IN THE SUPREME COURT OF GUAM

Michael J. Lanser
Plaintiff-Appellant,

v.

Susan R. Lanser
Defendant-Appellee

Supreme Court Case No.: CVA02-018
Superior Court Case No.: DM0826-97

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted April 8, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice, BENJAMIN J.F. CRUZ and JOHN A. MANGLONA, Justices *Pro Tempore*.

CRUZ, J.:

[1] Plaintiff-Appellant Michael Jon Lanser ("Michael") appeals from the Superior Court's denial of his motion to modify child custody. Michael argues that in denying his request to alternate primary custody each school year, the trial court erred by failing to apply legislative policy favoring equal time with each parent and by considering the best interests of Defendant-Appellee Susan Rae Lanser ("Susan"), the children's mother, rather than the best interests of the children. We hold that substantial evidence in the record supports the trial court's decision and therefore affirm the denial of Michael's motion.

[2] Michael also appeals the Superior Court's grant of Susan's motion to modify child support. Michael argues that the trial court abused its discretion in increasing child support from $3000 per month to $7000 per month without specific findings to support the increase. We agree and accordingly reverse and remand on this issue.

I.

[3] Michael and Susan were married on December 29, 1989. They have two minor sons, a twelve-year-old and a ten-year-old. In June of 1997, Susan and the children moved from Guam to Hawaii. Michael remained on Guam. Michael and Susan were divorced on Guam on September 19, 1997. They signed a settlement agreement providing for joint legal custody of the children. The settlement required Michael to pay $2,000 per month in spousal support for three years and to pay $3,000 per month in child support.

[4] The settlement specifically permitted Michael to visit the children for one weekend each month, but both parties understood that Michael would have liberal visitation rights. Michael visited the children in Hawaii several times. In July 2000, Susan and the children moved from Hawaii to Washington, where they currently live. Michael remained on Guam.

[5] On September 5, 2001, Michael filed a motion to revise visitation. In his motion, Michael requested that primary custody alternate between him and Susan each school year. At a hearing on November 23, 2001, the trial court ruled that Michael's motion was for a change in custody rather than a modification of visitation.

[6] On March 6, 2002, the Superior Court issued a decision and order denying the motion to alternate custody on an annual basis but increasing Michael's visitation to eight weeks out of the children's ten weeks of summer vacation, Thanksgiving break, one week during the February school break, and alternating Christmas holidays and Spring breaks.

[7] Michael then filed a motion to reconsider the March 6 decision. On April 21, 2002, Susan filed a motion for child support modification. The trial court heard both motions on April 25, 2002. In a decision and order issued on July 31, 2002, the trial court denied Michael's motion to reconsider and increased child support from $3,000 per month to $7,000 per month, retroactive to April 2002, the month that Susan filed for modification. Michael filed a notice of appeal on August 7, 2002.

II.

[8] This court has jurisdiction over appeals from child custody orders. *See Flores v. Cruz*, 1998 Guam 30, ¶ 8. We review child custody matters keeping in mind the best interests of the children. *Id*. This court also has jurisdiction over appeals from child support orders. *See Leon Guerrero v. Moylan*, 2002 Guam 18, ¶ 5 (citing Title 5 GCA §34121 (1996) and 7 GCA §3107(a) (1994)).[1]

III.

A. Child Custody

[9] A court may modify a custody arrangement whenever "the best interests of the child require or justify such modification." Title 19 GCA §8404(f) (1994). Here, both parties agreed that the best interests

[1] Although the trial court's jurisdiction is not an issue on appeal, we note that Susan attempted to remove this case to Washington. The present case illustrates the difficulties of asserting jurisdiction when the children reside outside of Guam. For example, the trial court declined to continue the hearing on Michael's custody motion, despite the social worker's testimony that he had not had enough time to interview the children in preparing the custody home study report, because the children's vacation was ending and they had to return to Washington for school. The trial court accepted the video taped depositions of the children's school counselor and others who had observed the children, but did not have the benefit of a cross examination or of being able to ask additional questions. Additionally, the parties were unable to bring the children's teachers or anyone else with knowledge of the children's situation into court to testify, and the social worker prepared the custody home study report without the opportunity to observe the children at home. Thus, although the trial court properly accepted jurisdiction over this case, holding a hearing in the locality where the children currently reside would have been more desirable, especially since the children have not lived on Guam since 1997.

of the children required modification of the original custody agreement to increase the amount of time the children would spend with Michael.[2]

[10] Michael argues that the trial court erred in failing to apply 19 GCA §8404(h) to the present situation. That section provides:

> It is legislative policy that children spend as much time with each of their parents as possible, when the parents are not living together. Therefore, in determining visitation of minor children on Guam with non-custodial parents living on Guam, the court shall, to the greatest degree possible, order visitation for minor children (pendente lite and permanently) with non-custodial parents such that the children spend more or less equal amounts of time with the custodial parent and the non-custodial parent during non-working, non-sleeping, non-school time…

19 GCA §8404(h).

[11] The trial court determined that section 8404(h) applies only when both the custodial and non-custodial parents live on Guam. We agree. The section deals with the determination of "visitation of *minor children on Guam* with non-custodial parents living on Guam." *Id*. (emphasis added). Thus, the trial court correctly ruled that section 8404(h) is inapplicable in the present case, where Michael lives on Guam but Susan resides in Washington. Thus, section 8404(h) does not apply when the custodial parent, and thus the children, do not reside on Guam.

[12] Although section 8404(h) is inapplicable in the present case, joint custody is still preferred. This court has previously noted that "Title 19 of the Guam Code Annotated, read as a whole, reflects the legislature's underlying policy that whenever possible, the sanctity of family life should be preserved by the inclusion of both parents in the lives of their children." *Flores*, 1998 Guam 30 at ¶ 11. Moreover, Guam statutes are "devoid of language requiring the trial court to decide between two parents." *Id.* at ¶ 10.

[13] Joint custody, however, does not require that each parent have equal time with the children. *See Sandoval v. Sandoval*, 832 So. 2d 1221, 1224 (La. Ct. App. 2002) ("In providing for joint custody, the legislature contemplated that each party have substantial rather than equal time with the child."). The trial court appropriately applied the policy favoring joint custody by granting Michael increased time with the

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[2] "[T]o justify ordering a change in custody there must generally be a persuasive showing of changed circumstances affecting the child." *In re Marriage of Carney*, 598 P.2d 36, 38 (Cal. 1979). The rationale behind this rule is that "it is desirable that there be an end of litigation and undesirable to change the child's established mode of living." *Id*. (citation omitted). The trial court in the present case made no specific finding of changed circumstances, but neither party raised this issue on appeal. Although not reflected in the record on appeal, the parties apparently stipulated to changed circumstances warranting a modification.

children during the summers and other school vacations and in maintaining joint legal custody in both parents. *See Taylor v. Taylor*, 508 A.2d 964, 967 (Md. 1986) ("Shared physical custody may, but need not, be on a 50/50 basis, and in fact most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights.").

[14] Michael also argues that the trial court considered the best interests of Susan and not of the children in denying the motion for equal time. In its Decision and Order, the trial court noted that Susan "has developed a very strong attachment to her children. As she testified, the children are 'her world.'" Appellant's Excerpts of Record, tab G, p. 21 (Decision and Order). The trial court further stated that Susan "has devoted her life to her children. They are the only world she knows and the only world she has…. She has in fact become the integral part of this family unit with her children." Appellant's Excerpts of Record, tab G, p. 26 (Decision and Order). Based partially on these statements, Michael argues that the trial court did not consider the best interests of the children in reaching its conclusion.

[15] We review child custody orders for an abuse of discretion. *See Flores*, 1998 Guam 30 at ¶ 8. Under this standard, the appellate court does not substitute its own judgment for that of the trial court. *People v. Tuncap*, 1998 Guam 13, ¶ 12. Instead, it determines whether substantial evidence supports the trial court's decision. *In re Marriage of Meegan*, 13 Cal. Rptr. 2d 799, 801 (Cal. Ct. App. 1992); *see also Bondoc v. Worker's Comp. Comm'n*, 2000 Guam 6, ¶ 6.

[16] The primary consideration when determining custody is the best interests of the children. *See* 19 GCA §8404; *Flores*, 1998 Guam 30. The purpose of a custody hearing is "to determine the best interests of the child and not that of the parents." *Flores*, 1998 Guam 30 at ¶ 23. "The issue is not what is in the best interest of the family unit consisting of the custodial mother and the minor children." *Riley v. Riley*, 873 S.W.2d 564, 567 (Ark. Ct. App. 1994). Once a court finds that a change in custody is necessary, the sole issue before the court is "determining the best interests of the children, not the children and their mother, and not the children and their father." *Id*.

[17] Here, the trial court heard testimony from several witnesses on the children's best interests. Witnesses included Robert Wolford ("Wolford"), the social worker who prepared the Home Custody Report, the school counselor at Voyager School, friends of Michael and Susan, and Michael and Susan themselves. Wolford testified to his conclusion that the proposed alternating custody arrangement would

not be in the best interests of the children. Transcript vol. 1, p. 203 (Custody Status Hearing, Feb. 21, 2002). The children's school counselor arrived at the same conclusion, noting that alternating custody would be difficult for the older child because he is resistant to change and for the younger child because he does not have as close a relationship with his father as with his mother. Transcript vol. 1, pp. 92-93 (Custody Status Hearing, Feb. 21, 2002). Susan also testified that the proposed arrangement would not be in the best interests of the children. Thus, the trial court's decision is supported by substantial evidence.

[18] Although some testimony contradicts the trial court's conclusion, "it is within the purview of the trial court to weigh the credibility of witnesses and their testimony." *Nissan v. Sea Star Group, Inc.*, 2002 Guam 5, ¶ 32. Rather than reweighing the evidence, we look only to see whether substantial evidence exists to support the trial court's decision. *See Tuncap*, 1998 Guam 13 at ¶ 13; *In re Marriage of Meegan*, 13 Cal. Rptr. 2d at 801. "Substantial evidence is relevant evidence that a reasonable person may accept as sufficient to support a conclusion, even if inconsistent conclusions may be drawn from the evidence." *B.M. Co. v. Avery*, 2002 Guam 19, ¶ 13. Thus, because substantial evidence supports the decision, the trial court did not abuse its discretion in denying Michael's motion for equal time.

B. Child Support

[19] An award of child support is reviewed for an abuse of discretion, keeping in mind the best interests of the children. *See Leon Guerrero*, 2002 Guam 18 at ¶ 16.[3] The trial court granted Susan's motion to modify child support, increasing Michael's obligation from $3,000 to $7,000 per month. Michael argues that the increased amount of child support vastly exceeds the reasonable needs of the children, thereby depriving Michael of his right as a parent to make discretionary spending decisions. Michael also argues that the trial court's award of child support far in excess of the children's needs resulted in a disguised

[3] A court may modify a support order "upon a showing of substantial and material change of circumstances." Title 5 GCA §34121; see also *Wolf v. Wolf*, 566 S.E.2d 516, 518 (N.C. Ct. App. 2002); *Sims v. Sims*, 770 N.E.2d 860, 863 (Ind. Ct. App. 2002); *Weiss v. Weiss*, 742 N.Y.S.2d 663, 664 (N.Y. App. Div. 2002); *Gallner v. Hoffman*, 653 N.W.2d 838, 843 (Neb. 2002); *Yancey v. Yancey*, 752 So. 2d 1006, 1010 (Miss. 1999). The burden to establish a substantial and material change of circumstances is on the moving party. *In re Marriage of Stephenson*, 46 Cal. Rptr. 2d 8, 12 (Cal. Ct. App. 1995). "It is error to change the amount of support where there is no evidence submitted to show a change in circumstances." *Thurston v. Pinkstaff*, 730 S.W.2d 239, 241 (Ark. 1987); *see also Dorfman v. Dorfman*, 719 A.2d 178, 180 (N.J. Super. App. Div. 1998). As with the custody modification issue, the trial court in the present case did not make a finding of changed circumstances warranting a modification of child support, nor did it discuss any evidence of a change in circumstances. However, the parties appear to have stipulated to a substantial and material change in circumstances and did not argue this issue on appeal.

award of spousal support because the excess amount primarily benefited Susan rather than the children. Finally, Michael argues that the trial court erred in awarding an amount of child support that inappropriately contemplates the future needs of the children rather than their present needs.

[20] In setting the amount of child support when a parent is wealthy, "a balance must be struck between reasonable needs, which reflect lifestyle opportunities, while at the same time precluding an inappropriate windfall to the child or even in some cases infringing on the legitimate right of either parent to determine the appropriate lifestyle of a child." *Isaacson v. Isaacson*, 792 A.2d 525, 538 (N.J. Super. App. Div. 2002). "The problem with requiring child support in amounts far in excess of the usual expenditures on children is that it effectively transfers most of the discretionary spending on children to the custodial parent." *Matter of Marriage of Patterson*, 920 P.2d 450, 455 (Kan. App. 1996) (citation omitted); *see also Downing v. Downing*, 45 S.W.3d 449, 455-56 (Ky. Ct. App. 2001) ("An increase in child support above the child's reasonable needs … effectively transfers most of the discretionary spending on children to the custodial parent."). Thus, the court must engage in "a careful balancing of interests reflecting that a child's entitlement to share in a parent's good fortune does not deprive either parent of the right to participate in the development of an appropriate value system for a child." *Isaacson*, 792 A.2d at 538-39.

[21] Courts recognize that "where the child has a wealthy parent, that child is entitled to, and therefore 'needs' something more than the bare necessities of life." *White v. Marciano*, 235 Cal. Rptr. 779, 782 (Cal. Ct. App. 1987); *see also Isaacson*, 792 A.2d at 537 ("Children are entitled to not only bare necessities, but a supporting parent has the obligation to share with his children the benefit of financial achievement."). This concept of relative needs, however, "is not an open-ended opportunity for a parent to develop a 'wish-list' for a child that does not comport with the child's best interests." *Isaacson*, 792 A.2d at 539. Thus, "[w]hile to some degree children have a right to share in each parent's standard of living, child support must be set in an amount which is reasonably and rationally related to the realistic needs of the children." *Downing*, 45 S.W.3d at 456. "Practitioners dealing with situations such as this sometimes refer to the 'Three Pony Rule.' That is, no child, no matter how wealthy the parents, needs to be provided more than three ponies." *Matter of Marriage of Patterson*, 920 P.2d at 455.

[22] Although allowing a child to share in the good fortune of a non-custodial parent may unavoidably confer an incidental benefit on the custodial parent as well, "a custodial parent cannot through the guise of the incidental benefits of child support gain a benefit beyond that which is merely incidental to a benefit

being conferred on the child. This is especially true when … the supporting parent's alimony obligation has ended." *Loro v. Colliano*, 806 A.2d 799, 807 (N.J. Super. App. Div. 2002); *see also Downing*, 45 S.W.3d at 455 ("An increase in child support above the child's reasonable needs primarily accrues to the benefit of the custodial parent rather than the children."). A child is entitled to share in the lifestyle of his parents. *See Id*. at 456. However, "the purpose of a child support order is to provide for the care and well-being of minor children, and not to equalize the available income of divorced parents" *Battersby v. Battersby*, 590 A.2d 427, 431 (Conn. 1991).

[23] When the income of the parents exceeds the child support guidelines, as it does here, the court cannot simply extrapolate from the guidelines to determine the amount of child support. *See Leon Guerrero*, 2002 Guam 18 at ¶ 27-29; *see also Reinhart v. Reinhart*, 963 P.2d 757, 759 (Utah. Ct. App. 1998). The trial court must make "factual findings to support setting the basic child support obligation beyond the Guidelines' cap." *Leon Guerrero*, 2002 Guam 18 at ¶ 28. Moreover, "[t]hese findings must be more than a simple recitation by the court of relevant statutory factors; the court must relate those factors to the specific facts in the case before it. The court must show how the figure it is using reflects the reasonable needs of these particular children in these particular circumstances." *Id*. at ¶ 29 (holding that the trial court abused its discretion in exceeding the guidelines without specific findings) (citation omitted).

[24] Here, the trial court did not make any specific findings to justify setting the amount of child support at $7000 per month. Instead, the trial court began by extrapolating from the guidelines to reach an amount of $10,000 per month. The trial court also considered Susan's interrogatories showing that the children's current needs were $3057 per month at the time of the hearing. Appellant's Excerpts of Record, tab H, p. 15 (Decision and Order). Nothing in the record, however, suggests or justifies the amount of $7000 that the trial court ultimately reached.[4]

[25] In increasing the amount of child support, the trial court explained that, among other "future needs," the amount awarded "contemplated that when these children reach driving age, it will avail them the opportunity of having an automobile suitable and appropriate for a teenager." *Id.* at p. 16. The trial court further stated that it was "not the intent that every cent of support received per month be spent."

[4] We note that using Susan's answers to the interrogatories and her estimate of additional expenses that she asked the trial court to consider would set the monthly needs of the children at no more than $4500 per month, but leave it to the trial court to calculate the reasonable needs of the children.

Appellant's Excerpts of Record, tab H, p. 16 (Decision and Order). "[A]n award for child support is for the child's current needs based on the child's appropriate standard of living and not for the purpose of saving portions thereof for future needs." *Jane Doe VI v. Richard Roe VI*, 736 P.2d 448, 457 (Haw. Ct. App. 1987); *see also Brooks v. Brooks*, 871 S.W.2d 42, 45 (Mo. Ct. App. 1993) (characterizing "a car for a child who was 15 years old at the time of the trial, and a bar mitzvah for a child who was 10 at the time of trial" as "wish list" items). Thus, the trial court's award of child support exceeded the reasonable needs of the children, even considering that they are children of a wealthy parent.

C. Date of Modification

[26] "Modification of a child support order may take effect any time after the filing of the motion to modify." *Leon Guerrero*, 2002 Guam 18 at ¶ 45 (citing Title 5 GCA §34121 (1996)). We review the determination of the effective date of modification for an abuse of discretion. *Id*.

[27] In *Leon Guerrero v. Moylan*, 2002 Guam 18, this court expressed a preference for using the date of filing the motion to modify support rather than the date of the hearing as the effective date of child support modification. *See id*. at ¶¶ 45-46. Granting modification from the latter date "detracts from the purposes of the changed circumstances rule and serves to encourage and benefit dilatory tactics. Moreover, a motion to modify child support indicates that a change in circumstances has occurred at the time the petition is filed." *Id*. at ¶ 47 (citation and quotation marks omitted). Once the trial court determined that a modification was necessary, it was required to rule that the modification was effective retroactively to the date that the motion was filed without evidence justifying using a later date. Therefore, the trial court did not abuse its discretion in determining the filing date to be the effective date of modification.

IV.

[28] We hold that the trial court did not abuse its discretion in denying Michael's motion to modify custody by allowing each parent equal time with the children, alternating primary custody each school year. Substantial evidence supported the trial court's decision that the proposed custody arrangement was not in the children's best interests. However, we also hold that the trial court did abuse its discretion in increasing the amount of child support beyond the reasonable needs of the children. Accordingly, we

AFFIRM in part and **REMAND** for a determination of the proper amount of child support that provides for the current reasonable needs of the children.