DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, Judge

CA05-955

June 14, 2006

COLLEEN GARRISON VICARI
APPELLANT

v.

ED GARRISON
APPELLEE

AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT
[No. DV 90-5010]

HONORABLE ELLEN BRANTLEY, CIRCUIT JUDGE

AFFIRMED

This appeal concerns ongoing child-custody and child-support proceedings. In its most recent order, the trial court found appellant Colleen Garrison Vicari to be in arrears in her child-support payments in the amount of $11,692. The trial court also found that appellant could not claim a setoff for arrearages allegedly owed by appellee Ed Garrison. Appellant appeals from the denial of her claim for a setoff. We affirm.

The parties were divorced on October 1, 1990. The decree awarded custody of the parties' three minor children to appellant, and appellee was ordered to pay child support of $104 per week.

On September 26, 1995, an order was entered holding appellee in contempt for failure to pay child support in the amount of $3,831.96. In addition to his regular support payment of $120 per week, appellee was directed to pay an additional $16 per week towards the arrearage. The order did not reduce the arrearage to judgment.

On March 4, 1998, appellant filed a petition alleging that appellee's income had increased and seeking a modification of his child-support obligation. Appellee responded,

denying that his income had increased. He also sought a change of custody of the children, alleging that the children were not attending school on a regular basis and not being properly supervised. On September 21, 1998, the trial court issued an order increasing appellee's child-support payments to $146 per week. The trial court also took appellee's motion for change of custody under advisement.

On December 22, 1998, appellee filed a motion for relief from the September 21, 1998 order and seeking a change of custody, alleging that the children's school attendance had declined and that one of the children's behavior had deteriorated. Appellant denied the allegations. On March 8, 1999, the trial court issued a temporary agreed order changing custody of two of the three minor children from appellant to appellee and terminating the previously ordered child support against appellee.

On August 23, 1999, an agreed order containing the parties' full agreement was entered, providing that appellee would have custody of two of the children and that appellant would have custody of the third child. The agreed order stated that the child support previously specified for appellee to pay to appellant was terminated; that appellant was to pay $100 per month to appellee; and that appellee had an arrearage of $1,000 but that the arrearage had been satisfied by a setoff of child support due from appellant. Appellant was ordered to refund $972 to appellee for child-support payments she mistakenly received through a wage assignment.

In January 2000, appellee filed a motion seeking to hold appellant in contempt for nonpayment of child support. On May 12, 2000, the trial court issued an agreed order that appellant was in arrears in the amount of $5,959.50. Appellant was directed to pay $19 a week, in addition to the weekly child-support payment of $105, until the arrearage was satisfied.

By the time appellant filed a petition for change of custody in May 2002, the oldest child had reached majority. In her petition, appellant alleged that the youngest child had expressed a desire to live with appellant. On September 12, 2002, the parties entered into an agreed order that changed the custody of the youngest child from appellee back to appellant. The agreed order specified that, because each party had one minor child, there would be no child-support obligation. The order also stated that the parties recognized that appellant was in arrears on child support but reserved the issue.

On January 13, 2004, the parties entered into another agreed order that changed custody of the youngest child from appellant back to appellee, thereby giving appellee custody of both minor children. The order reserved the issue of appellant's support obligation.

On October 29, 2004, appellee filed a motion seeking to establish a support obligation for appellant that had been reserved in the January 2004 order. The motion alleged that appellant was in arrears on her prior support obligation by approximately $3,200. Appellant filed a response denying the allegations and reserving the right to amend her response and plead further. On December 28, 2004, an agreed order was entered specifying that appellant would pay child support of $127 per week. In the order, the parties agreed to reserve all other issues regarding child support.

At the final hearing leading to this appeal, appellee testified that, in 2000, appellant was found to be in arrears in the amount of $5,959.50. He further testified that, after the youngest child returned to live with him in January 2004, appellant did not pay child support at all during that year. He said that the parties' middle child turned eighteen and graduated from high school in May 2004. As a result, he said he was seeking support for two children from January 2004 until May 21, 2004, and for one child after that time.

In response, appellant testified that appellee did not pay support between 1991 and 1995, creating an arrearage of approximately $21,000. She asserted that she was entitled to a setoff for any child support due her prior to the August 1999 agreed order. She also denied seeing the August 1999 order until the day of trial. On cross-examination, when asked about the May 2000 order stating that she was in arrears in the sum of $5,959.50, appellant testified that she knew appellee owed her more money than she was seeking but that she wanted to move forward. She also stated that, during the 1995 hearing, she was not aware that appellee owed her more than the $3,831.96 arrearage ultimately established by the court. According to her calculations and after deducting the support she owed appellee, appellant claimed that appellee still owed her $6,616 but that she did not want the money. In closing arguments, appellant argued that Ark. Code Ann. § 9-12-234 (Repl. 2002) prohibits retroactive modification of a decree or order involving unpaid child support.

The trial court ruled from the bench, finding that the August 1999 agreed order was not an order modifying unpaid child support. The court noted that appellant "has been here numerous times, and she doesn't lose it just because she doesn't bring it up. But when we calculate arrears I think you have to bring up your amount for a setoff." The court concluded the hearing by finding that there were no arrearages after the date of the August 1999 order. On March 17, 2005, an order was entered finding that appellant owed an arrearage of $11,692 and that appellant's weekly child-support payment of $127 was to continue until the arrearage was satisfied in full. The order did not address appellant's claim for unpaid arrearages. This appeal followed.

Appellant's sole point on appeal is that the trial court erred in ruling that appellant's claim for child-support arrearages was barred by res judicata. We are unable to address the merits of appellant's argument because, although appellant testified that she was seeking a setoff, she failed to obtain a ruling on this specific issue. As noted above, the trial court did

somewhat address the setoff issue in its ruling from the bench, but the trial court's written order did not address the setoff issue at all. It is well settled that a party's failure to obtain a ruling precludes our review of an issue on appeal. *Finagin v. Arkansas Dev. Fin. Auth.*, 355 Ark. 440, 139 S.W.3d 767 (2003); *Bell v. Bershears*, 351 Ark. 260, 92 S.W.3d 32 (2002). It was appellant's burden to raise the issue of setoff and to obtain a specific ruling on it. Her failure to do so now precludes this court from considering the merits of her argument.

Affirmed.

NEAL and ROAF, JJ., agree.