IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-289

Filed: 17 December 2019

New Hanover County, No. 06 CvD 1606

SHAMEKIA (COGDELL) PRIDGEN, Plaintiff,

v.

RASHAD D. COGDELL, New Hanover County OBO, Defendant.

Appeal by Plaintiff from orders entered 15 August 2017 and 28 February 2018 by Judge Melinda H. Crouch in New Hanover County District Court. Heard in the Court of Appeals 14 November 2019.

*Jonathan McGirt for the Plaintiff-Appellant.*

*No brief filed for the Defendant-Appellee.*

DILLON, Judge.

Plaintiff Shamekia Pridgen ("Mother") appeals from two orders directing her to pay child support and arrears to Defendant Rashad D. Cogdell ("Father").

## I. Background

Mother and Father were married in 1999 and divorced in 2006. Two children were born of their marriage. Custody and support of the two minor children have been the subject of several disputes and actions.

Upon the parties' separation in 2005, the children primarily lived with Mother, and Father consented to pay $250.00 per month in child support. In January 2009, the younger child began to primarily reside with Father, and in November 2013, the elder child began to primarily reside with Father. In April 2015, in light of these changes, Father filed a motion seeking modification of his child support obligations.

A consent order was entered which transferred primary custody of the children to Father, but did not resolve the issue of child support. Father filed another motion, this time seeking to establish Mother's child support obligation.

In December 2016, a hearing was held on Father's motion. On this same day, Mother's counsel of record effectively withdrew. A week later, the trial court entered an order, directing Mother to pay Father $2,430.00 per month, noting that Mother was not present at the December hearing.

Following the December hearing and order, Mother filed a Rule 59 motion, Rule 60 motion, and motion for contempt. After a hearing on the matter, the trial court entered an order granting Rule 59 and Rule 60 relief to Mother.

Months later, in August 2017, the trial court entered a child support order (the "2017 Order"), finding a substantial change in circumstances that warranted

modifying Mother's child support obligation to $1,452.62 per month and ordering Mother to pay Father a lump-sum payment of $13,292.74 for arrearages. Mother filed Rule 59 and Rule 60 motions, requesting relief from the 2017 Order.

At the hearing on the matter held in February 2018, evidence was introduced concerning Mother's earnings and errors made in the calculations made in the 2017 Order. Based on the evidence, the trial court entered another order (the "2018 Order"), which not only denied Mother's Rule 59 and Rule 60 motions, but also increased Mother's child support obligation to $1,764.08 per month and ordered Mother to pay Father $22,041.13 in arrearages.

Mother timely appealed the 2018 Order and has also sought our review of the 2017 Order.

## II. Analysis

Mother argues that (1) the trial court erred by modifying its prior child support order and imputing income to her and (2) the trial court abused its discretion in calculating her child support obligation.[1]

We review the 2018 Order to determine whether the trial court abused its discretion. *See White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

[1] Mother filed a notice of appeal from both the 2017 Order and the 2018 Order. While the appeal of the 2018 Order was timely, the appeal of the 2017 Order was not. Mother has motioned our Court to issue a writ of *certiorari* to consider her appeal of the 2017 Order, which we deny. Thus, our review is limited to the trial court's 2018 Order.

"[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[.]" N.C. Gen. Stat § 50-13.7(a) (2018). Wife clings to Section 50-13.7(a)'s "upon motion" language in arguing that the trial court did not have a legal basis or jurisdiction to modify the prior child support order *sua sponte*. However, our Supreme Court has recently held that "[t]he provision of N.C.G.S. § 50-13.7(a) requiring a motion to be filed is directory rather than mandatory; consequently, the absence of a motion to modify a child support order does not divest the district court of jurisdiction to act under the purview of the statute." *Catawba Cty. V. Loggins*, 370 N.C. 83, 94, 804 S.E.2d 474, 482 (2017). And our Court has interpreted "*Loggins* as continuing to require *some* action by the parties in order to satisfy the underlying purpose of N.C. Gen. Stat § 50-13.7(a)." *Summerville v. Summerville*, ___ N.C. App. ___, ___, 814 S.E.2d 887, 897 (2018) (emphasis in original).

In the present case, these directions and requirements have been met. Mother filed motions to challenge the amount of child support she was ordered to pay in the 2017 Order, and the trial court heard evidence on the matter. Therefore, we conclude that the trial court did have jurisdiction and acted within its purview in modifying Mother's child support obligation. *See Loggins*, 370 N.C. at 94-97, 804 S.E.2d at 482-84.

Mother also argues that the trial court abused its discretion in imputing income to her and in calculating arrears due to Father.

While child support obligations are ordinarily determined by a party's actual income, a party's earning capacity may be the basis of an award upon a finding that the supporting party "is deliberately depressing [her] income or indulging [herself] in excessive spending because of a disregard of [her] marital obligation to provide reasonable support for [her] children." *Beall v. Beall*, 290 N.C. 669, 674, 228 S.E.2d 407, 410 (1976).

In the underlying case, the trial court found that Mother owns a business at which she does not work or draw an income from, has a Master's in Accounting but sought part-time employment at Belk applying makeup for $12.50 per hour, and ultimately "has acted in 'bad faith' or at the very least with 'naïve indifference' to the needs of her children[,]" and "has not shown that she has a meritorious defense" for failing to support her children. These findings are sufficient to support the trial court's imputation of income to her. Moreover, the calculation of imputed income to Mother was conducted by Mother's own expert witness, a CPA. Therefore, we conclude that the trial court did not abuse its discretion in basing the child support obligation on Mother's earning capacity.

However, we do conclude that the trial court abused its discretion in concluding that Mother owes Father $22,041.13 in child support arrears. Indeed, there is a

finding of fact that Mother "has only paid child support of $2,651.99 and ha[s] accrued arrears of $20,184.49[,]" which is supported by the evidence presented at the hearing. However, we are unable to determine the source and calculation of the additional $1,856.64 in the 2018 Order. Therefore, we reverse this portion of the 2018 Order decreeing that "[Mother] owes [Father] $22,041.13 and said sum shall be paid . . . within thirty (30) days of the entry of this Order" and remand with instructions that the amount owed and to be paid by Mother to Father is $20,184.49.

## III. Conclusion

We conclude that the trial court did not abuse its discretion in exercising jurisdiction over and in modifying the child support award in the underlying case. We further conclude that the trial court properly imputed income to Mother and based its child support obligation on Mother's earning capacity.

However, the trial court's calculation of arrearages owed by Mother is not supported by the evidence. Thus, we reverse and remand that portion of the order with instructions to enter an award of arrearages based on the evidence and findings of fact.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).