

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-002347-ME

RONALD W. OLIVER, JR.

APPELLANT

APPEAL FROM BOONE AND CALDWELL CIRCUIT COURTS  
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE  
ACTION NOS. 09-CI-02897 & 06-CI-00164

AMY J. OLIVER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON AND KELLER, JUDGES.

ACREE, JUDGE: In this case we are called upon to determine whether the circuit court abused its discretion in failing to modify the child support obligation of a non-custodial parent following a material change in financial circumstances.

Finding no abuse of discretion, we affirm.

Ronald Oliver (Father) and Amy Oliver (Mother) were married on March 2, 1996. Two children were born of the marriage. They separated on July 28, 2006, and entered into a settlement agreement according to which Father would pay child support in the amount of \$559 monthly. In an addendum dated January 4, 2007, Father agreed to increase his obligation to \$678 per month. When the decree of dissolution was entered on January 7, 2007, the circuit court incorporated and adopted the parties' prior agreements.

This arrangement continued until the circuit court ordered modification of Father's monthly obligation, to \$1,727.19, based upon an increase in Father's income. The modification order was entered on August 6, 2009.

Approximately two months later, on October 5, 2009, Father requested that the circuit court again modify his monthly child support obligation pursuant to Kentucky Revised Statute (KRS) 403.213. This time, he sought a reduction of monthly payments due to a work injury which prevented him from working overtime. He further cited a new company-wide policy which implemented a "mine[-]wide hour reduction to 10 hours per day/average." He contended this would prevent him from working twenty overtime hours per week, as he had done in the past, and would result in a corresponding decrease of income. In support of his position, Father presented an affidavit from the General Manager of Operations of his employer.

Mother objected. She believed Father's injury and the accompanying inability to work overtime were merely temporary setbacks, rather than

“substantial and continuing” changes to his gross monthly income. KRS 403.213(1). Father conceded his injury was temporary, but maintained the reduction of income would be permanent. Mother further contended that while Father’s employer required a company-wide average of ten work hours per day, that policy did not necessarily mean Father’s overtime hours would be reduced. Mother preferred that the circuit court wait to modify Father’s child support obligation until the true effect on his income was certain.

The circuit court agreed with Mother, concluding that Father had not demonstrated that the change in his income was “substantial and continuing,” as required by KRS 403.213(1). This appeal followed.

To warrant a modification of a parent’s child support obligation, the moving party must show: (1) “a material change in circumstances that”; (2) “is substantial and continuing.” KRS 403.213(1). We may reverse a circuit court’s ruling on a motion to modify child support only when the circuit court has abused its discretion. *Rainwater v. Williams*, 930 S.W.2d 405, 407 (Ky. App. 1996) (citing *Redmon v. Redmon*, 823 S.W.2d 463 (Ky. App. 1992)).

The evidence Father presented did not conclusively show that his hours or his income would be reduced upon recovery from a temporary injury. Therefore, we cannot say that it was an abuse of discretion for the circuit court to determine that Father failed to demonstrate a substantial and continuing change to his financial circumstances sufficient under the statute to justify modification.

Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Jarrod H. Jackson  
Princeton, Kentucky