

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000150-MR

ROSANNE COLEMAN

APPELLANT

v. APPEAL FROM PIKE FAMILY COURT
(NOW FLOYD CIRCUIT COURT)
HONORABLE LARRY E. THOMPSON, JUDGE
CIVIL ACTION NO. 99-CI-00576

LORENZO D. NICHOLS

APPELLEE

OPINION

VACATING AND REMANDING

** ** * * *

BEFORE: GUIDUGLI, HUDDLESTON and JOHNSON, Judges.

HUDDLESTON, Judge: Rosanne Coleman appeals an order of the Pike Family Court which increased the child support obligation of her ex-spouse, Lorenzo D. Nichols, from \$1,500.00 per month to \$1,809.00 per month.¹ She argues that the circuit court abused its discretion in failing to consider the statutorily mandated factors for modification of a child support order, and specifically that

¹ Sometime after the instant appeal was taken, the case was transferred from Pike Family Court to Floyd Circuit Court. The record does not reveal the reason for this transfer, but it is not being contested.

the circuit court's failure to find Nichols voluntarily underemployed was an abuse of discretion.

The parties' marriage was dissolved by Pike Family Court on September 21, 2000. Incorporated in the court's decree was an award of \$1,500.00 per month in child support to be paid by Nichols to Coleman. The only factual findings in the decree² were that the parties were married on June 16, 1990, their marriage was dissolved by order entered on February 10, 2000, the parties had amicably settled "all matters relating to their marriage including the division of all property, both real and personal," that such agreement was not unconscionable, and that Nichols had a gross monthly income of \$15,000.00 while Coleman had a gross monthly income of \$10,000.00. The court did not make any findings regarding the reasonable needs of the children.

Pursuant to a motion filed by Coleman and following a hearing, the court, on December 20, 2000, modified Nichols's support obligation. The court's discussion of its reasons for modification are contained in the following paragraph:

IT IS HEREBY ORDERED AND ADJUDGED that the RESPONDENT [Nichols] owes a duty of support to his minor children [] as outlined in prior orders of this Court. That effective September 1, 2000, child support is increased to \$1,809.00 per month.

² That is, the only factual findings relevant for present purposes, although the court made some findings with respect to division of debts.

Coleman's primary argument on appeal is that the family court abused its discretion in setting Nichols's increased child support obligation at \$1,809.00 per month. In cases such as this, where the combined incomes of the parents exceed the child support guideline tables codified at Kentucky Revised Statutes (KRS) 403.212, our function on review, as explained in Downing v. Downing,³ is as follows:

The child support guidelines set out in KRS 403.212 serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines only upon making a specific finding that application of the guidelines would be unjust or inappropriate.^[4] However, KRS 403.211(3)(e) specifically designates that "combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines" is a valid basis for deviating from the child support table. Furthermore, the trial court may use its judicial discretion to determine child support in circumstances where combined adjusted parental gross income exceeds the uppermost level of the guidelines table.^[5] The child support table ends at the \$15,000.00 per month level, so deviation from the guidelines is clearly appropriate in this case.

³ Ky. App., 45 S.W.3d 449, 454 (2001).

⁴ KRS 403.211(2).

⁵ KRS 403.212(5).

Kentucky trial courts have been given broad discretion in considering a parent's assets and setting correspondingly appropriate child support.^[6] A reviewing court should defer to the lower court's discretion in child support matters whenever possible.^[7] As long as the trial court's discretion comports with the guidelines, or any deviation is adequately justified in writing, this Court will not disturb the trial court's ruling in this regard.^[8] However, a trial court's discretion is not unlimited. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, or unsupported by sound legal principles.^[9]

Review of a circuit (or family) court's order modifying a child support obligation must begin with the court's factual findings to determine whether they are clearly erroneous. We must then look to the factors the court considered in reaching its decision to establish whether the court properly exercised its discretion.

In this case, the inadequate nature of the family court's order precludes us from undertaking a meaningful review. We are

⁶ Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992).

⁷ See Peqler v. Peqler, Ky. App., 895 S.W.2d 580 (1995).

⁸ Commonwealth v. Marshall, Ky. App., 15 S.W.3d 396, 40001 (2000).

⁹ Goodyear Tire and Rubber Co. v. Thompson, Ky. 11 S.W.3d 575, 581 (2000); Commonwealth v. English, Ky., 993 S.W.2d 941, 945 (1999).

presented with no factual findings and no discussion of the factors the court considered in reaching its decision. Accordingly, we vacate the order of December 20, 2000, and remand this case to Floyd Circuit Court for further proceedings. On remand, the court must make sufficient factual findings on which to base its decision and provide a discussion of the factors considered in reaching its award should it deem a departure from the statutory guidelines appropriate, so that its subsequent order comports with the requirements of Downing.

With respect to Nichols's second argument, we note that a party's income is not by itself a dispositive factor in setting child support. In fixing the amount of child support, the following language from Downing must be considered:

An increase in child support above the child's reasonable needs primarily accrues to the benefit of the custodial parent rather than the children. In addition, this approach effectively transfers most of the discretionary spending on children to the custodial parent. Furthermore, a strict reliance on linear extrapolation could result in vast increases in child support unwarranted by the children's actual needs. Beyond a certain point, additional child support serves no purpose but to provide extravagance and an unwarranted transfer of wealth. While to some degree children have a right to share in each parent's standard of living, child support must be set in an amount which is reasonably and rationally related to the realistic needs of the

children. This is sometimes referred to as the "Three Pony Rule." That is, no child, no matter how wealthy the parents, needs to be provided with more than three ponies.¹⁰

The order fixing child support is vacated and this case is remanded to Floyd Circuit Court for further proceedings consistent with this opinion.

JOHNSON, Judge, CONCURS.

GUIDUGLI, Judge, DISSENTS.

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¹⁰ Downing, supra, n. 3, at 455.