STATE OF MICHIGAN

COURT OF APPEALS

MARLA K. MICHALUK,

Plaintiff-Appellee/Cross-Appellant,

v

ROBERT E. WHITTON,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
August 27, 1996

No. 170452
LC No. 92-427735 DP

Before: Holbrook, Jr., P.J., and Saad and W. J. Giovan,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order of filiation which set defendant's child support obligation for his daughter at $700 per week. Plaintiff cross-appeals on the basis that the amount awarded by the court was too low. We affirm.

First, we are not persuaded that the trial court abused its discretion in limiting discovery by ordering the production of each party's tax returns. The only issue at trial was the appropriate amount of child support. The record reflects that, at the time this decision was made, the parties had spent a great deal of time attempting to complete discovery, with little success. The trial court therefore ordered that the parties submit their respective tax returns in an attempt to condense and expedite the discovery process. Neither party objected. Further, the order did not entirely preclude discovery beyond the tax returns as defendant suggests, but rather held it in abeyance pending receipt of the tax material. Defendant's contention that, due to the court's order, he was unable to determine the actual costs of raising the child is without merit. Defendant had a full and fair opportunity to examine plaintiff regarding the actual costs at the January 4, 1994, hearing. We therefore find no abuse of discretion.

Next, we find that the trial court did not abuse its discretion in ordering child support in the amount of $700 per week. Defendant argues that the amount is excessive and arbitrary, and will result in a higher standard of living for plaintiff. Plaintiff argues on cross-appeal that the amount is too low. In determining the amount of child support to be paid, the court must consider both the needs of the child

*Circuit judge, sitting on the Court of Appeals by assignment.

and the parents' ability to pay. *Thompson v Merritt*, 192 Mich App 412, 416; 481 NW2d 735 (1991). There is a rebuttable presumption that a child support amount determined by Friend of the Court child support guidelines is proper. *Calley v Calley*, 197 Mich App 380, 384; 496 NW2d 305 (1992). Here, the child support guidelines recommended an amount of $1,320 per week. However, the trial court determined pursuant to MCR 722.717(3); MSA 25.497(3) that this amount was inappropriate, inasmuch as it exceeded the amount needed to maintain the child in a reasonable standard of living.

In determining the proper amount, the court correctly held that amounts claimed by plaintiff as "monthly expenses" such as mortgage payments, utilities, home maintenance, property taxes, and car payments were not attributable to the child, and were thus impermissible. See *Haefner v Bayman*, 165 Mich App 437, 445; 419 NW2d 29 (1988); *Kalter v Kalter*, 155 Mich App 99, 104-105; 399 NW2d 455 (1986). The court was also within its discretion in finding that $2000 per month for a live-in nanny was unnecessary until plaintiff became employed. Finally, the court supported its finding that $700 per week was an appropriate amount for child support, as this amount included food, clothing, recreation, health care, education, and miscellaneous expenses of the child such as books and toys. Thus, we find that the court appropriately fashioned a child support payment which took into account both the child's needs (excluding plaintiff's needs), and defendant's ability to pay a larger amount of support. *Thompson, supra* at 416.

Finally, the defendant in a paternity action, which is civil in nature, *Mead v Batchlor*, 435 Mich 480, 497; 460 NW2d 493 (1990), may not challenge the verdict on the ground that he was denied effective assistance of counsel. *Covington v Cox*, 82 Mich App 644; 267 NW2d 469 (1978). The appropriate remedy for a non-indigent paternity defendant, such as in this case, is a legal malpractice suit for monetary damages. *Kenner v Watha*, 115 Mich App 521, 525; 323 NW2d 8 (1982).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry W. Saad
/s/ William J. Giovan