An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-240

No. COA21-67

Filed 5 April 2022

Cabarrus County, No. 18 CVD 701

RHONDRIA SMITH, Plaintiff,

v.

MARQUE GRANT, Defendant.

Appeal by Defendant from order entered 10 July 2020 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 2 November 2021.

Arnold & Smith, PLLC, by Ashley A. Crowder, for Plaintiff-Appellee.

Fleet Law, PLLC, by Jennifer L. Fleet, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Marque Grant ("Defendant") appeals from a Child Support Order entered July 10, 2020. On appeal, Defendant contends the trial court erred by utilizing Worksheet A, denying him credit for A.G.'s future health insurance, and denying his motion for attorney fees. After a careful review of the record and applicable law, we vacate the Child Support Order and remand for further proceedings.

I. Factual and Procedural Background

¶ 2 Rhondria Smith ("Plaintiff") and Defendant are the biological parents of A.G., born in 2016. Plaintiff and Defendant do not live together. A.G. has lived with Plaintiff since he was born but would stay with Defendant every weekend and one or two days per week. Since A.G.'s birth, both parties worked to co-parent together, but a controversy arose when Defendant requested to claim A.G. as a dependent on his income tax returns. Plaintiff denied Defendant's request, and Defendant then threatened to remove A.G. from her care.

¶ 3 On March 8, 2018, Plaintiff filed a verified complaint with the trial court. In the complaint, Plaintiff asserted claims for child custody, child support, prior maintenance, and attorney fees. In response, Defendant filed an answer alleging the parties agreed at A.G.'s birth "that the Parties would alternate claiming the minor child on his/her taxes." Defendant also requested joint custody, child support, and attorney fees.

¶ 4 On April 20, 2018, the trial court ordered the parties to attend mediation. The mediation was not successful because the parties "were not able to complete a Parenting Agreement." Thus, the mediator referred this case back to the trial court.

¶ 5 On August 29, 2019, the parties entered into a Memorandum of Judgment/Order ("MOJ") to resolve their claims. The MOJ provided the following: The parties would share joint legal custody over A.G. During the school year, A.G. would primarily live with Plaintiff but would live with Defendant every other

weekend from Thursday evening until Monday morning. During the summer, A.G. would live with Plaintiff and Defendant on alternating weeks. The parties further agreed A.J. would alternate living with Plaintiff or Defendant for each major holiday. Additionally, Plaintiff was to provide health insurance for A.G. The MOJ was formalized and signed by the trial court in a Consent Order two months later.

¶ 6 The case then proceeded to a hearing on June 25, 2020, to address both parties' pending motions for child support. There, Plaintiff testified Defendant had not provided her with any child support for A.G. besides a one-time payment for A.G.'s childcare. After Plaintiff's testimony, Defendant testified he had been paying for half of the cost for A.G.'s daycare "every time . . . [he took] . . . [A.G.] back home to the day care on Monday" and had made such payments on three occasions. Following the hearing, the trial court entered a Child Support Order on July 10, 2020, wherein it granted Plaintiff's motion for child support. In calculating the amount of child support owed, the trial court found no indication A.G. would stay at least 123 overnights with Defendant during a year; as a result, the trial court used Worksheet A to calculate the amount owed in child support. Because the trial court used Worksheet A, Defendant was ordered to pay Plaintiff $620.00 per month in child support payments and an additional $130.00 per month in arrearages owed. The trial court also required Plaintiff to carry health insurance for A.G. and denied each party's motion for attorney fees. On August 7, 2020, Defendant timely filed a notice of

appeal.

II. Standard of Review

¶ 7 Our review of a child support order is "limited to a determination of whether there was a clear abuse of discretion." *Jonna v. Yaramada*, 273 N.C. App. 93, 100, 848 S.E.2d 33, 41 (2020) (quoting *Mason v. Erwin*, 157 N.C. App. 284, 287, 579 S.E.2d 120, 122 (2003)); *see also White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). As such, "[a] trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason." *White*, 312 N.C. at 777, 324 S.E.2d at 833. "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White*, 312 N.C. at 777, 324 S.E.2d at 833; *see Jonna*, 273 N.C. App. 93, 100, 848 S.E.2d 33, 41 (2020); *Biggs v. Greer*, 136 N.C. App. 294, 297, 524 S.E.2d 577, 581 (2000).

III. Analysis

A. Use of Worksheet A

¶ 8 Defendant first contends the trial court erred by determining to use Worksheet A based off its calculation of A.G.'s potential, future overnight visits with him instead of the number of overnight visits allotted to him in the Consent Order. We agree with Defendant's argument that the trial court erred in determining which worksheet to use based on the number of overnight visits A.G. might potentially have with

Defendant in the future.

¶ 9 The N.C. Child Support Guidelines create a "rebuttable presumption in all legal proceedings involving the child support obligation of a parent . . . ." N.C. Child Support Guidelines (2019). *See also Hammill v. Cusack*, 118 N.C. App. 82, 86, 453 S.E.2d 539, 542 (1995) ("The Guidelines apply to modification of child support orders as well as to initial orders."). When calculating a parent's child support obligation, the trial court must use either worksheet A, B, or C. N.C. Child Support Guidelines (2019); *see also Jonna*, 273 N.C. App at 122, 848 S.E.2d at 54.

¶ 10 Worksheet A is to be used when a parent has primary physical custody of the child. N.C. Child Support Guidelines (2019). "Primary physical custody" is when a "child lives with that parent . . . for 243 nights or more *during the year*." N.C. Child Support Guidelines (2019) (emphasis added). Worksheet B is used when both parents share custody of the child. *Id.* Parents share custody under Worksheet B when "the child lives with each parent for at least 123 nights *during the year* and each parent assumes financial responsibility for the child's expenses during the time the child lives with that parent." *Id.* (emphasis added). However, a parent does not have shared custody for the purpose of Worksheet B when "that parent has visitation rights that allow the child to spend less than 123 nights *per year* with the parent and the other parent has primary physical custody of the child." *Id.* (emphasis added).

¶ 11 Thus, determining which worksheet to use requires an analysis into how many

nights per year a child has spent with each parent. The "per year" language in Worksheets A and B necessitates a 12-month calendar period from which the trial court can determine whether one parent has primary physical custody or whether both parents share custody. *See also In re A.D.N.*, 231 N.C. App. 54, 63, 752 S.E.2d 201, 207 (2013) ("A child is determined to live with a parent or third party based upon the number of nights a child spends with that person *per year*.") (cleaned up).

¶ 12 In this case, the trial court had before it evidence of less than a full calendar year from which to determine how many overnight stays A.G. had with Defendant. The Consent Order was entered on October 29, 2019, and the Child Support Order was entered less than 10 months later on July 10, 2020. In an effort to create a full calendar year for determining which worksheet to use, the trial court made future predictions on how many nights Defendant may spend with A.G. in the future. Finding of fact number seven and eight in the Child Support Order provides,

> 7. [i]n 2020, the Defendant has not exercised all physical custody of the minor child to which he is entitled under the order. If Defendant exercised all physical custody of the minor child to which he was entitled under the order, he would have 133 overnight visits. In 2019, the Defendant had 117 overnight visits. In 2021, the Defendant will have 120 overnight visits according to the *projected* schedule.
>
> 8. Even averaging these three years of 2019, 2020[,] and 2021 together, the Defendant *at best* would have an average over a three-year period of 123 overnight visits, but since he has not taken advantage of said visits in 2020, there is no indication that Defendant will do so *in the future*

> so as to average more than 123 overnight visits each year.

(emphasis added). In other words, the trial court first determined Defendant had not exercised all of his custodial time for 2019 even though the custody order was not entered until August 2019. Then the trial court found that the Defendant had not exercised all of his custodial time in 2020 although the Child Support Order was entered in July 2020. The trial court then estimated how much custodial time Defendant may use for 2021, a year that had yet to occur. Finally, the trial court averaged Defendant's custodial time in 2019 and part of 2020 and then projected Defendant's custodial time for the remainder of 2020 and 2021 in order to predict Defendant would not average more than 123 overnight visits in the future. Notably, the trial court found that under the custody order entered in August 2019, the Defendant would be entitled to exercise 133 overnight visitations with A.G.

¶ 13 Our Supreme Court has firmly established that a court has "no jurisdiction to determine matters purely speculative, enter anticipatory judgments, declare social status, deal with theoretical problems, give advisory opinions, answer moot questions, adjudicate academic matters, provide for contingencies which may hereafter arise, or give abstract opinions." *Little v. Wachovia Bank & Trust Co.*, 252 N.C. 229, 243, 113 S.E.2d 689, 700 (1960) (citations omitted); *see also Baxter v. Jones*, 283 N.C. 327, 332, 196 S.E.2d 193, 196 (1973); *Parker v. Town of Erwin*, 243 N.C. App. 84, 109, 776 S.E.2d 710, 729 (2015). The trial court's findings of fact illustrate

it did not have a full calendar year evidencing A.G.'s overnight visits with Defendant from which to determine which worksheet to use. Thus, the trial court's determination to use worksheet A was impermissibly premised upon a speculation of how many overnight visits Defendant may, or may not, use in the future. Because precedent prohibits such speculation, the trial court abused its discretion in utilizing Worksheet A when calculating child support and entering the Child Support Order. Accordingly, we vacate and remand the Child Support Order.

¶ 14 Defendant further contends the trial court erred as a matter of law by determining he could not seek credit for A.G.'s future health insurance's premium and by not awarding attorney fees to him. As we vacate the trial court Child Support Order, we need not address Defendant's other arguments on appeal.

IV. Conclusion

¶ 15 The trial court impermissibly pro-rated the number of A.G.'s overnight stays with Defendant when determining which worksheet under the N.C. Child Support Guidelines to utilize. Therefore, we vacate the Child Support Order and remand to the trial court for further proceedings. Recognizing that the Child Support Order was entered in July 2020 and that the parties' circumstance may have changed in the interim, the trial court may choose to take additional evidence in this matter when calculating the appropriate child support under the N.C. Child Support Guidelines.

VACATED AND REMANDED.

Judges DILLON and GORE concur.

Report per Rule 30(e).