

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANISA R. CROSS

APPELLANT-RESPONDENT,

**v.
JUSTIN G. CROSS**

RESPONDENT-APPELLANT.

DOCKET NUMBER WD71386 Consolidated with WD71439
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 1, 2010

Appeal From:

Pettis County Circuit Court
The Honorable R. Paul Beard II, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

Attorneys:

Leonard K. Breon and Carroll G. Leffler, Warrensburg, MO, for appellant-respondent.

Daniel Baker, Sedalia, MO, for respondent-appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

ANISA R. CROSS,

APPELLANT-RESPONDENT,

v.

JUSTIN G. CROSS,

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No. WD71386 Consolidated with WD71439

Pettis County

Before Division Three Judges: James M. Smart, Jr., Presiding Judge, Joseph M. Ellis and Gary D. Witt, Judges

Father and Mother were married in August of 1999, and the Circuit Court of Pettis County entered its Judgment Order and Decree of Dissolution dissolving the parties' marriage in 2007. Two children were born of the marriage who remain unemancipated. As a part of the original divorce judgment, the trial court awarded joint legal custody of the children to the parties but gave sole physical custody to Mother, with Father being allowed specific visitation rights. Additionally, the trial court ordered Father to pay Mother \$717 in child support on a monthly basis.

In February of 2009, Father filed a motion to modify child support, alleging that substantial and ongoing changes in circumstances required a reduction in the child support he was paying to Mother. Specifically, Father asserted in his motion that because he had to work so many hours to pay the child support order, this work interfered with his ability to meaningfully parent his children. In response to Father's motion to modify, Mother filed a counter-motion to increase Father's child support on the basis that Father's income had substantially increased since the original dissolution judgment had been entered, and also because the cost of the children's care had increased since the entry of that order.

Shortly after the original divorce judgment, Father took on a second full time job. He continued working both full time jobs until shortly before the filing of this action. On January 29, 2009, Father sent a letter to one of his employers giving two weeks' notice and resigning his position. In that letter he states, "I am currently taking my ex-wife back to court for full custody of my children and have been strongly advised to quit one of my full-time jobs to ensure the chance of victory for my case." He further stated in this letter that he looks "forward to continuing to work with you as soon as my court case is over." Less than two weeks after sending this letter, Father filed his Motion to Modify.

On July 9, 2009, a hearing was held on the motions. The trial court entered its Judgment of Modification of Support, which, *inter alia*, increased Father's ordered child support to \$1,034 a month.

Father appeals, and Mother cross-appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Division Three holds:

In Point One, Father argues that the trial court erred in denying his motion to modify because the court should not have determined his income to be the amount he earned while working two full-time jobs. The relevant determination in deciding whether to impute income to a parent in calculating the Form 14 PCSA, is whether, applying all relevant factors, including those factors found in Comment H that are relevant, there is evidence to support a finding that the parent is deliberately limiting his or her work to reduce income to avoid paying child support. Here, the circuit court made detailed findings and conclusions that Father voluntarily reduced his income in order to escape his child support responsibilities. No more clear indication of Father's intent could be found than his own words in his letter of resignation.

Moreover, the trial court made detailed findings of fact pertaining to Father's "probable earnings," and in doing so, the Court was permitted to gauge any time period as may be appropriate under the circumstances. Father does not dispute that for *two years* after the dissolution of his marriage and up to two weeks prior to filing his motion, he was working two full time jobs and earning \$6,053.00 per month. Accordingly, the trial court was warranted in using this figure as Father's gross income when completing the Form 14.

In Point Two, Father argues that the trial court erred when it modified the child support award because the court mistakenly attributed \$100 "of extraordinary child rearing costs" to Father. During oral argument, on this matter, both parties stipulated that the \$100 of counseling costs for the minor child was no longer being spent on a continuing basis and that this amount should be deducted from the other extraordinary child rearing costs in the Form 14 in this case.

In her sole Point Relied On in her cross-appeal, Mother argues that the trial court erred in completing its Form 14 because the court improperly allowed Father an adjustment to his gross income pursuant to Line 2c for Father's newborn child in light of the fact that this child was born after the entry of the original divorce judgment. Here, it is undisputed that after the divorce judgment was entered, Father had a child with another woman, not a party to this action, in 2008. Pursuant to Missouri law, since Husband was the moving party, he was not entitled to any adjustment for the child of his second marriage, as that child was not born at the time the original support order was entered. Therefore, we conclude that the trial court erred in adjusting Father's income pursuant to Line 2c.

When recalculating the presumed child support award in the appropriate fashion, removing Father's Line 2c adjustment and deducting the \$100 of extraordinary child care costs per the stipulation of the parties, the presumed child support amount increases from \$1,034 to \$1,105 per month. The case is remanded to the trial court with directions to either enter judgment in favor of Mother for child support in the amount calculated by Civil Procedure Form No. 14, as is set forth above, or to enter a finding that the amount calculated is unjust and inappropriate and to enter judgment for child support in an appropriate sum.

Opinion by: Gary D. Witt, Judge

June 1, 2010

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