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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000619-MR

TERESA ELLEN DENTON

APPELLANT

v. APPEAL FROM HENDERSON FAMILY COURT
HONORABLE SHEILA NUNLEY-FARRIS, JUDGE
ACTION NO. 02-CI-00514

WILLIAM BRIAN DENTON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON AND McANULTY, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

JOHNSON, JUDGE: Teresa Ellen Denton, pro se, has appealed from the March 9, 2004, order of the Henderson Family Court which granted a motion filed by William Brian Denton and ordered that he be allowed to claim the parties' two children as dependents for tax exemption purposes for 2003 and all subsequent years.

Having concluded that the family court did not abuse its

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

discretion when it awarded both the tax exemptions to William, we affirm.

Teresa and William were married on August 25, 1989. They separated on June 14, 2002, and Teresa filed a verified divorce petition on June 20, 2002. Two children were born of the marriage, namely Abbie Denton (DOB May 24, 1990), and Keely Denton (DOB July 26, 1991). The children have primarily resided with Teresa. The child support paid by William of \$194.79 per week was based on his earnings constituting 79.7% of the parties' total income.

On April 14, 2003, the family court entered an order providing that William could claim the parties' minor children as dependents for tax exemption purposes for the 2002 tax year. The family court ordered William to file his state and federal tax returns as married filing separately, claiming both children as dependents. However, the family court reserved the issue of the future tax exemptions for the children to be determined in the final order addressing child custody and property division.

On June 2, 2003, the family court entered its first set of findings of fact, conclusions of law and order. The family court awarded sole custody of the minor children to Teresa, with specific visitation for William, and found that since Teresa was employed part-time William was not required to

pay maintenance.² This order did not address the issue of future tax exemptions for the children. Both parties filed motions seeking clarifications of various findings of the family court, but neither party requested a finding on the issue of the tax exemptions. The family court addressed both motions in an order entered on July 3, 2003, but there was no mention of the tax exemption issue. On July 10, 2003, the family court issued a second set of findings of fact and conclusions of law, as well as a decree of dissolution dissolving the parties' marriage, which also did not address the tax exemption issue.

On February 18, 2004, William moved the family court to enter an order awarding him the tax exemptions for both children for the tax year 2003 and all subsequent years. The family court held a hearing on March 1, 2004, and it granted William's motion. The family court determined that the amount of money William would receive in the form of a tax refund by claiming both children as dependents was a significantly higher amount than the amount he would receive if he were only permitted to claim one of the children as a tax exemption. The family court also stated that so long as William continued to earn 79.7% of the parties' total income and remained current on his child-support payments, he would be entitled to claim both

² The family court found that Teresa was employed part-time by Windy Way Apartments, in Henderson, Kentucky, as an on-site manager, earning \$1,100.00 per month. William was employed full-time by General Electric, in Madisonville, Kentucky, earning \$4,200.00 per month.

children as dependants for tax exemption purposes for the 2003 tax year as well as all future years. An order to that effect was entered on March 9, 2004, and this appeal followed.

The sole issue in this appeal is whether the family court abused its discretion by awarding the tax exemptions for both children to William. It is well-settled law in Kentucky that a family court has the authority to allocate between former spouses the tax exemption for a child of the dissolved marriage.³ Further, "[a] trial court should allocate the exemption so as to maximize the amount available for the care of the children" [footnote omitted].⁴

Teresa argues that, under the current tax code as the primary and sole custodian, she is entitled to claim both children as dependents for tax exemption purposes. She asserts that 26 U.S.C. § 152(e) creates a presumption in favor of awarding the exemption to the custodial parent. Therefore, Teresa contends that the family court abused its discretion by allowing William to claim both children as dependents. We disagree.

In Hart,⁵ this Court held that 26 U.S.C. § 152(e) does not prohibit a state court from allocating a tax exemption

³ Marksberry v. Riley, 889 S.W.2d 47, 48, (Ky.App. 1994).

⁴ Hart v. Hart, 774 S.W.2d 455, 457 (Ky.App. 1989).

⁵ 744 S.W.2d at 456-57.

between a custodial and non-custodial parent. State courts retain the authority to allocate the exemption between the parties as a factor in setting child support. In the case before us, the family court noted that based upon the child-support guidelines William pays 79.7% of the support for the two children. Thus, the family court concluded that allowing William to claim both children as dependents would provide a greater financial benefit to the children than if Teresa were allowed to claim only one child as a dependent. Teresa argues that Hart does not leave the question of allocating the exemptions entirely to the discretion of the trial court.

This Court in Hart specifically stated:

Congress, however, did not, expressly or by implication, prohibit state courts from allocating the exemption and did not, we believe, intend to tread into an area traditionally left to the states courts to adjudicate. The allocation of the exemption has, or at least should have, a bearing on the amount of money available as child support. A trial court should allocate the exemption so as to maximize the amount available for the care of the children [footnote omitted]. This power in no way conflicts with the intent of our U.S. Congress to avoid IRS involvement in the issue of which parent should be able to claim the exemptions [citation omitted].⁶

Accordingly, the family court correctly exercised its discretion in allocating the exemptions to William.

⁶ Hart, 774 S.W.2d at 457.

At the March 1, 2004, hearing William testified that if he were to claim both children as exemptions on his tax returns he would receive a refund of \$2,708.00 from the federal government and pay \$57.00 to the state. However, if he were to claim only one of the children as an exemption, he would receive a refund of \$945.00 from the federal government and pay the state \$77.00. At this same hearing, Teresa testified that if she were to claim only one child as a tax exemption she would receive a refund of \$4,900.00 from the federal government, but if she did not claim either child, she would receive a refund in the amount of \$4,400.00. Teresa further stated that there would be only a \$20.00 difference in the state refund between the two filings. Thus, the family court determined that William would maximize the amount of money he retained by claiming both children as tax exemptions. Based on this determination, which is supported by substantial evidence, it is clear that the standard set forth in Hart was met by the family court. Hence, the family court correctly allocated the tax exemptions to the parent who could best utilize it as additional support for the children and did not abuse its discretion.

Based on the foregoing reasons, the order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Teresa Ellen Denton, Pro Se
Henderson, Kentucky

BRIEF FOR APPELLEE:

Susie H. Moore
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