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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

STEVEN LOHR, *Petitioner/Appellant*,

v.

ALLISON L. WISE, *Respondent/Appellee*.

No. 1 CA-CV 16-0325 FC
FILED 5-11-2017

Appeal from the Superior Court in Maricopa County
No. FC2010-001395
The Honorable Pamela Hearn Svoboda, Judge

AFFIRMED IN PART AND VACATED AND REMANDED IN PART

APPEARANCES

Steven Lohr, Mesa
Petitioner/Appellant

Rubin & Ansel PLLC, Scottsdale
By Yvette D. Ansel
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Diane M. Johnsen joined.

T H U M M A, Judge:

¶1 Steven Lohr (Father) appeals from the superior court’s orders modifying child support and denying his motion for new trial. As set forth below, the order using two worksheets to calculate child support is vacated and remanded, with such remand also to clarify Father’s payment obligations regarding expenses for GWL’s nanny. In all other respects, the orders are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Allison L. Wise (Mother) are the parents of two minor children, GWL and AWL. In 2010, the parties agreed to share joint legal custody. The court awarded parenting time to Father and ordered him to pay \$510.88 per month in child support.

¶3 In 2014, both parents petitioned to modify parenting time and child support. Later, the parties agreed to equal parenting time with AWL. Following a one-day trial in October 2015, the superior court found a modification of parenting time with GWL was warranted based on her “extreme resistance” to parenting with Father. The court ordered that Father parent GWL on a graduated schedule, starting with at least two sessions with a specialized therapist. Mother had retained a nanny to care for GWL; the court ordered the parties to pay for the nanny equally. Using a child support worksheet based on equal parenting time, the court ordered Father to pay \$900.88 per month in child support for AWL; using a different child support worksheet adjusted for five days of parenting time, the court ordered Father to pay \$1,696.78 per month in child support for GWL. *See* Ariz. Rev. Stat. (A.R.S.) § 25-320 app. (2017) (Guidelines).¹ Father unsuccessfully moved for a new trial challenging those rulings and then

¹Absent material revisions after the relevant dates, statutes cited to refer to the current version unless otherwise indicated.

LOHR v. WISE
Decision of the Court

timely appealed. This court has appellate jurisdiction pursuant to A.R.S. §§ 12-2101(A)(2), -2101(A)(5)(a).

DISCUSSION

¶4 A child support award is reviewed for an abuse of discretion. *In re Marriage of Robinson & Thiel*, 201 Ariz. 328, 331 ¶ 5 (App. 2001). This court defers to the superior court's findings of fact unless they are clearly erroneous, *Nash v. Nash*, 232 Ariz. 473, 476 ¶ 5 (App. 2013), but reviews de novo interpretation of the Guidelines, *Engel v. Landman*, 221 Ariz. 504, 510 ¶ 21 (App. 2009).

I. Using Two Worksheets To Compute Child Support Was Error.

¶5 Father argues the superior court overstated his child support obligation by using two worksheets to compute child support for two children, rather than one worksheet for two children. Father minimally, but sufficiently, raised this issue in his motion for new trial, the first practical opportunity for him to do so after the court denied his request for equal parenting time for both children and then calculated support using two worksheets. Accordingly, the issue is properly before this court on appeal.

¶6 The child support calculation was contrary to the "income shares model" on which the Guidelines are based. *See Mitton v. Mitton*, 1 CA-CV 15-0769 FC, 2017 WL 1348850, at *3 ¶ 12 (Ariz. App. Apr. 11, 2017) (issued after trial in this case but applying the Guidelines in existence at the time of trial in this case). Mother offers no persuasive argument to the contrary. Accordingly, the child support order is vacated and the issue remanded to calculate child support using one worksheet. *See Mitton*, 2017 WL 1348850 at *3 ¶ 13.

II. The Parenting Time Adjustment For GWL Was Proper.

¶7 Father argues the superior court erred in crediting only five parenting days against his child support obligation for GWL. Father, however, does not explain how many parenting days the court should have credited. The goal of the graduated schedule was reunification, with any parenting time contingent on sessions with the therapist. Thereafter, parenting time would increase. The Guidelines allow a parenting time adjustment “when proof establishes that parenting time is or *is expected to be exercised* by the noncustodial parent.” Guidelines § 11 (emphasis added). On this basis, Father has not shown error in the court’s calculation of a five-day parenting time adjustment for GWL.

III. Father’s Asserted Double-Counted Child Care Expense.

¶8 Father argues the order erred by including the \$2,400 paid to GWL’s nanny twice, i.e., once in the order itself and again in the child support calculations (split equally between the worksheets). To the extent the order can be reasonably construed as Father suggests, *see In re Marriage of Johnson & Gravino*, 231 Ariz. 228, 233 ¶¶ 16-17 (App. 2012), Mother concedes she cannot recover Father’s share of the amount paid to the nanny over and above what was credited on the worksheets, a concession Father accepts. Accordingly, on remand, the court should consider issuing an order clarifying Father’s payment obligations regarding expenses for GWL’s nanny to avoid any confusion in the future.

IV. Father’s Other Arguments.

¶9 Father argues the superior court erred by implicitly finding that (1) Mother was not underemployed and (2) Mother may claim child care expense of \$2,400 per month. *See* Guidelines §§ 5(E), 9(B)(1). The court is not required to explicitly state each of its findings in making such determinations. *See* Guidelines § 22; *Baker*, 183 Ariz. at 72. Moreover, this court defers to the superior court’s assessment of witness credibility and weight to give the evidence. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 347 ¶ 13 (App. 1998). On this record, which does not include the transcript from the hearing, Father has shown no error. *See* ARCAP 11(b), (c) (imposing burden on appellant claiming error to provide transcript); *Kohler v. Kohler*, 211 Ariz. 106, 108 n.1 ¶ 8 (App. 2005) (presuming, when transcript is not provided, the record supports the court’s ruling).

LOHR v. WISE
Decision of the Court

CONCLUSION

¶10 The child support calculation using two worksheets is vacated and remanded, with such remand also to clarify Father's payment obligations regarding expenses for GWL's nanny. In all other respects, the orders are affirmed. Mother's request for an award of attorneys' fees pursuant to A.R.S. § 25-324 is denied. Father is awarded taxable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court
FILED: AA