

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000961-MR

LISA ELAINE GAULT

APPELLANT

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE DENNIS FRITZ, JUDGE
ACTION NO. 95-CI-00143

ROBERT A. GAULT

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. The appellant, Lisa Elaine Gault (Lisa), appeals from an order of the Henry Circuit Court entered November 3, 1997, setting child support at \$3,750 per month to be paid by the appellee, Robert A. Gault (Robert), for the parties' two minor children. We affirm.

Lisa and Robert were married on August 18, 1984. Two children were born of the marriage, namely, Sarah Kendall Gault, born March 2, 1988, and Elizabeth Kaelyn Gault, born June 25, 1990. On April 25, 1997, the parties entered into a separation agreement (the Agreement), which granted the parties joint custody of the two minor children and named Lisa as their primary

physical custodian. The parties' marriage was dissolved on April 28, 1997, by order of the Henry Circuit Court.

During the marriage Lisa was not employed and Robert was the president of his family-owned business. By 1995, Robert had earnings in excess of \$800,000 per year. Under the Agreement, Robert agreed to carry both life insurance and health insurance for the parties' children. In addition, Robert agreed to pay all of the children's medical and dental expenses that were not covered by insurance. Further, each party received a sizeable estate with no debt associated therewith. The trial court found that the distribution of the accumulated marital assets sufficiently provided financial security for the appellant and the children. Lisa received the primary residence and other substantial assets debt free. The Agreement made no provision for child support.

The trial court conducted a hearing on March 25, 1997, regarding child support and heard extensive testimony regarding the needs of the children. Based upon this testimony, the Agreement and other evidence before the court, the trial court set child support at \$3,750 per month for the two children on November 3, 1997. This appeal followed.

After a thorough review of the record, we decline to disturb the circuit court's ruling. KRS 403.211(2) states, "[t]he child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the guidelines where their application would be unjust or inappropriate." One of the criteria provided for by KRS 403.211(3) that allows adjustment of the guideline

award is combined parental income in excess of the Kentucky child support guidelines of \$15,000 per month. In circumstances where the combined adjusted parental gross income exceeds the uppermost levels of the guidelines tables, as in the case sub judice, the trial court may use its discretion in determining child support. KRS 403.212(5). See Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992). The guidelines are not designed to cover all possible scenarios, and the legislature has not taken away the trial court's broad discretion in ensuring the needs of the children will continue to be met. Id. at 465.

Furthermore, KRS 403.211(4) provides that a trial court retain its broad discretion in determining the amount of child support considering each family's circumstances. Having reviewed the record, we find no abuse of the trial court's discretion with respect to the amount of child support awarded. The trial judge carefully considered both the needs of the children and the ability of Robert to pay before setting child support at \$3,750 per month. At the March 25, 1997, hearing, the trial court heard extensive testimony regarding the needs of the children and their accustomed lifestyle during the marriage. Lisa testified that the children were accustomed to designer clothes, numerous and extended yearly vacations, and participation in extracurricular activities. However, Robert testified that in addition to his child support obligation, he would make certain provisions to provide for the children. Furthermore, Robert testified that both children had a trust fund in place that would cover college tuition and expenses. Moreover, we note that Robert agreed to

carry both life and health insurance for the children and, in addition, to pay for all of the children's medical and dental expenses not covered by insurance. The trial court found that \$3,750 per month in child support would be enough to provide for the needs of the children and their accustomed lifestyle.

However, Lisa argues that the trial court should have awarded \$7,383 per month in child support. This figure is extrapolated from the child support guidelines where at the uppermost levels of monthly gross income, or \$15,000 per month, the obligor is required to pay approximately 12% of his income in child support. The trial court considered this approach but found that it did not directly relate to the children's current needs or standard of living achieved during the marriage. We do not believe KRS 403.211 (the child support guidelines) mandates such a mechanical application. The trial court has broad discretion in determining the appropriate child support level as long as it considers the factors set forth by the statute. Child support may vary depending upon the needs of the children, their standard of living enjoyed before the divorce, and the parents' financial condition.

We note that a trial court's discretion in this matter, although broad, is not absolute. However, we defer to the logic of the court in Voishan v. Palma, 609 A.2d 319 (1992):

[T]he guidelines...establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule. Beyond this the trial [court] should examine the needs of the child in light of the parents' resources and determine the amount of support necessary to ensure

that the child's standard of living does not suffer because of the parents' separation.

Id. at 331, 332.

In the case sub judice, the trial court properly set the child support award based upon the needs of the children and the parties' ability to pay. We do not believe the trial court abused its broad discretion by awarding \$3,750, (\$45,000 per year) in child support for the parties two minor children based upon the facts of this case. We find the appellant's remaining arguments are without merit.

For the foregoing reasons, the order of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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