

Cite as 2024 Ark. App. 336
ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-23-334

DONALD WISE

APPELLANT

Opinion Delivered May 22, 2024

V.

STATE OF ARKANSAS, OFFICE OF
CHILD SUPPORT ENFORCEMENT
CASE NUMBER 828936596; AND
KIMBERLY HUCKABAY

APPELLEES

APPEAL FROM THE GREENE
COUNTY CIRCUIT COURT
[NO. 28DR-04-397]

HONORABLE KIMBERLY BOLING
BIBB, JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Donald Wise appeals from the Greene County order modifying and extending his child-support obligation. He appeals, making several arguments: the court erred in finding a material change in circumstances warranting a modification of support; in determining the amount of support owed; in imputing income; and in awarding expert-witness fees to OCSE. We affirm.

I. Background

On September 28, 2004, a decree of divorce was entered granting appellee Kimberly Huckabay a divorce from Wise. The incorporated stipulation and property settlement agreement stated that two children were born of the marriage, both of whom were born on

December 4, 2001. Wise agreed to pay \$120 weekly for the support of the minor children until the children reached the age of eighteen years or graduated from high school.

In 2011, the Arkansas Office of Child Support Enforcement (OCSE) intervened and filed a motion to modify support. In an order entered July 26, 2011, Wise's child-support payment was modified to \$363 biweekly based on Wise's biweekly net income of \$1,530.86. The order provided that the support would continue until the children emancipated.

On May 14, 2021, OCSE moved to modify support. The motion noted that since the July 26, 2011 order, the children had turned eighteen and would graduate from high school on May 21, 2021. OCSE stated that the children had been diagnosed as permanently disabled and would need assistance for the rest of their lives. OCSE stated that there had been a material change of circumstances to warrant a modification to continue child support past the age of majority because both children are permanently disabled. In response, Wise denied that the children had a disability or that there was a material change of circumstances, and by motion filed May 21, 2021, he requested that child support be terminated.

A hearing was conducted and established the following. Huckabay knew something was different with the children the day she brought them home from the hospital. One of the boys has severe autism and fragile X chromosome abnormality, seizures, moderate cognitive impairment, severe anxiety, sleep disorder, and a mobility disorder. The other boy has the same diagnosis except that he does not suffer from seizures and his mobility is not as limited.

Prior to the divorce, the children were not walking or talking and attended a pediatric daycare where they received therapies. At this time, Huckabay and Wise decided that Huckabay would quit her job and tend to the children full time. The children have been drawing SSI disability benefits since before the divorce. The children have attended school in a special self-contained classroom and interacted with a limited number of students. The children are currently unable to cook, drive, or work and will never be able to live on their own or function in society.

Since the divorce, Wise has had limited interaction with the children. He visited with them on three occasions in 2011 when they were nine years old. He testified that Huckabay kept the children from him. She said that she took the children to meet with Wise for a fourth visit in 2011, but he never showed up, and he has not attempted to contact her since.

The children attended the hearing, and Wise agreed that they appeared to be completely and totally disabled, which was a change since he last saw them in 2011. In 2011, he was able to have conversations, but he also acknowledged that they had trouble speaking. He testified he likely could not communicate with them like that now.

Dr. Vern Shotts, who has been a pediatrician for forty-four years, testified she has known the children most of their lives. Huckabay called her as a witness because Wise contested the fact that the boys are disabled. She testified that the children have always been delayed in their development and that one of the children's disabilities has increased with age because of his seizure disorder. She explained the children always had therapies hoping they would improve, but they never improved. She testified that at the age of ten, there was

still the possibility they improve to the point they would not need constant supervision. Dr. Shotts also testified that Huckabay is an excellent caregiver and that the children would be worse in a group home. Dr. Shotts testified that it is in the children's best interest that Huckabay remain their caretaker. Accordingly, Huckabay cannot maintain a job and take care of the children because they require full-time care and supervision.

Wise has worked as a paramedic for about twenty-six years but was fired in 2022. He testified that he was unsure why he was fired and that the matter is still under investigation. He is currently collecting unemployment and not seeking another paramedic job because he has trauma from that line of work. Wise testified that he does not think he should pay child support because he does not know the children.

Glenea Ross, a child-support specialist with OCSE, testified that the 2021 first quarter gross earnings for Wise were \$14,105.10, and the second quarter earnings were \$16,574.65. She had no records for the third quarter because of a change in employment, but his earnings for the fourth quarter were \$32,666.17. For the first quarter of 2022, his earnings were \$32,666.17, and his earnings for the second quarter were \$2,918.93. She testified that Wise applied for unemployment benefits on September 24, 2022. She testified that if no income was imputed to Huckabay and Wise's monthly gross income was \$5,444.35, Wise's monthly child-support obligation would be \$1,152, which is based on the income that he was making at the beginning of the year until he became unemployed.

Following the hearing, the court entered an order with the following findings. It granted OCSE's motion to modify on the basis of a material change of circumstances; in

doing so, it denied Wise's counterpetition to terminate support. Wise's monthly gross income was determined to be \$5,444.35, and the court accordingly ordered child support in the amount of \$1,152 a month "based upon calculations supported by Administrative Order No. 10." The court further granted OCSE its costs, including the expense incurred in providing expert testimony concerning the children's disability. The court awarded OCSE reimbursement for its expert-witness fee in the amount of \$4,375 "as the Court does not find the Defendant's denial of knowledge of the children's condition and disability reasonable." Wise now appeals.

Child-support cases are reviewed de novo on the record. *Troutman v. Troutman*, 2017 Ark. 139, 516 S.W.3d 733. A circuit court's finding of fact will not be reversed unless it is clearly erroneous. *Id.* Due deference is given to the circuit court's superior position to determine the credibility of witnesses and the weight to be accorded to their testimony, but no deference is given to a circuit court's conclusion of law. *Id.*

II. *Change in Circumstances*

Wise first argues that his support obligation should have automatically been terminated upon the children's graduation because there had not been a material change in circumstances warranting an extension and modification of support. In support of his argument, he contends the evidence of the children's disability was available to all parties in 2011 when the modified child-support order was entered.

Arkansas Code Annotated section 9-14-237 (Supp. 2023) sets forth that a parent ordinarily has no legal obligation to support a child beyond age eighteen or upon reaching

the milestones that traditionally signal emancipation. However, the statute does not automatically terminate a parent's continuing common-law duty to support a child who is disabled upon attaining his majority and who needs further support. *Guthrie v. Guthrie*, 2015 Ark. App. 108, 455 S.W.3d 839. Further, section 9-12-312(a)(6)(B) (Repl. 2020) states that a court may provide for the continuation of child support beyond emancipation for an individual with a disability that affects the ability of the individual to live independently from the custodial parent. A change in circumstances must be shown before there can be a modification of child support; the party seeking modification has the burden of showing a change of circumstances has occurred. *White v. Merrigan*, 2024 Ark. App. 265, ___ S.W.3d ___.

In 2011, the children were about nine years old and had not yet been diagnosed with fragile x, and one boy's disorder causing prolonged seizures had not been evident. That same child did not struggle walking long distances as he does now. Dr. Shotts testified that around 2011, there was still the possibility the children could improve to the point they would not require constant supervision and that ordering child support past majority in 2011 would have been premature. It was not until the boys were around the age of twelve that they slowly stopped making progress in their therapies. Notably, according to Wise's own testimony, when he last saw the boys in 2011, the only concern he recalled was the boys' lack of communication. Upon seeing the children at the hearing, he conceded that they both appeared completely and totally disabled, which was "absolutely" a change since 2011. A determination of whether continued support is proper must be made on the basis of the

facts of the particular case. *Bagley v. Williamson*, 101 Ark. App. 1, 4, 269 S.W.3d 837, 840 (2007). Given these facts, it cannot be said that the circuit court's finding of a material change of circumstances was clearly erroneous.

III. *Financial Need*

Wise argues the court erred in applying Arkansas Code Annotated section 9-12-312 and Administrative Order No. 10 in determining whether to order Wise to pay extended child support. Specifically, he challenges the court's finding that there was no factual dispute that the disabled children were in need of support.

In determining a reasonable amount of child support, initially or upon review, to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. Ark. Code Ann. § 9-12-312(a)(3)(A). It is a rebuttable presumption that the amount contained in the family support chart is the correct amount of child support to be awarded. Ark. Code Ann. § 9-12-312(a)(3)(C). Only upon a written finding or specific finding on the record that the application of the child support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted. Ark. Code Ann. § 9-12-312(a)(3)(D). The current Administrative Order No. 10 states that a deviation from the chart amount "should be the exception rather than the rule." As is important for this case, "[t]he court also may provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent." Ark. Code Ann. § 9-12-312(a)(6)(B). Thus, on review, the circuit court may continue child support for a disabled

child, and the amount of child support to be paid is determined by referring to the family support chart.

The circuit court engaged in this analysis in determining the amount of support Wise owed. OCSE presented proof of the need for the continuation of support for the children, both of whom suffer from a disability that affects their ability to live independently from the custodial parent. Evidence established that the boys are not capable of taking care of themselves, either physically or financially. They live at home with Huckabay, who is their full-time caretaker, which Dr. Shotts testified is in their best interest.

Wise erroneously asserts that OCSE was required to present evidence regarding the costs of the children's care and actual financial need. We have rejected the argument that a noncustodial parent does not have to pay child support pursuant to the chart simply because that amount exceeds a child's actual needs. *Cross v. Cross*, 2019 Ark. App. 100, at 5, 572 S.W.3d 407, 410. Administrative Order No. 10 permits consideration of factors that may support a deviation from the family support chart, but Wise did not rebut the presumption that the amount contained in the family support chart is the correct amount.

IV. *Imputed Income*

Wise argues the court's imputation of his paramedic income should be reduced to an amount more comparable to his unemployment income.

Arkansas Supreme Court Administrative Order No. 10(III)(d) (2014), provides:

If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her

earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

We review the court's imputation of income under the abuse-of-discretion standard. *Byrd v. Byrd*, 2012 Ark. App. 589. An abuse of discretion occurs when discretion is applied thoughtlessly, without due consideration, or improvidently. *Id.*

The circuit court did not abuse its discretion in imputing income. Wise is unemployed and not seeking work. He has twenty-six years of experience as a paramedic, and he testified that his skills would translate to a hospital setting. Thus, Wise is well qualified to continue working in the medical field, despite his desire not to. We have held that the payor's choices cannot always take precedence over his obligation to earn income sufficient to provide support. *Guthrie, supra*. While we are sympathetic to the reasons Wise does not want to return to employment as a paramedic, he did not present any evidence that he suffers from a documented mental or physical disability that precludes his employment as a paramedic or stops him from seeking other work.

OCSE presented testimony regarding Wise's earnings as a paramedic through the child-support specialist. According to the child-support worksheet, Wise's monthly gross income was imputed at \$5,444.35. The circuit court, in reaching that amount, used Wise's 2022 first-quarter gross income of \$32,666.17 (three months) and divided that amount by six months, for an imputed monthly gross income of \$5,444.35. Given these circumstances, the circuit court did not thoughtlessly or improvidently impute income to Wise.

V. Expert Fees

In awarding OCSE its costs incurred in providing expert testimony, the court relied on Arkansas Code Annotated section 9-12-309(2) (Repl. 2020), which provides that “the court may award the wife or husband costs of court, a reasonable attorney’s fee, and expert witness fees.” Further, Arkansas Code Annotated section 9-14-210 (Supp. 2023) states:

(d) The State of Arkansas is the real party in interest for purposes of establishing paternity, child support obligations, securing repayment of past-due support, and costs in actions brought to establish, modify, or enforce an order of support.

We review issues of statutory interpretation *de novo*. The primary rule of statutory interpretation is to give effect to the intent of the legislature. *Keep Our Dollars in Independence Cnty. v. Mitchell*, 2017 Ark. 154, 518 S.W.3d 64. We first construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* In conducting this review, we will reconcile statutory provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part. *Ark. Dep’t of Corr. v. Shults*, 2018 Ark. 94, at 4, 541 S.W.3d 410, 412.

In applying our rules of statutory interpretation, we must sensibly reconcile these two statutes. Here, Huckabay assigned her child-support rights to OCSE, making it the real party in interest. Dr. Shotts’s testimony aided in proving the boys are disabled, which was necessary because Wise denied they are disabled prior to the hearing. Dr. Shotts thoroughly explained her billing and fees at the hearing. Accordingly, the circuit court properly awarded the expert-witness fees to OCSE as the real party in interest.

Affirmed.

HARRISON, C.J., and KLAPPENBACH, J., agree.

Jeremy B. Lowrey, for appellant.

Gil Dudley, Arkansas Department of Finance & Administration, for separate appellee
Office of Child Support Enforcement.