

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002436-MR

ROBERT LEE MADISON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE RICHARD J. FITZGERALD, JUDGE
ACTION NO. 97-FC-004735

SANDRA LEE MADISON
(NOW JENNINGS)

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

MILLER, JUDGE: MILLER, JUDGE. Robert L. Madison (Robert) brings this *pro se* appeal from a September 15, 1997 judgment of the Jefferson Family Court. We affirm.

On September 15, 1992, Robert's ex-wife, Sandra Lee Madison (Sandra), was awarded sole custody of the couple's two children--Christopher and Michael. On June 17, 1997, Robert made a motion to modify custody and support. Prior to a hearing on the motion, the parties agreed that, during Christopher's senior year, he would reside with Robert. No issue was raised

concerning Michael's custody. The domestic relations commissioner held a child-support hearing and made recommendations to the circuit court. The circuit court, thereafter, determined there to be a combined monthly parental income of \$4,202.99. Of this amount, 78% was imputed to Robert, and 22% was imputed to Sandra. Robert does not dispute these findings. He does, however, challenge the circuit court's application of the child-support guidelines (guidelines), found in Ky. Rev. Stat. (KRS) 403.212, to set the respective child support owed by each party. In his judgment, the circuit judge states as follows:

Since each party has one child residing with them, the Court calculated child support as if there were only one child, with each parent exercising custodial control. Doing so resulted in a finding that Petitioner would have a monthly obligation of \$129.00 and Respondent would have a monthly obligation of \$464.00. When these figures are offset, it leaves a monthly obligation for Respondent in the amount of \$355.00, or \$77.37 per week

Robert claims that the circuit court should have calculated the parties' respective obligations based on the joint obligation set forth in the guidelines for "two children" and a combined monthly income of \$4,202.99. In other words, he wanted the economy of scale that occurs when two children live in the same household. To support his position, Robert relies on the language found in KRS 403.212(4), which reads in relevant part as follows:

The child support obligation shall be the appropriate amount for the number of children

in the table for whom the parents share a joint legal responsibility

We perceive the guidelines to contemplate physical possession or primary custody of the parties' children to be with one parent. Such are not the facts here. One child was to reside with Sandra and one child was to reside with Robert. As the guidelines do not specifically provide for this type of arrangement, it was proper for the circuit court to fashion an appropriate order. See Brown v. Brown, Ky. App., 952 S.W.2d 707 (1997), and KRS 403.211(2). We, therefore, discern no error on this issue. We further believe the circuit court made sufficient written findings to support any deviation from the guidelines. KRS 403.211(2) and (3).

Robert next complains that the circuit court erred by entering a wage assignment to have child-support payments deducted from his paycheck. We disagree. When an order or decree provides child support, the imposition of a wage assignment is statutorily required. KRS 403.215. The circuit court, however, is given discretion to depart from said requirement upon a showing of good cause. KRS 403.215. We perceive no abuse of discretion in the circuit court's decision to impose a wage assignment in the case at hand. Cf. Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982).

Robert further maintains that the circuit court erred in finding his child-support payments to be in arrears. To the contrary, he claims that he overpaid child support by \$108.58. The circuit court explains its calculations as follows:

[Robert] had been making an overpayment in the amount of \$75.30 every two weeks for a period of approximately four weeks. Thereafter, the overpayment was reduced to \$58.38 through the last payment he made. The resulting total overpayment to date is \$208.98. In light of this overpayment, . . . [Robert] unilaterally determined that child support would not be paid. In so doing, and as a result of the calculation of child support by this Court, [Robert] . . . is now in arrears in the amount of \$100.40.

We perceive no error in the above calculations or on the part of the circuit court on this issue. Cf. id.

For the foregoing reasons, the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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