

DISTRICT OF COLUMBIA COURT OF APPEALS

William A. Wilson III v. Francesca V. Craig

987 A.2d 1160 (D.C. 2010) · No. Nos. 05-FM-372, 06-FM-1450 and 06-FM-1553 · Decided January 28, 2010

SUMMARY

The District of Columbia Court of Appeals reviewed orders modifying child custody and child support, awarding retroactive support, and holding the appellant in civil contempt. The court affirmed the custody modification, the authority to modify support, the retroactive award, and the contempt determination, but reversed and remanded for further consideration of the appellant's business expenses in calculating his income for child-support purposes.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Blackburne-Rigsby, Associate Judge; Reid, Associate Judge; Pryor, Senior Judge
JURISDICTION	District of Columbia
DECIDED	January 28, 2010
DOCKET	Nos. 05-FM-372, 06-FM-1450 and 06-FM-1553
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from trial court judgments modifying custody and child support, awarding retroactive child support, and holding appellant in civil contempt for failure to pay the retroactive support.
STANDARD OF REVIEW	Custody, child support, visitation, and counsel-fee determinations are reviewed for clear abuse of discretion. Factual findings in a nonjury case may be set aside only for errors of law or when plainly wrong or unsupported by evidence. A trial court's contempt determination based on ability to pay is reviewed for clear error or abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	William A. Wilson III v. Francesca V. Craig

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court properly modified the parties' incorporated custody agreement to award appellee sole legal and physical custody.
2. Whether the trial court had authority to modify child support sua sponte when appellee had not formally petitioned for an increase.
3. Whether the trial court properly calculated appellant's child support obligation and earning capacity without adequately accounting for the operating expenses of his law practice.
4. Whether the trial court could make the modified child support award retroactive when no formal petition for retroactive support had been filed.
5. Whether the trial court properly held appellant in civil contempt for failing to pay retroactive child support when he had the ability to pay.

HOLDINGS

1. The trial court properly modified the custody arrangement because the evidence established an unforeseen, substantial, and material change in circumstances affecting the children's welfare, and sole custody with appellee was in the children's best interests.
2. The trial court had authority to modify the child support obligation sua sponte when changed circumstances and the children's welfare warranted an increase.
3. The trial court properly determined that appellant's earning capacity exceeded his claimed salary, but it was required to consider reasonable expenses of operating his law practice in determining his net disposable income.
4. The trial court could make the modified child-support award retroactive to the date the court raised the support issue, provided appellant had notice and a fair opportunity to contest the requested revision.
5. The trial court properly held appellant in civil contempt because clear and convincing evidence established that he willfully failed to pay despite having the ability to satisfy the arrearage.

KEY QUOTATIONS

"Trial court determinations of custody, child support, visitation rights, and counsel fees ... are subject to reversal only for clear abuse of discretion." (987 A.2d at 1164)

"Having fairly determined that changed circumstances required an alteration of the custody arrangement with a corresponding increase in the support-related expenses the mother would thereby incur, the judge was well within her authority to revise the support amount in order to protect the children's welfare." (987 A.2d at 1165)

"For child support purposes, consideration of parties' finances must include analysis of their 'net disposable income based on all legitimate financial obligations.'" (987 A.2d at 1166)

“As long as Mr. Wilson had notice and a fair opportunity to counter any showing of a need to revise the support amount, no sound reason exists why the trial judge, having found the need for a revision in light of changed circumstances, could not order the limited retroactivity” (987 A.2d at 1167)

FACTUAL BACKGROUND

The parties' divorce settlement provided for joint legal and physical custody of their three youngest children, an alternating-week schedule, and \$6,000 per month in child support. Persistent and escalating conflict between the parents caused the children psychological and emotional distress, including problems associated with transitions between households; a forensic evaluator concluded that continued joint custody was unworkable. The trial court awarded appellee sole custody, increased appellant's support obligation based on the custody change and his earning capacity, made the increase retroactive, and found that appellant had the assets and resources to pay the arrearage.

PROCEDURAL HISTORY

The parties' divorce judgment incorporated but did not merge a settlement agreement providing for joint legal and physical custody and monthly child support. After an evidentiary hearing, the trial court modified custody to award appellee sole legal and physical custody of the three minor children, ordered the parties to renegotiate child support, increased appellant's support obligation, made the increase retroactive, and held appellant in civil contempt for failing to pay. The Court of Appeals affirmed the custody modification, the authority to modify support, the retroactive award, and the contempt ruling, but reversed and remanded for reconsideration of appellant's net income after accounting for reasonable expenses of operating his law practice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for the trial court to reconsider the revised child-support amount by determining appellant's net disposable income after accounting for reasonable expenses necessarily incurred in operating his law practice, and to issue further proceedings consistent with the opinion.

CASES CITED

- Plumley v. Plumley, 465 A.2d 393, 394 (D.C. 1983)
- Moore v. Moore, 391 A.2d 762, 770 (D.C. 1978)
- In re E.H., 718 A.2d 162, 169 (D.C. 1998)
- Willcher v. Willcher, 294 A.2d 486, 488 (D.C. 1972)
- Portlock v. Portlock, 518 A.2d 116, 118-19 (D.C. 1986)
- Prisco v. Stroup, 947 A.2d 455, 458 (D.C. 2008)
- In re M.D., 758 A.2d 27, 34 (D.C. 2000)
- Lopez v. Ysla, 733 A.2d 330, 336 (D.C. 1999)

- Mazza v. Hollis, 947 A.2d 1177, 1181 n.5 (D.C. 2008)
- Foster-Gross v. Puente, 656 A.2d 733, 737 (D.C. 1995)

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