DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CA05-1299

SEPTEMBER13, 2006

WENDY GAYLE WILLIAMSON

APPELLANT

V.

PAUL BRIAN ALBRITTON

APPELLEE

APPEAL FROM THE UNION COUNTY CIRCUIT COURT
[NO. E2000-823-3]

HON. EDWIN A. KEATON, CIRCUIT JUDGE

AFFIRMED

Wendy Gayle Williamson appeals from that portion of an order of the Union County Circuit Court reducing the child-support obligation of her ex-husband, Paul Brian Albritton, after his part-time second job was eliminated. On appeal, she argues that the trial court erred when it: 1) refused to rule on or consider her motion to compel Albritton to amend his answers to the interrogatories that she propounded to him and grant her a continuance until the discovery request was answered completely; 2) allowed Albritton to question her about settlement negotiations; 3) entered an order that failed to recite Albritton's income and the amount of support required by Arkansas Supreme Court Administrative Order No. 10; 4) reduced Albritton's child support from $272 to $232 per bi-weekly pay period because it failed to consider that Albritton admitted that his wife paid his living expenses; 5) made the

reduction in child support retroactive to the date Albritton filed his petition to reduce his child support payments; and 6) awarded costs to Albritton. We affirm.

When the parties were divorced by a decree entered on November 17, 2000, Albritton, who was employed as a deputy with the Union County Sheriff's Department, was ordered to pay $200 every two weeks for support of the parties' two minor children. Albritton subsequently took a second job as an EMT with ProMed Ambulance, and Williamson successfully petitioned to have Albritton's child support obligation increased to $272 per two-week pay period to reflect the increase in his income. However, in December of 2004, ProMed eliminated Albritton's position. On January 6, 2005, Albritton filed a petition to reduce his child-support obligation to $232 per pay period, reflecting the amount indicated by the child-support chart contained within Arkansas Supreme Court Administrative Order No. 10. Williamson opposed his petition and counterclaimed for the court to order Albritton to share the children's medical expenses that were not covered by insurance and for the increased cost of the children's medical insurance premiums. After securing a continuance, Williamson propounded requests for admissions and interrogatories that were timely responded to, but not as completely as she desired. She subsequently moved to compel answers to interrogatories.

At the scheduled merits hearing, after both sides announced ready to proceed and after Albritton's trial counsel gave her opening statement, Williamson asked the court to consider her motion to compel. After going through the substance of her motion, the trial court

expressed a reluctance to grant the motion, but did not announce a ruling. At that point, Williamson simply asked the trial court to take the discovery problems into consideration when it made its ruling on Albritton's petition.

At the hearing, Albritton proved that his part-time job with ProMed had been eliminated and that his current income was only what he earned as a Union County Deputy Sheriff. His earnings were verified by Shannon Phillips, the payroll clerk for Union County. Williamson also testified about an increase in the children's health-insurance premiums and in the need to have Albritton share the uncovered medical expenses.

At the conclusion of the hearing, the trial judge announced from the bench that Albritton had not sought to reduce his income by quitting his job. He further found that Albritton's net income was $385 per week and that the applicable child support obligation for his two children was $116 per week, retroactive to the filing of his petition. The trial court also ordered that Albritton's contribution for the children's health insurance be increased $87 per month and that he share in the uncovered medical expenses. Finally, over Williamson's contention that the trial court had no authority to do so, the trial judge taxed the filing fee and service fee against Williamson.

Williamson first argues that the trial court erred when it refused to rule on or consider her motion to compel Albritton to amend his answers to the interrogatories and grant her a continuance for the purpose of securing more complete responses to the interrogatories that she propounded to Albritton. We believe that this argument mischaracterizes what occurred

at the trial court. While it is true that the trial judge expressed some reluctance to take up Williamson's motion to compel, her trial counsel was nonetheless allowed to argue it before the trial court. However, rather than pressing the trial judge for a ruling, Williamson acquiesced and merely asked that the problems with discovery "be considered by the Court in its final decision on the merits." It is axiomatic that a party's failure to obtain a ruling is a procedural bar to the court's consideration of the issue on appeal. *See, e.g.*, *Scamardo v. Jaggers*, 356 Ark. 236, 149 S.W.3d 311 (2004). Furthermore, an appellant may not complain on appeal that the trial judge erred if he induced, consented to, or acquiesced in the judge's position. *Keatherly v. Keatherly*, 76 Ark. App. 150, 61 S.W.3d 219 (2001).

For her second point, Williamson's argument requires some additional context. On cross examination, Albritton's trial counsel asked Williamson if she refused to consent to a reduction in child support based on the elimination of Albritton's position with ProMed. Williamson objected, arguing that the question sought inadmissible evidence of settlement negotiations. The objection was overruled because Albritton asserted that the question was independently relevant in that it went to the issue of the award of attorney fees. Williamson subsequently admitted that she was made aware that Albritton's job with ProMed had been eliminated, but nonetheless did not think that entitled her ex-husband to a reduction in his child-support obligation.

On appeal, she argues that the trial court violated Rule 408 of the Arkansas Rules of Evidence when it allowed Albritton to question her about settlement negotiations. She asserts

that her answer was the basis for the trial court awarding costs to Albritton, even though she had engaged in no misconduct, because she had a due-process right to have the case heard on the merits.

Evidentiary rulings are within the sound discretion of the circuit court and will not be disturbed absent a manifest abuse of that discretion. *Ozark Auto Transp., Inc. v. Starkey*, 327 Ark. 227, 937 S.W.2d 175 (1997). Arkansas Rule of Evidence 408 provides:

> Evidence of (1) furnishing, offering, or promising to furnish, or (2) accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 408 does not effect a blanket prohibition against the admission of all evidence relating to offers of compromise or settlement. *See Ozark Auto Transp., supra*. Instead, the rule only prohibits the introduction of settlement evidence when the evidence is offered to prove liability for, invalidity of, or the amount of the claim or any other claim. *See id.* Rule 408 does not prohibit the use of such evidence when it is introduced for any other reason. *See id.*

At the hearing, Albritton asserted that the testimony was admissible for the purpose of determining whether Williamson should be required to pay attorney fees, because he believed that it was undisputed that he had lost his second job and that as a result his income was

reduced. Pursuant to Arkansas Code Annotated section 16-22-309 (Repl. 1999), attorney fees may be awarded in cases where there is a "complete absence of a justiciable issue of either law or fact raised by the losing party or his attorney." To prevail, one must prove the litigation

> was commenced, used, or continued in bad faith solely for purposes of harassing or maliciously injuring another or delaying adjudication without just cause or that the party or the party's attorney knew, or should have known, that the action, claim, setoff, counterclaim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

Ark. Code Ann. § 16-22-309(b). Accordingly, to be awarded attorney fees, it was necessary to prove that Williamson was acting in bad faith when she refused to join in an agreed order to reduce Albritton's child-support obligation.

However, we note that the trial court did not award attorney fees, so even if the admission of this testimony was error, we are unable to discern prejudice. While we are mindful of Williamson's assertion that this evidence resulted in her being taxed the costs, we believe this is pure speculation and ignores the fact that fees are authorized under Rule 54(d)[1]

---

[1] Rule 54 states in pertinent part:

> (d) Costs.
>
> (1) Costs shall be allowed to the prevailing party if the court so directs, unless a statute or rule makes an award mandatory.
>
> (2) Costs taxable under this rule are limited to the

of the Arkansas Rules of Civil Procedure for parties who prevail on their claims. Here, Albritton prevailed on his petition to reduce his child-support obligation.

Williamson next argues that the trial court erred when it entered an order that failed to recite Albritton's income and the amount of support required by Arkansas Supreme Court Administrative Order No. 10. We acknowledge that Arkansas Supreme Court Administrative Order No. 10 states in pertinent part:

> All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite that amount of support required under the guidelines, and recite whether the court deviated from the Family Support Chart.

Although Albritton concedes, and we agree, that the order does not expressly find the amount of Albritton's take-home pay, we believe these deficiencies are of no moment. Albritton's obligation to pay $116 per week directly corresponds to the support obligation that would be required of him based on his net income of $385, the amount that the trial court found when it announced his ruling from the bench. Accordingly, while the order could have been more artfully drafted, Williamson was not prejudiced by it. Error is no longer presumed to be

---

> following: filing fees and other fees charged by the clerk; fees for service of process and subpoenas; fees for the publication of warning orders and other notices; fees for interpreters appointed under Rule 43; witness fees and mileage allowances as provided in Rule 45; fees of a master appointed pursuant to Rule 53; fees of experts appointed by the court pursuant to Rule 706 of the Arkansas Rules of Evidence; and expenses, excluding attorney's fees, specifically authorized by statute to be taxed as costs.

prejudicial; unless the appellant demonstrates prejudice, we do not reverse. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

Williamson next argues that the trial court erred when it reduced Albritton's child support from $272 to $232 per bi-weekly pay period. Citing cases from foreign jurisdictions for the proposition that "it is an undisputed maxim that determination of child support must include consideration of the amount of money a non-custodial parent would have for reasonable living expenses," she asserts that the Arkansas Family Support chart "implicitly" takes into consideration Albritton's living expenses. She contends, however, that because Albritton testified that his wife paid his living expenses and because he accumulated $40,000 in credit card debt, it was error to reduce his child support obligation. We disagree.

Nowhere in the Arkansas Family Support Chart or associated commentary can we find any reference to making an allowance for the payor's living expenses. Williams's argument rests on speculation, and accordingly, we have no basis in Arkansas law that substantiates her assertions. Moreover, the only evidence Williams produced at trial to prove that Albritton had excess money was her proof that he had accumulated more than $40,000 in debt. This evidence is contrary to her allegations that because Albritton's living expenses were being paid by another party, he had more money available to pay child support. Likewise, we find nothing in the chart that allows us to consider his debts as a reason to increase his child support payments.

As a rule, when the amount of child support is at issue, we will not reverse the trial judge absent an abuse of discretion. *Scroggins v. Scroggins*, 302 Ark. 362, 790 S.W.2d 157 (1990). We hold that the trial court correctly assessed the amount of child support that Administrative Order No. 10 mandates based on Albritton's income. Under Arkansas law, there is a rebuttable presumption that the amount contained in the family support chart is the correct amount of child support to be awarded unless application of the chart would be "unjust or inappropriate, as determined under established criteria set forth in the family support chart." Ark. Code Ann. § 9-12-312 (Repl. 2002). Regarding the stated criteria for deviation from the chart, Administrative Order No. 10 states that "[t]he court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support." In the instant case, Williamson presented no evidence regarding exceptional needs of the minor children. Accordingly, we cannot conclude that the trial court erred in setting Albritton's child-support obligation.

Williamson next argues that the trial court erred when it made the reduction in child support retroactive to the date Albritton filed his petition. She notes that when she successfully petitioned to have Albritton's child support increased when he took a second job, the increase in his obligation was not made retroactive to the filing of her petition, which she contends denies her equal protection of the law. This argument is unpersuasive.

We note that in her reply brief, Williamson acknowledges that "the law allows for an

award or modification of child support to be retroactive." Furthermore, we are unable to see where Williamson made her equal-protection argument to the trial court. It is axiomatic that we will not consider an argument on appeal, even if it has a constitutional aspect, unless the argument is first presented to and ruled on by the trial court. *See, e.g., Warnock v. Warnock,* 336 Ark. 506, 988 S.W.2d 7 (1999).

Finally, without citation to authority, Williamson argues that the trial court erred when it awarded costs to Albritton. She contends that "the American Rule is alive and well in Arkansas," each party should bear their own fees and costs, and accordingly, the trial judge should have "split the difference." Further, she asserts that she engaged in no misconduct and had a "due-process right to have an issue decided on the merits." Williamson also suggests on appeal, as she did to the trial court, that the trial judge did not have authority to award costs. We disagree.

In her reply brief, Williamson concedes that the trial court did indeed have authority to award costs under Rule 54 (d) of the Arkansas Rules of Civil Procedure. Furthermore, the so-called American Rule refers to the taxing of attorney fees as costs, and does not refer to costs awarded in the instant case. *See Cotten v. Fooks*, 346 Ark. 130, 55 S.W.3d 290 (2001). We note further that Williamson made no due-process argument to the trial court concerning her decision to take the child-support issue to trial, and therefore, we will not consider it on appeal. *Warnock, supra*.

Affirmed.

NEAL and VAUGHT, JJ., agree.