Beggs v. Beggs

NOT DESIGNATED FOR PUBLICATION

In this divorce case, Ronald Beggs argues that the trial court erred in 1) calculating his income for support purposes; 2) awarding alimony to Elizabeth Beggs until she reaches age sixty-two; 3) valuing Elizabeth's interests in two family businesses; 4) compensating Elizabeth $57,299.50 for his depletion of marital accounts; and 5) failing to recuse. Elizabeth argues on cross-appeal that she is entitled to more than $57,299.50 for Ronald's depletion of the accounts. We find no merit in these arguments and affirm.

Calculation of Ronald's Income The trial court gave Elizabeth custody of the parties' two daughters and ordered Ronald to pay child support of $4897 per month. The court based the award on Ronald's 2005 monthly income of $23,318. See In re: Administrative Order No. 10: Ark. Child Support Guidelines, Section III(b), 347 Ark. Appx. 1064, 1067 (2002) (applying a twenty-one-percent multiplier to payors whose income exceeds the chart amounts).[1] The court also awarded Elizabeth $4500 per month in alimony, based in part on Ronald's 2005 monthly income of $23,318. Ronald argues that these support awards should have been based on his 2006 income rather than his 2005 income.

We review traditional cases of equity, such as domestic-relations proceedings, de novo. Parker v. Parker, 97 Ark. App. 298, ___ S.W.3d ___ (2007). It is the ultimate task of the trial judge to determine the expendable income of a child-support payor. Id. As a rule, when the amount of child support is at issue, we will not reverse the trial judge absent an abuse of discretion. Id. Additionally, the amount of a party's income, both current and anticipated, is a consideration in awarding spousal support. See Boyles v. Boyles, 268 Ark. 120, 594 S.W.2d 17 (1980). We do not reverse an award of alimony absent an abuse of discretion. See Hiett v. Hiett, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

Ronald was employed by two businesses, Flynco, Inc., and Beggs Construction Management Company (BCMC). He earned fixed salaries from each totaling $110,000 annually, plus a year-end bonus from Flynco that varied based on performance and company profits. The bonus amounts in recent years were $175,000 in 2001; $140,000 in 2002; $170,000 in 2003; $119,000 in 2004; and $170,000 in 2005. Ronald's brother, David Beggs, operated Flynco and determined the amount of the bonuses.

At an October 2006 hearing, Ronald and his expert witness, CPA Rachel Kramer, testified that Flynco was not doing as well in 2006 as it had in 2004 and 2005, which Kramer described as banner years. Consequently, Kramer said, David Beggs told her that he estimated Ronald's 2006 bonus would be $50,000. She therefore calculated Ronald's net income for support purposes based on Ronald's fixed annual salary of $110,000 and an anticipated year-end bonus of $50,000, less deductions. She arrived at an income figure of $8546 per month.

Elizabeth's expert, CPA Liles Henry, testified that Flynco's bonuses were determined, at least in part, by "zeroing out" the company's net profits at the end of a year and that he could not speculate what Ronald's 2006 bonus would be. Henry therefore referred to Ronald's most recent completed tax return for the year 2005 and calculated Ronald's net income as $23,318 per month, based on a fixed annual salary of $110,000, the 2005 bonus of $170,000, and other income, less deductions. The court used Henry's computations to set child support at $4897 per month.

Ronald argues that Kramer's calculations, which were based on his anticipated 2006 earnings, should have been used to calculate his income and that 2005 was an extraordinarily successful year that was not representative of what he would earn in 2006. The primary bone of contention is whether Ronald's income should have been calculated with reference to the $170,000 bonus he received in 2005 or the $50,000 bonus that was anticipated in 2006.

The most current information should be used in calculating a child-support payor's income. See McWhorter v. McWhorter, 351 Ark. 622, 97 S.W.3d 408 (2003). However, accuracy is also a goal in establishing a payor's income. See id.; Admin. Order No. 10, § III(b) (requiring a court to establish a "sum certain dollar amount" of support). Our supreme court has discouraged speculation as to the amount of bonuses when calculating support awards. See Kelly v. Kelly, 341 Ark. 596, 19 S.W.3d 1 (2000); see also Stuart v. Stuart, 99 Ark. App. 358, ___ S.W.3d ___ (2007) (holding that an award of child support based on the payor's future receipt of a class-action award was improper where the amount of and date she would receive the award were unknown). Liles Henry testified that he could not speculate what Ronald's 2006 bonus would be, so he based his calculations on the prior year's bonus. His choice was not arbitrary-he testified that he had obtained Flynco's financial statements for the first half of 2006, and they showed that Flynco was on track to have a year comparable to 2005, with possibly even more net profit. Given that Henry's computations were based on the most recent bonus actually received rather than an anticipated bonus, the court may have reasoned that Henry's calculations presented a more accurate picture of Ronald's income than Kramer's. See, e.g., Paschall v. Paschall, 82 Ark. App. 455, 117 S.W.3d 650 (2003)(holding that the trial court properly considered a 2001 bonus in establishing future child support in a 2002 order); see also Abdin v. Abdin, 94 Ark. App. 12, 223 S.W.3d 60 (2006) (deferring to the trial court in choosing between the testimony of expert witnesses).

The court may also have determined that the $50,000 bonus figure was not credible. In contrast to Ronald's and Kramer's testimony that Flynco was not having a good year in 2006, Henry testified that he believed Flynco had enough money in 2006 to pay a significant amount in bonuses at the end of the year. Additionally, Rachel Kramer's spreadsheets showed that Flynco had significant annualized adjusted net income in 2006 from which bonuses would be paid. Kramer also testified that, as of June 2006, Flynco had $3 million cash on hand, though it historically carried less than half that amount at the end of a year. Further, Ronald and Kramer testified that Flynco would likely have a year in 2006 that was similar to the years it had from 2001 to 2003. Yet, the $50,000 bonus anticipated for 2006 was far less than bonuses paid between 2001 and 2003. We defer to the trial court on questions of credibility. See Taylor v. Taylor, 369 Ark. 31, ___ S.W.3d ___ (2007).

Ronald cites Delacey v. Delacey, 85 Ark. App. 419, 155 S.W.3d 701 (2004), for the proposition that a court cannot "cherry pick" a successful time frame for purposes of calculating support. Unlike the court in Delacey, thetrial court in this case did not choose an arbitrary income period to calculate support. Rather, the court relied on expert testimony that Ronald's 2005 income figures were the most recent, accurate figures available and were in line with what his income should be in 2006. We therefore find no abuse of discretion in the court's calculation of Ronald's income.

Duration of Alimony

Elizabeth was forty-four at the time of the final divorce hearing, and the court awarded her alimony until she reached age sixty-two. Ronald argues that alimony of this duration is unwarranted because Elizabeth is a healthy woman in her forties with a college degree, some computer skills, and the ability to work. The evidence showed that she has worked as a substitute teacher and at other occasional jobs. Further, her children were in high school at the time of the final hearing and often took care of their own food and transportation needs.

The duration of alimony is within the trial court's discretion. See Hiett, supra. The purpose of alimony is to rectify the economic imbalances in earning power and standard of living in light of the particular facts of each case. Kuchmas v. Kuchmas, 368 Ark. 43, 243 S.W.3d 270 (2006). The primary factors that a court should consider in awarding alimony are the financial need of one spouse and the other spouse's ability to pay. See id. The trial court may also consider other factors, including the couple's past standard of living, the earning capacity of each spouse, the resources and assets of each party, and the duration of the marriage. See Johnson v. Cotton-Johnson, 88 Ark. App. 67, 194 S.W.3d 806 (2004). We adhere to no mathematical formula or bright-line rule in awarding alimony. See Kuchmas, supra; Valetutti v. Valetutti, 95 Ark. App. 83, 234 S.W.3d 338 (2006). The trial court may make an award of alimony that is reasonable under the circumstances. Kuchmas, supra.

The court in this case considered the financial circumstances of both parties as well as Ronald's greater earning power; the extent of Elizabeth's financial need (about $9400 per month); and the fact that, although Elizabeth received a $272,000 asset in the form of Flynco, Inc., stock in the property division, the stock would generate no cash flow to her. Given these factors as well as the length of the marriage (nineteen years); Elizabeth's testimony that the parties agreed she would stay home and raise the children; the lifestyle that the parties enjoyed; and Elizabeth's absence from the full-time job market for nearly twenty years, we cannot say that the trial court abused its discretion in the award of alimony. See Johnson, supra; (affirming a lifetime alimony award to wife even though she was a physician where wife wanted to stay home and raise the children and husband's gross income far exceeded her potential earnings); Hiett, supra (affirming lifetime alimony award where wife was relatively young and healthy, had some college, but stayed home during a twenty-five year marriage and husband had the ability to pay).

Ronald argues that Elizabeth has no incentive to contribute to her own support, and he cites two out-of-state cases where an alimony award was remanded because the trial judge failed to address why the wife would be unable to contribute to her own support. O'Connor v. O'Connor, 782 So. 2d 502 (Fla. Ct. App. 2001); Hughes v. Hughes, 869 P.2d 198 (Ariz. Ct. App. 1993). Nothing in our law requires such an express determination. Further, because Elizabeth's alimony ends at age sixty-two and the court found that she has no substantial, income-generating assets, we disagree that she has no incentive to contribute to her own support.

Valuation of Companies

As part of its property division, the trial court valued Elizabeth's interest in Flynco, Inc., at $272,000, and her interest in BCMC at $74,562.25. Ronald argues that both of these valuations are inflated. A trial court's valuation of property for purposes of property division will not be reversed unless it is clearly erroneous. Hoover v. Hoover, 70 Ark. App. 215, 16 S.W.3d 560 (2000).

Flynco and BCMC are family-owned businesses. Flynco operates as a construction company, and there was evidence that BCMC functioned as a mere conduit, receiving money from Flynco primarily to pay salary and benefits to Ronald and David Beggs. Ronald owned a fifty-percent interest in BCMC, and it was undisputed that this was marital property. He owned approximately twelve percent of the shares in Flynco, and Elizabeth owned approximately seven percent of the shares. These shares were gifted to them individually, and it was undisputed that they were each spouse's separate property.

Ronald argues that Elizabeth's Flynco shares should have been valued at $95,000 rather than $272,000. We do not see how Ronald is prejudiced by the court's valuation. The shares are Elizabeth's non-marital property, and Ronald makes no argument that they are subject to division. While the value of a wife's non-marital property might be relevant in determining her need for alimony or in determining the overall equity of the property division, the husband in that circumstance would be arguing that the value of the asset should be higher rather than lower-the higher the value of the asset, the less need the wife would have for alimony or other property. We find no basis for reversal here.

As for BCMC, the court valued this company by dividing its liquid assets (virtually all cash) of $298,249 to arrive at Ronald's fifty-percent interest. The court then split that amount to award Elizabeth her marital share of $74,562.25. Ronald argues that this valuation was erroneous because Elizabeth offered no proof at trial of the value of her interest in BCMC. He contends that Elizabeth's expert, Liles Henry, took the unorthodox approach of valuing Flynco and BCMC together and assigned the full $272,000 value to Flynco; thus, Henry offered no testimony regarding the value of Elizabeth's interest in BCMC standing alone. Ronald claims that the only evidence regarding the value of Elizabeth's interest in BCMC came from his expert, Rachel Kramer, who valued her interest at $47,500. We disagree.

Kramer, like the trial court, based her valuation on the company's $298,249 in liquid assets. She halved that figure to obtain Ronald's interest, then applied a twenty-percent minority discount and a twenty-percent marketability discount to arrive at $95,000. One-half of that, or $47,500, was her calculation of Elizabeth's share. Liles Henry testified on rebuttal that he disagreed with Kramer's discount of the cash assets. The court chose to value the company based on its cash assets without the use of discounts. We cannot say that the trial court clearly erred in using this approach. In valuating an asset, the court may accept or reject all or any part of the testimony of expert witnesses. Cole v. Cole, 89 Ark. App. 134, 201 S.W.3d 21 (2005).

Dissipation of Assets

The trial court made an unequal division of marital property based on its finding that Ronald had depleted marital accounts while the divorce was pending. We review a trial judge's division of property in a divorce case under the clearly-erroneous standard. See Johnson, supra.

Liles Henry testified that, between March 2006 and September 2006, Ronald depleted $114,599 from three "marital cash accounts." Ronald's counsel admitted at trial that Ronald used the accounts to pay temporary alimony, temporary child support, and living expenses pending entry of a final divorce decree. The trial court took Ronald's use of the marital cash accounts into consideration in dividing $112,500 generated from the sale of the parties' houseboat. The court gave Elizabeth $57,299.50 (half of $114,599) to compensate her for Ronald's depletion of marital accounts, then divided the remainder of the houseboat money equally. Ronald argues that the unequal division was improper because he used the marital accounts for legitimate expenses and support payments. Based on the record and arguments before us, we cannot say that the trial court clearly erred in dividing the houseboat money.

An appellant has the burden of demonstrating error on appeal. See Arrow Int'l, Inc. v. Sparks, 81 Ark. App. 42, 98 S.W.3d 48 (2003) (recognizing that, regardless of the burden of proof below, it is the appellant's burden to demonstrate reversible error on appeal). Here, Ronald has not met that burden. He does not explain the exact nature of the marital cash accounts that he is charged with depleting, how they were funded, what portion he spent on support, what portion he spent on particular expenses, and whether those expenses were legitimate.[2] His argument, therefore, is not developed to the point that we can make an informed ruling on this issue. We will not address issues on appeal that are not appropriately developed. See generally McDermott v. Sharp, 371 Ark. 462, ___ S.W.3d ___ (2007).

Elizabeth argues on cross-appeal that the court should have divided the houseboat money differently. The court's method resulted in her receiving $84,899.75 from the houseboat proceeds. She claims that she should have received $57,299.50 as reimbursement for Ronald's depletion of assets plus $56,250 as half of her share of the houseboat proceeds, for a total of $113,549.50. We find no clear error in the court's division. The court decided to address Ronald's dissipation of assets through the $112,500 houseboat fund. Elizabeth's calculations would involve other funds because, using her computations, she would be entitled to more than $112,500. Moreover, our property-division statute does not compel mathematical precision in property distribution but only requires that property be distributed equitably. Hoover, supra. On the whole, we cannot say that the court's distribution was inequitable.

Recusal

Approximately five months after the divorce decree was entered, Ronald's counsel asked circuit judge Alice Gray to recuse or, in the alternative, to allow counsel to withdraw. The basis of the motion was that Ronald had filed a complaint against Judge Gray with the Judicial Discipline and Disability Commission, and counsel was concerned about a conflict of interest because she had been asked by the Commission to respond to the complaint. Judge Gray denied the motion, and Ronald filed a timely notice of appeal.

The party seeking recusal bears the burden of proving that the trial judge should do so. See Carmical v. McAfee, 68 Ark. App. 313, 7 S.W.3d 350 (1999). A trial judge is presumed to be impartial. Id. A trial judge's decision to recuse is within his or her discretion, and we will not reverse absent a showing of abuse of discretion. Id. The mere fact of adverse rulings is not enough to demonstrate bias. Id.

Ronald contends that the trial court "held an actual or apparent bias which was evidently present throughout the proceeding but only manifested itself at the end of the proceeding." However, he cites no specific instances of bias. He therefore has not met his burden of showing that the trial judge should have recused. Where a party alleges no specific instances of bias or shows how he was prejudiced by the denial of his motion to recuse, we will not reverse. See Trimble v. State, 336 Ark. 437, 986 S.W.2d 392 (1999).

Ronald also argues that, "if the Commission finds merit to Appellant's claims . . . such finding warrants a vacation of the trial court's prior rulings and reassignment to a new judge by random draw." Because appellant did not choose to assert allegations of bias in his motion for recusal and because we are not aware of any action taken by the Judicial Discipline and Disability Commission with regard to this matter, we have no basis for reversal on this point.

Affirmed.

BAKER and MILLER, JJ., agree.

1. The supreme court revised Administrative Order No. 10 after entry of the decree in this case. See In re: Administrative Order No. 10: Ark. Child Support Guidelines, 370 Ark. Appx. ___ (June 14, 2007) (Supp. Op.).

2. Elizabeth questions the legitimacy of some expenditures, such as Ronald's payment of $16,000 rent to his mother and a $35,920 check made out to cash.