

RENDERED: September 10, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-002248-MR

DONALD R. GRIFFIS

APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND W. HOWARD, JUDGE
ACTION NO. 81-CI-01316

SANDRA B. GRIFFIS (NOW PHELPS)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GARDNER, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Donald R. Griffis (Donald) appeals from an order of the Daviess Circuit Court entered on July 15, 1996, which granted Sandra B. Griffis (now Phelps) (Sandra) an increase in child support for their son, Sean. We affirm.

Donald and Sandra were divorced by Decree of Dissolution of Marriage entered on July 27, 1982. Sandra was awarded the care, custody, and control of Sean, who was eighteen-months-old at the time. Donald was ordered to pay child support in the amount of \$40.00 per week. On January 19, 1993, Sandra

filed a motion to increase child support arguing that there had been "changes of circumstances so substantial and continuing as to make the terms [of the 1982 award] unconscionable." Sandra alleged that Donald's income was actually higher than the income that was reflected on his income tax return and the child support should be set based on his actual income. The trial court denied that motion and the case was appealed to this Court.

On September 15, 1995 this Court reversed the trial court. This Court noted that Sandra had not presented any evidence that Donald was underemployed or that his income was higher than he had reported, but that Donald had been receiving cash gifts, not loans, from his parents in the four years preceding the divorce that averaged \$8,750.00 per year. This Court held that Sandra was "entitled to support based on [Donald's] income, including the money received from his parents", and remanded the case to the trial court for further proceedings.

On February 27, 1996 the Domestic Relations Commissioner (Commissioner) filed a report that recommended findings of fact that Donald, as a non-certified dental technician, could reasonably expect to earn a minimum of \$20,000.00 per year, and that he had received gifts from his parents that averaged \$729.00 per month. The Commissioner recommended that both Donald and Sandra have income imputed to them, and that Donald's child support be increased to \$81.00 per week.

On March 4, 1996, Donald filed exceptions to the Commissioner's report arguing that he was no longer receiving gifts from his parents. On March 18, 1996, the trial court ordered that the February 27, 1996 recommendation of the Commissioner be "confirmed in all respects, with the proviso that [Donald] be allowed an opportunity at a hearing before the Domestic Relations Commissioner to present evidence on the single issue that [he] is no longer receiving gifts from his parents or from any other source." On June 11, 1996, the Commissioner filed a supplemental report recommending a finding that while testimony indicated that Donald was not receiving gifts from his mother or from any other source, "the evidence indicate[d] that [Donald] continue[d] to live a life style that is beyond what he would have the Commissioner believe that he [could] afford with his reported income." The Commissioner continued with his recommendation that child support be increased to \$81.00 per week.

On June 17, 1996, Donald filed exceptions to this recommendation and the trial court conducted another hearing. On July 15, 1996, the trial court entered its final order and judgment confirming the Commissioner's recommendation and increasing the child support to \$81.00 per week. This appeal followed.

The record on appeal does not include transcripts of evidence from the hearings before the Commissioner and the trial court. In lieu of a trial record, Donald attempts to present a

narrative statement of the case in his brief. Sandra, however, correctly points out that pursuant to Kentucky Rules of Civil Procedure (CR) 75.13(1), while a narrative statement may be prepared by an appellant in the absence of a record, any such statement "shall be served on the appellee," for any objections or amendments, and "shall be submitted to the trial court for settlement and approval," and as such shall be included in the record on appeal. Donald failed to follow the procedure required by CR 75.13(1). Therefore, the narrative statement presented by Donald on appeal cannot be considered by this Court and "[w]ithout a transcript of the proceedings, we must assume the record supports the factual determinations of the trial court." Dillard v. Dillard, Ky.App., 859 S.W.2d 134, 137 (1993). See also Porter v. Harper, Ky., 477 S.W.2d 778, 779 (1972).

Donald claims the trial court abused its discretion by imputing income to him in three ways: (1) for gifts that were no longer being received; (2) for business income not received; and (3) for being underemployed absent a showing that he was purposely underemployed with an intent to interfere with his support obligation.

The trial courts are given broad discretion in applying the child support statutes at Kentucky Revised States (KRS) 403.212. The Legislature has provided the trial courts with certain guidelines and limitations, but it has also empowered the trial court with the discretion to achieve just results. See Keplinger v. Keplinger, Ky.App., 839 S.W.2d 566, 568 (1992). This

legislative scheme cannot address every possible situation that can arise in divorced parents supporting their child. However, the statutes provide sufficient flexibility to allow the trial courts to fashion appropriate orders. Downey v. Rogers, Ky.App., 847 S.W.2d 63, 64 (1993). Furthermore, as this Court stated in Keplinger, supra at 569, "[w]e believe that KRS 403.212(2)(a) must be read as creating a presumption that future income will be on a par with the worker's most recent experience" (footnote omitted).

The central issue in this case is determining Donald's actual income from the conflicting evidence that was presented. Thus, it was within the discretion of the trial court to determine which evidence was credible and to make the appropriate findings. CR 52.01. After the Commissioner had already expressed doubts about the credibility of Donald's evidence in his June 11, 1996 recommended order, the trial court, in its final judgment, stated: "The [c]ourt agrees with the Commissioner, after two lengthy hearings, that for purposes of calculating child support that there be imputed additional income to [Donald] based on un rebuttable evidence of his continued life style which requires expenditures of large sums of money."

There is no need for this Court to address the issues raised by Donald concerning the gifts and his underemployment. The final order indicates that the trial court made a determination of Donald's actual income based on his lifestyle expenditures regardless of whether that income was coming from

unreported gifts or income. The trial court did not determine Donald to be underemployed.

While Donald argues that there was no proof as to his "lifestyle" and that the trial court engaged in "speculation" without proof as to his income, in the absence of the record, we must assume there was sufficient evidence to support the findings of the trial court. Dillard, supra.

Accordingly, the judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. John M. McCarty
Hawesville, KY

BRIEF FOR APPELLEE:

Hon. Paul E. Bugay
Owensboro, KY