

RENDERED: MARCH 18, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000038-MR

JOHN FRANKLIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE PATRICIA WALKER FITZGERALD, JUDGE  
ACTION NO. 98-FC-007775

VALARIE FRANKLIN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND WINE, JUDGES.

MOORE, JUDGE: John Franklin appeals the Jefferson Circuit Court's order denying his motion to reinstate the original divorce decree provision allowing him to claim the parties' child as a dependent for tax exemption purposes. After a careful review of the record, we affirm.

John and Valarie Franklin were divorced on February 11, 1999. The settlement agreement, which was incorporated by reference in the divorce decree, provided that John was entitled to claim the parties' only child as a dependent for tax exemption purposes in odd-numbered years.

Valarie subsequently filed for sole custody of the child. Valarie tendered a *pro se* order, which the court entered, including a provision precluding John from claiming a tax exemption in *even*-numbered years. In that order, the court also acknowledged that John had not participated in the care of his daughter for the past eight years.

Valarie later testified that the court granted her request to preclude John from claiming the tax exemption in *any* year, but that Valarie made an error in drafting the order. It is apparent that John believed that the order precluded him from claiming any tax exemption because he filed a motion requesting that the court reinstate the provision in the parties' decree allowing him to claim the tax exemption.

A hearing was held in which the court denied John's motion, finding that John had no contact with the child and that it would not benefit the child to allow John to claim the tax exemption.<sup>1</sup> John filed a second motion. In an attempt to refute Valarie's testimony at the previous hearing, John presented evidence that

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<sup>1</sup> Although the court denied John's motion to vacate the January 18, 2008 order and to reinstate the provision in the decree allowing him to claim the exemption, no effort was made to clarify the inconsistency between the decree provision allowing John to claim the exemption in *odd*-numbered years and the January 18, 2008 order prohibiting John to claim the exemption in *even*-numbered years.

he had provided medical insurance for the parties' child and was current on his child support payments. John again requested that the court reinstate the original decree provision allowing him to claim the child as a dependent in alternate years.

After the second hearing, the court ordered that John was not allowed to claim the tax exemption because John had no contact with his daughter and Valarie was carrying the majority of the child's expenses. The court found that the greatest benefit for the child would be obtained by awarding the tax credit to Valarie. John now appeals, contending that the court applied the incorrect legal standard when modifying the decree.

A trial court has broad discretion in making an award of the right to claim a parties' child for tax exemption purposes. *Marksberry v. Riley*, 889 S.W.2d 47, 48 (Ky. App. 1994); *see also Pegler v. Pegler*, 895 S.W.2d 580, 581 (Ky. App. 1995). In doing so, the court must consider which party, by claiming the exemption, will be able to provide the greatest benefit for the child. *Hart v. Hart*, 774 S.W.2d 455, 457 (Ky. App. 1989). A court may also be guided by "balancing the equities between parties." *Brausch v. Brausch*, 265 S.W.3d 837, 842 (Ky. App. 2008).

In this case, the court used the correct standard by considering which party would provide the child with the greatest benefit by claiming the exemption. *Hart*, 774 S.W.2d at 457. Based on the record before us, the court did not abuse its discretion when it determined that the mother was providing for the majority of the

child's expenses and that allowing her to claim the exemption would maximize the amount available for the care of the child. Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Franklin, *pro se*  
Louisville, Kentucky

BRIEF FOR APPELLEE:

None Filed