

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001370-MR

DONALD G. CROUCH

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE DENNIS FOUST, SPECIAL JUDGE
ACTION NO. 91-CI-00050

SHARON CROUCH

APPELLEE

OPINION AND ORDER
AFFIRMING AND REMANDING FOR CONSIDERATION
OF ISSUE NOT ADDRESSED BY TRIAL COURT

** ** * * * **

BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE. Donald G. Crouch (Donald) appeals an order of the Graves Circuit Court entered April 17, 1998, denying his motion to reduce child support and increasing child support to \$166.51 per week. We affirm the court order as entered and remand for consideration of an issue not addressed by the trial court.

Donald and Sharon Ann Crouch (Sharon) were divorced on March 31, 1992. One child, namely, Andrea Ruth Crouch, born October 12, 1987, was adopted during the marriage. The trial court set child support, based upon Donald's income at the time

of the divorce and minimum wage being imputed to Sharon, at \$164.16 per week. On March 31, 1993, Donald sold his interest in Crouch Construction Company, the family business, to his brother, Larry Crouch. Donald still maintained income from two post offices, one known as the Water Valley Post Office (Water Valley) and the other known as the Drakesboro Post Office (Drakesboro). However, on April 26, 1993, based upon Donald's decreased income, the trial court reduced child support to \$137.41 per week.

In December of 1993, Donald borrowed \$145,000 using the Water Valley and Drakesboro post offices as collateral, ostensibly to pay debts incurred during the divorce. However, a thorough review of the evidence shows that Donald paid off the total indebtedness on the two post offices of \$16,684.38 and, in addition, paid off his son's car and his truck with the proceeds. Furthermore, Donald assigned the rental income from the two post offices, which the trial court had previously used to calculate his gross income. In February of 1994, Donald moved the court for a reduction in child support based upon his reduced income and the additional loan payments. On November 16, 1994, the trial court denied Donald's motion noting his attempts to divest himself of income.

On April 14, 1995, Donald sold his interest in the two post offices to his parents for \$100,000. Admittedly, Donald did not report the sale of the properties for eighteen (18) months because he did not want the trial court to include the sale proceeds in his income, which could have entitled Sharon to an increase in child support. However, on August 29, 1997, Donald

again moved the trial court for a reduction in child support based upon his reduced income. During a hearing on the matter on April 8, 1998, Donald admitted that he did not report the increase in income in 1995 because he knew that Sharon would be entitled to an increase in child support. Further, Donald testified that he performed "side jobs" in 1997, income which was also not reported on his tax returns. On April 17, 1998, the trial court entered an order denying Donald's motion. However, in that order, the trial court imputed income to Donald from the two post offices and increased child support to \$166.51 per week. This appeal followed.

The trial court is vested with broad discretion in domestic matters and this Court will not interfere with its decision unless that discretion is abused. Sommerville v. Sommerville, Ky., 339 S.W.2d 940 (1960). In his five and one-half page brief filed with no supporting authority, Donald argues the trial court erred in imputing income to him from the two post office properties. We do not agree.

Donald has consistently divested himself of income and thereafter sought to have his child support obligation reduced. In fact, Donald admittedly failed to report a significant increase in income in 1995 for the sole purpose of preventing Sharon from moving for an increase in child support. The trial court found Donald's actions to evidence a clear pattern of voluntary underemployment. This voluntary underemployment authorizes the trial court to impute income to Donald for

purposes of child support pursuant to KRS 403.212(2)(d), which states:

If a parent is voluntarily unemployed or underemployed, child support shall be calculated based upon a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility. Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

Although the statute does not require a finding of bad faith in order to impute income to an obligor who is voluntarily underemployed, in McKinney v. McKinney, Ky. App., 813 S.W.2d 828 (1991), we held:

This Court has seen several cases, this particular one included, where the issue is raised whether bad faith is required under KRS 403.212 to find an individual to be voluntarily underemployed. The statutory language makes no mention of a bad faith requirement. Considering the alternative, we think such a requirement must be implied. The statute would make sense only when one purposely terminated his employment or changes to employment with lower pay with an intent to interfere with his support obligations. If an individual's employment situation changes because of circumstances beyond his control or is reasonable in light of all the circumstances, then it would be unfair to find him to be voluntarily underemployed. KRS 403.212(2)(d) must therefore be interpreted to include a bad faith requirement.

See also, Keplinger v. Keplinger, Ky. App., 839 S.W.2d 566 (1992); Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992).

The evidence before us clearly establishes that Donald has acted to divest himself of income in order to reduce his child support obligation. A thorough review of the record evidences Donald's pattern of selling off assets to family members, failing to report income and then moving the trial court for reductions in child support. The trial court's decision to question his credibility and to impute income to him based upon his voluntarily underemployment intended to interfere with his child support obligation is not clearly erroneous nor an abuse of its discretion. Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982). Donald's brief is devoid of any legal authority, much less any authority to support his argument that the trial court improperly imputed income to him. We deem Donald's argument as to childcare costs incurred by appellee to be meritless.

Finally, we note that Donald, in his original motion, requested the court to address the pick up and drop off of the minor child for visitation purposes. In that the trial court did not address this issue in its final order, this matter needs to be remanded for further consideration by the trial court.

ALL CONCUR.

/s/ Daniel T. Guidugli
JUDGE, COURT OF APPEALS

ENTERED: September 10, 1999

BRIEF FOR APPELLANT:
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BRIEF FOR APPELLEE:
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