

RENDERED: JULY 14, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-000352-MR

PETER LLOYD BECKETT

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE STANLEY BILLINGSLEY, SPECIAL JUDGE
ACTION NO. 98-CI-00770

MARY ANN BECKETT

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: MINTON AND SCHRODER, JUDGES; MILLER, SPECIAL JUDGE.¹

MILLER, SPECIAL JUDGE: Peter Lloyd Beckett appeals from an order of the Boone Circuit Court denying his motion to reduce his child support obligation. Because the trial court erred in its finding that Mary Ann Beckett had been awarded "primary custody" of the parties' two minor children in the original divorce proceedings, we vacate and remand.

¹ Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

The parties were married on July 31, 1993. Two children were born of the marriage, Peter Joseph Becket, born April 4, 1993, and James Tyler Beckett, born November 26, 1994. On July 17, 1998, Mary filed a Petition for Dissolution of Marriage. On July 1, 1999, a Decree of Dissolution of the Marriage was entered, reserving all other issues for further review.

On November 19, 1999, a Supplemental Decree of Dissolution was entered. As relevant to this appeal the Supplemental Decree provided as follows:

11. The Husband and Wife are awarded the joint legal care, custody and control of the parties' two minor children, namely Joseph Beckett and James Tyler Beckett. Both Husband and Wife are awarded physical custody of the parties' two minor children consistent with the following shared parenting arrangement:

The Husband shall have physical possession of the parties' two minor children each week from 8:00 a.m. on Tuesday morning until 8:00 a.m. on Thursday morning and every other weekend from Friday at 4:00 p.m. until Monday at 8:00 a.m. effective September 29, 1999.

The Wife shall have physical possession of the parties' two minor children all other times not specifically awarded to the Husband.

. . . .

12. This Court specifically finds, after hearing testimony from the Husband's accountant, the Husband's annual income for

1998 for child support purposes was \$43,098.00 for a gross monthly income of \$3,591.00. The Court specifically finds, after hearing testimony from the Wife, she is earning \$9.50 per hour working 37 hours per week for a gross monthly income of \$1,511.00. Consistent with the attached child support worksheet and the fact both parties are equally sharing time with the parties' minor children, effective November 15, 1999, the Husband shall pay to the Wife the sum of \$81.00 per week as child support on behalf of the parties' two minor children. . . . (Emphasis added).

Peter's \$81.00 per week initial child support obligation was derived by calculating, based upon their respective incomes, the respective child support obligation of each party based upon the child support tables contained in KRS² 403.212. The Husband's obligation was determined to be \$666.00 per month, and the wife's \$314.00. The trial court then took the difference between the two amounts, \$352.00 per month, or \$81.00 per week, and assigned that amount as Peter's child support obligation.

On February 16, 2000, the trial court entered an order correcting the deduction for health care expenses on the original work sheets which resulted in increasing Peter's child support obligation to \$87.00 per week. The order also provided that out of his child support obligation Peter would pay Mary's

² Kentucky Revised Statutes.

\$35.65 share of day care expenses, resulting in a net cash payment to Mary of \$51.35 per week.

On November 1, 2004, Peter filed a motion for a review of his child support obligation seeking a reduction in his obligation on the basis that his income had substantially decreased since the original award. On January 19, 2005, the trial court entered an order denying Peter's motion. This appeal followed.

Before us, Peter contends that the trial court erred in denying his motion to reduce child support. In its January 19, 2005, the trial court began its discussion on the merits of Peter's motion as follows:

The parties were divorced in July 1999. The Petitioner [Mary] was granted primary custody of the parties' two minor children.
(Emphasis added).

The order went on to find that Peter's income had decreased from \$3,591.00 at the time the initial child support obligation was set to \$1,600.00 per month. The trial court also found that Mary's income had increased from \$1,511.00 to an imputed \$1,600.00 during this period.

Though Peter's income had decreased significantly, and Mary's income had risen slightly, without explanation, the trial court denied Peter's motion to modify support, possibly because if Mary were in fact the primary residential custodian of the

children, his support obligation would be calculated to be substantially the same as under the original award.

As previously noted, the trial court's November 19, 1999, Supplemental Decree of Dissolution provided for an equal time-sharing custody arrangement, and, it follows, Mary was not "granted primary custody of the parties' two minor children."

The trial court's determination that Mary had been awarded "primary custody" of the children was incorrect. To the contrary, the November 19, 1999, Supplemental Decree of Dissolution provided for an equal time-sharing arrangement. As such, the trial court's January 19, 2005, order is based upon an erroneous premise. The error concerns a crucial underpinning in any determination of child support - the custody arrangement. We accordingly vacate the trial court's January 19, 2005, order and remand for a reconsideration of Peter's motion based upon the actual custody arrangement as provided for in the November 19, 1999, Supplemental Decree of Dissolution.

Because of our disposition of this case we need not address the remaining issues raised by Peter in this appeal.

For the foregoing reasons the judgment of the Boone Circuit Court is vacated and remanded for additional proceedings consistent with this appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

C. J. Victor
Florence, Kentucky

BRIEF FOR APPELLEE:

David A. Koenig
Florence, Kentucky