SUPREME COURT OF MONTANA

Albrecht v. Albrecht, 2002 MT 227

56 P.3d 339, 311 Mont. 412 (2002) · No. No. 01-715 · Decided October 10, 2002

SUMMARY

The Supreme Court of Montana reviewed a child support award in a dissolution proceeding involving a self-employed parent. The court held that income for a self-employed parent should generally be based on a three-year average of net earnings, rejected imputation of income from an unsold home, and addressed deductions for business expenses and taxes. It affirmed in part, reversed in part, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Terry N. Trieweiler; Jim Regnier; Patricia Cotter; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	October 10, 2002
DOCKET	No. 01-715
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Keith Albrecht appealed the District Court's child-support award entered in the parties' dissolution proceeding.
STANDARD OF REVIEW	A child-support award is reviewed for abuse of discretion. Under that standard, the court examines whether the district court acted arbitrarily, without conscientious judgment, or beyond the bounds of reason, resulting in substantial injustice. Findings of fact are reviewed for clear error, and conclusions of law for correctness.
PRECEDENTIAL VALUE	binding
PARTIES	Keith Vincent Albrecht v. Patricia Marie Albrecht

TOPICS

child support · family law procedure · standard of review · appellate procedure · dissolution of marriage

PRACTICE AREAS

family law · child support · appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by calculating a self-employed parent's child-support income using only one year's income rather than a three-year average.
2. Whether the District Court could reject the parent's income-tax returns as the best measure of income for child-support purposes.
3. Whether the District Court properly determined which business expenses were deductible in calculating child-support income.
4. Whether the District Court improperly imputed income from the anticipated sale of an unsold home.
5. Whether the District Court properly calculated allowable tax and Social Security deductions.
6. Whether the District Court improperly excluded business losses from the income calculation.
7. Whether the District Court abused its discretion by relying on the opposing party's participation in an audit of the self-employed parent's business records.

HOLDINGS

1. A self-employed parent's income for child-support purposes should be calculated using a three-year average of net earnings, absent clear and convincing evidence that applying the Child Support Guidelines would be unjust or inappropriate.
2. A district court is not required to accept income-tax returns as the parent's income for child-support purposes when substantial evidence supports a more reliable reconstruction of disposable income.
3. Business expenses claimed for tax purposes are not automatically deductible for child-support purposes; only reasonable, ordinary, necessary, and adequately documented expenses required to produce income may be deducted.
4. A court may not include estimated profit from an unsold home as actual or imputed income where the parent has received no economic benefit and none of the Guidelines' conditions for imputing income exists.
5. When income is not averaged, the court may not calculate allowable tax deductions by averaging taxes paid in prior years; the deductions must correspond to the income and years used to determine support income. On remand, only taxes and Social Security payments made during the years used for the income average should be averaged.
6. The Guidelines do not categorically prohibit consideration of business losses in determining income; the prohibition against using a net business loss to offset other income prevents double counting rather than excluding business losses from the income calculation.
7. The District Court did not abuse its discretion by relying on the expert's audit despite Patricia's participation in reviewing Keith's business records because Keith failed to show that the process actually prejudiced the calculation.

KEY QUOTATIONS

> *"Income for a self-employed parent should be calculated based on a three-year average of that parent's net earnings."* (¶ 14)

> *"The income with which a court is concerned for child support purposes is a parent's disposable income rather than taxable income."* (¶ 17)

> *"A district court is not required to accept expenses at face value simply because they were claimed on tax returns when calculating income for child support."* (¶ 25)

> *"Imputed income is not appropriate for a parent who is working full-time and to the full extent of his earning capacity."* (¶ 31)

FACTUAL BACKGROUND

Keith and Patricia Albrecht were married in 1983 and had three children. Keith was self-employed as a roofing contractor, excavator, and home builder, and the parties disputed his actual income because his tax returns reported substantially less income than an expert's reconstruction of his business records. The District Court used a single year of reconstructed income, rejected or adjusted various claimed expenses, included estimated profit from an unsold home, and calculated monthly child support at $2,412.

PROCEDURAL HISTORY

Patricia Albrecht petitioned for dissolution in the Eighteenth Judicial District Court, Gallatin County. After trial, the District Court found the marriage irretrievably broken, awarded Patricia custody of the parties' three minor children, and ordered Keith to pay $2,412 per month in child support. Keith appealed the calculation of his support obligation to the Montana Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court must conduct further proceedings and make further findings consistent with the opinion, including recalculating Keith's child-support obligation using the appropriate income-averaging methodology, considering the omitted advertising and dump-fee expenses, excluding estimated profit from the unsold home, properly treating business losses, and calculating allowable tax and Social Security deductions consistently with the years used to determine income.

CASES CITED

- In re Marriage of Craib, 266 Mont. 483, 490, 880 P.2d 1379, 1384 (1994)
- In re Marriage of Kovarik, 1998 MT 33, ¶¶ 21, 30, 287 Mont. 350, 954 P.2d 1147
- In re Marriage of Wessel, 220 Mont. 326, 333, 715 P.2d 45, 50 (1986)
- In re Marriage of Noel, 265 Mont. 249, 252, 875 P.2d 358, 359 (1994)

- In re Marriage of Stufft, 286 Mont. 239, 250-51, 950 P.2d 1373, 1379 (1997)
- Interstate Production Credit v. DeSaye, 250 Mont. 320, 322-23, 820 P.2d 1285, 1286-87 (1991)
- United States v. United States Gypsum Co., 333 U.S. 364, 68 S. Ct. 525, 92 L. Ed. 746 (1948)
- In re Marriage of Brown, 263 Mont. 184, 187, 867 P.2d 381, 382 (1994)
- Burris v. Burris, 258 Mont. 265, 269, 852 P.2d 616, 619 (1993)
- In re Marriage of Albinger, 2002 MT 104, ¶ 12, 47 P.3d 820, 309 Mont. 437
- In re Marriage of Jacobson, 251 Mont. 394, 399, 825 P.2d 561, 565 (1992)
- In re Marriage of Nash, 254 Mont. 231, 233, 235-36, 836 P.2d 598, 600-01 (1992)
- In re Marriage of Wersland, 249 Mont. 169, 172, 814 P.2d 991, 993 (1991)
- In re Marriage of Sullivan, 243 Mont. 292, 296, 794 P.2d 687, 689 (1990)
- In re Marriage of Murphy, 268 Mont. 1, 6, 885 P.2d 440, 443 (1994)
- In re Marriage of Chiovaro, 247 Mont. 185, 192, 805 P.2d 575, 579 (1991)
- Keebler v. Harding, 247 Mont. 518, 523, 807 P.2d 1354, 1357 (1991)
- Pankratz v. Teske, 2002 MT 112, ¶ 18, 309 Mont. 499, 48 P.3d 30
