

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-003146-MR

DALE MOORE

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE RODERICK MESSER, JUDGE  
CIVIL ACTION NO. 96-CI-00505

WANDA (MOORE) SNIDER

APPELLEE

### OPINION

### VACATING AND REMANDING

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BEFORE: DYCHE, HUDDLESTON and McANULTY, Judges.

HUDDLESTON, Judge: Dale Moore appeals from an order denying his motion for a reduction in child support payments. Following the dissolution of his marriage to Wanda (Moore) Snider, by decree entered on October 22, 1996, Moore was ordered to pay \$847.47 per month in child support for Moore's three children, an amount consistent with Kentucky child support guidelines.<sup>1</sup> At the time, Moore worked at Begley Lumber Yard where he earned a monthly income of \$3,625.00.

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<sup>1</sup> Ky. Rev. Stat. (KRS) 403.212 (6).

Moore claims that while employed at Begley Lumber Yard he was injured and, since that injury in July 1999, has been permanently disabled. Moore is no longer employed at the lumber yard and currently receives no income, although he does have a claim pending for Social Security disability insurance benefits.

On July 2, 1999, Moore filed a motion and affidavit seeking a reduction in child support payments due to the lack of income that resulted from his injury. As evidence of his alleged disability, Moore submitted the records of several medical experts who had examined him and supported his claim of disability.

On December 8, 1999, the circuit court denied Moore's motion without making any findings of fact or explaining the legal basis for its decision. Moore claims on appeal that the court had no legal basis for its decision and that its failure to make findings of fact makes it impossible for this Court to evaluate the order. We agree that additional findings of fact are necessary before we can properly review the order denying Moore's motion for a reduction in child support payments.

Because the appellee, Wanda (Moore) Snider, failed to file a brief in this case, we have three options. We can "(i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if [the] appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case."<sup>2</sup> We choose to accept Moore's statement of the facts and issues as correct.

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<sup>2</sup> Ky. R. Civ. Proc. (CR) 76.12(8)(c).

Moore makes a strong prima facie case for a reduction in child support payments. He claims that his disability makes it impossible for him to work and produce income. Four well-qualified medical experts support his assertion of disability. Accepting Moore's claims of disability as true, Moore's inability to earn an income due to his disability could certainly lead to a 15% change in circumstances that is rebuttably presumed to be a material change necessary to modify a child support order.<sup>3</sup> However, cases such as this are fact-sensitive by nature, and there may be additional facts that rebut this statutory presumption. Without specific findings of fact from the circuit court, this Court is unable to review the order denying Moore's motion for a decrease in child support payments. Therefore, we vacate the order denying Moore's motion for reduction of child support payments and remand this case to Laurel Circuit Court with directions to make specific findings of fact and reach conclusions of law within ninety days of the finality of this opinion. Because of the lapse in time from the commencement of Moore's action until now, we authorize the circuit court to reopen the case and receive additional evidence if necessary.

ALL CONCUR.

BRIEF FOR APPELLANT

Edmond Collett  
John Hunt Morgan  
Hyden, Kentucky

BRIEF FOR APPELLEE:

NO BRIEF FILED FOR APPELLEE

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<sup>3</sup> Ky. Rev. Stat. (KRS) 403.213 (1)-(2).

