NO. COA07-1102

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

TAMARA E. HYER,
Plaintiff,

v. Buncombe County
No. 02 CVD 665

SHAWN HYER,
Defendant.

Appeal by plaintiff from order entered 24 April 2007 by Judge Rebecca Knight in Buncombe County District Court. Heard in the Court of Appeals 17 March 2008.

Cecilia C. Johnson for plaintiff-appellant.

No brief filed on behalf of defendant-appellee.

GEER, Judge.

Plaintiff Tamara E. Hyer appeals from an order entered 24 April 2007, requiring her to pay defendant Shawn Hyer child support. On appeal, Ms. Hyer does not contest the trial court's determination that she owes child support, but rather argues that the court miscalculated the amount due under the North Carolina Child Support Guidelines. According to Ms. Hyer, the court's findings of fact overstate her current income and mistakenly attribute childcare expenses to Mr. Hyer. Based upon our review of the record, however, we conclude that the trial court's findings

and its calculation of the child support due are supported by competent evidence. Accordingly, we affirm.

Facts

Mr. and Ms. Hyer were married on 12 September 1992. They have one child who was born on 8 March 1997. The parties separated on 26 December 2001 and have lived apart since that time. In 2002, Ms. Hyer filed a complaint, seeking a legal separation, equitable distribution, and child support. On 13 February 2002, the court entered a consent judgment as to the parties' agreement regarding equitable distribution and child support. With respect to child support, the judgment specified:

> The parties have agreed that there will be an eighteen month moratorium on the Defendant's obligation to pay child support from February 1st and that at the end of that period the parties will exchange financial information through their counsel and enter into an amendment to this order for child support based upon the appropriate guideline amount at that time. The Defendant shall be obligated to keep the minor child insured on his health insurance nothwithstanding [sic] this moratorium and provide the Plaintiff with appropriate information to allow her to process claims on behalf of the minor child. He also agrees to keep Plaintiff on his health insurance coverage until she is able to establish coverage for herself through her employment. Plaintiff will pay all medical expenses not covered by insurance during the moratorium.

The parties did not, however, at the end of the moratorium on child support, enter into any amendment of the order establishing child support.

On 23 May 2006, Buncombe County, on behalf of Mr. Hyer, filed a complaint seeking child support from Ms. Hyer. Ms. Hyer moved to dismiss the action based on the pendency of the 2002 action, but instead the two cases were consolidated. On 2 August 2006, Ms. Hyer filed, in the original action, a motion to set child support.

Following a hearing on Ms. Hyer's motion and Mr. Hyer's complaint, the trial court entered a Child Support Order on 24 April 2007. The court ordered Ms. Hyer to pay Mr. Hyer $174.00 per month for child support. The court determined that Mr. Hyer was entitled to retroactive child support in the amount of $1,218.00 and ordered that the retroactive amount be paid through an additional monthly sum of $100.00. Ms. Hyer timely appealed from this order.

Discussion

Ms. Hyer first challenges the trial court's calculation of the proper monthly amount for child support on two bases: (1) the trial court erred in determining that her current monthly gross income was $3,797.00, and (2) the trial court erred in finding that the father had a total child care expense of $714.00 per year. Our review of a trial court's determination of the amount of child support "is limited to a consideration of whether there is sufficient competent evidence to support the findings of fact, and whether, based on these findings, the Court properly computed the child support obligations." *Miller v. Miller*, 153 N.C. App. 40, 47, 568 S.E.2d 914, 918-19 (2002).

With respect to Ms. Hyer's monthly income, the trial court made the following finding of fact: "The Mother is employed as a nurse at Mission Hospital. She earns $21.94 per hour but her hours vary. In 2006, she earned $45,563. The Mother's current monthly gross income is $3,797 per month." Ms. Hyer claims that this finding is in error because it assumes that she works 40 hours per week when she presented evidence that she had changed jobs in December 2006, and her new position averaged 32 hours a week. She points out that child support must be determined based on a party's actual income at the time the order is made. *Holland v. Holland*, 169 N.C. App. 564, 567-68, 610 S.E.2d 231, 234 (2005).

In support of her contention, Ms. Hyer relies primarily on letters attached to a brief that she submitted to the trial court after the hearing. In her brief on appeal, Ms. Hyer asserts that the submission, after the close of the evidence, "was permitted by the Court . . . due to inclement weather and the imminent closing of the courthouse." The citation to the transcript included in the brief does not support this assertion. According to the transcript, the trial court informed counsel that they could submit written "arguments for proposed guidelines." There is no reference to submission of additional evidence apart from the trial court's request that Ms. Hyer provide her W-2 for 2006. Moreover, Ms. Hyer does not address the admissibility of unsworn letters under the Rules of Evidence.

In any event, Ms. Hyer does not dispute the accuracy of the trial court's finding that she earned $45,563.00 in 2006. Dividing

that amount by 12 months results in a monthly gross income of $3,797.00. The trial court properly determined Ms. Hyer's current income at the time of the order by means of this calculation. *See id.* at 568, 610 S.E.2d at 235 (holding that trial court erred when it entered a child support order on 10 January 2003 without making findings of fact regarding plaintiff's 2002 income). Since the trial court's finding is supported by competent evidence, it is conclusive on appeal even if Ms. Hyer's evidence to the contrary, attached to her post-hearing brief, is considered. *See Savani v. Savani*, 102 N.C. App. 496, 503, 403 S.E.2d 900, 904-05 (1991) ("Once the trial court has made such findings, on appeal they are conclusive, if supported by any evidence, even if there is also evidence to the contrary.").

Ms. Hyer next contends that the trial court erred by including Mr. Hyer's payment of child care expenses in the calculation of child support. The trial court found:

> 7. Father currently pays child care at the rate of $15 per day for 18 days per year, and $12 per day for 37 days per year. The total child care expense is $714 per year, which averages $60 per month. Mother has no child care expense.

Ms. Hyer argues that these child care expenses represented payments to the maternal grandparents that were a "voluntary gift" and, therefore, should not be included in the calculation of child support.

As factual support for her contention, she points to an affidavit from the maternal grandparents that was not submitted during the hearing, but rather was also attached to the brief filed

after the close of the evidence. Mr. Hyer, however, testified that on average for the summer and the school year he paid approximately $60 per month in child care:

> Okay, child care, I had $15 after-school care for 18 days during the summer days that I have her, and 37 at $12 per day that [the grandmother] picks her up -- or [the grandfather] picks her up, I'm paying $12 per visit per time. [The grandparents] keep her and -- I added those two, the 18 for 15 days and the 12 for 37 days and I came up with $714, divided that by 12, and it equals $59.50. I rounded it to $60.

Mr. Hyer also testified that the maternal grandparents picked the child up from school on Thursdays when Mr. Hyer worked late, and he would pay the grandparents $12.00 each time they did so. This testimony constituted sufficient evidence to support the trial court's finding regarding Mr. Hyer's child care expenses.

We, therefore, hold that the trial court's findings of fact regarding Ms. Hyer's income and Mr. Hyer's child care expenses are supported by competent evidence. Since Ms. Hyer makes no other argument regarding the trial court's calculation of the child support due, we affirm the trial court's award of child support.

Ms. Hyer next contends that the trial court erred in including the following requirements in the decretal portion of its order:

> 6. The parents shall not discuss money issues with the child or blame or demean the other parent in the child's presense [sic] for any reason, including telling the child she can't do something because the other parent won't allow her to do so.
>
> 7. The parents shall attend mediation within 60 days to develop a plan on how they will communicate about financial issues and the

> child's activities. The parents shall not communicate through the child.

Ms. Hyer cites no authority and makes no specific argument as to why the sixth paragraph is improper. We, therefore, do not address that contention. *See* N.C.R. App. P. 28(b)(6) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.").

With respect to the mediation requirement, Ms. Hyer argues that it is contrary to N.C. Gen. Stat. § 50-13.1(b) (2007), which specifies: "Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section." The trial court's order did not, however, require the parties to mediate "child support" or "other economic issues," but rather required mediation to develop a plan for communication.

The trial court heard substantial testimony from the parties regarding their inability to communicate with each other regarding financial matters and their child's activities. The trial court's decretal paragraph addressed only those communication issues. The issue of child support, including who would receive child support payments and how much those payments would be, was not relegated to mediation, but was decided by the trial court. Thus, in ordering the parties to mediate this limited issue, the trial court did not abuse its discretion. *See Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005) ("In reviewing child support orders, our review is limited to a determination whether the trial court abused its discretion.").

Affirmed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).