

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-12-800

TOM VYTLACIL

APPELLANT

V.

LINDA VYTLACIL

APPELLEE

Opinion Delivered November 6, 2013

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[No. DR2011-1146-5]HONORABLE XOLLIE DUNCAN,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Tom Vytlacil appeals from a decree of divorce terminating his union with appellee, Linda Vytlacil. Tom argues that the trial court erred in its property-division, child-support, and alimony determinations. We disagree and affirm.

On June 11, 1988, Tom and Linda were married. They separated on April 30, 2011, after Linda discovered that Tom had resumed an adulterous relationship that had caused marital discord in the past. During the marriage, Tom did not work outside of the home and had not done so in ten years.¹ Because Tom was financially dependent on Linda, after the parties' separation, Linda provided Tom with \$2500 per month to cover his living expenses.

In August 2011, the parties agreed to alternate visitation with the children on a weekly basis. Further, based on the demands of Linda's full-time employment as Vice President of Global Customer Insights with Wal-Mart, she hired a nanny to assist with child care during her

¹Tom's last employment ended in 2001.

alternate-week custody. The parties agreed that the nanny would work twenty hours per week at the home of whichever parent had the children, and Linda would be responsible for the entire \$1500 monthly child-care cost.

The record shows that as a Wal-Mart executive, Linda received a base salary of \$260,000, with an additional annual bonus in an amount not exceeding 100% of her base salary.² She also was provided with Wal-Mart stock options, which allowed her occasional opportunities to exercise or become vested in corporate stocks. Tom holds a Master of Business Administration and agreed that—with additional classes—he could work in the Wal-Mart vendor market. At the time of the hearing, he was in the process of completing the requisite certifications to enter this field of employment. Tom acknowledged that prior to the divorce, he received \$107,000 following the sale of the parties' property in Minnesota. The parties also had a considerable amount of remaining real and personal property subject to division as marital property, including a home in Arkansas with over \$200,000 in equity, a cash reserve of \$324,514, three vehicles valued at over \$50,000, and various financial investments totaling over \$1 million.

On May 25, 2012, the trial court entered a decree of divorce, granting the parties joint custody of the children, with no exchange of child support. Linda was ordered to continue to pay twenty-hours of weekly nanny services to Tom through April 30, 2013. The parties' financial investments, including stock vested by January 31, 2012, were ordered to be divided equally. Any stock vesting thereafter was not to be considered marital property. The court ordered that Linda pay Tom alimony in the amount of \$3065 monthly from April 2012 until April 2013, then \$2000

²Her past years' bonus had been just under \$200,000.

monthly from May 2013 until May 2014. After that, Tom would receive \$1000 per month from May 2014 until April 30, 2015, when alimony was terminated. The court also ordered that the alimony terminate immediately if Tom died, remarried, or co-habitated for more than three days in a seven-day period.

In reviewing domestic-relations cases, we consider the evidence de novo but will not reverse a trial court's findings unless they are clearly erroneous or clearly against the preponderance of evidence. *Erwin v. Erwin*, 2010 Ark. App. 586, at 2. On appeal, the test is not whether there is clear and convincing evidence to support the trial court's finding, but whether this court can say that the trial court's findings are clearly erroneous. *Fletcher v. Fletcher*, 2011 Ark. App. 89, at 5, 381 S.W.3d 129, 132. A finding is clearly erroneous when, even though there is evidence to support it, the appellate court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Erwin*, 2010 Ark. App. 586. Furthermore, on review, we defer to the trial court's evaluation of the credibility of the witnesses. *Id.*

For his first point on appeal, Tom argues that the trial court abused its discretion in failing to award him child support, although the parties received joint custody of the children. The purpose of child support is to provide for the children's reasonable needs. *Gilbow v. Travis*, 2010 Ark. 9, 372 S.W.3d 319. Here, the record shows that Tom requested and was awarded joint custody. In joint-custody arrangements it is within the trial court's discretion to refuse an award of support to either parent. *Office of Child Support Enforcement v. Burroughs*, 100 Ark. App. 128, 130, 265 S.W.3d 132, 134 (2007). Further, Tom received the benefit of nanny services provided at Linda's expense and one half of a \$1.5 million marital estate. Based on the facts and

circumstances of the parties' joint-custody arrangement, we see no abuse of discretion in the trial court's order that neither party pay child support and affirm on this point.

Next, Tom claims that the trial court erred in its treatment of Linda's non-vested stock options, claiming that the options received by Linda during the marriage should be treated as marital property regardless of whether the stock had vested. In the decree, the trial court specifically addressed Linda's non-vested and vested stock, requiring that any stock that had vested by January 31, 2012, be treated as marital property. In his argument, Tom does not specifically identify the potential stock options, the future value of the options, or how and when they vest. As such, because Tom had the duty to demonstrate error and he failed to carry his burden on this point, we affirm the trial court's stock-division determination as it stands. *Cash v. Cash*, 275 Ark. 335, 629 S.W.2d 298 (1982).

Next, Tom takes issue with the alimony award that was based on a three-year declining scale, with an eventual complete termination. The purpose of alimony is to rectify the economic imbalance in earning power and standard of living of the parties to a divorce in light of the particular facts of each case. *Matthews v. Matthews*, 2009 Ark. App. 400, at 6, 322 S.W.3d 15, 19. The primary factors in determining alimony are the financial need of one spouse and the ability of the other spouse to pay. *Elliott v. Elliott*, 2012 Ark. App. 290, at 3–4, ___ S.W.3d ___, ___. The trial court may also consider other factors, including the couple's past standard of living, the assets of each party, and the duration of the marriage. *Id.* The decision whether to award alimony is a matter that lies within the trial court's sound discretion, and on appeal, we will not reverse the trial court's decision absent an abuse of that discretion. *Id.* An abuse of discretion means

discretion improvidently exercised, i.e., exercised thoughtlessly and without due consideration.

Id.

The appropriateness of an alimony award is determined in light of the facts in each case, and the trial court is in the best position to view the needs of the parties in connection with an alimony award. *Stuart v. Stuart*, 2012 Ark. App. 458, ___ S.W.3d ___. Here, the trial court considered the relative earning power of each party, the duration of the marriage, and the parties' standard of living. The trial court then specifically structured the settlement so that Tom (who holds an MBA) would be allowed ample time to train for re-entry into the workforce, considering that prior to voluntarily leaving the workforce he had been gainfully employed for numerous years, making a salary in the range of \$60,000 to \$70,000 per year. Based on our reading of the record, we hold that the trial court in this case applied the correct legal standard, found facts that were supported by the evidence presented, and did not abuse its discretion in the amount and duration of its alimony award. As such, we affirm the trial court's alimony award.

Finally, Tom claims that the final clause of the alimony award, setting out the circumstances that would result in termination of alimony, was counter to Arkansas law. Specifically, Tom takes issue with the language that calls for termination of his alimony if he co-habitates for more than three days in a seven-day period. Linda responds that because the alimony has not been terminated as a result of the language, the dispute is not ripe for our review and should not be considered on appeal. While we agree that for us to weigh in on the termination provision of the trial court's alimony award would be something akin to an

“advisory opinion,” we note that this case involves rehabilitative alimony as opposed to permanent alimony. Rehabilitative alimony is payable for a short, specified duration of time, the primary purpose of which is to afford the recipient a specific period of time in which to become self-supportive and is subject to material changes in circumstances in the parties’ personal and financial circumstances. *See Elliott*, 2012 Ark. App. 290, ___ S.W.3d ___. Here, the cohabitation language in the alimony-termination provision is simply a statement of changed circumstances. Therefore, we see no error in the trial court’s decision to set out the circumstances that would warrant a change in the rehabilitative alimony on the front rather than the tail end and affirm the divorce decree in its entirety.

Affirmed.

WYNNE and GLOVER, JJ., agree.

Brenda Horn Austin, for appellant.

Taylor Law Partners, LLP, by: *William B. Putman*, for appellee.