NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1366

DANE SCOTT HAAGA

VERSUS

ADRIENNE FULTON HAAGA

Judgment Rendered: February 11, 2011

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On Appeal from the 22nd Judicial District Court
In and For the Parish of St. Tammany
Trial Court Number 2003-11611, Divison "L"

The Honorable Dawn Amacker, Judge Presiding

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Bennett Wolff
Metairie, LA

Counsel for Plaintiff/Appellant
Dane Scott Haaga

Catherine Hilton
New Orleans, LA

Counsel for Defendant/Appellee
Adrienne Fulton Haaga

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Guidry, J. concurs in the result

HUGHES, J.

This is an appeal from a February 26, 2010 judgment finding plaintiff/appellant, Mr. Dane Scott Haaga, in contempt of court for his failure to pay child support and in arrears in the amount of $25,170.00.[1] For the reasons that follow, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Mr. Haaga and Ms. Adrienne Suttle[2] were married and share two children from that marriage. In May of 2003, the parties divorced and entered into a consent judgment regarding child support and custody. The consent judgment was approved and made the order of the court on August 18, 2003. Under that judgment, the parties were awarded joint custody of the children with Ms. Suttle designated as the primary domiciliary parent. In regards to child support, the judgment read as follows:

> The parties have agreed that Dane Haaga will pay TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS monthly to Adrienne Haaga in total child support for their minor children, payable on the first (1st) day of the first month following the date that this Joint Custody and Child Care Plan is signed by both parties, and continuing each month on the same date for twelve (12) months. The parties recognize and agree that the child support payments made by Dane Haaga include basic child support and all other child care expenses, including but not limited to, health insurance, the cost of child care, day care, school tuition, and any other ordinary or extraordinary child care expenses recognized by law. All child support payments owed by Dane Haaga to Adrienne Haaga under this Plan shall be made directly to Adrienne Haaga at her domiciliary address.
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> At the end of twelve (12) months the parties will renegotiate and recalculate child support as provided in this Plan, with the intent of modifying the child support obligations of the parties by written agreement for a term to be specified therein. The parties reserve all rights to seek judicial relief to establish child support as provided by law in the event that they

[1] The parties stipulated to the fact that if the court found that Mr. Haaga's child support obligation remained at $1,800.00 at the end of twelve months, Mr. Haaga would be in arrears in the amount of $25,170.00.

[2] At the time of the filing of this appeal, defendant's/appellee's legal name was Ms. Adrienne Diane Fulton Haaga. However, she has since remarried and changed her name. In this appeal, we will refer to her by her new legal name, Ms. Adrienne Diane Suttle.

> fail to reach a written agreement to modify child support as set forth in this Plan. Notwithstanding any provision of this paragraph C, the parties recognize and agree that, in the event that they cannot reach an agreement concerning child support at the end of twelve (12) months, all other provisions of this Plan will remain in effect as the agreement of the parties.

It is undisputed that the parties never entered into a written agreement to reduce the amount of child support owed by Mr. Haaga, but both parties admit that they did reach a verbal agreement in early 2005 to reduce the monthly amount from $2,000.00 to $1,800.00. Thereafter, Mr. Haaga unilaterally reduced the monthly payments to $1,400.00 in March of 2006, then to $1,200.00 in August of 2008, and finally to $900.00 in September of 2008.

On May 22, 2009 Ms. Suttle sent Mr. Haaga a notice of intent to relocate the children to Texas in order to work and marry her fiancé. Mr. Haaga filed an objection to the motion to relocate. Ms. Suttle then filed a motion seeking a court order to allow the relocation, and a rule for contempt alleging that Mr. Haaga was in violation of the prior support order in that he failed to pay the full amount due, or $1,800.00 per month, and that he failed to pay timely. Mr. Haaga then filed a motion requesting that the court specify custodial access and modify the custody arrangement.

A hearing was held on November 2, 2009 and in a judgment dated November 25, 2009 the trial court ordered that the mother be allowed to relocate with the children to Texas, that Mr. Haaga be held in contempt of court for his failure to pay child support by the 1st of each month, and continued to a later date the issue of the amount of arrearage. The court ordered the parties to meet with a hearing officer in an attempt to reach a new agreement as to Mr. Haaga's child support obligation. No agreement was reached, however, and in January of 2010 the court held another hearing

in order to determine the amount of the child support obligation and to determine the issue of whether, under the prior agreement, Mr. Haaga was in arrears.

On February 26, 2010 a judgment was signed holding Mr. Haaga in contempt of court for his failure to pay the amount due under the 2003 consent judgment. The amount of the arrearage was set at $25,170.00. A new order was entered, setting the amount of child support at $728.00 per month.

Mr. Haaga appeals the February judgment and asserts the following assignments of error:

> (A) The trial court erred as a matter of law in finding that Mr. Haaga was in contempt of court for failing to pay his court ordered child support obligation. More particularly, the trial court had previously found Mr. Haaga in contempt of court for failing to pay his child support timely. He cannot be held in contempt of court a second time based on the same allegations and motion because he allegedly was also in arrears. Additionally, Mr. Haaga could not have willfully and deliberately violated a court order which the trial court found to be very unclear and which Appellant asserts was no longer in existence.
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> (B) The trial court erred as a matter of law in finding that Mr. Haaga was in arrears in his child support payments in the amount of $25,170.00 because the child support order had expired and there was no written agreement extrajudicially modifying it.

Although Ms. Suttle did not answer the appeal of the judgment signed on February 26, 2010, her answer in response to the judgment signed on November 25, 2009 on appeal before us in docket no. 2010 CU 0927 indicates an intent to seek review of the re-calculated child support. Ms. Suttle also moved that the two appeals in docket nos. 2010 CU 0927 and 2010 CA 1366 be consolidated, which motion was denied. Although technically not before us in the instant appeal, given the indication of intent, that appeals are favored in the law, and in the interest of

justice, we will review the re-calculation of child support set in the February 26, 2010 judgment in this appeal, docket no. 2010 CA 1366.

LAW AND ANALYSIS

I. Interpretation of the Custody Order

In his first assignment of error, Mr. Haaga argues that he cannot be held in contempt of court for failing to pay the full amount due, because he had already been held in contempt of court for his failure to pay on time. We note that a review of the record reveals that while the court determined that the untimely payments were obvious, the arrearage amount was taken under advisement and continued until a later date, without objection by Mr. Haaga. Moreover, no additional attorney's fees were awarded with this "second" contempt charge. We do not agree with Mr. Haaga's argument that the timeliness of payments and the sufficiency of payments cannot be considered as separate acts of contempt. See LSA-C.C.P. art. 224(2). This assignment of error is without merit.

We next consider Mr. Haaga's second assignment of error. The central issue is whether the trial court erred in its interpretation of the 2003 consent judgment. Interpretation of a consent judgment between parties is a determination of the common intent of the parties; each provision in the contract is interpreted in light of other provisions so that each is given the meaning suggested by the contract as a whole, and when the words of the contract are clear and explicit and lead to no absurd consequences, the intent of the parties is to be determined by the words of the contract. **Nungesser v. Nungesser**, 95-2298, pp. 3-4 (La. App. 1 Cir. 6/28/96), 694 So.2d 312, 314. However, notwithstanding the freedom of the parties to enter into stipulations relating to child support, parties must remember that their

agreements may not "derogate from laws enacted for the protection of the public interest." LSA-C.C. art. 7.

The general rule in Louisiana is that a child support judgment remains in full force and effect until the party ordered to pay it has the judgment modified, reduced, or terminated by the court. **Halcomb v. Halcomb**, 352 So.2d 1013, 1015 (La. 1977); **Heflin v. Heflin**, 44,155 (La. App. 2 Cir. 1/14/09), 1 So.3d 820, 822. However, in certain cases, courts have recognized the parties' ability to extrajudicially modify a child support order by agreement. In those cases, the agreement must foster the continued support and upbringing of the child. It must not interrupt the child's maintenance or upbringing or otherwise work to his detriment. **Dubroc v. Dubroc**, 388 So.2d 377, 380 (La. 1980). The party that claims this type of agreement has the burden of proving it. **Heflin**, 1 So.3d at 822.

The governing provisions of the judgment before us read as follows:

> The parties have agreed that Dane Haaga will pay TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS monthly to Adrienne Haaga in total child support for their minor children, payable on the first (1st) day of the first month following the date that this Joint Custody and Child Care Plan is signed by both parties, and continuing each month on the same date for twelve (12) months. The parties recognize and agree that the child support payments made by Dane Haaga include basic child support and all other child care expenses, including but not limited to, health insurance, the cost of child care, day care, school tuition, and any other ordinary or extraordinary child care expenses recognized by law. All child support payments owed by Dane Haaga to Adrienne Haaga under this Plan shall be made directly to Adrienne Haaga at her domiciliary address.
>
> At the end of twelve (12) months the parties **will renegotiate** and recalculate child support as provided in this Plan, **with the intent of modifying the child support obligations of the parties by written agreement** for a term to be specified therein. The parties reserve all rights to **seek judicial relief** to establish child support as provided by law **in the event that they fail to reach a written agreement** to modify child support as set forth in this Plan. Notwithstanding any provision of this paragraph C, the parties recognize and

> agree that, in the event that they cannot reach an agreement concerning child support at the end of twelve (12) months, all other provisions of this Plan will remain in effect as the agreement of the parties. [Emphasis added.]
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> * * * *
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> The parties recognize and agree that termination of child support is controlled by law.
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> * * * *

The clear words of the contract establish that the parties intended to re-negotiate child support at the end of the first twelve-month period. However, it is undisputed that there was never a subsequent written agreement. Mr. Haaga makes two arguments: 1) that at the end of the first 12-month period, the amount of his child support obligation had "expired" and he was free to unilaterally decrease his support payments to any amount he deemed fair, and place the burden on Ms. Suttle to return to court if she did not agree; or 2) that he and Ms. Suttle had made several subsequent extrajudicial verbal agreements to reduce his child support obligation.

The contract clearly states that in the event that they fail to reach a written agreement, *either* party has the right to seek judicial relief for the purpose of establishing a new amount of child support. Presumably, this removes the usual prerequisite of showing a material change in circumstances prior to obtaining a re-calculated support obligation. To interpret the judgment to allow the child support amount to "expire" and require the obligee to return to court for continued support is both absurd and against public policy. We agree with the trial court that the contract set an amount of support, and that amount continued until a reduction or modification was ordered. While the parties could have re-negotiated a different amount by written agreement, they did not. The trial court acknowledged the testimony that they had agreed to the reduction to

$1,800.00 per month. As such, Mr. Haaga's child support obligation remained at $1,800.00 until it was judicially decreased.

Mr. Haaga claimed that the parties had made subsequent extrajudicial verbal agreements. The burden was on him to prove such agreements. We agree with the trial court that Mr. Haaga failed to carry this burden.

II. Child Support Re-calculation

Ms. Suttle alleges error in the trial court's decision to deviate from the statutory child support guidelines. The Louisiana Child Support Guidelines set forth the method for implementation of the parental obligation to pay child support. LSA-R.S. 9:315, *et seq.* The guidelines are intended to fairly apportion between the parents the mutual financial obligation they owe their children. The calculation begins with a verified income for each parent, which was stipulated to in this case, and ends with a percentage amount representing each parent's respective share of the support obligation. See **Percle v. Noll**, 93-1272, p. 9 (La. App. 1 Cir. 3/11/94), 634 So.2d 498, 502.

The guidelines are to be used in any proceeding to establish or modify child support, are mandatory, and provide structure and limits to the trial court's discretion in setting the amount of support. The trial court's child support judgment is to be given great weight and will not be disturbed absent a clear abuse of discretion. **Lambert v. Lambert**, 2006-2399, pp. 3-4 (La. App. 1 Cir. 3/23/07), 960 So.2d 921, 924; **Walden v. Walden**, 2000-2911, pp. 9-10 (La. App. 1 Cir. 8/14/02), 835 So.2d 513, 530.

While there is a rebuttable presumption that the amount of child support obtained by use of the guidelines is proper and in the child's best interest, the trial court may deviate from them if it finds that application of the guidelines would not be in the child's best interest or would be inequitable to the parties. When this is done, LSA-R.S. 9:315.1(B)(1)

mandates that the trial court give specific oral or written reasons for a deviation and include specific findings as to the amount of support that would have been required under a mechanical application of the guidelines and as to the particular facts and circumstances that warranted the deviation.

The question before us is whether Mr. Haaga's child support obligation should have been reduced under the facts of this case. In its oral reasons for judgment, the trial court stated that:

> The joint obligation work sheet works out according to the calculations what child support should be. There's health insurance premium costs, and the Court does find at $99 per month that the father is now paying, it would result in a recommended child support order of $921.91.
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> * * * *
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> The reason for the deviation is twofold. One is that the father does have significant time with the children. He has in excess of 73 days per year with the children and also he has travel expenses which he never had before, and this is due to the mother's voluntary relocation. And I did find for good reason and allowed her to relocate, but I have to take into consideration that the father will now have to also incur travel expenses.
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> And I do believe, I think just common sense tells me, that he will have travel expenses because I remember his testimony of the relationship he had with his children, and I do believe he will be traveling there a good bit to visit them and that they'll be coming here at times also at his expense or at least partially at his expense.

The trial court complied with its statutory requirement to calculate the amount of support that would have been required under a mechanical application and give specific oral or written reasons for its deviation. The trial court's reasoning that it would be inequitable to place the burden of the extra travel expenses that result from Ms. Suttle's desire to relocate on Mr. Haaga is supported by LSA-R.S. 9:315.1(C)(8).[3] Based upon all the facts

[3]LSA-R.S. 9:315.1(c)(8) provides that "[a]ny other consideration which would make application of the guidelines not in the best interest of the child or children or inequitable to the parties."

and circumstances in the record, we do not find that the trial court abused its discretion in granting a reduction in child support in this case.

CONCLUSION

For the reasons assigned herein, the judgment appealed from is affirmed. All costs of this appeal are to be borne by plaintiff/appellant, Mr. Dane Haaga.

AFFIRMED.