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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200514

Melanie Ann Scofield

v.

Joshua Stephen Scofield

Appeal from Colbert Circuit Court
(DR-17-900195.01)

MOORE, Judge.

Melanie Ann Scofield ("the mother") appeals from a judgment entered by the Colbert Circuit Court ("the trial court") insofar as it

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modified the child-support obligation of Joshua Stephen Scofield ("the father"). We reverse the trial court's judgment.

Procedural History

On June 26, 2019, the parties were divorced by a judgment of the trial court that incorporated an agreement of the parties with regard to the father's child-support obligation for the parties' twin daughters ("the children"), who were born on November 11, 2015. Pursuant to the divorce judgment, the father was ordered to pay monthly child support in the amount of \$770 and "one-half ($\frac{1}{2}$) of any and all extracurricular activities, school fees and/or medical expenses for the ... children." On September 2, 2020, the father filed a complaint seeking to modify his child-support obligation. On October 6, 2020, the mother answered the complaint and counterclaimed, requesting that the trial court hold the father in contempt for failing to pay child support as ordered by the trial court.

After a trial, the trial court entered a judgment on January 14, 2021, reducing the father's child-support obligation to \$481 per month, retroactive to September 2020. The trial court also found the father in contempt for failing to pay child support as ordered and, among other

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things, determined that he owed arrearages in the amount of \$1,705 and ordered him to pay \$50 per month toward that amount. The mother filed a postjudgment motion on February 10, 2021; that motion was denied on March 8, 2021. On April 16, 2021, the mother filed her notice of appeal.

Facts

The father testified that, in 2018 and 2019, he earned approximately \$55,000 to \$60,000 per year working for his father's business. According to the father, he had worked for that business for approximately 10 years, but, he said, he had always wanted to further his education. He testified that, after the parties divorced, he decided to go to college full-time and that that had resulted in his income being reduced by one-half. He testified that, even if he were working full-time, he could not earn as much as he had in previous years because the business's workload had decreased. He testified that, beginning the week after the trial, he would be attending classes 4 days per week and, therefore, would be able to work only between 10 and 15 hours per week, earning \$20 per hour.

The father also testified that he has remarried; that his wife has two children for which she receives no support; that he had sold the parties'

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former marital residence, which he had been awarded in the parties' divorce judgment, and had purchased a larger, four-bedroom house to accommodate his wife and her children and to be closer to the college he is attending; and that the mortgage payment on the new house is approximately \$250 more per month than the monthly mortgage payment was on the former marital residence. Additionally, he testified that his wife, who had quit her job when she moved to Sheffield to live with the father, was not working at the time of the trial because, the father said, she had been unable to secure new employment as a result of the COVID-19 pandemic. He testified, however, that she was searching for employment. According to the father, he pays \$150 per week for his wife's children to attend day care even though she is not employed. He testified that he cannot afford all of his monthly expenses and that he had used credit cards to pay for his college courses. He testified that he was requesting a reduction in his monthly child-support obligation because he needs to reduce his monthly expenses.

The mother testified that, after the parties divorced, she obtained a cosmetology degree. However, according to the mother, the salon at which

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she had been employed had closed down because of the COVID-19 pandemic, and, she said, she had been unable to find other employment in that field. She testified that, at the time of the trial, she was working two part-time jobs -- one at T.J. Maxx, a discount department store, where she works approximately 15 hours per week earning \$9 per hour, and the other at Papa Wok, a restaurant, where she works approximately 8 hours per week earning \$7.25 per hour. She testified that, although she had previously been able to earn tips at Papa Wok, she was not able to do so at the time of the trial because the dining room had been closed. According to the mother, at the time of the trial she was taking online classes to become a sonographer; she explained, however, that, at the time of the trial, she was taking only one class because that is all that she could afford. The mother also testified that she cannot work full-time because she has no one to help her take the children to and from school. She testified further that she cannot afford after-school day care for the children, who were five years old at the time of the trial. According to the mother, she and the children live with her parents in a three-bedroom house because, she said, she cannot afford to buy a house. She also stated

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that she has had to rely on food stamps to buy food for herself and the children.

Discussion

On appeal, the mother argues that the trial court erred in reducing the father's monthly child-support obligation.

"An award of child support may be modified only upon proof of a material change of circumstances that is substantial and continuing. Browning v. Browning, 626 So. 2d 649 (Ala. Civ. App. 1993). The parent seeking the modification bears the burden of proof. Cunningham v. Cunningham, 641 So. 2d 807 (Ala. Civ. App. 1994). Whether circumstances justifying modification of support exist is a matter within the trial court's discretion. Id. We will not disturb the trial court's decision on appeal unless there is a showing that the trial court abused that discretion or that the judgment is plainly and palpably wrong. Id.; Douglass v. Douglass, 669 So. 2d 928, 930 (Ala. Civ. App. 1995)."

Romano v. Romano, 703 So. 2d 374, 375 (Ala. Civ. App. 1997). "[W]hen ... [child] support [is] agreed upon by the parties, those payments should not be modified without close scrutiny. This is especially true where, as here, so short a time ... separates the decree and the hearing for modification." Taylor v. Taylor, 369 So. 2d 1240, 1242 (Ala. Civ. App. 1978) (reversing a judgment reducing a party's child-support obligation

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when only 18 months had elapsed between the entry of the divorce judgment and the hearing on the modification request). "Although pursuing a degree as a full-time student is a laudable venture that may ultimately enhance a parent's employment opportunities and provide a financial benefit for the parent's child, it does not permit a parent to ignore the current and continuing financial needs of a child." J.L. v. A.Y., 844 So. 2d 1221, 1226 (Ala. Civ. App. 2002) (plurality opinion authored by Pittman, J., with Thompson, J., concurring and Yates, P.J., and Murdock, J., concurring in the result, without writings).

"The fact that a divorced husband has remarried is a circumstance that may be considered in weighing the equities of the situation when he requests the court to reduce support and maintenance payments for minor children. But the fact that the husband has remarried, and thereby increased his expenses, is not such a change in the condition of the parties as to justify a modification of the original support decree."

Mencer v. Mencer, 277 Ala. 679, 681, 174 So. 2d 319, 321 (1965).

In the present case, like in Taylor, the trial court's judgment reduced the father's monthly child-support obligation from the amount that he had agreed to pay only 18½ months before the modification and contempt trial. The father's claimed need for a modification was a result of his voluntary

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reduction in income and his voluntary assumption of additional expenses. Meanwhile, the mother, the sole custodian of the children, is unable to afford a house for herself and the children, is unable to afford after-school day care for the children, and has been relying on food stamps to feed the children. Based on the foregoing, we conclude that the trial court's judgment reducing the father's monthly child-support obligation has permitted the father "to ignore the current and continuing financial needs of [the children]," J.L., 844 So. 2d at 1226, and, thus, is "plainly and palpably wrong." Romano, 703 So. 2d at 375. We therefore reverse the trial court's judgment and remand the case for the trial court to enter a judgment denying the father's request for a modification of his monthly child-support obligation.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Edwards, Hanson, and Fridy, JJ., concur.