IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-212

Filed: 1 October 2019

Union County, No. 09-CVD-1926

ABIGAIL B. LITTLE (now ABIGAIL L. COBLE), Plaintiff,

v.

EVERETTE D. LITTLE, Defendant.

Appeal by defendant from order entered 6 December 2018 by Judge Joseph J. Williams in Union County District Court. Heard in the Court of Appeals 4 September 2019.

No brief filed on behalf of plaintiff-appellee.

Christopher A. Gray for defendant-appellant.

BERGER, Judge.

Everette D. Little ("Defendant") appeals from an order that modified his child support obligation. On appeal, Defendant contends that the trial court erroneously calculated his income for purposes of determining his child support obligation. We disagree.

Factual and Procedural Background

Defendant and Abigail L. Coble ("Plaintiff") were married in August 1999 and separated in May 2008. There were two children born of the marriage. On February 27, 2009, Plaintiff and Defendant entered into a separation agreement that addressed claims for equitable distribution, spousal support, child custody, and child support. Pursuant to the terms of the separation agreement, Defendant was required to pay $900.00 per month in child support for the parties' minor children. The separation agreement was incorporated into the parties' divorce judgment on July 23, 2009.

On October 16, 2015, Plaintiff filed a motion to modify child support. After a hearing was held, the trial court entered an Order Granting Plaintiff's Motion to Modify Child Support on December 6, 2018, in which the trial court ordered Defendant to pay $1,681.00 per month in child support. It is from this Order that Defendant appeals.

Analysis

Defendant contends that the trial court erroneously calculated his income for purposes of determining his child support obligation. We disagree.

"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." *Head v. Mosier*, 197 N.C. App. 328, 333, 677 S.E.2d 191, 195 (2009) (citation and quotation marks omitted). "To support a reversal, an appellant must show that the trial court's actions were manifestly

unsupported by reason." *Id.* (internal citation and quotation marks omitted). "If different inferences may be drawn from the evidence, [the judge sitting without a jury] determines which inferences shall be drawn ..., and the findings are binding on the appellate court." *Cauble v. Cauble*, 133 N.C. App. 390, 395-96, 515 S.E.2d 708, 712 (1999) (alterations in original) (internal citation and quotation marks omitted).

Modification of a child support order requires a two-step process. N.C. Gen. Stat. § 50-13.7 (2017). "First, a court must determine whether there has been a substantial change in circumstances since the date the existing child support order was entered." *Head*, 197 N.C. App. at 333, 677 S.E.2d at 195. "Once a substantial change in circumstances has been shown by the party seeking modification, the trial court then proceeds to follow the Guidelines and to compute the appropriate amount of child support." *Id.* at 334, 677 S.E.2d at 196 (internal citation and quotation marks omitted).

Pursuant to the North Carolina Child Support Guidelines, child support calculations are "based on the parents' current incomes at the time the order is entered." Form AOC–A–162, Rev. 8/15. The Guidelines define "income" as:

> a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation . . . .
>
> Except as otherwise provided, income does not include the income of a person who is not a parent of a child for whom

> support is being determined, regardless of whether that person is married to or lives with the child's parent or has physical custody of the child.

Form AOC–A–162, Rev. 8/15.

With regard to a parent's income from self-employment or operation of a business, the Guidelines provide, in pertinent part,

> Gross income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, is defined as gross receipts *minus ordinary and necessary expenses required for self-employment or business operation*. . . .
>
> Expense reimbursements or in-kind payments (for example, use of a company car, free housing, or reimbursed meals) received by a parent in the course of employment, or operation of a business are counted as income if they are significant and reduce personal living expenses.

AOC–A–162, Rev. 8/15 (emphasis added). Specifically excluded from "ordinary and necessary expenses" are those "determined by the court to be inappropriate for determining gross income" for purposes of calculating child support. AOC–A–162, Rev. 8/15. Moreover, "income and expenses from self-employment or operation of a business should be *carefully reviewed* to determine an appropriate level of gross income *available to the parent* to satisfy a child support obligation." AOC–A–162, Rev. 8/15 (emphasis added).

In the present case, Defendant's sole argument on appeal[1] is that the trial court should not have factored his current wife's income of $34,656.00 when it calculated Defendant's income in finding of fact 14, which states:

> Defendant is presently self-employed and earns a gross monthly income of approximately $13,345.00. In calculating Defendant's income, the Court looked to Defendant's 2017 Amended Individual Income Tax Return. The Court took the income amount listed as "Farm Income" on line 18, and added back the following deductions to Defendant's income: $18,300.00 in charitable deductions; $6,600.00 for Defendant's other child's school expenses; $8,650.00 for insurance deductions; and $34,656.00 for Defendant's current wife's income, for a total of $175,249.00. The Court specifically finds that it is not appropriate to consider losses carried forward from prior years. As to Defendant's current wife's income, the Court specifically finds that her involvement in the business is not enough to justify her salary as she simply keeps up with accounting, but Defendant does the work. Further, the Court finds that Defendant's contention that he pays employees more than he earns is disingenuous. The Court did apply a deduction of $15,125.00 for Defendant's self-employment expenses.

At the hearing, Defendant's current wife affirmed that she is "basically the office manager for L&L Farms" and that her employee status had remained the same

[1] We note that Defendant's brief is not in compliance with Rule 28 of our Rules of Appellate Procedure, which requires the "body of the argument" to "contain citations of the authorities upon which the appellant relies." N.C.R. App. P. 28(b)(6). Defendant merely provides citations to the applicable standard of review, but does not offer any authority to support his sole argument on appeal. "Our Supreme Court has held Rule 28(b) to be a nonjurisdictional rule." *Lipscomb v. Mayflower Vehicle Sys.*, 213 N.C. App. 440, 447, 716 S.E.2d 345, 350 (2011). Thus, we will not dismiss Defendant's appeal because "[n]oncompliance with rules of this nature, while perhaps indicative of inartful appellate advocacy, does not ordinarily give rise to the harms associated with review of unpreserved issues or lack of jurisdiction." *Id.* (citation and quotation marks omitted).

since at least November 2017. When asked how she is paid, she testified that neither Defendant nor she "really draw a paycheck. We just pay our bills." When asked how she paid for the bills for the business and for the house, she testified she had a personal account that she uses for personal expenses and that the majority of bills are paid out of the business account. In addition, she stated her personal account consists only of child support checks she receives every month from her former spouse. She further testified that as the office manager she made $2,888.58 a month, about one thousand dollars more than what Defendant reported to make in his 2017 amended income tax return, which was amended a couple weeks before the hearing on Plaintiff's motion to modify child support.

Based on the evidence and testimony at the hearing, it is apparent that the trial court did not deem the $34,656.00 paid to Defendant's current wife to be an "ordinary and necessary" business expense, and specifically found in finding 14 that "her involvement in the business [was] not enough to justify her salary as she simply keeps up with accounting, but Defendant does the work" and "that Defendant's contention that he pays employees more than he earns is disingenuous." *See Cauble*, 133 N.C. App. at 399, 515 S.E.2d at 714 (emphasizing that the determination of what is an ordinary and necessary expense is in the trial court's discretion and will not be disturbed on appeal if its findings specifically show that its decision to disallow the deduction of the business expense in calculating income was not manifestly

unsupported by reason). These findings demonstrate that the trial court's decision to include $34,656.00 in Defendant's income was not manifestly unsupported by reason.

"Because the Guidelines vest the trial court with the discretion to disallow the deduction of any business expenses which are inappropriate for the purposes of calculating child support, . . . the trial court's decision in the instant case to disallow the claimed expense[ ] must be upheld[.]" *Kennedy v. Kennedy*, 107 N.C. App. 695, 700, 421 S.E.2d 795, 798 (1992) (citation omitted). Accordingly, the trial court did not abuse its discretion.

AFFIRMED.

Judge MURPHY concurs.

Judge INMAN concurs in result only.

Report per Rule 30(e).