

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002184-ME

DEBORAH N. FROST

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE MATTHEW B. HALL, JUDGE
ACTION NO. 03-CI-01378

GLENN M. FROST

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

DIXON, JUDGE: Deborah Frost (Mother) appeals from a Hardin Circuit Court order that denied her motion for a judgment of child support arrearage against Glenn Frost (Father). Finding no error, we affirm.

In 2003, Mother initiated divorce proceedings, and the parties signed a settlement agreement in 2007. The settlement agreement established Father's monthly child support obligation of \$709.00, for the parties' three children. The

parties shared joint custody of the children, with Mother designated as the primary residential custodian. The court accepted the settlement agreement and issued a decree of dissolution in March 2008.

In August 2010, a wage garnishment was established for payment of Father's monthly support obligation. Approximately one year later, Father filed a motion to modify child support and to modify the parenting-time schedule; thereafter, Mother sought to suspend Father's visitation and filed a motion to hold Father in contempt, alleging he owed her nearly \$25,000.00 in child support from July 2007 through May 2010.

On August 9, 2012, the court held an evidentiary hearing and heard testimony from several witnesses, including the parties and their children. The trial court rendered an order denying Mother's motion for contempt and request for child support arrearage. The court made thorough written findings, concluding that the evidence established that Mother and Father never followed the terms of the settlement agreement because they lived together as a family between July 2007 and May 2010. Based on the evidence presented, the court found that Father had contributed to household expenses by paying for groceries, utilities, rent, and car payments. Mother now appeals.

We first address Mother's argument regarding pretrial discovery. At the final hearing, the court found that Mother had not responded to Father's requests for admissions; accordingly, the court deemed the requests admitted

pursuant to CR 36.01(2).¹ Mother asserts the court erred by relying on the admissions instead of allowing her the opportunity to withdraw or amend the admissions. *See* CR 36.02.

According to CR 36.01(2),

[e]ach matter of which an admission is requested . . . is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.]

A trial court has broad discretion when ruling on discovery disputes and evidentiary issues. *Manus, Inc. v. Terry Maxedon Hauling, Inc.*, 191 S.W.3d 4, 8 (Ky. App. 2006). Although the court deemed the requests admitted, the court explained that the admissions were not the sole evidence presented and that ample evidence was introduced at trial to support the admissions. We conclude the court did not abuse its discretion by denying Mother's request to amend or withdraw the admissions.

Next, Mother contends the court erred by finding that Father did not owe her \$24,815.00 in back child support. She relies on the terms of the parties' settlement agreement, which required Father to pay monthly child support, and she asserts that he failed to make any payments between July 2007 and May 2010. Mother's

¹ For the first time on appeal, the parties acknowledge that Mother had filed a response to the discovery requests, although the response was filed beyond the thirty-day period provided by CR 36.01(2). Since the parties proceeded below as if no response had been filed, our review on appeal is limited to the arguments that were actually raised before the trial court. *Skaggs v. Assad*, 712 S.W.2d 947, 950 (Ky. 1986).

contention overlooks the court's factual finding that the parties chose not to follow the separation agreement.

It is well-settled "that oral agreements to modify child support obligations are enforceable, so long as (1) such agreements may be proved with reasonable certainty, and (2) the court finds that the agreement is fair and equitable under the circumstances." *Whicker v. Whicker*, 711 S.W.2d 857, 859 (Ky. App. 1986).

Here, Mother and Father presented conflicting testimony regarding their relationship after the divorce. Father asserted that he resided with Mother and the children approximately 65% of the time. Father provided bank records, canceled checks, and receipts to support his contention that he paid household expenses in lieu of child support. Mother asserted that Father resided in his own apartment; however, she admitted that Father resided with the family for brief periods of time, that they traveled together, and that he paid some of the utilities and household expenses. Mother also acknowledged that she and Father did not have a final break-up of their relationship until 2011. The testimony of the children also indicated that Father had lived in the marital home off-and-on in the years following the divorce.

On appeal, we will not disturb the trial court's findings of fact "unless they are clearly erroneous, and due regard must be given to the opportunity of the trial judge to view the credibility of the witnesses." *Polley v. Allen*, 132 S.W.3d 223, 228 (Ky. App. 2004). A finding of fact is not clearly erroneous if it is supported

by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998).

In the case at bar, the trial court heard extensive testimony and accepted evidence from the parties. The crux of Mother's argument is that she disagrees with how the court weighed the evidence. At the conclusion of the hearing, the court explained that it believed Father's version of events and pointed out aspects of Mother's testimony that it found incredible. The court concluded that the parties attempted to reconcile following the divorce and lived together as a family nearly 65% of the time from 2007 until 2010. The court found that during the period of reconciliation, the parties chose not to follow the terms of the settlement agreement; instead, Father helped support the household by paying for groceries, utilities, rent, and car payments. Although Mother disagrees with Father's version of events, the "[v]eracity of a witness is judged by the trier of fact, and we cannot substitute our view as to credibility." *Mauk v. Mauk*, 873 S.W.2d 213, 216 (Ky. App. 1994). Our review of the record indicates the trial court's findings were supported by substantial evidence; accordingly, we find no error in the court's decision to deny Mother's motion for back child support.

For the reasons stated herein, we affirm the judgment of the Hardin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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