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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-21-414

Opinion Delivered November 15, 2023

FRANK IACAMPO
APPELLANT/CROSS-APPELLEE

V.

DEBORAH HOFFPAUIR
APPELLEE/CROSS-APPELLANT

APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, CHICKASAWBA DISTRICT [NO. 47BDR-09-299]

HONORABLE PAMELA HONEYCUTT, JUDGE

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

MIKE MURPHY, Judge

Appellant/cross-appellee Frank Iacampo appeals the April 24, 2020 order of the Mississippi County Circuit Court modifying custody, visitation, and child support. The order further held him in contempt. On appeal, Frank asserts multiple errors made by the circuit court. Appellee/cross-appellant, Deborah Hoffpauir, cross-appeals, arguing that the court erred in not awarding her full custody of the parties' minor children. We affirm in part and reverse and remand in part.

Frank and Deborah were married for twenty-seven years and have nine children together. They were divorced in June of 2010. At that time, seven of the children were still minors and placed in Frank's custody. Deborah was awarded visitation, and any transportation costs for visitation was Deborah's responsibility. Prior to the divorce, the

family was deeply religious, and Deborah had stayed home and homeschooled the children. After the divorce, Deborah moved to Texas, obtained a college degree, and eventually obtained employment.

On February 5, 2018, Frank filed a motion for child support, modification of insurance and expense division, and an award for travel expenses. At this point, four children were still minors. Generally, he alleged that Deborah's income had materially changed since the entry of the decree, warranting modification. In that motion, he asked for five years' arrearages, for reimbursement for driving the children to and from the airport for Deborah's visitation, and that Deborah pay for the children's health insurance.

Deborah answered and filed a competing motion for contempt and change of custody. In that motion, she alleged that a material change in circumstances existed to warrant a change of custody because the children were testing below grade average due to homeschooling with Frank, that Frank was illegally working the children in violation of labor laws, and that Frank isolated the minor children such that they had no friends or activities. She further alleged that Frank violated court orders by denying her visitation and access to medical and school records.

The ad litem filed her report with the court on November 12, 2019. At that point, three children were still minors. That report explained that the children had lived a sheltered life, were homeschooled, and helped their father with his various business enterprises. The ad litem noted that she did not have any concerns about the integrity or character of either parent, and both parents appeared stable and structured. The ad litem said that she did not

have any information that indicated Deborah was anything but cordial to Frank but that Frank was condescending and rude to Deborah. The report stated that the children were comfortable in their home with Frank but would go wherever ordered. The ad litem expressed concern that if custody were given to Deborah, Deborah would likely enroll the children in public school, which concerned the ad litem because of the "culture shock" the children would likely experience "based on the life [the children] have lived."

The ad litem ultimately recommended that custody continue with Frank but that Deborah receive extended monthly and summer visitation because the children's homeschool schedule allowed the same.

A three-day trial was held. At the conclusion of the testimony, the ad litem stood by her recommendation. The court took the case under advisement and then issued a detailed letter opinion that was adopted in an order filed April 24, 2020.

The order provided that the older siblings testified that they believed their younger siblings would benefit from living with their mother and attending public school. They said their father tried to prevent them from having a relationship with their mother. The court found that the children who are still minors are all socially awkward with few to no friends.

Ultimately, the court found there had been a material change in circumstances that warranted a change in custody and visitation because the evidence clearly established that Frank was hostile and attempted to interfere with and prevent Deborah's visitation, and further, Frank was uncooperative in facilitating Deborah's access to medical and educational records.

The court further found that the change in custody and visitation was in the children's best interest. The court considered Deborah's request for sole custody, reasoning that she was the parent more likely to facilitate visitation and was more involved in the children's educational and social needs, but it weighed that consideration against its concern about removing the children from their home nine years after the divorce, relocating the children to Houston, and the effects of being away from their father and siblings. It ultimately found a change from sole custody with Frank to sole custody with Deborah would not be in the children's best interest but that both parents sharing joint custody would be.[1]

[1]After finding a material change in circumstances sufficient to warrant a change of custody and finding a change in custody was in the children's best interest, the court curiously referred to the new arrangement as "joint custody of the minor children with [Frank] being the primary custodial parent," despite over a decade of Arkansas caselaw establishing that using the terms "joint custody" and "primary custody" in the same sentence creates an ambiguity. For a thoughtful discussion, *see generally Baird v. Baird*, 2022 Ark. App. 442, 654 S.W.3d 367, *reh'g denied* (Dec. 7, 2022). It would be illogical, however, for the court to make the findings it did (the order specifically said "[t]he court finds a material change in circumstances *warranting a modification of custody*") (emphasis added) but then leave custody undisturbed. We therefore analyze this case for what it is: joint custody.

"'Joint custody' means the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court." Ark. Code Ann. § 9-13-101(a)(5) (Supp. 2023). Frank alleges the visitation "allows Debbie close to 140 days of visitation, 40% of the year." This seems an approximate and reasonable equal division of time, especially given that one parent lives in a different state. *See Baird*, 2022 Ark. App. 442, at 14, 654 S.W.3d at 375 ("While Dan contends that the overall custody split was 60/40, Celina argues that it was 63/37. Regardless of the mathematical precision, the parties' custody split was *approximately* 60/40. This split in custody compares favorably with the facts in *Cooper* [*v. Kalkwarf*, 2017 Ark. 331, 532 S.W.3d 59] and with the verbiage in Ark. Code Ann. § 9-13-101(a)(5)[.]").

The court explained that normally it would not award joint custody when the parents live in separate states, but because the children are homeschooled, it was viable in this case. The court anticipated that this arrangement would further allow Deborah access to the children's medical and educational records without court intervention. The court changed the visitation schedule to provide that the children would spend one week a month, six consecutive weeks each summer, extended holidays, and traditional academic breaks with Deborah.

Regarding travel expenses, the court ordered that the parties equally split the costs. Regarding child support, the court denied Frank's request for back support, but it did order the parties to split any medical costs not covered by insurance equally. It further ordered Deborah to pay child support, but the order did not recite her income or the chart amount. Instead, it set her obligation "at only the minimum on the chart for three children," reasoning that "[t]o order full chart child support and expect [Deborah] to keep the children seven days per month and holidays and to pay one half (1/2) of transportation and medical would work a serious hardship on her financially."

The court also granted Deborah's motion for contempt against Frank, explaining in its letter opinion that

> Ms. Hoffpauir's motion for contempt is granted. Mr. Iacampo's emails alone are proof he failed to follow the court order schedule, he attempted to have total control over the children's schedule and he tried to make Ms. Hoffpauir's visitation with the children as difficult as possible.

> In one email he told her "you are a bitch. You talk to them constantly on the phone. I can barely keep my head above water taking care of nine (9) kids you wanted, fuck off and die."

The court discussed instances of Deborah's requests for medical records and Frank's not providing direct answers. Frank apparently also did not know one of the children's oral surgeon's name. The court continued:

> These responses are not acceptable. Mr. Iacampo has obvious contempt for Ms. Hoffpauir and he tries to prevent her access to medical records, he tries to make her visits as difficult as possible hoping she will forfeit, and he thinks he is the only parent who's opinion or time with the children matter. He scheduled trips during Mom's visitation time and then refused to make up the time.
>
> Therefore, Mr. Iacampo is found to be in contempt of court for refusing to cooperate regarding the children's medical and educational needs and for interfering and trying to prevent Ms. Hoffpauir's visitation and relationship with her children.
>
> The Court feels Ms. Hoffpauir had no option but to bring the current suit which was necessitated by Mr. Iacampo's failure to communicate in a civilized manner without cursing, name calling, and blaming, and for his refusal to cooperate in good faith regarding visitation and medical issues.

The court ordered Frank to pay $5000 in attorney's fees for the contempt. Finally, of note, the court, in the letter opinion, used the term "mail order Phillipino [sic] bride" in the following context:

> After the divorce Ms. Hoffpauir moved back to Texas to be near both her family and some of Mr. lacampo's family and to obtain an education. Since moving to Texas she obtained her college degree, obtained reputable employment in her chosen field and purchased a new home with ample room for the children to reside with her. Ms. Hoffpauir brings the current action requesting a change in custody because she now has the income and means to support the children, because she feels the children's education, (being home schooled) is insufficient to prepare them for successful careers, because the children are falling below their educational age levels while Mr. lacampo allows them to be home schooled by his, as he put it mail order Phillipino [sic] bride, and because his attitude toward women is detrimental to the

> children's well being, especially the girls, and last because he utilizes the children to work in his rental/renovation business in violation of labor laws and to the determent of their studies.

Frank appealed. On appeal, he argues that the circuit court erred in (1) calculating child support, (2) denying retroactive child support, (3) dividing transportation costs, (4) modifying visitation, (5) holding him in contempt, and (6) referring to his current wife as a "mail order bride." Deborah cross-appeals. On cross-appeal, she argues that the circuit court erred in not awarding her sole custody.

For the purposes of organization, we will address the points on appeal out of order.

I. *Custody and Visitation*

For her sole point on cross-appeal, Deborah argues the circuit court erred in not granting her sole custody of the children. Of note, in none of his arguments to this court does Frank directly challenge the court's custody determination. In reply to the cross-appeal, he focuses his discussion on why a change of custody to Deborah is not in the children's best interest. On direct appeal, he challenges the court's visitation schedule. Before addressing Frank's visitation argument, we will first determine if it was clearly erroneous to not award Deborah sole custody.

In reviewing child-custody cases, we consider the evidence de novo but will not reverse a circuit court's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Hewett v. Hewett*, 2018 Ark. App. 235, 547 S.W.3d 138. We give due deference to the superior position of the circuit court to view and judge the credibility of the witnesses. *Id.* This deference is even greater in cases involving child custody

because a heavier burden is placed on the circuit court to fully utilize its powers of perception in evaluating the witnesses, their testimony, and the best interest of the children. *Id.* To make changes to custody or visitation, the moving party must first demonstrate a material change in circumstances. *Maley v. Cauley*, 2010 Ark. App. 850, at 5, 378 S.W.3d 808, 811. The primary consideration is always the best interest of the child. *Grove v. Grove*, 2011 Ark. App. 648, at 6–7, 386 S.W.3d 603, 607.

The court found—and the record supports—that Frank was hostile toward Deborah and attempted to interfere with her visitation. Furthermore, one of the grown children testified that Frank tried to prevent them from having a relationship with their mother. In *Szwedo v. Cyrus*, this court held that evidence of the mother's hostility, interference with visitation, and evidence of parental alienation was sufficient to support a material change for purposes of custody. 2020 Ark. App. 319, at 16, 602 S.W.3d 759, 769. The same is true here. This record supports the finding that Frank's actions constitute a material change in circumstances.

Deborah argues that the court erred, however, in not awarding her sole custody. After all, Frank was found to be the hostile parent interfering with the relationship between his children and their mother, and Deborah was found to be the parent more likely to facilitate visitation. However, in asking us to reverse the court on this point, Deborah asks us to reweigh the evidence. Here, the court carefully considered, in writing, how the older children had done well in their father's care and expressed its concern with the effects of public school on the minor children given their age and lack of socialization. It weighed those

considerations against Frank's behavior and the value Deborah has as a parent (the court noted Deborah is the parent more concerned with the children's educational and emotional needs). All these factors are supported by this record.

Instead, in making its joint-custody award, the court is effectively allowing the children the maximum possible benefit of each parent given the distance between the parents' homes. We cannot say that was clearly erroneous. *See also Szwedo*, 2020 Ark. App. 319, at 17, 602 S.W.3d at 770 ("Although the circuit court could have decided to leave primary physical custody with Szwedo or award primary custody to Cyrus, we cannot conclude on this record that awarding joint shared physical custody was clearly erroneous."). We affirm on cross-appeal.

This leads us now to Frank's contention that the court awarded Deborah too much visitation. Naturally, a court must consider visitation when changing custody. The setting of visitation is within the sound discretion of the circuit court. *Bryant v. Bryant*, 2009 Ark. App. 231, at 4–5, 303 S.W.3d 91, 94. The reasons for placing visitation matters within the circuit court's discretion are clear. No two situations are ever the same, and a circuit court must be afforded the flexibility to deal with the myriad of circumstances confronting families in determining appropriate visitation. *Id.* Unless an appellant demonstrates an abuse of the circuit court's discretion in this regard, we will not reverse. *Id.*

Frank asserts that the new schedule, including the holidays, will allow Deborah approximately 60 percent of the year with the children. Frank argues that because his older children are successful, the evidence demonstrates that the younger children do not need to

spend as much time with their mother. He points to the testimony of two of the younger children in which they explain that they simply do not care to have friends. He also chooses one line from the fifteen-year-old's testimony that they "sit around the house" in response to the following questions: "What does it look like if Mom is working while you're there? What do you guys do?" Frank's argument, however, misses the mark. Just because the older children, by outward measures, are doing well, does not intrinsically mean that the younger children spending more time with their mother would be detrimental. For the same reasons the change in custody was not clearly erroneous, the expansion of visitation was not an abuse of discretion. As discussed above, the circuit court weighed the conflicting evidence and explained its reasoning in a careful and detailed opinion. We cannot say the court abused that discretion.

II. *Child Support*

Frank argues that the circuit court erred in not awarding him retroactive child support, in setting the child-support amount, and in equally dividing the cost of the children's travel. An appeal from a child-support order is reviewed de novo on the record. *Parnell v. Off. of Child Support Enf't*, 2022 Ark. 52, at 3, 639 S.W.3d 865, 867. In a child-support determination, the amount of support awarded lies within the sound discretion of the circuit court and will not be reversed absent an abuse of discretion. *David v. David*, 2022 Ark. App. 177, at 10, 643 S.W.3d 863, 869.

Frank first contends that because Deborah has never paid him child support, she owed him retroactive child support to the date of the divorce. In the divorce decree, after listing the parties' respective income and assets, the court wrote the following:

> What I have in mind over the course of this hearing, taking those assets and looking at those factors I'm required to consider under case law, my inclination was to grant alimony from Mr. Iacampo to Ms. Iacampo as rehabilitative alimony for five years, 60 months of $750. So basically it looks like the difference is between 750 and 707 (child support) which is $43 a month. So my inclination is at this point is to, after giving you my basis for calculations of both child support and alimony, is to award no child support and no alimony.

Put another way, the alimony award was zero, and the child-support award was zero. Frank would have us recall that "a parent has a legal duty to support his minor children, regardless of the existence of a support order" and that the parent continues to have "both a legal and a moral duty to do so." *Fonken v. Fonken*, 334 Ark. 637, 976 S.W.2d 637 (1998). Here, however, there *is* the existence of a support order. The divorce decree set that support at zero. Frank had the ability to appeal that order at the time and chose not to do so. Further, in the event Frank determined that a modification was in order, he was not foreclosed from seeking judicial review thereof. *See, e.g.*, Ark. Code Ann. § 9-14-107 (Supp. 2023); *Shipp v. Shipp*, 94 Ark. App. 351, 230 S.W.3d 305 (2006) (holding that child-support orders generally remain enforceable as final judgments until modified by a subsequent order).

Frank's request that we interpret the decree to mean anything else is not well taken. The legal duty that exists in the absence of a support order is different than a situation in which the court affirmatively orders no payment. *See generally In re Adoption of A.M.P.*, 2021 Ark. 125, at 8, 623 S.W.3d 571, 576 (acknowledging that when a noncustodial parent whose

obligation to provide support is supervised by court order cannot be said to have a "duty" to provide beyond that imposed by the court).

Frank next contends that even if he is not awarded support retroactive to the entry of the decree, the court erred, at a minimum, in not awarding him support retroactive to the date his 2018 petition was filed.

Retroactive modification of a court-ordered child-support obligation may be assessed from the time that a petition for modification is filed. Ark. Code Ann. § 9-14-234(c)(1) (Repl. 2020). Our statute governing retroactive support is discretionary, *id.*, and we review a decision to award retroactive support under an abuse-of-discretion standard. *See generally Higdon v. Roberts*, 2020 Ark. App. 59, at 10, 595 S.W.3d 19, 26.

On appeal, Frank argues that "[t]he trial court gave no explanation for its denial of any retroactive child support." Frank is mistaken: the court explained in its letter opinion (which was incorporated into the order) that Deborah had, despite not having a court-ordered duty to pay support, nevertheless provided support to the children by providing costs of transportation to and from Houston, providing clothing for the children, and providing for their extracurricular activities. The circuit court also found that an award of retroactive support would not be fair or reasonable under the facts of the case. Given the court's thoughtful reasoning, it cannot be said that it abused its discretion on declining to award retroactive support under these facts.

Frank argues that the circuit court further erred in setting child support and allocating travel expenses. We are unable to reach the merits of this portion of Frank's argument,

however, because the order does not recite the payor's income, the amount of support required under the guidelines, or whether it deviated from that amount.

It should be noted that the order in this case was filed on April 24, 2020. Our supreme court issued *In re Implementation of Revised Administrative Order No. 10*, 2020 Ark. 131 (per curiam), on April 2, 2020, and that order provided that circuit courts, when setting child support, may use the new guidelines as of that date but that all support orders entered after June 30, 2020, shall use the new guidelines.

Here, we are unable to even determine which guidelines the circuit court applied. Regardless, both versions of Administrative Order No. 10 provide that child-support orders contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the chart. *Compare* Ark. Sup. Ct. Admin. Order No. 10(I) (2019) *with* Ark. Sup. Ct. Admin. Order No. 10(II)(2) (2020).

Accordingly, we reverse and remand for additional findings by the circuit court in compliance with Administrative Order No. 10. Further, because any order on remand would necessarily be entered after June 30, 2020, the new guidelines shall be followed. In the event deviation from the chart is appropriate, the order shall also include a justification that explains why the order deviates from the presumed correct amount of support as may be permitted under section (II).

Because the circuit court tied its analysis regarding travel expenses to its determination of child support, we likewise reverse and remand the portion of the order concerning the minor children's travel so that the court may reconsider it, as well.

III. *Contempt*

Next, Frank challenges the decision of the circuit court holding him in contempt for interfering with Deborah's court-ordered visitation and preventing her from accessing medical and educational records.

Whether the contempt is civil or criminal, "[b]efore one can be in contempt for violating a court's order, the order must be definite in its terms, clear as to what duties it imposes, and express in its commands." *Doss v. Miller*, 2010 Ark. App. 95, at 4, 377 S.W.3d 348, 352. We affirm if the decision is supported by substantial evidence, viewing the record in the light most favorable to the circuit court's decision. *Id.* In order to establish contempt, there must be willful disobedience of a valid order of a court. *Holifield v. Mullenax Fin. & Tax Advisory Grp., Inc.*, 2009 Ark. App. 280, at 3, 307 S.W.3d 608, 610.

The divorce decree contained a visitation schedule and denoted when Deborah may exercise her visitation. The decree provided that violations of the visitation order "may result in . . . a finding of contempt of court." It further provided that

> [e]ach parent will have unfettered access to the educational, health, dental, and optical records of the children. . . . Each parent will furnish to the other parent the name, address and telephone number of each health care provider furnishing services to the children. Neither parent will take any action to prohibit, hinder, or interfere with the other parent obtaining records or conferring with others concerning educational and all health care issues of the children.

Notably, on appeal, Frank does not disagree that he interfered with Deborah's visitation or access to medical and educational records. Instead, he attempts to justify it by saying that "Debbie did the same things, though." (Frank also explains that he used profane language because he "had just returned from a long and tiring trip," and "Debbie badgered him and goaded him into becoming angry"). Concerning withholding medical information, Frank then says that he had told Deborah that "the children were seeing the same doctors they always had." Finally, Frank argues the $5000 fine was excessive.

The decree of divorce was clear, as was the evidence that Frank violated it. The decision regarding contempt is supported by substantial evidence. Frank cites no authority or provides any convincing argument as to why the fine for contempt should be reduced. However, whether a fine for contempt is excessive is reviewed for an abuse of discretion. *See Conlee v. Conlee*, 370 Ark. 89, 98, 257 S.W.3d 543, 551 (2007) (stating that in contempt cases, the circuit court has discretion to fashion the punishment to fit the circumstances). Here, the court found that Deborah had to bring the current suit due to Frank's actions. The court recited that it considered the net worth of the parties, the difficulty of the case, and the experience of the attorneys involved at arriving at the fine amount. We cannot say this is an abuse of discretion.

IV. *Request to Remand*

Finally, Frank asks that this court remand the case to the circuit court with instructions to strike or permanently redact the record from any reference to Frank's wife as a "mail order bride." We hold, however, that Frank's final point of appeal is unpreserved.

He has not raised any issue with the court's choice of words until this appeal. To preserve an issue for appeal, a party must object at the first opportunity and obtain a ruling from the trial court. *Vaughn v. State*, 338 Ark. 220, 223, 992 S.W.2d 785, 787 (1999). We will not review a matter on which the circuit court has not ruled, and the burden of obtaining a ruling is on the movant; matters left unresolved are waived and may not be raised on appeal. *Id.* This issue is unpreserved.

Affirmed in part; reversed and remanded in part.

WOOD and BROWN, JJ., agree.

Woodruff Law Firm, P.A., by: *Jennifer Woodruff Douglas*, for appellant/cross-appellee.

James & Streit, by: *Jonathan R. Streit* and *Elzabeth James*, for appellee/cross-appellant.