

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001289-MR

INGE OGDEN HURST

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NO. 04-CI-502680

CHARLES WILLIAM KAVANAUGH HURST

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: MOORE AND THOMPSON, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Inge Ogden Hurst appeals from an order of the Jefferson Family Court establishing the child support obligation of her ex-husband, Charles William Kavanaugh Hurst (Will). We affirm.

¹ Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 11(5)(b) of the Kentucky Constitution and KRS 21.580.

The parties were married in August 1992. During the marriage they had four children, including a set of triplets. On July 16, 2004, Charles filed a petition for dissolution of marriage.

Following a motion for temporary child support by Inge, on January 7, 2005, the family court entered an order establishing Will's temporary child support obligation at \$2,617.00 per month retroactive to November 2004.² On January 18, 2005, Will filed a motion to reduce his temporary child support obligation to \$384.00 per month. On May 16, 2005, he filed a second motion to reduce the temporary support, this time to \$625.00.

The final hearing on the dissolution was held on January 27, 2006, following which the parties submitted documents in support of their respective child support calculations. Inge's documents supported a child support obligation of \$4,000.00 while Will's supported an obligation of \$640.00.

The final decree was entered on February 1, 2006; however, the issue of child support was reserved for later determination. On May 25, 2006, the family court issued its order establishing permanent child support, and also addressing Will's still pending motion to reduce his temporary child support. Noting that the parties' combined monthly income exceeded the child support guideline tables contained in KRS³ 403.212, the order set Will's permanent child support obligation at \$1,600.00 per month,

² Will failed to pay child support for November and December 2004, resulting in arrearage of \$5,234.00.

³ Kentucky Revised Statutes.

retroactive to May 16, 2005, the date Will had filed his motion to reduce his temporary child support obligation. This appeal followed.

As we construe Inge's arguments before us, her only argument is that the family court failed to make sufficient findings in support of its child support award of \$1,600.00 per month, and the sole relief requested is that we vacate the family court's order and remand for additional findings in support of its decision.

The family court determined that Will's monthly income is \$14,039.00 monthly and that Inge's is \$7,282.25. The child support guidelines contained in KRS 403.212 only go up to \$15,000.00. In such circumstances KRS 403.212(5) provides that “[t]he court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.” Moreover, as the family court was sitting without a jury, it was under a duty to “find the facts specifically” in support of its decision. CR⁴ 52.01; *see also* KRS 403.211(3)(e) (requiring findings of fact in establishing child support for monthly incomes in excess of child support guidelines).

We agree with Inge that the family court failed to make findings of fact sufficient to allow us to review its establishment of \$1,600.00 as Will's child support obligation. While the order does provide various findings relating to its decision, the order provides no calculation or specific explanation for the source of this amount. However, pursuant to CR 52.04 “[a] final judgment shall not be reversed or remanded

⁴ Kentucky Rules of Civil Procedure.

because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by written request for a finding on that issue or by a motion pursuant to Rule 52.02 [motion for amendment].” See *Underwood v. Underwood*, 836 S.W.2d 439, 445 (Ky.App. 1992); *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky.1982); *Whicker v. Whicker*, 711 S.W.2d 857, 860 (Ky.App. 1986).

Our review of the record discloses that subsequent to the entry of the family court's May 26, 2006, order, Kimberly did not make a motion for additional findings in support of the family court's child support award or otherwise bring the issue to the court's attention. As such, this issue is not properly preserved for our review, and we are precluded by CR 52.04 from remanding the cause simply on the basis that the family court failed to make adequate findings in support of its decision.

For the foregoing reasons the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

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