

RENDERED: OCTOBER 17, 2008; 10:00 A.M.
 NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000002-ME

DANIEL B. LITTLEFIELD

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JOSEPH W. O'REILLY, JUDGE
ACTION NO. 01-FC-006888

CARLA DANIELLE SCHNEIDER

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

STUMBO, JUDGE: Daniel B. Littlefield appeals from an order of the Jefferson Circuit Court ruling that he is voluntarily underemployed for purposes of child support calculation and denying his motion to decrease child support. Littlefield contends that the circuit court erred in finding that Carla Danielle Schneider, with whom he has a child, pays \$461.00 per month in child support for a prior born child. Because Littlefield's claim was not raised below, not preserved for appellate

review, and not supported by reference to the record, we affirm the order on appeal.

Sydney Littlefield was born on April 13, 2001, to Littlefield and Schneider. A paternity action followed in Jefferson Circuit Court establishing Littlefield as the child's biological father. On March 23, 2007, the Jefferson County Attorney's Office filed a motion on behalf of Schneider to establish Littlefield's child support obligation. After proof was heard on the motion, the circuit court rendered an order on July 2, 2007, finding that Littlefield was voluntarily underemployed pursuant to KRS 403.212(2)(d) and imputing to him the income of \$14.00 per hour for a 40-hour work week. Relying on the Kentucky Child Support Guidelines, the court ordered Littlefield to pay \$113.64 per week in child support to Schneider.

Thereafter, Littlefield filed a *pro se* motion to modify the child support obligation, and the County Attorney's office moved to summarily dismiss the motion. After a series of delays, a hearing on the motions was conducted on November 19, 2007, and the circuit court rendered an order on November 27, 2007. It found in relevant part that Littlefield failed to demonstrate a change in income of at least 15% as required by KRS Chapter 403 sufficient to justify a change in his child support obligation. As part of the calculus upon which the court relied in reaching this conclusion, it found that Schneider paid \$461.00 per month in child support for a prior born child. This appeal followed.

Littlefield now argues that the circuit court erred in finding that Schneider pays \$461.00 per month in child support for a prior born child. Littlefield contends that Schneider actually *receives* \$461.00 per month in child support, and that this incorrect finding skewed the child support calculation resulting in the court failing to properly find that Littlefield experienced a change in income in excess of the statutorily required 15%. Littlefield notes that for purpose of calculating child support, the court may deduct from the gross income of either party the amount of child support paid to prior born children. He seeks an order finding that the trial court erred in deducting \$461.00 per month from Schneider's gross income, and remanding the matter for recalculation of his child support obligation.

We find no error. We must first note that this issue was not raised before the circuit court. A party may not raise one argument before the trial court, and another argument before an appellate court. *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750, 755 (Ky. 2005); see also, *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976). Similarly, and for the same reason, Littlefield has not complied with the requirement set out in CR 76.12 (4)(c)(v) that he demonstrate at the beginning of his argument that the issue raised is preserved for appellate review and, if so, in what manner. We would be well within our authority to strike Littlefield's brief and summarily affirm the order on appeal. CR 76.12(8)(a). "It goes without saying that errors to be considered for appellate

review must be precisely preserved and identified in the lower court.” *Combs v. Knott County Fiscal Court*, 141 S.W.2d 859 (Ky. App. 1940).

Even if this issue were preserved for appellate review, Littlefield has not offered even a scintilla of proof that Schneider receives child support for a prior born child, nor has our review of the record uncovered any such proof. The burden is on the party alleging error to show it affirmatively by the record. *Smithers v. Bindner*, 351 S.W.2d 872 (Ky. 1961). Littlefield has not met that burden, and accordingly we find no error.

For the foregoing reasons, we affirm the November 27, 2007, order of the Jefferson Circuit Court.

ALL CONCUR.

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