STATE OF MICHIGAN

COURT OF APPEALS

LORIE LOWELL,

Plaintiff-Appellant,

v

DAVID ANTHONY JACKSON,

Defendant-Appellee.

UNPUBLISHED
January 21, 2021

No. 354815
Genesee Circuit Court
Family Division
LC No. 03-247126-DS

Before: SWARTZLE, P.J., and RONAYNE KRAUSE and RICK, JJ.

PER CURIAM.

In this domestic relations matter, plaintiff appeals by right the trial court's order denying her objection to a referee's recommendation regarding child support. This matter arises out of defendant's admitted child support arrearage, and plaintiff's statements at a referee hearing to the effect that she had given defendant two credits of $10,000 each, only one of which proved to be reflected in the Friend of the Court's records. Over plaintiff's objection, the trial court retroactively modified defendant's child support order to give him a deduction for both credits, rather than only one credit, and it further abated the remainder of the arrearage on equitable grounds. We affirm the trial court's retroactive modification as to the second credit to which plaintiff admitted at the referee hearing, and we reverse and remand as to the trial court's equitable abatement of the remainder of defendant's arrearage.

I. BACKGROUND

The parties have two children in common, and both children are now adults. The parties were never married, but plaintiff was granted custody and defendant was ordered to pay child support. The oldest child moved in with defendant at the age of either eleven or twelve-and-a-half, while defendant was living in Arkansas, and the youngest child moved in with defendant at approximately the age of sixteen, while defendant had returned to living in Michigan. After the youngest child turned eighteen, defendant sought a formal change in custody and to terminate his child support obligations. The parties' statements at the referee hearing indicate that some kind of efforts were made to modify the child support order in the interim, but none of those efforts were ever made formal. By the time of the referee hearing, defendant owed an arrearage of $21,210.99

to the State of Michigan, and he owed an arrearage to plaintiff of $11,202.95. As plaintiff concedes on appeal, at the referee hearing, she explained to the referee that she had "signed off" on one credit of $10,000.00 while defendant was living in Arkansas, and another credit of $10,000.00 "when the kids were smaller." Later at the same hearing, she expressly agreed and clarified that she had given defendant two separate credits for $10,000.00. However, for no explained reason, the Friend of the Court's records (and defendant's calculated arrearage to plaintiff), only reflected one of those credits.

The hearing referee recommended that the motion to change custody should be denied as moot, because both children were now adults, and that defendant's obligation to continue paying child support should be halted; neither of which plaintiff found objectionable. The referee also recommended that the entirety of defendant's child support arrearage should also be terminated. Plaintiff objected to the latter, asserting that she was unwilling to give defendant the second $10,000.00 credit that had not been entered into the Friend of the Court's records, and further asserting that the referee's recommendation to retroactively modify defendant's child support would contravene MCL 552.603. The trial court made factual findings that plaintiff and defendant had actually agreed to *two* reductions in defendant's child support arrearages in the amount of $10,000 each, but only one credit was reflected in their Friend of the Court file. The trial court reduced defendant's arrearages by $10,000 to account for the parties' second agreement, which left $1,202.95 owing to plaintiff. The court abated the remainder of defendant's arrearages owed to plaintiff, reasoning that the children residing with defendant constituted "overwhelming equitable grounds." Additionally, the court noted that even if the second $10,000 credit could not be applied, the court would nevertheless apply the credit for the same equitable reasons. This appeal followed.

II. STANDARD OF REVIEW

"Generally, this Court reviews child support orders and orders modifying support for an abuse of discretion. Whether the trial court properly acted within the child support guidelines is a question of law that this Court reviews de novo. This Court also reviews questions of statutory construction de novo." *Malone v Malone*, 279 Mich App 280, 284; 761 NW2d 102 (2008) (quotation marks and citations omitted). The abuse of discretion standard recognizes that there may be more than one reasonable and principled outcome, and the court only abuses its discretion if its decision falls outside that range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A trial court's factual findings underlying a child support determination are reviewed for clear error, which requires this court to be definitely and firmly convinced that, upon review of the entirety of the evidence, a mistake was made. *Stallworth v Stallworth*, 275 Mich App 282, 284; 738 NW2d 264 (2007). "[T]he appellant bears the burden of showing that a mistake was made." *Id.*

III. EQUITABLE ABATEMENT

Plaintiff first argues that equity is an impermissible basis for retroactively modifying a child support obligation, and defendant expressly agrees. We are not bound by concessions of law. *In re Finlay Estate*, 430 Mich 590, 595; 424 NW2d 272 (1988). Nevertheless, the parties are correct. This Court has clearly explained that, pursuant to MCL 552.603(2), equity is not a permissible basis for retroactively modifying child support orders. See *Malone*, 279 Mich App at

286-289. The trial court erred in abating the $1,202.95, and to the extent the trial court cited equity as an alternative basis for abating the second credit of $10,000.00, it also erred.

IV. SECOND ARREARAGE CREDIT

Plaintiff also argues that the trial court erred in deducting the second credit of $10,000.00, contending that she never actually granted him any such second credit. Pursuant to MCL 552.603(5), a support order may be retroactively modified by "a court approved agreement between the parties." Plaintiff argues that there was neither an agreement nor approval by a court, as proved by the absence of any such agreement in the records of the Friend of the Court. We disagree.

First, the trial court did not clearly err in finding that there was an agreement. As discussed, plaintiff described to the referee having "signed off" on two separate credits of $10,000.00 each, and she later affirmatively agreed that she had given two such credits. Indeed, plaintiff recognizes as much on appeal. We are not definitely and firmly convinced that the trial court made a mistake in concluding that the parties agreed to two credits of $10,000.00. Secondly, we have found no case law holding that "court approved" should mean anything other than the obvious. Approval means to confirm, sanction, ratify, or consent to something. See *City of Lake Angelus v Mich Aeronautics Comm*, 260 Mich App 371, 377 n 9; 676 NW2d 642 (2004). Thus, "court approved" means nothing more extraordinary than an agreement to which a court gives its assent. By necessary implication, the trial court gave that assent here. We are therefore unable to conclude that the trial court erred in applying the second $10,000.00 credit to retroactively modify defendant's support order, pursuant to MCL 552.603(5).

We affirm the trial court's application of the second $10,000.00 credit to defendant's support arrearage. We reverse the trial court's abatement of $1,202.95, and we remand the matter to the trial court accordingly. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Amy Ronayne Krause
/s/ Michelle M. Rick