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NO. COA 05-1610

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STANLEY J. HERRIMAN,
Plaintiff

v.

Gaston County
No. 99 CVD 4254

GASTON COUNTY, by and
through its CHILD SUPPORT
ENFORCEMENT AGENCY, ex rel:
CHANDRA O. HERRIMAN,
Defendant.

Appeal by plaintiff from order entered 25 July 2005 by Judge Thomas G. Taylor in Gaston County District Court. Heard in the Court of Appeals 24 July 2006.

Page Morgan for plaintiff-appellant.

David J. Hargett, for defendant-appellee Gaston County Department of Social Services.

MARTIN, Chief Judge.

Plaintiff Stanley J. Herriman appeals from an order of the district court granting his motion to modify his child support obligation based on changed circumstances. See N.C. Gen. Stat. § 50-13.7(a) (2005). Because the court did not deviate from the North Carolina Child Support Guidelines (2002) ("the Guidelines") by including the minor children's private school tuition within its calculation of child support, we affirm.

Plaintiff and defendant Chandra Herriman were married in 1981. The marriage produced three children, Beneth, Neil, and Sarah, born 23 March 1984, 15 August 1987, and 18 June 1995.

In 1999, plaintiff filed a complaint seeking divorce from bed and board, custody, child support, equitable distribution, and attorney's fees. The parties entered a consent judgment under which defendant was awarded primary custody of the children and plaintiff agreed to pay monthly child support of \$1,230.00. In an order entered 30 August 2000, plaintiff was ordered to pay the children's monthly private school tuition, which totaled \$600.00.

On 10 August 2002, the district court reduced plaintiff's monthly child-support obligation to \$1,149.00 upon the finding that the eldest child had attained majority and graduated from high school.

On 13 April 2005, plaintiff filed a motion for modification of child support based on a substantial change of circumstances, pursuant to N.C. Gen. Stat. § 50-13.7(a). He alleged that he had sustained an involuntary decrease in income and that defendant had obtained full-time employment. Plaintiff expressly requested a reduction in his obligation "to correspond to the amount required by the North Carolina Child Support Guidelines."

In its order granting plaintiff's motion, the district court found that the change in the parties' incomes constituted a substantial change in circumstances. It calculated a basic monthly child support obligation of \$1,228.89 under the Guidelines, and apportioned to plaintiff a 72.32% share. The court further found

that the parties' two minor children were in 12th grade and 4th grade at a private Christian school, and that their monthly tuition costs totaled \$549.00. In resolving the parties' dispute as to whether the tuition should be deemed an "extraordinary expense" under the Guidelines, the court found as follows:

That . . . the children . . . have been enrolled in private Christian school their entire educational lives. That their respective schools are the only schools the children have ever known or attended.

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That the decision to send their children to private Christian school was an agreed-upon course of action by the parties during their marriage. . . .

That the Christian school provides additional education with respect to values that both parties have agreed are important for their children.

That the continuity of the children's education is an important factor in the children's intellectual and emotional development.

That the Defendant has made lifestyle changes and sacrifices so that the minor children could continue to attend private Christian school, including selling their home of seven years.

That the Plaintiff has not shown any standard of living decline or personal lifestyle change despite his decrease in income.

. . .

That the tuition expense is reasonable and necessary to meet the needs of the minor children and should be included in the

calculation of the child support worksheet as an "extraordinary expense." That this is not a deviation from the Guidelines.

The court then adjusted the basic support obligation to reflect defendant's work-related child care costs, plaintiff's payment of the children's health insurance premiums, and the "extraordinary expense" of their tuition. After accounting for these adjustments, the court ordered plaintiff to pay monthly child support of \$1,336.00, reflecting his 72.32% share of the \$1,874.88 total support obligation until 1 June 2005, when plaintiff's child support decreases to \$1141.00.

On appeal, plaintiff challenges the court's inclusion of the children's private school tuition in its calculation of child support, absent "specific [f]indings of [a] need for the minor children to go to private school." Plaintiff notes that the court "must make adequate findings of specific facts" in support of any deviation from the Guidelines. See N.C. Gen. Stat. § 50-13.4(c) (2005). He further contends that the tuition costs "should have been apportioned between the parties."

Plaintiff's claims have no merit. Under N.C. Gen. Stat. § 50-13.4(c), the district court is required to make findings of fact only "[i]f the court orders an amount other than the amount determined by application of the presumptive [G]uidelines[.]" The Guidelines allow the court to adjust the parties' basic child support obligation based on certain extraordinary expenses, as follows:

Other extraordinary child-related expenses (including 1. expenses related to special or private elementary or secondary schools to meet a child's particular educational needs . . .) may be added to the basic child support obligation and ordered paid by the parents in proportion to their respective incomes if the court determines the expenses are reasonable, necessary, and in the child's best interest.

N.C. Child Support Guidelines, 2006 Ann. R. N.C. 47, 51.

In *Biggs v. Greer*, 136 N.C. App. 294, 298, 524 S.E.2d 577, 581-82 (2000), we explicitly held that the district court need not enter findings of fact to support the classification of private school tuition as an extraordinary expense under the Guidelines. "[I]ncorporation of such adjustments into a child support award does not constitute deviation from the Guidelines, but rather is deemed a discretionary adjustment to the presumptive amounts set forth in the Guidelines." *Id.* (emphasis in original).

Here, as in *Briggs*, "the trial court was under no obligation to render findings of fact because it did not deviate from the presumptive Guidelines, but rather adjusted the Guideline amounts to account for the extraordinary expense of private schooling." *Id.* at 298, 524 S.E.2d at 582. We note, however, that the court entered detailed findings of fact in support of its decision. Moreover, contrary to defendant's assertion on appeal, the court properly apportioned the tuition cost between the parties based on their respective incomes.

Affirmed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).

