

RENDERED: SEPTEMBER 4, 2009; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-001723-MR

TERRI N. BRADY, F/K/A  
TERRI N. SUITER

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT  
HONORABLE TYLER L. GILL, JUDGE  
ACTION NO. 01-CI-00262

PATRICK RAY SUITER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT AND STUMBO, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: Terri N. Suiter appeals from the Logan Circuit Court's order confirming recommendations for reimbursement of childcare expenses made

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<sup>1</sup> Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice Pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by a Domestic Relations Commissioner. After careful review, we affirm the order of the Logan Circuit Court.

Terri Suiter and Patrick Suiter were married on September 8, 1996, and a decree of dissolution was entered on April 25, 2003. Terri and Patrick were awarded joint custody of their three minor children, and Terri was designated as the primary residential custodian. The issue of child support was reserved, and a notice of video appeal in Case No. 2003-CA-002465-MR was filed on November 18, 2003. This Court issued an unpublished opinion on May 27, 2005, that set out each party's responsibility for paying child support. This Court determined that Terri was responsible for 31.3% of the child support and that Patrick was responsible for 68.7%.

Terri first filed a motion regarding the allocation of work-related child care expenses on March 15, 2007. As part of her motion, Terri asked the court to set out the percentage each party would be responsible for paying in relation to child care expenses. Terri again filed a motion to allocate work-related child care expenses on September 28, 2007.

A hearing on this motion was held on October 31, 2007. Terri testified that her present daycare expenses were \$25.00 per week paid to a neighbor who helped get the three children on the bus while Terri drove to work. Again, Terri requested that the court establish the percentage each party was responsible for paying for child care expenses. The Domestic Relations

Commissioner (hereinafter “DRC”) then established that Patrick was responsible for 54% and Terri was responsible for 46% of work-related childcare expenses.

At the hearing, Patrick objected to the amount of child care expenses Terri was claiming because the amount was paid to a neighbor. The DRC stated that it was fortunate to have such an arrangement because it benefited the children and was “extremely reasonable.” Terri presented evidence at the hearing that in 2003, she was employed by Journey to Recovery and that her two youngest children were in preschool, which only offered care Tuesday through Friday. Terri testified that her parents watched her children at no cost to her during this time. Terri also had various child care providers consisting of friends and daughters of friends, whom she would pay a rate of \$5.00 to \$6.00 an hour for work-related child care.

Terri testified that in 2004, she was still employed at Journey to Recovery and indicated that she used the same providers in addition to her neighbor, Connie Black. Connie provided childcare all day on Mondays and would care for Terri’s oldest child after school. In 2005 and 2006, Terri was employed at Coldwell Banker. Beginning in 2006, the two youngest children were in school full time and her childcare expenses decreased accordingly. Terri also testified that during her employment at Coldwell Banker, she had limited childcare expenses because of her flexible work hours.

Terri submitted a spreadsheet showing the various private individual childcare providers. Terri explained at the hearing how she prepared the

spreadsheet and testified that none of the payments listed were for any cost other than work-related childcare expenses. Terri stated that she used her bank statements and canceled checks in preparing the spreadsheet and submitted proof of cancelled checks and bank statements as an exhibit. Terri also submitted her most recent social security statement to show that she was actually working during the time periods in question.

Terri was cross-examined by Patrick's counsel, who questioned Terri about three particular checks that were for large amounts. Terri testified that sometimes she did not have the money to pay the providers as needed, so she would pay them in full later when she got paid.

The DRC filed a report on November 19, 2007, which indicated that out of \$12,000.00 in claimed child care costs, Patrick was responsible for reimbursing Terri \$2500.00. Terri filed exceptions on November 28, 2007, and a hearing was held on December 20, 2007. At that time, the trial court remanded the matter to the DRC for specific factual findings as to the amount of actual money and reasonable childcare expenses incurred and a calculation of how the DRC reached the sum of \$2500.00.

The DRC filed a supplemental report on June 11, 2008. The DRC again awarded Terri \$2500.00 and specifically stated that this amount was an effort by the DRC to try to find a fair and equitable resolution that would benefit both parties. Terri again filed exceptions on June 20, 2008. A hearing was held on

these exceptions on July 25, 2008. The trial court entered an order confirming the DRC's recommendations on August 11, 2008. This appeal follows.

Terri's only argument on appeal is that the trial court abused its discretion by failing to allocate work related daycare expenses actually incurred. In support of her argument, Terri argues that the trial court is required to allocate reasonable and necessary child care costs associated with employment as set out in *Olson v. Olson*, 180 S.W.3d 650 (Ky. App. 2003). Terri also relies on KRS 403.211(6), which states " [t]he court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines." Terri argues that she met her burden of proof for the actual expenses incurred, and therefore the trial court was required to allocate those expenses between her and Patrick.

Patrick submits that the trial court properly adopted and confirmed the recommendations of the DRC because the DRC did not find that Terri met her burden of proof on the issue of actual expenses expended on reasonable daycare.

A trial court's findings of fact will not be disturbed on appeal unless clearly erroneous. CR 52.01; *Thomas v. Lyons*, 586 S.W.2d 711 (Ky. 1979). The findings of a master commissioner, to the extent they are adopted by the trial court, are given the same weight. CR 52.01; *Warner v. Sanders*, 455 S.W.2d 552 (Ky. 1970).

In the instant case, the trial court confirmed the report in which the DRC found that the amount to be repaid to Terri by Patrick was determined in an effort to be fair and reasonable and was “not based upon any finding that [Terri] had proven she was entitled to the repayment, as she clearly was not by the evidence presented.” The trial court found that generally speaking, the DRC’s report indicated skepticism toward the evidence Terri presented. Further, the trial court noted that it was essentially impossible to logically calculate any amount to be awarded to Terri because of her pattern of paying relatively large lump sums in even amounts to friends and neighbors without any specific accounting or supporting documentation. The trial court concluded that as a whole, “the pattern of payments raises the likelihood that a substantial portion of the amount claimed was not legitimate.” The trial court then noted that the proper thing for the DRC to do would have been to find that Terri did not meet her burden and award nothing, but that the DRC instead guessed at an arbitrary amount because he felt that Terri did have some legitimate childcare expenses. The trial court concluded that this was arguably an error, but that Patrick failed to object, and therefore the trial court affirmed the findings of the DRC.

“Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous.” *Davis v. Graviss*, 672 S.W.2d 928 (Ky. 1984)(overruled on other grounds). In the instant case, the trial court was in the best position to judge the credibility of the testimony and evidence

presented. Both the DRC and the trial court had serious doubts about Terri's credibility and her methodology used to calculate work related childcare expenses, but felt that some of the claimed expenses were legitimate. Based upon this determination, the DRC and the trial court awarded Terri \$2500.00 in reimbursed childcare expenses in an attempt to find a fair and equitable middle ground. Accordingly, the trial court's findings were not clearly erroneous, given the court's determination that Terri was not an entirely credible witness and the lack of any specific accounting methods to support Terri's checks and bank statements.

We therefore affirm the August 11, 2008, order of the Logan Circuit Court adopting the DRC's recommendations that Patrick reimburse Terri \$2500.00 for work-related childcare expenses.

ALL CONCUR.

BRIEF FOR APPELLANT:

D. Bailey Walton  
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

J. Stewart Wheeler  
Russellville, Kentucky