SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS
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FILED BY
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT
2019 MAR 20 PM 3:51

In the Matter of:
H. S.,

KEOLANI TYNAN,
Petitioner/Appellee,

vs.

CHRISTOPHER SCHURZ,
Respondent/Appellant.

Case No.: **APC 18-0015**

(Case below: CF-07-0005)

MEMORANDUM DECISION AND ORDER

This appeal comes before us on a Notice of Appeal filed by Appellant Christopher Schurz (Father) from an order of the Community Court dated May 23, 2018 and amended on June 25, 2018 requiring Appellant Father to reimburse Appellee Keolani Tynan (Mother) for a medical bill Mother paid in full for medical services rendered to their daughter, H.S. The order further required Father to pay Mother the credit amount subtracted from Father's monthly child support obligation amount (as determined in 2013 by the application of the child support calculator) because Father did not have H. S. in his custody between 2013 and 2017 in accordance with the parenting time schedule set forth in the June 2013 child support order.

Analysis

Appellant asserts the appropriate standard of review is "clearly erroneous." Appellee does not contradict this assertion, and we agree. We review this matter using the clearly erroneous standard. While not binding on this Court, the Rules of Civil Appellate Procedure, Appendix, Rules Committee Notes to Rule 12(c)(6), advises that "The [clearly erroneous] standard gives great deference to the trial court's findings of fact. It is not whether the court of appeals would have reached a different outcome if it were the finder of facts, but whether the trial court's findings are plausible in context to

the entire record." Had we reviewed this case using the "de novo" standard, our review of the entire record, including the recording of the May 7, 2018 evidentiary hearing, might lead us to a different disposition. However, using the clearly erroneous standard requires us to give great deference to the trial court's findings of fact. Therein lies our problem. The trial court's order on appeal is virtually devoid of any identifiable and substantive findings of fact.

As to the issue of the medical bill payment, the May 23, 2018 order contains the following findings: "that Ms. Tynan paid a medical bill in July 2017 in the amount of $841.61; and that Ms. Tynan is requesting that Mr. Schurz pay $400.00 of the medical bill." These findings do not include any facts regarding the date of medical service. The meager findings do not include any facts regarding the Appellee's testimony at the evidentiary hearing about timely notification of the bill to Appellant and request for payment as provided in the Salt River Child Support Guidelines, Section III (D) [SRO-390-2012, "Except for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur.")], made applicable with the force of law pursuant to SRO § 10-49 ("All child support orders entered after February 1, 2012, shall be made pursuant to the Community's child support guidelines . . ."), nor are there any findings detailing facts determined by the judge that might constitute "good cause" for deviating from the time limit. Without detailed findings of fact, it is impossible for this panel to determine whether the trial court's findings are plausible in context to the entire record, leading to the legal conclusion "that Mr. Schurz owes Ms. Tynan $400.00 for a medical bill . . . ." In addition, the findings do not cite the legal authority the judge applied to the facts to reach the legal conclusion.

Similarly, the May 23 order lacks sufficient findings of fact for us to conduct a proper legal review of the ordered relief regarding the claim for "reimbursement" to Mother of the cumulative amount of the parenting time credit deducted from Father's monthly child support payment (calculated by use of the child support

calculator) occasioned by the alleged, but arguably undocumented, failure of Father to exercise parenting time pursuant to the schedule he proposed.

Our review of the entire record, including the recording of the May 7, 2018 evidentiary hearing, revealed *inter alia* that Mother knew and understood at the time the June 2013 child support order was issued that she could file a request to modify the child support payment of Father to exclude the parenting time credit, and that she did not do so until 2018. She testified that she did not do so for two reasons: (1) she did not file for modification upon the advice of her legal counsel; and, (2) that she lacked financial resources to pay her advocate to prepare and file a motion for modification. The record further shows that Mother voluntarily declined to file a motion for modification herself without the assistance of legal counsel because she was unfamiliar with the Community's laws. The record further reveals that the judge stated: "I can't hold Mr. Schurz responsible while [Mother] was represented just because [Mother] decided not to pay [her advocate]."

None of this information is contained in the May 23, 2018 order. It does, however, contain the following finding: "that the actions under the motion to reimburse credit for days not spent with the father began in 2013 and ended on June 20, 2017 when the parties' daughter turned 18 years old." This meager, singular finding does not include any of the facts contained in the record as noted above. The record of the case below, including the documents and the recordings, do not appear to demonstrate that Mother offered any evidence to document or support her assertion that Father did not fully avail himself of the parenting time schedule he had submitted to the court in 2013. Neither does the finding indicate what legal authority the judge was applying to the facts. While the legal conclusion in the order provides that "regarding the motion to reimburse credit for days not spent with the father, Ms. Tynan met the deadline for filing an action beginning April 3, 2016 and ending on June 20, 2017 . . . pursuant to S.R.O. § 4-6(a) [sic], Limitations for bringing civil actions . . . ," the May 23 order cites the Community's statute of limitations for new actions but does not explain how or why that law might apply to an enforcement action in a domestic relations case ongoing

since 2007. Again, the findings are too substantively deficient for us to conduct a proper legal review of the ordered relief regarding the claim for "reimbursement" of the credit for parenting time under the clearly erroneous standard, making it is impossible for this panel to determine whether the trial court's findings are plausible in context to the entire record.

For these reasons, we are completely unable to properly review these matters under the clearly erroneous standard. As a result, the May 23, 2018 Order should be vacated in its entirety and the matter remanded to the trial court for further consideration and action consistent with our order below.

THEREFORE, IT IS THE ORDER OF THIS COURT that:

1. The May 23, 2018 order granting the Motion to Reimburse Credit for Days Not Spent with Father and the Motion to Reimburse Medical Bill is **VACATED**.
2. This matter is remanded to the trial court with instructions to enter a new order (based exclusively upon the existing record of the case including the trial court file and recordings of hearings) which contains specific findings of facts and conclusions of law regarding, at a minimum, the following:

   (a) Whether the mother requested that the father pay his share of the medical bill within 180 days of the date of the medical services as required by law; and

   (b) If not, whether there was just cause (briefly but comprehensively described) for her failure to make a timely request; and

   (c) The specific legal basis for requiring the father to reimburse the mother for days not spent with the daughter between 2016 and June 20, 2017; and

   (d) Whether requiring the father to reimburse the mother for days not spent with the daughter constituted the enforcement of an existing obligation of the father, a modification of an existing obligation of the father, or was a new support obligation; and

(e) If the latter, whether there was specific precedent or authority in tribal, state or federal law for retroactively imposing a financial support obligation on the father.

3. The trial judge should feel free, upon a more thorough review of the entire record since the last child support modification in 2013, including the documents and the recording of the May 23, 2018 evidentiary hearing, to reach whatever legal conclusion the complete facts and applicable law leads him to, and enter his rulings on the motions accordingly. While it appears that the existing record presents sufficient evidence from which the trial judge can make the detailed findings and conclusions required without further proceedings, the decision whether the judge feels the need for additional testimony or other evidence in order to comply with our mandate remains his.

SO ORDERED this 20th day of March, 2019.

Electronically approved 3/20/2019

/s/
Paul Bender, Justice

Electronically approved 3/20/2019

/s/
Robert Clinton, Justice

Electronically approved 3/20/2019

/s/
Jan Morris, Justice