

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-001492-MR

BETH CROSS TRIPP

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE WILLIAM T. CAIN, JUDGE  
CIVIL ACTION NO. 98-CI-00268

KEVIN D. CROSS

APPELLEE

### OPINION

AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

\*\* \*\* \* \* \*

BEFORE: HUDDLESTON, KNOFF and MILLER, Judges.

HUDDLESTON, Judge: Beth Cross Tripp appeals from a child custody order calculating the child support obligation of Kevin D. Cross and setting visitation pick-up arrangements.

The parties were divorced in Hamilton County, Ohio, on June 18, 1986. At that time, Kevin was awarded custody of their two children, Amanda Kristen Cross, born March 10, 1982, and Brandon Kyle Cross, born November 1, 1984. In 1992 or 1993, Beth moved to Pulaski County, Kentucky. On February 1, 1994, the parties entered into an agreement whereby Kevin granted temporary custody of Amanda to Beth. On August 18, 1997, the parties entered

into a similar agreement with respect to Brandon. In both instances, the agreement was voluntary, and the change of custody was undertaken in the best interest of the child.

On March 19, 1998, Beth filed a motion in Pulaski Circuit Court requesting custody of the children. The petition did not specify whether sole or joint custody was sought, but, rather, sought only "permanent" custody. Beth, Kevin and Beth's current husband were deposed, and briefs were filed by both sides. Kevin did not oppose the awarding of permanent custody of the children to Beth.

On January 4, 1999, the court entered an order awarding Beth permanent custody of the children. The order also awarded Beth child support and required that visitation exchanges occur at Lexington, Kentucky, the midway point between Kevin's residence in Norwood, Ohio, and Beth's residence in Somerset, Kentucky. Beth filed a motion to alter, amend or vacate, and on February 16, 1999, the court, noting that there were errors in its original calculation, entered an order requiring the parties to file revised child support calculations pursuant to instructions as set forth in the order. On April 13, 1999, the court entered an order accepting Kevin's calculation of child support, which included a credit in his favor for Social Security benefits paid to Beth on behalf of the children due to her disabled condition. This appeal followed.

First, Beth contends that the court erred by giving Kevin a credit on his child support obligation for Social Security payments received by Beth on behalf of the children. Beth suffers from agoraphobia. According to Beth,

agoraphobia is an incapacitating fear of open spaces. Agoraphobia is a disorder characterized by avoidance of crowds, and open agoraphobia is a disorder characterized by avoidance of crowds, and open and public places, particularly if escape or assistance is not immediately available. It may occur alone, or may accompany other types of panic disorder. This phobia causes people to restrict their activities to a smaller and smaller area, finally leading to the inability to leave home without suffering a panic attack.

As a result of her disability, Beth receives Social Security payments of \$732.00 for herself, and \$198.00 for each child (\$396.00 total for the children).

The April 13, 1999, order set Kevin's child support obligation at \$412.00 per month. The calculation was based upon an adjusted monthly income of \$547.00 for Beth,<sup>1</sup> and an adjusted monthly income of \$3,342.00 for Kevin. Based upon the total combined monthly parental income of \$3,889.40, the child support guideline schedules produced a base child support obligation of \$808.00.<sup>2</sup> Kevin's income represented 86% of the percentage of combined parental income, and, under normal circumstances, the worksheet would produce a child support obligation of \$646.40;<sup>3</sup>

---

<sup>1</sup> \$732.00 in monthly Social Security disability income, less \$185.00 for child health insurance; the \$396.00 Social Security payment Beth receives on behalf of the children was not included in Beth's income.

<sup>2</sup> See Ky. Rev. Stat. (KRS) 403.212.

<sup>3</sup> \$808.00 X 86%.

however, at this stage of the calculation, the trial court deviated from the normal process. To arrive at Kevin's final child support obligation, the trial court deducted the children's Social Security benefit of \$396.00 from the base support obligation of \$808.00. This produced a monthly child support obligation of \$412.00.<sup>4</sup>

"Kentucky follows the prevailing view of most jurisdictions in the United States in that government benefits in the form of social security for child support may be credited against the parent's liability under the decree or agreement of settlement."<sup>5</sup> "Social Security payments may be considered by the trial court in determining whether to modify a support obligation."<sup>6</sup> While this was not a modification case, but was, rather, a case setting the initial child support obligation, it stands to reason that, in the appropriate case, Social Security payments may likewise be considered in the setting of initial child support.

In light of the cases cited above, Beth concedes that Social Security payments may be considered by a trial court in calculating a noncustodial parent's child support obligation. She argues, however, that Hamilton, Board and Miller are distinguishable because, in each of those cases, it was the Social Security benefit entitlement emanating from the noncustodial parent which generated the benefit payment and not, as here, an

---

<sup>4</sup> The normal step of splitting the combined parental income into percentages was ignored.

<sup>5</sup> Board v. Board, Ky., 690 S.W.2d 380, 381 (1985).

<sup>6</sup> Hamilton v. Hamilton, Ky. App., 598 S.W.2d 767, 768 (1980); See also Miller v. Miller, Ky. App., 929 S.W.2d 202 (1996).

entitlement emanating from the custodial parent. We agree with Beth.

In Hamilton, the parties had a separation agreement that provided that the mother would receive child support of \$141.00 per month. The father died and the child then became entitled to a Social Security benefit of \$341.00 per month. The father's estate moved to terminate the child support obligation, and Hamilton approved the termination of the support in light of the Social Security benefit. In Board, the facts were substantially similar to the Hamilton case, except that in Board, the child support obligation was not exceeded by the Social Security benefit, so rather than a termination of the benefit, there was merely a credit against the obligation. In Miller, the father, the noncustodian, did not die, but rather became disabled. As a result of his disability, his child became entitled to a Social Security benefit. Miller held that the father was entitled to have his child support obligation credited by the amount of the Social Security payment paid directly to the child.

"The prevailing view of most jurisdictions in the United States is that government benefits for children for support may be credited against the parent's liability under the decree."<sup>7</sup> However, while "Social Security payments may be considered by the trial court . . . [the child support] obligation is not necessarily satisfied in every case as to the amount of benefits received.

---

<sup>7</sup> Hamilton , supra, n. 6, at 768 (citing Bruce I. McDaniel, Annotations, Right to Credit on Child Support Payments for Social Security or other Government Dependency Payments Made for Benefit of Child, 77 A.L.R.3d 1315 (1977)).

Each situation must be considered in light of the individual circumstances."<sup>8</sup>

In light of the individual circumstances of this case, we are not persuaded that Kevin is entitled to a credit for the Social Security benefits paid to the parties' children because the Social Security benefit is paid because of Beth's disability. Kevin did not have anything to do with the creation of the children's entitlement to their \$396.00 Social Security benefit. "Social Security disability payments represent money which an employee has earned during his employment and also that which his employer has paid for his benefit into a common trust fund under the Social Security Act. 42 U.S.C. § 301 et seq. These payments are for the purpose of replacing income lost because of the employee's inability to work upon becoming disabled. Thus, these payments substitute as income."<sup>9</sup>

The \$396.00 in Social Security benefits paid to the children are as a result of Beth's labor, earnings and disability. The payments on behalf of the children are intended to substitute for her income. Kevin is a stranger to the Social Security benefit, and, we conclude, is not entitled to a credit in the calculation of his child support obligation.

We reverse the trial court's child support award and remand for a calculation of child support which excludes a credit for Kevin. On remand, the calculation should be made in accordance

---

<sup>8</sup> Id.

<sup>9</sup> Miller, supra, n. 6, at 204 (quoting Horton v. Horton, 219 Ga. 177, 132 S.E.2D 200, 201 (1963))

with the child support guidelines.<sup>10</sup> In so doing, the \$396.00 Social Security payment for the children shall be included in Beth's monthly gross income.<sup>11</sup>

Next, Beth contends that the trial court erred in requiring that the visitation exchange be in Lexington, Kentucky because, due to her agoraphobia, she is unable to drive the children to Lexington.

Establishing responsibility for the transportation of the children for visitation is a matter committed to the trial court's discretion.<sup>12</sup> The record discloses that the children's stepfather, John Tripp, has on numerous occasions transported the children during visitation exchanges and that the children's maternal grandparents reside in the Somerset area. We are not persuaded that the trial court abused its discretion in requiring Beth to assume a share of the responsibility for transporting the children to visitation exchanges.

For the foregoing reasons, the order is affirmed in part and reversed in part and this case is remanded to Pulaski Circuit Court for a recalculation of child support obligation consistent with this opinion.

ALL CONCUR.

---

<sup>10</sup> See KRS 403.212.

<sup>11</sup> See Miller, supra, n. 6.

<sup>12</sup> Klopp v. Klopp, Ky. App., 763 S.W.2d 665 (1988).

BRIEF FOR APPELLANT:

Bruce W. Singleton  
Somerset, Kentucky

BRIEF FOR APPELLEE:

Benny E. Ham  
Somerset, Kentucky