties complete the child-support worksheet, the circuit court may then consider the time the children spend with the payor parent as a basis for adjusting the child-support amount determined on the worksheet. Ark. Sup. Ct. Admin. Order No. 10 (V)(2). In making a determination whether to apply an additional credit, the circuit court should consider the amount of disparity between the income of the parties, giving more weight to disparities of less than 20 percent and considering which parent is responsible for the majority of the nonduplicated fixed expenditures, i.e., routine clothing costs, costs for extracurricular activities, school supplies, and any other nonduplicated fixed expenditures. *Id.*

Here, the parties' combined monthly income was determined to be $68,887.04, with Case earning $57,976.29, and Katie earning $10,910.75. According to the guidelines, the monthly chart amount of support for two children when the parents' combined monthly income is $30,000 is $2660; therefore, Case was responsible for 84.16 percent of the child-support obligation, or $2238.66; and Katie was responsible for 15.84 percent, or $421.34. The parties each paid $200.59 a month for the children's health insurance; pursuant to the income percentages, Case was responsible for $337.63, and Katie was responsible for $63.55. Case's total child-support obligation pursuant to the chart was determined to be $2576.29 ($2338.66 + 337.63); with a credit for the $200.59 in additional child-rearing expenses, Case's final monthly child-support obligation in accordance with the chart totaled $2375.

On appeal, Case takes issue with the circuit court's determination that his child support should remain at $7000 a month, or 295 percent greater than the presumed chart amount.

The circuit court found all parties to be credible. In deviating upward by $4625 a month, the circuit court considered the factors for deviation set forth in Administrative Order No. 10 and made written findings. It noted that the children do not attend private school; both parties carry life-insurance policies with the children as beneficiaries, and health insurance is divided equally between the parties; there are no extraordinary travel expenses for court-ordered visitation; Case had established a trust for the children in which he had deposited $63,705 before ceasing contributions in May 2019 pursuant to the parties' agreement, but the trust had earned $22,758.70, for a current value of $83,463.70; that the children have 529 educational trusts with values of $120,000 and $114,000; Case had remarried and has three children with his new wife; Case pays $2400 a month in childcare expenses for his three youngest children, and he had created 529 educational trusts for those children that totaled $287,500; Katie had not remarried and has no other children; and the parties share true joint custody of their sons, with the children dividing their time equally with each parent. The circuit court also found that there were other factors that warranted a deviation from the presumptive chart amount of child support—Case's gross monthly income was almost nearly double the maximum chart amount of $30,000; Case's affidavit of financial means indicated that all of his current family's financial obligations, including contributions to his 401k, childcare for his three youngest children, and his current $7000 child-support obligation, totaled less than half of his monthly gross income; Katie's affidavit

of financial means provided that her current financial obligations, including 401k contributions, exceeded her gross monthly income from all sources, including the $7000 in monthly child support; the children's expenses incurred by both parties to maintain the standard of living they have come to enjoy far exceeded the presumptive base child-support amount of $2660; the children's tennis and extracurricular activities included extensive time and travel, which constituted a substantial part of the support requirements; any reduction of Case's child-support payments would cause Katie to be unable to meet her financial commitments and time and travel obligations to the children because of the standard of living the children have traditionally enjoyed; and the $7000 was a more accurate reflection of the share of income the children would have received had the parties remained together and shared financial resources given that Case's income was roughly five times more than Katie's income, and it alone far exceeded the chart's maximum combined monthly gross-income amount.

In the present case, all of the factors considered by the circuit court, with the exception of the "other factors" catch-all provision, are either neutral or favor a downward deviation in child support. The children do not attend private school, the parties each carry a life-insurance policy for the benefit of the children, and they divide equally the health-insurance premiums and medical expenses not covered by insurance. There is no extraordinary travel expense for visitation. Case established a trust for the children currently valued at over $83,000; the children also have 529 educational plans valued at $120,000 and $114,000. While Katie has not remarried and does not have any other children, Case has

remarried and has three other children with his new wife; he pays $2400 a month in daycare expenses for those children and has also funded 529 plans for them valued aggregately at approximately $287,500. The children's time is divided equally between Case and Katie. These factors weigh in favor of a downward deviation in Case's favor, as he has clearly provided additional funds for the children in the form of the trust and 529 educational accounts, and he has a new family that he is providing for at a high standard of living as well. There also was no consideration of the fact that Case and Katie share true joint custody of their sons. In *Jennings v. Jennings*, 2023 Ark. App. 185, this court reversed and remanded a child-support determination in which the circuit court failed to take into consideration the fact that the parents shared true joint custody; therefore, arguably, the payor parent's support obligation should be decreased because the children's basic needs increased with additional time spent with the payor parent, who was paying those expenses directly while the children were in his care.

Case cites *Parnell v. Arkansas Department of Finance and Administration*, 2022 Ark. 52, 639 S.W.3d 865, in support of his argument. In *Parnell*, the supreme court reversed and remanded a child-support order setting Parnell's support obligation above the amount indicated in the latest child-support guidelines. While he was an active player in the NFL, Parnell's net monthly income was $306,080, and his presumed monthly child-support obligation under the old guidelines was more than $45,000; the circuit court found that amount was not justified and, instead, ordered Parnell to pay $7500 a month in child support. Parnell retired from the NFL in January 2019 and moved to reduce his child-

support obligation; the hearing was held after the new support guidelines went into effect. The circuit court found Parnell's monthly gross income was $36,849, which was greater than the maximum $30,000 monthly combined income amounts under the new guidelines. The circuit court added 15 percent of the excess monthly income, or $1027.35, to the maximum chart amount for one child of $1864.31, for a total child-support obligation of $2891.35. The circuit court also deviated upward from what it had concluded was the presumptive child-support amount due to the mother's needs, the age of his son (sixteen), and the fact that Parnell had already set aside funds to pay for his son's support through his eighteenth birthday, concluding that it was in the child's best interest under the circumstances for Parnell to pay $6500 in monthly child support.

Parnell appealed, arguing (1) that the mother's needs were not synonymous with his son's needs, which were presumptively covered by the chart; (2) that because his son was sixteen did not mean he had a need for greater support; and (3) that the fact he had been prudent with his finances had nothing to do with the reasonable needs of his son and was not a reason for an upward deviation in his child-support obligation. Parnell noted that his son had no extraordinary educational or medical needs; he paid all of his health, dental, and vision insurance as well as 100 percent of all amounts not covered by insurance; he paid all of the expenses associated with transportation for visitation; and he had established an irrevocable trust for his son that was currently valued at $17,474.64.

In reversing, the supreme court held that under the new guidelines, it was impermissible to simply add 15 percent of a portion of one parent's income to his or her

child-support obligation, and doing so was clear error. It further held that a parent's need "is not a legitimate factor to consider when deviating from the chart. Child support should focus on the child's needs, not the custodial parent's needs." *Parnell*, 2022 Ark. 52, at 8, 639 S.W.3d at 869. Additionally, it held that a child's age alone does not justify an increased child-support obligation, and the fact that Parnell prudently handled his finances did not justify the circuit court's increase of his monthly child-support obligation.

We recognize that all of the errors made in calculating child support in *Parnell* were not present in this case—the circuit court did not add a percentage of Case's income over the chart maximum, nor did it rely on the children's ages to increase child support. However, the written reasons set forth by the circuit court for the upward deviation included that Case's gross monthly income alone was almost double the maximum chart amount of $30,000 for the combined income of both parties; that Case's current family's financial obligations, including the $7000 in child support, totaled less than half of his monthly gross income; that Case had no debt, so despite his decrease in income, he still had sufficient income to meet all of the monthly needs of his family, including the $7000 child-support obligation; that, according to Katie's affidavit of financial means, her current financial obligations, including contributions to her 401k, exceeded her gross monthly income from all sources, including the $7000 in child support; that the cost to maintain the children's standard of living they had come to enjoy far exceeded the presumptive child-support amount of $2660, and a substantial amount of that cost was associated with tennis and extracurricular activities, including extensive time and travel for both the children and the

parents; that any reduction in Case's child-support obligation would cause Katie to be unable to meet her financial commitments and time and travel obligations to the children; and the $7000 monthly child support was a more accurate reflection of the share of income the children would receive had the parties remained married and shared financial resources because Case's income was five times the amount of Katie's.

It is true that the children have enjoyed a standard of living that most people do not—over $22,000 was spent in fourteen months for their extracurricular activities. While Case's gross monthly income alone was almost twice the maximum chart income of $30,000 for the gross monthly combination of both parties in the guidelines, the circuit court awarded child support in an amount almost three times the presumptive amount. The circuit court's findings failed to take into consideration Katie's gross monthly income from her job, which was $10,911. The parties have also agreed to split the cost of the children's extracurricular activities equally; however, with this child-support order, Case is ultimately paying for all of the extracurricular activities. The upward deviation gives Katie an additional $55,500 in child support over the presumptive chart amount, while Case has to pay not only the presumptive chart amount of support but an additional $55,000 as well as his one-half of the children's extracurricular activities. This deviation, in effect, guts the Income Shares Model since the cost of meeting all the children's needs is placed on Case.

We also hold that, as in *Parnell*, the circuit court abused its discretion in considering Katie's needs in setting child support. One of the reasons the circuit court gave for the upward deviation in Case's child-support obligation was that Katie's expenses exceeded her

income on her affidavit of financial means, even after including the $7000 in child support. A review of this document shows that the circuit court's finding is incorrect. Katie's affidavit lists total monthly income of $20,026.53, with her expenses totaling $18,064.58—her monthly expenses do not exceed her monthly income; rather, her income exceeds her expenses by almost $2000. She also lists $1,368,132 in other funds available to her. A further review of Katie's affidavit shows that the circuit court, in contravention of *Parnell*, incorrectly considered Katie's monthly needs when deviating Case's child-support obligation upward. Some of the listed monthly expenses are wholly attributable to the children, such as their health insurance ($200.59); clothes and shoes ($125); and extracurricular activities ($800), and some of the other expenses, such as utilities ($507.95) and food ($1330), are partially attributable to the children. These expenses are taken into consideration in the chart amount based on income, which is presumed to be the appropriate amount. But Katie's listed monthly expenses also include her health-insurance premium ($191.34), monthly contributions to her 401k ($1619.51), alcohol ($100), lawn care ($150), charitable giving ($100), "other" expenses ($1772), family vacations ($917), household expenses ($875), and rental-property expenses ($750). Katie also lists three payments for rent and house expenses—$2509.70; $1346.86; and $1575.52—that total over $5400. Many of Katie's listed monthly expenses are not for her children's benefit, but the circuit court clearly considered all of the expenses, including those solely attributable to Katie, in making an upward deviation in child support. This upward deviation essentially reverts back to the old method of setting child support since the circuit court focused only on Case's monthly income to set

the support amount, which the new income-shares guidelines move away from. We hold that the circuit court abused its discretion in considering Katie's monthly expenses that did not benefit the children—in contravention of *Parnell*—in almost tripling Case's child support.

For the reasons set forth above, we hold that the circuit court abused its discretion in deviating from the chart amount less the appropriate deductions. We therefore set Case's monthly child-support obligation at $2375. Although Case filed his motion to reduce child support in January 2020, the parties agreed that if there was a reduction in child support, it would be retroactive to July 1, 2020. Therefore, the reduction to $2375 is retroactive to that date, and Case is entitled to a credit for the overage of support he has paid since that time.

Affirmed in part; reversed in part.

GLADWIN and KLAPPENBACH, JJ., agree.

HARRISON, C.J., and WOOD, J., concur.

BROWN, J., concurs in part and dissents in part.

WENDY SCHOLTENS WOOD, Judge, concurring. I agree that we must reverse the circuit court's order because one of the findings made by the court in support of its upward deviation—Katie's monthly expenses exceed her monthly income—is clearly erroneous. I concur because this court should not determine Case's monthly child-support obligation. I would remand for the circuit court to make that determination.

The crux of the Income Shares Model is that "children should receive the same proportion of parental income that they would have received had their parents lived together and shared financial resources." Ark. Sup. Ct. Admin. Order No. 10(I) (2020). The child-

support obligation for incomes above $30,000 a month—as we have in this case—must be determined by using the highest amount in the guidelines. Ark. Sup. Ct. Admin. Order No. 10(II). In such cases, the court may then use its discretion and set an amount above that "to meet the needs of the child and the parent's ability to provide support." *Id.* In my view, this must include the discretion to deviate upward when a parent's income far exceeds the $30,000 chart cap.

Despite the erroneous finding made by the circuit court, the court's fourteen-page order sets forth many other findings that support its upward deviation from the presumptive chart amount of child support. Judge Brown details many of these findings in his dissent, and I will not restate them here, except to reiterate the circuit court's finding that child support in the amount of $7,000 "is a more accurate reflection of the share of income the children would have received had the parties remained together and shared financial resources." These findings are within the circuit court's discretion in setting an amount of support above the chart "to meet the needs of the child and the parent's ability to provide support."

I realize that deviation above the chart amount is the exception rather than the rule. But the administrative order recognizes that the chart reflects a range of the average amount of money that families in the United States spend to support their children. Ark. Sup. Ct. Admin. Order No. 10(I). The record clearly establishes, and the circuit court found, that the parties have been spending money on their children well above the average range recognized

by the chart. This case presents exceptional circumstances, which was acknowledged by the circuit court:

[T]his Court has considered the respective incomes of the parties, the amount of income available to support the minor children, the lifestyles of the children, the lifestyles of the parents, and the Affidavits of Financial Means of both parties, including the assets available to the parents and their current monthly expenses, both of which are in excess of what some individuals in the State of Arkansas make on an annual basis . . . .

In sum, the circuit court based its deviation in part on a clearly erroneous finding of fact. Rather than this court setting the child support at the presumptive chart amount, I would remand so that the circuit court may exercise its proper discretion based on factual findings supported by the record. *See Parnell v. Ark. Dep't of Fin. & Admin.*, 2022 Ark. 52, at 9, 639 S.W.3d 865, 870.

Harrison, C.J., joins.

WAYMOND M. BROWN, Judge, dissenting. Although I agree with the majority that the circuit court had the authority to rule in this case, I disagree with the majority's reversal of the circuit court's decision to allow child support to remain at $7000 a month. The circuit court's order stated in pertinent part:

> v. The children's expenses incurred by both parties to maintain the standard of living the children have come to enjoy far exceed the presumptive base child-support amount of $2660.
>
> vi. A substantial part of the total support requirements of the two boys of these parties is associated with their tennis and extracurricular activities, which in some cases include extensive time and travel for the children and parents. The

children are accustomed to enjoying multiple gym memberships, private and group tennis lessons, School of Rock lessons and programs, and both local and out-of-town tennis tournament competition with the active involvement and presence of both parties, regardless of under which parent's custodial period said activities may fall.

vii. Any reduction in the plaintiff's child support obligation would cause the defendant to be unable to meet her financial and time/travel obligations to the children based on the standard of living the children have traditionally enjoyed.

viii. The amount of $7000 per month the plaintiff is currently paying to the defendant for child support along with the other financial contributions made by the parties to the children's expenses is a more accurate reflection of the share of income the children would have received if these parties continued to live together and share financial resources than the chart suggests, given that the plaintiff's gross income is roughly five (5) times that of the defendant; the parties have each spent far in excess of the base chart amount monthly for the financial support of the children and for both parents' continued involvement and support of the children's activities; and, the defendant's gross income does, alone, far exceed the maximum combined income amount reflected on the chart.

13. The Court has further considered the standard set forth in the most recent version of Administrative Order No. 10 Section II, 3rd paragraph in determining whether this Court should use its discretion to set an amount of child support above the maximum chart amount that meets the needs of the children and the parent's respective abilities to provide support. To that end, as set forth in detail above, this Court has considered the respective income of the parties, the amount of income available to support the minor children, the lifestyles of the children, the lifestyles of the parents, and the Affidavits of Financial Means of both parties, including the assets available to the parents and their current monthly expenses, both of which are in excess of what some individuals in the State of Arkansas make on an annual basis, and does find that this Court should use its discretion in setting an amount of child support above the maximum chart amount to meet the needs of the children and which is reflective of the parents' respective abilities to provide the necessary support and involvement to maintain the children's customary standard of living. Based on the foregoing, this Court finds that it is in the children's best interest that the plaintiff pay to the defendant the sum of $7,000 per month in child support to the defendant and that it is not in the best interest of the children to reduce the plaintiff's child support obligation to the defendant at

> this time; therefore, the plaintiff's child support obligation shall remain $7,000.00 per month.

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.[2] 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.[3] 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.[4] However, a circuit court's conclusions of law are given no deference on appeal.[5]

This appeal is governed by the "Income Shares Model" adopted by the supreme court in *In re Implementation of Revised Administrative Order No. 10*,[6] which changed the way child-support is calculated in this State and considers the incomes of both parties instead of basing child support solely on the payor's income, as in the prior version of the rule. Section I of Administrative Order No. 10 states that the Income Shares Model is based on the concept that children should receive the same proportion of parental income that they would have

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[2]*David v. David*, 2022 Ark. App. 177, 643 S.W.3d 863.

[3]*Id.*

[4]*Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

[5]*Id.*

[6]2020 Ark. 131 (per curiam).

received had the parents lived together and shared financial resources. Section I provides further that under the revised "Family Support Chart," each parent's share is that parent's prorated share of the two parents' combined income, subject to certain deviations or adjustments. According to Section II, a rebuttable presumption exists that chart-derived amount is the amount to be awarded. If a deviation is made, the circuit court is required to explain its reason in writing based on certain listed factors.

The circuit court in this instance did what it was required to do in order to deviate from the presumptive chart amount. It was in the best position to weigh the evidence and decide what was in the best interest of the parties' minor sons when making its award. Instead of following our stated standard of review, the majority has instead substituted its own personal objections to the circuit court's order. According to Administrative Order No. 10, the children should receive the same portion of parental income and financial resources they would have received if the parties were still together. There is no justification for the majority to blindly award only the chart-based amount under these circumstances (reduction of child support by over $4,000 a month) and expect these children to enjoy the same or similar standard of living that they have become accustomed to. The circuit court understood the negative impact a reduction of child support would have on the children; unfortunately, this court does not.

Therefore, I respectfully dissent.

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