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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-308

	Opinion Delivered November 16, 2011
WHITNEY DAVIS APPELLANT	APPEAL FROM THE UNION COUNTY CIRCUIT COURT [NO. DR-2005-641-3]
V.	HONORABLE EDWIN KEATON, JUDGE
MICHAEL WAYNE DAVIS APPELLEE	AFFIRMED IN PART; REVERSED AND REMANDED IN PART

JOHN MAUZY PITTMAN, Judge

The parties were married in August 2003. A daughter was born of the marriage before the parties divorced in October 2005. The divorce decree awarded them joint custody of the child. In August 2006, appellant drove to appellee's workplace, called him on his cell phone, and slashed her wrists with the car door locked. Appellant was hospitalized, and appellee immediately sought an emergency ex parte order, alleging that appellant suffered from extreme mental and emotional instability and praying that the court award him custody of the minor child. After a hearing, the trial court found that an emergency existed because of appellant's emotional instability and entered a temporary order on September 18, 2006, granting full custody to appellee and granting appellant supervised visitation with the child. Subsequently, appellee filed a pleading asserting that appellant had not complied with the order requiring that visitation be supervised and requesting the court to order appellant to pay

child support. Appellant then counterpetitioned seeking custody. After a hearing, the trial court entered an order on January 20, 2011, that awarded custody to appellee, permitted appellant unsupervised visitation, and ordered appellant to pay child support in the amount of $84 per week. On appeal, appellant argues that there is no evidence to support the award of $84 weekly child support and requests that the award be modified so that she is required to pay only $70 per week. Appellant then argues that the trial court erred in granting custody of the child to appellee.

The trial court must refer to the most recent child-support chart in setting the amount of child support that a noncustodial parent must pay. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005). The family-support chart sets out the definition of income for child-support purposes and the manner of calculation of support. *See* section (VII) of Supreme Court Administrative Order No. 10, *In Re Administrative Order No. 10: Arkansas Child Support Guidelines*, 347 Ark. App'x 1064 (2002). It also requires the parties to execute affidavits of financial means and lists factors that the court should consider when determining support at variance to the chart. *Id.*; *see Cole v. Cole*, *supra*. Although the court must consider the chart, it does not have to settle upon the chart amount if the circumstances of the parties indicate another amount would be more appropriate. *Cole v. Cole*, *supra*.

We agree that the evidence of record does not support the trial court's finding that appellant's net income was $359.72 per week, requiring her to pay $84 per week in child support in accordance with the Arkansas Family Support Chart. In a letter opinion to the parties' attorneys dated September 22, 2010, the trial judge announced and explained his

custody decision, stated that appellant should pay child support in accordance with the Family Support Chart, ordered appellant to furnish a copy of her most current check stub to appellee, and asked appellee's attorney to prepare an order consistent with that decision. Presumably, appellee was furnished with a current check stub that was used by his attorney in preparing the order requiring appellant to pay $84 child support per week. However, no such check stub appears in the record, and the evidence of appellant's income adduced at trial does not support a finding that she earned $359.72. Consequently, we reverse and remand on this point and direct the trial court to enter an order of child support based on the evidence of record.

Appellant next argues that the trial court erred in awarding custody to appellee. The superior position, ability, and opportunity of the trial court to observe the parties carries great weight in cases involving children, and we therefore give special deference to the trial court's assessment of the credibility of the witnesses in child-custody cases. *Harris v. Grice*, 97 Ark. App. 37, 244 S.W.3d 9 (2006). We review the evidence de novo on appeal but, as the supreme court emphatically stated in *Stehle v. Zimmerebner*, 375 Ark. 446, 291 S.W.3d 573 (2009), de novo review does not mean that the findings of fact of the circuit judge are dismissed out of hand and that the appellate court becomes the surrogate trial judge. Nor does it mean that the appellate court is free to address any issues that have not been raised as grounds for reversal by the appellant. *Country Gentleman, Inc. v. Harkey*, 263 Ark. 580, 569 S.W.2d 649 (1978); *Cummings v. Boyles*, 242 Ark. 923, 415 S.W.2d 571 (1967). What de novo review does mean is that a complete review of the evidence and record may take place

as part of the appellate review of the issues argued on appeal to determine whether the trial court clearly erred in either making a finding of fact or in failing to do so. *Stehle v. Zimmerebner*, *supra*. Thus, we will not reverse the findings of the court unless it is shown that they are clearly contrary to the preponderance of the evidence. *Dunham v. Doyle*, 84 Ark. App. 36, 129 S.W.3d 304 (2003). A finding is clearly against the preponderance of the evidence when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

On our review of the record in this case, we cannot say that the trial court clearly erred in finding that it would be in the child's best interest to remain in the custody of appellee because appellee's living conditions are more stable than that of appellant and are better suited for rearing the child. The parties are aware of the facts of the case and we need not deal in specifics; suffice it to say that the case turns on whether appellee's relative instability regarding matters of employment and residence was outweighed by the evidence of appellant's mental and emotional instability. This is largely a question of credibility and, in light of the evidence that the child is presently well adjusted and enjoys a close relationship with both of her parents, we cannot say that the trial court clearly erred in finding that the child's best interest would be better served by remaining in appellee's custody.

Affirmed in part; reversed and remanded in part.

ABRAMSON and HOOFMAN, JJ., agree.