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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002117-MR

FREDDIE EARL WIREMAN APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 08-CI-00541

ANGELA DENISE WIREMAN APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

STUMBO, JUDGE: Freddie Wireman appeals from findings of fact, conclusions of law, and decree of dissolution of marriage. Appellant's appeal concerns whether the court properly awarded child support arrearages to Appellee and whether the trial court erred in prohibiting Appellant's girlfriend from associating with his child. Angela Wireman argues the court was acting within its discretion in

deciding these issues and should therefore be affirmed. We agree with Angela, and accordingly, affirm.

The Wiremans were married on June 8, 2002. They had one child born on September 6, 2006. On July 28, 2008, Appellee filed a petition for dissolution of marriage. A final hearing was set for November 18, 2008, but on the day of the hearing, the court was advised the parties had settled and were going to submit an agreed order and settlement agreement. No agreement or order was ever entered into the record. It appears that the agreement was never executed by the parties.

Appellee's attorney withdrew from the case on July 8, 2009. Appellee retained a new attorney and a new hearing was held on October 20, 2009. At this hearing, Appellee testified that she signed a settlement agreement that was to be filed in November of 2008, but could not produce a copy. Appellant admitted that they had reached an agreement, but stated that nothing was ever signed. Both parties testified that they had agreed to the terms of child support, but that they disagreed about the amount. Appellee stated that she thought it was around $280 a month and Appellant stated it was around $293. A child support worksheet, dated 2008, was introduced that indicated Appellant was to pay $294 a month in child support. As of the October 20, 2009 hearing, Appellant had paid no child support.

The parties agreed that they were to have joint custody and Appellee would be the primary residential parent; however Appellee did not want the child

to associate with Appellant's current girlfriend, Randi Fritz. Testimony was introduced that in February of 2009, Ms. Fritz had attempted suicide at Appellant's residence. Also, testimony revealed that Appellant called the police in September of 2009, because Ms. Fritz would not leave his house when he requested her to do so. Appellant testified that he thought she might have been under the influence of alcohol. No charges were filed in the latter instance and Ms. Fritz left when the police arrived.

The trial court ordered the Wiremans to have joint custody, but the child could not be in the presence of Ms. Fritz. Further, the trial court found that a child support agreement had been reached in November 2008, and that Appellant should have been paying child support since that time. The court ordered Appellant to pay $294 a month in child support, with an additional payment of $100 toward arrearages. Appellant now appeals the portions of the order dealing with the arrearages and Ms. Fritz.

Appellant first argues that the trial court erred when it ordered him to pay child support arrearages because there was no written or signed agreement. He cites to KRS 403.180 which states in pertinent part:

> (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.

> (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable. (Emphasis added).

Appellant is correct when he states that separation agreements must be in writing and signed by both parties to be valid. *Bratcher v. Bratcher*, 26 S.W.3d 797, 799 (Ky. App. 2000); *Carter v. Carter*, 656 S.W.2d 257, 258 (Ky. App. 1983). However, there is more flexibility when it comes to agreements concerning child support. KRS 403.180(2) states that a court is not bound by terms of a separation agreement dealing with custody, support, and visitation of children.

Appellee argues that even though no agreement concerning child support was signed by both parties, or arguably put into writing, the trial court properly permitted her to recover arrearages. Appellee notes that child support can be modified by oral agreements. *Whicker v. Whicker*, 711 S.W.2d 857 (Ky. App. 1986). She would have us apply this concept to initial child support agreements, not just modifications. We agree.

In the unpublished case of *Minix v. Minix*, 2008 WL 399442 (Ky. App. 2008),[1] a previous panel of this Court held that the principles set forth in *Whicker* can be applied to initial child support agreements. In order for oral child support agreements to be enforceable, they must be proved with reasonable

[1] While *Minix* is not binding on this Court, it is persuasive authority.

certainty and the court must find that the agreement is "fair and equitable under the circumstances." *Whicker* at 859.

A trial court's findings of fact will not be set aside unless they are clearly erroneous. CR 52.01. Factual findings are not clearly erroneous if they are supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly,* 976 S.W.2d 409, 414 (Ky. 1998). Substantial evidence is "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Id.*

We find that the trial court correctly found the parties had agreed to child support as of November, 2008, and that it was proven with reasonable certainty. Both parties testified that they had come to an agreement, testified to a similar amount to be paid, and a child support worksheet was introduced into evidence. The amount of support is reasonable given the finances of the parties and thus, we cannot find it in error. Appellant agreed to pay child support. Also, the arrearages were not ordered to be paid in a lump sum. Rather, Appellant was allowed to pay it off by paying an extra $100 each month.

Appellant also argues that the trial court abused its discretion when it prohibited the child from having contact with Ms. Fritz. Appellant acknowledges that a trial court has the discretion to restrict an individual's contact with a minor child, but argues the trial court lacked sufficient evidence to prohibit all contact with Ms. Fritz. We disagree. We cannot say that the court abused its discretion in this instance. Ms. Fritz had earlier that year tried to commit suicide in Appellant's

home and, as Appellant testified, was depressed. Also, Ms. Fritz caused the police to be called to Appellant's house later that same year. There was no abuse of discretion in this instance. If the circumstances surrounding Ms. Fritz change, then this issue can be revisited by the trial court at a later date.

Based on the above, we affirm the order of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Sharon Easthom Rowsey
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