

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-339

LUKE SZABO

APPELLANT

V.

LESLI RUTLAND WOMACK

APPELLEE

Opinion Delivered November 2, 2011

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. DR-2008-138]HONORABLE XOLLIE DUNCAN,
JUDGE

REVERSED AND REMANDED

RAYMOND R. ABRAMSON, Judge

In this appeal, appellant Luke Szabo contends that the circuit court erred in its child-support calculations and abused its discretion in awarding attorney's fees to appellee. We reverse and remand on both issues.

The parties were divorced in September 2008, and appellee Lesli Rutland Womack was awarded primary custody of their minor daughter. Appellant was ordered to pay \$50 a week in child support, but this amount was later increased. The parties had issues with visitation and requested intervention from the court following their divorce. In December 2009, the court entered an order requiring, among other things, that the parties not talk to the child about adult matters, not make derogatory comments concerning the other or allow others to do so, and notify the other immediately if the child had to be taken to the emergency room. On June 24, 2010, appellant was found to be in contempt of court for making derogatory comments about appellee; as a result, he was jailed until July 8, 2010. A

review hearing was set for October 26, 2010, and appellant subsequently filed a petition for modification regarding several matters, not including child support.

At the hearing on October 26, 2010, the court heard the testimony of Danny Szabo, appellant's brother, who had been supervising appellant's visitations with his child; appellant; a Benton County deputy sheriff who responded when appellant and appellee's husband Steve Womack had an altercation; and appellee. Much of the testimony concerned issues with visitation and problems between appellant and appellee's husband, which are not directly relevant to this appeal. Appellant testified that, beginning the previous month, he began receiving \$399 in Social Security disability benefits on his child's behalf. He stated that he was going to have those checks made payable to appellee in the future. As for his income, appellant stated that he received disability benefits for posttraumatic stress in the amount of \$2774 per month from the Veterans Administration. At the time of the hearing, appellant also received \$941 per month in Social Security disability benefits, for a total monthly income of \$3715. Later, in November 2010, the Social Security Administration notified appellant that his benefits would be terminated because he was imprisoned for conviction of a crime. Appellant's affidavit of financial means filed in December 2010 reflected only \$2774 in monthly income.

At the conclusion of the hearing, the court indicated from the bench that appellant's "behavior created the problems." The court stated that it needed to review a recent case regarding child support, but directed appellant to immediately pay over to appellee the \$399 he had received on his daughter's behalf. The court's order filed December 29, 2010, set

child support at \$487 a month beginning November 1, 2010. Appellant was also ordered to pay to appellee attorney's fees and costs in the amount of \$600. This timely appeal followed.

I. *Child Support*

Appellant contends that the trial court erred in its calculation of child support in this case because it (1) did not include the Social Security disability payments to the child in determining his income and (2) failed to credit those payments to the child against the amount of child support he owed. Appellant contends that the court should have included the \$399 Social Security disability payments as part of his income, and then it should have credited that amount from the total amount of child support that he owes. So, he contends that instead of owing \$487 a month based on a monthly income of \$2774, his support should be set at \$537 based on a monthly income of \$3173. Then, after applying a credit for the \$399 in disability payments, appellant would owe only \$138. Appellant cites *Arkansas Office of Child Support Enforcement v. Hearst*, 2009 Ark. 599, ___ S.W.3d ___, in which our supreme court held that Social Security disability benefits paid to the dependent children of a noncustodial parent based on the noncustodial parent's disability *are income* for the purpose of determining child support.

Here, the trial court clearly did not count those payments as income because it awarded child support based only on income of \$2774. Thus, we hold that the court erred in failing to include the Social Security disability payments paid on the child's behalf as income.

The question then becomes whether the court erred in failing to give appellant a credit against the amount of child support. In *Cash v. Cash*, 234 Ark. 603, 353 S.W.2d 348 (1962), the supreme court reversed a trial court's ruling in which Social Security payments to the appellant's son were not permitted to displace his court-ordered child-support payments. The supreme court held that, under the facts of that case, which included the appellant's mandatory retirement, the appellant should be credited with the full amount of the Social Security payments to his son. Based on *Cash*, appellant is entitled to a credit in this case for Social Security disability payments to his child.

Additionally, Arkansas Code Annotated section 9-12-312(a)(2) (Repl. 2009) provides that

[i]n determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

In determining the amount of child support, the trial court is required to reference the child-support chart. *Akins v. Mofield*, 355 Ark. 215, 222, 132 S.W.3d 760, 763 (2003). Thus, because the trial court did not reference the support chart in this case, there is an additional basis for our decision to reverse and remand the child-support award.

Based on the above, we remand this issue for the trial court to determine the appropriate amount of child support under the particular circumstances of this case, with specific reference to the child-support chart.

We note that appellee contends that the trial court did not abuse its discretion here because appellant's disability payments of \$945 per month had been cancelled and it was unclear whether the child's Social Security payments would continue. We are reversing and remanding for the reasons outlined above, and the issue of whether those payments were continued has presumably resolved itself by now.

II. *Attorney's Fees*

Appellant next contends that the trial court erred in awarding attorney's fees to appellee. Courts have the inherent power to award attorney's fees in a domestic-relations proceeding. *Miller v. Miller*, 70 Ark. App. 64, 14 S.W.3d 903 (2000). A trial court has considerable discretion in the allowance of attorney's fees in a divorce case, and, absent an abuse of that discretion, the fixing of the amount of fees will not be disturbed on appeal. *Id.*

In *Stout v. Stout*, 2011 Ark. App. 201, ___ S.W.3d ___, the trial court awarded attorney's fees in the parties' divorce decree without any discussion and without providing any pertinent analysis of the factors set out in *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990). This court stated that, if a trial court fails to consider the *Chrisco* factors when awarding the attorney's fees, we reverse and remand for the trial court to make such an analysis. *Stout*, 2011 Ark. App. 201 (citing *Bailey v. Rahe*, 355 Ark. 560, 142 S.W.3d 634 (2004); *South Beach Beverage Co. v. Harris Brands, Inc.*, 355 Ark. 347, 138 S.W.3d 102 (2003); *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002)). Because there was no evidence that any such analysis took place in *Stout*, this court reversed and remanded the \$2000 fee award for proper consideration of the *Chrisco* factors.

This court has not strictly required documentation of time and expense in a divorce case where the circuit court has the opportunity to observe the parties, their level of cooperation, and their obedience to court orders. *Stout*, 2011 Ark. App. 201, at 11. In this case, because the trial court made no reference to the *Chrisco* factors and failed to discuss any basis for its award, we also reverse the award of attorney fees and remand for proper consideration under *Chrisco*.

Reversed and remanded.

PITTMAN and HOOFFMAN, JJ., agree.