



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DEC 21 2022

JOHN D. HADDEN
CLERK

IN RE THE MARRIAGE OF:

KEVIN W. WALLACE,

Petitioner/Appellee,

vs.

ANGELA DEE WALLACE,

Respondent/Appellant.

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Case No. 119,903

APPEAL FROM THE DISTRICT COURT OF
LINCOLN COUNTY, OKLAHOMA

HONORABLE EMILY J. MUELLER, TRIAL JUDGE

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

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For Petitioner/Appellee

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For Respondent/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Angela Dee Wallace appeals the trial court's order denying her motion for new trial and denying her request for an award of interest on the judgment for past-due child support the trial court entered in her favor and against petitioner, Kevin W. Wallace. Because the trial court erred in denying Angela's request for

postjudgment interest, we reverse the orders appealed in part and remand with instructions to enter a judgment awarding Angela postjudgment interest.

BACKGROUND

In 2013, the trial court entered a decree of dissolution of marriage granting Angela and Kevin a divorce. The trial court awarded the parties joint legal and physical custody of their two minor children and ordered Kevin to pay child support in the amount of \$280 per month. The trial court also ordered Kevin to maintain medical insurance for the parties' minor children and to pay fifty percent of any uninsured medical expense for the minor children.

In 2018, Angela filed an application for contempt alleging Kevin had failed to pay court-ordered child support and medical expenses. Angela alleged Kevin was in arrears in the amount of \$20,160 as to support, not including interest. Angela also asserted Kevin had refused to pay his portion of the minor children's uninsured medical expenses and was in arrears in the amount of \$12,923.98 as of December 5, 2018. Angela also filed a motion to modify the decree and to terminate joint custody on that same date. Angela asked the trial court to terminate joint custody and grant Angela sole custody of the minor child.¹ Angela also asked the trial court to modify child support and visitation consistent with the child custody modification.

In May 2021, Kevin filed a *Notice of Filing of Motion to Modify Child Support* notifying the trial court he previously filed a request to modify child support with

¹ One child had reached the age of majority.

the Department of Human Services. In his motion, Kevin asserted “emancipation of one or more children” and asked that he no longer be required to pay child support.

The court held an evidentiary hearing on each of these motions in June 2021 and issued its order the following month. As to Angela’s contempt citation, the trial court held Angela failed to prove a willful violation of the order to pay child support and medical expenses and found Kevin was not guilty of contempt. As to Kevin’s motion to modify support, the trial court eliminated child support retroactively “from October 2018 through the date the youngest child aged out.” The trial court found the parties had not agreed to waive child support. The court found child support should have accrued from December 2014 through July 2018, resulting in a judgment of \$12,320 for unpaid child support against Kevin. However, the court also held Kevin had overpaid child support from August 2018 through April 2021, thereby creating an offset of \$9,240. After offsetting the overpayment from the amount of past-due child support, the trial court ordered an arrearage judgment of \$3,080 in past-due child support against Kevin for the period of December 2014 through July 2018.

Both Angela and Kevin filed a motion for new trial. In her motion, Angela alleged the trial court’s order was contrary to law because the court was required to award interest on past-due child support, which the court failed to do. Angela argued that each unpaid child support payment became a judgment by operation of law pursuant to 43 O.S. § 137(A). Angela further argued that pursuant to 43 O.S. § 114, the unpaid child support payments accrued simple interest at the

rate of ten percent per year from December 2014 through October 2016, and two percent per year from November 2016. Angela argued that imposing interest under § 114 is mandatory and the trial court failed to account for mandatory interest on the child support arrearage as required.

Kevin objected to Angela's new trial request and raised new issues in support of additional relief. First, Kevin argued that Angela failed to ask the trial court for interest and had thereby waived the issue. He also alleged Angela prolonged the litigation and to award interest would award Angela for her litigious behavior.

The trial court entered an order filed on September 9, 2021, denying both motions for new trial. Concerning the interest award, the trial court stated:

While interest does accumulate for past-due child support balances, it is not included when rendering a judgment. Judgment was rendered as of July 9, 2021, and interest accrues from that point forward on any unpaid balance.

Angela appeals both the trial court's initial order failing to award interest and the trial court's denial of her motion for new trial.

STANDARD OF REVIEW

An appellate court uses an abuse-of-discretion standard of review in reviewing a trial court's decision denying a motion for new trial. *Dopp v. Kirkendall*, 2021 OK 52, ¶ 11, 498 P.3d 287. "Abuse of discretion occurs if the trial court errs with respect to a pure, simple, and unmixed question of law or where the trial court acts arbitrarily." *Id.*

ANALYSIS

Angela's primary argument on appeal is that she is entitled to interest on the child support arrearage judgments from the date each becomes delinquent, and the trial court erred in failing to make this award. We agree with Angela's position.

Title 43 O.S., § 137, provides, in relevant part, that "[a]ny payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order of the Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law." Section 114 of that same title provides that "[p]ast-due child support payments accruing after the establishment of the current support order shall draw interest from the date they become delinquent.... The interest shall be collected in the same manner as the payments upon which the interest accrues." The trial court has no discretion on the issue of interest on the child support arrearage once the child support payments are shown to be due and unpaid. *Howard v. Howard* 1992 OK CIV APP 162, ¶ 5, 843 P.2d 395. See also *Dept. of Human Servs. v. Glasby*, 1993 OK CIV APP 126, 858 P.2d 1291.

The Oklahoma Supreme Court has construed Section 114 to require child support arrearages to earn simple interest, not compounded interest. *Phillips v. Hedges*, 2005 OK 77, ¶¶ 10, 12, 124 P.3d 227. Section 114 currently mandates that past due child support payments draw interest at the rate of two percent per year from the date the payment becomes delinquent. Prior to November 1,

2016, § 114 required court-ordered child support payments draw interest at the rate of ten percent per year from the date it becomes past due.

The Oklahoma Supreme Court addressed a similar issue in *Phillips v. Hedges*, 2005 OK 77, 124 P.3d 227. In discussing interest on past-due child support arrearages and whether the amount of interest had to be reduced to a lump sum and included in a judgment, the Oklahoma Supreme Court stated:

Postjudgment interest is “a continuing obligation *that runs at the statutory rate from the date of judgment until paid*,” and, unlike prejudgment interest, need not be reduced to a lump sum and included in a judgment. *Id.* A court-ordered child support payment becomes a judgment by operation of law on the date that it becomes past due. 43 O.S.2001, § 137(A). A court may later enter an order reducing the judgment to writing, but all interest is postjudgment interest which begins to accrue immediately upon the payment becoming delinquent. *Id.* § 114. Thus, there is no prejudgment interest on delinquent child support payments. We do not find error in the trial court’s order omitting a lump-sum amount of postjudgment or prejudgment interest. *See May-Li Barki, M.D., Inc.*, 1999 OK 87, supp. opinion ¶ 4, 20 P.3d at 142-43.

Id. ¶ 13.

Relying on *Phillips*, Kevin argues that the trial court is not required to award interest on the past-due child support payments. However, Kevin misconstrues the holding of *Phillips*. While the trial court is not required to include the postjudgment interest on the arrearage in its initial judgment setting the amount of child support that is past due, the award of interest on the past-due child support arrearage is not discretionary.

Here, the trial court correctly determined the amount of base child support Kevin owed and the amount of Kevin's overpayment of child support.² However, the trial court erred as a matter of law when it failed to calculate and assess statutory interest on Kevin's unpaid child support obligation prior to subtracting the offsetting overpayments. As explained by the *Phillips* Court, each individual child support payment began to accrue postjudgment interest once the payment became delinquent. The method used by the trial court here deprived Angela of interest on the child support arrearage judgments.³

In response, Kevin raises several arguments, but none are persuasive. First, Kevin argues Angela did not request interest from the trial court and, therefore, the trial court did not err in omitting it. The record belies this argument. Angela raised interest in her initial contempt application. See R. 14 ("Petitioner . . . is currently in arrears in the amount of \$20,160.00 *not including interest.*" (emphasis supplied)).

Kevin also asserts that it is possible that the trial court considered equity in not awarding interest on the past-due child support to Angela. Kevin claims the trial court could have considered Kevin's payments for "cars, insurance, and

² Neither party questions the trial court's calculation of the amount of child support owed by Kevin or the amount of Kevin's overpayment.

³ We note that Angela's method of calculation of interest appears to be correct—see *Wallace Balance Ledger*, R. 41-42—except insofar as it applies Kevin's payments against interest prior to principal. See *Roco v. Roco*, 2014 OK 55, ¶ 17, 337 P.3d 97 (holding that, at least as to "payments made through the Centralized Support Registry," the proper allocation of payments made against an overdue amount is "first to current obligations, second to past due amounts, and finally to interest on the principle (sic) balance").

cellphones for the children in lieu of child support” as payments that “alternatively complied” with the outstanding accrued interest.

Notwithstanding the fact that equitable defenses to child support judgments are severely limited, Kevin’s argument is overcome by the fact that the trial court *did* address the question of equity in her order and found in favor of Angela. The trial court stated in footnote 1 of the July 9, 2021, order:

While it was not presented during the trial, [Kevin] may claim he is entitled to some equitable relief for payments made for the children’s benefit. *See In re Marriage of Hall*, 2012 OK CIV APP 108, ¶ 3, 472 P.3d 709, 710. However, the Court finds he is not entitled to such credit as his continuation of providing the same items for his children after child support resumed demonstrates these payments were not in lieu of support but for the benefit of the children. Furthermore, equitable defenses are generally not favored in considering child support payments. *See Aguero v. Aguero*, 1999 OK CIV APP 38, ¶ 27, 976 P.2d 1088, 1094.

Kevin did not appeal this ruling. Nevertheless, Kevin’s argument on appeal is, in effect, that the trial court should not have granted the judgment because of these “equitable considerations.” However, Kevin waived any argument going to whether the judgment for the arrearage was meritorious by failing to appeal that judgment. *Reyes v. Reyes*, 2000 OK 72, n.2, 12 P.3d 470. And, even if the argument had not been waived, we do not view the type of payments Kevin cited to here—gratuitous payments for “cars, insurance, and cellphones”—as the type of payments which “alternatively complied” with child support obligations.

CONCLUSION

The trial court’s order denying Angela’s motion for new trial and thereby denying her request for interest on the child support arrearage is reversed and

this case is remanded to the trial court with instructions to calculate and assess statutory interest at the applicable rate on the delinquent child support arrearage. In making its calculation, the trial court shall consider that each past-due child support payment begins to accrue simple interest *immediately* upon the payment becoming delinquent, when it becomes a judgment as a matter of law. In all other respects, the trial court's orders of July 9, 2021, and September 9, 2021, are affirmed.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

WISEMAN, P.J., and BARNES, J. (sitting by designation), concur.

December 21, 2022