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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002050-MR

ERIC K. BUCKLEY — APPELLANT

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 03-CI-00126

RENEE BUCKLEY — APPELLEE

OPINION
AFFIRMING

** ** ** ** ** ** ** **

BEFORE: TAYLOR, JUDGE; ROSENBLUM,[1] SENIOR JUDGE; MILLER,[2] SPECIAL JUDGE.

MILLER, SPECIAL JUDGE: Eric Buckley appeals from a judgment of the Henry Circuit Court determining that he had accrued a child support arrearage of approximately $750.00 and requiring the establishment of a joint checking account by the parties from which certain expenses for the benefit of the parties' minor

[1] Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

[2] 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

children were to be paid. For the reasons stated below, we affirm.

The parties were married on January 21, 1984. Three children were born of the marriage. On May 13, 2003, Eric filed a petition for dissolution of marriage. On July 29, 2003, the circuit court entered a final decree of dissolution, which incorporated a settlement agreement executed by the parties.

The settlement agreement provided that the parties would have "true joint custody" of the children, with physical custody alternating weekly, with neither party paying child support to the other. The agreement also provided that Eric would pay "100% reimbursed meds, prescription and eyeglasses not covered by insurance."

On October 19, 2004, Renee filed a motion to establish child support based upon material changes in circumstances, including changes in the parties' incomes and payment of marital debt. On December 14, 2004, the circuit court entered an order requiring Eric to pay child support of $70.20 per week. The order also determined that Eric owed an arrearage of $577.41 from the date of the filing of the motion, and that extraordinary medical expenses should be prorated at 65% to Eric and 35% to Renee.

On July 21, 2005, Renee filed a "Motion for Contempt/For Order Detailing Expenses to be Paid by Each Party."

The motion alleged that Eric had failed to pay $742.77 in past-due child support. The motion also requested that "the Court entered an Order detailing exactly what fees each party is to pay for the children." The motion alleged that since the child support order had been entered that "the Petitioner has refused to pay for any items for the children, even when they are in his care[.]" Eric filed a cross-motion for modification of the child support order.[3]

On September 21, 2005, the circuit court entered an order determining that Eric had a child support arrearage of "approximately $750.00" and establishing a plan whereby a joint checking account would be set up. Under the plan, the checking account would initially be funded with the $750.00 arrearage, and thereafter supplemented at the rate of $65.00 per month by Eric and $35.00 per month by Renee. The purpose of the account would be to pay various expense items relating to the children upon which the parties' had been unable to agree.

Before us, Eric contends that the circuit court erred by determining that he had incurred a $750.00 arrearage and by establishing the joint checking account.

The circuit court's September 21, 2005, order stated, in relevant part, as follows:

[3] We are unable to locate a copy of this motion in the record.

Testimony before the Court now shows that the husband did not make full monthly payments of the ordered child support until a wage assignment was put in place on February 25, 2005. Prior to that time, and including the period covered by the Court's prior arrearage, the petitioner subtracted from the curt ordered child support amounts that he paid for miscellaneous items on behalf of the children. It was the petitioner's testimony that by paying child support to his wife, it was his wife's obligation to pay virtually all school and related expenses for the children.

The Court finds that the petitioner has misinterpreted the child support award. In fact, the Court by using the comparison method of child support for parties that share 50/50 custody split was merely recognizing a difference in the earning potential of the two parties. The child support ordered is to insure that both parties are able to provide a safe and stable home for the children when they are with that party. In no way does it mean that $303.95 per month is sufficient to pay all of the expenses necessary in raising three teenagers.

The parties have been through mediation on this issue and appeared before the Court with both parties telling the Court they needed some direction. After hearing testimony, it is certainly evident to the Court that these parties need directions as to how to provide for their children. Given the difficulties shown to date, the Court devises the following plan which should alleviate many of the problems.

First, the Court notes that the parties enjoy a 50/50 custody split with the children. The children spend one week with the mother and one week with the father. It is incumbent on the parents to pay the normal out of pocket expenses for their

children during the time the children are with them. This means that all meals, breakfast, lunch, and dinner should be paid for by the parent who has custody on that given day. This includes school lunches. Incidental expenses for the children, including, for example, going to the movie theater or small items of supply and clothing should be paid for by the parent with custody at that time. Each parent has a responsibility to make sure the child is wearing clothes that are suitable, the right size and not overly frayed.

The Court also finds that the current support arrearage owed by Mr. Buckley to Ms. Buckley is approximately $750.00.

The Court orders Mr. Buckley to open a checking account with an initial deposit from him of $750.00. That checking account must be maintained for the benefit of the children and shall have checks that may be signed by either Mr. Buckley or Ms. Buckley. Beginning on October 1, 2005 and subsequently on the first date of each month, Mr. Buckley is ordered to deposit $65.00 into this joint children's' account. Ms. Buckley is ordered to deposit $35.00 at the first day of each month into the joint children's' account. This joint children's' account will be used for the following items:

A. Any and all unreimbursed medical expenses may be paid for by direct check out of the joint children's account. This includes co-pays for doctor visits and prescribed medicines. It does not include incidentals such as soap, toothpaste, non-prescription medicines and other over the counter items that should be bought by the parents while they have custody of the children.

B. The funds in the joint children's account may also be used by either party to

pay any and all school fees. School fees are defined as any payments related to the children's education that is made payable to the school or the school system. This does not include school lunches, but it does include such items as student fees, athletic participation fees, field trips, books, and other items or services that are purchase through the school.

C. The fund in the joint children's checking account may also be used for Nikki's tutoring which commenced prior to the separation of the parties and continues.

D. The parties may also agree in writing to use these funds for any other matter for the children, such as supplies for school, vacations, etc. The Court will require both parties to keep a full record of any expenses they make out of the joint children's account and to keep written record of any agreement of these expenses which are not unreimbursed medical expenses, school fees, or tutoring for Nikki. The best way to keep these records is for the parties to email their request or agreement with one another and to print out and keep a copy of the emails.

E. Twice per year, once in the month of April and once in the month of August, the parties are to withdraw monies from the joint children's account to provide clothing for the three children. At no time should the draw of monies for clothing bring the account balance to below $400.00. The parties must also agree as to which parent is to take the children shopping for clothes and a dollar amount to be assigned either in total or for each child.

By maintaining the above referenced joint children's account, the parties should be able to 1) anticipate their likely out of pocket costs for these expenses and 2) share

> in these expenses in an amount comparable to their relative earning capacities.
>
> It is evident to the Court that the parties are raising three intelligent and active children. It is a testament to the parents that the children have not been involved in the minutia of cost disputes which have engaged the parties. The Court recommends that it be kept that way. Neither party is to discuss with the children the financial arrangements between the parties or the reluctance of one party or the other to agree to pay for a certain thing. It is also the Court's recommendation that the parties communicate, whether by phone or by email, to insure that the best interest of the children are met. By using the children's joint account, they should be able to use their funds and resources for the children and not for attorney or mediator fees.

There is conflicting evidence concerning the issue of the $750.00 arrearage which presented a factual question for the circuit court. As such, its findings may not be disturbed unless found to be clearly erroneous. Kentucky Rules of Civil Procedure 52.01; Story v. Story, 423 S.W.2d 907, 908 (Ky. 1968). This we do not find. Renee testified and presented documentary evidence in support of her claim of the arrearage, and this testimony and evidence is substantial evidence supporting the finding of the circuit court. Hence, we find no error in the circuit court's determination that Eric was in arrears on his child support obligation in the amount of $750.00.

Eric also contends that the circuit court erred by requiring the establishment and maintenance of a joint checking account from which various expenses related to the children would be paid. Eric contends that the requirement that the account be established represents a deviation from the child support guidelines. We, however, do not so construe the circuit court's order. Rather, we construe the order as merely the enforcement of its prior orders requiring that the parties share in the children's school, recreational, and extracurricular activities expenses.

Courts have inherent power to enforce compliance with their lawful orders. Blakeman v. Schneider, 864 S.W.2d 903, 906 (Ky. 1993). The record supports the determination by the circuit court that Eric had "misinterpreted the child support award" by deducting normal expenses, for which he was responsible, from his child support obligation. This, in turn, lead to the accruing of an arrearage and ongoing dissension between the parties regarding these routine expenses.

A trial judge has a broad discretion in determining what is in the best interests of children. Krug v. Krug, 647 S.W.2d 790, 793 (Ky. 1983) In many instances he will be able to draw upon his own common sense, his experience in life, and the common experience of mankind and be able to reach a reasoned judgment concerning the likelihood that certain conduct or

environment will adversely affect children. Id. The circumstances of this case require that we defer to the circuit court on the proper resolution of the ongoing dissension between the parties concerning expenses for the children. The circuit court has fashioned a practical remedy to the problem, and we will not second-guess its judgment.

Finally, we note that the intent of the plan is not to have Eric pay more in expenses as a result of the joint checking account plan than he would otherwise; rather, amounts for which he would otherwise have been responsible will be paid from the joint account rather than his personal account. In summary, under the unique circumstances of this case, we cannot conclude that the circuit court abused its discretion by requiring the establishment of the joint checking account.

For the foregoing reasons the judgment of the Henry Circuit Court is affirmed.

TAYLOR, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Virginia Lee Harrod New Castle, Kentucky	Alan Q. Zaring New Castle, Kentucky