Cite as 2023 Ark. App. 568

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-552

	Opinion Delivered December 6, 2023
JAMES DAVID APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. 72DR-19-730]
V.	HONORABLE JOHN C. THREET, JUDGE
BRITTANY DAVID APPELLEE	AFFIRMED

KENNETH S. HIXSON, Judge

Appellant James David (James) appeals from the Washington County Circuit Court's order modifying child support filed on July 22, 2022, in favor of appellee Brittany David (Brittany).[1] In this appeal, James contends that (1) the circuit court's decision on his motion to modify child support was clearly erroneous, and (2) the circuit court erred by refusing to apply the modified child-support amount retroactively to the date the motion was filed. We disagree and affirm.

[1]This is the second time these parties have been before us regarding James's motion to modify child support. *David v. David*, 2022 Ark. App. 177, at 16, 643 S.W.3d 863, 873 (*David I*). In *David I*, we reversed and remanded for the circuit court to fully comply with the requirements set forth in the "Revised Administrative Order No. 10" in determining the modified child-support amount and then to reconsider whether the modification should be retroactive after the application of the Revised Administrative Order No. 10.

To offer a preview for context, a few months after the decree had been entered and child support and spousal support had been agreed upon by the parties, James's income increased by approximately $35,000 annually. Brittany petitioned for a commensurate *increase* in child support pursuant Arkansas Supreme Court Administrative Order No. 10. In the interim and before the petition for modification came for trial, the supreme court issued Revised Administrative Order No. 10, which dramatically changed the formula to calculate child support.[2] As a result of the 2020 Revised Rule 10 becoming effective, James filed a counterpetition requesting a *decrease* in his child support from $2,458.54 a month to $900 a month, despite the fact that his income had increased by $35,000 annually. Hence, the litigation and appeals.

I. *Relevant 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

[2]To avoid confusion, this opinion will refer to the prior Administrative Order No. 10 that was in effect on the date the divorce decree was filed as the "old Rule 10," and we will refer to Administration Order No. 10 that was in effect at the time the current petitions were disposed of in the circuit court as the "Revised Administrative Order No. 10" or the "2020 Revised Rule 10." This version is set forth in *In re Implementation of Revised Administrative Order No. 10*, 2020 Ark. 131, at 1 (per curiam). We further acknowledge that Revised Administrative Order No. 10 was again revised on October 6, 2022, and we refer to that version as the "2022 Revised Rule 10." However, the 2022 Revised Rule 10 is not applicable in this case.

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. Also, the PSA required James to pay Brittany $2,500 a month in alimony for thirty months unless Brittany remarried, cohabited with a romantic partner, or died before the expiration of the thirty months. And, important for this discussion, 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 *increased* and recalculated using the same

formula as the parties agreed on and used in the parties' 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 with the Old Rule 10.

While the counterpetitions to modify child support matriculated through the court system, the Arkansas Supreme Court made dramatic changes to Administrative Order No. 10. The new Revised Administrative Order No. 10 became effective for "all support orders entered after June 30, 2020," including orders modifying child support. *In re Implementation of Revised Admin. Ord. No. 10*, 2020 Ark. 131, at 1 (per curiam).

After Revised Administrative Order No. 10 became effective, each party filed amended petitions and added other claims, including claims for discovery violations and contempt.[3] With the exception of the competing motions to modify child support, the parties resolved all other pending issues.

[3]On the eve of the hearing, Brittany filed a new pleading: an "Amended Petition for Reformation of the Property Settlement, Child Custody, and Support Agreement." In her petition for reformation, Brittany alleged that because the parties did not, and could not, anticipate the dramatic changes set forth in the Revised 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 moved to strike Brittany's amended petition for reformation, 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.

A hearing on the competing petitions to modify child support was held on October 27, 2020. At the outset of the hearing, Brittany orally withdrew her petition to *increase* child support, but James did not withdraw his petition to *decrease* child support. The circuit court granted Brittany's motion, and the hearing commenced on James's counterpetition for modification to *decrease* child support. Each party introduced into evidence several exhibits, including affidavits of financial means, child-support worksheets, and the PSA. James also offered expert testimony regarding the implementation of Revised Administrative Order No. 10.

James testified that he had filed an amended counterpetition to modify and *decrease* his child-support obligation on July 13, 2020, which was after 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 Revised Administrative Order No. 10 from $2,458.54 a month to $900 a month and made retroactive to the filing of his counterpetition. James argued that this reduction in child support was in the best interest of the children.

In support of his request to decrease child support, James testified that he had three sources of income at that time, including severance or retirement income from Simmons Foods, the City of Springdale, and the Arkansas Air National Guard. James further testified

that his income had increased approximately $35,000[4] annually since the entry of the divorce decree in May 2019. James testified that he provides medical insurance for the children at a cost of $132.12 a month and further stated that he should receive a deduction in the amount of $913 a month for work-related child-care expenses. James testified that while he was currently unemployed and receiving income in a severance package, he was looking for a new position and would still need child care. 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 child-support guidelines.

James called Chris Bedwell as an expert witness regarding the implementation of Revised Administrative Order No. 10 and to provide an opinion on the amount of James's child support under the revision.[5] Bedwell testified that the methodology used to arrive at the new support charts 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. 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 the court has discretion to

[4]Some parts of the record provide that the increase was $30,000 annually, and some parts provide that the increase was $35,000 annually. Hereinafter for consistency, we will use the $30,000 amount since it is not material to the ultimate disposition in this opinion.

[5]Brittany made several objections regarding relevancy of certain items during Bedwell's testimony; however, Brittany did not object to Bedwell testifying as an expert witness.

make additional adjustments to child support in joint-custody arrangements, taking into consideration the number of days that the children stay with each parent.

Regarding this case, Bedwell produced his report and calculations based on his interpretation of the new guidelines. Pertinent to the issues herein, Bedwell's testimony indicates that after he determined James's gross income and calculated James's share of the basic child-support obligation at $2,369.01 a month, he reduced James's basic child-support obligation for two reasons: (1) James paid the cost of the children's health insurance in the amount of $132.12 a month, and (2) the cost of work-related child-care expenses in the amount of $913 a month "that [James] bears." These two reductions ultimately decreased James's presumptive child support to $2,244 a month.

However, the calculation of this presumptive child-support amount did not exhaust Bedwell's reductions for James's ultimate child-support obligation. Bedwell indicated that Revised Administrative Order No. 10 allows the court discretion to further reduce the presumptive child-support amount to account for joint custody. To that end, pursuant to Revised Administrative Order No. 10, because James and Brittany each have the children 182.5 nights a year, Bedwell took the presumptive child-support amount for each parent and multiplied it by 50 percent, which represented the equal shared time spent with the children. Bedwell then reduced James's monthly presumptive child support from $2,244 to $1,122. Bedwell made similar calculations for Brittany's presumptive child support and determined her reduced child-support obligation was $222 a month. Mr. Bedwell then netted those two numbers to "equalize the relative obligation" and determined James's relative "shared

custody obligation" was $900 a month. Thereupon, Bedwell opined that James's child-support obligation should be reduced from the current monthly amount of $2,458 to $900. Bedwell's child-support worksheet and report consistent with his testimony was admitted into evidence.

Brittany testified that she and James shared 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 a month 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 in child support, the court should use the same methodology as agreed by the parties in the PSA. Brittany's child-support worksheet consistent with her testimony was admitted into evidence.

The court recessed and invited the parties to submit posttrial briefs and set the matter for closing arguments. The parties submitted posttrial briefs, and the circuit court heard closing arguments on December 2, 2020. The circuit court subsequently granted James a decrease in child support, although not to the extent that James requested. James appealed.

This court reversed the decision of the circuit court in *David I*, *supra*, and remanded the case to the circuit court with instructions to calculate child support in accordance with Revised Administrative Order No. 10 and to determine whether the decrease, if any, should be applied retroactively. On remand, the circuit court did not hold a new evidentiary hearing; rather, the circuit court based its current order on the evidence presented at the previous hearing.

After we remanded the case, the circuit court filed its order modifying child support on July 22, 2022. It made the following relevant findings:

> 3. That pursuant to the parties' Decree of Divorce and associated Property, Child Custody and Support Agreement, [James] was obligated to pay $2,458.54 per month in child support, based upon the parties' offsetting incomes, for three dependents. In addition, he was obligated to pay alimony of $2,500.00 per month for 30 months. The parties were awarded Joint Custody of their minor children.
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> 4. That [James] filed his counter-petition for modification seeking a reduction in his child support obligation based upon the increase in his income of $30,000 gross annually from what his income was at the time the Decree of Divorce was entered.
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> 5. That [Brittany]'s income has not changed since the entry of the Decree of Divorce. Specifically, [Brittany] continued to remain unemployed, is attending school in pursuit of a degree, and her monthly financial needs have remained consistent from what they were at the time of the divorce.
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> 6. That [Brittany] is unemployed, but receives $2,500 in spousal support income from [James] each month. [James], after reducing the spousal support payment from his income, earns a gross monthly income of $18,512. Defendant also provides health insurance for the minor children at the cost of $132.12 per month. If [Brittany] were the non-custodial parent, [Brittany] would ordinarily pay child support to defendant in the amount of $335.66 per month. If [James] were the non-custodial parent, [James] would ordinarily pay child support to [Brittany] in the amount of $2,353.34 per month. [*James*] *requested that the Court give him credit for child*

care expenses, but due to the fact that [James] is not currently employed, the child care is not actually needed at this time and is merely anticipated. Therefore, [James] shall not receive a credit for said expense.

7. That pursuant to Admin. Order No. 10, the Court, after calculating the presumptive child support owed by the parties, "*may then consider* the time spent by the child(ren) with the payor parent as a basis for adjusting the child-support amount . . . . 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 . . . ." (emphasis added) The adjustment of child support in joint custody cases is discretionary. In this particular case, there is a significant disparity between the parties' incomes, with [James] earning $16,012 per month more than [Brittany]. This significant disparity weighs against any adjustment for defendant.

8. That pursuant to Admin. Order No. 10, "[i]t 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." Additionally, the Court may deviate based upon "[a]ny other factors that warrant a deviation.

9. That [James] has requested that this Court modify his child support obligation from $2,458.54 per month to $900.00 per month. [Brittany]'s income has not increased one cent since the decree of divorce, but [James]'s income has increased substantially by $30,000 gross annually. Nevertheless, [James] is asking that this Court reduce his child support obligation by $1,558.54 per month and [James] believes that said reduction is in the best interest of the minor children.

10. That this Court disagrees with [James] and finds that such a reduction based upon the sole material change being a substantial increase in [James]'s income would not be in the best interest of the minor children.

11. That this Court specifically finds that the reduction of child support sought by [James] would be unjust and inappropriate under the circumstances. Additionally, the factors which support said finding and this Court's rejection of [James]'s request are as follows: (1) [Brittany] continues to be unemployed while attending school; (2) [Brittany]'s income has not increased since the entry of the Decree of Divorce; (3) [Brittany]'s financial needs, and those of the minor children when in her care, have not decreased since the entry of the Decree of Divorce; (4) [James] is earning substantially more, not less, income since the entry of the Decree of Divorce; and (5) the disparity in income between the parties is significant.

> 12. That [James]'s request to reduce his child support obligation from $2,458.54 to $900 per month is hereby denied, as said reduction would be unjust and inappropriate under the circumstances. Accordingly, the Court hereby orders that [James]'s child support obligation shall be set at $2,017.68. Furthermore, the Court denies [James]'s request for a retroactive reduction in child support for the same reasons set forth herein. Said retroactive reduction would be unjust and inappropriate, the income disparity is significant between the parties, and a retroactive reduction would not be in the best interest of the minor children.

(Emphasis added.) James appealed and abandoned all pending but unresolved claims in his notice of appeal pursuant to Arkansas Rule of Appellate Procedure–Civil 3(e)(vi) (2022).

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. *David I*, *supra*. 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. *Child Support*

The calculation of child support in Arkansas continues to be mired in the midst of morphing the decades-old version of old Rule 10 with which we were all familiar, with the 2020 Revised Rule 10. Most of the problems arise from the dramatic change from the older version in which courts generally calculated child support on the basis of the payor's income

or ability to pay along with pertinent expenditures, to the new, modern version in which courts generally calculate child support on the basis of family income and pertinent expenditures and what it has been described as "what it actually costs to raise children." This new and improved version is sometimes referred to as the "Income Shared Approach." However, other problems arise from the use of unfamiliar new terminology and newly authorized worksheets that contain previously unused phrases, such as basic obligation, additional monthly child-rearing expenses, deviations, child-support obligation, presumptive child support, and even credits and cross-credits. And when the case involves joint custody, the revisions now grant the circuit court discretion to allow for additional deviations for the "real time" spent with each parent and the calculation of "shared custody obligation." If calculating child-support obligations from scratch using the new 2020 Revised Rule 10 was not difficult enough, to exacerbate the problem, now payors whose child-support obligations were calculated under the old Rule 10 are petitioning the circuit court for modifications to hopefully reduce their child-support obligations under the revised versions of Rule 10. That is what we have here—the inconvenient intersection of the old Rule 10 with the 2020 Revised Rule 10.

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). In this case, the pertinent child-support guideline is the 2020 Revised Rule 10. 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 2020 Revised Rule 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 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.*
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> The following sets out the relevant procedure:
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> > [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." *Parnell*, 2022 Ark. 52, at 6, 639

S.W.3d at 868. 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);
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> 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);
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> c. Extraordinary travel expenses for court-ordered visitation;
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> d. Significant available income of the child(ren);
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> e. The creation or maintenance of a trust fund for the children;
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> f. The support given by a parent for minor children in the absence of a court order;
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> g. Extraordinary time spent with the payor parent;
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> 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;
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> 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 6–7, 639 S.W.3d at 868–69.

In cases of joint custody as is the case here, the 2020 Revised Rule 10 provides the following guidance for additional deviations.

> 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.[3] In particular, in deciding whether to apply an additional credit, [referred to hereinafter as the "additional joint custody adjustment" or "additional joint custody 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 3 omitted and emphasis added).

Relevant to the issues on appeal in this case, pursuant to 2020 Revised Rule 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).

Appellant argues on appeal that the circuit court improperly focused on Brittany's income and needs and that to use his "income as justification that he can pay more than warranted by the guidelines is merely a transfer of wealth from one household to the other, without regard for the evidence-based methodology in Administrative Order 10." He further argues that the circuit court erred in failing to deviate and reduce his child support as his expert, Bedwell, recommended because the "enumerated deviation factors [under Revised Administrative Order No. 10] supports a downward deviation for the payor – in addition to

the intended deviation for joint custody." Appellant additionally complains that the circuit court failed to follow 2020 Revised Rule 10 when it failed to attach the child-support worksheets and failed to "adequately explain in writing the specific reasons for its deviation . . . [in that the] stated reasons are improper because they focus on the wealth and needs of the payor and payee rather than any proof on the children's needs." He argues that his expert provided the correct calculations, including "a reasonable deviation for joint custody, that his "presumptive child support obligation" was only $900, and that "the only enumerated factors present here clearly support the 'intended' downward deviation."

In his reply brief, appellant compares his case to our recent decision in *Maner v. Maner*, 2023 Ark. App. 256; however, appellant's arguments are misplaced. Unlike in *Maner*, the circuit court here did not make an upward deviation on the basis of Brittany's financial needs but instead reduced David's child support in accordance with 2020 Revised Rule 10.

James argued at trial that he should be entitled to three pertinent reductions:[6] (1) a reduction equal to the amount of the costs for the children's health insurance in the amount of $132.12 a month that he was paying; (2) a reduction equal to the cost of work-related child-care expenses in the amount of $913 a month "that [he] bears"; and (3) an additional

[6]We return to the introduction of this section and the new nomenclature used in 2020 Revised Rule 10. In some parts of the rules and guidelines, reductions are referred to as "deviations," "credits," "adjustments," or "reduce/reductions." We are using the generic term "reductions" in this opinion. By using the term "reductions," we are not attempting to delineate or further define or redefine these terms beyond their ordinary meanings as used in the rule or guidelines.

50 percent joint-custody reduction from the presumptive child-support amount on the basis of the amount of equal time he shares with the children in joint custody.

On remand, the circuit court allowed James the first reduction in the amount of $132.12 a month for the costs of health insurance. The second reduction requested by James was a reduction for the costs of child-care expenses in the amount of $913 a month. The court rejected this reduction, finding that because James was unemployed, any expense for child care was "merely anticipated" in the future. We cannot say that the circuit court erred in this regard.

The third reduction requested by James was an additional 50 percent joint-custody reduction from the presumptive child-support amount on the basis of the amount of equal time he shares with the children in joint custody. An additional deviation for joint custody, if ordered, must be consistent with the considerations set forth in section V, paragraph 2, which addresses joint- or shared-custody arrangements. *See Smith v. Smith*, 2022 Ark. App. 514, 656 S.W.3d 198. However, as James's expert testified and 2020 Revised Rule 10 provides, such an additional joint-custody reduction based on their shared time with the children is *discretionary* with the circuit court. The 2020 Revised Rule 10 guidelines provide in pertinent part:

> *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.[3] In particular, in deciding whether to apply an additional credit, [referred to hereinafter as the "additional joint custody adjustment" or "additional joint custody 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 3 omitted and emphasis added).

Here, in determining whether James was entitled to an additional 50 percent joint-custody discretionary reduction based on his shared equal time with the children, the circuit court first noted that the parties were, in fact, awarded joint custody. The court then considered the time spent with each parent and noted that the financial needs of the minor children when in Brittany's care had not changed and that James had sought "a reduction in his child support obligation based upon the increase in his income of $30,000 gross annually from what his income was at the time the Decree of Divorce was entered." The court specifically stated that "there is a significant disparity between the parties' incomes, with [James] earning $16,012 per month more than [Brittany]. This significant disparity weighs against any adjustment for [James]." And finally, the court stated that such a reduction is not in the best interest of the children and that said reduction would be "unjust and inappropriate under the circumstances."

To abuse its discretion, the circuit court must have not only made an error in its decision but also must have acted improvidently, thoughtlessly, or without due consideration. *Reed v. Smith*, 2018 Ark. App. 313, 551 S.W.3d 407. On this record, in light of the court's findings and application of 2020 Revised Rule 10, we cannot say that the circuit court abused its discretion in rejecting James's expert's methodology and calculations

in determining the amount of child support and ordering James to pay child support to Brittany in the amount of $2,107 a month. Finally, we note that James does receive a benefit by applying 2020 Revised Rule 10 in that his child-support obligation decreases from $2,458.54 a month to $2,017.68 a month, despite a $30,000 increase in annual income. Accordingly, we affirm this point.

IV. *Retroactivity*

James additionally argues that the circuit court abused its discretion in failing to apply the modification retroactively. For support, he relies on Arkansas Code Annotated section 9-14-107(d) (Supp. 2019), which provides that "[a]ny modification of a child support order that is based on a change in gross income of the noncustodial parent shall be effective as of the date of filing a motion for increase or decrease in child support *unless otherwise ordered by the court*." (Emphasis added.) He argues that "the statute plainly states that modifications of support shall be effective as of the date of the petition" and that "there is no valid reason or explanation that would justify failing to follow the statute." We disagree.

We have repeatedly explained that the commencement date of an award of child support is a matter within the discretion of the circuit court. *See Armstrong v. Keeton*, 2023 Ark. App. 410, at 11; *Grynwald v. Grynwald*, 2022 Ark. App. 310, at 9, 651 S.W.3d 177, 183; *Pardon v. Pardon*, 30 Ark. App. 91, 93, 782 S.W.2d 379, 380 (1990). Contrary to appellant's argument that section 9-14-107(d) *mandates* retroactivity to the date of the filing of the motion, the statute specifically permits the court to order otherwise. *See Armstrong*, *supra*. In fact, in *Cowell v. Long*, 2013 Ark. App. 311, we held that the circuit court was not even

required to give a reason for failing to retroactively modify child support. Cowell had argued that the circuit "court had 'simply picked a date out of thin air,' when it made the award effective on August 1, 2012, [a date that occurred after a hearing was held but before the formal order was filed] and that if the trial court is not going to award the increase retroactively, as required by the statute, the court should be required to give a reason for doing so." *Cowell*, 2013 Ark. App. 311, at 6. We affirmed and provided the following analysis:

> In the case at bar, the trial court awarded the child-support increase prospectively, and it did not give any reasoning for doing so. The statute does not require a trial court to make findings if it makes the award prospective. Further, the statute states that the award shall be retroactive "unless otherwise ordered by the court." Here, the trial court "otherwise ordered" the child support to be paid prospectively, which is permitted by the statute. Accordingly, we hold that the trial court did not abuse its discretion on this point.

Id.

Here, the circuit court denied James's request to order that any reduction be applied retroactively and found that the "retroactive reduction would be unjust and inappropriate, the income disparity is significant between the parties, and a retroactive reduction would not be in the best interest of the minor children." Again, appellant sought a reduction of child support not because the children's needs had changed but because his income significantly increased by approximately $30,000 and because the application of Revised Administrative Order No. 10 would ironically result in a reduction of child support. Given the record and

standard of review, we cannot say the circuit court abused its discretion in denying James's request to retroactively reduce his child support.[7]

V. *Other Arguments*

Finally, James makes two additional arguments. First, he argues that the court erred in failing to attach the child-support worksheets to its order in violation of 2020 Revised Rule 10. We disagree. We note that James fails to cite any authority in 2020 Revised Rule 10 that requires the worksheets to be attached to the order. The worksheets were clearly in the record and relied upon by the circuit court. Second, James argues that the circuit court erred "in failing to follow the roadmap in his unrebutted expert witness's testimony." However, again, we disagree and note that we have held innumerable times that the weight and value to be given to the testimony of expert witnesses lies within the exclusive province of the trier of fact. Here, the circuit court, as the trier of fact, obviously paid close attention to Bedwell's testimony and report, and it was within the court's exclusive province to determine the weight and value of Bedwell's testimony.

Accordingly, we affirm.

ABRAMSON and WOOD, JJ., agree.

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

Putman Law Office, by: *William B. Putman*, for appellee.

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[7]James's argument that our recent decision in *Maner*, *supra*, requires reversal is misplaced. In *Maner*, we specifically noted that "the parties [had] *agreed* that if there was a reduction in child support, it would be retroactive." *Id.* at 17 (emphasis added). Here, there was no such agreement.