

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 1075

et al
TMH

ANDREA CEOLA BELL

VERSUS

TERRAL CARL JACKSON, JR.

Judgment Rendered: MAY 31 2019

Appealed from the
Family Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 206826

Honorable Charlene Charlet Day, Judge Presiding

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Andrea Ceola Bell

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Counsel for Defendant/Appellee
Terral Carl Jackson, Jr.

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

PM *McCleendon, J. concurs.*

WHIPPLE, C.J.

Andrea Ceola Bell appeals a judgment of the family court that imputed income to Terral Carl Jackson, Jr. and deviated from the child support guidelines. For the following reasons, we vacate the judgment and remand this case for further proceedings.

FACTS AND PROCEDURAL HISTORY

The parties in this matter, Andrea Ceola Bell and Terral Carl Jackson, Jr., were engaged in a brief relationship, which produced one child, born on November 6, 2015. On October 27, 2016, Ms. Bell filed a Petition to Establish Paternity and Child Support in the Family Court for East Baton Rouge Parish, requesting that Terral Carl Jackson, Jr. be recognized by judicial decree as the natural and biological father of the minor child and that he be ordered to pay child support for the care and maintenance of the minor child as well as his percentage share of maintaining a policy of health, dental, and vision insurance for the minor child, and his percentage share of payments of any non-insured medical expenses and any extraordinary expenses for the minor child.¹

In discovery requests filed into the record of this proceeding, Mr. Jackson alleged he received an average income of \$3,000.00 per month as a result of his co-ownership in and ventures he promoted with the Allure Nightclub and Ultralounge (“Allure”), but was unemployed due to the closure of Allure. In his testimony at trial, Mr. Jackson indicated that he intended to find more stable employment, but he was continuing to do work as a promoter of events in addition to some work in marketing and as a disc jockey. Notwithstanding his purported \$3,000.00 average

¹Mr. Jackson’s paternity of the minor child was established in the same action as presently before this court, but that determination is not on appeal.

income, Mr. Jackson alleged monthly expenses totaling \$8,757.65.² Additionally, Mr. Jackson admitted that he has never filed federal or state income tax returns.

Trial in this matter was held on January 22 and 29, 2018, during which both Ms. Bell and Mr. Jackson testified. (R1. 3, 69; R2. 192). Evidence was introduced and included Mr. Jackson's bank statements, copies of checks and withdrawal receipts for one of Mr. Jackson's accounts, a spreadsheet Mr. Jackson and his wife created to account for some of the withdrawal receipts, an *in globo* exhibit containing invoices, estimates, proposals, and a portion of a lease agreement, and one vendor invoice history.

On February 15, 2018, the trial court issued a partial ruling in open court and imputed income of \$8,471.00 to Mr. Jackson. Following the trial court's ruling and declaration of Mr. Jackson's imputed income, counsel for Mr. Jackson orally requested a deviation from the child support guidelines based on Mr. Jackson's purported obligation for a minor daughter conceived from a different relationship and allegedly living with him in his home. In open court on February 27, 2018, the trial court granted Mr. Jackson a deviation from the child support guidelines in the amount of \$400.00. The trial court found Ms. Bell to have a gross monthly income of \$5,649.00 for the period of November 1, 2016 to December 31, 2016 and a gross monthly income of \$7,996.00 from January 1, 2017 to present.³ Applying the \$8,471.00 imputed income of Mr. Jackson with the deviation of \$400.00 to all applicable periods, the trial court ordered Mr. Jackson to pay \$845.00 in monthly

²These expenses were broken down as follows: Mortgage Note: \$1,962.65; Telephone bill: \$500.00; Natural gas and Electricity: \$250.00; Water and Parish sewerage commission or related entity for such service: \$110.00; Automobile rental or automobile note: \$653.00 and \$826.00; Gasoline for transportation: \$250.00; Automobile repairs and maintenance: \$300.00; Automobile insurance: \$500.00; Clothes: \$500.00; Food: \$800.00; Household Supplies: \$200.00; Entertainment: \$100.00; Personal Grooming: \$200.00; Laundry and cleaning expenses: \$100.00; Educational expenses: \$406.00; Charge cards: \$100.00; and Monthly attorney's fees for lawsuits: \$1,000.00. However, according to Mr. Jackson's trial testimony, some of these expenses had decreased.

³The determination of Ms. Bell's income is not the subject of this appeal.

child support for the period of November 1, 2016 to December 31, 2016; \$798.00 per month for the period of January 1, 2017 through December 31, 2017; and \$799.00 per month beginning on January 1, 2018.⁴

DISCUSSION

The guidelines for the determination of child support obligations are set forth in LSA-R.S. 9:315, *et seq.*, and rely on the combined adjusted monthly gross income of the parents. St. Philip v. Montalbano, 2016-0254 (La. App. 1st Cir. 10/31/16), 206 So. 3d 909, 912, writ denied, 2016-2110 (La. 1/13/17), 215 So. 3d 255. A trial court's determination of the monthly gross income of a parent and the parents' credibility is subject to a manifest error standard of review. State v. Alexander, 2014-615 (La. App. 3rd Cir. 11/5/14), 150 So. 3d 679, 680; also see Lambert v. Lambert, 2006-2399 (La. App. 1st Cir. 3/23/07), 960 So. 2d 921, 924-27. Generally, the trial court's order of child support is entitled to great weight and will not be disturbed on appeal absent clear abuse of discretion. Verges v. Verges, 2001-0208 (La. App. 1st Cir. 3/28/02), 815 So. 2d 356, 363, writ denied, 2002-1528 (La. 9/20/02), 825 So. 2d 1179.

Imputed Income versus Actual Income (Assignment of Error No. 1)

In the first assignment of error, Ms. Bell contends that the trial court erred by imputing a gross income to Mr. Jackson instead of using the evidence introduced at trial reflecting his significant actual earnings and income. In support, Ms. Bell relies on the evidence introduced at trial reflecting monthly deposits into two checking accounts from September 1, 2015 through March 13, 2017 totaling over \$640,000.00 and Mr. Jackson's failure to demonstrate any ordinary and necessary expenses reducing this gross income. Ms. Bell contends that the trial

⁴Notably, the judgment references Child Support Worksheets Nos. 1, 2, and 3 that were attached to set forth the resulting child support calculations, but the record does not contain any worksheets.

court should impute an income to Mr. Jackson based on the average monthly deposits into bank accounts controlled by Mr. Jackson, which was over \$40,000.00.⁵

Pursuant to LSA-R.S. 9:315(C)(3), “gross income” means income from any source, reimbursed expenses or in-kind payments received in connection with a parent’s employment, and gross receipts less ordinary and necessary expenses required to produce income for purposes of income from self-employment, proprietorship of a business, joint ownership, or partnership. The party seeking to reduce his income by including ordinary and necessary expenses bears the burden of proving that the expenses were ordinary and necessary for the production of income. Lavigne v. James, 2015-19 (La. App. 5th Cir. 5/14/15), 170 So. 3d 1163, 1166 (citing Dejoie v. Guidry, 2010-1542 (La. App. 4th Cir. 7/13/11), 71 So. 3d 1111, 1118, writ denied, 2011-1779 (La. 9/2/11), 68 So. 3d 520). “Adjusted gross income” means gross income less amounts owed for preexisting child or spousal support obligations pursuant to a court order and, subject to the court’s discretion, amounts paid on behalf of a party’s minor child not the subject of the action of the court. LSA-R.S.9:315(C).

The only evidence introduced during trial regarding Mr. Jackson’s income were copies of bank statements from the Capital One Bank (“Capital One”) account held by Allure and Mr. Jackson’s personal bank account with JP Morgan Chase Bank (“Chase”), which were introduced by Ms. Bell. Ms. Bell also introduced numerous copies of checks and cash withdrawal receipts from Allure’s Capital One account. Mr. Jackson introduced a spreadsheet he and his wife created to account for some of the withdrawals from Allure’s Capital One account, which included expenses for lease payments, alcohol, bar supplies, and food and totaled

⁵It is unclear how Ms. Bell arrived at this figure as this court was unable to arrive at the same figure based on the information contained in the exhibits introduced at trial.

over \$150,000.00 for the year 2016. However, there were no receipts or other evidence produced in connection with the spreadsheet, and, as noted by the trial court, it was “an uncorroborated statement of what he believes he spent the money on.” While Mr. Jackson introduced an invoice history from one of Allure’s vendors, Capital City Wholesale, this document only provided the totals of various invoices for Allure for 2016 and did not indicate what was ordered. According to Mr. Jackson, these amounts were all paid in cash directly to the vendor.

Additionally, Mr. Jackson introduced an *in globo* exhibit containing various documents he found relating to expenses from events he hosted at Allure or other locations with another production venture in which he participated. This exhibit also contained an unsigned copy of the lease for the building used for Allure, which indicated that the rent was \$13,650.00 per month, and a receipt for general liability insurance in the amount of \$1,527.88, which Mr. Jackson testified was a monthly expense, although he may have been delinquent on some of the payments.⁶ Again, a number of these documents in the *in globo* exhibit were uncorroborated, some were issued in Mr. Jackson’s wife’s name, some were estimates and proposals, and some were summaries of purported expenses. According to Mr. Jackson’s own repeated testimony, he kept poor business records. Notably, no verified income statements showing the gross income of the parties with documentation of current and past earnings was provided, notwithstanding the clear mandate of LSA-R.S. 9:315.2.

Mr. Jackson stated that the last time he received money from the operation of Allure was in April or May of 2016, but he could not guess what his income from Allure would have been in 2016. He also testified as to other sources of income in 2016, which he estimated to be \$8,000.00. Mr. Jackson stated that based

⁶However, as developed on cross-examination and review of Allure’s bank records, it appeared that the monthly insurance payment was shown to be about \$770.00.

on events he produced and other unidentified income sources, he believed he made about \$40,000.00 to \$45,000.00 in 2017. However, at the time of trial, Mr. Jackson was unemployed. As aptly noted by the trial court, “I really don’t know how anyone can conclusively figure out what his income is. So it’s all going to be my best guess [...] as educated as I can make it.”

In issuing its ruling, the trial court specifically referenced the Labor Department’s average income for advertising and promotions managers, which was \$75,920.00, but no evidence regarding this figure was introduced at trial or contained within the record. See LSA-R.S. 9:315.1.1(B) (providing that when the income of an obligor cannot be sufficiently established, evidence of wage and earning surveys distributed by government agencies is admissible for the purpose of imputing income). Additionally, the trial court stated that it used “other figures and reduced the income by forty-five percent coming up with [\$103,969.00 and \$155,308.00].” According to the trial court, these three figures were averaged to arrive at the imputed income to Mr. Jackson in the amount of \$8,471.00.⁷ However, based on the record herein, this court is unable to determine what information was used or what conclusions of fact were reached by the trial court in arriving at these figures.

Louisiana Revised Statute 9:315.2(A) provides as follows:

Each party shall provide to the court a verified income statement showing gross income and adjusted gross income, together with documentation of current and past earnings. Spouses of the parties shall also provide any relevant information with regard to the source of payments of household expenses upon request of the court or the opposing party, provided such request is filed in a reasonable time prior to the hearing. Failure to timely file the request shall not be grounds for a continuance. Suitable documentation of current earnings shall include but not be limited to pay stubs or employer statements. The documentation shall include a copy of the party's most recent federal tax return. A copy of the statement and documentation shall be

⁷Using the figures supplied by the trial court, the average monthly income would be \$9,311.03. Therefore, it is unclear how the trial court calculated the figure it used for Mr. Jackson’s imputed income.

provided to the other party. When an obligor has an ownership interest in a business, suitable documentation shall include but is not limited to the last three personal and business state and federal income tax returns, including all attachments and all schedules, specifically Schedule K-1 and W-2 forms, 1099 forms, and amendments, the most recent profit and loss statements, balance sheets, financial statements, quarterly sales tax reports, personal and business bank account statements, receipts, and expenses. A copy of all statements and documentation shall be provided to the other party.

(Emphasis added.) This court in Carr v. Gibbens, 2015-0701 (La. App. 1st Cir. 9/18/15), 2015 WL 5515906, (unpublished), held that the trial court could not properly apply the guidelines of LSA-R.S. 9:315, *et seq.*, to determine the award of child support in accordance with the law without appropriate documentation required by LSA-R.S. 9:315.2. Id. at *7 (citing Drury v. Drury, 2001-0877 (La. App. 1st Cir. 8/21/02), 835 So. 2d 533, 539). Absent the introduction of appropriate documentation and compliance with LSA-R.S. 9:315.2(A), this court is unable to determine the propriety of the trial court's ruling based on the instant record. Carr, 2015 WL 5515906, *7; Drury, 835 So. 2d at 539; also see State Dep't of Soc. Servs. v. Reuther, 2006-842 (La. App. 5th Cir. 3/13/07), 952 So. 2d 929, 933. No verified income statement of Mr. Jackson, as required by LSA-R.S. 9:315.2(A), appears in the record, and the indiscernible evidence as to Mr. Jackson's past earnings renders the determination of his actual earnings virtually impossible on the record as presently constituted. See Drury, 835 So. 2d at 539. Moreover, Mr. Jackson's testimony provides no apparent basis to support the trial court's calculations or its ruling. Although we recognize that we review judgments, and not reasons for judgment, there must nonetheless be evidentiary support for a ruling. Thus, in instances where the record is inadequate and lacks information necessary to make a child support determination, a remand to the trial court is necessary. St. Philip, 206 So. 3d at 913; Carr 2015 WL 5515906, *8. Finding

merit to this assignment error, we must vacate the trial court's determination of imputed income to Mr. Jackson and remand the matter to the trial court.

Deviation from Child Support Guidelines (Assignment of Error No. 2)

In this assignment of error, Ms. Bell submits that it was error for the trial court to permit a deviation from the basic child support guidelines due to a minor child residing with Mr. Jackson. Pursuant to LSA-R.S. 9:315.1(B)(1), a court is permitted to deviate from the child support guidelines if their application would not be in the best interest of the child or would be inequitable to the parties. In permitting a deviation, the court must provide specific reasons therefor, including a finding of the amount of support that would have been required under the guidelines and the facts and circumstances warranting the deviation. LSA-R.S. 9:315.1(B)(1). In accordance with LSA-R.S. 9:315.1(C)(2) and (9), a court may consider the legal obligation of a party to support dependents who are in the party's household and who are not the subject of the action before it as well as any other consideration which would make application of the guidelines not in the best interest of the child or inequitable to the parties.

Importantly, a deviation from the guidelines based on an obligation to support other minor children in a party's household is neither automatic nor guaranteed; rather, all that is required by the statute is that the trial court consider such factors in its determination of whether a deviation is warranted. LSA-R.S. 9:315.1(C)(2); Lambert, 960 So. 2d at 927. As the party requesting the deviation, Mr. Jackson bore the burden of establishing that the application of the child support guidelines would not be in the best interest of the minor child who is the subject of these proceedings or would be inequitable to him because of expenses he has related to his obligation to support his other daughter. Id. Moreover, a deviation pursuant to LSA-R.S. 9:315.1(C)(2) must be supported by an evidentiary

basis. Lambert, 990 at 927. Therefore, in order to limit his support obligation under the guidelines, Mr. Jackson was required to come forward with proof as to his expenses related to the support of the minor child living in his home.

In this case, Mr. Jackson testified that he and his wife have one minor daughter living in their home. He also testified that he pays \$406.00 per month for tuition for the daughter living with him. However, he did not produce any documentation or record evidence for this expense. Mr. Jackson testified that he has a mortgage note of \$1,962.65 per month, utility bills totaling \$360.00 per month, a cable bill in the amount of \$300.00 to \$400.00 per month, and a home security system bill of \$60.00 to \$80.00 per month. Mr. Jackson testified that he has expenses of \$2,329.00 per month for his and his wife's automobiles, food expenses of \$400.00 per month, general household expenses of \$200.00 per month, clothing and personal grooming expenses of \$350.00 per month, and entertainment expenses of \$100.00 per month. However, no documentation was submitted for any of the expenses mentioned by Mr. Jackson nor does any such evidence appear in the record. Moreover, while Mr. Jackson testified that his wife has a job, he did not provide any testimony or evidence regarding whether his wife contributed to any of the household expenses or the expenses related to their daughter.⁸ No testimony was received regarding how any amount of child support awarded to Ms. Bell in this case would be inequitable to him in light of the expenses and obligations attributable to the support of the daughter who lives with him.

In granting Mr. Jackson a deviation in the amount of \$400.00 per month, the trial court reasoned as follows:

⁸While counsel for Mr. Jackson attempted to ask him about how these expenses were actually paid, counsel for Ms. Bell objected to such questions to the extent Mr. Jackson was going to testify about his wife's income, as any information concerning his wife's income was not produced in discovery. No ruling on the objection was found in the record, but no further questions in this regard were asked.

The court is going to deviate from child support guidelines and deduct four hundred dollars per month from Mr. Jackson's income due to his biological child living in his home. ... considering the equity of the parties, the testimony and evidence as well as the best interest of both children of Mr. Jackson, the court believes such deviation is warranted.

The court heard evidence of Mr. Jackson's monthly expenses, some of which included housing, food, clothing, and among other things for himself, his wife, and his child full time in his home. Although the court did not hear testimony as to the extent that Mr. Jackson's wife provides help with these expenses, the court in deviating allocated fifty percent of the expenses to Mr. Jackson and therefore deviated by deducting four hundred dollars per month from Mr. Jackson's monthly income

Again, no documentary evidence was received by the trial court on the issue, and Mr. Jackson's testimony as to his expenses and his daughter living with him was uncorroborated. By law, any deviation pursuant to LSA-R.S. 9:315.1(C)(2) must be supported by an evidentiary basis. Lambert, 960 So. 2d at 927. On review, we find merit to this assignment of error, as Mr. Jackson did not carry his burden of proving that a deviation was warranted under the circumstances. As such, the trial court erred in granting a deviation to Mr. Jackson. Thus, we vacate the trial court's grant of a deviation to Mr. Jackson and remand this matter to the trial court.

CONCLUSION

For the above and foregoing reasons, those portions of the April 3, 2018 judgment of the trial court imputing a gross income to Terral Jackson, Jr. in the amount of \$8,741.00, calculating his support obligation on this basis, and awarding a deviation in the amount of \$400.00 to Terral Jackson, Jr. are vacated. This matter is remanded to the trial court for the purpose of calculating Terral Jackson, Jr.'s true income and expenses, as can be proven. As related to his purported support of another child, this matter is further remanded to the trial court to determine any resultant recalculation of his child support obligation and any

deviation due in his favor, as can be proven in accordance with the child support guidelines. Costs of the appeal are assessed to the appellee, Terrall Jackson, Jr.

VACATED AND REMANDED FOR FURTHER PROCEEDINGS.