

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

SODERQUIST V. SODERQUIST

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

MELISSA A. SODERQUIST, APPELLEE,
V.
SHAWN H. SODERQUIST, APPELLANT.

Filed May 8, 2012. No. A-11-899.

Appeal from the District Court for Kearney County: TERRI S. HARDER, Judge. Affirmed.

Kent A. Schroeder and Mindy L. Lester, of Ross, Schroeder & George, L.L.C., for
appellant.

Hether Swanson-Murray, of Yeagley Swanson Murray, L.L.C., for appellee.

MOORE, CASSEL, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Shawn H. Soderquist appeals from a decree of dissolution issued by the district court for Kearney County on August 31, 2011. Shawn also appeals from the court's order issued September 27, ruling on his motion to alter or amend the decree of dissolution. For the reasons that follow, we affirm the decision of the trial court.

BACKGROUND

Shawn and Melissa A. Soderquist were married May 21, 1994, and they have three children together. On April 26, 2010, Melissa filed a complaint for dissolution of marriage in the district court for Kearney County.

Melissa is a licensed practical nurse. Her current rate of pay is \$15.60 per hour, and she works 40 hours per week. Melissa has health insurance available to her through her employer, and this coverage extends to the minor children of the parties. Melissa testified that her employer

offers vision, health, and dental coverage. She testified that the documentation used to demonstrate the costs of each type of insurance coverage was retrieved from her employer's computer. Melissa testified that she was unable to get documentation reflecting the current cost of health insurance coverage for her and the children. The document she provided was dated November 2009 and reflected the amount paid for insurance at the commencement of this case.

Final hearing on the complaint took place on April 10, 2011. At that time, the parties' children were 16, 13, and 9 years old. The decree of dissolution entered by the district court awarded custody of the minor children to Melissa. The decree further ordered Shawn to pay monthly child support in the amount of \$916 for three children, \$809 for two children, and \$587 for one child, commencing September 1, 2011. Melissa was ordered to provide, maintain, and pay for health insurance coverage for the minor children as long as it was available to her through her employer, with the same deductible and coverage as currently was in force. Attached to and incorporated in the decree of dissolution as exhibit B are the court's child support calculations. Each of these calculations provides a credit for Melissa in the amount of \$247 per month for the health insurance premium. During the final hearing, Melissa offered and the court received a current copy of Melissa's pay stub, marked as exhibit 9 and titled "Statement of Earnings Details." Melissa is paid biweekly and receives 26 paychecks per year. According to exhibit 9, she pays \$11.98 for dental insurance, \$5.44 for vision insurance, and \$134.77 for health insurance each pay period. Melissa pays \$329.75 per month for health coverage (vision, dental, and health multiplied by 26 pay periods and divided by 12 months).

In the decree, the parties were ordered to alternate the child tax exemptions. Thus, the district court used an average of the two child support calculations (one providing the exemption to Melissa and the other providing the exemption to Shawn) to determine Shawn's total obligation for three children. Both calculations include the health insurance credit for Melissa in the amount of \$247 per month. This amount was calculated using the health insurance amounts shown in exhibit 26 for "You and Family" coverage (\$8.06 vision, \$17.64 dental, and \$120 medical) minus the amount shown for "You Only" coverage (\$2.91 vision, \$5.61 dental, and \$23.31 health). The "You Only" monthly amount totaled \$68 and was subtracted from the "You and Family" amount which totaled \$315, leaving \$247 attributed to the children.

On September 9, 2011, Shawn filed a motion to amend or alter the decree, asserting that the dollar amount used for the health insurance premium in the child support calculations is inconsistent and contrary to the evidence and testimony presented at trial. On September 26, the district court held a hearing on the motion. Shawn offered exhibit 29, an affidavit from the head of Melissa's employer's human resources department. Exhibit 29 was not received by the court.

The court issued an order denying the motion to amend and alter the decree with respect to the health insurance deduction.

ASSIGNMENTS OF ERROR

Shawn alleges the district court erred in allowing a credit for Melissa for health insurance coverage in the child support calculation. Shawn also alleges the district court erred in denying his motion to amend or alter the decree because the credit allowed does not accurately reflect the amount required to provide health insurance for the minor children.

STANDARD OF REVIEW

An appellate court's review in an action for dissolution of marriage is de novo on the record to determine whether there has been an abuse of discretion by the trial judge, and this standard of review applies to the trial court's determinations regarding child support. *Millatmal v. Millatmal*, 272 Neb. 452, 723 N.W.2d 79 (2006).

A judicial abuse of discretion exists when reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Rutherford v. Rutherford*, 277 Neb. 301, 741 N.W.2d 922 (2009).

An appellate court reviews the denial of a motion for new trial or to alter or amend the judgment for an abuse of discretion. *Mandolfo v. Mandolfo*, 281 Neb. 443, 796 N.W.2d 603 (2011).

ANALYSIS

Shawn asserts that the trial court abused its discretion in allowing Melissa a credit for health insurance and that the evidence at trial was insufficient to prove the cost of providing health insurance for the children. Further, Shawn asserts the trial court erred in failing to receive exhibit 29 and denying the motion to alter or amend the testimony at trial regarding the cost of providing health insurance for the minor children.

Child support orders should be established in accordance with the Nebraska Child Support Guidelines unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption in favor of applying the guidelines. *Noonan v. Noonan*, 261 Neb. 552, 624 N.W.2d 314 (2001). The guidelines require a parent requesting an adjustment in child support for health insurance premiums to submit proof of the cost of the premium. See Neb. Ct. R. § 4-215(A) (rev. 2011).

At the final hearing on the complaint for dissolution, Melissa testified that she provides health, vision, and dental insurance (hereinafter collectively referred to as "health insurance") for the minor children through her employer. She testified that she was unable to obtain a new document reflecting the current cost of health insurance, but she provided an itemized list of health insurance costs, dated November 2009. The document included a list of costs for coverage of "You Only," "You and Spouse," "You and Child," and "You and Family." The document was highlighted to reflect the coverage the family was enrolled in. The total cost for the policies highlighted was \$315 per month. Melissa also testified that she currently pays more than the costs listed, and she provided a current pay stub with itemized health insurance deductions. The pay stub reflected deductions totaling \$329 per month for health insurance. She also testified that although she now pays more for health insurance, she was asking for only a credit based upon the figures in exhibit 26, because she could not provide updated information from her health insurance provider.

Shawn argues that the record is "devoid of evidence regarding the costs of health insurance to the children" at the time of trial. Brief for appellant at 13. Therefore, he argues, the district court erred in allowing a credit. Shawn asserts the evidence provided is insufficient under the Nebraska Child Support Guidelines.

However, the guidelines simply require "proof of the cost for health insurance coverage of the child(ren)." § 4-215(A). The guidelines are not specific regarding the format of the proof

or how timely the information must be. Melissa testified that the best and only evidence regarding the cost of health insurance was the information included in exhibit 26.

Shawn attempts to impose a level of precision that the burden of proof--the greater weight of the evidence--simply does not require. The standard of proof functions to instruct fact finders about the degree of confidence our society believes they should have in the correctness of their factual conclusions for a particular type of adjudication. *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010). Unless an exception applies, only a preponderance of evidence is required in civil cases. *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010). We find no recent Nebraska Supreme Court precedent suggesting that a higher burden applies on the matter of child support in a dissolution action. The older cases clearly required only a preponderance of the evidence where the care and custody of children was at issue. See, e.g., *Goodman v. Goodman*, 180 Neb. 83, 141 N.W.2d 445 (1966). And although the two terms are synonymous, we prefer “the greater weight of the evidence” to the “preponderance of the evidence.” See, *Novak v. Novak*, 2 Neb. App. 21, 508 N.W.2d 283 (1993); NJI2d Civ. 2.12A. The greater weight of the evidence means evidence sufficient to make a claim more likely true than not true. *Brown v. Farmers Mut. Ins. Co.*, 237 Neb. 855, 468 N.W.2d 105 (1991). Melissa’s evidence met this burden of proof. Upon our de novo review, we find it more likely true than not that the amount of health insurance premiums paid by Melissa and attributable to coverage of the children is at least \$247 per month.

In addition, Shawn asserts that the district court did not provide any explanation as to how it determined the amount of credit or Melissa’s costs for providing insurance for the children; therefore, the amount is speculative. A court’s findings regarding the propriety of child support obligations should not be based on costs that are entirely speculative. *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007).

An examination of the record reveals the trial court calculated the cost of insurance using exhibit 26. According to the document provided, the cost per pay period for “You Only” is \$31.83 (\$2.91 vision, \$5.61 dental, and \$23.31 medical) and the cost per pay period for “You and Family is \$145.70 (\$8.06 vision, \$17.64 dental, and \$120 medical). The monthly cost is calculated by multiplying the costs by 26 pay periods and dividing by 12 months. The total monthly cost to provide insurance for “You Only” was subtracted from the total monthly cost to provide insurance for “You and Family” to calculate the amount attributable to the children. The result is \$247, equal to the health insurance credit awarded by the trial court. This shows the credit assigned to Melissa was not merely speculative. Exhibit 26 was sufficient to determine the monthly cost of insurance; therefore, it was not an abuse of discretion for the trial judge to use the evidence provided at trial in determining the credit assigned to Melissa.

Further, the pay stub provided at trial indicates that the current health insurance premiums are higher than the premiums for 2009 listed in exhibit 26. Based upon the evidence at trial, the district court’s order did not deprive Shawn of an equitable result, as he is likely paying less for child support than he would have otherwise.

Following the decree of dissolution, Shawn sought to alter or amend the decree provision regarding health insurance for the children. At the hearing on the motion, Shawn sought to introduce exhibit 29, an affidavit from the head of Melissa’s employer’s human resources

department. Exhibit 29 was not received by the court, as it was determined to be an effort to offer evidence that should have been or could have been offered at trial.

In *Drew on behalf of Reed v. Reed*, 16 Neb. App. 905, 755 N.W.2d 420 (2008), this court considered a motion to alter or amend an award of retroactive child support. The mother argued that she did not have access to the father's financial records and that therefore, she could not ask for the appropriate amount for child support. We determined the mother would have had access to pertinent financial information and had discovery options available to her.

The same may be said in this case. Shawn did not object to exhibit 26 at trial or offer any evidence of his own at that time. Exhibit 29 attempts to clarify the categories of insurance provided and the health insurance coverage Melissa carries. However, the information provided in exhibit 29 came from Melissa's employer, and with the exercise of reasonable diligence, the information could have been discovered prior to trial. In addition, Shawn could have clarified any issues regarding health insurance coverage through cross-examination at trial. The trial court correctly determined that the evidence was not timely, and it was not an abuse of discretion to deny Shawn's motion to alter or amend the order.

Shawn again asserts the trial court ordered a health insurance credit without sufficient proof of costs or a clear explanation for the deviation from the child support guidelines. However, as stated above, there was no deviation from the child support guidelines and the credit ordered is directly attributed to the evidence provided at trial. The evidence shows Melissa presented an accounting of her costs, which, though outdated, reflected a low estimate of the total estimate for health insurance for the children. The court's calculation is clearly supported by the evidence, and it was not an abuse of discretion to award Melissa a monthly credit in the amount of \$247.

CONCLUSION

Upon a de novo review of the record, we find it was not an abuse of discretion to award Melissa a credit for health insurance for the children. We find that the district court did not err in its denial of Shawn's motion to alter or amend and that as such, it did not constitute an abuse of discretion. We affirm.

AFFIRMED.