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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-679

	Opinion Delivered February 18, 2009
FORREST GILLESPIE APPELLANT	APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, [NO. E2001-538(db)]
V.	HONORABLE DAVID BURNETT, JUDGE
SABRENA GILLESPIE APPELLEE	AFFIRMED ON DIRECT APPEAL AND CROSS-APPEAL

ROBERT J. GLADWIN, Judge

In this domestic-relations case, appellant Forrest Gillespie argues that the circuit court erred in 1) declaring him $23,900 in arrears on child support; 2) finding that his two oldest children were not emancipated; 3) ruling that some future child-support payments would be governed by Tennessee law; and 4) ordering him to pay his former wife, Sabrena Gillespie, $8750 in attorney fees. Sabrena Gillespie cross-appeals the court's decision to set future child support at $1450 per month. We affirm in all respects.

The parties were divorced on April 20, 2004. The decree gave Sabrena custody of their three children, ages nineteen, seventeen, and fourteen; ordered Forrest to pay $550 per month child support for each child (a total of $1650); and provided for a reduction in child support if one of the following "terminating events" occurred:

1. A child attained age eighteen, unless the child was still in college or technical school, in which case support would continue as long as the child remained so;

2. A child or non-custodial parent died;

3. A child was otherwise emancipated (such as by marriage, full time self-supporting employment, or entry into military service);

4. A child ceased living with the custodial parent; or

5. A court of competent jurisdiction terminated support.

The decree also provided that child support would be "recalculated upward" and paid immediately upon any increase in Forrest's pay, to include "increases in BAH [Basic Allowance for Housing], or any other entitlement . . ."

Neither party appealed the decree. But, on April 19, 2005, Forrest asked the circuit court to reduce his child-support payments and to "clarify" the decree's "terminating events," so that he would be relieved from supporting a child who continued college well into adulthood. Sabrena in turn requested an increase in child support, based on Forrest's increase in income, and asked the court to hold Forrest in contempt for failing to obey the decree's directive to produce his earning statements each January and July.

At a June 26, 2006 hearing, Sabrena told the court she would not object to Forrest's support obligation ceasing upon a child's completing four or five years of college. She testified that the couple's oldest child, twenty-one-year-old Juannisha, was in her third year of college and that the second oldest, nineteen-year-old Forrest, Jr., was in his freshman year. Sabrena said both children lived with her at home, although Juannisha had also lived off-campus with roommates. She further testified that Juannisha worked twenty-five hours per

week and had received a $1000 educational subsidy from her employer. She said that Forrest, Jr., had fathered a child, whom he was not supporting. Sabrena stated further that she knew Forrest's income had increased since entry of the divorce decree, but she had not received his earning statements. Forrest admitted his income had increased but said the increase was primarily due to a rise in his BAH, which he received for off-post housing when on-post housing was not available. He stated that the BAH was paid directly to his landlord.

Following the hearing, the court ruled 1) that Juannisha was not emancipated and that support would continue for her until she completed four years of college; 2) that Forrest, Jr., was not emancipated and that support would continue for him until he completed four years of college or reached age twenty-three; 3) that support for the third child, following the oldest two's emancipation, would be governed by Tennessee law; and 4) that Sabrena was entitled to a $2500 attorney's fee. The court reserved a ruling on an increase in child support pending Sabrena's receipt of Forrest's earning statements, which the court ordered him to provide. Forrest attempted to appeal the court's order, but we dismissed the appeal for lack of a final judgment.

Throughout 2007, Sabrena made several unsuccessful attempts to obtain Forrest's earning statements, which resulted in the court awarding her a $250 attorney fee. She received the last of the statements in late 2007, and prepared calculations showing that Forrest had not increased child support since entry of the divorce decree, despite his income increasing from $5283.76 per month in April 2004, to $9191.87 per month in December 2007. She therefore sought judgment for a $26,962.83 arrearage. Forrest asked the court to

disregard that portion of his pay increase attributable to his BAH, which rose substantially between 2004 and 2007. On March 5, 2008, the court awarded Sabrena a child-support arrearage of $23,900, a $6000 attorney fee, and set future child support at $1450 per month. Both parties appeal.

We review domestic-relations cases de novo, but we will not reverse a circuit court's finding of fact unless it is clearly erroneous. *See Hunter v. Haunert*, 101 Ark. App. 93, 270 S.W.3d 339 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed. *Id*. In reviewing a circuit court's finding, we give due deference to the court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008).

Forrest argues first that the $23,900 arrearage was excessive because it was based on an income calculation that included his BAH. He contends that the BAH represented money paid directly to his landlord and should not be considered part of his "expendable income." *See Brown v. Brown*, 76 Ark. App. 494, 68 S.W.3d 316 (2002) (holding that the trial court's ultimate task is to determine the expendable income of a child-support payor). We find no clear error. The divorce decree, from which Forrest did not appeal, stated that child support would be adjusted upward based on an increase in Forrest's income, "to include . . . increases in BAH." Additionally, Administrative Order No. 10, which contains our child-support guidelines, states that, for military personnel, BAH "should be added to other income to

reach total income." Admin. Order No. 10, § III(c).[1]

Forrest cites a separate part of Administrative Order No. 10, which reads:

> In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

Forrest claims that this clause should apply because the increase in his BAH "is due almost entirely to the absurd cost of housing in the area of Germany where he is stationed . . ." There is no evidence of this in the record. Forrest testified only that he received BAH because the military was required to pay for him to live "off post" when on-post housing was not available.

Forrest argues further that the court erred in not citing the family-support chart when setting the arrearage. The trial court must refer to the family-support chart in determining a reasonable amount of child support initially or upon review. *See* Ark. Code Ann. §§ 9-12-312(a)(2) and 9-14-106(a)(1)(A) (Repl. 2008); *McGee v. McGee*, 100 Ark. App. 1, 262 S.W.3d 622 (2007). Reference to the chart was not mandatory here. The court had already determined a reasonable amount of child support, and the decree established a method for automatically increasing it upon a change in income. The court simply enforced the terms of the decree and computed Forrest's debt for the amount of support he failed to pay.

Next, Forrest contends that the circuit court should have declared his two oldest children emancipated because they were over eighteen and leading adult lives. A parent is

[1] Forrest cites the current version of Administrative Order No. 10. The prior version uses the term BAQ (quarters allowance).

generally not obligated to support a child past the age of eighteen. *See Towery v. Towery*, 285 Ark. 113, 685 S.W.2d 155 (1985). There are exceptions, such as when a parent agrees to provide post-majority support or when the child has an illness or handicap, or remains in high school past age eighteen. *See Van Camp v. Van Camp*, 333 Ark. 320, 969 S.W.2d 184 (1998); *Mitchell v. Mitchell*, 2 Ark. App. 75, 616 S.W.2d 753 (1981). Those exceptions are not applicable here. Nevertheless, we decline to reverse under the particular facts of this case.

From its inception, the divorce decree required Forrest to support his children after they attained their majority, as long as they were in college or technical school. Forrest did not appeal the decree. He filed a motion for reconsideration but later withdrew it. Approximately one year after entry of the decree, he asked the court to clarify the phrase "terminating events," regarding the length of time he was obligated to support a child attending college. At the June 2006 hearing, he asked the court to declare that, under the terms of the decree, a "terminating event" had occurred, based upon his two oldest children's ages and circumstances. The court granted Forrest's request to establish dates on which his support obligations to Juannisha and Forrest, Jr., would cease. However, the court made a factual finding that Juannisha and Forrest, Jr., were not yet emancipated. We limit our review to a determination of whether the court's factual finding was clearly erroneous.

Forrest contends the children were, in the words of the decree, "otherwise emancipated (such as by marriage; full-time, self-supporting employment; or entry into military service)." However, there is no evidence that the children were married, had full-time, self-supporting employment, or had joined the military. And, we cannot say that the

court clearly erred in refusing to declare them emancipated based on similar adult behavior or lifestyles. According to Sabrena, the children were college students living with her. The court was entitled to believe Sabrena, and we defer to the court's superior position to determine her credibility and the weight to be accorded to her testimony. *Brown v. Brown*, *supra*.

Forrest argues next that the trial judge erred in stating he would apply Tennessee law when the time arrived to calculate support for the youngest child alone. This argument is procedurally barred. At the 2006 hearing, Forrest's counsel asked the court whether the youngest child's support would be governed by Arkansas law or Tennessee law. When the court replied "Tennessee," counsel did not object. Nor did counsel object when the court asked Forrest if he lived in Tennessee, to which Forrest replied, "Yes." The argument is therefore being raised for the first time on appeal, and we decline to address it. *See Norman v. Cooper*, 101 Ark. App. 446, 278 S.W.3d 369 (2008).

Finally, Forrest contends that the circuit court erred in awarding Sabrena $8750 in attorney fees because her counsel did not document his expenses or hours, or demonstrate other factors in support of the fee award. *See Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990). We find no abuse of discretion. *See Miller v. Miller*, 70 Ark. App. 64, 14 S.W.3d 903 (2000) (citing abuse-of-discretion standard).

A circuit court in a domestic-relations proceeding has the inherent power to award attorney's fees. *Miller*, *supra*. The circuit court is also in a better position than this court to evaluate the services of counsel. *Scroggins v. Scroggins*, 302 Ark. 362, 790 S.W.2d 157

(1990). The circuit court may use its own experience as a guide and can consider *Chrisco*-type factors; but, it need not conduct an exhaustive hearing on the amount of attorney's fees because it has presided over the proceedings and gained familiarity with the case and the services rendered by the attorney. *See Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983). Further, our court has not strictly required documentation of time and expense in a divorce case where the circuit court has the opportunity to observe the parties, their level of cooperation, and their obedience to court orders. *See Deaton v. Deaton*, 11 Ark. App. 165, 668 S.W.2d 49 (1984). In light of Forrest's continual failure to provide earning statements to Sabrena as ordered; the resultant hearings and pleadings, including contempt petitions; the delay in obtaining a judgment for back child support; and our review of the nearly four years of proceedings in this case, we see no abuse of discretion in the $8750 award.

On cross-appeal, Sabrena argues that the court erred in reducing child support from $1650 per month to $1450 per month absent a change in circumstances. We disagree that there were no changed circumstances here. In June 2006, the parties' oldest child, Juannisha, was in her third year of college. The trial judge ruled from the bench that Juannisha should complete her college education in a four-year time period, and he ordered one additional year of support for her.[2] More than a year later, the judge recognized that he had established four years as the time frame for Juannisha to complete her education, and he reduced child support to $1450. The modification therefore appears to have been based on changed circumstances

[2]The court's written order stated simply that support would continue until Juannisha completed four years of college.

tantamount to a child's attaining majority. *See generally Mixon v. Mixon*, 65 Ark. App. 240, 987 S.W.2d 284 (1999). Accordingly, we find no error.

Affirmed on direct appeal and cross-appeal.

VAUGHT, C.J., and KINARD, J., agree.