

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-746

JAMES MERLIN HAWK

APPELLANT

V.

JULIE HAWK OSBORN

APPELLEE

Opinion Delivered April 22, 2009
 APPEAL FROM THE FAULKNER
 COUNTY CIRCUIT COURT,
 [NO. DR-2005-651]

 HONORABLE CHARLES E.
 CLAWSON, JR., JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

By order entered April 8, 2008, the Faulkner County Circuit Court modified James Hawk's child-support obligation to his former wife, Julie Osborn, to \$3,605.91 per month. Hawk, the sole shareholder of the subchapter S corporation James Hawk, M.D., P.A., appeals from the order. Specifically, he argues that the circuit court erred in finding that his income for child-support purposes included all of the corporation's income without considering whether that income was actually available to him. We affirm.

The parties were divorced by decree entered August 4, 1999. As a result of a motion to modify, the court increased Hawk's child support for the parties' three children to \$3,304.50 per month. Two days later, Hawk filed a "Motion to Set Aside Order and/or Modify Support." He alleged that the circuit court erred when it considered money used to pay corporate debt as part of his income. The circuit court held a hearing on the motion on

March 12, 2008, and it stated that it would treat the matter as one to modify support.

According to tax documents entered into evidence, Hawk's subchapter S corporation claimed earnings of \$87,892 in 2006. However, only \$45,260 was distributed to Hawk as income. The corporation earned \$84,527 in 2005, but only \$30,229 was distributed to Hawk. Both figures were in addition to his W-2 income. Hawk claimed that only the amount distributed to him by the corporation should be included in the child-support calculation. Tommy Porterfield, Hawk's CPA, testified on Hawk's behalf. He stated that, because Hawk's corporation was a subchapter S corporation, the corporation's earnings were taxed regardless of whether the earnings were distributed to Hawk. Porterfield testified that the remaining earnings went to pay corporate debts and to provide operating capital to the corporation. He also stated that the corporation owned rental property and that Hawk was making arrangements to purchase the rental property from the corporation.

By letter dated March 19, 2008, the circuit court stated that its original calculations would stand, with a modification for a previous miscalculation attributed to payments for medical insurance. With the adjustment, Hawk's child-support obligation was \$3,605.91 per month, effective April 1, 2008. The findings were incorporated into an order entered April 8, 2008.

Hawk contends that the circuit court erred in including all of the earnings of his subchapter S corporation into the calculation without considering whether those earnings were available to him. We review child-support orders de novo on the record, and we will not reverse a finding of fact unless the finding is clearly erroneous. *Hill v. Kelly*, 368 Ark. 200,

243 S.W.3d 886 (2006). The amount of child support lies within the sound discretion of the circuit court, and we will not reverse that amount absent an abuse of discretion. *Id.* The circuit court is required to reference the child-support chart, and the amount specified in the chart is presumed to be reasonable. *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002). “Income” for child-support purposes means “any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker’s compensation, disability, payments pursuant to a pension or retirement program, and interest. . . .” Admin. Order No. 10, § 2. This definition is intentionally broad and designed to encompass the widest range of sources consistent with the policy to interpret “income” broadly for the benefit of the child. *See Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005).

Under Arkansas law, earnings retained by a subchapter S corporation constitute income for child-support purposes. *See Pannell v. Pannell*, 64 Ark. App. 262, 981 S.W.2d 531 (1998); *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998). Hawk acknowledges this, but he argues that he rebutted the presumption that the earnings in his corporation should be considered income. He argues that viability of his corporation and his ability to earn a living depends on him satisfying financial responsibilities before making distributions.¹

¹Hawk cites cases from other jurisdictions where undistributed earnings from a subchapter S corporation were not considered in child-support calculations. At the same time, he cites a law journal article, where the author notes that jurisdictions are split on the issue. *See* M. Kyle Rominger, *Valuing S Corporation Earnings in Child Support Calculations*, 35 U. Louisville J. Fam. L. 145 (1996) (citing *Mueller v. Mueller*, No. C-910473, 1992 WL 214425, at *1-2 (Ohio Ct. App. Sept. 2, 1992) (S corporation earnings included in income for child support because listed on personal tax return as income); *Taylor v. Taylor*, 455 S.E.2d 442, 448 (N.C. Ct. App. 1995) (court should give proper consideration to income actually received from S corporation)). In other words, the authorities from other jurisdictions are not helpful.

The circuit court was within its authority to reject Hawk’s argument. A shareholder’s desire to bolster his corporation does not trump our state’s public policy of broadly defining “income” for the benefit of the children. As the sole shareholder, Hawk has sole authority on whether to distribute his corporate earnings. If we were to accept his argument, we would be authorizing similarly situated people to manipulate their child-support income by having their corporations retain additional earnings. Further, the only reason Hawk is in a position to make this argument is because he has made his practice a subchapter S corporation. Had his practice been a mere sole proprietorship, all of the practice’s income and expenses would flow directly to him. While it would make sense that some of that income would be redirected to his practice, that income would still be considered income for child-support purposes. We see no reason why Hawk should be treated differently merely because his practice is part of a subchapter S corporation. Accordingly, we affirm the circuit court’s calculation of Hawk’s child support.

Affirmed.

GLOVER and HENRY, JJ., agree.