STATE OF MICHIGAN

COURT OF APPEALS

WENDY ANN PIERCE, Plaintiff-Appellee/ Cross-Appellant,	UNPUBLISHED May 29, 2001
v	No. 222216 Oakland Circuit Court Family Division
NORMAN ALAN SILVERMAN, Defendant-Appellant/ Cross-Appellee.	LC No. 98-614817-DP

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right, and plaintiff cross-appeals as of right from the trial court's order in this paternity action. While both parties challenge the trial court's child support award, defendant also challenges the trial court's award of attorney fees, and plaintiff argues that the trial court erred in not ordering defendant to reimburse her for lost wages associated with her pregnancy. We reverse in part, affirm in part, and remand for proceedings consistent with this opinion.

The parties' minor child was born on July 31, 1998.[1] Because defendant conceded paternity, child support was the primary contested issue at trial. After hearing testimony from plaintiff, the trial court issued a twelve-page written opinion ordering defendant to pay combined[2] weekly child support in the amount of $875.84. This amount reflected the trial court's determination that defendant pay $500 a week in child support, and $375.84 a week to compensate plaintiff for child-care expenses. On appeal, defendant contends that the $875.84

[1] The record reveals that plaintiff and defendant were involved in a four-year relationship before the birth of the child, but were never married. A review of the record also demonstrates that defendant has chosen not to have any part in raising the child.

[2] See *Thompson v Merritt*, 192 Mich App 412, 419; 481 NW2d 735 (1991); see also MCL 722.717(6); MSA 25.497(6) ("For the purposes of [the Paternity Act], "support" may include . . . child care expenses . . . .").

combined weekly award of child support was excessive. In contrast, plaintiff asserts that the trial court erred in deviating from the amount set forth in the Michigan Child Support Formula Manual when determining child support.[3]

We review a trial court's child support award for an abuse of discretion. *Phinisee v Rogers*, 229 Mich App 547, 558; 582 NW2d 852 (1998); *Calley v Calley*, 197 Mich App 380, 382; 496 NW2d 305 (1992). The party appealing a child support award bears the burden of establishing that the trial court made a mistake. *Id.* We will not reverse a trial court's child support award unless we are convinced that the trial court erred. *Good v Armstrong*, 218 Mich App 1, 4; 554 NW2d 14 (1996).

Child support awards in paternity actions are governed by MCL 772.717(3); MSA 25.497(3), which provides:

> Except as otherwise provided in this section, the court shall order support in an amount determined by application of the child support formula developed by the state friend of the court bureau. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:
>
> (a) The support amount determined by application of the child support formula.
>
> (b) How the support order deviates from the child support formula.
>
> (c) The value of property, or other support awarded instead of the payment of child support, if applicable.
>
> (d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

As our Supreme Court observed in *Ghidotti v Barber*, 459 Mich 189, 200; 586 NW2d 883 (1998), a trial court may not deviate from the child support formula unless it determines that circumstances exist that render compliance with the formula "unjust or inappropriate." On appeal, plaintiff asserts that the trial court's downward deviation from the child support formula warrants reversal because it was based on consideration of the disparity between the parties' income. In support of her claim plaintiff cites our Supreme Court's recent decision in *Burba v Burba (After Remand)*, 461 Mich 637; 610 NW2d 873 (2000).

In *Burba, supra*, our Supreme Court had occasion to consider the statutory requirements

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[3] According to the record, the child support formula provided for child support in the amount of $682.00 a week.

of MCL 552.17; MSA 25.97[4] in the context of a trial court's modification of child support. *Id*. at 640. In *Burba, supra*, the plaintiff argued that income disparity between the parties did not render application of the child support formula unjust or inappropriate to the extent that the trial court could justify deviating from the formula. *Id.* at 646. The *Burba* Court agreed, observing that the parties' incomes "are accounted for when child support levels are set." *Id.* at 648. Moreover, the Court, speaking through Justice Cavanagh, opined:

> An interpretation of [MCL 552.17; MSA 25.97] that considers income disparity as a factor rendering the formula unjust or inappropriate, justifying deviation from the formula, is repugnant to the Legislature's intent that income be dealt with as it is dealt with by the formula. Further, a "double-dipping" into income would occur were income disparity an appropriate basis for deviating from the formula because income would be a factor when the support level was initially set by the formula, and then again when a court deviates from the formula because of income. [*Id.* at 648-649 (footnote omitted).]

Similarly, a close examination of the trial court's well-reasoned opinion in this case reveals that it decided to deviate from the child support formula based on factors that are already accounted for in the formula.[5] Because we recognize that the respected judge prepared his decision without the benefit of the Supreme Court's reasoning in *Burba, supra*,[6] we remand to allow the court the opportunity to reconsider its decision.

Similarly, we reject defendant's contention that the trial court's child support award regarding child-care expenses was an abuse of discretion.[7] We review a trial court's findings of fact involving child support for clear error. *Kosch v Kosch*, 233 Mich App 346, 350; 592 NW2d 434 (1999). The trial court found that because of plaintiff's erratic work schedule, she was unable to place the parties' child in conventional day care, and instead was required to have family members care for the child at the rate of $9 an hour. Under these circumstances, the trial court's support award relating to child-care expenses was not an abuse of discretion.[8]

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[4] MCL 552.17; MSA 25.97 contains identical language to § 7 of the Paternity Act, MCL 772.711 *et seq.*; MSA 25.491 *et seq*.

[5] Specifically, the learned trial court concluded that consideration of plaintiff's ability to pay and the needs of the child warranted deviation from the child support formula. With due deference to our colleague, we note that in *Burba, supra*, our Supreme Court observed that (1) a child's needs and (2) the actual resources of each parent are accounted for in the child support formula. See *Burba, supra* at 648; see also MCL 552.519(3)(vi); MSA 25.176(19)(3)(vi).

[6] In fact, the Supreme Court's decision in *Burba, supra*, was released almost one year after the trial court issued its opinion in the instant case.

[7] As a panel of this Court observed in *Thompson, supra* at 419-420, child-care costs are to be added to the general award of child support allowed under the child support formula.

[8] Likewise, we reject defendant's claim that the $500 in child support awarded by the trial court was "excessive," where this amount was substantially lower than the amount prescribed by the child support formula.

Defendant also argues that the trial court erred in awarding $10,000 in attorney fees to plaintiff. We disagree.

A trial court's award of attorney fees is reviewed for an abuse of discretion. *Featherston v Steinhoff*, 226 Mich App 584, 592; 575 NW2d 6 (1997). Attorney fees are available under the Paternity Act "if they are necessary to enable an adverse party to carry on or defend the action." *Thompson v Merritt*, 192 Mich App 412, 423; 481 NW2d 735 (1992), citing *Bessmertnaja v Schwager*, 191 Mich App 151, 158; 477 NW2d 126 (1991). The trial court found that an award of attorney fees was necessary to enable plaintiff to pursue her paternity action against defendant.

Specifically, plaintiff testified that she lost over $6000 in wages before the birth of the parties' child and had to borrow money from her father to pay her attorney's retainer. At the time of trial, plaintiff owed additional fees to her attorney. The trial court also found plaintiff's attorney had submitted appropriate documentation supporting plaintiff's claim. On this record, we are unable to conclude that the trial court's findings were clearly erroneous. Consequently, the trial court did not abuse its discretion in awarding attorney fees.

On cross-appeal, plaintiff complains that the trial court abused its discretion by declining to order defendant to pay lost wages she incurred because of her pregnancy. In support of her argument, plaintiff directs our attention to MCL 722.712(1); MSA 25.492(1), which provides that in a paternity action, "[t]he father is liable to pay the expenses of the mother's confinement, and is also liable to pay *expenses in connection with her pregnancy as the court in its discretion may deem proper*." [Emphasis supplied].[9] During trial, plaintiff testified that she incurred $6,616.52 in lost wages when she missed three weeks of work as a result of complications relating to her pregnancy. Plaintiff maintains that her lost wages represent "expenses in connection with her pregnancy" that defendant should pay pursuant to MCL 722.712(1); MSA 25.492(1).

Plaintiff has failed to cite any authority to support her assertion that lost wages incurred because of pregnancy are compensable under MCL 722.712(1); MSA 25.492(1). To the extent that plaintiff has announced her position and left it for this Court to search for authority to sustain or reject her argument, she has abandoned the issue on appeal. *Caldwell v Chapman*, 240 Mich App 124, 132-133; 610 NW2d 264 (2000); *Opland v Kiesgan*, 234 Mich App 352, 359; 594 NW2d 505 (1999). In any event, we are not persuaded that lost wages associated with complications of pregnancy are "expenses in connection with [plaintiff's] pregnancy" as contemplated by § 2 of the Paternity Act.

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[9] Similarly, MCL 722.717(2); MSA 25.497(2), provides in pertinent part:

> In addition to providing for the support of the child, the order [of filiation] shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement . . . and for the expenses in connection with the pregnancy of the mother or of the proceedings as the court considers proper.

When we interpret a statute, we strive to give effect to the Legislature's intent. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 194 (1999). We must first consider the language of the statute itself. *Id*. If the language is clear and unambiguous, judicial construction is neither required nor permitted. *Sington v Chrysler Corp*, ___ Mich App ___; ___ NW2d ___ (Docket No. 225847, issued 5/1/01), slip op, 8. Merely because a term in not defined in the statute does not render it ambiguous to the extent that judicial construction is permitted. *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997).

Because the term "expense" is not defined in the Paternity Act, we turn to the ordinary dictionary meaning of the term. *Washburn v Michailoff*, 240 Mich 669, 676-677; 613 NW2d 405 (2000). Black's Law Dictionary, (6th ed), p 401, defines an expense as "[t]hat which is expended, laid out or consumed" and "[a]n outlay, charge, cost, price." From this definition, it is clear that lost wages incurred because of complications in plaintiff's pregnancy are not "expenses in connection with . . . pregnancy" within the meaning of § 2 of the Paternity Act. Our conclusion is consonant with the well-settled purpose[10] of the Paternity Act, which is to "provide for the support of *illegimate children*." *Pizana v Jones*, 127 Mich App 123, 126; 339 NW2d 1(1983) (emphasis supplied), citing *Smith v Robbins*, 91 Mich App 284, 289; 283 NW2d 725 (1979); see also *Mitchell v Maurer*, 328 Mich 233, 235; 43 NW2d 921 (1950).

We reverse in part, affirm in part, and remand to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper

[10] When interpreting a statute, we are mindful of the "purpose and the object sought to be accomplished by the statute." *Robinson v Shatterproof Glass Corp*, 238 Mich App 374, 377; 605 NW2d 677 (1999), citing *Gross v General Motors Corp*, 448 Mich 147, 158-159; 528 NW2d 707 (1995).