

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2017 CA 1065**

**STEPHANIE CLAIRE ELMER ROBIN**

**VERSUS**

**RONALD MICKEL ROBIN, JR.**

**Judgment Rendered: MAY 10 2018**

**Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of Livingston  
State of Louisiana  
Docket Numbers 102270**

**Honorable Jeffery T. Oglesbee, Judge Presiding**

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**BEFORE: WHIPPLE, C.J., MCDONALD, AND CHUTZ, JJ.**

## WHIPPLE, C.J.

This matter is before us on appeal by plaintiff/appellant, Stephanie Claire Elmer Robin, from a March 2, 2017 judgment of the trial court, ordering defendant, Ronald Mickel Robin, Jr., to pay child support arrearages in the amount of \$96,474.00, but denying her request for court costs and attorney's fees. For the reasons that follow, we affirm in part, reverse in part, and remand.

### FACTS AND PROCEDURAL HISTORY

Stephanie Claire Elmer Robin and Ronald Mickel Robin, Jr. were married on October 31, 2001, and three children were born of their union, D.R., M.R., and J.R.<sup>1</sup> The parties subsequently divorced by judgment dated October 17, 2005, and the parties were awarded joint custody of the children with Stephanie designated as the domiciliary parent.<sup>2</sup> In the judgment of divorce, the trial court ordered that Ronald pay Stephanie interim child support in the amount of \$100.00 per week, pending a hearing on the issue of setting the child support award. Thereafter, following a January 9, 2006 hearing, the trial court signed a judgment dated June 27, 2006, ordering Ronald to pay child support in the amount of \$846.00 per month, "retroactive to the date of filing of the initial pleadings," *i.e.*, June 3, 2005, as well as an additional \$25.00 per month toward any past due arrearages.

On June 17, 2015, Stephanie filed a rule for contempt and to increase child support.<sup>3</sup> Therein, she contended that Ronald owed arrearages in the amount of "at least \$86,000.00" and requested that this amount be made executory, and that

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<sup>1</sup>D.R. was born on August 9, 2001; M.R. was born on December 11, 2002; and J.R. was born on June 14, 2004.

<sup>2</sup>The judgment of divorce awarded the parties "joint custody of the minor children born of their marriage," but then named only two of the parties' three children, D.R. and M.R. This oversight may have resulted from the fact that Stephanie had previously filed a petition for divorce in November of 2003, listing the parties' only two children who had been born as of that time.

<sup>3</sup>The trial court rendered a separate judgment on Stephanie's request for an increase in child support, which is addressed in our opinion in the companion appeal of Robin v. Robin, 2017 CA 1064, also handed down this date.

Ronald be held in contempt for his willful failure and refusal to comply with the court's order.

Stephanie's rule for increase and contempt was heard by the trial court on September 8, 2015, and August 3, 2016. With regard to the issues of arrearages and contempt, at the conclusion of the hearing on August 3, 2016, the trial court stated that it was going to hold Ronald in contempt for his failure to pay his child support obligation to Stephanie, but because the court did not "necessarily find it to be willful or deliberate," it further stated that would not order him to pay attorney's fees or court costs.

Thereafter, by judgment dated March 2, 2017, the trial court found Ronald in contempt, made the total arrearages of \$96,474.00 (from June 2005 to June 2015) executory, but denied Stephanie's request for court costs and attorney's fees. From this judgment, Stephanie appeals, contending that the trial court erred in failing to award her attorney's fees and court costs upon making the past due child support payments executory pursuant to LSA-R.S. 9:375(A), where Ronald failed to meet his burden of showing that good cause existed for the denial of such an award.

### **DISCUSSION**

Pursuant to LSA-R.S. 9:375(A), when a court renders a judgment making past due child support payments executory, "it shall, except for good cause shown, award attorney's fees and costs to the prevailing party." As justification for his failure to pay the court-ordered support, Ronald asserted, at times in these proceedings, both that he was unable to pay, and further, that the parties had an extra-judicial agreement that he would pay the children's private school tuition in lieu of the court-ordered child support payments.

The party to whom a child support award is made is the party entitled to those payments and is the owner thereof. Moreover, child support remains in full

force and effect in favor of that party until the party ordered to pay it has the judgment modified or terminated by the court. However, one jurisprudential exception to that rule is when the evidence shows that the parties have *clearly agreed* to waive or otherwise modify the court-ordered payments. The burden of proof is on the party claiming the agreement to prove its existence. Hendrix v. Hendrix, 457 So. 2d 815, 817 (La. App. 1<sup>st</sup> Cir. 1984).

While the court did not give Ronald credit for any tuition payments against the arrearages owed, and thus rejected his claim that there was an agreement by Stephanie to waive the support owed, it stated that it did not “necessarily find” Ronald’s failure to pay his support obligation to Stephanie “to be willful or deliberate” because others had made some payments such that these “payments were made on [his] behalf for tuition purposes.” However, we conclude that the record does not support such a finding.

First of all, with regard to an alleged agreement between the parties that Ronald would pay the children’s tuition in lieu of child support payments, Ronald’s testimony as to such an agreement was equivocal at best. Specifically, when questioned about an alleged agreement between the parties, Ronald acknowledged that the parties had no written agreement, but stated, “Well, I mean, we agreed upon it. I mean her [sic] and I both knew, you know, I was going to pay the tuition. She never had any objection until this year.” He further testified, “She knew I was paying tuition. We’ve never had a problem until this year.” Such testimony as to Stephanie’s alleged knowledge that Ronald was paying tuition certainly does not rise to the level of evidence required to establish an agreement that any such payments made would be considered payments in lieu of court-ordered child support payments. Moreover, Stephanie wholly denied that any such agreement existed.

Additionally, the only evidence of record of tuition payments **by Ronald himself** over the ten-year period in which he failed to pay the court-ordered support is a record of two payments to the school totaling \$2,886.00, made in *August and September of 2014*, more than nine years after the effective date of Ronald's court-ordered child support obligation as set forth in the June 27, 2006 judgment. Also, although Ronald claimed in his testimony that he made tuition payments to the school altogether totaling \$51,716.00, the record is devoid of evidence of any other payments by Ronald other than the two afore-mentioned payments in 2014 totaling \$2,886.00.

As to payments by others, there is evidence of record of tuition payments totaling \$34,401.02 made by Ronald's mother, Shirley Wagner, to the children's school as follows: \$3,890.00 in October 2007; \$2,382.00 in October 2008; \$5,434.02 in October 2010; \$11,151.00 in August 2011; and \$11,544.00 in September 2014. While Ms. Wagner likewise testified that she made additional tuition payments to the school by check, no additional checks were introduced into evidence to support such testimony.<sup>4</sup> Moreover, Ronald acknowledged that Stephanie's parents also made payments toward the children's tuition and registration fees for the 2008-2009, 2009-2010, 2010-2011, 2011-2012 school years, which, according to records obtained from the school, totaled over \$36,000.00.<sup>5</sup>

Thus, the record herein clearly demonstrates that both the maternal and paternal grandparents of the children greatly assisted with the children's private school tuition over the years. However, the record does not establish that Ronald

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<sup>4</sup>Notably, while Ronald testified that he paid the children's tuition in 2012 and 2013 "upfront" from a BP settlement he had obtained, his mother testified that **she** paid tuition for the 2012-2013 and 2013-2014 school years, totaling \$23,566.01. No copies of any checks were introduced into evidence to support either Ronald or his mother's testimony as to these alleged payments.

<sup>5</sup>The payment history obtained from the school also demonstrates that Stephanie likewise made payments on the children's tuition for the 2015-2016 school year.

and Stephanie entered into any extra-judicial agreement such that he or his mother would pay the children's private school tuition in lieu of his obligation to pay her court-ordered child support. Accordingly, the record also does not support a finding that the tuition payments made by Ronald's mother were child support "payments ... made on [Ronald's] behalf for tuition purposes." Moreover, even if such a finding were supported by the record, we note that the total established tuition payments made by Ronald (of only \$2,886.00) together with evidence of the tuition checks paid by Ronald's mother (totaling \$34,401.02) fall far short of the child support arrearages which the trial court (correctly) determined were owed by Ronald.

Considering the foregoing and the record as a whole, we conclude that the record does not support a finding that Ronald demonstrated "good cause" for his failure to pay Stephanie court-ordered child support, with accumulated arrearages of \$96,474.00. Thus, we must likewise conclude that the trial court abused its discretion in failing or refusing to award Stephanie attorney's fees and costs pursuant to LSA-R.S. 9:375(A). Hendrix, 457 So. 2d at 819; see also Bickham v. Bickham, 2002-1307 (La. App. 1<sup>st</sup> Cir. 5/9/03), 849 So. 2d 707, 711-712. Accordingly, we must reverse the portion of the trial court's March 2, 2017 judgment denying Stephanie's request for attorney's fees and costs and remand this matter for the trial court to render such an award in accordance with LSA-R.S. 9:375(A).

### **CONCLUSION**

For the above and foregoing reasons, the portion of the trial court's March 2, 2017 judgment denying Stephanie Robin's request for attorney's fees and costs for Ronald Robin's failure to pay his child support obligation is hereby reversed. In all other respects, the judgment is affirmed. The matter is remanded to the trial court for further proceedings fixing the amount of attorney's fees and costs due and

owed to Stephanie Robin by Ronald Robin consistent with the views expressed herein. All costs of this appeal are assessed against Ronald Robin.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**