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NO. COA14-395
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

LINDA C. COFFEY (formerly CARLTON)
Plaintiff

v.

Catawba County
No. 08 CVD 2474

MICHAEL WAYNE CARLTON
Defendant

Appeal by plaintiff from order entered 20 November 2013 by Judge Mark L. Killian in Catawba County District Court. Heard in the Court of Appeals 8 October 2014.

Crowe & Davis, P.A., by H. Kent Crowe, for plaintiff-appellant.

Wesley E. Starnes, for defendant-appellee.

CALABRIA, Judge.

Linda C. Coffey ("plaintiff") appeals from an order modifying her monthly child support payments. The trial court increased plaintiff's child support payments from \$1,000 per month to \$2,500 per month. We affirm in part and reverse in part.

I. Background

Plaintiff and Michael Wayne Carlton ("defendant") were married 18 June 1994. They separated in December 2007 and are now divorced. During the marriage, they had two children: Cameron¹, born in 2000, and Matthew, born in 2004 (collectively, "the children").

In the trial court's 15 June 2011 order, the parties were awarded joint custody of the children and plaintiff was ordered to pay \$1,000 per month in child support. The trial court also ordered that the parties would share the children's uninsured medical expenses, with plaintiff paying 85% of those expenses, and that "[f]or as long as the children remain in private school, the Plaintiff shall continue to pay for same."

On 3 February 2012, defendant filed a motion to modify child support, alleging, *inter alia*, that the original order provided that plaintiff pay \$1,000 per month in child support and that plaintiff's income had increased significantly since the entry of the original order. Defendant's motion further alleged that the original order had failed to address which party would be allowed to claim the children as dependents for income tax purposes.

¹ "Cameron" and "Matthew" are pseudonyms used to protect the identities of the minor children.

After a hearing, the trial court entered an order modifying the original order on 20 November 2013 (the "modified order"). The trial court found that defendant's monthly gross income averaged \$4,102.23 plus commissions, and that defendant's monthly gross income had declined by \$1,534. The trial court also found that plaintiff's W2 form for 2012 listed a total income of \$542,589.30 and that her average monthly gross income for 2013 was at least \$25,863.68. The trial court ordered plaintiff to pay \$2,500 per month in child support, that each party would be allowed to claim one child as a dependent for tax purposes, that the parties would share the children's uninsured medical expenses in the same percentages as the original order, and that plaintiff would remain responsible for the tuition and associated fees and expenses for the children's private school education. Plaintiff appeals.

On appeal, plaintiff argues that (1) the trial court abused its discretion in modifying her obligation to pay the children's private school tuition; (2) the trial court erred by concluding defendant had proven a substantial change in circumstances entitling him to a child support modification; (3) the trial court erred by overruling plaintiff's objection to defendant's evidence of a change in the children's needs and expenses; and

(4) defendant's evidence was insufficient as a matter of law to increase the child support payments.

II. Standard of Review

"Our review of a child support order is limited to determining whether the trial court abused its discretion." *Brind'Amour v. Brind'Amour*, 196 N.C. App. 322, 327, 674 S.E.2d 448, 452 (2009). "Under this standard of review, the trial court's ruling will be overturned only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *Spicer v. Spicer*, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005). "The trial court must, however, make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Id.*

III. Private School Tuition

Plaintiff first argues that the trial court abused its discretion in modifying her obligation to pay the children's private school expenses. Specifically, plaintiff contends that the trial court "lacked jurisdiction to modify the existing provisions in the June 2011 order and impose this extraordinary burden on the Plaintiff" because defendant did not specifically

raise the issue of the children's tuition and fees in his motion to modify. We agree.

According to the original order, plaintiff was required to pay the children's private school expenses "[f]or as long as the children remain in private school[.]" The modified order required that "[t]he parties shall continue to keep their minor children enrolled in private school and the plaintiff shall be responsible for payment of tuition and associated fees and expenses."

Although the modified order does not relieve plaintiff of her obligation to provide for the children's private school expenses, it imposes an additional obligation on plaintiff. The language in the modified order requires the children to remain enrolled in private school indefinitely, whereas the original order merely provided that plaintiff would pay for the children's private school tuition and fees for so long as the children were so enrolled. Although the modified order makes findings of fact related to the children's private school expenses, the findings do not support a modification requiring the children's indefinite enrollment in private school. Therefore, we reverse the trial court with regard to this portion of the order.

IV. Change in Circumstances

Plaintiff also argues that the trial court erred by concluding defendant had proven a substantial change in his circumstances. We disagree.

"[A]n order of a court of this State for support of a minor child 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) (2013). The burden of proving the changed circumstances is on the party seeking the modification. *Frey v. Best*, 189 N.C. App. 622, 629, 659 S.E.2d 60, 67 (2008) (citation omitted). A change in circumstances can be shown in several ways, including by a substantial increase or decrease of 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; a voluntary decrease in income of either supporting parent, absent bad faith, upon a showing of changed circumstances relating to child oriented expenses; or, for support orders at least three years old, proof of a disparity of 15% or more between the support payable under the original order and the amount owed under the child support guidelines based upon the parties' current income and expenses. *Wiggs v. Wiggs*, 128 N.C. App. 512, 515, 495 S.E.2d 401, 403 (1998), *disapproved of on other grounds* by *Pulliam v. Smith*, 348 N.C. 616, 620, 501 S.E.2d 898, 900, n.1 (1998) (citations omitted).

"When the evidence shows that a party has acted in 'bad faith,' the trial court may refuse to modify the support awards." *Wolf v. Wolf*, 151 N.C. App. 523, 527, 566 S.E.2d 516, 519 (2002). "Without evidence of any change in circumstances affecting the welfare of the child or an increase in need, however, an increase for support based solely on the ground that the support payor's income has increased is improper." *Greer v. Greer*, 101 N.C. App. 351, 355, 399 S.E.2d 399, 402 (1991) (citing *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963)).

In the instant case, defendant testified to his employment history as well as the expenses relating to the children, including their extracurricular sports and grocery expenses. The trial court found that defendant was employed forty hours per week, that his average gross monthly income was \$4,102.23 plus commissions, and that defendant did not expect to receive any commissions until October or November of 2013. The trial court also found that defendant's monthly gross income had declined in the amount of \$1,534. The trial court further found that defendant's financial situation had deteriorated since the entry of the original order, and that he had filed a Chapter 7 bankruptcy petition in November 2011.

The trial court also made findings regarding the children's ages and activities, including extracurricular sports, and the

related expenses. The trial court specifically found that "[b]oth children have physically grown and require more expense" and that "[t]he children's needs and expenses have increased significantly since entry of the last Order." The trial court finally found that defendant had "a significant involuntary decrease in his income[,]" and that "[s]ubstantial changes in circumstances have occurred since the Order Granting Child Support was entered, to wit: the Defendant has had a significant involuntary reduction in his income, and the minor children's expenses and needs have significantly increased."

The trial court's findings regarding plaintiff's income were that her gross monthly salary was \$17,083.33, that she had received bonuses in the past and expected to receive a bonus in 2013, and that she received stock options in addition to her salary and bonuses. The trial court also found that according to plaintiff's 2012 W2 form, her total gross income through wages, tips, and other compensation was \$542,589.30. The trial court further found that plaintiff's gross income for the period between 1 January 2013 and 21 June 2013 was \$161,389.39, and that her total average gross monthly income was at least \$25,863.68.

Plaintiff contends that the basis of the modified order was her increase in income and that defendant created some increased

expenses. Plaintiff states in her brief that “[i]t defies logic to increase the Plaintiff’s child support obligation” to support defendant’s expenses. Plaintiff is mistaken.

The trial court made findings regarding defendant’s employment history and bankruptcy, as well as a finding that defendant had sustained a significant *involuntary* reduction in income. More importantly, the trial court did not find bad faith on defendant’s part and made findings regarding changed circumstances relating to child oriented expenses. See *Wiggs*, 128 N.C. App. at 515, 495 S.E.2d at 403. Therefore, the modification of the original child support order is supported by findings of fact and changed circumstances. Plaintiff fails to show that the trial court abused its discretion in modifying the original child support order. Plaintiff’s argument is overruled.

V. Evidence of Change in Needs and Expenses

Plaintiff further argues that defendant’s motion to modify the original order was deficient because it did not allege the grounds for the modification. Therefore, according to plaintiff, the trial court erred by overruling her objection to defendant’s evidence regarding a change in the children’s needs and expenses. We disagree.

"The factual allegations of a motion to modify need not be detailed, but they must be legally sufficient to satisfy the elements of at least some legally recognized claim." *Devaney v. Miller*, 191 N.C. App. 208, 213, 662 S.E.2d 672, 675-76 (2008) (citation and internal quotation marks omitted).

In the instant case, defendant's motion to modify child support alleged, *inter alia*, that the original order provided that plaintiff pay \$1,000 per month in child support, and that "upon information and belief, application of the North Carolina Child Support Guidelines will result in a fifteen per cent (15%) deviation in the child support amount." These allegations were sufficient to allege a change of circumstances justifying a modification of the original order. See N.C. Gen. Stat. § 50-13.7 (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"); see *Wiggs*, 128 N.C. App. at 515, 495 S.E.2d at 403 (change of circumstances may be shown by proof of a disparity of 15% or more between the support payable under the original order and the amount owed under the child support guidelines based upon the parties' current income and expenses). Therefore, plaintiff was aware that defendant had pled a change in circumstances to modify the original order.

At the hearing, plaintiff objected to a line of questioning concerning the children's changes in age since the original order. Plaintiff specifically objected to the questioning because defendant had not alleged a change in the needs and expenses of the children in his motion to modify child support. Later, defendant offered evidence in the form of a budget summarizing his expenses:

Q. Now, have you prepared a budget, sort of what your expenses are?

A. Yes.

Q. Let me show you what's marked as Defendant's Exhibit No. 8 and ask you if you can identify that for me.

A. Yes.

Q. And does this accurately and correctly reflect the expenses that you've had -- that you presently have in managing your household?

A. Yes.

Q. And these expenses contribute to the needs of your minor children, is that correct?

A. Yes.

[Defense Counsel]: We'd MOVE TO INTRODUCE Defendant's Exhibit No. [7].

. . .

THE COURT: Yes, sir. [Plaintiff's Counsel], any objection to Defendant's Exhibit No. 7?

[Plaintiff's Counsel]: No, I'll cross-examine him.

THE COURT: All right. Let it be RECEIVED.

Q. Again, just because I've remarked it, let me ask you if Exhibit 7 is the expense sheet that we just--

A. Yes.

Q. -- talked about. It accurately and correctly reflects your expenses, is that correct?

A. Yes.

Plaintiff failed to object to the admission of the summarized list of expenses. Because plaintiff failed to renew her objection to the admission of evidence concerning a change in circumstances regarding defendant's expenses, especially those concerning the children, plaintiff waived her prior objection to defendant's testimony regarding the change in circumstances from the original order. See *Venters v. Albritton*, 184 N.C. App. 230, 240, 645 S.E.2d 839, 846 (2007) (citing *State v. Campbell*, 296 N.C. 394, 399, 250 S.E.2d 228, 231 (1979) and *Moore v. Reynolds*, 63 N.C. App. 160, 162, 303 S.E.2d 839, 840 (1983)) ("[I]t is the well-established rule that the admission of evidence without objection waives any prior or subsequent objection to the admission of evidence of a similar character."). Therefore, this argument is overruled.

Plaintiff finally argues that defendant's evidence was insufficient as a matter of law to increase the child support payments. However, plaintiff fails to cite any authority in support of this argument. Therefore, this argument is deemed abandoned. See N.C.R. App. P. 28 (b)(6).

VI. Conclusion

Although plaintiff remained responsible for the tuition and expenses of the children's private school education, the trial court's findings did not support a conclusion requiring the children's mandatory private school enrollment. The trial court found that defendant had sustained an involuntary decrease in income, and did not find any bad faith on his part regarding the decrease. Plaintiff waived her objection to the admission of defendant's evidence regarding his increased expenses. Therefore, the trial court did not abuse its discretion by increasing plaintiff's monthly child support payments. We affirm in part the order of the trial court, but reverse the portion requiring the children's mandatory private school education.

Affirmed in part, reversed in part.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).