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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-928

No. COA21-273

Filed 29 December 2022

Currituck County, No. 17 CVD 102

CURTIS LEE PRICE, Plaintiff,

v.

SHARYN PRICE, Defendant.

Appeal by Defendant from order entered 3 February 2021 by Judge Robert P. Trivette in Currituck County District Court. Heard in the Court of Appeals 30 November 2021.

Frank P. Hiner, IV, and Brett A. Lewis for plaintiff-appellant.

Irvine Law Firm, PLLC, by David J. Irvine, Jr., and Stephanie B. Irvine, for defendant-appellee.

MURPHY, Judge.

¶ 1

Appellant Curtis Lee Price (“Father”) alleges, *inter alia*, that he received insufficient notice of a 10 November 2020 hearing of the of the Currituck County District Court and that the 3 February 2021 order based on that hearing contained reversible error. For the reasons described below, Father received adequate notice of the 10 November 2020 hearing; however, as the evidence did not support the trial

court's determination of Father's monthly gross income in the 3 February 2021 order, we vacate the order and remand for further proceedings consistent with this opinion.

BACKGROUND

¶ 2

This case arises out of an order of the Currituck County District Court requiring Father to pay child support and attorney fees to Appellee Sharyn Price ("Mother"). In April 2020, Mother learned that her son ("Son"), who had been in Father's custody pursuant to a 3 July 2017 *Consent Order*, was homeless and suffering from addiction issues in Boise, Idaho after leaving Father's Florida home. Father had abandoned efforts to reconcile with Son. On 1 April 2020, Mother flew Son to her home; and, between 12 April 2020 and 11 July 2020, she enrolled him in a rehabilitation program in Los Angeles, California. Father rejected any involvement with Son and declined to take on any of Son's expenses during this time.

¶ 3

On 20 April 2020, Mother filed a *Motion to Modify Child Support*. The trial court gave notice to the parties on 26 August 2020 that it would conduct a hearing on Mother's motion on 1 October 2020. When 1 October arrived, however, Father filed a *Motion for Protective Order*, which became the sole topic of the remainder of the hearing. Moreover, during the hearing, Father's then-counsel informed the trial court that "[Father] fired [him] on the phone[.]" after which the trial court permitted

him to continue the representation solely for the purpose of the *Motion for Protective Order*.¹

¶ 4

At the end of the 1 October 2020 hearing, the trial court orally scheduled a new hearing to discuss Mother's *Motion to Modify Child Support* for 10 November 2020. However, on 10 November 2020, neither Father, Father's former counsel fired at the 1 October hearing, nor any new counsel was present. Father also had not responded to any of Mother's discovery requests. The trial court proceeded with the hearing in Father's absence, during which time Mother presented the trial court with the following documents: Father's 2019 W-2 form, indicating he had a yearly gross income of \$251,918.59; records indicating Father was receiving \$1,500.00 per week in disability insurance between October 2019 and April 2020, which Mother testified Father received "in addition" to his income; and records indicating Mother's only income was \$685.44 per week from her work. Mother also sought attorney fees, submitting an affidavit from her counsel detailing hours spent on the case and providing the following testimony:

[Mother's Counsel:] And with respect to your claim for child support, are you pursuing that claim in good faith?

[Mother:] Yes, ma'am.

¹ Counsel explained the firing on the basis that Father was having a "mental breakdown of sorts" at the time.

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[Mother's Counsel:] Okay. And the retainer that you paid me, where did you get the funds to pay that retainer?

[Mother:] I borrowed the money.

[Mother's Counsel:] Okay. And are you expected to pay that money back?

[Mother:] Yes, ma'am.

[Mother's Counsel:] And I've created an affidavit of attorney's fees to present to the Court. This is only attorney's fees for the child support issue, is that correct?

[Mother:] Yes, ma'am.

[Mother's Counsel:] We're not pursuing child—any kind of claims for fees associated with the custody issue as you and [Father] entered into a consent order back in July of this year, correct?

[Mother:] Yes, ma'am.

¶ 5

On 3 February 2021, the trial court entered a written order awarding Mother child support and attorney fees. The order contained the following findings of fact:

1. [Father] is the biological father of [Son,] whose date of birth is [22 September] 2003
2. [Mother] is the biological mother of the minor child.
3. [Father] and [Mother] are now divorced.
4. [Father] received proper and timely notice of his hearing and chose not to attend or participate in the hearing.

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5. On [8 July] 2016, an order was entered whereby [Father] assumed primary physical and legal custody of the minor child.

6. In April of 2020, [Mother] learned from her eldest son's girlfriend that [Son] was no longer residing with [Father], but rather was homeless and in Boise, Idaho. [Mother] also learned during that conversation that [Son] was struggling with substance abuse issues.

7. Upon learning of [Son's] situation, [Mother] immediately began making arrangements to fly [Son] from Boise, Idaho to her home in North Carolina.

8. [Mother] immediately began researching various treatment options for [Son], which were limited by his then current condition, his age and the growing concerns regarding Covid-19.

9. [Mother] was successful in locating a treatment facility . . . near Los Angeles, California that was willing to accept [Son] into its treatment program. This was one of the few programs willing to accept [Son] into treatment due to his then current condition, his age and the growing concerns regarding Covid-19.

10. After flying [Son] from Boise, Idaho at her expense, [Mother] purchased plane tickets which [Son] and she used to travel to Los Angeles, California for the sole purpose of having [Son] admitted to [the treatment facility]. The total cost of the plane tickets was \$997.29, which was paid by [Mother]. The airline tickets for [Son] and [Mother] were reasonable and necessary expenses related to the medical and psychological treatment of [Son].

11. [Son] and [Mother] flew to Los Angeles on [12 April] 2020 for the purpose of having [Son] admitted to [the treatment facility].

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12. The total out-of-pocket cost for [the treatment] . . . was \$6,400.00. [Mother] assumed liability for the cost of [Son's] treatment at [the facility].

13. At the time of [Son's] admission to [the facility], he was covered by medical insurance provided by [Father]. However, after the application of such medical insurance coverage, there remained an out-of-pocket cost [of] . . . \$6,400.00. [Mother] has made an initial down-payment toward that balance in the amount of \$1,500.00. She has been paying \$200.00 per month on the balance owed. [Mother] is obligated to [the facility] in the total, out-of-pocket cost of \$6,400.00.

14. [Mother] spoke with [Father] about [Son's] situation and treatment. With the exception of a single \$800.00 check received by [Mother] from [Father] on [9 November] 2020, [Father] has failed and refused to pay anything toward the uninsured expenses related to [Son's] substance abuse treatment and has failed and refused to pay any child support to [Mother] except for the aforementioned \$800.00 check. [Father] made it clear to [Mother] that [Son] could not return to his home and that he was now [Mother's] responsibility.

15. [Son's] diagnosed issues addressed at [the facility] and in his subsequent out-patient treatment included substance abuse and anxiety.

16. [Son] spent 94 days at [the facility] and was released to [] [M]other's care on [11 July] 2020.

17. Following [Son's] discharge from [the facility], he returned to North Carolina and began living with [Mother]. [Son] is currently receiving therapy [Son's] therapy is on-going and expected to extend into the foreseeable future.

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18. The medications prescribed to [Son] are shown on [Mother's] Exhibit 4 introduced during the hearing of this matter. From the period between [11 July] 2020 and [11 September] 2020, the out-of-pocket cost, paid by [Mother], for [Son's] prescribed medications was \$103.38. The costs associated with [Son's] medications are on-going. As of the date of this hearing, [Mother] had paid \$106.00 out-of-pocket toward [Son's] out-patient therapy.

19. [Son] currently has medical insurance issued through Medicaid.

20. [Father] is employed by JetBlue as a pilot. He also receives short term disability pay. He also received income from a business located in Virginia

21. In anticipation of the hearing of this matter, [Mother's] attorney served discovery requests upon [Father] through his prior attorney. [Father's] attorney had withdrawn from representing [Father]. [Father] has failed to respond to [Mother's] discovery after having been ordered to do so by the Court.

22. [Father's] 2019 W-2 from JetBlue shows wages, salaries and tips totaling \$227,046.04.

23. The evidence of [Father's] income from [the Virginia business] consisted of the following: 2016 W-2 showing income of \$79,800.00; and 2019 W-2 showing income of \$24,500.00.

24. Beginning in October 2019, [Father] began receiving short term disability payments in the amount of \$1,500.00 per week. [Mother] is informed and believes that [Father] is still receiving these payments.

25. [Mother] is employed by Sicario Properties, Inc. in Elizabeth City, NC and earns \$685.44 gross per week.

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26. Prior to the hearing of this Child Support matter, the parties entered into a Consent Order granting [Mother] primary custody of [Son].

27. For the purposes of child support, the Court finds that [Father's] gross monthly income from all sources is \$29,534.89 and that [Mother's] gross monthly income is \$2,970.24. The respective percentages of the total of the parties' incomes for child support calculation purposes are: [Father] – 91% and [Mother] – 9%.

28. [Mother] introduced evidence that she had incurred the following expenses related to medical, pharmaceutical, counseling and therapy treatment of the minor child which were not otherwise covered or paid by applicable insurance:

- a. Plane tickets - \$997.29;
 - b. [Treatment facility] - \$6,400.00;
 - c. Medications - \$103.38;
 - d. [Therapy] - \$106.00
- TOTAL - \$7,606.67

The foregoing expenses were not covered by medical or health insurance and are directly related to medical and therapeutic treatment of the minor child. Pursuant to the North Carolina Child Support Guidelines applicable to this case, [Father's] share of these expenses is \$6,922.07.

This total does not include certain uninsured medical expenses incurred in October and early November and [Mother] may seek reimbursement for those expenses with uninsured medical expenses incurred after the date of the hearing.

29. [Mother] has maintained this child support action in good faith and lacks sufficient means to defray her expenses incurred in pursuing her child support claim, including attorney's fees owed to her attorney[.] . . .

30. [Mother] submitted into evidence an Attorney's Fee Affidavit prepared and executed by her attorney, . . . which reflects attorney's fees in the amount of \$6,580.00 and

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\$25.00 in costs incurred by [Mother] in the preparation, filing and hearing of her child support motion. The Court finds these fees to be reasonable.

The trial court also made the following conclusions of law:

9. This Court has jurisdiction of the person of [Father], [Mother] and the subject matter of this action.
2. This matter was properly noticed for hearing and [Father] has been afforded an opportunity to be heard and to present his own evidence.
3. [Father] and [Mother] are the natural parents of the minor child
4. The Findings of Fact are incorporated herein to the extent they represent Conclusions of Law.
5. [Mother] has maintained this action in good faith and lacks the funds necessary to defray her litigation expense, including attorney's fees.
6. As the current custodial parent of [Son], [Mother] is entitled to an award of Child Support, reimbursement of uninsured medical and related expenses and recovery of the costs of this action, including an award of attorney's fees.
7. The child support Order herein is reasonable and is consistent with the North Carolina Child Support guidelines.
8. [Father] has the present ability to pay the monthly child support ordered herein, as well as reimbursement of uninsured medical expenses, child support arrearage and [Mother's] attorney's fees.

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9. The Court finds the attorney's fees incurred by [Mother] to be reasonable and that [Mother] is entitled to an Order requiring [Father] to reimburse her for the incurred attorney's fees and costs.

The trial court ordered Father to pay \$2,280.00 per month in child support, arrears between 1 May 2020 and 30 January 2021, and 91% of Son's medical, pharmaceutical, counseling, and therapy expenses not covered by insurance.

¶ 6 Father timely appealed from the 3 February 2021 order.

ANALYSIS

¶ 7 On appeal, Father argues that (A) the trial court erred in failing to provide him written notice of the 10 November 2020 hearing; (B) the trial court erroneously calculated his income; (C) the trial court did not make adequate findings of fact and conclusions of law in determining the amount of child support he owed; and (D) the trial court did not make findings adequate to award attorney fees. Here, although the trial court's notice to Father of the 10 November 2020 hearing was sufficient, we agree the trial court erred in calculating his income. Accordingly, we reverse the determination of the trial court and remand for proceedings consistent with this opinion.

A. Notice

¶ 8 Father first argues the trial court erred because notice of the 10 November 2020 hearing was insufficient, consisting only of a written continuance filed and sent

to him the day of the hearing itself. Mother, meanwhile, argues the trial court did not err because the oral notice provided at the October hearing was sufficient. “Whether a party has adequate notice is a question of law[,]” reviewable de novo. *Trivette v. Trivette*, 162 N.C. App. 55, 58 (2004).

¶ 9

In *Trivette*, we addressed a similar issue to the one before us. In that case,

the defendant’s attorney was timely served on 10 May 2001 with a copy of the motion seeking a modification of child custody and notice of hearing for 6 June 2001. See [N.C.G.S.] § 1A–1, Rule 5(b) (2003) (papers may be served upon either the party or the party’s attorney of record). On 6 June 2001, the hearing was continued in open court to 23 July 2001. Neither the defendant nor his attorney was present in court and neither received written notice informing them of the new hearing date.

Id. Despite the absence of both Defendant and his counsel from the hearing at which the continuance was announced, we held that a continuance announced in open court provides adequate constructive notice to parties at a regularly scheduled court date and further reasoned that fairness did *not* warrant a departure from our ordinary notice rules:

It is generally held that parties have constructive notice of all orders and motions made during a regularly scheduled court date. *Wood v. Wood*, 297 N.C. 1, 6[] . . . (1979). For example, in *Danielson v. Cummings*, this Court held that no written notice of dismissal was required to effectuate adequate notice to the opposing party where the dismissal was announced in open court. 43 N.C. App. 546, 547[] . . . (1979), *judgment aff’d*, 300 N.C. 175[] . . . (1980). However, we have held that this rule can bend when necessary to

“embrace common sense and fundamental fairness.”
Hagins v. Redevelopment Comm’n of Greensboro, 275 N.C.
90, 98[] . . . (1969).

There is no need to bend the general rule in this case because the defendant admits that he was on actual notice that a motion to modify custody was set to be heard on 6 June 2001, but was continued to some date in the future in order to accommodate his need to find new counsel. Thus, defendant had a duty to either attend the 6 June 2001 hearing or affirmatively inquire as to the date on which the new hearing was scheduled.

Id. at 59.

¶ 10 *Trivette* is a sufficient guide for our resolution of this issue. Here, where Father had fired his former counsel just before the 1 October 2020 hearing—notice to all parties of which is uncontroverted—Father had constructive notice of the 10 November 2020 hearing upon the announcement of the continuance in open court on 1 October 2020. Especially having fired his attorney before the 1 October 2020 hearing, Father, like the defendant in *Trivette*, “had a duty to either attend the . . . hearing or affirmatively inquire as to the date on which the new hearing was scheduled.” *Id.* And, under the circumstances, we see “no need to bend the general rule” *See id.* Father’s constructive notice of the 10 November 2020 hearing was adequate.

B. Income Calculation

¶ 11 Father next argues the trial court erred in determining his income. Specifically, he contends the trial court erred in calculating his overall income, as the monthly income resulting from his disability insurance, employment, and business totaled approximately \$2,000.00 less per month than the trial court concluded.²

¶ 12 At the threshold, we note the parties' disagreement as to the standard of review with respect to income calculation. Father contends, based on a recent trend in our caselaw, that "determinations of gross income in a child support order are conclusions of law reviewed de novo, rather than findings of fact." *Craven County ex rel. Wooten v. Hageb*, 277 N.C. App. 586, 2021-NCCOA-231, ¶ 10; see also *Thomas v. Burgett*, 265 N.C. App. 364, 367 (2019) ("In child support cases, determinations of gross income are conclusions of law reviewed *de novo*, rather than findings of fact.") (citing *Lawrence v. Tise*, 107 N.C. App. 140, 145 n.1 (1992)). This deviates from the usual rule that "a trial court's child support modification is reviewed for abuse of discretion." *Deanes v. Deanes*, 269 N.C. App. 151, 164 (2020). Meanwhile, Mother contends that "[t]he standard of review question is more nuanced than [Father's] brief suggests," arguing that *Lawrence v. Tise*, the case originating the use of a de novo

² Father also contends, as an alternative basis for the trial court's error in the calculation of his income, that it could not have both determined he was receiving income from his employment and that he was collecting disability insurance payments, as obtaining disability insurance payments necessarily requires that the recipient be unable to work. However, as our holding with respect to income calculation is independently dispositive, we find it unnecessary to address this argument. See *infra* ¶ 14.

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standard of review in determinations of gross income, has been taken out of context in our contemporary caselaw, expanding the use of the de novo standard beyond where it originally applied in that case.

¶ 13 Even if Mother’s arguments are meritorious, the fact remains that our recent cases—which extend, rather than contradict, *Lawrence*—cannot be overturned by another panel of the Court of Appeals. See *In re Civil Penalty*, 324 N.C. 373, 384 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”). These cases apply a de novo standard of review to determinations of gross income without qualification and in no uncertain terms, and we may not now narrow the application of that standard absent a holding from our Supreme Court doing so. *Id.* Accordingly, we must apply a de novo standard of review in our analysis of this issue. *Wooten*, 2021-NCCOA-231 at ¶ 10; *Thomas*, 265 N.C. App. at 367.³

³ We note separately, however, that the standard of review in this case is practically immaterial, as the error Father alleges the trial court committed is a mathematically irrational determination of his overall income. Mathematical correctness is a binary, not a spectrum; it affords little distinction between a conclusion that is simply erroneous and a conclusion that is “manifestly unsupported by reason.” *R & L Const. of Mt. Airy, LLC v. Diaz*, 240 N.C. App. 194, 196 (2015); see also *Plott v. Plott*, 313 N.C. 63, 79 (1985) (remarking the trial court must employ “some degree of mathematical accuracy” when evaluating whether the trial court abused its discretion).

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¶ 14

Having established the standard of review, we now must address whether the trial court erred in either the calculation of Father’s income or the determination that Father was earning wages and disability insurance at the same time. Here, although we are unable to determine based on the evidence in the Record whether the trial court erred in simultaneously accounting for wages and disability insurance payments,⁴ we nonetheless hold the trial court erred in calculating Father’s monthly income as \$29,534.89 per month. Father’s 2019 W-2 indicated he earned \$227,046.04 per year in wages. Even if we assume Father received \$1,500.00 per week from disability insurance in addition to wages in the amount of \$227,046.04 per year and \$24,500.00 per year from the Virginia business referenced in findings of fact 20 and 23, his yearly income would be \$329,546.04—or \$27,462.17 per month. No other evidence on the Record existed from which the trial court could have concluded Father’s overall gross income to be \$29,534.89 per month—more than \$2,000.00 higher per month than the sources it was provided indicated—and the trial court offered no other explanation for the discrepancy.

⁴ The Record does not contain the terms of the insurance policy itself, and the only reference to the policy is a series of stubs including the following language: “If this benefit represents payment beyond your return-to-work date—do not cash. Return to the above address. Any adjustment benefit due will be promptly issued.” Nowhere is there reference to the definition of “return-to-work date” or what might trigger the occurrence of such a date.

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¶ 15

In light of this erroneous determination, we vacate the trial court's 3 February 2021 order and remand for proceedings consistent with this opinion. *Thomas*, 265 N.C. App. at 381. Upon the trial court's conducting a new hearing, the parties may present new evidence to resolve outstanding questions regarding the parties' income, including whether Father was receiving regular wages alongside his disability payments.

CONCLUSION

¶ 16

Although Father received sufficient notice of the 10 November 2020 hearing on which the trial court's 3 February 2021 order was based, the trial court erred when it concluded in the 3 February 2021 order that Father's income was more than \$2,000.00 higher per month than the evidence on which it relied indicated.

VACATED AND REMANDED.

Judges DIETZ and WOOD concur.

Report per Rule 30(e).