

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002293-MR

CHARLES S. VOSE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 99-CI-03882

LESLIE P. VOSE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND McANULTY, JUDGES; AND JOHN WOODS POTTER,
SPECIAL JUDGE.¹

McANULTY, JUDGE: Charles S. Vose (Charles) appeals from an order of the Fayette Circuit Court, entered on September 20, 2001, which granted Leslie P. Vose (Leslie) child support in the amount of \$1,798.34 per month for their daughters. We affirm.

Charles and Leslie were married on June 21, 1986. Two children, Julie Steele Vose and Lucy Steward Vose, were born of this marriage. On April 7, 1998, Charles, a dentist, commenced employment with King Faisal Specialist Hospital in the Kingdom of

¹ Senior Status Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) (b) of the Kentucky Constitution.

Saudi Arabia. In November 1999, while Charles was working in Saudi Arabia, Leslie, an attorney, filed a petition for legal separation with the Fayette Circuit Court.

After the petition for legal separation was filed, the parties engaged in a mediation session in Louisville, Kentucky. During mediation, Charles and Leslie reached a separation agreement. Pursuant to their agreement, Charles agreed to pay Leslie monthly child support of \$2,500.00 until March 2000, after which time Charles' child support obligation would drop to \$1,000.00 per month. The separation agreement further provided that future child obligations would be made by agreement between the parties. Charles and Leslie also agreed to joint custody of their children and divided their marital assets, debts and property. On December 29, 1999, after the parties agreed to convert the separation action to a dissolution action, the trial court granted a dissolution decree and incorporated the separation agreement by reference.

In June 2000, Charles and Leslie both filed numerous motions concerning this matter. On June 5, 2000, Charles filed a motion to vacate the December 1999 dissolution decree claiming that the 60 day waiting period required by Kentucky Revised Statutes (KRS) 403.140(2) had not elapsed because the petition for separation was filed on November 4, 1999. Further, Charles requested the trial court enter a new decree of dissolution, set this matter for an uncontested trial date and enter an order approving the separation agreement. Four months later, due to the parties' inability to reach an agreement concerning Charles'

future child support obligations, Leslie filed a motion asking the trial court to set child support. In response, Charles filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 asking the trial court to set aside the separation agreement. In support of his CR 60.02 motion, Charles tendered an affidavit stating that Leslie falsely claimed a margin account debt of \$129,000.00 so that she could bolster her share of the marital equity, misrepresented the waiting period requirements so that Leslie could file her 1999 federal taxes under the single, head of household status, and that Leslie misrepresented the mediation process as non-binding when, in fact, the session was binding upon the parties.

The trial court conducted an evidentiary hearing on December 21, 2000, concerning the issues raised in the filed motions. During this hearing, Charles testified that he was aware of the assets and debts of the parties, including the \$129,000.00 margin account debt Leslie claimed was from her mother's estate. Moreover, Charles presented no documentary proof supporting his allegations of fraud against Leslie. Finding no evidence of fraud, the trial court denied Charles' motion to set aside the separation agreement. At this time, the trial court also entered a supplemental decree dissolving the marriage as of December 29, 1999.

On July 19, 2001, the trial court held another evidentiary hearing concerning the issue of child support. During this hearing, Leslie testified concerning her income, the necessary expenses of the couple's daughters, provided an

itemized list of the children's normal expenses, and provided the trial court with copies of her 2000 federal income tax returns. Charles did not contest the validity of the monthly expenses Leslie claimed on behalf of the children, nor did he question Leslie concerning the standard of living enjoyed by the children. Furthermore, during his testimony at this hearing, Charles acknowledged that he refused to appear at a discovery deposition scheduled to obtain his financial information, including his employment contract with the Saudi Arabian hospital and his 2000 federal income tax records. Charles also failed to provide these documents at the hearing. However, Charles did testify that he earned approximately \$8,200.00 per month in salary and received a stipend of approximately \$2,500.00 per month to compensate for living away from his family. Further, Charles informed the court that his living expenses were lower in Saudi Arabia because he lived rent free in hospital-owned living quarters and that he received tax advantages from the United States government because of his employment in the Middle East. Saudi Arabia, according to Charles, did not withhold taxes from his salary.

Based upon the testimony and evidence presented to it, the trial court found that Leslie's income was \$9,859.99 per month. The trial court also found that Leslie paid \$193.00 per month in insurance, \$723.41 per month in child care and \$5,315.00 in necessary expenses for the children. Further, the trial court attributed Charles with income in the amount of \$13,000.00 per month, with Charles' monthly salary, stipend, tax advantages and relatively low living expenses included in that figure. The

trial court also determined that, since the combined gross monthly income of the parties exceeded the limits found in the child support guidelines, the awarded child support amount should be extrapolated from the guidelines, using a growth increment of 5%. Therefore, the trial court ordered Charles to pay \$1,798.34 in child support, effective October 1, 2000.

On July 30, 2001, Charles filed a motion to alter, amend, vacate and/or reconsider the child support ruling. In support of his motion, Charles submitted unsigned tax returns marked "Do Not File" and a child support worksheet showing his obligation to be \$1,399.00. The trial court refused to revisit the ruling because no evidence was presented that the submitted tax returns were actually filed. This appeal followed.

On appeal, Charles brings forward three assertions of error for our review. First, Charles argues that the Fayette Circuit Court erred in its calculation of his child support obligation. We disagree.

Kentucky trial courts are given broad discretion in considering a parent's assets and setting the appropriate amount of child support. Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992). While KRS 403.212 provides the trial courts with certain guidelines and limitations concerning the establishment of child support, the statute empowers the trial courts to exercise its discretion to achieve just results. Keplinger v. Keplinger, Ky. App., 839 S.W.2d 566, 568 (1992). This legislative scheme cannot address every possible situation that can arise in divorced parents supporting their children. However, KRS 403.212 provides

trial courts with sufficient flexibility to fashion appropriate orders. Downey v. Rogers, Ky. App., 847 S.W.2d 63, 64 (1993).

The child support guidelines set out in KRS 403.212 serve as a rebuttable presumption for the establishment of the amount of child support. A trial court may deviate from these guidelines only upon making a specific finding that applying the guidelines would create unjust or inappropriate results. KRS 403.211(2). Specifically, KRS 403.212(5) provides that a trial court may deviate from the guidelines when the combined monthly adjusted parental gross income exceeds the uppermost levels of the guidelines table. KRS 403.212(5); Downing v. Downing, Ky. App., 45 S.W.3d 449, 454 (2001). In reviewing a trial court's order setting a parent's child support obligation, the reviewing court should defer to the lower court's discretion whenever possible. See Pegler v. Pegler, Ky. App., 895 S.W.2d 580 (1995). As long as the trial court's discretion comports with the guidelines, or any deviation is adequately justified in writing, this Court is not empowered to disturb the trial court's ruling. Commonwealth ex rel. Marshall v. Marshall, Ky. App., 15 S.W.3d 396, 400-01 (2000). However, the trial court's discretion is not unlimited, as we must ensure that the lower court's exercise of its discretion was not arbitrary, unreasonable, unfair, or unsupported by sound legal principles. 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).

In support of his assertion that the trial court incorrectly calculated his child support obligation, Charles

argues that the trial court failed to accurately establish the standard of living or actual needs of the children. In reviewing a trial court's assessment of the actual needs of children when setting an amount of a parent's child support obligation, a panel of this Court stated:

In determining the reasonable needs of the children, the trial court should also take into consideration the standard of living which the children enjoyed during and after the marriage. The fundamental premise of the income shares model is that a child's standard of living should be altered as little as possible by the dissolution of the family. Consequently, the concept of "reasonable needs" is flexible and may vary depending upon the standard of living to which they have become accustomed.

Any assessment of the child's reasonable needs should also be based upon the parents' financial ability to meet those needs. Factors which should be considered when setting child support include the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating the children. The focus of this inquiry does not concern the lifestyle which the parent could afford to provide the child, but rather it is the standard of living which satisfies the child's reasonable and realistic needs under the circumstances. Thus, while a trial court may take a parent's additional resources into account, a large income does not require a noncustodial parent to support a lifestyle for his children of which he does not approve.

Downing, 45 S.W.3d at 456-57.

In this matter before us, Leslie introduced documentation concerning Julie and Lucy's monthly expenses. This list of monthly expenses includes not only the basic necessities of life, such as food, water, heat, electricity and medical expenses, but also expenses concerning the childrens' education,

school-related functions, dance and piano lessons and a family pet. All of the items listed and introduced as monthly expenses constitute the reasonable needs of the parties' children. These expenses, while they may appear to be excessive, are not truly a mere "wish list" of activities when the standard of living enjoyed by the children during this marriage is considered. Here, while married, Leslie and Charles earned more than \$200,000.00 annually as successful professionals. Moreover, Leslie testified that the standard of living for the children has changed very little since the petition for separation was filed. At the hearing, Charles did not question Leslie concerning the expenses she has incurred on behalf of the children. Even more telling is Charles' failure to object to the lifestyle his children currently enjoy, coupled with his failure to provide information contradicting the standard of living his children enjoy. In light of Downing, the trial court properly established Charles' child support obligation.

Charles further alleges that the trial court erred in calculating his child support obligation by improperly relying upon its mathematical extrapolation of the child support guidelines. We reject this argument.

Charles correctly points out that a trial court abuses its discretion when it relies primarily on a mathematical calculation to set child support without any other supporting findings or evidence. Downing, 45 S.W.3d 457. Despite his assertions, the trial court did not rely primarily on its mathematical calculation in establishing Charles' child support

obligation. In the matter before us, the trial court heard evidence concerning the necessary and actual needs of the children, considered the parties' income and debts, the impact of Charles' tax advantages and lower living expenses and the standards of living for all involved before calculating child support obligation. The trial court's findings were specifically noted in its September 20, 2001 order, as well as verbally disclosed to the parties after the July 19, 2001 hearing. Since evidence does exist in the record setting this child support obligation above the guidelines, we find no reason to interfere with the trial court's discretion.

For his second assertion of error, Charles argues that the trial court erred in calculating his income for child support purposes. Specifically, Charles objects to the trial court imputing \$13,000.00 per month in income to him because a portion of his income is exempt from taxation due to his employment in the Middle East. We reject this argument.

In Snow v. Snow, Ky. App., 24 S.W.3d 668, 672 (2000), a panel of this Court held that, since KRS 403.212(2)(c) recognizes that taxation and child support serve different purposes, trial courts establishing child support obligations have the discretion and the duty to scrutinize taxable income and deviate from it whenever it seems to have been manipulated for the sake of minimizing a child support obligation or when such a deviation is clearly in the best interest of the child. Here, the trial court heard testimony from Charles concerning his income. During his testimony, Charles admitted to earning approximately \$98,400.00

per year while practicing dentistry at King Faisal Hospital in Saudi Arabia. In addition to his salary, Charles receives an unrestricted stipend of approximately \$30,000.00 per year to compensate for being away from his family, two months paid vacation a year, all educational expenses reimbursed and he resides rent free in living quarters owned by the hospital. None of Charles' income is subject to taxation by the Saudi Arabian government and, according to Charles, only \$23,000.00 of his income is subject to taxation by the United States government because of his employment in the Middle East. In other words, most of Charles' income is tax free and, because his living expenses are negligible, Charles is permitted to preserve almost all of his income. Thus, pursuant to Snow, we believe that the testimony Charles provided to the trial court concerning his income enabled the trial court to impute income to Charles for child support purposes. Therefore, we reject Charles' argument because competent evidence exists in the record supporting the trial court's imputation of income to him for child support purposes.

Charles' final argument on appeal is that the trial court erred in denying his CR 60.02 motion to set aside the separation agreement. This argument is without merit.

CR 60.02 provides, in relevant part, as follows:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence.

In order to set aside a property settlement agreement in a divorce action, the movant must demonstrate that the separation agreement was procured on the basis of fraud, undue influence or overreaching. Peterson v. Peterson, Ky. App., 583 S.W.2d 707 (1979). In this matter, the record reveals no facts supporting a finding of fraud. Charles, through his own testimony, acknowledged that he was aware of the parties' assets and liabilities, that he possessed all relevant financial information referred to in negotiating the separation agreement and that he could not produce documentary evidence concerning his allegations of fraud. With this testimony in mind, we find that the trial court properly denied Charles' motion to set aside the settlement agreement.

For the aforementioned reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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