Cite as 2024 Ark. App. 372

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-807

J. TODD SLAYTON APPELLANT V. ANGELA DILL APPELLEE	Opinion Delivered June 5, 2024 APPEAL FROM THE CLEBURNE COUNTY CIRCUIT COURT [NO. 12DR-16-286] HONORABLE DONALD T. MCSPADDEN, JUDGE REVERSED AND REMANDED

BART F. VIRDEN, Judge

The Cleburne County Circuit Court entered an "agreed order" denying requests by appellant J. Todd Slayton and appellee Angela Dill to modify custody of their one minor child (MC) and setting Slayton's child-support obligation. Slayton argues in this one-brief appeal that the trial court erred in calculating his gross income as a self-employed restauranteur under Ark. Sup. Ct. Admin. Order No. 10. We reverse and remand.

I. *Background*

Slayton and Dill married in March 2006 and divorced in May 2018. The parties were granted true joint custody of MC who was born in 2010. In the division of marital property, Slayton was awarded the parties' restaurant called Pizza Pie-zazz. The divorce decree further provided that neither party was to pay child support for MC given the joint-custody arrangement.

In April 2021, Slayton moved to change custody of MC to him, alleging domestic violence in Dill's home that she shared with her new husband. Dill counterclaimed for primary custody and for child support. Following a hearing on August 17, 2022, the trial court denied the parties' requests to change custody because it found that there had been no material change of circumstances. That decision is not at issue in this appeal. At the conclusion of the hearing and after the testimony had been presented on the custody decision, the trial court and counsel for the parties had a brief discussion about child support.

The trial court asked if there had been any proof of income, to which Slayton's counsel said that Slayton's last two years of tax returns had been provided. The trial court asked if Dill's counsel was "still pursuing that," and he said, "No. I think what we just ask is that you set child support based on the worksheet that they provided." The trial court said the following:

> Well, I have two worksheets. I have one that's provided—that my office has done which shows Mr. Slayton's gross income at $11,644.00 per month, and Ms. Dill's at $2,887.00 per month, with a child support obligation of $1,096.00 on Mr. Slayton's part, and Ms. [Dill's] at $271 per month.

Slayton's counsel said that tax returns had been provided showing that Slayton's annual income was approximately $47,000 the previous year. The trial court said that it had seen that Slayton was claiming to have made $30,000 in 2020 and $47,000 in 2021 but that it wanted to hear from a certified public accountant (CPA). Despite this, the trial court commented that it did not have "a lot of regard for expert witnesses." The judge shared that

his son is a forensic accountant and said that his son had told him that an accountant's job is "to work figures around" to "make you look very, very wealthy" or "make you look like you're broke." The judge also said that he knew that folks in the cattle business "can depreciate a rock."

With respect to Slayton's restaurant business, the trial court said that Slayton could not deduct for depreciation even though that was allowed by the IRS and that "I will knock off what it takes to make a pizza. I will not knock off—you don't knock off insurance." The trial court also said, "I will hire a CPA, and it's not going to be your CPA that you-all use every time you turn around, but it will be a CPA that I pick out and you will have to pay for it." When Slayton's counsel objected on the basis that his client could not afford that, the trial court briefly questioned Slayton, who said that he drives a 2014 Dodge and also owns a 1993 Jeep Cherokee; that he lives in a 2004 mobile home in Wilburn; and that he owns ten rental properties. The trial court again said that it would hire a CPA but that Slayton's counsel could hire "somebody to throw in the mix." At one point during the hearing, the trial court said,

> I'd probably encourage everyone just to go back to the original decree because that's what the Court is going to order. It's going to order same—split custody, week on, week off. And it may be that Ms. Dill may have to get a babysitter, but that's going to go into the pot as far as what is paid in child support, so you're going to probably be paying more in child support.

The trial court briefly returned to a discussion of custody and then informed the parties that it would take the issue of child support under advisement. Dill's counsel said, "I'll do the order and then just leave the child support and wait for your calculations." The

trial court said, "Don't let me go over 30 days. And if you-all want to suggest a CPA, I'll look at it, but I have my own CPA in mind." When Slayton's counsel mentioned the name of a CPA—John Ed Welch—the trial court agreed that Welch is "good at what he does" and encouraged Slayton's counsel to hire Welch because he needed to "pick somebody that's on [Slayton's] side." The trial court remarked that Dill's counsel would likely hire whoever does his taxes.

There were several emails back and forth between counsel for the parties, the judge, and the judge's trial-court assistant. Two weeks after the hearing, the judge and his assistant began asking about the status of the order being prepared. Slayton's counsel said that Dill's counsel was preparing the order as the prevailing party and suggested that the parties had not yet come to an agreement on child support. Dill's counsel responded that his understanding was that the child-support issue would be supplemented after hearing from Slayton's CPA.

On September 9, the trial-court assistant said that she and the judge had not yet received a proposed order. The judge himself followed up on that email telling Dill's counsel that he wanted the order in his hands by noon. Slayton's counsel, who had been copied on the email from the judge, attached both parties' proposed orders stating that "neither side disagrees with the content of either of the orders" but that the difference was that Slayton's numbers were supported by Welch's findings. Slayton's counsel pointed out that Dill's counsel had not offered numbers supported by an expert but that he (Dill's counsel) had voiced no disagreement with Welch's numbers. Attached as an exhibit to Slayton's counsel's

proposed order was a letter dated August 31 from Welch containing a summary of Slayton's 2021 income for child-support purposes. Welch said the following:

> I reviewed Todd Slayton's 2021 federal income tax return in order to determine his income for the purpose of calculating child support. Mr. Slayton's income is derived from two primary sources. First is the operation of Pizza Pie Zazz which is a restaurant in Heber Springs, Arkansas that he owns, and the second source of income is various rental properties in the area that he owns. In 2021, the restaurant had gross sales of $247,977 and expenses of $238,619. The expenses consisted of food cost of $71,274, labor cost of $139,987, utilities of $15,771 and taxes and licenses of $11,587 for total cost of $238,619 which netted him a profit of $9,358. His total rental income received was $40,895 and his insurance expense for those various properties totaled $2,745. His net rental income exclusive of depreciation expense and other miscellaneous expenses was $38,150. Therefore, his 2021 income for child support purposes totaled $47,508 ($9,358 + $38,150).

Slayton's counsel concluded his email to the judge by saying that, "Otherwise, I believe we would need to set a hearing on support, with [Dill's counsel] still within his 30 days to find someone of his own for an expert."

The judge responded, "I trust your CPA. I do not believe your client" and directed Dill's counsel to send his proposed order through eflex. Dill's counsel said that he was sending the order that he had prepared "per your ruling for the amount of child support owed during the hearing." When the judge forwarded the "agreed order" to both parties, Slayton's counsel reminded the judge of his ruling, which he understood to have been that the parties had thirty days to find an expert; he asked for a hearing; and he requested that Dill's counsel identify his expert. The judge clarified that "[t]he time was for me to find a CPA to go over the numbers."

On September 13, the trial court entered an order finding the following:

> [Slayton]'s gross monthly take home pay equals $11,663.00.[1] [Dill]'s gross monthly take home pay equals $2,887.00. The total gross income equals $14,550. Based upon Administrative Order No. 10 and the Family Support Chart, the child support obligation of the parties is $1,370.00 per month for the minor child. [Slayton] is responsible for 80% or $1096.00 per month and [Dill] is responsible for 20% or $274 per month. Due to the true joint custody and equal time sharing with the minor child, [Slayton] shall receive an offset of [Dill]'s obligation. [Slayton] shall be the payor and shall pay $822.00 per month in child support to [Dill] who is the payee. Worksheet is attached. The parties shall obtain health insurance for the minor child if health insurance is available at a cost of 5% of gross income or less.

Slayton filed a timely notice of appeal from the so-called "agreed order."

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 trial court unless it is clearly erroneous. *Browning v. Browning*, 2015 Ark. App. 104, 455 S.W.3d 863. In reviewing a trial 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 accorded to their testimony. *Id.* As a rule, when the amount of child support is at issue, we will not reverse the trial court absent an abuse of discretion; however, a trial court's conclusion of law is given no deference on appeal. *Id.*

III. *Discussion*

A party seeking modification of a child-support order has the burden of showing a material change in circumstances. *Moore v. Moore*, 2024 Ark. App. 230. Our supreme court

[1]Slayton points out in his argument on appeal that this number inexplicably increased $19 from the number recited by the trial court during the hearing.

has stated that *it is axiomatic* that a change in circumstances must be shown before a court can modify an order for child support. *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005). In determining whether there has been a change in circumstances warranting an adjustment in support, the 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, ability to meet current and future obligations, and the child-support chart. *Id.*

We note that the divorce decree provided that these parties would share true joint custody of MC and that neither party would pay any child support. Dill alleged in her counter petition seeking child support "[t]hat the Plaintiff should be named the payor parent and be ordered to pay child support in accordance with Administrative Order No. 10." The hearing addressed the parties' requests to change custody, but the issue of child support had been taken under advisement—ostensibly, for the trial court to get input from a CPA of its choosing. It does not appear from the record that the trial court consulted a CPA before determining Slayton's income for child-support purposes.

In calculating child support, any order shall state the amount of health insurance premiums, extraordinary medical expenses, and childcare expenses allowed in determining the total child-support obligation. Ark. Sup. Ct. Admin. Order No. 10(V), paragraph 1 (2023). These three additional child-rearing expenses shall be added to the worksheet and must be considered by the trial court. Ark. Sup. Ct. Admin. Order No. 10(IV). It is clear that the trial court did not factor into Slayton's total child-support obligation "childcare

expenses," although it referred at the hearing to Dill's future, potential need for a babysitter. Further, although the trial court ordered that "[t]he parties shall obtain health insurance for the child if it is available at a cost of 5% of gross income or less," the amount actually paid must be set forth in determining the total child-support obligation because "[t]he payor receives a credit for the additional child-rearing expenses that the payor is paying out of pocket." Ark. Sup. Ct. Admin. Order No. 10(V), paragraph 1. Moreover, with respect to the worksheet referenced in Administrative Order No. 10, "[t]he Worksheet shall be filed in the court file and attached to the order that includes the child-support award." Ark. Sup. Ct. Admin. Order No. 10(III), paragraph 7. The "agreed order" refers to a worksheet; however, there is not a worksheet attached to the file-marked copy of the order that was electronically signed by the judge, although the parties' proposed orders have various worksheets and other exhibits attached to them.

Slayton argues that the trial court clearly erred and abused its discretion by finding that he, a self-employed payor, could not deduct ordinary and necessary business expenses in determining his gross monthly income for child-support purposes. Administrative Order No. 10 provides that there are several reasons why it is difficult to determine income for self-employed individuals and business owners, to include the following:

i. These individuals often have types of income and expenses not frequently encountered when determining income for most people.

ii. Taxation rules, business records, and forms associated with business ownership and self-employment differ from those that apply to individuals employed by others. Common business documents reflect policies unrelated to an obligation to support one's child.

iii. Due to the control that business owners or executives exercise over the form and manner of their compensation, a parent, or a parent with the cooperation of a business owner or executive, may arrange compensation to reduce the amount visible to others looking for common forms of income.

Ark. Sup. Ct. Admin. Order No. 10(III), paragraph 3(a).

Administrative Order No. 10(III), paragraph 3(b) and (c) also provides that to determine monies that a parent has available for support,

> [I]t may be necessary to examine business tax returns, balance sheets, accounting or banking records, and other business documents to identify additional monies a parent has available for support that were not included as personal income. At a minimum, a self-employed parent shall provide their two most recent years of state and federal tax returns. The parent should provide three years of tax returns when there is a reduced, deferred, or elective income situation. Unless otherwise prohibited by law, the court may award expert witness fees when necessary to determine self-employed parent's income.
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> c. For income from self-employment, proprietorship of a business, or ownership or a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation, including an employer's share of FICA. However, the court should exclude from those expenses amounts allowed by the Internal Revenue Service for accelerated depreciation of investment tax credits for purposes of these Guidelines and add those amounts back in to determine gross income. In general, the court should carefully review income and expenses from a parent's self-employment or operation of a business to determine actual levels of gross income available to the parent. The court's duty is to accurately determine a child-support obligation in every case. This amount may differ from the determination of business income for tax purposes.

Administrative Order No. 10(III), paragraph 3 also lists deductions for tax purposes, including depreciation. Ark. Sup. Ct. Admin. Order No. 10(III), paragraph 3(i).

Slayton asserts that in its custody decision, the trial court said with respect to his allegations of domestic violence in Dill's home, "[y]ou can't prove anything by just thinking, well, somebody probably lied about it." Slayton argues that the same applies here as to his gross income as a self-employed individual. Slayton has a point. While the trial court had Slayton's income tax returns for 2020 and 2021, and Slayton himself was subjected to questioning by the trial court concerning his lifestyle, there was not much other information adduced at the hearing on which to determine Slayton's gross income. Although the trial court expressly found that Slayton was not credible, the trial court remarked that it trusted Welch, whom it referred to as a competent CPA. In that regard, Slayton's counsel provided Welch's analysis of Slayton's 2021 income during email correspondence with the judge after the hearing. While the trial court's determination of Slayton's gross income and his total child-support obligation may ultimately be correct, we cannot discern from the record how the trial court arrived at its figures for a self-employed individual—or whether the trial court simply imputed income to Slayton, which is addressed by an entirely different section of Administrative Order No. 10. *See* Ark. Sup. Ct. Admin. Order No. 10(III), paragraph 8.

We therefore remand for the trial court to reexamine its child-support award. The trial court should assess the allegations, arguments, and concessions made below; hold Dill, as the moving party, to her burden of proof; consider the evidence submitted by the parties; and consult the proper version of Administrative Order No. 10 and its instructions related to self-employment and imputed income. We thus reverse and remand for the trial court to decide this matter in accordance with our opinion.

Reversed and remanded.

HARRISON, C.J., and BARRETT, J., agree.

Blair & Stroud, by: *Barrett S. Moore*, for appellant.

One brief only.