

RENDERED: NOVEMBER 26, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000781-ME

JERINA BEAUCHAMP

APPELLANT

APPEAL FROM HARDIN FAMILY COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 94-CI-00722

DARRELL BEAUCHAMP

APPELLEE

OPINION
AFFIRMING

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BEFORE: DIXON AND THOMPSON, JUDGES; LAMBERT,¹ SENIOR JUDGE.

DIXON, JUDGE: Appellant, Jerina Beauchamp, appeals from an order of the Hardin Family Court setting Appellee, Darrell Beauchamp's, child support at \$775 per month effective February 1, 2008. Appellant challenges the effective date of

¹ Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the support based upon a prior order of the court setting the date as September 21, 2006. Finding no error, we affirm.

Jerina and Darrell Beauchamp were divorced in the Hardin Circuit Court by decree entered on March 29, 1995. At the time of the divorce, the parties had one minor child, Brittany, born in December 1991. Pursuant to a separation agreement later incorporated into the final divorce decree, the parties were awarded joint custody of Brittany, with Darrell being designated as the primary residential custodian.

On September 21, 2006, Jerina filed a motion to modify custody and to set child support in accordance with the Kentucky Child Support Guidelines. Apparently, the family court had previously issued an emergency protective order on behalf of Brittany, placing the child in Jerina's physical custody until a hearing could be scheduled. On March 6, 2007, the family court entered an order ruling that until such time as the parties could agree on permanent child support, Darrell was required to pay \$400 per month in temporary support, effective September 21, 2006. Further, the family court ruled that if permanent support was determined to be more than \$400 per month, Darrell would owe Jerina the difference as arrearages from September 21, 2006.

Over the course of the next year, Jerina's counsel moved to continue several hearings on the grounds that Darrell was not cooperating with discovery. On February 1, 2008, the trial court denied any further continuances and a full

hearing was held. At the close of all the evidence and testimony, the family court ruled from the bench that based upon the parties' incomes, Darrell's child support obligation would be set at \$775 per month, and directed Jerina's counsel to prepare an order. However, Darrell's counsel took exception to the proposed order because it contained an effective date of September 21, 2006. Following another hearing, the family court entered an order on March 27, 2008, denying Jerina's motion that the increased support be retroactive, and ruling that Darrell's \$775 support obligation was effective from the date of the February 1, 2008, hearing.

This appeal followed.

Jerina argues on appeal that the family court's March 27, 2008, order was clearly erroneous in light of its prior March 6, 2007, order directing that any permanent child support amount would be retroactively effective from September 21, 2006, the date Jerina filed her motion for child support. Jerina claims that the prior March 2007 order was never modified by the family court and therefore was controlling as to the effective date of support. We disagree.

A family court judge has extremely broad discretion in ascertaining the reliability of the evidence presented. Moreover, a reviewing Court is not permitted to substitute its judgment for that of the family court unless its findings are clearly erroneous. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Factual findings are not clearly erroneous if they are supported by substantial evidence. *Black Motor Co. v. Greene*, 385 S.W.2d 954, 956 (Ky. 1964). The "test for substantiality of evidence is whether when taken alone, or in the light of all the

evidence, it has sufficient probative value to induce conviction in the minds of reasonable men.” *Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843, 852 (Ky. App. 1999), *cert. denied*, 531 U.S. 811 (2000). Thus, in reviewing the decision of the family court, “the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.” *B.C. v. B.T.*, 182 S.W.3d 213, 219-220 (Ky. App. 2005).

During the final hearing, the family court judge commented that she does not always have the opportunity to fully review every case record before a hearing, and that Jerina’s counsel should have raised the issue of retroactivity during the February 1, 2008 hearing. However, the court continued to explain that at the time the March 2007 order was entered, it was equitable that a permanent child support order be retroactive to September 2006. Nevertheless, because of the lengthy time period that ensued, imposing an arrearage as a result of the increased support had become inequitable.

The family court is in the best position to ascertain the quality and adequacy of the facts and has broad discretion in matters of child support. We simply cannot conclude that the family court’s decision herein was clearly erroneous. The family court’s decision was supported by sound legal principles, and thus, it will not be disturbed. *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001).

The decision of the Hardin Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Phyllis K. Lonneman
Elizabeth, Kentucky

BRIEF FOR APPELLEE:

No brief for Appellee