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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.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.

In re the Matter of: Karen Choy Lan YEE, Petitioner/Appellant,
v.
Martin Wayne YEE, Respondent/Appellee.

No. 1 CA–CV 16–0441 FC
|
FILED 10/19/2017

Appeal from the Superior Court in Maricopa County, No. FC2008–007465, The Honorable Katherine M. Cooper, Judge. **VACATED AND REMANDED**

Attorneys and Law Firms

Jones, Skelton & Hochuli PLC, Phoenix, By Jennifer B. Anderson, Counsel for Petitioner/Appellant

Burt Feldman & Grenier, Scottsdale, By Mary K. Grenier, Counsel for Respondent/Appellee

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge John C. Gemmill [1] joined.

MEMORANDUM DECISION

THOMPSON, Judge:

***1** ¶ 1 Appellant Karen Choy Lan Yee (mother) challenges the family court's decision modifying child support on multiple grounds. We vacate the decision and remand for further proceedings for the reasons set forth below.

FACTUAL AND PROCEDURAL HISTORY

¶ 2 Mother petitioned for dissolution of the parties' marriage in 2008. The parties had two minor children at that time, J.Y. and R.Y. [2] The family court entered a consent decree in 2009 which granted the parties joint legal decision-making authority for both children. The decree also obligated Father to pay Mother $1,000 monthly in child support and $4,000 monthly in spousal maintenance through April 2012, reduced to $2,750 monthly through April 2014.

¶ 3 The parties later stipulated to a revised order under which J.Y. would reside primarily with mother. The parties retained joint legal decision-making authority for R.Y. but agreed that Appellee Martin Wayne Yee (father) would have final decision-making authority on medical matters. The family court later granted father final decision-making authority "regarding [R.Y.'s] educational needs." The parties reached a separate agreement in July 2015 under which father agreed to pay mother a lump sum of $20,000 and $1,800 in monthly child support for both J.Y. and R.Y. beginning June 1, 2015.

¶ 4 Less than a month later, mother filed a petition seeking to modify legal decision-making, parenting time, and child support. Mother asked the court to order "joint legal decision-making on all issues," that R.Y. reside primarily with her, and that father's child support obligation be modified "to reflect the new parenting time." Father cross-petitioned to reaffirm his sole legal decision-making authority for R.Y. as to medical and educational matters, to reduce mother's parenting time to every other weekend on a supervised basis, and to revise child support "as necessary."

¶ 5 Following an evidentiary hearing, the family court issued a signed order affirming father's sole legal decision-making authority for R.Y. for medical and educational matters and reducing mother's parenting time to supervised parenting time totaling approximately 29 hours per month. The court also ordered mother to pay $310.46 in monthly child support for R.Y. beginning in May 2016 based on annual incomes of $400,000 for father and $95,000 for mother and "terminat[ed] father's child support obligation effective April 30, 2016." The court incorporated its own child support worksheet as its findings regarding child support; there, it calculated child support for R.Y. only while crediting father for $321 in "Court Ordered Child Support of Other Relationships." The court also found mother had taken unreasonable positions and awarded father attorney fees pursuant to Arizona Revised Statutes (A.R.S.) § 25–324(A) (2017). [3]

***2** ¶ 6 Mother moved for a new trial, arguing among other things that the child support modification was not supported by the evidence. The court denied mother's motion. Mother

timely appealed, and we have jurisdiction pursuant to A.R.S. § 12–2101(A)(1), (2), and (5)(a) (2016).

DISCUSSION

I. The Trial Court Abused its Discretion in Modifying the Parties' Child Support Obligations.

¶ 7 Mother challenges the child support modification on multiple grounds. We review the modification for an abuse of discretion. *Milinovich v. Womack*, 236 Ariz. 612, 615, ¶ 7 (App. 2015). We accept the court's factual findings unless they are clearly erroneous, but review de novo the court's conclusions of law, including its interpretations of the Arizona Child Support Guidelines, A.R.S. § 25–320 app. (Guidelines). *Sherman v. Sherman*, 241 Ariz. 110, 113, ¶ 9 (App. 2016).

¶ 8 Mother first contends the court erred by terminating father's child support obligation for J.Y. It is unclear whether the court intended to terminate Father's obligation for J.Y., as the order states "[t]he pending petitions concern[ed] [R.Y.] only." We need not resolve that ambiguity because the court abused its discretion either way.

¶ 9 If the court intended to terminate father's child support obligation for J.Y., it did so without finding that J.Y.'s circumstances had changed in any substantial or continuing way. *See* A.R.S. § 25–327(A) (2017); *see also Heidbreder v. Heidbreder*, 230 Ariz. 377, 380, ¶ 9 (App. 2012) ("A court's authority to modify child support ... is based on a 'showing of changed circumstances that is substantial and continuing' ") (quoting A.R.S. § 25–503(E)). While the question of whether a substantial and continuing change has occurred normally is one of fact, *Schroeder v. Schroeder*, 161 Ariz. 316, 323 (1989), neither party offered any evidence whatsoever to suggest there had been any such change since the July 2015 agreement. The court therefore lacked authority to modify the parties' child support obligations with respect to J.Y.

¶ 10 If the court did not intend to terminate father's child support obligation for J.Y., neither its order nor its child support worksheet accounted for it. As noted above, the order "terminat[ed] father's child support obligation effective April 30, 2016," and the accompanying child support worksheet reflected $321 in "Court Ordered Child Support of Other Relationships Paid by Father" without any evidence to suggest father had any such children or was paying any such support.

¶ 11 Under Section 16 of the Guidelines,

> [w]hen each parent is granted physical custody of at least one of the parties' children, each parent is obligated to contribute to the support of all the children. However, the amount of current child support to be paid by the parent having the greater child support obligation shall be reduced by the amount of child support owed to that parent by the other parent.

Guidelines, § 16. The parties do not dispute that J.Y. was a minor and had not emancipated when the order issued. We therefore vacate that portion of the family court's order addressing child support and remand for a proper determination of both parties' child support obligations for J.Y. and R.Y., including back child support, if any, under the Guidelines.

***3** ¶ 12 Mother also contends the court abused its discretion by finding Father's annual gross income was $400,000 without ordering him to submit an affidavit of financial information. It appears the trial court based its finding on mother's contention in her pretrial statement that Father "earns approximately $400,000 per year." On remand, the court may require Father to file a current affidavit of financial information. *See* Ariz. R. Fam. Law P. 91(B)(2)(a) (party opposing a petition for modification of child support "shall respond by filing and serving a completed Affidavit of Financial Information").

II. Attorneys' Fees on Appeal

¶ 13 Both parties request attorneys' fees pursuant to A.R.S. § 25–324(A), under which we must consider "the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." Neither parent took unreasonable positions in this appeal and, having considered the relevant financial evidence in the record, we decline to award attorneys' fees.

CONCLUSION

¶ 14 We vacate the trial court's child support order and remand for further proceedings consistent with this decision. We also find mother is the successful party in this appeal and may recover her taxable costs, in an amount to be determined, upon compliance with Arizona Rule of Civil Appellate Procedure 21.

All Citations

Not Reported in Pac. Rptr., 2017 WL 4684045

Footnotes

1 Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable John C. Gemmill, Retired Judge of the Court of Appeals, to sit in this matter.

2 J.Y. turned 18 in 2016. Father contends on appeal that J.Y. emancipated in May 2017, which mother does not appear to contest.

3 Absent material changes from the relevant date, we cite a statute's current version.

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