NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1568

AMY LOUISE EASTER ANDERSON

VERSUS

LARRY EDMOND ANDERSON

DATE OF JUDGMENT: SEP 15 2017

ON APPEAL FROM THE TWENTY-FIRST JUDICIAL DISTRICT COURT
NUMBER 2012-0001156, DIVISION J, PARISH OF TANGIPAHOA
STATE OF LOUISIANA

HONORABLE JEFFREY CASHE, JUDGE

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BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

Disposition: AFFIRMED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS.

CHUTZ, J.

Defendant-appellant, Larry Edmond Anderson, appeals the family court's judgment ordering payment of child support to his ex-wife, plaintiff-appellee, Amy Louise Easter Anderson, and awarding her sums for child support arrearages. We affirm in part, vacate in part, and remand.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married in 1997 and had three children. In April 2012, Mrs. Anderson filed a petition for divorce. In June 2012, the parties entered into a stipulated judgment in which they agreed to joint custody of the children with Mrs. Anderson designated as the domiciliary parent. The stipulated judgment set forth a schedule of visitation for Mr. Anderson and provided that Mr. Anderson would pay Mrs. Anderson $1,550.00 per month in child support. In July 2013, a judgment of divorce issued.

At the end of the summer of 2015, after Mr. Anderson exercised his stipulated visitation, the youngest child returned to Mrs. Anderson's residence, but the two older children expressed their desire to remain with Mr. Anderson. Apparently, Mrs. Anderson did not challenge the decision of the two older children and they remained primarily in Mr. Anderson's physical custody despite the terms of the June 2012 stipulated judgment. Notwithstanding the change of physical custody, Mr. Anderson continued to pay Mrs. Anderson the amount of $1,550.00 per month in child support.

In September 2015, Mr. Anderson filed a rule to modify custody, seeking designation as the domiciliary parent of the two older children. He also averred that the change in custody entitled him to termination of all child support payments to Mrs. Anderson.

A hearing on Mr. Anderson's rule was held on February 11, 2016. An interim judgment issued on March 24, 2016, wherein the family court awarded

primary physical custody of the two older children to Mr. Anderson. According to the terms of the interim judgment, the two older children were to reside with Mr. Anderson from Monday through Friday; Mrs. Anderson was granted visitation the first, second, and fourth weekend of each month. The youngest child remained subject to the terms of the custody schedule set forth in the June 2012 stipulated judgment.[1]

In the March 24, 2016 interim judgment, the family court also concluded that the amount for the youngest child would be determined by Worksheet A of the Child Support Guidelines and the amount of child support for the older two children would be calculated by Worksheet B. The parties were ordered to exchange financial information to allow for calculation of the child support obligations. Designation of a domiciliary parent was not set forth in the interim judgment.

Mrs. Anderson subsequently filed rules to re-calculate child support and to have the amount of arrearages set made executory. A hearing was held on May 20, 2016 at which documentary and testimonial evidence was adduced, and a judgment was issued on July 1, 2016. Pursuant to calculations determined by an application of Worksheet A, the family court ordered Mr. Anderson to pay to Mrs. Anderson $1,100.00 per month for the support of the youngest child beginning on May 1, 2016. Mr. Anderson was also ordered to pay Mrs. Anderson $981.00 per month for support of the two older children beginning on May 1, 2016 as calculated by an application of Worksheet B of the Child Support Guidelines.

The judgment also ordered Mr. Anderson to pay to Mrs. Anderson the amount of $3,116.48 for child support arrearages from November 1, 2015 through February 10, 2016. An additional arrearage in the amount of $3,365.50 was

[1] The interim judgment also established a visitation schedule for holidays and summers while the children were out of school.

assessed against Mr. Anderson for having failed to pay child support from February 11, 2016 through May 15, 2016. Mr. Anderson appeals.[2]

DISCUSSION

In his appellate brief, Mr. Anderson acknowledged that subsequent to his appeal of the July 1, 2016 judgment, the family court terminated his obligation to pay child support to Mrs. Anderson, retroactive to September 12, 2016. Therefore, on appeal, Mr. Anderson's challenge of the July 1, 2016 judgment is expressly limited to the amounts set as arrearages and the amount he was required to pay in child support between May 1, 2016 and September 11, 2016.[3]

Mr. Anderson contends that in ordering the monthly child support awards and rendering arrearages, the family court failed to consider his inability to work full time commencing in November 2015 due to his medical condition. He also complains that the family court failed to account for the additional expenses he incurred as a result of having had primary physical custody of the two older children. As we have already noted, pursuant to the stipulated judgment, Mr. Anderson was obligated to make child support payments in the amount of $1,550.00 for the time period between November 1, 2015 and February 10, 2016.

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[2] In the appealed judgment, the family court concluded that Mr. Anderson was in contempt of court for having failed to pay the full amount of child support to Mrs. Anderson for the months of November 2015 through February 2016 and ordered him to pay Mrs. Anderson's attorney's fees and court costs. The rights of the parties to claim the children as dependents for federal and state income tax purposes were also set forth. And Mr. Anderson was ordered to pay $250.00 per month in arrearages to Mrs. Anderson until all arrearages have been paid. These portions of the family court's judgment have not been appealed.

[3] Mr. Anderson asserts that the family court should not have calculated and ordered child support based on the custody arrangement set forth in the March 24, 2016 interim judgment since it was an interlocutory, rather than a final, judgment. While it is true that the interim judgment was interlocutory, see La. C.C.P. art. 1841, Mr. Anderson has offered no support for his assertion that the family court could not base the child support determination on the custody set forth in the interlocutory decree. The parents' obligation to pay child support is continuous. See La. R.S. 9:315A. The testimony of each parent confirmed the living arrangements of the children at the time that child support was set forth in the interim judgment. Nothing precludes Mr. Anderson from seeking a modification of the child support award based on material changes in custody, see La. C.C. art. 142 and La. R.S. 9:311A, which he acknowledges he has already successfully done. Mindful that Mr. Anderson has not suggested that another custody arrangement should have been used to determine child support, we find no merit in this assertion.

An appellate court will not disturb a child support order unless there is an abuse of discretion in the amount awarded or manifest error in the family court's factual findings. See ***State ex rel. Dep't of Children & Family Services v. Peters***, 2014-1800 (La. App. 1st Cir. 6/5/15), 174 So.3d 1200, 1202.

Child Support Owed From November 1, 2015 through February 10, 2016:

It is undisputed that Mr. Anderson was employed by the Louisiana State Police and that in November 2015, he underwent back surgery. He testified that he has been unable to work since the surgery and had no idea when he would be cleared to return to work. He was on sick leave for which his employer was "actually deducting out of [his] time."

Mr. Anderson identified his W-2 forms from 2015, reflecting income of $92,585.00, which supports a finding of monthly wages of $7,715.42 for the time period between November 1, 2015 and December 31, 2015. Additionally, Mr. Anderson's paycheck stub for the pay period ending on March 27, 2016 reflected year-to-date wages of $26,569.00. Thus, the evidence showed that, commencing on January 1, 2016, Mr. Anderson had earned monthly wages of $8,175.08 despite his medical condition. The family court was not manifestly erroneous in concluding that Mr. Anderson was able to contribute to the child support of his children despite his inability to work full time because of his medical condition. Thus, the family court did not abuse its discretion in finding Mr. Anderson owed Mrs. Anderson child support at the rate of $1,550.00 per month from November 1, 2015 through February 10, 2016.

Insofar as Mr. Anderson's assertion that the family court erred in failing to account for his additional expenses, it is undisputed that commencing in November 2015, Mr. Anderson reduced the amount of child support paid to Mrs. Anderson to $517.00 per month. Mr. Anderson reasoned that since he was providing direct support for the maintenance of the two older children who primarily resided with

him, he was entitled to reduce the child support payment to Mrs. Anderson. Although Mr. Anderson stated that he had made payments for basketball, driver's education, a driver's license, and clothing, the record is devoid of any specific evidence showing the actual amounts of additional expenses he incurred. He also stated that he had paid approximately $1,400.00 for a dental bill of one of his children, but Mrs. Anderson testified that she had paid dental bills for her youngest child who resides with her. She also stated that Mr. Anderson had paid for her youngest child's last doctor's visit and that she had given Mr. Anderson permission to deduct her portion of that expense from the child support payment. Mrs. Anderson also stated that despite the changed living arrangements, she continued to be responsible for the children's school expenses, which included uniforms and supplies.

While Mr. Anderson filed the rule to terminate child support with his request to modify custody on September 24, 2015, he did not file a separate request to reduce his child support obligation prior to that date. The record shows that Mr. Anderson's rule for a change in custody was originally set for October 19, 2015. At Mr. Anderson's request, the matter was continued until November 9, 2015. At the hearing, Mrs. Anderson appeared without legal representation and the court granted her a continuance, resetting the matter to December 14, 2015. No one appeared in court on December 14, 2015, and the family court reset the hearing to January 13, 2016, at which time the matter was finally heard. Since the parties were unable to complete the presentation of evidence that day, upon agreement of counsel, the bench trial was continued until February 11, 2016. Thus, the record shows that the custody hearing was delayed for several reasons, including for the convenience of Mr. Anderson.

Considering the absence of a request for a reduction in child support before it, the numerous continuances on Mr. Anderson's request for termination of child

support as part of his rule to modify custody, and the lack of evidence demonstrating either the actual expenses Mr. Anderson incurred or the diminution of expenses Mrs. Anderson sustained as a result of his physical custody of the two older children, we find no error by the family court in its imposition of child support in the amount of $1,550.00 per month pursuant to the stipulated judgment. Thus, the family court correctly awarded Mrs. Anderson the sum of $3,116.48 for arrearages from November 1, 2015 through February 10, 2016.[4]

Child Support Owed After February 10, 2016:

Mr. Anderson next asserts that the family court erred in concluding that he owed arrearages of $3,365.50 for the time period between February 11, 2016 and May 15, 2016. In order to ascertain whether the arrearage amount is correct, we must determine whether child support for that time period was properly computed. In this regard, Mr. Anderson contends that the family court erred when it applied Worksheet B to determine the amount of child support for the two older children.

According to La. R.S. 9:315.9B, Worksheet B is the correct form to use when the parties have "shared custody" of the children. Subsection A(1) explains that shared custody means that each parent has physical custody of the child for an approximately equal amount of time. In this case, the March 24, 2016 interim custody order provides that Mr. Anderson has primary physical custody of the two older children and Mrs. Anderson has primary physical custody of the youngest child. And in their May 20, 2016 testimony, the parties confirmed these living arrangements. Thus, the record establishes that the parties did not have shared

[4] This amount included credit for Mr. Anderson's monthly child support payments of $517.00 to Mrs. Anderson.

custody of the children.[5]

To the extent that the family court's order directing the use of Worksheet B for the two older children was intended as a deviation from the guidelines, La. R.S. 9:315.1B(1) requires specific oral or written reasons for the deviation, including a finding as to the amount of support that would have been required under a mechanical application of the guidelines and the particular facts and circumstances that warranted a deviation from the guidelines. Although Section 315.1B(1) mandates that the reasons "shall be made part of the record of the proceedings," since the parties have failed to ensure such an articulation was made a part of the appellate record, we are constrained to remand this matter to the family court. See ***Leger v. Leger***, 2000-0505 (La. App. 1st Cir. 5/11/01), 808 So.2d 632, 639-40.

Therefore, the family court's awards of $1,100.00 per month for the youngest child and $981.00 per month for the two older children in child support beginning May 1, 2016 are vacated. Because the family court's monthly support awards, commencing on February 11, 2016 are vacated, that portion of the judgment which awarded arrearages of $3,365.50 for the time period of February 11, 2016 through May 15, 2016 is likewise vacated. The matter is remanded to the family court for a calculation of the correct amount of child support owed by Mr. Anderson from February 11, 2016 through September 10, 2016. A written or oral determination of the amount of support under a mechanical application of the guidelines must be made part of the record of the proceedings. In the event that the family court finds a deviation from that amount was warranted, articulation of the

[5] Although the parties exercised split primary physical custody of the children, an application of the provisions of La. R.S. 9:315.10 (setting forth the effect of a split custody arrangement) require a determination that each party was "the sole custodial or domiciliary parent of at least one child to whom support is due." Since at the time the family court made the child support awards the rule that Mr. Anderson filed in September 2015 seeking a modification of domiciliary status had not been taken up, the provisions of La. R.S. 9:315.10 cannot be directly applied to the facts of this case.

reasons for the deviation -- either orally or in writing -- must also be made part of the record of the proceedings.

DECREE

For these reasons, that portion of the family court judgment, which set arrearages from November 1, 2015 through February 10, 2016 in the amount of $3,116.48, is affirmed; that portion of the family court judgment which orders Mr. Anderson to pay to Mrs. Anderson child support in the amount of $1,100.00 per month for the care and support of the youngest child pursuant to Worksheet A commencing on May 1, 2016 is vacated; that portion, which orders Mr. Anderson to pay to Mrs. Anderson child support in the amount $981.00 for the care and support of the two older children pursuant to Worksheet B commencing on May 1, 2016, is vacated; and that portion of the judgment, which sets arrearages beginning on February 1, 2016 through and until May 15, 2016 in the amount of $3,365.50, is vacated. The matter is remanded to the family court with instructions to conduct a hearing consistent with the views expressed in this opinion. Appeal costs are assessed one-half to Mr. Anderson and one-half to Mrs. Anderson.

AFFIRMED IN PART; VACATED IN PART; REMANDED WITH INSTRUCTIONS.