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NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.
Court of Appeals of Arizona, Division 1.

Garrett GODOY, Petitioner/Appellant,
v.
Shayna WEIR, Respondent/Appellee.

No. 1 CA–CV 17–0206 FC
|
FILED 12/14/2017

Appeal from the Superior Court in Maricopa County; No. FC2016–004954; The Honorable Michael J. Herrod, Judge.
AFFIRMED

Attorneys and Law Firms

Burns, Nickerson & Taylor, PLC, Phoenix, By Neal C. Taylor, Counsel for Petitioner/Appellant

Owens & Perkins, P.C., Scottsdale, By Max Nicholas Hanson, Counsel for Respondent/Appellee

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kent E. Cattani joined.

MEMORANDUM DECISION

BEENE, Judge:

***1** ¶ 1 Garett Godoy ("Father") appeals the superior court's child support order. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶ 2 The order in question involves child support for Father's daughter he shares in common with Shayna Weir ("Mother"). Father has four sons from a previous marriage, but support relating to those children is not at issue here.

¶ 3 In May 2016, Father filed a petition to establish paternity, legal decision-making, parenting time, and child support for his daughter. After establishing paternity, the superior court held an evidentiary hearing on Father's petition and ordered that Mother and Father share joint legal decision-making authority and have equal parenting time. As for child support, the court ordered that Mother pay child support to Father, but found a deviation downward "from $19.60 to $0.00 is appropriate because the amount is *de minimus*." The court specifically found "that Father is not entitled to a credit for child support for his other children because he and the mother of those children have agreed that no child support shall be paid." The court also filed a child support worksheet reflecting its findings.

¶ 4 Father unsuccessfully moved to amend the judgment, arguing the superior court erred by failing to give him credit for his other four children pursuant to Arizona Revised Statutes ("A.R.S.") section 25–320 app. section 6 (2015) ("Guidelines"). In affirming the child support award, the court found "that it correctly applied Section 6(B) of the child support guidelines."

¶ 5 Father timely appealed. We have jurisdiction pursuant to A.R.S. § 12–120.21(A)(1).

DISCUSSION

¶ 6 "[W]e will not disturb a court's award of child support absent an abuse of its discretion." *Hetherington v. Hetherington*, 220 Ariz. 16, 21, ¶ 21 (App. 2008). We will accept the court's findings of fact unless clearly erroneous, but we draw our own legal conclusions from facts found or implied in the judgment. *McNutt v. McNutt*, 203 Ariz. 28, 30, ¶ 6 (App. 2002).

¶ 7 Father argues the superior court erred in awarding child support by applying § 6(B) of the Guidelines. He asserts that the court should have instead applied § 6(C), awarded him a credit in the child support calculations for his other four children, and adjusted his gross income accordingly. We disagree.

¶ 8 In awarding child support, the superior court shall make adjustments to a parent's gross income for other child support obligations for "children of other relationships ... who are not the subject of this particular child support determination."

Guidelines § 6. In pertinent part, adjustments are made as follows:

* * * *

> B. The court-ordered amount of child support for children of other relationships, if actually being paid, shall be deducted from the gross income of the parent paying that child support.
>
> C. An amount shall be deducted from the gross income of a parent for children of other relationships covered by a court order for whom they are the custodial parent.

* * * *

Guidelines § 6.

***2** ¶ 9 When Father and his ex-wife were divorced in 2012, the court ordered that they would share joint legal and physical custody of their four sons. The court also ordered that Father was obligated to pay child support in the amount of $80.96 per month, but deviated that amount down to $0.00 because "[t]he parties agree that the time spent with each parent is essentially equal and that the gross incomes for the parents are essentially equal ... [so] the parties have agreed that no child support will be ordered."

¶ 10 Here, under § 6(B), in calculating Father's gross monthly income, the superior court entered $0.00 for "Court Ordered Child Support of Other Relationships." Because Father was ordered to pay child support for his four sons, but is not actually paying any amount, the court did not abuse its discretion by applying § 6(B), listing $0.00 in the calculations, and declining to adjust Father's income. Moreover, Father did not request the superior court deviate the amount Mother was ordered to pay upward in this case to account for resources he expends on his four sons (despite not actually paying child support) under the criteria and relevant factors of A.R.S. § 25–320(D). Thus, we do not consider such argument on appeal. *See* *Maher v. Urman*, 211 Ariz. 543, 548, ¶ 13 (App. 2005).

¶ 11 Additionally, contrary to Father's assertion, § 6(C) is inapplicable here. Section 6(C) applies only to a "custodial parent." A custodial parent is defined as "the parent who has physical custody of the children *for the greater part of the year*." Guidelines § 9(B)(1) (emphasis added). As stated above, Father and the mother of his four sons share joint legal and physical custody. In their equal physical custody arrangement, they share a "5–2–2–5" parenting schedule—each having the children exactly 50% of the time. Thus, because Father does not have physical custody of his sons for the greater part of the year (more than 50%), he is not a custodial parent under the Guidelines and § 6(C) is inapplicable. The superior court did not abuse its discretion in determining that Father was not entitled to a credit for his four sons when calculating child support in this case.

CONCLUSION

¶ 12 For the foregoing reasons, we affirm the superior court's child support order. Also, both parties request attorneys' fees and costs under a variety of statutes. In the exercise of our discretion, we deny both requests for attorneys' fees on appeal. As the prevailing party, however, we award taxable costs to Mother upon compliance with ARCAP 21.

All Citations

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