

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001554-MR

TAMARA LYNN SWEENEY MILES

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 93-CI-01003

ROBERT EUGENE SWEENEY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE, KNOPF AND McANULTY, JUDGES.

McANULTY, JUDGE: This is an appeal of an order of the Boyd Circuit Court which denied the motion of Tamara Lynn Sweeney Miles (hereinafter appellant) to reduce her child support obligation. The child support obligation in this case was entered on March 10, 1998, in the amount of \$406.37 per month. On April 20, 1998, appellant filed a motion to reduce child support on the ground that her income is less than the amount the trial court considered in setting child support. We affirm the judgment of the circuit court.

Appellant and Robert Eugene Sweeney (hereinafter appellee) were divorced by a decree of dissolution of marriage

entered on May 24, 1994. The parties were given joint custody of their minor child, and appellee was awarded physical custody. At that time, questions of child support were reserved.

On January 23, 1998, appellee filed a motion for child support. Appellee stated in his motion that he did not know appellant's salary but, based on comments that she made to him, appellee believed that she was making approximately \$35,000 per year. Appellee thereby estimated her child support obligation at \$406.37 per month based on the child support worksheet. The action was referred to a domestic relations commissioner for hearing and recommendation. The hearing was set for February 23, 1998. Appellee was present and testified. Appellant did not appear and she was not represented by counsel at the hearing. Following the hearing, the domestic relations commissioner recommended that appellant be required to pay \$406.37 per month in child support and 65.3% of medical, dental and ocular expenses not covered by appellee's insurance.

Within ten days, appellant filed exceptions to the report of the domestic relations commissioner. Appellant argued that she earned only \$14,748.11 in 1997, and attached a Form W-2 wage and tax statement. From this amount, she estimated that her child support payment should be only \$207 per month. In response, appellee argued that consideration of the W-2 form was not conclusive as it could have been one of several she received, and that appellant had a chance to be heard and cross-examined on these matters at the hearing but did not appear. He asserted that the child support obligation should not be altered. On

March 10, 1998, the trial court entered an order overruling the exceptions and adopting the report of the commissioner.

On April 20, 1998, appellant filed a motion to reduce child support, attaching the aforementioned W-2 Form from 1997. The trial court ordered that appellant file with the court a copy of her 1997 income tax return. On May 5, 1998, appellant filed a copy of a TeleFile Tax Record (used when taxpayers file tax returns electronically) which listed appellant's and her husband's adjusted gross income as \$33,564 for 1997. Appellee filed a response in which he argued that appellant had not complied with the order of the court in that the TeleFile Tax Record was unsigned by appellant and she provided no verification that she had filed that particular return. On May 21, 1998, the trial court overruled appellant's motion to reduce child support.

Appellant essentially argues in this appeal that the trial court erred in the first instance in entering the child support decree in the present amount. We note, however, that appellant did not appeal the initial order establishing her child support obligation. Not having taken an appeal, the issues therein are unpreserved and appellant is precluded from arguing them in this appeal.

In the case sub judice, we are concerned only with whether the trial court erred in denying the motion for reduction of child support. The standard for modification of child support is set forth in KRS 403.213(1):

The provisions of any decree respecting child support may be modified ... only upon a showing of a material change in circumstances that is substantial and continuing.

We conclude that the trial court ruled correctly, since appellant failed to meet her burden of proof with respect to the above standard.

We affirm the order of Boyd Circuit Court which denied the motion to reduce child support.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Lyon, Jr.
Greenup, Kentucky

BRIEF FOR APPELLEE:

Charles D. Oppenheimer
Ashland, Kentucky