

RENDERED: January 21, 2000; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002889-MR

DOUGLAS WAYNE TREVINO

APPELLANT

v. APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 96-CI-000076

CASSANDRA KAY KNIGHT TREVINO

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, HUDDLESTON AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Douglas Wayne Trevino appeals from the judgment of the Anderson Circuit Court, entered on October 24, 1997, awarding Cassandra Kay Knight Trevino \$500.00 per month for child support based on Douglas' lump-sum settlement of a workers' compensation claim. Having concluded that the trial court did not abuse its discretion in determining the amount of child support based on allocating the workers' compensation award as income for one calendar year as opposed to income over 425 weeks, we affirm.

Douglas and Cassandra, the parents of two minor children, were divorced by decree entered on January 17, 1997. An agreed order modifying an April 29, 1996 property settlement agreement was entered on that date as well. The order gave Cassandra the right to claim additional child support based on any settlement in Douglas' then-pending workers' compensation claim or any claim against any third party for injuries he had received in an automobile accident. The order stated that Cassandra had the right to claim child support from September 17, 1996, through the date of any settlement.

Douglas received one workers' compensation award in March 1997, and another one in June 1997, for a total award of \$21,076.68. On July 3, 1997, Cassandra filed a motion asking the trial court to calculate the amount of child support that was owed based on the total lump-sum settlement of Douglas' claims. After a hearing before the Domestic Relations Commissioner, the trial court accepted the Commissioner's recommendations and ruled that the settlement amount would be considered as income received in the one-year period from September 17, 1996, through September 17, 1997. After applying the child support guidelines in Kentucky Revised Statutes (KRS) 403.212 to that income, the trial court ordered Douglas to pay child support at the rate of \$500.00 per month from September 17, 1996, through September 17, 1997. This appeal followed.

Douglas claims that it was error for the trial court to consider the lump-sum award as income in one twelve-month period

because Kentucky law does not specifically provide for such. Even though he received the settlement in a lump-sum, Douglas argues that the award should have been considered income over a 425-week period because that is typically the period over which workers' compensation settlements are paid. Douglas claims that there is no statutory or common law authority for the trial court to use the lump-sum benefit as income during a one-year period.

KRS 403.212(2) provides the statutory basis for what is to be included as income for purposes of calculating child support; and we believe the trial court properly considered the workers' compensation settlement as coming within this statute. This Court has stated that "[w]here unusual circumstances exist which are not specifically provided for in the statute, the Legislature has provided that trial courts should exercise their discretion to achieve just results."¹ Furthermore, Kentucky trial courts have been given broad discretion in considering a parent's assets and setting correspondingly appropriate child support.²

In the case sub judice, the agreed order of January 17, 1997, stated that the parties agreed that child support would be recalculated once Douglas received a settlement. The trial court recalculated Douglas' child support obligation based on the settlement being income for a one-year period. "We believe that KRS 403.212(2) (a) must be read as creating a presumption that

¹Keplinger v. Keplinger, Ky.App., 839 S.W.2d 566, 568 (1992).

²Redmon v. Redmon, Ky.App., 823 S.W.2d 463 (1992).

future income will be on a par with the worker's most recent experience."³ Douglas' most recent experience was that he received a lump-sum payment within one year and not over a 425-week period.

Furthermore, "[t]he party who wants the trial court to use a different income level in applying the child support guidelines bears the burden of presenting evidence which would support the requested finding."⁴ Douglas has not presented any legal or factual basis for his requested finding. Nor, has Douglas presented any proof as to any difference it would make to him or the beneficiary, for better or worse, if the settlement was viewed as income over a 425-week period.⁵

Douglas also claims that the trial court erred in using the total amount of the settlement as a basis for Douglas' income without first subtracting the 20% attorneys' fee paid out of the settlement. However, this issue was not presented to the trial court and has not been properly preserved for our review.

³Keplinger, supra at 569.

⁴Id.

⁵According to Douglas' pleadings, if he paid his child support based on receiving his settlement over 425 weeks, then he would pay approximately \$9900.00 total child support over those weeks. According to our calculation, this amount, discounted at 6% APR, as was the lump-sum settlement in the case sub judice, would have a present value of approximately \$6,000.00. Based on the current court order, Douglas is paying \$500.00 per month for twelve months which totals \$6,000.00 over a one-year period. Thus, since Douglas would pay approximately the same amount either way, we cannot say that the trial court abused its discretion in choosing the one-year approach.

Finding no error, we affirm the judgment of the
Anderson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James F. Gibbs, Jr.
Lawrenceburg, KY

BRIEF FOR APPELLEE:

G. Edward Henry, II
Lexington, KY