

DA 13-0633

IN THE SUPREME COURT OF THE STATE OF MONTANA

2014 MT 195N

IN RE THE MARRIAGE OF:

DOUG R. BEACH,

Petitioner and Appellant,

v.

ELIZABETH O. BEACH, n/k/a

ELIZABETH O. SONSALLA,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Fallon, Cause No. DR 2007-44
Honorable Joe L. Hegel, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Doug R. Beach (self-represented), Ekalaka, Montana

For Appellee:

Albert R. Batterman, Batterman Law Offices, P.C.; Baker, Montana

Submitted on Briefs: June 18, 2014

Decided: July 22, 2014

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The issue before the Court is whether the District Court correctly modified child support payments owed by Doug R. Beach (Beach) to his ex-wife, Elizabeth O. Beach, n/k/a Elizabeth Sonsalla (Sonsalla), for the support of their two children.

¶3 The District Court for the Sixteenth Judicial District, Fallon County, granted the Final Decree of Dissolution of Marriage to Beach and Sonsalla in 2009; the decree included a settlement of child support obligations. On April 25, 2012, Beach filed a motion to modify child support, representing himself pro se. In his affidavit supporting his motion, Beach argued that the District Court was not properly calculating his child support obligations based on his income and expenses, and he alleged that Sonsalla did not properly report all of her income to the District Court. After a hearing on Beach's motion, the District Court issued its Findings of Fact and Conclusions of Law on August 23, 2013. The District Court held that Beach owed Sonsalla \$1,198.00 per month based on Montana's Child Support Guidelines as set forth in § 40-4-204, MCA, and the Administrative Rules of Montana, Title 37, Chapter 62, Sub-chapter 1.

¶4 The District Court found that Beach had an annual income of \$77,000 in 2011, which included unemployment payments, veteran's disability benefits, and Beach's documented

subsistence payments. The District Court considered both Beach's and Sonsalla's documented expenses. The District Court did not include all of the mileage Beach claimed as an expense because Beach did not provide a mileage log or fuel receipts. Beach appealed the District Court's ruling to this Court.

¶5 We review a district court's findings of fact and conclusions of law which underlie an order for the modification of child support to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *In re Marriage of Carter-Scanlon*, 2014 MT 97, ¶ 15, 374 Mont. 434, 322 P.3d 1033. Evidentiary rulings by a district court are reviewed for an abuse of discretion. *Carter-Scanlon*, ¶ 15.

¶6 “[A] trial court cannot base child support upon speculation.” *In re Marriage of Cox*, 266 Mont. 67, 73, 878 P.2d 903, 907 (1994). “The court shall consider all relevant factors including . . . the financial resources of the parents” when determining a child support obligation under § 40-4-204, MCA. Actual income for child support calculations includes “allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce *receipts or other acceptable documentation*.” Admin. R. M. 37.62.106(2)(e) (2014) (emphasis added). “[A] trial court in a marriage dissolution action may consider military disability retirement pay as a source of income in awarding spousal or child support.” *In re Strong*, 2000 MT 178, ¶ 40, 300 Mont. 331, 8 P.3d 763.

¶7 Beach argues that the District Court did not grant him sufficient “leeway” or “slack” as a pro se litigant, that the District Court erred in its determination regarding his expenses, and that the District Court abused its discretion by requiring him to provide documentation of his claimed travel expenses.

¶8 Taking each of Beach’s assignments of error in turn, “[w]hile we may grant wider latitude to *pro se* litigants in court proceedings, we cannot grant latitude so wide as to prejudice the other party.” *State v. Ferre*, 2014 MT 96, ¶ 16, 374 Mont. 428, 322 P.3d 1047 (internal quotations omitted). The record reflects that the District Court granted Beach appropriate latitude as a pro se litigant, but not at the expense of ensuring a fair hearing for Sonsalla. The District Court correctly considered all of Beach’s income – including his veteran’s disability benefits – and expenses when it calculated his child support obligations. The Child Support Guidelines require evidence of expenses, and allowing Beach to claim expenses without evidence would be prejudicial to Sonsalla and clearly beyond the “latitude” allowed to pro se litigants. The District Court did not abuse its discretion by requiring Beach to provide either a mileage log or fuel receipts to prove he had greater travel expenses than the District Court had calculated.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. The District Court’s findings of fact are supported by substantial evidence, and the legal issues are controlled by settled Montana law, which the District Court correctly interpreted.

¶10 Affirmed.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MICHAEL E WHEAT

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ JIM RICE