

STATE OF MICHIGAN
COURT OF APPEALS

MARIE E. MELL, f/k/a MARIE E. REIKOW,
Plaintiff-Appellee,

UNPUBLISHED
January 22, 2013

v

JOHN P. REIKOW,
Defendant-Appellant.

No. 304672
Ottawa Circuit Court
LC No. 99-033229-DM

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Defendant-appellant John Reikow appeals by leave granted a final Uniform Child Support Order (UCSO) and an additional order that denied him retroactive child support and the opportunity to claim a tax dependency exemption in regard to his youngest daughter for the year 2011. He argues that the trial court erred in determining child support in this case. We reverse and remand.

In 2000, the trial court's divorce decree granted the parties joint custody of their two daughters and ordered defendant to pay \$200 each week in child support. In 2006, plaintiff and defendant stipulated to the entry of an order modifying the original custody and parenting time provisions. The order provided that the parties would have joint physical and legal custody of their daughters and that the daughters would alternate weeks spent with each parent. This arrangement continued until December 23, 2006, when the daughters refused to live with plaintiff any longer and began to live with defendant full-time. The estrangement between plaintiff and the daughters continued despite attempts at family counseling.

In 2008, defendant petitioned the trial court for a change in custody in regard to the younger daughter, who was still a minor. Defendant asked the trial court to terminate his child support obligation for the younger daughter and to order plaintiff to pay him child support retroactive to December 23, 2006. Defendant also requested permission to claim the daughter as a dependent in subsequent income tax returns.

In June 2010, the trial court issued its opinion and order in regard to defendant's petition. The trial court found that defendant had precipitated and aggravated the estrangement of plaintiff from their daughters, which had caused plaintiff to incur significant expenses for counseling and court action. Accordingly, while the trial court granted defendant sole legal and physical custody of the younger daughter, the trial court refused to grant defendant retroactive child support. The

trial court also held that defendant could claim his younger daughter as a dependent in 2010 but that plaintiff could claim her as a dependent in 2011. Defendant moved for reconsideration of this order. In June 2011, the trial court entered an UCSO and another order that reaffirmed its original order.

On appeal, defendant argues that the trial court abused its discretion in relying on his precipitation and aggravation of plaintiff's estrangement from their younger daughter in refusing to grant him retroactive child support and his daughter's 2011 tax dependency exemption. Generally, questions of whether the trial court properly applied the Michigan Child Support Formula (MCSF) are reviewed de novo. *Ewald v Ewald*, 292 Mich App 706, 714; 810 NW2d 396 (2011). "The trial court's discretionary rulings permitted by statute and the MCSF are reviewed for an abuse of that discretion." *Id.* at 714-715. Specifically, "[a] trial court abuses its discretion when it relies on a legally improper reason for departing from the MCSF in establishing a parent's child support obligation." *Ewald*, 292 Mich App at 715.

Parents are jointly and severally obligated to support their children under the Support and Parenting Time Enforcement Act, MCL 552.601 *et seq.* MCL 722.3(1). Trial courts must presumptively follow the MCSF when determining child support obligations. *Ewald*, 292 Mich App at 714. "[E]quitable circumstances are not appropriate considerations in applying MCL 552.603(2) and a flexible interpretation of the statute is precluded." *Clarke v Clarke*, 297 Mich App 172, ___; ___ NW2d ___ (Docket No. 303580, issued June 26, 2012), slip op at 8.

Generally, a child support obligation cannot be retroactively modified. *Fisher v Fisher*, 276 Mich App 424, 429; 741 NW2d 68 (2007); MCL 552.603(2). However, MCL 552.603(2) provides that child support may be retroactively modified "with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support."

Here, the trial court articulated in its opinion that child support was payable by plaintiff pursuant to the MCSF in the amount of \$487 per month, but that it was refusing to apply child support retroactively because doing so would produce an unjust and inappropriate result. The trial court explained that defendant's precipitation and aggravation of the estrangement of plaintiff from their daughters resulted in plaintiff's loss of three years of involvement in her daughters' lives and in plaintiff incurring significant expenses. The trial court concluded that this was a relevant factor in deviating from the MCSF under 2008 MCSF 1.04(E)(18).¹

However, in *Ewald*, 292 Mich App 706, this Court recognized that parental rights (including parenting time), were separate from parental obligations (including child support), and that separate remedies exist for a parent who has been denied parenting time. *Id.* at 718-719, 721. The *Ewald* Court held that remedies for violations of parental rights should be analyzed separately from assignment of a parental obligation. *Id.* at 721. The *Ewald* Court concluded that

¹ 2008 MCSF 1.04(E) provides, in relevant part: "[s]trict application of the formula may produce an unjust or inappropriate result in a case when any of the following situations occur: . . . (18) Any other factor the court deems relevant to the best interests of a child."

“the Support and Parenting Time Enforcement Act does not provide for the enforcement of parenting-time rights by adjusting child support obligations.” *Id.* Thus, defendant’s precipitation and aggravation of the estrangement of plaintiff from their daughters was not a circumstance that rendered the MCSF “unjust or inappropriate” under MCL 552.605. *Id.* at 722. The trial court’s refusal to retroactively grant defendant child support was an improper departure from the MCSF and, thus, an abuse of discretion. See *id.* at 715. In addition, because the trial court provided no separate explanation for its decision in regard to its award of the 2011 tax dependency exemption, it appears that holding was itself a departure from the MCSF based on defendant’s actions.² Accordingly, the trial court abused its discretion in basing its tax dependency exemption decision on that ground. *Id.*

Accordingly, we vacate the trial court’s UCSO entered on June 2, 2011, and the trial court’s other order entered on June 16, 2011, and remand the case to the trial court for reconsideration of the parties’ child support obligations.

Reversed and remanded. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O’Connell
/s/ Christopher M. Murray

² An award of the federal dependency tax exemption is considered part of the child support award. *Clarke*, 297 Mich App at ____, slip op at 8.