IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-646

Filed: 3 September 2019

Mecklenburg County, No. 15 CVD 792

ERIN MAUREEN YOUNG, Plaintiff,

v.

ROBERT MCCLAIN, III, Defendant.

Appeal by defendant from order entered 14 December 2017 by Judge Aretha V. Blake in District Court, Mecklenburg County. Heard in the Court of Appeals 30 January 2019.

Horack Talley Pharr & Lowndes, P.A., by Kyle A. Frost and Elizabeth J. James, for plaintiff-appellee.

Plumides, Romano, Johnson & Cacheris, PC, by Richard B. Johnson, for defendant-appellant.

STROUD, Judge.

Father appeals from a child support order and contends the trial court lacked jurisdiction to enter the order; it improperly imputed income to him; it erred in calculating his retroactive and prospective child support obligations; and it did not consider his ability to pay. Because the trial court retained subject matter

jurisdiction over the custody case as initially filed, and Mother had a right under N.C. Gen. Stat. § 1A-1, Rule 15(a) to amend her complaint to add the child support claim, the trial court had subject matter jurisdiction to enter the child support order. Since the trial court did not impute income to Father, it was not required to find that he suppressed his income in bad faith. The trial court made detailed findings of fact regarding the actual expenses of the child for purposes of retroactive child support and the reasonable needs of the child for prospective child support, as well as the incomes of both parties, and we affirm. Because the trial court erred in using Father's 2014 income to calculate his child support obligation for 2015, we remand for the limited purpose of correcting mathematical errors.

I. Background

Mother and Father have one child born in July 2014. Father is a professional football player, and Mother works for Wells Fargo. Mother filed a complaint for child custody in January 2015. By a consent order, Mother was awarded primary physical and legal custody. After entry of the consent order, Mother filed an amended complaint for child support, and the trial court entered a temporary child support order requiring Father to pay $400.00 per month effective 1 November 2015. A trial was held on 1 February 2017 on permanent child support. The trial court entered an order requiring Father to pay monthly child support of $2,355.15 effective 1 November 2017, and the trial court determined Father owed $97,633.20 in child

support retroactive to the filing of the child support claim. Father was required to pay the $97,633.20 at the rate of $5,000.00 per month until paid in full. Father timely appealed.

II. Jurisdiction

Father argues that "the trial court lacked subject matter jurisdiction to hear Plaintiff-Appellee's claim for child support as it was not properly filed and the Order entered on 14 December 2017 should be reversed and vacated."[1] Mother argues "the Consent Order is not a final judgment as it is a child custody order and always subject to modification." "In reviewing a question of subject matter jurisdiction, our standard of review is *de novo*." *In re K.A.D.*, 187 N.C. App. 502, 503, 653 S.E.2d 427, 428 (2007).

Mother filed the original complaint for child custody on 15 January 2015, and Father did not file an answer or any response whatsoever. On 20 February 2015, the trial court entered the consent order for permanent child custody and paternity. That order established that Father was the legal and biological father of the child and granted sole physical and legal custody to Mother. The consent order also decreed "[t]his matter is hereby retained for further orders of the Court in order to effectuate the language, purpose, and intent of this Consent Order."

[1] Father's brief states, "Defendant-Appellant challenges Findings of Fact 9 through 51 and Conclusions of Law 1, 2, 3, 4, 5," but he does not address any finding or conclusion individually and only argues regarding jurisdiction. Listing findings and conclusions alone is not sufficient to make or preserve challenges that are not specifically made in his brief, and we have considered only the arguments actually made in his brief. *See* N.C. R. App. P. 28(b)(6).

On 22 May 2015, Mom filed an "Amended Complaint" under Rule 15:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within 30 days after service of the amended pleading, unless the court otherwise orders.

N.C. Gen. Stat. § 1A-1, Rule 15(a).

Mother's amended complaint added paragraphs numbered 24 to 35, addressing child support, and she requested that the court enter an order for retroactive child support, prospective child support, and attorney's fees. Father still did not file an answer or any other response, but on 30 October 2015 he filed his financial affidavit as required by the Mecklenburg County Local Rules, noting that it was filed for purposes of child support.

The parties consented to entry of a memorandum order for temporary child support on 9 November 2015; this order was later incorporated into a formal order for temporary support filed on 26 February 2016, *nunc pro tunc* to 9 November 2015. The order set temporary child support at $400.00 per month as of 1 November 2015 and included provisions regarding the child's medical insurance and payment of uninsured medical expenses.

On 20 January 2017, Father filed an amended financial affidavit, and on 31 January 2017, for the first time, he filed an answer which responded to the allegations of both the original complaint and the amended complaint. His answer included only general admissions and denials of the allegations of the complaint, and he requested that "Plaintiff not be granted any relief requested in her Complaint for Custody or Amended Complaint whatsoever." The child support claim, based upon the amended complaint, was tried on 1 February 2017. Father fully participated in the hearing and raised no objection to hearing the child support claim.

Father argues that the consent custody order entered on 20 February 2015 was a final order which disposed of all issues raised by Mother's complaint. Thus, he contends the complaint could not be amended under Rule 15, and the trial court had no subject matter jurisdiction to enter a child support order. Subject matter jurisdiction cannot be waived by the parties, so Father's participation in the hearing cannot confer jurisdiction on the court. *Time Warner Entm't Advance/Newhouse P'ship v. Town of Landis*, 228 N.C. App. 510, 514, 747 S.E.2d 610, 614 (2013). Father cites to several cases—none under Chapter 50—in which this Court has held that Rule 15 did not allow a particular amendment to a pleading. Father first notes a personal injury case where the plaintiff filed a voluntary dismissal under N.C. Gen. Stat. § 1A-1, Rule 41 and then filed a motion under Rule 15 to amend the notice of voluntary dismissal, which the trial court allowed. *Carter v. Clowers*, 102 N.C. App.

247, 401 S.E.2d 662 (1991). This Court held that the trial court had no jurisdiction to enter an order allowing amendment of the voluntary dismissal because the dismissal ended the case entirely, leaving nothing to amend:

> For the purposes of this case, federal Rule 41(a)(1) is the same as our state law. As one federal court has noted, A notice of dismissal itself is the operative document. In a frequently cited case concerning the effect of a notice of dismissal, the Fifth Circuit Court of Appeals stated:
>
> > That document itself closes the file. There is nothing the defendant can do to fan the ashes of that action into life and the court has no role to play. This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court. There is not even a perfunctory order of court closing the file.
>
> It also is logical to assume that neither can a plaintiff revive an action he or she voluntarily dismissed. After the dismissal, there is no longer a pending action, and therefore no further proceedings are proper.
>
> While no North Carolina cases specifically address whether a court has jurisdiction to allow a Rule 15(a) motion to amend a Rule 41(a)(1) notice of dismissal, this Court has on several occasions disallowed motions to amend pleadings after final judgment was entered.
>
> Given the cases cited and the construction of Rule 41(a)(1), we find that plaintiff's original notice of dismissal did, by itself, operate to dismiss the suit as to both defendants. Because the suit was no longer pending, the amended notice was ineffective to undo the original notice.

Id. at 251-52, 401 S.E.2d at 664-65 (citations, brackets, and quotation marks omitted).

Father also notes cases in which Rule 15 amendment has been disallowed following dismissal of a case by judgment on the pleadings, *Harris v. Family Medical*

Center, 38 N.C. App. 716, 248 S.E.2d 768 (1978); granting a motion to dismiss under N.C. Gen. Stat. § 1A-1, Rule 12(b)(1)(6), *Johnson v. Bollinger*, 86 N.C. App. 1, 356 S.E.2d 378 (1987); and entry of summary judgment, *Sentry Enterprises, Inc. v. Canal Wood Corp. of Lumberton*, 94 N.C. App. 293, 380 S.E.2d 152 (1989). Father also cites to a case which dismissed the Plaintiff's appeal of an interlocutory order, a custody order which reserved several pending claims "for future proceedings." *Hausle v. Hausle*, 226 N.C. App. 241, 243, 739 S.E.2d 203, 205 (2013). As part of this analysis, this Court noted the oft-repeated statement that "a final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Id.* at 243-44, 739 S.E.2d at 206 (brackets omitted). Father then argues that the consent custody order was a final order, not a temporary order, citing to cases which address the standards for modification of a child custody order. *See Peters v. Pennington*, 210 N.C. App. 1, 13-14, 707 S.E.2d 724, 734 (2011) ("If a child custody or visitation order is permanent, a court may not modify that order unless it finds there has been a substantial change in circumstances affecting the welfare of the child. If the court concludes there has been a substantial change in circumstances, it may modify the order if the alteration is in the best interests of the child. If a prior order is temporary, the trial court can proceed directly to the best-interests analysis. The trial court's designation of an order as temporary or permanent does not control. An order is temporary if either (1) it is entered without

prejudice to either party; (2) it states a clear and specific reconvening time in the order and the time interval between the two hearings was reasonably brief; or (3) the order does not determine all the issues. If the order does not meet any of these criteria, it is permanent." (citations, brackets, and quotation marks and omitted)).

Mother argues that a child custody order is never "final" in the sense that orders in other types of cases are, since the trial court maintains subject matter jurisdiction over a custody case as long as the child remains in the court's geographical jurisdiction:

> Additionally, a judicial decree in a child custody and support matter is subject to alteration upon a change of circumstances affecting the welfare of the child and, therefore, is not final in nature. As a result, the jurisdiction of the court entering such a decree continues as long as the minor child whose custody is the subject of the decree remains within its jurisdiction.

Catawba Cty. ex rel. Rackley v. Loggins, 370 N.C. 83, 88-89, 804 S.E.2d 474, 478 (2017) (citations, brackets, and quotation marks omitted).

We find Mother's argument more persuasive, considering the statutory subject matter jurisdiction in child custody and support cases. None of the cases cited by Father involves a claim in which the trial court may have continuing subject matter jurisdiction after entry of a dispositive order. In those cases, the parties brought a claim based upon a specific event—e.g. injury from an accident, negligent medical treatment during childbirth, breach of contract—and once those cases were resolved,

whether by dismissal under Rule 41, Rule 12(b)(6), or Rule 56, the trial court's subject matter jurisdiction ends. But in a child custody case, despite the entry of an order—even a permanent order, for purposes of modification, the trial court retains subject matter jurisdiction to amend the order as long as the child remains in its geographical jurisdiction. *Id.* In addition, the consent custody order here specifically noted the court's continuing jurisdiction: "This matter is hereby retained for further orders of the Court in order to effectuate the language, purpose, and intent of this Consent Order." The trial court still retained jurisdiction over the custody case, so the only remaining question is whether Mother could amend her complaint under Rule 15(a).

Although it is unusual for an order to be entered before the defendant files an answer or other responsive pleading, it is possible and it happened in this case. Under terms of the order, the trial court still retained subject matter jurisdiction over the case after entry of the custody consent order. Under Rule 15(a), Mother was allowed to file an amendment "once as a matter of course *at any time before a responsive pleading is served*." N.C. Gen. Stat. § 1A-1, Rule 15(a) (emphasis added). Because Father had not filed a responsive pleading, Mother still had the right to file an amendment. Father did not file an answer until long after both the original and amended complaints were filed, and he simply answered both without raising any objection to the amended complaint. This argument is overruled.

III. Calculating Income

Father argues that "[t]he trial court made reversible error when it failed to make any findings that Defendant-Appellant acted in bad faith prior to imputing income to Defendant-Appellant."

> In reviewing child support orders, our review is limited to a determination whether the trial court abused its discretion. 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. 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.

Spicer v. Spicer, 168 N.C. App. 283, 287, 607 S.E.2d 678, 682 (2005) (citations omitted).

Father does not specifically challenge any of the trial court's findings of fact as unsupported by the evidence.[2] Instead, he argues that the trial court imputed income to him without finding he had acted in bad faith to suppress his income. *See Lasecki v. Lasecki*, 246 N.C. App. 518, 523-24, 786 S.E.2d 286, 291-92 (2016) ('The trial court may impute income to a party only upon finding that the party has deliberately depressed his income or deliberately acted in disregard of his obligation to provide

[2] At the end of his argument, Father notes parenthetically that he challenges "Findings of Fact 20 through 23, 44, 45, 46, and Conclusions of Law 34 and 5." But his brief does not make any argument that these findings are unsupported by the evidence, and listing findings of fact is not sufficient for us to consider Father's challenge to these findings. He does not challenge any of the numbers in the findings of fact; he challenges only the trial court's use of the numbers to determine his current earnings.

support: Generally, a party's ability to pay child support is determined by that party's actual income at the time the award is made. A party's capacity to earn may, however, be the basis for an award where the party deliberately depressed his income or deliberately acted in disregard of his obligation to provide support. Before earning capacity may be used as the basis of an award, there must be a showing that the actions reducing the party's income were taken in bad faith to avoid family responsibilities. Yet, this showing may be met by a sufficient degree of indifference to the needs of a parent's children." (quotation marks omitted)).

Father is correct that the trial court must find bad faith suppression of income to impute income, but the trial court did not impute income to him. The trial court may use a parent's earning history to determine income to compute child support where "it would have been difficult for the trial court to have computed plaintiff's [current year's] income with any degree of accuracy." *Holland v. Holland*, 169 N.C. App. 564, 568, 610 S.E.2d 231, 235 (2005). This type of calculation is sometimes used when a parent's income varies substantially from year to year simply because of the nature of his employment. In *Holland*, plaintiff was a farmer "and most of his crops [were] harvested and sold in the late summer and fall" which occurred after the child support hearing. *Id.* This Court concluded that the trial court could use income from a previous year to determine his present earnings, but the trial court's "order fail[ed] to support this approach with the necessary findings of fact." *Id.*; *see also Hartsell v.*

Hartsell, 189 N.C. App. 65, 79, 657 S.E.2d 724, 732 (2008) ("Nor does the trial court's mere use of the phrases 'earning capacity' or 'past income' automatically transform the order into one that 'imputes' income to Plaintiff. In the instant case, the court's findings of fact expressly calculate Plaintiff's income on the basis of his present earnings, and not by imputing hypothetical earnings to an unemployed or underemployed parent. Finding of fact fifteen (15) might best be read as stating that 'Plaintiff has the present ability and capacity to continue to earn at least $2,500.00 per month from the grading business.' We conclude that the trial court's determination that Plaintiff could continue to earn at least $2,500 a month from the grading business, was reasonably based on its findings of fact regarding Plaintiff's actual earnings during the year prior to the hearing." (citation and brackets omitted)).

Defendant is a professional football player, and his earnings have varied substantially from year to year. The trial court made findings regarding Father's employment history and earnings since 2010, when he was "drafted by the Carolina Panthers in the NFL draft." In 2011, Father worked with both the Panthers and the Jacksonville Jaguars. In 2012, he signed with the Atlanta Falcons and played with them through the end of the 2014 season. In 2014, his gross income was $1,500,183.00. In 2015, Father was signed by the New England Patriots but released before commencement of the regular season. In 2015, his gross income was $381,607.00. He signed with the Panthers in December 2015 and was part of the

Panthers team that played in Super Bowl 50. Three days after his release from the Panthers in December 2016, he signed with the San Diego Chargers. His income for 2016 was $791,188.00. At the time of the trial in February 2017, Father was still under contract with the Chargers and he had already earned $135,856.24 in the first month of 2017. Father does not contest these findings as unsupported by the evidence, so they are binding on appeal. *Mussa*, 366 N.C. at 191, 731 S.E.2d at 409.

At trial, Father testified that he did not have another contract lined up after his contract with the Chargers expired in March 2017, and his physical condition would limit his future prospects for employment. The trial court made findings about Father's expected future employment and earnings based upon his past history:

> 21. Defendant has been employed by a team within the National Football League for all but one football season since being drafted in 2010.
>
> 22. In light of Defendant's continued and consistent employment within the National Football League, Defendant's prior work history, and the pattern and timing of his past professional football contracts, including the fact that he was signed by the Chargers only three days after being released by the Carolina Panthers at the end of 2016, the Court does not find credible Defendant's contention that his opportunities for employment by a team within the National Football League are limited by his physical condition.

Father is correct that no finding in the trial court's order states that father acted in bad faith, but the trial court did not impute income so no finding of bad faith was needed. Instead, the trial court relied upon Father's past earning history to calculate

an average income based upon his prior earning history. The trial court found in relevant part:

> 23. The Court finds that the Defendant has the capacity to earn in 2017 an average of the income that he earned in 2015 and 2016, the two years preceding the trial of this matter. Therefore, the Court finds that Defendant's current gross yearly income is $586,397.50, which is $48,866.46 gross per month. At the time of trial, Defendant had already earned $135,856.24 in the first month of 2017.

Mother correctly points out that "[w]hile Defendant-Appellant argues that this method of calculating income amounts to imputation of income which would require a finding of bad faith on Defendant-Appellant's part, this is simply not the case." The North Carolina Child Support Guidelines state that "[w]hen income is received on an irregular, non-recurring, or one-time basis, the court may average or prorate the income over a specified period of time . . . ." N.C. Child Support Guidelines, AOC-A-162, at 3 (2015). Although the child support obligation here did not fall within the Child Support Guidelines because of the level of income, the same rule may still be applied to calculation of the amount of income.

The trial court did not impute income but simply used Father's past history of income and the nature of his employment to determine an average to project income for the upcoming year since Father's contract was ending.[3] Father's income has

[3] The trial court calculated Mother's income in essentially the same manner, since her income also varied from year to year. Mother's income from Wells Fargo included her base salary, an "Annual Incentive," and a "Long-Term Cash Award Plan" each year. She also had income from interest,

varied over the years, but he had been consistently employed as a professional football player since 2010, and his employment was always based upon a series of contracts with a fixed term. Father does not specifically challenge the relevant findings of fact as to his employment history or income as unsupported by the evidence, and those facts are binding on appeal. *Mussa*, 366 N.C. at 191, 731 S.E.2d at 409. The trial court did not err by failing to make findings regarding bad faith, since it did not impute income to Father. This argument is overruled.

IV. Retroactive and Prospective Child Support

Father argues that the trial court's method for calculating his income from 2014 to 2017 "was an incorrect method as the child support ordered here was not based on Defendant-Appellant's income at the time of the trial on 1 February 2017."

A. Calculation of Child Support

We first note that the trial court did not calculate child support based upon the Child Support Guidelines because the parties' combined gross incomes exceed the guidelines.[4]

> In a non-guideline child support case, the trial court must consider the needs of the child, specifically based upon the "accustomed standard of living" of that child, and must make findings of fact to address these needs:
>
> where the parties' income exceeds the level

dividends, and capital gains. The trial court determined her income for each year starting in 2014 and determined her average monthly gross income as of the time of trial in 2017 was $31,757.22.

[4] The Guidelines do not apply when the parties' combined gross incomes are above $25,000 per month. N.C. Child Support Guidelines, at 2.

> set by the Guidelines, the trial court's support order, on a case-by-case basis, must be based upon the interplay of the trial court's conclusions of law as to (1) the amount of support necessary to meet the reasonable needs of the child and (2) the relative ability of the parties to provide that amount. The determination of a child's needs is largely measured by the accustomed standard of living of the child.

Crews v. Paysour, ___ N.C. ___, ___, 821 S.E.2d 469, 474 (2018) (quoting *Smith v. Smith*, 247 N.C. App. 135, 145-46, 786 S.E.2d 12, 21 (2016)).

Here, the trial court was considering three time periods for child support: (1) retroactive child support, from the child's birth to May 2015; (2) past prospective child support, from June 2015 to the date of trial; and (3) future prospective child support, from the date of trial until the child reaches the age of 18. "Child support awarded prior to the time a party files a complaint is properly classified as retroactive child support. Child support awarded, however, from the time a party files a complaint for child support to the date of trial is termed prospective child support." *Respess v. Respess*, 232 N.C. App. 611, 628, 754 S.E.2d 691, 702-03 (2014) (ellipsis and brackets omitted). When the trial court determines the amount of child support which accrued between the filing of the child support claim and prior to the trial, this support is past prospective child support. *See also Carson v. Carson*, 199 N.C. App. 101, 105, 680 S.E.2d 885, 888 (2009) ("As a preliminary matter, we must clarify the difference between prospective and retroactive child support. Child support awarded *prior* to

the time a party files a complaint is properly classified as retroactive child support. Child support awarded, however, from the time a party files a complaint for child support to the date of trial is termed prospective child support." (quotation marks, ellipses, and brackets omitted)).

Retroactive child support is set based upon the actual expenditures for the child and the ability of the parent to meet the child's needs during the time period for which support is ordered:

> The ultimate objective in setting awards for child support is to secure support commensurate with the needs of the children and the ability of the obligor to meet the needs. Retroactive child support encompasses child support awarded prior to the time a party files a complaint. However, retroactive child support payments are only recoverable for amounts actually expended on the child's behalf during the relevant period. Therefore, a party seeking retroactive child support must present sufficient evidence of past expenditures made on behalf of the child, and evidence that such expenditures were reasonably necessary.

Loosvelt v. Brown, 235 N.C. App. 88, 93, 760 S.E.2d 351, 355 (2014) (citations, brackets, and quotation marks omitted).

Father argues, "rather than basing Defendant-Appellant's child support obligation on his income at the time of trial and making that amount retroactive to the date of filing, the trial court went through each year from 2014 to the date of trial and determined Defendant-Appellant's child support arrears for this time period." Father's argument appears to be based on a misapprehension of law and seems to

confuse the standard for future prospective child support with the above standards for retroactive child support and past prospective child support. Father's argument would be correct regarding *future* prospective child support. *See State ex rel. Midgett v. Midgett*, 199 N.C. App. 202, 207, 680 S.E.2d 876, 879 (2009) ("It is well established that child support obligations are ordinarily determined by a party's actual income at the time the order is made or modified."). But retroactive and past prospective child support is not based upon the parents' incomes at the time of the trial.

In a child support case where the parties' incomes exceed the level of the Child Support Guidelines, to set retroactive child support, "the trial court must determine the amount actually expended by the dependent spouse which represents the supporting spouse's share of support." *Smith v. Smith*, 247 N.C. App. 135, 149, 786 S.E.2d 12, 24 (2016) (brackets and quotation marks omitted).[5] Child support for the period after the filing of the child support claim and the date of hearing is considered as past prospective child support, and it is calculated based upon the parent's earning, children's needs, and other relevant facts for the time period for which the child support is being ordered. *See id.* Future prospective child support is child support ordered from the date of the hearing forward, based upon the circumstances

[5] As of 2014, the North Carolina Child Support Guidelines apply to calculation of retroactive child support in cases falling under the Guidelines. N.C. Child Support Guidelines, at 2 ("In a direct response to *Respess v. Respess*, 232 N.C. App. 611, 754 S.E.2d 691 (2014), the 2014 General Assembly amended G.S. 50-13.4(c1) to provide that "the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations, including retroactive support obligations [. . .]" (alteration in original)).

existing as of the time of the hearing. *See Midgett*, 199 N.C. App. at 207, 680 S.E.2d at 879. In many cases, there is no significant difference in the financial circumstances during each of these three periods of time and thus no need to differentiate between them. Here, because of the variability of the parties' incomes from year to year, the child support calculations are different for each time period.

The trial court recognized the differences between retroactive child support, past prospective child support, and future prospective child support and made detailed findings of fact to support the child support calculations. The trial court found that Mother sought "retroactive child support from the child's birth in August 2014 through May 2015, the date of the filing of the Amended Complaint seeking child support." The trial court also found that "Mother seeks prospective child support beginning June 1, 2015, after filing of the action for child support." The trial court then made detailed findings of fact regarding the reasonable expenses for the minor child from the child's birth up to the time of the trial, as well as findings regarding both Father's and Mother's incomes during each time period, and then determined the percentages of the child's expenses each parent should be responsible for based upon their relative incomes. This argument is overruled.

B. Mathematical Errors in Calculating Father's Retroactive and Past Prospective Child Support Obligations

Father argues in the alternative that "even if this Court were to find that it was not reversible error for the trial court to calculate Defendant-Appellant's income

on an annual basis for each year, the trial court's methodology was inconsistent and different for each year and there appears to be mathematical errors[.]

1. Retroactive Child Support from August 2014 to May 2015

Father argues that the trial court erred in its calculation of retroactive child support from August of 2014 to May of 2015 by only using Father's 2014 income to calculate his share for the entire time period, although the trial court found his income for 2014 was substantially more than his income for 2015. We agree that it appears the trial court made a mathematical error in using Father's 2014 income to determine his percentage of the child's expenses for 2015. In 2014, Father had his highest income; in 2015, he had his lowest.

This period includes five months in 2014 and five months in 2015. For each five month period the trial court found expenses of $17,323.35. The medical expenses related to the birth of the child in 2014 fall within the first five month period. The trial court found the total medical expenses to be $2,858.38. Based upon his and Mother's incomes as found by the trial court, Father was responsible for 78.8% of expenses in 2014. This results in a total obligation of $15,903.20 for August 2014 to December 2014. From January 2015 to May 2015, based upon the trial court's findings of each parties' income for 2015, Father would be responsible for 50.6% of the expenses which would result in an obligation of $8,765.62. The trial court used Father's 2014 income for the entire time period, resulting in a total obligation of

$29,554.00. Based upon the trial court's findings, Father's total obligation for August 2014 through May 2015 should have been $24,668.82.

2. Past Prospective Child Support from June 2015 through December 2015

Father contends the trial court erred by finding that his share of the child's expenses was 78.8% for June 2015 through December 2015, when this share of support was based on the parties' 2014 incomes. The trial court again used Father's 2014 income for the entire time period, resulting in a total obligation of $19,111.12. Based the trial court's findings of his and Mother's incomes for 2015, he should have been responsible for 50.6% of expenses. Based upon the trial court's findings of the child's reasonable expenses for 2015 and the parties' incomes, Father's share of support for June 2015 through December 2015 should have been 50.6%, or $12,271.86. We therefore remand for correction of this calculation.

3. Error in Finding of Fact 43

Father next notes that finding of fact 43 has an error where the trial court found Father responsible for 66% of the minor child's expenses when he should have been responsible for 67%. We agree with Father he should have been responsible for 67% based on the numbers in the order, but this error is simply a rounding error and is *de minimis*. Mother has not cross appealed, and we find this discrepancy to be harmless.

4. Calculation of Total Arrears Owed

Defendant mentions in a footnote in his brief that there was an additional mathematical error in the order. The trial court found Father's total arrears to be $97,963.20. Father states the arrears should have been $103,463.20. In finding of fact 49, the trial court reduced Father's arrears by $5,500.00, the amount of temporary child support he paid from 1 November 2015 through 1 February 2017.

As discussed above, using Father's income from 2015 to calculate his child support obligation in 2015 results in Father's arrears being reduced by $11,724.44. Subtracting this amount, $11,724.44, from the arrears as the trial court found, $97,963.20, results in arrears of $86,238.76. We remand for the trial court to make this correction.

C. Ability to Pay Child Support

Father argues "[t]here are no detailed findings regarding Defendant-Appellant's expenses nor findings as to what of his expenses are reasonable or not and what is his ability [to] pay either retroactive or prospective child support based on these expenses." Father contends findings of fact 38 and 48 were not sufficient to support the trial court's conclusion that Father had the ability to pay the child support ordered:

> 38. Father had the ability to pay child support during the time for which reimbursement is sought Father did not pay these expenses, and Mother paid all expenses.
>
> . . . .

> 48 Despite his lucrative career and ability to provide support, Father has contributed only $5500.00 to the care of the minor child since her birth. Father purchased a home for $505,000 in February of 2015 and made a down payment of $98,000 on that home.

But Father ignores the trial court's detailed findings regarding his income in previous years and at the time of trial, as discussed above.

The evidence and the trial court's findings regarding Father's income show that Father has the ability to pay the child support ordered. The trial court's finding of ultimate fact that Father had the ability to pay is fully supported by the evidence, and the trial court need not make findings as to each evidentiary fact. Father's own financial affidavit stated his monthly expenses as $11,292.74 with no debt other than his home mortgage, and that payment was included in his monthly expenses. Based upon his current monthly income of $48,866.46 per month, he can well afford his prospective monthly child support payment of $2355.15 as well as arrears at the rate of $5,000.00 per month until paid in full. For each year, Father's income far exceeded his expenses based upon his own affidavit and evidence. This argument is overruled.

V. Conclusion

For the foregoing reasons, we affirm in part but remand to correct the errors in calculating Father's child support obligation.

AFFIRMED IN PART AND REMANDED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).