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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-760

Opinion Delivered April 20, 2011

REBECCA LYNNE BOWDLE
APPELLANT

V.

GREGORY KIM HANKE and MINOR CHILDREN
APPELLEES

APPEAL FROM THE SALINE COUNTY CIRCUIT COURT, [NO. DR-06-359-1]

HONORABLE RICHARD NILE MOORE, JR., SPECIAL JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Rebecca Lynne Bowdle appeals the decision of the Saline County Circuit Court requiring her to pay child support for her three minor children based on an imputed monthly income of $2000[1] and also requiring her to pay $2145.85 for her half of the children's uncovered medical expenses. Bowdle argues on appeal that the trial court erred (1) by requiring her to pay child support when the parties agreed in their property-settlement agreement that she would not be responsible for child support, (2) by imputing to her an income of $2000 when she was unemployed, and (3) by ordering her to pay medical expenses

[1]Monthly child support was figured at $718, and was to be paid retroactive to the date appellee Gregory Kim Hanke filed his motion, for a total of $9,334.

that were more than a year old in violation of the property-settlement agreement. We find no error and affirm.

Bowdle and Hanke were divorced by order of the court on April 18, 2007. The divorce decree incorporated a child-custody, visitation, child-support, property-settlement, and debt-settlement agreement. Under pertinent parts of the agreement, the parties were to share joint legal custody of the children, with Hanke exercising "primary physical custody over the minor children, with reasonable rights of visitation in [Bowdle]." Bowdle was to pay no child support in "light of [her] lack of employment, . . . the disparity in the parties' income, and the remaining promises and consideration between the parties." Hanke was to maintain medical and dental insurance on the children, and the parties were to equally divide all uncovered expenses. The agreement provided that the "party incurring such an expense shall pay same, and within thirty days remit to the other party a paid invoice, who will have thirty days to remit one-half of the amount paid to the party incurring the charge." The agreement also provided that Hanke pay Bowdle a lump sum of $200,000, and an additional $850,000 to be paid at the rate of $6,743.66 per month for 192 months.

On February 10, 2009, Hanke filed a motion for contempt, motion to enforce order and terminate visitation, and motion to set child support. Hanke alleged (1) that Bowdle failed to pay her share of the uncovered medical and dental expenses for their minor children, (2) that she exercised her full weekend visitation only once in the past year, and (3) that, as a result of Bowdle's refusal to exercise her extended visitation, she should be ordered to pay child support. Bowdle filed a response on February 23, 2009.

A hearing on the motion took place on March 3, 2010. Hanke testified that Bowdle owed him $2145 for her half of the children's medical expenses. According to Hanke, he has not received any reimbursement from Bowdle. He also acknowledged that he agreed Bowdle would not be responsible for child support at the time of the divorce because he wanted to allow her a transitional period. Hanke asked the court to order Bowdle to pay child support based on his monthly payment of $6,743.66[2] in property-settlement. Hanke sought child support in the amount of $1,571.92 per month.

On cross-examination, Hanke testified that he had not sent Bowdle an invoice of the medical expenses he paid within thirty days of payment. However, he stated that she had not cooperated with him in regard to visitation, the care of the children, or anything else. Hanke said that he forwarded a copy of bills to Cindy Moore, Bowdle's previous attorney, a year ago and that Bowdle still did not reimburse him. Hanke contended that there was "no reason to [send Bowdle the uncovered expenses within thirty days] because there would be nothing done about it." Hanke stated that when he agreed that Bowdle would not be responsible for child support, he had no idea that "she was going to marry Mr. Bowdle." He testified that he also sought child support because Bowdle had not supported the children emotionally, she had not freely exercised her visitation,[3] and she had not helped at all with the children. Hanke said that he followed the thirty-day provision of the agreement in 2007 and 2008 but he never

[2]This is also the amount listed on Bowdle's Affidavit of Financial Means.

[3]A condition of Bowdle's visitation with the children was that her husband not be present.

received payment, so he stopped. He acknowledged that the medical bills for which he sought reimbursement were not current. He also stated that more bills would come in the near future.

Bowdle testified that the last time she received medical bills from Hanke was in 2008 and that she paid her half. She stated that they agreed that she would not be responsible for child support because the division of the marital property weighed heavily in favor of Hanke. Bowdle acknowledged that she filled out an Affidavit of Financial Means, which was introduced at an earlier hearing. She said that the only thing that had changed since the time she filled out the financial statement is that she and her husband traded a vehicle in for another one. Bowdle insisted that the income disparity between her and Hanke was still present. On cross-examination, Bowdle stated that she understood their custody agreement to mean "that they live with their father, but that [she is] still their mother."

The court issued an order on April 14, 2010, requiring Bowdle to pay child support, as well as her share of the children's uncovered medical expenses. The order stated that an income of $2000 had been imputed to Bowdle "because [the court] believes this is how much [Bowdle] could obtain if she were working. It is equitable to impute income to [Bowdle] because both parties have an obligation to support their children." The court applied the child-support award retroactively, resulting in a back child-support amount of $9,334. This appeal followed.

Our standard of review for an appeal from a child-support order is de novo on the record, and we will not reverse a finding of fact by the circuit court unless it is clearly

erroneous.[4] A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed.[5] We give due deference to the trial court's superior position to determine the credibility of the witnesses and the weight to be given their testimony.[6] In a child-support determination, the amount of child support lies within the sound discretion of the trial court, and the lower court's findings will not be reversed absent an abuse of discretion.[7]

For her first point on appeal, Bowdle argues that the trial court erred by ordering her to pay child support when the parties' property-settlement agreement stated that she would not be responsible for any child support. In the context of divorce litigation, while parties may enter into contractual agreements with regard to contributions for child support, it is settled law in this state that the duty of child support cannot be bartered away permanently to the detriment of the child.[8] Here, the trial court stated that both parties had an obligation to support the children. We cannot say that the trial court erred by ordering Bowdle to pay child support.

Next, Bowdle contends that the trial court erred by imputing an income of $2000 for child-support purposes. According to Bowdle, since she was unemployed, the income

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[4]*Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005).

[5]*Akins v. Mofield*, 355 Ark. 215, 132 S.W.3d 760 (2003).

[6]*Id.*

[7]*Id.*

[8]*Warren v. Kordsmeier*, 56 Ark. App. 52, 938 S.W.2d 237 (1997).

imputed should have been based "at the rate of an unemployed person." This argument is without merit. Section (II) of Administrative Order No. 10[9] sets forth the following definition of "income" for purposes of determining child support:

> Income means any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions for:
>
> 1. Federal and state income tax;
>
> 2. Withholding for Social Security (FICA), Medicare, and railroad retirement;
>
> 3. Medical insurance paid for dependent children; and
>
> 4. Presently paid support for other dependents by court order, regardless of the date of entry of the order or orders.

Here, the $6,743.66 Bowdle receives per month in property-settlement is considered income under Admin. Order No. 10. Our supreme court has stated that the term "income" is "intentionally broad and designed to encompass the widest range of sources consistent with the State's policy to interpret 'income' broadly for the benefit of the child."[10] The court chose to deviate downward and only imputed $2000 for child support purposes finding it "fair and equitable" to impute that amount. There was no abuse of discretion by the trial court. Thus, we affirm.

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[9]Ark. Sup. Ct. Admin. Order No. 10 (II) (2009).

[10]*Evans v. Tillery*, 361 Ark. 63, 70, 204 S.W.3d 547, 552 (2005) (citing *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002)).

Finally, Bowdle argues that the trial court erred by requiring her to pay one-half of the medical expenses that were over a year old. According to Bowdle, since Hanke did not submit the invoices to her within thirty days of payment, he should be precluded from seeking reimbursement. The agreement contained no provision stating that failure to submit invoices within thirty days waived or precluded a party's right to reimbursement. It is clear that it was the intent of the parties to share in all out-of-pocket expenses related to the children's health. Bowdle was presented with invoices, and under the terms of the agreement, she was responsible for half of the children's uncovered medical expenses. Therefore, we affirm the court's decision.

Affirmed.

WYNNE and ABRAMSON, JJ., agree.