

RENDERED: April 2, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001706-MR

JOYCE IRENE TURNER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA OVERSTREET, JUDGE
ACTION NO. 88-CI-03696

GEORGE MACAULEY CHURCH, JR.

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Joyce Irene Turner (Joyce) brings this appeal from a June 23, 1998, order of the Fayette Circuit Court. We affirm.

Joyce and George Macauley Church, Jr. (George), divorced in January 1989. Joyce was awarded sole custody of the couple's two minor children (Nancy and Michael), and George was ordered to pay child support in the amount of \$200.00 per month. Pursuant to an April 6, 1994, Agreed Order, the circuit court modified child custody whereby Joyce retained sole custody of Nancy, and George received sole custody of Michael. George's

child-support obligation remained the same. On April 15, 1998, however, Joyce filed a motion to increase child support. The circuit court sustained same on June 23, 1998, and ordered George to pay \$282.73 a month. Perceiving the support inadequate, Joyce filed this appeal.

Joyce's single argument is that the circuit court erred in applying the child-support guidelines (guidelines) of Ky. Rev. Stat. (KRS) 403.212. We disagree. The court based its calculations on George and Joyce's combined monthly income of \$2767.50. Of this amount, 82% was imputed to George and 18% was imputed to Joyce.¹ Based on these percentages, the court separately calculated each parent's obligation under the guidelines as if there were only one child. This resulted in a finding that George's monthly obligation was \$362.24 and Joyce's was \$79.51. Thus, George was left with a monthly obligation of \$282.73.

The guidelines contemplate physical possession or primary custody of the children to be with one parent. See Downey v. Rogers, Ky. App., 847 S.W.2d 63 (1993). When such is not the case, KRS 403.211(2) grants to the court the discretion to fashion an appropriate remedy. See Brown v. Brown, Ky. App., 952 S.W.2d 707 (1997), and Downey, 847 S.W.2d 63. Because the situation in the case *sub judice* was not contemplated under the

¹Joyce does not dispute the court's calculation of combined monthly income nor the percentage of income imputed to each party.

guidelines, the court was forced to style its own remedy. It is our opinion that said treatment balanced the disparity between the parents' incomes and the expense of having a child reside in each parent's household. As such, the circuit court's determination was appropriate, and we perceive no abuse of discretion.

For the foregoing reasons, the order of the Fayette Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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