

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002026-MR

ALAN KEITH MAUSER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 95-FC-005023

MARY ELIZABETH HAND

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Alan Mauser has appealed from an order entered by the Jefferson Family Court on April 26, 2002, which denied his motion to modify his child support obligation. Having concluded that the family court correctly ruled that Mauser had failed to establish a material change in circumstances warranting a modification of his child support obligation as required by KRS¹ 403.213(1), we affirm.

¹ Kentucky Revised Statutes.

Alan Mauser and Mary Hand were married in Jefferson County, Kentucky, on August 25, 1985. The marriage produced four children, all of whom have yet to reach the age of majority. The couple separated in August 1995, and shortly thereafter Mauser filed a petition for dissolution of the marriage. On March 22, 1996, the parties entered into a settlement agreement concerning, inter alia, the custody of their children. In sum, the agreement provided for a joint custody arrangement, whereby the parties agreed to equally share time with their children.² On May 15, 1996, the Jefferson Family Court entered a decree of dissolution, which incorporated the settlement agreement.

On October 24, 1996, Hand petitioned the family court for a change of custody. Hand requested the family court to award her sole custody of the children, or in the alternative, to grant her "ultimate decision-making responsibility" with respect to the children. However, on November 25, 1997, the family court entered an order awarding Mauser sole custody of the children. The family court agreed with Hand that it was "in the best interest of the children to have the stability of a

² The settlement agreement failed to designate either party as the "primary residential custodian" of the children. Pursuant to the agreement, Mauser agreed to pay Hand \$1,500.00 per month as child support. The settlement agreement also provided for the distribution of the marital assets acquired by the parties during their marriage and it contained a maintenance provision whereby Mauser agreed to pay Hand \$2,000.00 per month for 36 months, effective April 1, 1996.

sole custodial parent to be the final decision-maker," but it determined that Mauser was more likely to "recognize the necessity and capacity of the mother to be involved in [the] decision-making [process.]"³

On February 25, 1999, Mauser filed a motion requesting the family court to, inter alia, modify his child support obligation. On March 2, 2000, the family court entered an order setting Mauser's child support obligation at \$1,281.45 per month.⁴ Mauser subsequently filed a motion to alter or amend and a motion for additional findings of fact, in which he requested the family court to, inter alia, recalculate his child support

³ Although Mauser was awarded sole custody of the children, both parties submitted a shared-time agreement, which was approved by the family court, in which they agreed to equally divide their time with the children.

⁴ The family court found that Mauser had earned an average annual income of \$203,974.34 as a result of his podiatry practice. In addition, the family court imputed \$25,000.00 per year to Hand after concluding that she was voluntarily underemployed. See KRS 403.212(2)(d). Thus, the family court found that Mauser had an average monthly income of \$16,997.84 and that Hand had an average monthly income of \$2,083.34. The highest level of combined monthly income set forth in the child support guidelines is \$15,000.00. See KRS 403.212(7). Consequently, the family court used a mathematical extrapolation of the guidelines to arrive at a monthly child support obligation of \$3,681.00. The family court then determined that Mauser was responsible for 89% of the child support obligation and that Hand was responsible for 11% of the child support obligation. The family court based its decision in this respect on the percentage that each party contributed to their combined monthly income, which totaled \$19,081.18. Using the 89% figure, the family court calculated Mauser's monthly child support obligation to be \$3,276.00. Since the parties shared time with the children on an equal basis, the family court divided this figure in half to arrive at a total monthly child support obligation for Mauser of \$1,481.45. The family court then applied a \$200.00 credit to Mauser's monthly obligation to account for the cost of certain activities that Mauser was responsible for providing, which resulted in a monthly child support obligation of \$1,284.45. The family court failed to provide any findings concerning the reasonable needs of the children or the standard of living they would have enjoyed if their parents had remained together in support of its decision to deviate from the child support table set forth in KRS 403.212(7).

obligation. On May 4, 2000, the family court entered an opinion an order setting forth additional findings.⁵

On October 23, 2001, Mauser filed a motion requesting the family court to evaluate and modify his child support obligation in light of this Court's recent holding in Downing v. Downing.⁶ Specifically, Mauser requested the family court to recalculate his child support obligation based on "the actual needs and expenses incurred for the children and the level at which each parent [] fund[ed] [those] expenses[.]" On April 26, 2002, the family court entered an order denying Mauser's motion to modify his child support obligation. The order provides, in relevant part, as follows:

The Court heard the testimony and viewed exhibits relative to the parties' incomes.⁷ Dr. Mauser earned the sum of \$202,450.00 in 2000, and he testified that his income in 2001 was consistent with prior years. Ms. Hand testified that her income for 2000 was \$10,998.00. These figures are

⁵ The family court denied Mauser's request to have his child support obligation recalculated. This Court rendered an Opinion affirming the family court's orders on November 16, 2001. See Mauser v. Hand, 2000-CA-001413-MR (non-published opinion). Mauser did not raise any issues concerning the propriety of his child support obligation in his appeal to this Court.

⁶ Ky.App., 45 S.W.3d 449 (2001). In Downing, this Court reversed a child support award in which the trial court used a mathematical extrapolation to determine the child support obligation of a non-custodial parent whose monthly income exceeded the highest amount set out in the child support guidelines. In sum, the Court was troubled by the trial court's failure to provide any findings in support of its decision concerning the reasonable needs of the children. Consequently, the Court held that "[a]t a minimum, any decision to set child support above the guidelines must be based primarily on the child's needs, as set out in specific supporting findings." Id. at 456 (citing Stringer v. Brandt, 877 P.2d 100, 102 (Or.App. 1994)).

⁷ An evidentiary hearing was held on March 8, 2002.

consistent with the findings on which the Court based the current child support order as set out in the order herein on March 2, 2000. Therefore, with regard to income, there has been no substantial or continuing change in circumstances.

[T]his Court cannot find any substantial increase in reasonable expenses incurred for the children since the last order was entered.

Therefore, Dr. Mauser's motion to modify child support is OVERRULED.

Mauser subsequently filed a motion to alter or amend and a motion for amended and additional findings of fact, which was denied by the family court on August 29, 2002. This appeal followed.

Mauser argues on appeal that: (1) the family court committed clear error and abused its discretion by denying his motion to modify his child support obligation on the ground that the children's reasonable expenses had not increased since its previous order; (2) the family court committed clear error and abused its discretion by continuing to rely upon "arbitrary arithmetic calculations to justify not evaluating and modifying [his] child support obligation[] in a manner consistent with this Court's opinion in Downing" [emphasis omitted]; (3) the family court committed clear error and abused its discretion by "condon[ing] an apparent personal subsidy [] to the appellee as part of [his] child support [obligation]" [emphasis omitted];

and (4) the family court committed clear error and abused its discretion when it "arbitrarily approved as reasonable assigning 80% of the appellee's housing related costs to the children" [emphasis omitted].

It is well-established that a trial court's decision with respect to child support is reviewed for an abuse of discretion.⁸ "The test for abuse of discretion in reviewing the trial court's decision is whether the decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles."⁹

KRS 403.213(1) sets forth the criteria for modifying a child support order. The statute provides, in relevant part, as follows:

The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing [emphasis added].

As previously discussed, the family court found that Mauser had failed to establish a substantial or continuing change in circumstances with respect to his or Hand's income.

⁸ See Downing, 45 S.W.3d at 454 (citing Redmon v. Redmon, Ky.App., 823 S.W.2d 463 (1992)).

⁹ Clary v. Clary, Ky.App., 54 S.W.3d 568, 570 (2001)(citing Goodyear Tire & Rubber Co. v. Thompson, Ky., 11 S.W.3d 575, 581 (2000); and Commonwealth v. English, Ky., 993 S.W.2d 941, 945 (1999)). See also Romstadt v. Allstate Insurance Co., 59 F.3d 608, 615 (6th Cir. 1995)("A [] court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an[] erroneous legal standard")(quoting Southward v. South Central Ready Mix Supply Corp., 7 F.3d 487, 492 (6th Cir. 1993)).

In addition, the family court further found that Mauser had failed to establish "any substantial increase in reasonable expenses incurred for the children since [its previous] order was entered." These findings are supported by substantial evidence contained in the record, and thus, we cannot say that they are clearly erroneous.¹⁰ Likewise, we are unable to conclude that the family court abused its discretion in denying Mauser's motion to modify his child support obligation as he failed to establish a material change in circumstances that would warrant a modification.¹¹

Based on the foregoing reasons, the orders of the Jefferson Family Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

B. Mark Mulloy
Louisville, Kentucky

BRIEF FOR APPELLEE:

Sally Hardin Lambert
Louisville, Kentucky

¹⁰ Kentucky Rules of Civil Procedure (CR) 52.01; Cherry v. Cherry, Ky., 634 S.W.2d 423, 425 (1982).

¹¹ Mauser claims that his motion to modify his child support obligation was not based on a material change in circumstances. In sum, he contends that his motion was based on this Court's recent holding in Downing. Regardless of how such a motion is couched, the movant is still required to establish a material change in circumstances that is substantial and continuing prior to obtaining a modification of his child support obligation. This he failed to do.