NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 08-1006

	Opinion Delivered May 27, 2009
KENNETH R. WHITE APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT, [NO. DR-2004-719-4-3]
V.	HONORABLE WILLIAM BENTON, JUDGE
ERIKA L. WHITE APPELLEE	AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Kenneth White, appeals from the circuit court's May 27, 2008 order denying his request for modification of spousal support and child support owed to his ex-wife, Erika White. The parties were divorced by decree entered December 7, 2004. A final hearing was held in January 2005, and an amended decree was filed on February 9, 2005. The amended decree awarded appellee custody of the parties' severely handicapped minor child, Devin, and provided that appellant had the right to reasonable visitation. Appellant was ordered to pay child support in the amount of $274 bi-weekly, spousal support in the amount of $203 bi-weekly, Devin's TEFRA expense, one-half of applicable deductible amounts and any medical or dental expenses not covered by insurance, and one-half of the expenses for the diapers, pull-ups, wipes, and eye ointment necessary as a result of the child's medical condition. In addition, appellant was responsible for paying one-half of the mortgage payment on the marital home, with appellee retaining possession

of the house as long as their child is in her custody and dependent upon the parties for support.

On September 22, 2006, the court entered an order increasing child support to $307.20 every two weeks and decreasing spousal support to $80 every two weeks. On October 31, 2007, appellant filed a petition to terminate spousal support, to reduce child support, and to set visitation. In this petition, appellant stated that his net pay for the past year averaged approximately $800 weekly, thus warranting a decrease in the amount of child support, which had been based on a net pay of $1,024 weekly. He also alleged that the factors relied on by the court for the award of spousal support had substantially changed and that those factors no longer warranted an award of spousal support. Appellee counterclaimed, requesting an increase in both child support and spousal support.

On April 2, 2008, a hearing was held on appellant's petition and appellee's counterclaim. Both parties submitted affidavits of financial means. Appellant's affidavit showed net pay of $35,940.88 over a forty-three week period. He testified that his earnings had decreased when his former company was taken over by another company because he no longer received substantial overtime. Appellee's affidavit of financial means reflected net pay of $567.13 bi-weekly plus support income received from appellant. Her total monthly expenses were listed as $1,748.31.

In an order filed May 27, 2008, the circuit court made the following findings: plaintiff-appellant's current net income for purposes of calculating child support is $835.83

per week[1]; defendant-appellee's current net income is $226.16 per week; she receives support from plaintiff in the amount of $838.93 per month; and her earnings and support payments total $1,818.95; appellee's monthly expenses of $2,155.94 to support herself and her minor child were found to be reasonable; appellee's expenses exceed her income by $336.99; appellant's expenses as stated on his affidavit of financial means total $2,533.07, which includes a $710 per month car payment; after adding appellant's support payments totaling $838.93 to his expenses and deducting this total from his monthly net income of $3,590.50, appellant has a surplus of $218.57. The court further found that appellant's rebuttable presumption for a reduction in child support had been rebutted by the evidence in this case. Finally, the court found that appellant failed to demonstrate by a preponderance of the evidence that the amount of spousal support should be reduced. Appellant's claims for reductions in child support and spousal support were dismissed, as was appellee's counterclaim.

On appeal, appellant contends that the trial court erred in (1) not reducing his child-support payments and (2) not terminating or reducing his spousal-support obligations. We affirm.

Child Support

The court found that appellant's current net income for purposes of calculating child support is the sum of $835.83 per week. The court correctly noted that the

[1] The court's ruling from the bench included the following statement: "I find there's no substantial decrease in Mr. White's income to warrant the Court in granting any change or modification of either the child support or the alimony award." To the extent this statement conflicts with the court's written order, the written order controls over the court's oral ruling. *See National Home Centers, Inc. v. Coleman*, 370 Ark. 119, 257 S.W.3d 862 (2007).

presumptive amount of child support under the weekly child-support chart is $135. *See* Supreme Court Administrative Order No. 10. In its order, the circuit court wrote:

> Plaintiff's rebuttable presumption for a reduction in child support has been rebutted by the evidence in this case. First, the defendant is the custodial parent and primary care giver for the parties' severely disabled minor child. Secondly, the evidence preponderates in favor of the defendant under one or more of the deviation considerations under Section V of Administrative Order No. 10, including, among other deviation considerations, the minor child's accustomed standard of living, food, shelter and utilities, clothing, transportation expenses, the provision or payment of special education needs or expenses of the child. Thirdly, it would be unjust and inappropriate to reduce plaintiff's child support and it is not in the best interest of the parties' severely disabled minor child. Therefore, the plaintiff's claim for a reduction in child support is hereby dismissed.

Appellant argues that the trial court properly applied Administrative Order No. 10 to determine the presumptively correct amount of child support, but incorrectly decided that amount was rebutted by the deviation factors allowed by Administrative Order No. 10. Appellant contends that none of the deviation factors listed in the court's order have any application to this case because no evidence was presented that appellee has any "significant additional expenses attributable to Devin." Appellant also argues that "[t]he third basis the trial court utilized to rebut the presumptively correct amount of child support reveals [that] the trial court was unduly influenced by Devin's severe disabilities without recognizing these disabilities do not pose any economic hardship on Appellee whatsoever." Appellant's final argument regarding child support is that the trial court clearly erred in its finding as to appellee's total monthly income.

The amount of child support a trial judge awards lies within the court's sound discretion and will not be disturbed on appeal absent an abuse of discretion. *Office of Child*

Support Enforcement v. Pittman, 70 Ark. App. 487, 490-91, 20 S.W.3d 426, 428 (2000) (citing *Davis v. Office of Child Support Enforcement,* 68 Ark. App. 88, 5 S.W.3d 58 (1999)).

Here, the trial court expressly stated that it found the presumptive amount of child support had been rebutted by one or more of the deviation considerations contained in Administrative Order No. 10. Furthermore, the factors listed in Administrative Order No. 10 are not exclusive. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992); *Black v. Black*, 306 Ark. 209, 812 S.W.2d 480 (1991). We find no abuse of discretion in this case.

Spousal Support

Next, appellant argues that the trial court erred in not terminating or reducing his spousal support or alimony obligation. An award of alimony is in the sound discretion of the trial court, and we will not reverse such an award unless the trial court has clearly abused its discretion. *Bracken v. Bracken*, 302 Ark. 103, 105, 787 S.W.2d 678, 679 (1990). The primary factors to be considered in making or changing an award of alimony are the need of one spouse and the ability of the other spouse to pay. *Id.* To balance these primary factors, a court should consider certain secondary factors. *Schumacher v. Schumacher*, 66 Ark. App. 9, 17, 986 S.W.2d 883, 888 (1999). Among these secondary factors are (1) the financial circumstances of both parties; (2) the amount and nature of the income, both current and anticipated, of both parties; (3) the extent and nature of the resources and assets of each of the parties; and (4) the earning ability and capacity of both parties. *Anderson v. Anderson*, 60 Ark. App. 221, 234, 963 S.W.2d 604, 611 (1998).

Alimony awards must always depend on the specific facts of each case. *Schumacher, supra*. The purpose of alimony is to rectify, insofar as reasonably possible, the frequent economic imbalance of earning power and standard of living of the divorced husband and wife. *Id.*

The argument for reversal focuses entirely on the current earnings of the parties. However, the court was entitled to consider other factors. While appellant is correct that the trial court appears to have relied upon the 2006 affidavit of financial means, rather than the 2008 affidavit, to determine appellee's income and expenses, that fact alone does not render the court's ultimate findings clearly erroneous. Even though appellant's earnings had decreased, the court found that he still had the ability to pay alimony. The court noted in its order that appellant's monthly expenses included a $710 motor vehicle payment. Additionally, the special needs of the parties' son limit appellee's activities and create special circumstances that appear to have been taken into consideration by the trial court. In its oral ruling from the bench, the court noted, "Devin has got some severe disabilities, a very difficult situation here, and it requires the parents, or especially the mother here—she's the primary caregiver—to go above and beyond what are the normal duties or general duties of a parent." Given these findings and the multitude of factors the court was permitted to consider, we cannot say that the trial court abused its discretion in declining to reduce or terminate spousal support in this case.

Affirmed.

HART and GLADWIN, JJ., agree.