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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-558

Filed: 5 June 2018

Robeson County, No. 16 CVD 215

ROBESON COUNTY ENFORCEMENT UNIT ex rel. ANGELA HARRISON,  
Plaintiff,

v.

ANDRE HARRISON, Defendant.

Appeal by defendant from order entered 2 February 2017 by Judge William J. Moore in Robeson County District Court. Heard in the Court of Appeals 12 December 2017.

*Locklear, Jacobs, Hunt and Brooks, by Jessica Scott, for plaintiff-appellee.*

*Peterkin Law Firm, PLLC, by Timothy J. Peterkin, for defendant-appellant.*

BRYANT, Judge.

Where the trial court concluded a substantial change in circumstances had occurred, supported by findings of fact and competent evidence, we affirm the order modifying defendant's child custody obligation.

On 27 January 2016, plaintiff Angela Harrison filed a complaint against defendant Andre Harrison in Robeson County District Court seeking divorce from

ROBESON CTY. ENFORCEMENT UNIT V. HARRISON

*Opinion of the Court*

bed and board, child custody and child support, equitable distribution, alimony and post-separation support, and attorney's fees. The matter was heard before the Honorable Herbert L. Richardson, Judge presiding. On 18 March, Judge Richardson entered a temporary order on the issue of child support.

In its 18 March 2016 order, the court found that the parties were married but separated and that the union produced two children: a son born in 1997 and a daughter born in 2001.

6. . . . [T]he Defendant was most recently employed as a private contractor for the last three (3) years in Dubai, but his assignment recently ended and he is currently receiving unemployment benefits in the amount of \$350.00 per week.
7. The Plaintiff is employed with the Town of Hope Mills and makes approximately \$14.31 per hour at 40 hours per week.
8. The Plaintiff pays for health insurance for the minor children at a cost of \$307.00 per month.
9. The parties' oldest child . . . is a senior in high school and is incurring significant expenses for college application fees, SAT and ACT fees, and costs for graduation.
10. The Defendant did give the children a small amount of money, but otherwise is not assisting the Plaintiff in taking care of the minor children's financial needs.

The court concluded that the minor children were in need of financial support from both plaintiff and defendant. Defendant was an "able-bodied man and . . . capable of

*Opinion of the Court*

financially supporting his minor child.” In accordance with the result calculated using the child support worksheet (form AOC-CV-627), the court ordered that defendant pay \$293.00 per month for the support and benefit of his minor children.

On 20 May 2016, the parties entered into a consent order regarding post-separation support, alimony, and equitable distribution. The court found that “[d]efendant has maintained a series of contract positions throughout the marriage. While these contract positions yield a higher income than [p]laintiff’s employment, [d]efendant does have significant gaps in his employment and earns no income during those times.”

On 19 August 2016, the parties entered into a consent order for child support.

The court made the following findings of fact:

2. . . . [The parties] have one minor child . . . . They have another child, but that child has reached the age of majority.
- . . . .
4. Plaintiff is well-educated and has full-time employment.
5. Defendant has been employed through various contract positions. He will have lengths of time between contracts where he is unemployed.
6. Both parties are capable of providing for the needs of the minor child and they should both do so.
7. Plaintiff is the primary caretaker of the minor child and is entitled to monthly support.

*Opinion of the Court*

The court concluded that the parties were both capable of providing support for the minor child. Accordingly, the court gave the following orders:

11. By consent of the parties, this permanent child support order is entered.
12. Defendant was previously ordered to pay \$293.00 per month. This order was based on there being two children. One child has reached the age of majority.
13. Defendant shall continue to pay \$293.00 per month until the remaining minor child reaches the age of 18 or graduates from high school, whichever is first.

Plaintiff and defendant consented to the order on 15 July and 20 July 2016, respectively.

On 1 October 2016, Robeson County Department of Social Services moved to intervene on behalf of plaintiff and requested a modification in child support due to a substantial change in circumstances, with monthly payments to be made to North Carolina Child Support Centralized Collections. The matter came on for hearing on 29 November 2016 in Robeson County District Court before the Honorable William J. Moore, Judge presiding.

On 2 February 2018, the trial court entered an order granting plaintiff's motion to modify child support. The court found that a substantial change in circumstances had occurred: defendant was no longer receiving unemployment benefits, but rather was employed, receiving \$110,240.00 per year. Moreover, the minor child had

*Opinion of the Court*

increased school expenses. Plaintiff's income was \$2,426.65 per month. The court concluded that the Department of Social Services should be allowed to intervene on plaintiff's behalf, and the substantial change in circumstances warranted an increase in child support. The trial court ordered defendant to pay \$1,011.00 per month for child support going forward and obtain health insurance for the minor child within ninety days. Defendant appeals.

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Defendant argues that the trial court erred by modifying his child support obligation based on a substantial change in circumstances because defendant had obtained employment paying an annual income rate of \$110,240.00 months before the parties entered into a consent agreement for child support. Therefore, as the trial court entered a final order on child support there was no substantial change in circumstances since the time the order was entered.

The trial court is given broad discretion in child custody and support matters. Its order will be upheld if substantial competent evidence supports the findings of fact. *Shipman v. Shipman*, 357 N.C. 471, 474–75, 586 S.E.2d 250, 253–54 (2003); see *Pulliam v. Smith*, 348 N.C. 616, 625, 501 S.E.2d 898, 903 (1998) (“It is the duty of the reviewing court to examine all of the competent evidence in the record supporting the trial court’s findings and to then decide if it is substantial.”). If the record indicates substantial evidence to support the trial court’s findings of fact, “such findings are conclusive on appeal, even if record evidence ‘might sustain findings to the contrary.’” *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 903 (citations and quotations omitted). “Substantial evidence” is “such

ROBESON CTY. ENFORCEMENT UNIT V. HARRISON

*Opinion of the Court*

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Shipman*, 357 N.C. at 475, 586 S.E.2d at 254 (quoting *Pulliam*, 348 N.C. at 625, 501 S.E.2d at 903 (quoting *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975))).

*Meehan v. Lawrance*, 166 N.C. App. 369, 375, 602 S.E.2d 21, 25 (2004).

“Ordinarily, in entering a judgment for the support of a minor child or children, the ability to pay as well as the needs of such child or children will be taken into consideration.” *Fuchs v. Fuchs*, 260 N.C. 635, 639–40, 133 S.E.2d 487, 491 (1963) (citation omitted). “When determining a parent’s child support obligation . . . a court must determine each parent’s gross income. *A parent’s child support obligation should be based on the parent’s actual income at the time the order is made.*” *Moore v. Onafowora*, 208 N.C. App. 674, 677, 703 S.E.2d 744, 747 (2010) (emphasis added) (citation omitted).

Pursuant to General Statutes, section 50-13.7, “an 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 by either party or anyone interested subject to the limitations of G.S. 50-13.10.” N.C. Gen. Stat. § 50-13.7(a) (2017).

Modification of an order requires a two-step process. First, a court must determine whether there has been a substantial change in circumstances since the date the existing child support order was entered. . . .

. . . .

*Opinion of the Court*

. . . The Court's determination of whether changed circumstances exist is a conclusion of law.

Upon finding a substantial change in circumstances, the second step is for the court to enter a new child support order that modifies and supersedes the existing child support order. . . . Absent a request by a party for deviation [from the Child Support Guidelines], when the court enters an order for child support determined pursuant to the Guidelines, specific findings regarding the child's reasonable needs and the parents' ability to provide support generally are not required. Although the court need not make specific, or evidentiary findings of fact reciting the child's past and present expenses, the court must make "ultimate" findings of fact that will support the court's conclusion that there has been a substantial change of circumstances and that are necessary to resolve material disputes in the evidence.

*Head v. Mosier*, 197 N.C. App. 328, 333–34, 677 S.E.2d 191, 195–96 (2009).

[T]he court upon motion for an increase in such allowance, is not warranted in ordering an increase in the absence of any evidence of a change in conditions or of the need for such increase, particularly when the increase is awarded solely on the ground that the father's income has increased, therefore, he is able to pay a larger amount.

*Fuchs*, 260 N.C. at 639, 133 S.E.2d at 491. However, where a trial court has considered evidence of a custodial parent's current inability to financially provide for herself and her child to an adequate standard of living, this Court has upheld the trial court's conclusion that a substantial change in circumstances had occurred and affirmed the order modifying the non-custodial parent's child support obligation. *See Roberts v. Roberts*, 38 N.C. App. 295, 302–03, 248 S.E.2d 85, 89 (1978).

*Opinion of the Court*

The record on appeal tends to show that on 18 March 2016 the District Court entered a temporary order finding that defendant was an able-bodied man, capable of being employed. Prior to entry of the order, defendant had been a private contractor working in Dubai for three years. But his assignment had ended, and at the time of the temporary order, he was then receiving unemployment benefits in the amount of \$350.00 per week. Plaintiff was earning \$14.31 per hour and working forty hours per week. Plaintiff was the custodial parent for two minor children and paid for the minor children's health insurance.

In July 2016, the parties entered into a consent agreement for child support. The District Court reviewed the agreement and entered the consent order on 19 August 2016. In the order, the court found that defendant had been employed through various contract positions, but that “[h]e [would] have lengths of time[] between contracts where he [was] unemployed.” The order directed defendant to continue his child support payments of \$293.00 per month—the amount calculated on 10 March 2016 using Administrative Office of the Courts form AOC-CV-627 in accordance with North Carolina's Child Support Guidelines and calculated with defendant's unemployment benefits of \$350.00 per week as his sole income. However, unquestioned and undisclosed was that defendant was no longer unemployed. Defendant had been employed since May 2016 (three months prior to the entry of the August consent order) with an annual pay rate of \$110,240.00. Defendant now argues



*Opinion of the Court*

that because there had been no substantial change in his income since the time the 19 August 2016 consent order was entered, the trial court erred in modifying his child support obligation. *Cf. Moore*, 208 N.C. App. at 677, 703 S.E.2d at 747 (“A parent’s child support obligation should be based on the parent’s actual income at the time the order is made.” (citation omitted)).

We note that during the 29 November 2016 hearing on Robeson County Department of Social Services’s motion to intervene on plaintiff’s behalf and to modify child support, plaintiff testified to a change in her circumstances. Plaintiff’s father had passed away, and plaintiff and her then minor child moved to reside with her widowed mother and respective grandmother. Plaintiff’s mother no longer had the benefit of her deceased husband’s income, and plaintiff’s expenses increased. The residential area plaintiff’s mother lived in (to which plaintiff and the minor child moved) compelled a higher cost of living than plaintiff’s previous residential area. Also, the minor child was enrolled in a new school with new expenses, such as school uniforms and sports equipment for a team the minor child had joined. We hold that the record evidence was sufficient to support the trial court’s findings that defendant had changed employment income of \$110,240.00 and the minor child had increased school expenses. *See Roberts*, 38 N.C. App. 302–03, 248 S.E.2d 89 (finding modification proper where the trial court considered change in custodial parent’s financial circumstances). These findings support the court’s conclusion a substantial

ROBESON CTY. ENFORCEMENT UNIT V. HARRISON

*Opinion of the Court*

change in circumstances occurred. Accordingly, defendant's argument is overruled.

The trial court's order is

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).