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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-126

	Opinion Delivered September 16, 2009
LISA M. HUBANKS APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [No. DR-07-424-4]
V.	HONORABLE LEON N. JAMISON, JUDGE
WILLIAM D. BAUGHMAN APPELLEE	AFFIRMED

LARRY D. VAUGHT, Chief Judge

Following the divorce of Lisa Hubanks and William Baughman, William was awarded custody of their minor child, and Lisa was ordered to pay child support based on the child-support chart rate established pursuant to Administrative Order No. 10. Thereafter, Lisa filed a petition to reduce child support, alleging that her monthly living expenses and child-support payments exceeded her monthly income.[1] The Jefferson County Circuit Court denied her petition. On appeal, Lisa contends that the trial court abused its discretion. We affirm.

Lisa testified that her monthly expenses included rent, payments to creditors, and child-support payments. She said that after these monthly expenses, she did not have enough money

[1]Lisa sought a one-half reduction of her support payments.

to purchase food, household items, and gasoline. She added that she did not have cable, satellite, or health insurance and that she had borrowed money every month to make ends meet.

According to Lisa, William had money left over each month sufficient to fund a savings account, which at the time of the hearing held over $2000. Lisa testified that William deposited all of the child-support payments into this account and did not use the funds for child care. She testified that because she did not have enough money to live and William had enough to save, her child-support obligation should have been reduced.

William testified that he needed the child-support payments to pay for his child's expenses. While he had deposited some of the child-support payments into his savings account, he testified that he did not deposit all of them. Some of his own money was deposited into that account as well. He also testified that the money in the account was for repairs/maintenance or replacement of his twenty-eight-year-old vehicle and for a trip for his child.

At the conclusion of the hearings, the trial court denied Lisa's petition to reduce child support from the bench:

> The Court is satisfied that it should not deviate from the chart. The chart is a presumption as to what the support should be for this particular child in this case.
>
> Moreover, although [William] has accumulated funds, this Court finds that it's reasonable for him to have these funds on hand in light of the age of the vehicle, the repairs that need to be done to it as was testified to . . . .
>
> The Court sees no reason to deviate from the chart. This petition should be dismissed.

Thereafter, the trial court entered an order that provided:

> The Court finds that [neither] the financial circumstances of both parties, nor the fact that [William] has established a savings account with some funds paid by [Lisa] as child support, warrant a deviation from the child support chart as to the amount of child support to be paid by [Lisa] to [William] for the support and maintenance of the parties[']minor child.

Lisa argues that the trial court erred in failing to grant a reduction in child support. We review child-support awards de novo on the record. *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006). In such cases, we will not reverse a finding of fact by the trial court unless it is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.* Because the question of whether the trial court's findings are clearly erroneous turns largely on the credibility of witnesses, we give special deference to the superior position of the trial court to evaluate the witnesses, their testimony, and the children's best interest. *Id.* There are no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carry as great a weight as those involving minor children. *Id.*

The family-support chart is the appropriate method for determining the amount of support for children by their noncustodial parents. *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000). We begin with the presumption that the chart amount is reasonable. *Ceola v. Burnham*, 84 Ark. App. 269, 139 S.W.3d 150 (2003). Reference to the chart is required, and the chart establishes a rebuttable presumption of the appropriate amount that can only be

modified on the basis of written findings stating why the chart amount is unjust or inappropriate. *Ceola*, 84 Ark. App. at 273, 139 S.W.3d at 153; Ark. Code Ann. § 9-12-312(a)(2) (Repl. 2008).[2] The court may grant more or less support if the evidence shows that the needs of the children require a different level of support. *Id.*, 139 S.W.3d at 153 (citing *In Re: Administrative Order No. 10, Arkansas Child Support Guidelines*, 347 Ark. App'x 1064 (2002)).

Moreover, a change in circumstances must be shown before a court can modify an order for child support. *Martin*, 95 Ark. App. at 54, 233 S.W.3d at 692. The party seeking modification has the burden of showing a change in circumstances. *Id.* at 54, 233 S.W.3d at 692. In determining whether there has been a change in circumstances warranting adjustment in support, the court should consider remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change in custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and the child-support chart. *Id.* at 54–55, 233 S.W.3d at 692. It is the ultimate task of the trial court to determine the expendable income of a child-support payor.

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[2]Arkansas Code Annotated section 9-12-312(a)(2) states:

> In determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

Id. at 55, 233 S.W.3d at 692. A trial court's determination regarding whether there are sufficient changed circumstances to warrant a modification in child support is a question of fact that will not be reversed unless it is clearly erroneous. *Id.*, 233 S.W.3d at 692.

Because the amount of support paid by Lisa is based upon the family-support chart, it is presumed reasonable; therefore, Lisa has the burden of rebutting that presumption. *Ceola*, 84 Ark. App. at 273, 139 S.W.3d at 153. She also bears the burden of establishing a change in circumstances. *Martin*, 95 Ark App. at 54, 233 S.W.3d at 692. We hold that Lisa failed to show a change of circumstances warranting a reduction of her child-support payments. She testified that since child support was ordered, she had not changed jobs, her financial situation had not changed, and the child's standard of living had not changed. Moreover, there is no evidence that either party had remarried, that the parties' child had reached majority, that one of the parties had relocated, or that there had been a change in custody. There was no evidence that because the child support was ordered, the debts of the parties or financial conditions of the parties and families had changed.

The only evidence presented by Lisa supporting her petition was that she could not meet her financial obligations while William was able to save money. As such, she contends that William can care for their child without child support. We reject this argument for two reasons. First, Arkansas appellate courts have previously held that a noncustodial parent is not entitled to a reduction in child support provided by the child-support chart on the ground that the amount exceeds a child's actual needs. *Smith*, 341 Ark. at 595, 19 S.W.3d at 59; *Lee v. Lee*, 95 Ark. App. 69, 77, 233 S.W.3d 698, 704 (2006); *Ceola*, 84 Ark. App. at 274–75, 139

S.W.3d at 154–55.

We also reject Lisa's argument for a second reason. The trial court found, based on the testimony at trial, that William was not accumulating wealth, but he was saving money in order to make repairs to his truck or to purchase a new one if necessary. This is a credibility finding made by the trial court to which we give special deference. *Martin*, 95 Ark. App. at 54, 233 S.W.3d at 692.

Accordingly, we hold that the trial court did not abuse its discretion in denying Lisa's petition to reduce child support.

Affirmed.

HART and GRUBER, JJ., agree.