SLIP OPINION

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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-665

	Opinion Delivered February 8, 2012
EMILY TONOS BENDINELLI APPELLANT	APPEAL FROM THE CHICOT COUNTY CIRCUIT COURT, [DR-2001-7-2]
V.	HONORABLE B. KENNETH JOHNSON, JUDGE
MICHAEL EMIL BENDINELLI APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

In this one-brief case, Emily Bendinelli appeals from the trial court's reduction of the amount of child support paid by Michael Bendinelli for their three daughters. As her sole point of appeal, she contends that the trial court erred by reducing Michael's child-support obligation "despite the fact that his earnings were diminished by his subsequent voluntary acts of committing felony sex offenses against minors resulting in registered sex-offender status." We affirm.

Emily and Michael were divorced by decree entered on January 23, 2002. Emily was awarded custody of their three children. Multiple petitions for contempt, to modify support, or to revise conditions of visitation were filed by the parties. For purposes of this appeal, we are concerned only with Michael's July 14, 2009 motion to modify his child-support obligation, in which he asserted that his income had changed significantly and that his child-support obligation should be reduced to reflect that change.

SLIP OPINION

At the hearings on his motion, it was undisputed that Michael's child-support obligation at that time was $1,008 per month; that it was based upon income he received when he worked for Dollar General; and that he no longer held that job. It was also undisputed that he had pleaded guilty to sexual offenses in Mississippi that required him to register as a sex offender and that his current income was $108 per week from a part-time job. There was also testimony that Michael had suffered for a time from a condition called tardive dyskinesia, which made it hard for him to talk, but that his condition had improved significantly. Michael recounted his efforts to find employment, attributing his inability to do so to his status as a convicted felon and, in part, to his health problems. Emily testified that his loss of employment was based solely on his voluntary conduct, *i.e.*, his convictions, contending that he had never told her that his unemployment was based on a medical condition.

In its order, the trial court reduced Michael's child-support obligation to $44 per week, based on his $108 per week income and the child-support chart.

A trial court's decision concerning child-support issues is reviewed de novo by this court, and the trial court's findings are not disturbed unless they are clearly erroneous. *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003). In reviewing a trial court's findings, we give due deference to the court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony. *Id.* As a rule, when the amount of child support is at issue, we will not reverse absent an abuse of

SLIP OPINION

discretion. *Id*. However, a trial court's conclusion of law is given no deference on appeal. *Id*.

Administrative Order No. 10, section III provides in pertinent part:

> d. *Imputed Income*. If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support.

The gist of Emily's argument in this appeal is that "Arkansas law is clear—one who [suffers a reduction in income] by his own voluntary conduct by engaging in criminal behavior cannot obtain a reduction in child support." To the extent that the argument eliminates the trial court's exercise of discretion in matters involving child support, we disagree and find no abuse of the trial court's discretion in its decision.

Here, the trial court was faced with a changed set of circumstances—Michael's income was significantly lower than when the child-support amount of $1008 per month had been set. The trial court explained that his decision involved a matter of economics; establishing why Michael did not have a job; considering the children's needs and Michael's ability to pay; and "if I'm going to make him pay an amount on earnings not gained then I need to have a reason." In short, the trial court was faced with exercising its discretion in deciding whether to allow a reduction in Michael's child-support obligation.

While Michael's sexual offenses can obviously be categorized as voluntary, that does not end the discussion. There was certainly no evidence that he committed them for

SLIP OPINION

the purpose of reducing his child-support obligation. Moreover, he testified about his unsuccessful efforts to find employment and his reliance upon family members to provide him with, essentially, odd jobs. The trial court credited his testimony that he was making efforts to find employment but that he had not been able to do so. We find no clear error in that regard.

Emily relies primarily upon two cases in making her argument: *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003), and *Reid v. Reid*, 57 Ark. App. 289, 944 S.W.2d 559 (1997). Both of these cases acknowledge the "voluntary" nature of criminal misconduct and the applicability of the maxim of unclean hands. In both cases, however, we were affirming the trial court's exercise of discretion. In *Allen*, the trial court ordered the father to pay the minimum child-support amount, even though he was incarcerated. In *Reid*, the trial court rejected the father's argument to abate an existing child-support obligation based upon his subsequent incarceration, and we made particular note of the fact that Reid had relied only on his incarceration as a change in circumstances and had failed to produce evidence that he had no assets or other sources of income. Here, too, we are affirming the trial court's decision because we find no abuse of discretion in its reduction of the child-support obligation in light of the evidence that was presented.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.