RENDERED: JANUARY 14, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000186-MR

KIMBERLY K. SHROYER — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 95-FC-002110

ROBERT DEAN GRIMM, II — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; BARBER, JUDGE; MILLER, SENIOR JUDGE.[1]

MILLER, SENIOR JUDGE: Appellant Kimberly K. Shroyer (Shroyer) appeals from Orders of the Jefferson Family Court entered November 14, 2003, and December 30, 2003, reducing the child support obligation of Appellee Robert Dean Grimm, II (Grimm). We affirm.

The questions presented are the family court's application of the evidence and the law in the assessment of

[1] Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

child support. We review questions of fact under the clearly erroneous rule of Kentucky Rule of Civil Procedure (CR) 52.01 and questions of law *de novo*. The family court, of course, has broad discretion in fixing the amount of child support.

Shroyer and Grimm, who never married, are the parents of one child, born April 7, 1995. Grimm is involved in the horse business.

For background we start our review with a family court order entered November 4, 1998, which after considering substantial expert testimony, set Grimm's child support at $3,300.00 monthly based on Shroyer's imputed income of $1,917.00 per month[2] and on Grimm's income of $30,000.00 per month. Back in court on January 10, 2003, on Grimm's motion for reduction in child support, the family court found that determination of Grimm's income remained difficult due to his history of serious alcohol and substance abuse problems (which in January, 2003, had been abated for six months) and the filing of both personal and corporate bankruptcies. At that time Grimm supplied no 2001 tax return or verification of his business expenses. The only financial information supplied were copies of bank statements from January, 2001, through November, 2001, indicating that he had sold two horses (of which all the proceeds went into a

[2] The court imputed income to Shroyer based on a history of self-employment annual earnings of approximately $20,000.00 to $25,000.00, to be effective on the child's fourth birthday.

business of which he is a 45% owner, or were used to repay a loan to his mother), was employed by Taylor Made farms earning $2,000.00 per month, received a trust income of $133.00 per month, and deposited an average of $40,000.00 per month in his personal bank account. His mother paid a majority of his expenses. The court found that Shroyer historically had never earned more than $24,000.00 annually and was then working as a bookkeeper earning $1,400.00 per month or $17,000.00 annually. The court found no substantial and continuing change in circumstances in the income of Shroyer and Grimm, but reduced Grimm's child support to $2,617.90 per month based on the reasonable monthly living expenses for the child.

On July 23, 2003, Grimm filed a motion to reduce his child support obligation. After conducting hearings on September 4, 2003, and October 10, 2003, the family court concluded that Grimm's average monthly income was $10,962.00, based on Grimm's 2002 tax returns showing an annual income of $61,543.00 (including operating losses of $38,581.00) and living expenses of $70,001.00 provided from Grimm's mother (which, according to the record, included over $14,000.00 in child support and legal fees). Shroyer's income, deduced from the previous child support calculation in January, 2003, averaged $1,914.00 monthly. Additionally, the court found that Grimm maintained medical insurance on the child at a cost of $122.00

per month. Applying Kentucky Revised Statutes (KRS) 403.212, the Kentucky Child Support Guidelines, the family court ordered a reduction in Grimm's child support from $2,617.90 per month to $943.90 per month. Shroyer's motion to alter, amend or vacate was overruled and this appeal followed.

Before us Shroyer makes numerous contentions of error by the family court. Specifically, Shroyer argues that 1) the family court failed to consider a) Grimm's 2003 income, b) the needs of the child and the lifestyle of the parents, c) that Grimm voluntarily created the situation which he claims is the basis for reduction, and d) that Grimm failed to allege any substantial and continuing change in circumstances; and 2) the family court improperly a) considered Grimm's 2001 and 2002 income tax returns, and b) imputed Shroyer's income.

We disagree with Shroyer's contention that the issues presented involve statutory construction and questions of law requiring this Court to conduct a *de novo* review. Our review of Shroyer's contentions, which are factual in nature, is subject to the following standard:

> As are most other aspects of domestic relations law, the establishment, modification, and enforcement of child support are prescribed in their general contours by statute and are largely left, within the statutory parameters, to the sound discretion of the trial court. KRS 403.211-KRS 403.213; Wilhoit v. Wilhoit, Ky., 521 S.W.2d 512 (1975). This discretion

> is far from unlimited. Price v. Price, Ky., 912 S.W.2d 44 (1995); Keplinger v. Keplinger, Ky.App., 839 S.W.2d 566 (1992). But generally, as long as the trial court gives due consideration to the parties' financial circumstances and the child's needs, and either conforms to the statutory prescriptions or adequately justifies deviating therefrom, this Court will not disturb its rulings. Bradley v. Bradley, Ky., 473 S.W.2d 117 (1971).

Van Meter v. Smith, 14 S.W.3d 569, 572 (Ky.App. 2000). Stated another way, the test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. Downing v. Downing, 45 S.W.3d 449, 454 (Ky.App. 2001).

With regard to Shroyer's contentions that the family court's findings are erroneous, we are bound to assume that the family court's factual findings are supported by substantial evidence because the record on appeal does not contain any record of the child support reduction hearing.[3] When the complete record is not before the appellate court, the appellate court must assume that the omitted record supports the decision of the trial court. Commonwealth v. Thompson, 697 S.W.2d 143, 145 (Ky. 1985). We must conclude, therefore, that the findings of the family court are supported by substantial evidence

[3] Grimm's brief cites us to a September 4, 2003, hearing tape that we do not find in the appellate record. Likewise, Shroyer's brief references, without specific citation, a hearing on October 10, 2003, with regard to preservation of the issues and considerations of evidence by the family court that we also do not find in the appellate record. Additionally, neither of these hearing tapes was requested in the supplements granted to the record on appeal.

contained in the record and are clearly not erroneous. CR 52.01. Applying the findings to the guidelines, we are unable to conclude that the family court abused its discretion in reducing Grimm's child support.

For the foregoing reasons, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
John H. Helmers, Jr. Louisville, Kentucky	Robert Dean Grimm, pro se Lexington, Kentucky