IN THE COURT OF APPEALS
OF THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

Corey Lee Farrell,
Appellant,

v.

Ashley Rose Farrell n/k/a
Ashley Rose Friendshuh,
Appellee.

File No. Ct App. 039-13

OPINION

Factual Background

The Appellee, Ashley Rose Friendshuh, and the Appellant, Corey Lee Farrell, were married on October 29, 2007. Friendshuh is a member of the Shakopee Mdewakanton Sioux Community ("the Community"); Farrell is not a member of any federally recognized Indian tribe. The parties are the parents of one child, who is six years old and who is a member of the Community. The parties were divorced on February 2, 2010, by Order of the Community's Trial Court. The Court's Order adopted, in its entirety, an agreement (the "Agreement") that the parties had negotiated. The Agreement took the form of Stipulated Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree. Both parties were represented by counsel during the negotiations that led to the Agreement.

Under the Agreement, the parents agreed "to provide a safe, secure, and drug-free environment when the parties' minor child is in their care and custody."[1] The parents shared joint legal custody of their child; Friendshuh was awarded sole physical custody and Farrell was awarded "co-equal parenting time," which effectively gave him custody of the child

[1] Stipulated Findings of Fact, ¶ 18.

approximately one-half of the time.[2] Notwithstanding this arrangement, Friendshuh agreed to pay child support to Farrell, in the initial amount of $4,000 per month.[3] In the portion of the Decree relating to this stipulated support amount, the parents submitted, and the Trial Court adopted, the following statement:

> While this is an upward deviation from the Community's child support guidelines and [Friendshuh] is receiving sole physical custody of the parties' minor child, [Friendshuh] agrees that this deviation is appropriate based on continuing the standard of living the child has been used to while the child is in [Farrell's] care and [Friendshuh's] desire to maintain that standard of living for the child.[4]

After their marriage was dissolved, matters stood as the Agreement and the Trial Court's Order contemplated until late May, 2012, when police raided Farrell's home and arrested him on charges relating to drugs and drug paraphernalia that were found in the home. In response to those events, the Community commenced a Children's Court proceeding, which resulted in the Court first suspending Farrell's parenting time, and then restoring it on a limited basis subject to supervision. Consequently, given the parties' changed circumstances, Friendshuh filed a motion to modify her child-support obligation. On November 19, 2012, without making Findings of Fact, the Trial Court granted that motion and reduced Friendshuh's support obligation to $1,000 per month "until further Order of the court." Thereafter, on July 17, 2013, the Children's Court proceeding was closed pursuant to a stipulation of the parents and the Community. In closing the file, the Court found that Farrell had complied with his case plan and that additional parenting-time provisions, aimed at addressing ongoing concerns about the child's safety had been agreed to and were appropriate.

Farrell then filed a motion seeking reinstatement of the originally-ordered support payments, to which Friendshuh objected, asking that the reduced amount of $1,000 per month be retained. But the Trial Court did neither. Instead, on October 17, 2013 the Trial

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[2] *Id.*

[3] *Id.* at ¶ 22. In accordance with the parties' Agreement, the monthly child-support payments were reduced somewhat after the parties' divorce because the payments that Friendshuh received from the Community were reduced.

[4] *Id.*

Court concluded that there was no legal basis under the Shakopee Mdewakanton Sioux (Dakota) Community Domestic Relations Code (the "Code") for imposing any child-support obligation on either parent. The Trial Court therefore vacated its previous award of support to Farrell.

This appeal followed.

Domestic Relations Code Provisions Relating to Child Support

At all relevant times, the Code has contained a number of provisions dealing with child support in marriage-dissolution proceedings. Chapter III, Section 7.a. of the Code provides that, in such proceedings, "[c]hild support shall be paid by the non-custodial parent as follows . . .," and sets forth a table enumerating the percentage of net income that comprises appropriate support for varying income levels and numbers of supported children. The same section also discusses in detail the manner in which calculations are to be made using the table, and it defines cash flows that are and are not to be considered "net income."

Chapter III, section 7.b. of the Code provides:

> **b. Other factors.**
>
> In addition to the child support guidelines, the Court shall take into consideration the following factors in setting or modifying child support:
>
> (1) The physical, mental and emotional needs of the child(ren) to be supported, as documented by medical professionals or experts working directly with the child(ren). Said services shall be necessary for the child(ren) to maintain a healthy existence and may include therapy; medical, psychological, behavioral or chemical dependency treatment; accommodations for special physical or mental needs and special educational requirements in excess of that which is covered by Tribal insurance or programs. Said services shall not include those items which affect the lifestyle of the child, including but not limited to private school attendance and extra-curricular activities; and
>
> (2) The amount of the aid to families with dependent children grant for the child or children; and

(3) Which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it; and

(4) The parents' debs as provided in subsection (c) [of Chapter III, section 7.b.]

The Court shall not consider the following factor(s):

(1) The standard of living the child would have enjoyed had the marriage not been dissolved; had the parents resided together or continued to reside together.

Chapter III, section 7.d. of the Code sets forth circumstances that will authorize the Court to exceed the Guidelines:

d. When guidelines may be exceeded or modified.

(1) The Court may receive evidence to determine if an upward departure from the child support amount delineated in the guidelines is appropriate and necessary for the child(ren). An upward departure from the guidelines shall only occur if the child has medically documented physical, mental or emotional needs, including chemical dependency and learning disability needs, which require professional intervention or oversight and exceed those services provided by Tribal insurance or programs.

(2) If the Court finds that the child's needs as provided herein require additional financial support, beyond that covered by Tribal insurance or programs, the Court may, under the above conditions and upon issuance of written findings to that effect, award necessary and additional child support in a total amount not to exceed $5,000 per family unit. ...

And Chapter III, section 7.e. provides –

e. Nature of guidelines.

The above guidelines are binding in each case unless the Court makes express findings of fact as to the reason for departure below or above the guidelines. Said findings shall be express and shall address each of the areas of consideration. In addition, valid medical documentation shall be filed with each request for an upward departure from the guidelines.

In addition, Chapter III, section 7.g. of the Code speaks in detail as to when and how a child support order may be modified:

g. Modification of Child Support Award.

(1) After an order for child support, the Tribal Court may from time to time, on motion of either of the parties or on motion of the public authority responsible for support enforcement, modify the order, and may make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

(2) The terms of a decree respecting child support may be modified upon a showing of one or more of the following:

(i) substantially increased or decreased earnings of a party;
(ii) substantially increased or decreased need of a child for which support is ordered;
(iii) receipt of public assistance;
(iv) a change in the cost of living for either party measured by the federal bureau of statistics;

On a motion for modification of child support, the Tribal Court shall:

(v) take into primary consideration the needs of the children and shall not consider the financial circumstances of each party's spouse, if any;
(vi) not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the Court [makes findings not relevant to these proceedings].

(3) A modification of child support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party. However, modification may be applied to an earlier period if the Court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability or a material misrepresentation of another party and that the party seeking modification, when no longer precluded, promptly served a motion.

Finally, Chapter III, section 7.h. of the Code speaks to termination of child support, as follows:

> **h. Termination.**
>
> Unless otherwise agreed in writing, with Court approval, or expressly provided in the decree, provisions for child support are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstance.

Notably, no section of the Code discusses the Court's role in situations where divorcing parents have come to an independent agreement with respect to child support and have sought the Court's approval of their agreement. The Code is also silent on situations where child custody is more or less equally shared by the parents.

Discussion

In concluding that it had no power under the Code to award of child support to either parent, the Trial Court said:

> The court agrees with the observation that each parent has an obligation to financially support their children. But the court is limited in the setting of an award if the parents share equally in the care of the child. The Domestic Relations Code in Section 7(a) states that "Child support shall be paid by the non-custodial parent . . .." Here the parents submitted a Parenting Plan which was adopted by Order of this court on July 17, 2013. This Plan by its nature and intent establishes a schedule and decision-making by the parents with respect to the child that clearly creates joint custody and responsibility for equal care of the child in each of their homes. It is evenly divided to the point where *there is no non-custodial parent which is required of the court to set an award of child support.*[5]

[5] Memorandum Opinion and Order at 5. (October 17, 2013) (emphasis added).

In his appeal, Farrell argues that this was error because it ignored the fact that, when they divorced, the parties *had agreed* that Friendshuh would pay child support at a stipulated amount, pointing to a decision of the Minnesota Court of Appeals, *O'Donnell v. O'Donnell*, which held that there was no basis for modifying a child support award that deviated from Minnesota's support guidelines:

> [W] here, as here, the parties entered into a stipulated agreement, where both were represented by counsel, where respondent had been actively involved in caring for the children prior to the dissolution and had sufficient opportunity to assess their needs and expenses, where the parties are well educated, where there is no allegation of fraud, mistake, or duress, and most importantly, where there is no claim or finding that the best interests of the children necessitate a change or were adversely affected by a continuation of the support terms of the original judgment.[6]

He also argues that the "law of the case" doctrine precluded the Trial Court's revisiting its 2010 decree; that the Trial Court abused its discretion by modifying child support without finding the changed circumstances that Chapter III, section 7.g. of the Code requires; and that, if the Code is read not to permit the award of child support in circumstances where parents are sharing parenting responsibility, that failure works a harm to the children that it affects.

In our view, however, each of Farrell's first three arguments fails, and each fails for the same reason: Friendshuh's agreement that child support would be paid at a higher-than-Guidelines level was not unconditional. Effectively, she contracted to pay that higher amount in return for Farrell's agreement "to provide a safe, secure, and drug-free environment when the parties' minor child is in [his] care and custody." And it is important for us to stress, here, that nothing in the Code forbids such an agreement – as the Trial Court clearly believed in 2010 when it approved the Agreement. When the General Council of the Community amended the Code to limit the reasons for which upward deviations from Guidelines-level child support can be made, it did not speak to voluntary agreements by Community members. Rather, General Council Resolution 05-15-01-01 stated that its purpose was to clearly specify the limits on "the exercise of discretion *by the Tribal Court in*

[6] 678 N.W.2d 471, 476 (Minn. Ct. App. 2004).

determining awards of child support." Hence, when Friendshuh agreed to pay $4,000 per month to Farrell to ensure that their child would continue to have the standard of living to which he had been accustomed, that was something that the law of the Community permitted, and the Trial Court did not exceed its authority when it approved that arrangement.

But when Farrell failed to live up to his end of that bargain, we think it is fair to conclude that the Trial Court could properly relieve Friendshuh of her obligation. This was neither a deviation from the Trial Court's original decree that was inconsistent with the "law of the case" doctrine, nor was it the sort of modification of Court-ordered support that is the subject of Chapter III, section 7.g. Rather, it was a consequence implicit in the Agreement, and therefore also in the Trial Court's original decree. We conclude, therefore, that the Trial Court did not abuse its discretion when it held that Friendshuh was no longer is obligated to pay Farrell child support at the level contemplated by the Agreement.

But matters stand differently as to the Trial Court's conclusion that it lacked the power to award any child support at all. There is considerable force in Farrell's argument that if the Code does not allow the establishment of support obligations when parents are sharing parenting responsibility, the effect could well be to discourage such sharing, to the detriment of children. We therefore are reluctant to read the Code that way.

Rather, we think it is reasonable to read Chapter III, section 7.a. of the Code, which begins with the statement, "Child support shall be paid by the non-custodial parent as follows . . ." to contemplate a situation where, if parents are sharing custody, *each* is a non-custodial parent for the fraction of time that the child is in the custody of the other parent. This reading certainly is permitted by the section's language, and in our view it is more consistent with the best interests of the affected children – which was of fundamental importance to the Community when it gave this Court domestic-relations jurisdiction – than is the Trial Court's interpretation of the section.

Under the Guidelines, the "income ceiling" that is used to calculate support obligations is $7,794.29,[7] and therefore a non-custodial parent who is paying support for one

[7] This amount is a function of cost-of-living increases to the ceiling, worked by Chapter III, section 7.f. of the Domestic Relations Code.

child, and whose income exceeds the maximum specified in the Guidelines (as Friendshuh's concededly does), would be obliged to pay 25% of that ceiling amount, or $1,948.57, per month to the custodial parent. Given our reading of Chapter III, section 7.a. then, because of the parties' shared custody arrangement, we conclude that Friendshuh's obligation should be half that amount, or $974.28 per month, unless the specific factors set forth in Chapter III, sections 7.b. and 7.d. of the Code authorize an upward deviation. Having reviewed the record, we find no physical, mental, or emotional needs of the parties' child that would justify an upward deviation.[8]

We therefore reverse the Trial Court's order and remand to the Trial Court for entry of an order awarding child support from Friendshuh to Farrell in the amount of $974.28 per month, retroactive to the first month in which Friendshuh did not pay child support in reliance on the Trial Court's October 17, 2013 Order. The Trial Court shall have discretion, pending argument from or agreement of the parties, to determine whether Friendshuh should pay this retroactively awarded child support in a lump sum or in installment payments.

Dated: April 2, 2014

Chief Judge John E. Jacobson

Judge Vanya Hogen Moline

Judge Jill E. Tompkins

[8] We note, though, that our reading of the Guidelines could also justify an award of child support to Friendshuh from Farrell if he has "net income" as that term is defined by Chapter III, section 7.a. of the Code. But whether Farrell has "net income" is not established in the record before us, and in any event, Friendshuh has not thus far requested child support from Farrell.