

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000445-MR

TIM KREITER

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 04-CI-00192

AMELIA RUTH ODEN KREITER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, McANULTY, AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE: Tim Kreiter appeals from a ruling of the Bell Circuit Court ordering him to pay \$1,500 per month in child support. He maintains that the award is excessive and not supported by the law. For the reasons stated below, we affirm the order on appeal.

Amelia Oden Kreiter (hereinafter "Amy") and Tim Kreiter were married on October 24, 1998. The marriage produced one child, namely Corley Amelia Kreiter. Amy and Tim separated on November 22, 2003.

On April 5, 2004, Amy filed a petition seeking to dissolve the marriage, and the matter proceeded in Bell Circuit Court. As the parties had previously entered into a prenuptial agreement, the only issues before the court were: 1) child custody and child support, and 2) dissolution of the marriage. On May 14, 2004, the court entered an order granting temporary joint custody and designating Amy as the temporary primary custodian. Tim was ordered to pay to Amy the sum of \$1,500 per month in temporary child support, plus 85% of all reasonable child care expenses and unreimbursed medical and dental expenses. The marriage was dissolved by way of an order entered on December 7, 2004, and an order finalizing the custody and support order was entered on February 14, 2005. The court noted that it based the \$1,500 per month child support obligation on its finding that Tim's income exceeded the uppermost level of the child support guideline set forth in KRS 403.212. It did not make a specific finding as to what either Amy's or Tim's income was. This appeal followed.

The sole issue for our consideration is Tim's contention that the trial court erred in fixing his monthly child support obligation at \$1,500. He maintains that the court improperly calculated his annual income, in part by incorrectly considering bonuses and a one-time sale of \$1.4 million in stock. He also contends the court improperly extrapolated the

child support schedule in ordering the \$1,500 per month child support after finding that Tim's income exceeded the uppermost amount shown in the statutory table. He also directs our attention to case law addressing the calculation of child support when the obligor's income exceeds the maximum amount addressed by the child support statute. In sum, Tim argues that he should be required to pay no more than \$1,244 per month in child support (the maximum shown in the statutory table for one child), and he seeks an order reversing and remanding the matter for recalculation of the child support obligation.

We have closely examined the written arguments, the record and the law, and find no basis for reversing the order on appeal. The corpus of Tim's claim of error centers on his assertion that his child support obligation is disproportionate to his income. Stated differently, Tim contends that the trial court erred in improperly extrapolating to a child support obligation above the highest amount addressed in the statute.

Neither party cites to any findings made by the trial court on the issue of the parties' incomes, and our examination of the record has uncovered no such findings. The sole reference made by the court on the issue of the parties' incomes is found in the February 14, 2005, order, wherein the court states that Tim's income "exceeds the uppermost levels of the Kentucky Child Support Guidelines Table that is set forth in KRS

403.212." If the trial court did make findings as to Amy's or Tim's actual income, it did not reveal those findings in the record.

The parties have stipulated, by way of their written arguments, that Tim earned \$218,337 in 2003, and projected an income of \$186,000 in 2004. In a memorandum filed on January 26, 2005, Tim stated that his total gross income was \$208,000. Amy contends that his actual income is higher, because the memorandum fails to account for interest income of at least \$17,000 per month. In any event, based on Tim's admissions in the record, it is reasonable to conclude that Tim's income is in the range of \$186,000 to \$218,000 per year.

The question then arises as to whether the trial court erred in ordering child support in excess the maximum \$1,244 award (for one child) found in the child support table. We find no basis for answering this question in the affirmative. As a general rule, as long as the trial court's discretion comports with the child support guidelines, or any deviation is adequately justified in writing, we will not disturb the trial court's child support award.¹ Stated differently, the test is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.²

¹ Downing v. Downing, 45 S.W.3d 449 (Ky. App. 2001).

² Id.

In the matter at bar, the trial court articulated a rational basis for deviating from the child support guidelines, to wit, its finding that Tim's income exceeded the maximum income addressed by the guidelines. This finding is supported by the record. Tim would have us conclude that the award was erroneous per se because it was in excess of an upward extrapolation from the top of the child support table. This conclusion is not supported by KRS 403.212 or the case law.³ The test is not whether the trial court extrapolated from the guidelines in a certain manner, but whether the trial court abused its discretion.

Nothing in the record, nor anything cited by Tim, leads us to conclude that the trial court abused its discretion in entering a child support award of \$1,500 per month on an income in the general range of \$200,000 per year. The fact that the record may have also supported a lower child support award does not, by itself, constitute a basis for reversing the order on appeal.

For the foregoing reasons, we affirm the order of the Bell Circuit Court.

SCHRODER, JUDGE, CONCURS.

McANULTY, JUDGE, DISSENTS.

³ Id.

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