ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION II

CA07-222

OCTOBER 10, 2007

EVERETT ALDRIDGE APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NO. E-91-778]
V.	HON. HARRY A. FOLTZ, JUDGE
BETTY ALDRIDGE TOLBERT APPELLEE	AFFIRMED

Appellant Everett Aldridge appeals the December 11, 2006 order of the Sebastian County Circuit Court awarding judgment to appellee Betty Jo Aldridge Tolbert. Appellant contends on appeal that the trial court erred in applying res judicata to appellee's child-support obligation and that the trial court erred in finding that appellant failed to meet his burden of proof regarding appellee's alleged child support arrearages. We affirm the trial court's decision and hold that appellant failed to meet his burden of proof that a child-support arrearage existed.

The parties were divorced by decree filed August 19, 1991. The divorce decree provides that appellant father is awarded custody and that appellee mother is responsible for child-support payments as follows:

> [W]ith the Court therewith reserving the right and power to determine the amount of support at a later hearing. It being agreed by the parties that no child support shall be set at this time but the Court shall take the matter under advisement and upon application of the parties at a later date fully determine the responsibilities of the parties in this regard.

Both parties agreed that appellee's child-support obligation did not begin until nine months after the divorce decree was filed. Although the parties did not litigate the issue, appellee began paying fifty dollars per week in child support. At some point before 1998, appellee began paying forty dollars per week in child support and paying for the child's clothes. By agreed order filed February 25, 1998, custody was changed to appellee and appellant was ordered to pay forty dollars per week as support for the minor child. This order provided that all previous orders not modified remained in effect. Appellant's child support obligation was increased to sixty-one dollars per week by order filed October 10, 2003. This order also found that appellant was $3000 behind in child support and appellee was granted judgment in that amount. Further, appellee was awarded $1000 in attorney's fees, with all previous orders not modified remaining in effect.

On May 3, 2006, appellant filed a motion to terminate child support and for judgment against appellee, arguing for the first time that appellee had failed to support the child properly during the time period between 1991 and 1998. He also asked that the trial court

to terminate his support obligation because the child was soon to be eighteen years old and was entering the military. Current support was terminated on August 15, 2006, by order filed on that date. After a full hearing, the trial court found in an order filed December 11, 2006, that res judicata applied to appellant's claim for a child-support arrearage from 1991 to 1998. Further, the trial court found that the order of October 10, 2003, acted as res judicata because appellant had an opportunity to litigate any alleged arrearage during the 2003 litigation. Finally, the trial court found that even if res judicata did not bar appellant's claims, he had failed to meet his burden of proof to establish that a child support arrearage existed. Appellee was awarded judgment for the amount of arrearage owed to her by appellant in the amount of $3256. This appeal follows.

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. *Tucker v. Office of Child Support Enforcem't*, 368 Ark. 481, __ S.W.3d __ (2007). A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been made. *Id*. 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. *Id*. 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. *Id*. However, a trial court's conclusions of law are given no deference on appeal. *Id*.

Appellant claims that the trial court's finding that he did not meet his burden of proof in establishing the amount of child support arrearage owed him by appellee is erroneous. He argues that under Arkansas Code Annotated section 9-12-312(a)(2), it is a rebuttable presumption that the amount of child support contained in the Family Support Chart is the correct amount of child support to be awarded. He asserts that he introduced evidence that appellee's take-home pay "in the 1991 to 1998 time frame" was $310 per week. He took this evidence from appellee's 1997 deposition. The trial court took judicial notice that under the guidelines, this would have equated to seventy dollars per week in child support. He contends that he proved that the total amount due him in child support is $20,300. He argues that any deviation from the guideline amount would have required a specific finding by the trial court in writing. *See* Ark. Code Ann. § 9-12-312(a)(2). He claims that the trial court failed to make such a finding. He contends that appellee paid him $6590 in child support, and appellee claims that she paid him $13,180. He argues that even if she were given credit for the amount that she claims, she still would owe him another $7120.

Appellee asserts that the trial court did not abuse its discretion by finding that appellant failed to prove the existence of an arrearage. The court stated in its December 11, 2006 order:

> [T]he Plaintiff [father] had the burden to prove that the Defendant [mother] failed to make child support payments between 1991 and 1998, and the Court finds that the Plaintiff [father] presented insufficient evidence to establish that any such arrearage existed or that the Defendant [mother] failed to make any of the payments.

This finding was based upon the evidence presented by appellee's testimony that she paid support on the child from 1991-98. She also testified that she purchased all of the child's clothing during a portion of this time. Appellant acknowledged that the mother paid fifty dollars per week in support, and he calculated the total amount that she paid to be $6590. Appellant did not dispute that appellee purchased the child's clothing.

Appellee argues that the trial court considered that appellant did not raise the issue of arrears in previous litigation, aside from any res judicata argument. She contends that his failure to do so damaged his credibility with the trial court. She also contends that the evidence appellant presented as to her income in 1997 did not necessarily apply to her income in the years preceding 1997.

Giving due deference to the trial court's superior position in determining the credibility of the witnesses and the weight to be given their testimony, we hold that the trial court's finding that appellant failed to carry his burden of proof is not clearly erroneous. The original order did not set child support, and no subsequent order dealt with appellee's support obligation; therefore, appellant fails in his proof. Because we affirm the trial court based upon its alternative ruling that the appellant failed to establish the existence of a child-support arrearage, we do not address the issue of the applicability of res judicata.

Affirmed.

PITTMAN, C.J., and ROBBINS, J., agree.