

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001805-ME

KATHERINE EMILY WILLIAMS

APPELLANT

v. APPEAL FROM HENDERSON FAMILY COURT
HONORABLE SHEILA N. FARRIS, JUDGE
ACTION NO. 04-CI-00494

MICHAEL GENE WILLIAMS

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: DIXON, J. LAMBERT AND NICKELL, JUDGES.

DIXON, JUDGE: Appellant, Katherine Emily Williams, appeals from an order of the Henderson Family Court modifying the child support obligation of Appellee, Michael Gene Williams. After reviewing the record, we conclude that the issues raised herein are moot and the appeal should be dismissed.

The parties herein were married on December 28, 1994. Two children were born during the marriage, a daughter born in 1996 and a son born in 2002. The parties were divorced by a decree entered on December 2, 2005, and were awarded joint custody of the children with Michael being entitled to parenting time every other weekend from Friday evening until Monday morning, as well as one additional overnight visit during the week. At the time of the divorce, the family court determined that Appellee's income was \$9,111.65 per month and income of \$3,020.32 per month was imputed to Appellant. A subsequent order was entered on March 29, 2006, setting Appellee's child support obligation at \$1,504.82 per month effective December 2005.

In late 2006, Appellee filed a motion to modify child support on the basis that he had been terminated from his prior employment. Initially, the family court reduced Appellee's support obligation to \$263.34 per month. However, following Appellant's motion to reconsider, the family court entered a second order on February 7, 2007, finding that as of January 2007, the parties were, in fact, sharing equal parenting time with the children. Relying on case law setting forth child support computation in shared custody arrangements (referred to as the "Colorado Rule"), the family court calculated Appellee's support obligation at \$70.68 per month.

In August 2007, Appellee's support obligation was again recalculated at \$798.76 following his regaining full-time employment. The same shared custody calculation method was employed by the family court. Subsequently, in

May 2008, the family court entered an agreed order setting Appellee's support obligation at \$1,017.59 per month, noting that "[s]aid amount [was] computed in compliance with the Kentucky Basic Child Support Guidelines taking into consideration the Colorado Rule"

On July 1, 2015, Appellant again filed a motion for review of Appellee's support obligation. That same day, Appellee filed a motion to modify child support based on the parties' older child having turned eighteen-years-old in October 2014 and graduated high school in May 2015. Appellant then filed a motion requesting the family court determine the new support obligation pursuant to KRS 403.215, arguing that Appellee's income of approximately \$15,000 per month resulted in an adjusted parental income in excess of that provided for in the child support guidelines.

An evidentiary hearing was held on August 19, 2015. On November 16, 2015,¹ the family court entered a final and appealable order setting Appellee's support obligation at \$644.35 per month, again using the Colorado Rule. Therein, the family court specifically found:

The parties earn in excess of the Kentucky Child Support Guidelines and the parties have one minor child and share parenting time with that child.

The Petitioner earns approximately \$14,904.00 per month and the Respondent earns approximately \$4,125.51 per month. The combined parental income is in excess of the Kentucky Child Support Guideline monthly combined gross income. The Respondent

¹ The family court entered an initial order on September 8, 2015, but later rescinded such order due to "errors and omissions . . . not reflecting the opinion of this court."

presented evidence of expenses for the child in order to maintain a lifestyle at her home similar to the lifestyle at Dad's home. The Court recognizes the disparity in income between the parties[;] however[,] the parties were divorced in December 2005. N.W. was an infant at the time of the parties' divorce. He did not reside in an intact household with a combined parental income in excess of the child support guidelines. To require Dad to pay Respondent a sum to equalize the standard of living at two homes would be unfair. This Court finds that it is fair and just to extrapolate from the guidelines and add an additional \$176.00 to the base child support amount and finds that this is an appropriate amount based on the difference between base child support amounts with a gross combined income of \$19,030.00.

The Court also finds that it is appropriate to use the Colorado model in this situation due to the parties' shared parenting arrangement.

Therefore the base amount of support is \$1,401.00. Pursuant to the Colorado Model calculations this is multiplied by 1.5% for a sum of \$2,102.00. One half of this amount is subject to the parties' proportionate income in accordance to the Colorado Model and offset against the same derivative of other party.

Wherefore, the Petitioner shall pay to Respondent the amount of \$644.35 per month in child support for their minor child, or \$148.70 per week. See attached Colorado Model worksheet.

The family court further ruled that the reduction in child support was retroactive to the filing of Appellee's motion on July 1, 2015. Appellant thereafter appealed to this Court.

On appeal, Appellant argues that the family court erred in modifying child support solely using a mathematical calculation rather than making specific findings as to the needs of the minor child. Further, Appellant contends that the

family court erred by using the Colorado Rule and by considering the parties' shared parenting arrangement. However, we necessarily do not reach the merits of the issues presented as we conclude that such are moot.

The record indicates that Appellant filed her Notice of Appeal in this Court on November 24, 2015. However, on January 11, 2016, an agreed order was entered whereby the parties agreed that:

1. Respondent owes to the Petitioner the sum of \$1,866.20 for the overpayment of child support for the period of July 1, 2015 through November 30, 2015. Said amount was computed as follows:

\$1,017.59 (original amount of child support) *less*
(\$644.35) (reduced amount of child support pursuant
to November 16, 2015 Order)

\$373.24 (amount overpaid each month)

\$373.24 X 5 months (number of months overpaid) =
\$1,866.20

2. Respondent shall repay said overpayment over the period of twenty months at the rate of \$93.31 per month. Said amount was computed as follows:

\$1,866.20/20 months = \$93.31

3. Pursuant to paragraphs 1 and 2 above, Petitioner shall pay to Respondent child support in the amount of \$551.04 per month (\$644.35 - \$93.31 = \$551.04) or \$127.16 per week effective December 1, 2015. Said amount shall be effective until July 2017, at which time the overpayment should be paid in full . . .
. . .

4. The case management conference currently scheduled . . . is hereby CANCELLED as all issues have been resolved.

As a general rule, except with respect to issues of custody and child support in a domestic relations case, the filing of a notice of appeal divests the trial court of jurisdiction to rule on any issues while the appeal is pending. *Johnson v. Commonwealth*, 17 S.W.3d 109, 113 (Ky. 2000) (citing *Hoy v. Newburg Homes, Inc.*, 325 S.W.2d 301 (Ky. 1959)). Herein, however, the family court clearly retained jurisdiction over matters concerning child support. Accordingly, when Appellant entered into the agreed order, she essentially approved the amount of child support set by the family court in the November 16, 2015 order from which she appealed. As a result, we are compelled to conclude that the issues raised herein have been resolved and this appeal should be dismissed.

ALL CONCUR.

ENTERED: JULY 15, 2016

/s/ Donna L. Dixon
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

William B. Norment, Jr.
Henderson, Kentucky

BRIEF FOR APPELLEE:

Allison Bowers Rust
Henderson, Kentucky