

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re C.L.

No. 23-578 (Webster County CC-51-2012-JA-52)

MEMORANDUM DECISION

Petitioner the Bureau for Child Support Enforcement (“BCSE”)¹ appeals the Circuit Court of Webster County’s September 5, 2023, order modifying child support.² Upon our review, we determine that oral argument is unnecessary and that a memorandum decision vacating the circuit court’s September 5, 2023, order modifying child support and remanding for further proceedings is appropriate, in accordance with the “limited circumstances” requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure.

In 2012, C.L.’s father was a party to a child abuse and neglect proceeding. At the conclusion of the proceeding, the father was ordered to pay \$248 per month in child support. Then, on July 23, 2023, the father was incarcerated. In August 2023, the BCSE filed a motion for expedited modification of child support. The motion explained that the father was incarcerated, thus, his support obligation should be reduced to zero until his release.

In September 2023, the circuit court entered an order modifying child support finding that “the obligor has no ability to pay,” yet set the child support obligation at \$50 per month with payment beginning on September 1, 2023. The court further ordered that, upon the father’s release from incarceration, the child support obligation would remain \$50 per month. Then, on the first day of the fourth month after the father’s release, the obligation would increase to the previously ordered amount of \$248 per month. It is from this order that the petitioner appeals.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court’s findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). The petitioner argues that the circuit court erroneously imposed a \$50 monthly child support obligation as to the incarcerated father even after finding that he had no ability to pay. We agree. The petitioner contends that the circuit court misapplied West Virginia Code § 48-13-404, which reads as follows:

¹ The petitioner appears by counsel Mark French.

² We use initials where necessary to protect the identities of those involved in this case. See W. Va. R. App. P. 40(e).

In cases where the payor parent’s adjusted gross income is below \$2,600 per month, an additional calculation in Worksheet A, Part II, § 48-13-403 of this code, shall be made. This additional calculation sets the child support order at whichever is lower.

(1) Child support at the amount determined in Worksheet A, Part I, § 48-13-403 of this code; or

(2) The difference between 80 percent of the payor parent’s adjusted gross income and \$997, or \$50, whichever is more.

Further, West Virginia Code § 48-1-205(e) directs that “[i]ncome shall not be attributed to an obligor who is incarcerated.”³ The petitioner correctly asserts that Worksheet A, Part I returns a support obligation of zero when the parent’s income is zero, while the amount contemplated by West Virginia Code § 48-13-404(2) results in an obligation of \$50 when the parent’s income is zero. According to West Virginia Code § 48-13-404, the court should have set the child support obligation at zero, as zero is the lower value between the two options. However, we note that “the court may either disregard the guidelines or adjust the guidelines-based award,” but “[i]n either case, the reason for the deviation and the amount of the calculated guidelines award must be stated on the record (preferably in writing on the worksheet or in the order).” W. Va. Code § 48-13-702(a). Although the court deviated from the guidelines, it offered no rationale for its deviation even though it expressly found that the father had no actual income or attributable income. Thus, the court erred when it ordered the father to pay \$50 per month during his incarceration.

For the foregoing reasons, we vacate the circuit court’s September 5, 2023, order modifying child support and remand this matter to the circuit court for further proceedings consistent with this opinion. Specifically, the court must provide a reason for its deviation from the guidelines or reduce the obligation to zero and, in either event, must memorialize its decision in an order. The court is further directed to undertake any additional proceedings consistent with the applicable rules and statutes. The Clerk is directed to issue the mandate contemporaneously herewith.

Vacated and remanded, with directions.

ISSUED: November 6, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn

³ Obligor is defined, in part, as “an individual. . . [w]ho owes or is alleged to owe a duty of support” or “who is liable under a support order.” W. Va. Code § 48-1-235.