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ARKANSAS COURT OF APPEALS

DIVISIONS IV & I
No. CA12-328

	Opinion Delivered February 20, 2013
CAMILLE L. GRIFFIN COLE APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT, [NO. DR-10-662]
V.	
CHARLES EDWARD GRIFFIN APPELLEE	HONORABLE SANDY HUCKABEE, JUDGE
	REVERSED AND REMANDED

WAYMOND M. BROWN, Judge

Camille Griffin Cole appeals the order of the Lonoke County Circuit Court reducing the amount of child support to be paid by appellee Charles Griffin. She argues on appeal that the trial court abused its discretion by not following the requirements set forth in Administrative Order No. 10 for support orders; and that the court was clearly erroneous in its decision to reduce appellee's child-support obligation and by imputing income that is less than appellee's actual income according to appellee's own evidence. We find merit in appellant's arguments and reverse and remand.

The parties were divorced by a decree entered on March 3, 2011. The decree incorporated the parties' settlement agreement; however, the agreement was not merged into the divorce decree. As part of the settlement, appellee agreed to pay appellant $1316 in monthly child support for their daughter. This amount was based on appellee's monthly

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income of $10,577. Appellee filed a petition to reduce his child-support obligation on December 15, 2011. According to appellee, his employment had been terminated on November 15, 2011, and his only income was the $366 weekly payment he received in unemployment benefits.[1]

A hearing on appellee's motion took place on February 1, 2012. At the hearing, appellee testified that he subsequently sold his business to Lonnie Gooden for $285,000. According to appellee, Gooden paid him $100,000 down and agreed to pay the remainder in monthly installments of $3854 for a total of four years.[2] Appellee testified that he owned rental property and that the annual revenue for those properties was "a little short" of $134,000. He stated that his total annual revenue was $180,000. Appellee said that the annual total expenses for his rental property were $28,500. He calculated his total debt service at $152,000 "and change." He stated that his total outgoing expenses were $181,000. He said that he first started drawing unemployment in December and that he received a net weekly check in the amount of $303. Appellee testified that he had unsuccessfully sought employment.

On cross-examination, appellee stated that he did not think that he would ever be able to get his license back. He said that he voluntarily surrendered his license because he could

[1]Appellee entered into a consent administrative order, individually and as president of Compliance Management, Inc., with the Arkansas Department of Environmental Quality (ADEQ) due to numerous alleged violations. Appellee agreed to relinquish his license and the company's license as a form of settlement. The consent order was filed on August 23, 2011.

[2]Appellee stated that he received a little over $46,000 annually from the sale of the business.

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not afford the litigation. Appellee testified that he took the down-payment he received from Gooden and paid it toward the loan he took out to pay appellant off as per the settlement agreement. He stated that he did not know the balance of the loan at the time of the hearing. He also testified that he paid $13,000 in property taxes approximately one week before the hearing. Appellee further stated that he took a ten- to twelve-day trip to the Grand Canyon following the sale of his business. At the time of the hearing, appellee had a valid electrician license.

Appellant testified that she was a stay-at-home mother. She stated that the parties' daughter was a competitive dancer and attended school at Jacksonville Christian Academy. She said that the child had a studio fee of $110 a month as well as other costs and fees associated with being a competitive dancer. Appellant stated that if appellee's child-support payments were reduced, she would have to get a job, the child would have to go to day care and quit dance, and that it would change the child's world all around. She opined that, given the skills appellee had and the people he knew, he would not be unemployed for long.

The trial court entered an order on February 8, 2012, granting appellee's motion to reduce child support. The court imputed an income of $500 a week to appellee, and ordered him to pay support at the rate of $102 a week. Appellant filed a timely notice of appeal on February 29, 2012. This appeal followed.

Our standard of review for an appeal from a child-support order is de novo, and we will not reverse a finding of fact by the circuit court unless it is clearly erroneous.[3] In

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[3] *Hardy v. Wilbourne*, 370 Ark. 359, 259 S.W.3d 405 (2007).

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reviewing a circuit court's findings, we give due deference to that court's superior position to determine the credibility of the witnesses and the weight to be accorded to their testimony.[4] However, a circuit court's conclusion of law is given no deference on appeal.[5]

Administrative Order No. 10(I) provides in pertinent part:

> It is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart is the amount of child support to be awarded in any judicial proceeding for divorce, separation, paternity, or child support. The court may grant less or more support if the evidence shows that the needs of the dependents require a different level of support.
>
> All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the Family Support Chart. If the order varies from the guidelines, it shall include a justification of why the order varies as may be permitted under Section V hereinafter. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Family Support Chart is correct, if the court enters in the case a specific written finding within the Order that the amount so calculated, after consideration of all relevant factors, including the best interests of the child, is unjust or inappropriate.

Administrative Order No. 10 defines income as "any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions[.]"[6] It is well established that this definition of income is

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[4] *Id.*

[5] *Id.*

[6] Administrative Order No. 10(II)(a).

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broadly construed, intended to encompass the widest range of potential income sources.[7] 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.[8]

Appellant argues in her first point of appeal that the trial court abused its discretion by not following the requirements set forth in Administrative Order No. 10 for support orders. Administrative Order No. 10 requires the court to determine the payor's income, recite the amount of the support required under the guidelines, and recite whether the court deviated from the chart. Here, the court imputed an income to appellee in the amount of $500 a week; it recited the amount required under the guidelines, and it awarded that amount. Thus, it would appear that the court met the requirements under Administrative Order No. 10. However, the evidence presented to the court showed that appellee had an actual income. The court's failure to provide sufficient findings of how it reached the imputed income amount prevents this court from determining whether or not it violated Administrative Order No. 10.

As her second point, appellant argues that the court erred by reducing appellee's child-support obligation and by imputing income that is less than appellee's actual income. Under

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[7] *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W.3d 273 (2000); *White v. White*, 95 Ark. App. 274, 236 S.W.3d 540 (2006).

[8] Administrative Order No. 10(III)(d).

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Administrative Order No. 10, a court may grant less or more support if it determines that the needs of the dependent require a different level of support.[9] A court is also allowed to deviate from the chart amount after considering certain factors.[10]

Here, the trial court did not deviate from the chart amount based on appellee's actual income and provide its reason(s) for that deviation. Instead, it imputed an income of $500 per week to appellee without providing sufficient findings for this court to conduct meaningful judicial review. Based on the evidence before us, it appears that the court may have used some offsets; however, not all expenses are proper deductions under Administrative Order No. 10.[11] Therefore, we reverse and remand for the trial court to provide findings sufficient to support the income calculation. Upon remand, the trial court may consider its decision in the light of any changed circumstances that arose during the pendency of this appeal.

Reversed and remanded.

GLADWIN, C.J., and PITTMAN, and HIXSON, JJ., agree.

WALMSLEY and WOOD, JJ., dissent.

RHONDA K. WOOD, Judge, dissenting. I respectfully dissent. The majority is remanding this case for the circuit court to enter an order with more specific findings regarding how it arrived at the imputed income amount of $500. The majority is concerned

[9]Section (I).

[10]Administrative Order No. 10(V).

[11]*See* Section (II).

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that the circuit court may not have accurately determined the appellee's income under Administrative Order No. 10.

A trial court's decision concerning child support is reviewed de novo by this court, and the trial court's findings are not disturbed unless they are clearly erroneous. *Bendinelli v. Bendinelli*, 2012 Ark. App. 127. In reviewing a trial court's findings, we give due deference to the court's superior position to determine the credibility of witnesses and the weight 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 discretion. *Id.* However, a trial court's conclusion of law is given no due deference on appeal. *Id.*

In the current case the trial court imputed income to appellee in the amount of $500 per week. This amount was above his actual unemployment benefits of $303 per week. There was testimony at the hearing and an undisputed affidavit of financial means from appellee that showed that, although he had significant income from his rental holdings, he also had even greater debt on these holdings. The trial court had discretion in determining what appellee's imputed income should be, and it stated in its order that it granted the petition to reduce child support and imputed the appellee's income amount based "upon the pleadings, testimony, evidence, exhibits, the applicable law, arguments of counsel, and all other matters and things."

Based on the record, and the due deference afforded the trial court in factual findings, I cannot find that the lower court's decision to reduce support was clearly erroneous; therefore, it should be affirmed.

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Administrative Order No. 10 specifically states that "[a]ll orders granting or modifying child support shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the family support chart." Ark. Sup. Ct. Admin. No. 10(I). The administrative order goes on to state that if the order varies from the amount of support required under the guidelines, an explanation should be given in the order. However, that is not relevant here as the circuit court did not vary from the amount of support set forth in the chart.

Administrative Order No. 10 also sets the guidelines for imputed income:

> If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefore. 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.

Ark. Sup. Ct. Admin. Order No. 10(III)(d). In the present case, the circuit court complied with Administrative Order No. 10. The majority is asking the circuit court to explain how it arrived at the imputed income; however, Administrative Order No. 10 does not require circuit courts to "show their work" as to how they arrive at the imputed income figure. In this case, it is clear that the circuit court examined the uncontested affidavit of financial means, found that the appellee had a net income loss, took into account the $303 weekly unemployment benefit, and then imputed income above this at $500 due to the appellee's employability.

I believe it is a mistake to create an additional requirement to Administrative Order No. 10. Now trial courts must explain how they arrive at income. It is the role of the

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Arkansas Supreme Court to establish the requirements of administrative orders, not the Arkansas Court of Appeals. It is an error to create a precedent or give the impression that trial courts are now required to make specific findings when they determine income for a litigant in a child-support case. If our supreme court had intended to require this, then it would have been included in the language of the administrative order.

I additionally dissent because the appellant failed to preserve the issue on appeal. There was no objection to the appellee's affidavit of financial means that depicted his income at a net loss of $1122 a year. At no time did appellant's counsel argue that the income, revenue, or offsetting expenses were inaccurate or that the trial court should not consider them. The appellant's sole argument was that because the appellee voluntarily quit his job by signing a consent order, it would be inequitable to lower his child-support amount. It is my contention that this is the only argument preserved on appeal. In regard to this argument, there was nothing in the record to indicate that appellee entered into the consent decree with ADEQ for the purpose of avoiding child support.

We have held that we will not disturb the trial court's findings of child support unless those findings are clearly erroneous and that the trial court's decision should be given due deference and not be reversed unless there is a clear abuse of discretion. *Bendinelli v. Bendinelli*, 2012 Ark. App. 127.

It is for these reasons that I respectfully dissent.

WALMSLEY, J., joins.

Ballard & Ballard, P.A., by: *Andrew D. Ballard*, for appellant.

Gammill & Gammill, by: *Randall L. Gammill*; and *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellee.