

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA12-952

DARRYL HAWKINS		<b>Opinion Delivered</b> May 15, 2013
	APPELLANT	APPEAL FROM THE POPE COUNTY CIRCUIT COURT [NO. DR 2009-761]
V.		HONORABLE GORDON W. “MACK” MCCAIN, JR., JUDGE
DENITA HAWKINS	APPELLEE	REVERSED IN PART; AFFIRMED IN PART

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**RHONDA K. WOOD, Judge**

Darryl Hawkins appeals from the circuit court’s decree of divorce (1) ordering him to pay retroactive child support and (2) valuing his former wife’s share of real property. We reverse the court’s finding regarding retroactive child support but affirm its division of the real property.

Appellant Darryl Hawkins and Appellee Denita Hawkins were married for 23 years. Denita filed for divorce on October 20, 2009. The parties at that time had two minor children. On July 9, 2010, the parties entered into an agreed temporary order that provided that Darryl pay a certain amount of child support to Denita. Almost two years later, the court held the final divorce hearing. Following that hearing, the court entered a divorce decree on July 13, 2012. Darryl appeals two findings in the decree. First, the court ordered that Darryl pay a higher amount of child support than agreed to in the

temporary order and ordered that this amount be retroactive to the date of the complaint for divorce. Darryl argues that this was error, and we agree.

The appellate court reviews issues of statutory construction de novo, as it is for the appellate court to decide what a statute means; this court is not bound by the trial court's decision. *Middleton v. Lockhart*, 344 Ark. 572, 43 S.W.3d 113 (2001). We review equity cases de novo on the record and will not reverse unless a finding by the circuit court is clearly erroneous. *Allen v. Allen*, 99 Ark. App. 292, 259 S.W.3d 480 (2007).

Arkansas law is very clear that retroactive support may not be awarded absent a proper motion to modify. Arkansas Code Annotated section 9-14-234(b) (Supp. 2012) provides as follows:

Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or the Arkansas child support clearinghouse shall be final judgment subject to writ of garnishment or execution as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

In *Sullivan v. Edens*, the supreme court explained that Arkansas Code Annotated section 9-14-234(b) was passed to insure federal funding for state child support programs. 304 Ark. 133, 801 S.W.2d 32 (1990). Application of the statute typically arises from retroactive modification of child support in a divorce decree. *Id.* Our court has addressed the issue of retroactive modification of a temporary child support order at the time of a final decree in *Rudder v. Hurst*, 2009 Ark. App. 577, 337 S.W.3d 565. In *Rudder*, the circuit court conducted a temporary hearing and set temporary child support while reserving the right to revisit the support amount at the final hearing. At the time of the final divorce hearing,

the court retroactively increased support from the amount in the temporary order. Our court affirmed the retroactive award by stating that

[i]n the present case, the facts compel our conclusion. The temporary hearing was not fully completed, and the trial court specifically noted that it lacked enough information to determine the appropriate amount of child support. Due to time constraints, the court stated its intention to rectify any inequities that might result from setting temporary support without having all of the relevant information.

*Id.* at 5, 337 S.W.3d at 570. Our court went further to state that “[w]here, as here, a trial court reserves judgment until a later determination, we perceive no error when the trial court makes any contemplated adjustments.” *Id.* This is distinctly different from the case in front of us. In the present case, the parties entered into an agreed order as to the amount of child support, the court signed off on the agreement, the agreement did not contain language reserving the right for retroactive modification, and neither party requested that the court reconsider the amount of support retroactively at any time during the two years following entry of the temporary order. We find that in this case the facts compel a finding that the circuit court’s sua sponte retroactive modification of the temporary child support order was clearly erroneous.

Darryl’s second point on appeal is that the circuit court’s valuation of the parties’ real property was not supported by the evidence. The parties had an ownership interest in ICON Communications and also a 50% interest in the real property where ICON is located. The circuit court made two separate property divisions regarding these assets, one for the value of the real property and one for the business itself.

We review divorce cases de novo. *Dew v. Dew*, 2012 Ark. App. 122, 390 S.W.3d 764. We give due deference to the circuit court's superior position to determine the credibility of witnesses and the weight to be given their testimony. *Id.* With respect to the division of property in a divorce case, we review the circuit court's findings of fact and affirm, unless those findings are clearly erroneous. *Dial v. Dial*, 74 Ark. App. 30, 44 S.W.3d 768 (2001).

At the final divorce hearing, Denita submitted an appraisal of the real property in question without objection. The appraisal listed the value of the property at approximately \$570,000. The circuit court found that Denita's interest in the property was one fourth of the appraised value or \$142,000. Darryl argues that the value of the land should have been discounted by a \$350,000 line of credit debt of ICON that is secured by the real property. He contends that the circuit court erred when it stated in its order that the debt should be considered a business expense and included in the business valuation instead of the property value. The circuit court relied on the appraisal of the real property, introduced without objection, and an expert witness's report introduced at trial that valued ICON. The only testimony that either valuation was too high came from Darryl, and the circuit court found in its order that Darryl was "less than credible in his presentation and his tendency to present matters in a light that supports his needs at any given moment." Darryl did not introduce a second appraisal or business valuation.

We cannot find that the circuit court was clearly erroneous in its decision to award Denita \$142,000 for her share of the business property and refusing to discount the property value by ICON's debt. There was sufficient evidence in front of the circuit

court to make a determination that a debt resulting from a business line of credit should more properly be included in the valuation of the business, rather than the value of the real estate that rented the land to the business. The business valuation used an income approach instead of an asset approach, which resulted in the debt not directly altering the value of the business. Neither party objected to the business valuation's admission or the method of valuation chosen by the expert. Given that there was sufficient evidence to support the circuit court's findings, we cannot say the court's decision is clearly erroneous. We affirm the circuit court on this point.

Reversed in part; affirmed in part.

WYNNE and HIXSON, JJ., agree.

*Rose Law Firm*, by: *Richard T. Donovan* and *Haley Heath Burks*, for appellant.

*The Lancaster Law Firm, PLLC*, by: *Clinton W. Lancaster*, for appellee.