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NO. COA13-287
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

CUMBERLAND COUNTY
EX REL:

KAREN M. RETTIG,
Plaintiff,

v.

Cumberland County
No. 12 CVD 2163

DANIEL R. RETTIG JR.,
Defendant.

Appeal by Defendant from order entered 9 November 2012 by Judge Robert J. Stiehl III, in Cumberland County District Court. Heard in the Court of Appeals 28 August 2013.

Cumberland County Child Support Enforcement Agency, by Roxanne Cecile Garner, for Plaintiff.

Ferrier Law, P.L.L.C., by Kimberly M. Ferrier, for Defendant.

DILLON, Judge.

Daniel R. Rettig, Jr. (Defendant) appeals from the trial court's order denying his motion to reduce his child support payments. We affirm.

I. Factual & Procedural Background

Karen M. Rettig (Plaintiff) and Defendant were married on 2 August 2004 and separated on 13 April 2010. Plaintiff and Defendant have two minor children.

On 19 July 2012, a Temporary Support Order was entered in accordance with the North Carolina Child Support Guidelines (the Guidelines) ordering Defendant to pay a monthly sum of $984.00 as support for his minor children. At the time, Defendant was employed by Purolator, where he worked approximately 48 hours per week earning wages of $19.26 per hour. Defendant also received – and continues to receive – a monthly benefit under the G.I. bill in the amount of $1,104.00.

On 22 August 2012, Defendant resigned from his employment with Purolator to pursue an associate degree at Fayetteville Technical Community College, where he had already registered as a student on 5 August 2012. Defendant filed a Motion for Modification on 28 August 2012, requesting that his child support payments be reduced to reflect his income, which, as a result of leaving his employment with Purolator, consisted of only the monthly $1,104.00 G.I. bill benefit.

The matter came on for hearing in Cumberland County District Court on 27 September 2012. Defendant proceeded *pro se* at the hearing, and Plaintiff was represented by counsel from

Cumberland County Child Support Enforcement Agency. Following an opening statement from Plaintiff's attorney, the court asked Defendant whether he had "anything pursuant to [his] motion," to which Defendant responded, "Nothing much, Your Honor, just that I'm now pursuing full time student status. The order of $984 a month I think it was, that is – I wish to be reduced to my current income of $1104." The court then asked Defendant a series of questions, inquiring into the nature of Defendant's previous employment at Purolator, his educational and career goals, and whether he would be able to rely on his present wife's income. Defendant testified that he had worked an average of 48 hours per week at Purolator at a rate of $19.26 per hour; that he aspired to become a mechanical engineer, which, he believed, would require four years of college; and that he was able to rely on his wife's income "[t]o a certain extent[.]" Following this exchange, the court announced that it had "heard contentions of at least one of the parties" and proceeded to articulate its findings in open court. The court then orally denied Defendant's motion to reduce his child support payments and granted Plaintiff's request for a permanent child support order of $984.00 per month. The court subsequently entered its written order of permanent child

support on 9 November 2012, substantially conforming with its in-court ruling. From this order, Defendant appeals.

II. Analysis

A. Defendant's Motion to Modify

Defendant contends that the trial court erred in denying his motion to modify child support. We disagree.

A child support order "may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party . . . ." N.C. Gen. Stat. § 50-13.7(a) (2011). "[M]odification of a child support order involves a two-step process." *McGee v. McGee*, 118 N.C. App. 19, 26, 453 S.E.2d 531, 536 (1995). The first step for the court in considering whether modification is appropriate is to "determine whether there has been a substantial change in circumstances since the date the existing child support order was entered." *Head v. Mosier*, 197 N.C. App. 328, 333, 677 S.E.2d 191, 195 (2009). Only if the court determines that there has been a substantial change in circumstances will the court "proceed to apply the [] Guidelines to calculate the applicable amount of support." *McGee*, 118 N.C. App. at 27, 453 S.E.2d at 536.

The party seeking modification of the child support order bears the burden of proving by a preponderance of the evidence

that a substantial change in circumstances has occurred since entry of the order. *Trevillian v. Trevillian*, 164 N.C. App. 223, 224, 595 S.E.2d 206, 207 (2004); *Thomas v. Thomas*, 134 N.C. App. 591, 592, 518 S.E.2d 513, 514 (1999) ("The moving party has the burden of showing changed circumstances.").

> In the absence of findings of fact showing bad faith, child support orders may be modified upon a showing of substantial change in circumstances [which] may be shown in any of several ways [including]: a substantial increase or decrease in the child's needs; a substantial and involuntary decrease in the income of the non-custodial parent even though the child's needs are unchanged; [or] a voluntary decrease in income of either supporting parent, absent bad faith, upon a showing of changed circumstances relating to child oriented expenses.

Frey v. Best, 189 N.C. App. 622, 631-32, 659 S.E.2d 60, 68 (2008) (citations omitted) (alterations in original). The trial court's "determination of whether changed circumstances exist is a conclusion of law[,]" *Brooker v. Brooker*, 133 N.C. App. 285, 289, 515 S.E.2d 234, 237 (1999), reviewable *de novo* on appeal, *Davison v. Duke Univ.*, 282 N.C. 676, 712, 194 S.E.2d 761, 783 (1973).

Here, Defendant's testimony established that his monthly income had decreased from $5,295.00 to $1,104.00. "However, '[t]he fact that a husband's salary or income has been reduced

substantially does not automatically entitle him to a reduction'" in his support obligation. *Johnston Cnty. ex rel. Bugge v. Bugge*, __ N.C. App. __, __, 722 S.E.2d 512, 515 (2012) (citation omitted) (alteration in original).

> The trial court may refuse to modify support and/or alimony on the basis of an individual's earning capacity instead of his actual income when the evidence presented to the trial court shows that a husband has disregarded his marital and parental obligations by: (1) failing to exercise his reasonable capacity to earn, (2) deliberately avoiding his family's financial responsibilities, (3) acting in deliberate disregard for his support obligations, (4) refusing to seek or to accept gainful employment, (5) wilfully refusing to secure or take a job, (6) deliberately not applying himself to his business, (7) *intentionally depressing his income to an artificial low, or (8) intentionally leaving his employment to go into another business*.

Id. (citations omitted) (emphasis in original). "When the evidence shows that a party has acted in 'bad faith', the trial court may refuse to modify the support awards." *Id.* (citation and quotation marks omitted).

The trial court made the following pertinent findings of fact in its Order of Permanent Child Support:

> 8. A Temporary Support Order was entered on July 19, 2012 ordering the Defendant to pay according to the North Carolina Guidelines the sum of $984.00 per month as current support for the care and benefit of the

minor children.

9. . . . Defendant has represented that he was making $19.26 per hour while employed at Purolator.

10. That the Defendant work[ed] on average about 48 hours per week.

11. That the Defendant has since remarried and he has the ability to rely in part or completely on his current wife's income.

12. That the Defendant resigned from his job at Purolator on August 22, 2012 purportedly to pursue an advanced education.

13. That currently the Defendant has available to him $1,104.00 per month in a G.I. bill.

. . . .

17. That the conduct of the Defendant is a wholesale disregard of his rights to provide adequately for the care, support and maintenance of [his] two minor children.

18. That the Defendant quitting his job two weeks after entry of the July 19, 2012 child support order is in bad faith.

19. That the Defendant quitting his job at Purolator undermines a legitimate and reasonable amount of child support.

20. That currently the amount of child support would drop from $984.00 per month to $189.00 per month if the Defendant's GI Bill income were used to calculate child support.

. . . .

22. The following information was used to

> calculate the Defendant’s income and credits:
>
> > Income: The Defendant was imputed the wages that he was making at Purolator which is $4,191.00 per month.
>
> . . . .
>
> 24. The amount of ongoing child support is based on the North Carolina Child Support Guidelines.
>
> 25. The Defendant has the ability to pay the amount ordered.

We conclude that these findings are supported by Defendant’s testimony at the 27 September 2012 hearing and the competent evidence of record. Further, in light of these findings, we discern no abuse of discretion in the trial court’s decision to deny Defendant’s motion to modify his child support obligation. Defendant made the conscious decision to leave his job at Purolator, thereby depriving himself of the ability to comply with the temporary child support order entered just a few weeks earlier. As this Court has previously held, “[t]he trial court may deny modification upon a finding that Defendant intentionally left his employment.” *Bugge*, __ N.C. App. at __, 722 S.E.2d at 515 (citing *Wolf v. Wolf*, 151 N.C. App. 523, 527, 566 S.E.2d 516, 519 (2002)). We cannot say based upon the circumstances presented that the trial court’s decision to deny

Defendant's motion was "arbitrary" or "manifestly unsupported by reason." *See State v. Locklear*, 331 N.C. 239, 248, 415 S.E.2d 726, 732 (1992) ("The test for abuse of discretion requires the reviewing court to determine whether a decision 'is manifestly unsupported by reason,' or 'so arbitrary that it could not have been the result of a reasoned decision.'").

Defendant contends that the trial court's "mode of questioning prejudiced [him] and as a result a substantial injustice ensued" and that "the evidence ascertained was not done in accordance with North Carolina Rules of Evidence, G.S. § 8C-1, Rule 611." We disagree.

"[T]he trial judge's broad discretionary power to supervise and control the trial will not be disturbed [on appeal] absent a manifest abuse of discretion." *State v. Bethea*, 173 N.C. App. 43, 52, 617 S.E.2d 687, 693 (2005). Rule 611 governs the "[m]ode and order of interrogation and presentation" of witnesses and provides, in pertinent part, that the "court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue

embarrassment." N.C. Gen. Stat. § 8C-1, Rule 611(a) (2011).

Our review of the transcript reveals that the trial court's questioning of Defendant was focused – but not impermissibly leading – in order to procure relevant responses from Defendant, a *pro se* litigant. Defendant's assertion that the court dictated the outcome of the case by asking leading questions designed to elicit certain responses is belied by the following exchange, which indicates that the court did not ask Defendant any leading questions until *after* Defendant had had an opportunity to present his side of the case:

> [THE COURT]: Okay, anything pursuant to your motion, sir?
>
> [DEEFNDANT]: Nothing much, Your Honor, just that I'm now pursuing full time student status. The order of $984 a month I think it was, that is – I wish to be reduced to my current income of $1104."
>
> [THE COURT]: Anything else from you?
>
> [DEFENDANT]: No, Your Honor.
>
> [THE COURT]: Okay, when I get done asking you questions, I assume you're done then.

The court then asked Defendant a series of questions in order to ascertain the nature of Defendant's prior employment and future educational and career ambitions. Upon completing its questioning, the court afforded Defendant another opportunity to

provide further testimony in support of his position:

> [THE COURT]: Anything else you want me to know?
>
> [DEFENDANT]: No, Your Honor.

Defendant's contention that he was treated as a "hostile witness" is without merit. Moreover, Defendant's assertion that "[c]ourtrooms are intimidating environments for *pro se* litigants" is unavailing, as our Courts have declined to treat *pro se* litigants differently from those represented, for instance, "by all of the five largest law firms in the state." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999); *see also Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000). We hold that the trial court was within its discretion in its mode of questioning Defendant, and Defendant's contentions on this issue are overruled.

B. Order for Permanent Child Support

Defendant raises several challenges to the trial court's Order for Permanent Child Support. We address these contentions in turn.

Initially, we note that "[t]he trial court is given broad discretion in child custody and support matters. Its order will be upheld if substantial competent evidence supports the

findings of fact." *Meehan v. Lawrence*, 166 N.C. App. 369, 375, 602 S.E.2d 21, 25 (2004). "If the record indicates substantial evidence to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence might sustain findings to the contrary." *Id.* (citation and quotation marks omitted); *see also Leary v. Leary*, 152 N.C. App. 438, 441, 567 S.E.2d 834, 837 (2002) ("Child support orders entered by a trial court are accorded substantial deference by appellate courts and our review is limited to a determination of whether there was a clear abuse of discretion.").

Defendant contends that "the trial court erred by not utilizing the actual income of the parties at the time [the court entered] the permanent order[.]" Defendant cites *State v. o/b/o Midgett v. Midgett*, 199 N.C. App. 202, 680 S.E.2d 876 (2009), for the proposition that "'child support obligations are ordinarily determined by a party's actual income at the time the order is made or modified.'" *Id.* at 207, 680 S.E.2d at 879 (quoting *Ellis v. Ellis*, 126 N.C. App. 362, 364, 485 S.E.2d 82, 83 (1997)). However, as this Court also stated in *Midgett*, "'a party's *capacity* to earn income may become the basis of an award if it is found that the party deliberately depressed its income or otherwise acted in deliberate disregard of the obligation to

provide reasonable support for the child.'" *Id.* (quoting *Askew v. Askew*, 119 N.C. App. 242, 244–45, 458 S.E.2d 217, 219 (1995)) (emphasis added). We have already upheld, *supra*, the trial court's decision to deny Defendant's request for modification on grounds that Defendant voluntarily suppressed his income. Implicit in this holding is our determination that the trial court did not abuse its discretion in deviating from Defendant's actual income – and imputing to Defendant the income he had been earning at the time of the temporary child support order – when it entered the permanent child support order.

With respect to Plaintiff's income, Defendant contends that the trial court erred when it "took no evidence from the Plaintiff as to her actual income at the time of the hearing and made no finding as to her gross income[.]" This contention is undermined by the fact that appended to the trial court's temporary and permanent orders is a child support obligation worksheet reflecting Plaintiff's income. Although the worksheet reflects Plaintiff's income at the time the temporary order was entered, the amount of child support ordered by the temporary order, which was calculated based upon the Guidelines, could not be altered once the trial court denied Defendant's motion for modification. *See Lewis v. Lewis*, 181 N.C. App. 114, 638 S.E.2d

628 (2007) (holding that the trial court erred when it modified support after concluding that there had been no substantial change in circumstances). Thus, the trial court was not required to make additional findings with respect to Plaintiff's income at the time it entered the permanent order.

Defendant further contends that the trial court erred by considering his current wife's income in determining Defendant's child support obligation. This contention is without merit. As previously stated, Defendant's child support payments were calculated based upon the Guidelines, and do not take into account the income of his current wife. Moreover, we believe that the trial court's finding of fact 11 – that Defendant "has the ability to rely in part or completely on his current wife's income" – was merely superfluous and unnecessary to support the court's conclusion that modification was unwarranted, as this conclusion was amply supported by the other findings in the permanent order. *See In re Adoption of Cunningham ex rel. Cunningham*, 151 N.C. App. 410, 418, 567 S.E.2d 153, 158 (2002) (declining to consider whether certain findings in the trial court's order were supported by competent evidence upon concluding that other findings in the order were sufficient to support the trial court's conclusion).

Defendant contends that the trial court erred in failing to take any evidence regarding the reasonable needs of his minor children at the 27 September 2012 hearing. Defendant cites *Armstrong v. Droessler*, 177 N.C. App. 673, 676, 630 S.E.2d 19, 21 (2006), for the proposition that "[a] voluntary and substantial decrease in a parent's income can constitute a changed circumstance only if accompanied by a substantial decrease in the needs of the child." However, the trial court's determination that there had *not* been a change in circumstances sufficient to warrant modification obviated the need for the court to consider evidence of the children's needs. Moreover, we note that the amount of support entered in the permanent order was based upon the Guidelines and that "[c]hild support set in accordance with the Guidelines 'is conclusively presumed to be in such amount as to meet the reasonable needs of the child and commensurate with the relative abilities of each parent to pay support.'" *Beamer v. Beamer*, 169 N.C. App. 594, 596, 610 S.E.2d 220, 222–23 (citation omitted); N.C. Gen. Stat. § 50-13.4(c) (2011). Accordingly, this contention is overruled.

Finally, we note Defendant's contention that the trial court erred in ordering him to provide medical coverage for his children without making any findings concerning his ability to

procure the same at a reasonable cost. This contention is misplaced, however, as the plain language of the trial court's order does not actually require Defendant to pay for his children's medical coverage at the present time. Rather, the order states that "Defendant shall provide [his minor children] with medical coverage or other like program *if available at a reasonable cost as a benefit of Defendant's employment* . . . ." (Emphasis added). Thus, while Defendant's ability to provide medical coverage for his children may become relevant if and when he obtains employment providing the relevant medical benefits, this issue is not properly before us at the present time.

III. Conclusion

For the foregoing reasons, we affirm the trial court's 9 November 2012 order.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).