NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1629

DEBRA DAUZAT MORRIS

VERSUS

BRIAN CHRISTOPHER MORRIS

DATE OF JUDGMENT: JUN 05 2015

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
NUMBER 62796, DIVISION "E", PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE ALVIN TURNER, JR., JUDGE

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Debra Dauzat Morris
Baton Rouge, Louisiana

Plaintiff-Appellant
In Proper Person

Gregory S. Johnson
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Brian Christopher Morris

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

Plaintiff-appellant, Debra Dauzat Morris, appeals the trial court's judgment denying her relief pursuant to her motion to enforce a child support obligation, for an income assignment, and for payment of child support arrearages against defendant-appellee, Brian Christopher "Chris" Morris. We affirm.

BACKGROUND

The parties married in 1983 and divorced on January 19, 1999. They had two children. In accordance with a joint stipulation they had agreed to on December 17, 1998, the trial court's January 19, 1999 judgment ordered, among other things, that Chris: (1) pay $1,000.00 per month to Debra for child support; (2) maintain medical and dental coverage and pay 50% of all the uncovered medical and dental expenses; and (3) pay the tuition of the children to attend private school. The judgment also specified that each party claim one child as a dependent on income tax returns.

On March 7, 2014, Debra filed a motion seeking enforcement of child support and an income assignment for payment of child support arrearages. She averred entitlement to a judgment for arrearages for Chris's failure to pay child support for ten years.[1] After a hearing, the trial court concluded that Debra was not entitled to any relief. A judgment denying her motion was signed on August 18, 2014. Debra appeals.

DISCUSSION

Generally, a child support award remains in effect until it is modified or terminated by the court. ***Trisler v. Trisler***, 622 So.2d 730, 731 (La. App. 1st Cir. 1993) (citing ***Halcomb v. Halcomb***, 352 So.2d 1013, 1015-16 (La. 1977)). A judgment of the court awarding child support can be extrajudicially modified by

[1] Debra expressly limited her request for recovery of arrearages to ten years, conceding that was the peremptive period for child support obligations. See La. C.C. art. 3501.1.

agreement of the parties. Such an agreement must be clearly proven, it must meet the requisites of a conventional obligation, and it must not interrupt the child's maintenance or upbringing or otherwise work to his detriment at the time it was made. The burden of proof of the existence of the agreement is on the party seeking to modify his obligation under the judgment. ***Trisler***, 622 So.2d at 731 (citing ***Dubroc v. Dubroc***, 388 So.2d 377, 380 (La. 1980)).

It is undisputed that Chris paid all the children's private school tuition in accordance with the January 19, 1999 agreement. According to Chris, while tuition increased annually, his income did not. He and Debra discussed his struggles to maintain his home and pay the private school tuition. Debra agreed to accept a reduced amount of child support. First, they agreed to, and he paid, $750.00 per month. The monthly amount of child support was then reduced by mutual consent to $500.00 per month in 2001. By 2002, Debra had agreed to accept $250.00 for his monthly child support obligation. Chris introduced into evidence the forms he had submitted to his employer showing amounts that had been automatically deposited into Debra's checking account for the years 2001 and 2002, consistent with his testimony. He also placed in evidence a form he submitted to his employer on January 6, 2003, discontinuing the transfer of any money into Debra's account. Debra did not recall having made the agreements for reduced amounts of child support but admitted to the trial judge it was "possible" she had agreed to the original reduction.

Chris testified that beginning in January 2003, the parties agreed that when Debra needed money, Chris would pay her some, or all, of the amount she requested depending on his ability to do so. Chris's testimony was corroborated by a letter, dated October 14, 2003, handwritten by Debra. The letter stated in part, "I no longer receive child support – which you didn't ask me to do, but I did on my own because I wanted you to have more money to provide for our children."

Admitted into evidence were cancelled checks issued from Chris to Debra subsequent to the 2003 agreement showing that from February 25, 2004, until January 24, 2007, Chris paid to Debra $4,350.00 in various amounts at various times in accordance with the parties' January 2003 agreement. The payments were not made in a standard amount or at regular intervals.

Debra identified her October 14, 2003, handwritten letter that she acknowledged she sent shortly after the parties had changed their visitation schedule by a verbal agreement. Debra stated that she and Chris worked it out to where he had the children one week and she had them the next. According to Debra, since the parties were sharing equal time with the children, she agreed not to collect any more monthly child support payments. She testified that the agreement not to collect child support payments was to end when the 50/50 physical custody ended.

Chris testified that after having paid Debra on an as-needed basis, in 2007, he stopped paying Debra any monthly child support obligation in accordance with a new agreement they had reached. Noting that it was her idea, Chris explained that he agreed to give her the right to claim the other child as a dependent on her income tax return in exchange for which he was no longer obligated to pay anything toward the monthly child support obligation. An email issued by Debra from her former account, dated February 13, 2007, in which she made the offer, and Chris's response, dated March 8, 2007, in which he accepted it were admitted into evidence. Both parties testified that after the email exchange, Debra claimed both children as dependents on her income tax returns. And Debra admitted that the parties had agreed that Chris would forgo monthly child support payments in exchange for her right to claim on her income tax returns the dependent child tax deduction he had been allotted in the January 19, 1999 judgment.

The trial judge, who had the opportunity to observe the demeanor of the witnesses, chose to believe Chris's version of the facts. His evaluation of the credibility of the witnesses should not be disturbed on appeal absent manifest error, and his findings in that respect should be accorded very great weight on review. See ***Stobart v. State through Dep't of Transp. and Dev.***, 617 So.2d 880, 882 (La. 1993). Because a reasonable factual basis exists to support the trial court's conclusion that the parties entered into a clear and specific agreement to first modify the monthly payments of child support to an as-needed basis and later to terminate them altogether, we must affirm the denial of relief to Debra. See ***Stobart***, 617 So.2d at 882.

On appeal, Debra has not challenged the trial court's implicit finding that the parties' agreements met the requisites of a conventional obligation. The parties' modification of the January 19, 1999 order of $1,000 per month child support payments to whenever Debra needed child support was proven by Chris's testimony, Debra's handwritten letter, and documentary evidence showing what actions Chris took in conformity with the agreement. Additionally, the trial court clearly weighed Debra's credibility against her, finding it "incredible" that Debra, who is an attorney, did not know how to file a rule to collect child support after twenty-four years of legal practice. It also weighed against Debra her testimony that she did not know that a child support obligation could be collected by the district attorney. Thus, the evidence implicitly supports a finding that Debra consented to both agreements until approximately 60 days before she filed the motion before us, when Chris refused to pay for out-of-state, private school tuition for the parties' major child, which made her "furious." As such, Debra's inaction in pursuing collection of child support is further corroboration of the parties' January 2004 agreement to modify Chris's monthly child support to an as-needed basis. See ***Stobart***, 617 So.2d at 882.

Insofar as the agreement reached between the parties in 2007 to further modify the child support obligation from as-needed to nothing, Debra's admission that she had agreed to the exchange for the right to claim her other child as a deduction on her income tax returns along with the February 13, 2007 and March 8, 2007 emails corroborate the modification. Thus, the trial court correctly concluded that the parties' agreements met the requisites of conventional obligations. See La. C.C. arts. 1756-1905 (providing for obligations in general) and art. 1846 (providing that an oral contract in excess of $500 must be proved by at least one witness and other corroborating circumstances) in particular.

In reaching our conclusion, we note the trial court expressly found that the parties' agreements to modify child support did not interrupt the maintenance or upbringing of the children and were in their best interest. In reaching the latter finding, the trial court relied on Debra's testimony stating that the purpose of the January 2003 agreement was to allow Chris the ability to better provide for their children and to keep the peace between the parties which was for the benefit of the children. Chris confirmed the financial hardship he was under as a result of the private school tuition obligation he had, testifying that after payment of tuition, he was trying to live on less than minimum wage. On appeal, Debra has not challenged either the trial court's finding that the modifications to Chris's child support obligation did not interrupt the maintenance or upbringing of the children or that it was in the best interest for her to enter the agreements in light of Chris's financial difficulties. And nothing in the record establishes that either finding is manifestly erroneous or clearly wrong. See ***Stobart***, 617 So.2d at 882.

DECREE

For these reasons, the trial court's judgment is affirmed. Appeal costs are assessed against plaintiff-appellant, Debra Dauzat Morris.

AFFIRMED.