

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2022 CA 0094

KELLY A. LAROUSSE MIZE

VERSUS

JEREMIE MARK MIZE



**Judgment Rendered: NOV 04 2022**

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On appeal from the  
Seventeenth Judicial District Court  
In and for the Parish of Lafourche  
State of Louisiana  
Docket Number 137421

Honorable Marla M. Abel, Judge Presiding

\* \* \* \* \*

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\* \* \* \* \*

BEFORE: WHIPPLE, C.J., GUIDRY, AND WOLFE, JJ.

Wolfe, J. concurs

## **GUIDRY, J.**

Jeremie Mark Mize appeals from a judgment, which modified his child support obligation and denied his request for a tax dependency credit. For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

The parties to this action, former spouses, Jeremie Mark Mize and Kelly A. Larousse Mize, are the parents of two children.<sup>1</sup> Pursuant to a consent judgment, signed on September 12, 2019, the parties shared joint custody of their two children. Thereafter, pursuant to a judgment signed on February 19, 2020,<sup>2</sup> Mr. Mize was ordered to pay, among other things, the sum of \$2,978.54 as monthly child support for the minor children.

On February 4, 2021, Mr. Mize filed a petition to modify child support and rule for contempt.<sup>3</sup> A hearing on the matter was held on March 29, 2021, after which the trial court signed a judgment on June 16, 2021, that, among other things, reduced Mr. Mize's child support payment and awarded Ms. Mize the right to claim the children for tax purposes.

Thereafter, on August 17, 2021, the trial court signed a judgment denying Mr. Mize's motion for new trial;<sup>4</sup> Mr. Mize appealed. Following the lodging of this appeal, a rule to show cause order was issued by this court, ordering the parties to show cause by briefs why the appeal should not be dismissed as untimely. After considering the briefs submitted by the parties, we hereby recall the show cause order and maintain the appeal.<sup>5</sup>

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<sup>1</sup> A judgment of divorce was signed on November 13, 2020.

<sup>2</sup> While the judgment denotes a year of 2019, it is clear that the judgment was signed in 2020.

<sup>3</sup> The pleading does not include any allegations or argument on the issue of contempt.

<sup>4</sup> This reference to the judgment pertains only to issues in this appeal.

<sup>5</sup> At issue in the order was the October 13, 2021 motion for appeal, which was filed beyond thirty days of the August 20, 2021 mailing of the trial court's refusal to grant a timely application for

## ASSIGNMENTS OF ERROR

1. The Trial Court erred as a matter of law by deviating from the child support guidelines as provided for in La. R.S. 9:315.1 rather than a mechanical application of the guidelines that would result in [Mr. Mize] paying child support in the amount of \$1,580.00 per month.
2. The Trial Court erred as a matter of law by failing to provide a credit for payments made to [Ms. Mize] by [Mr. Mize] for his proportionate share of medical insurance, private school tuition, dancing, and music lessons to her directly as enhancements for supposed “reimbursements” to the monthly child support obligation that [Ms. Mize] did not in turn pay for the delineated providers and failed to recognize that she had an affirmative duty to return monies that were not owed pursuant to La. Civil Code article 2299.
3. The trial court erred as a matter of law by failing to grant [Mr. Mize] the tax dependency credit for the two minor children every year.

## STANDARD OF REVIEW

The determination or modification of child support is governed by the guidelines contained in La. R.S. 9:315 *et seq.* See Stogner v. Stogner, 98-3044, p. 5 (La. 7/7/99), 739 So. 2d 762, 766. The trial court has great discretion in establishing and modifying child support awards and its judgment will not be disturbed on appeal absent a clear abuse of discretion. Stogner, 98-3044 at p. 12, 739 So. 2d at 770.

## DISCUSSION

### Deviation from the Child Support Guidelines

Because the amount of child support determined by the use of the guidelines is presumptively correct, the party urging a deviation from this amount bears the burden of proving by a preponderance of the evidence that a deviation is warranted. Guillot v. Munn, 99-2132, p. 9 (La. 3/24/00), 756 So. 2d 290, 297.

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new trial. See La. C.C.P. art. 3943. We note, however, that in August 2021, Hurricane/Tropical Storm Ida impacted the 17th Judicial District Court and many surrounding areas within the state (a state of emergency was declared by the Governor on August 26, 2021). Thereafter, through a series of Orders, the 17th Judicial District Court remained closed through September 27, 2021. Our decision reflects the unique circumstances caused by Hurricane Ida.

When deviating from the guidelines, courts must give specific reasons for the deviation, specifying the particular facts and circumstances evidencing that a deviation is warranted. Deviations should be allowed only in limited circumstances so that the function of the guidelines, which is to provide adequacy and consistency in child support awards, is preserved. Guillot, 99-2132 at pp. 8-9, 756 So. 2d at 297.

Louisiana Revised Statutes 9:315.1(B)(1) provides that if the court finds that the application of the guidelines would not be in the best interest of the child or would be inequitable to the parties, the court may deviate from the guidelines. Louisiana Revised Statutes 9:315.1(C) provides a list of factors which may be considered by a court in determining whether to deviate from the guidelines, including “[a]ny other consideration which would make application of the guidelines not in the best interest of the child or children or inequitable to the parties.”<sup>6</sup> See La. R.S. 9:315.1(C)(9). Deviations by the trial court from the guidelines shall not be disturbed in the absence of manifest error. La. R.S. 9:315.17.

In the present matter, Ms. Mize, the appellee and domiciliary parent, argued she was entitled to an upward deviation from the child support amount provided by the guidelines because she, essentially, has physical custody of the parties’ two children 100% of the time. The parties agreed, during their testimonies, that Mr. Mize kept the children overnight approximately nine times within an eighteen-month period. According to Ms. Mize, her expenses are elevated by feeding and entertaining the children on weekends when Mr. Mize does not do so.

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<sup>6</sup> The trial court also has discretion to adjust a parent’s child support obligation pursuant to La. R.S. 9:315.8(E), which provides in part:

(1) In cases of joint custody, the court shall consider the period of time spent by the child with the nondomiciliary party as a basis for adjustment to the amount of child support to be paid during that period of time.

In making the deviation in child support from \$1,580.00<sup>7</sup> to \$2,020.00, and in its reasons for judgment, the trial court explained its ruling as follows:

In this case, the undisputed testimony at trial established that [Mr. Mize] has exercised a total of nine overnight visits with his children in the last two years – despite having joint custody and the ability to visit with them up to ten days per month. La. R.S. 9:315[.8](E)(2) allows a nondomiciliary parent with physical custody of a child for more than 73 days to receive a credit towards the child support obligation. For the same reasons a nondomiciliary parent in that situation should receive a credit, a nondomiciliary parent who rarely exercises physical custody should pay a greater percentage of the total child support obligation since the domiciliary parent bears virtually all of the day-to-day expenses in caring for the child.

While the court understands [Mr. Mize’s] work schedule may create a hardship in arranging long visits with his children, his sporadic visitation is not adequately contemplated by the figures and calculations in the child support guidelines. It is therefore in the best interest of the children – and is equitable to [Ms. Mize] –for [Mr. Mize] to pay 98% of the basic child support obligation amount minus the amount of his direct payments. This percentage is based on [Mr. Mize] exercising physical custody of the children for approximately five days out of the year . . . .

We are unable to conclude that the trial court herein abused its discretion or manifestly erred by allowing a deviation from the guidelines. As expressed by the Guillot court, the “typical visitation” arrangement has been factored into the guideline formula, and there is no bright line rule related to the amount of deviation that is acceptable. See Guillot, 99-2132 at p. 14, 756 So. 2d at 301. The decision of the trial court herein is supported by the evidence, including Mr. Mize’s testimony that he had seen his children “maybe, like, five to [six] times . . . on the high end” during the twelve months prior to the hearing. The trial court’s reasoning that it would be inequitable to place the burden of virtually all the day-

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<sup>7</sup> Under a mechanical application of the guidelines, Mr. Mize would have been required to pay \$1,580.00 in child support.

to-day expenses on Ms. Mize is supported by La. R.S. 9:315.1(C)(9).<sup>8</sup> We therefore find no merit in the assignment of error.

### **Income Tax Dependency**

The entitlement to claim dependents for federal and state income tax purposes is governed by La. R.S. 9:315.18, which pertinently provides:

A. The amounts set forth in the schedule in R.S. 9:315.19 presume that the custodial or domiciliary party has the right to claim the child as a dependent. However, the claiming of dependents for federal and state income tax purposes shall be as provided in Subsection B of this Section.

B.(1) The non-domiciliary party whose child support obligation equals or exceeds fifty percent of the total child support obligation shall be entitled to claim the child as a dependent for federal and state tax purposes if, after a contradictory motion, the judge finds both of the following:

(a) No arrearages are owed by the obligor.

(b) The right to claim the child, or some of the children in the case of multiple children, would substantially benefit the non-domiciliary party without significantly harming the domiciliary party.

Both elements of La. R.S. 9:315.18(B)(1) must be satisfied in order for the nondomiciliary party to be entitled to the tax dependency deduction. Carter v. Carter, 49,517, p. 4 (La. App. 2d Cir. 11/26/14), 155 So. 3d 81, 84. Where there is no evidence to prove that the income tax deduction would significantly benefit the nondomiciliary parent without significantly harming the domiciliary parent, the nondomiciliary parent has not proven entitlement. Carter, 49,517 at p. 4, 155 So. 3d at 84.

Mr. Mize contends that the trial court erred in failing to award him the federal and state tax dependency credits. The record, however, does not contain any evidence that the deductions would substantially benefit Mr. Mize, without substantially harming Ms. Mize. Absent such evidence, the requirements of La.

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<sup>8</sup> While the trial court referenced La. R.S. 9:315.8(E)(2) in its reasons, we note that the trial court's specific reasons for deviation include the best interest of the children and/or equity between the parties as expressed in La. R.S. 9:315.1.

R.S. 9:315.18(B)(1) remain unsatisfied. Thus, we find no merit in the assertion that the trial court erred in declining to grant Mr. Mize the tax dependency credit.

**Obligation to Restore**

Lastly, in addressing Mr. Mize’s assignment of error regarding “credit for payments” and the return of money under La. C.C. art. 2299,<sup>9</sup> we recognize the general rule, codified in Uniform Rules-Courts of Appeal, Rule 1-3, which provides: “[t]he Courts of Appeal will review only issues which were submitted to the trial court..., unless the interest of justice clearly requires otherwise.” We note that the issue of credit for payments was never raised before or during the trial of this matter, nor were the pleadings enlarged. This issue was not before the trial court for consideration. Therefore, the issue is not properly before us.

**CONCLUSION**

For the above and foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to the defendant/appellant, Jeremie Mark Mize.

**AFFIRMED.**

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<sup>9</sup> Louisiana Civil Code article 2299 provides that a person who has received a payment or a thing not owed to him is bound to restore it to the person from whom he received it.