

Commonwealth Of Kentucky

Court Of Appeals

No. 1996-CA-002889-MR

JAMES THOMAS PERKINS

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE JERRY D. WINCHESTER, JUDGE
ACTION NO. 78-CI-000146

COMMONWEALTH OF KENTUCKY,
EX REL, LINDA MOORE PERKINS
(NOW TAYLOR)

APPELLEE

OPINION
AFFIRMING

* * *

BEFORE: COMBS, KNOPF, AND KNOX, JUDGES.

KNOX, JUDGE: This appeal arises from an order of the Whitley Circuit Court denying appellant's motion to terminate his child support obligation. We affirm the trial court's decision.

Linda Moore Perkins (Linda) and James Thomas Perkins (James) were married on March 15, 1975. One child, James Thomas Perkins, Jr. (child), was born of this marriage on October 19, 1976. Linda and James divorced on August 6, 1980, and custody of their child was awarded to Linda. James was ordered to pay the sum of \$150.00 per month in child support.

James fell behind in his child support payments. By way of an agreed order entered May 31, 1990, James acknowledged arrearages of \$1,606.48 in child support owed to the Commonwealth of Kentucky and \$8,393.52 in child support owed to Linda for the period from August 1980 through May 31, 1990. James agreed to continue to pay child support of \$150.00 per month and to pay \$50.00 per month toward the arrearage beginning June 1, 1990.

In June 1995, James stopped paying his child support obligation of \$150.00 per month, although he continued to pay \$50.00 each month toward the arrearage. James claimed that the child was emancipated because he had reached the age of eighteen (18) in October of 1994, and would have graduated in June 1995 following his fourth year at Laurel County High School. James believed he was no longer responsible for child support. The child, however, had been unable to accumulate the requisite credits to graduate from Laurel County High and subsequently attended, and graduated from, South Laurel Academy, a private school, for a fifth year of high school in 1995-96. During this fifth year of high school James' son turned nineteen (19).

In March 1996, the Commonwealth, acting on behalf of Linda, moved for a show-cause order. James responded by moving for termination of his child support obligation, effective in June 1995, the month during which his son should have graduated from Laurel county High. A hearing in the matter was held on June 5, 1996. The trial court denied James' motion and found that he was indebted for the total amount of child support due

through May 31, 1996, the date the child graduated from South Laurel Academy. James has appealed the trial court's decision.

Essentially, James argues that his child support obligation ended in June 1995 by operation of law. He argues that the child did not live at home with his mother, Linda, during the time he attended the private school; he lived with his former stepfather. Thus, James argues, he is not obligated to pay child support for the period during which the child did not share his mother's residence. Further, James contends that due to this living arrangement, Linda does not have standing to sue for child support owed during a period when she did not have actual physical custody of the child. Finally, James argues that because South Laurel Academy is not a "qualified" high school, and because the child was not a full-time student as contemplated by the applicable statute, James does not owe child support for the 1995-96 school year.

We first address the issue of standing. James cites KRS 403.211 which provides that an action to establish or enforce child support may be initiated by "the parent, custodian, or agency substantially contributing to the support of the child." James argues that Linda did not substantially contribute to the support of the child during his enrollment at South Laurel Academy, and thus had no standing to bring an action to enforce child support.

We find this argument to be without merit. Under the terms of any child support order, both parents have an obligation

to support their child. The fact that the child in the instant case was living with his former stepfather did not nullify or revoke either Linda's or James' obligation to support their child. Thus, as long as, by operation of law, James had a legal obligation to pay child support, he had the obligation to continue paying the support to Linda, the legal custodian, regardless of where the child was living. Linda, in turn, had the responsibility of applying that payment to the support of her child. Because we believe that James' obligation to pay child support continued through May 1996, we find Linda to have had standing, in March 1996, to bring this enforcement action.

In order for the parent of a 19-year-old to continue to receive child support, the 19-year-old must still be attending high school. KRS 403.213(3) became effective on July 14, 1992, and represents a change in Kentucky's public policy regarding the duration of child support such that the law now mandates the continuation of child support beyond the child's eighteenth birthday if the child is still in high school, but not beyond the end of the school year during which the child turns nineteen.

KRS 403.213(3) provides in pertinent part:

Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child shall be terminated by emancipation of the child unless the child is a high school student when he reaches the age of eighteen (18). In cases where the child becomes emancipated because of age, but not due to marriage, while still a high school student, the court-ordered support shall continue while the child is a high school student, but not

beyond completion of the school year during which the child reaches the age of nineteen (19) years.

The legislature determined that in the public interest and in the best interest of children, a child should be supported to the age of nineteen (19) if he or she is still in high school. Understandably, the legislature has recognized the essential nature of a high school degree in today's competitive society.

James argues that KRS 403.213(3) mandates full-time attendance at an accredited high school. He maintains that not only did the child not attend school full-time during his fifth year of high school, but also that South Laurel Academy was not "accredited" by the state. We note that the trial court made no findings on the issue of school certification.

James asks this Court to determine the qualifications of private schools and what constitutes a "full-time" student. However, school certification is a function of the legislature, not the courts. Kentucky State Bd. for Elementary and Secondary Educ. v. Rudasill, Ky., 589 S.W.2d 877, 878 (1979), required the Kentucky Supreme Court to establish "the perimeter within which the Commonwealth may regulate the curriculum and instruction in private and parochial schools." The Court stated that if the legislature wishes to monitor the work of private schools in accomplishing the constitutional purpose of compulsory education, it may do so by appropriate standardized achievement testing. Id. at 884. We believe this principle could be applied to the case at hand. School certification is a function of the

legislature, not a function of the courts. For the purposes of the instant case and, until this Court is informed otherwise by the state legislature or the State Board of Education, South Laurel Academy is the "high school," for purposes of the statute, which the child attended during the 1995-96 school year and from which he eventually graduated.

James asserts that KRS 403.213(3) requires the child to be a "full-time" student when read in combination with KRS 405.020(1), which states in pertinent part:

The father shall be primarily liable for the nurture and education of his children who are under the age of eighteen (18) and for any unmarried child over the age of eighteen (18) when the child is a full-time high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years.

James argues his son was not a full-time student because he worked four (4) hours per day at a fast food restaurant. The record before us, however, indicates that Wayne Cornett, Principal of South Laurel Academy, testified under oath that the child was, in fact, a full-time student during the 1995-96 school year, and introduced records establishing this fact. The child worked four (4) hours per day during school at a fast food restaurant for which he received "business retail" credits. Thus, we find James' argument that the child was not a "full-time" student to be without merit.

Although James and Linda's child turned nineteen (19) on October 19, 1995, he was still a high school student, as that

term is used in KRS 403.213(3). Thus, the trial court properly ordered James to continue to pay child support through May 31, 1996, the date of the child's graduation. The decision of the Whitley Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcia A. Smith
Corbin, Kentucky

BRIEF FOR APPELLEE:

Ray Baldwin
Williamsburg, Kentucky