

RENDERED: SEPTEMBER 19, 2008; 10:00 A.M.
 NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002594-ME

CLAY RUSSELL WHITE

APPELLANT

APPEAL FROM CLAY CIRCUIT COURT
v. HONORABLE GENE CLARK, JUDGE
ACTION NO. 07-CI-00064

YOLANDA OWENS

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: FORMTEXT KELLER AND TAYLOR, JUDGES; GUIDUGLI,
SENIOR JUDGE.

TAYLOR, JUDGE: Clay Russell White brings this appeal from a December 3, 2007, order of the Clay Circuit Court denying his motion to eliminate child support. We affirm.

Clay Russell White and Yolanda Owens are the biological parents of two minor children, Ryan and Lana. Pursuant to a November 29, 2007, decree of

custody, the parties were granted joint custody of Ryan and Lana. Yolanda was designated as primary residential custodian, and Clay was granted visitation. Clay's visitation schedule was as follows: (1) during the school year, Clay had the children "every weekend from Friday at 6 p.m. until school commences on Monday morning" except for the first full weekend of each month when the children remain with Yolanda; and (2) during the summer, Clay had the children the same times as during the school year except he returned the children at 6 p.m. on Sunday. Under the decree, Clay was also ordered to pay child support of \$67.15 per week.

Clay subsequently filed a motion to decrease or eliminate child support. Therein, Clay argued that his child support should be decreased because he had experienced a 15 percent reduction in income. Alternatively, Clay argued that his child support should be eliminated because he and Yolanda shared joint legal and physical custody of the children. By order entered December 3, 2007, the circuit court granted Clay's motion to decrease child support and set support at \$57.45 per week. The court denied Clay's motion to eliminate child support. This appeal follows.

Clay contends the circuit court erred by denying his motion to eliminate child support. He relies upon *Plattner v. Plattner*, 228 S.W.3d 577 (Ky.App. 2007) for his contention that child support should be eliminated. Specifically, Clay maintains that he and Yolanda share joint legal and physical custody of the children, enjoy "nearly equal physical custodial/parenting time,"

and “incur nearly equal expenses” while “earning nearly equal incomes.” For the reasons hereinafter stated, we disagree.

Under KRS 403.211(2) and (3), a circuit court may deviate from the child support guidelines only if the court finds that application of the guidelines would be unjust or inappropriate. *Plattner*, 228 S.W.3d 577. And, it has been recognized that an “equal division of physical custody may constitute valid grounds for deviating from the guidelines” and awarding no child support. *Id.* at 579. Furthermore, it is well-settled that the establishment and modification of child support are within the sound discretion of the circuit court. *Vanmeter v. Smith*, 14 S.W.3d 569 (Ky.App. 2000). An abuse of discretion occurs only where the circuit court’s decision was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Clay’s reliance upon *Plattner* is misplaced. The facts of *Plattner* are clearly distinguishable from the facts in the case *sub judice*. In *Plattner*, the parties were awarded joint custody of their two children and, more importantly, actually shared equal physical custody of the children:

[T]he children reside with him each Monday and Tuesday and each alternating Friday, Saturday, and Sunday. The children spend each Wednesday and Thursday and each alternating Friday, Saturday, and Sunday with Levoir. Because he has a more flexible work schedule, Plattner attends medical appointments and stays at home with the children when either of them is ill.

. . . .

The parties were awarded joint custody of the children, and neither of them was designated as the primary residential custodian. Because physical custody of the children is evenly divided between the parents, they bear an almost identical responsibility for the day-to-day expenses associated with their care. And since there is no significant disparity between the parties' annual income, the expenses necessary to provide a home for the children (even when they are not in residence) are also incurred by each party in equal proportion.

Plattner, 228 S.W.3d at 579-580.

Unlike the facts in *Plattner*, Clay and Yolanda do not truly share equal physical custody of their two children. Rather, Clay merely has physical custody of the children for approximately three weekends per month. During the school year, his custody time slightly increased each weekend until Monday morning. However, it is clear that Yolanda retains physical custody of the children for the majority of each month. Additionally, Yolanda was designated the primary residential custodian; where, as in *Plattner*, neither party was so designated. Considering the whole of the case, we cannot say that application of the child support guidelines would be unjust or inappropriate. As such, we conclude that the circuit court did not abuse its discretion by denying Clay's motion to eliminate child support.

For the foregoing reasons the order of the Clay Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Clay Russell White, *Pro Se*
Manchester, Kentucky

NO BRIEF FOR APPELLEE