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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-236

Filed: 15 December 2020

Surry County, No. 14 CVD 335

ERIKA ANGEL, Plaintiff,

v.

JUAN CARLOS RUIZ SANDOVAL, Defendant.

Appeal by defendant from order entered 6 December 2019 by Judge Marion M. Boone in Surry County District Court. Heard in the Court of Appeals 20 October 2020.

No appellee brief filed.

J. Clark Fischer for defendant-appellant.

DIETZ, Judge.

Appellant Juan Carlos Ruiz Sandoval appeals a modification order increasing his child support obligations. Sandoval contends that there was undisputed evidence that Appellee Erika Angel was voluntarily unemployed and was capable of earning an income. Thus, Sandoval argues, the trial court erred by failing to make findings concerning Angel's suppression of her income capacity.

We reject this argument. Under the applicable standard of review, there was at least some competent evidence supporting the trial court's findings that Angel's lack of income was not in bad faith and was not a deliberate attempt to avoid her support obligations. Those findings, in turn, supported the trial court's conclusion not to impute income to Angel. We therefore reject Sandoval's arguments and affirm the trial court's order.

Facts and Procedural History

Erika Angel and Juan Carlos Ruiz Sandoval are the parents of two children. In 2014, Angel and Sandoval agreed to a voluntary child support arrangement with approval from the trial court.

In 2019, Angel moved to modify the child support arrangement based on a substantial change in circumstances. Sandoval responded with a request to impute income to Angel, who was not employed at the time and reported no monthly income.

After a hearing, the trial court granted the motion to modify and entered an order increasing Sandoval's monthly child support obligation from \$400 per month to \$1,339 per month. Sandoval appealed.

Analysis

Sandoval argues that the trial court's order failed to make necessary findings to support the court's decision to modify child support. Specifically, he contends that the court failed to make findings concerning Angel's voluntary unemployment that

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Sandoval contends would have led the court, in turn, to impute income to Angel based on her earnings capacity.

The challenged order, although labeled an “order for on-going child support and child support arrears,” was an order granting Angel’s motion to modify child support based on a substantial change in circumstances. As part of that ruling, the trial court also rejected Sandoval’s request to impute income to Angel, who was not employed and therefore had no gross monthly income.

This Court reviews a trial court’s ultimate decision to modify child support for abuse of discretion. *Young v. Young*, 224 N.C. App. 388, 390, 736 S.E.2d 538, 541–42 (2012). But the trial court’s modification order must “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.” *Nicks v. Nicks*, 241 N.C. App. 487, 506, 774 S.E.2d 365, 378 (2015). As a result, when a party challenges the findings of fact that support a trial court’s decision to modify child support, this Court examines whether there is any competent evidence in the record to support those findings. *Row v. Row*, 185 N.C. App. 450, 460, 650 S.E.2d 1, 7 (2007). The Court then assesses whether those findings support the trial court’s conclusions of law. *Id.*

With this standard of review in mind, we turn to Sandoval’s challenge to the trial court’s order. In general, if a trial court finds that a parent in a child support

proceeding is deliberately suppressing her income to avoid child support obligations, the trial court may calculate child support based on that parent's earnings capacity, rather than actual income. *Hill v. Hill*, 261 N.C. App. 600, 606, 821 S.E.2d 210, 217 (2018). But, importantly, "before the earnings capacity rule is imposed, it must be shown that the party's actions which reduced his income were not taken in good faith." *Id.* at 607, 821 S.E.2d at 217. If the court does not find a "deliberate depression of income or other bad faith, the trial court is without power to impute income, and must determine the party's child support obligation based on the party's actual income." *Id.*

Here, the trial court found that Angel has "ceased" or "stopped" work at two different employers within the past year and that she was "currently a stay at home mother caring for the needs of her children and her current gross income is zero." Likewise, the court found "[n]o credible evidence" that Angel was fired from any of her previous jobs "due to her own actions or behaviors." The court also found that "[n]either party is intentionally suppressing their income to decrease their obligation to support the children" and "[n]either party is acting in bad faith."

These findings are supported by at least some competent evidence in the record. For example, Angel testified that, after she stopped working and focused solely on raising her children, her children's reading level improved and she was able to take her children to participate in extracurricular activities such as soccer. She

also explained that she stayed home instead of pursuing employment because “my children need me.” This provides at least some competent evidence from which the trial court could find that Angel’s lack of any gross monthly income was not the result of bad faith or an intentional suppression of her income to evade child support obligations, despite Sandoval’s argument that he presented contrary evidence.

To be sure, as Sandoval argues, there was undisputed evidence that Angel’s unemployment was voluntary and that she was capable of returning to work. But that evidence does not compel a finding of bad faith or deliberate income suppression. *See Pataky v. Pataky*, 160 N.C. App. 289, 307, 585 S.E.2d 404, 416 (2003), *aff’d*, 359 N.C. 65, 602 S.E.2d 360 (2004). “A party is not deemed to be acting in bad faith only because he is unemployed by choice.” *Id.* “Rather, the dispositive issue is whether a party is motivated by a desire to avoid his reasonable support obligations.” *Id.* (brackets omitted). On that issue, the trial court found that Angel acted in good faith and did not intentionally suppress her income, and there was competent evidence supporting those findings. Thus, the trial court properly declined to impute income to Angel in calculating appropriate child support. We therefore reject Sandoval’s argument and affirm the trial court’s order.

Conclusion

We affirm the trial court’s order modifying the parties’ child support obligations.

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AFFIRMED.

Judges BRYANT and HAMPSON concur.

Report per Rule 30(e).