

RENDERED: OCTOBER 30, 2009; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2009-CA-000672-ME

ERIC JAMES SHAHEEN

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 08-CI-00333

SUZANNE V. SHAHEEN

APPELLEE

### OPINION AFFIRMING

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BEFORE: LAMBERT AND VANMETER, JUDGES; HARRIS,<sup>1</sup> SENIOR JUDGE.

VANMETER, JUDGE: Eric James Shaheen appeals *pro se* from an order of the Madison Circuit Court, Family Division, denying his motion to modify his child support obligation. We affirm.

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<sup>1</sup> Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Eric and appellee Suzanne V. Shaheen are the parents of three minor children. In February 2008 Eric filed a petition for the dissolution of marriage, accompanied by the parties' twenty-two page settlement agreement.<sup>2</sup> The agreement assigned nonmarital property, divided marital property, and provided for the parties' equal sharing of time with their children. Further, because of the differences in their relative incomes, Eric agreed to pay Suzanne child support of \$500 per month, plus 65% of extraordinary costs, plus the children's gymnastics and dirt bike/motocross expenses. In May 2008 the trial court entered a final decree of dissolution which incorporated the parties' agreement after finding it was equitable and not unconscionable.

Some seven months later, in December 2008, Eric filed a *pro se* motion seeking the modification of his child support obligation. He alleged that he lost his job when his employer went out of business, and that he now earned only \$35,000 per year rather than \$78,000 per year as in his prior employment. Further, he alleged that Suzanne's income "may have" recently increased. During the two evidentiary hearings, Eric testified regarding his various expenses and the difficulty of meeting his financial obligations.

Suzanne opposed the motion as "improperly taken without supplementing the record with current income, expenses and the appropriate allegations concerning a modification of a child support obligation less than seven months after the same was ordered enforced by the Court." In her pleadings and

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<sup>2</sup> The record indicates the settlement agreement was drafted by Eric's attorney. Suzanne was not formally represented by counsel, but the agreement was reviewed by an attorney on her behalf.

testimony she indicated that her income had increased by about \$3,000, to \$44,100 per year, and that she had received a bonus of some \$3,000. Evidence also was presented to show that because the daughter had ceased her gymnastics lessons and competitions, and had taken up dance, Eric's financial obligation for the daughter's activities had been reduced from about \$500 per month to about \$90 per month plus costumes and other fees. Suzanne described Eric's property holdings, including assets from his father's estate, and stated that his monthly child support obligation was "a deviation agreement because of the expenses [he] was agreeing to pay for the parties' minor daughter."

After the hearings, the parties were given the opportunity to file supplemental memoranda. Eric requested the court to not only reduce his child support obligation, but also to order Suzanne to pay him a monthly sum as child support. Suzanne opposed any modification of Eric's child support obligation, noting that he "lives in a three-quarters of a million dollar home, has assets set forth in the Property Settlement Agreement from his father's estate, of substantial nature; has more in mortgage payments [than] he allegedly makes per month; has four vehicles; and no longer has to pay the daughter[']s dance fees." The trial court denied Eric's motion for modification, stating:

The parties filed a marital settlement agreement in the action on February 28, 2008, and agreed that the child support payments would be \$500.00 per month. Although [Eric] is not employed by the same company and makes less than he did when the final decree was entered, it appears that he is able to continue to make substantial payments on his mortgage and other debts and

that he still owns substantial real and personal property. The Court will not decrease his child support payments unless he produces evidence that he is not financially able to pay all of his debts.

Eric's *pro se* appeal followed. Although he attempted at that time to supplement the record with additional financial evidence, such evidence cannot be considered by this court on appeal since it was not properly presented to or considered by the trial court.

The sole issue on appeal is whether the trial court abused its discretion by failing to grant Eric's motion to modify his child support obligation. We affirm.

KRS 403.213(2) provides in applicable part:

Application of the Kentucky child support guidelines to the circumstances of the parties at the time of the filing of a motion or petition for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due each month shall be rebuttably presumed to be a material change in circumstances.

As noted by the trial court, Eric described making substantial monthly payments which exceeded his monthly salary. However, he clearly owned substantial amounts of property, and he described having some level of access, through his executor uncle, to funds in his father's estate which had not yet been probated. Even assuming Eric's share of the father's estate constituted nonmarital property which was unavailable to Suzanne in a division of property, KRS 403.212(2)(a) defines "income" for purposes of the child support guidelines as including a

parent's "actual gross income." Importantly, KRS 403.212(2)(b) in turn defines "gross income" as including "income from any source," without regard to whether the described types of income are marital or nonmarital in nature, and without regard to whether income is sporadic or ongoing. Any income from the estate of Eric's father apparently was not excluded from consideration for purposes of calculating Eric's child support obligation. *Cf. Stewart v. Burton*, 108 S.W.3d 647 (Ky.App. 2003) (payments made by father's parents toward his living expenses constituted gifts and could be considered in calculating his child support obligation since such gifts freed the father's other sources of income). Given the absence of evidence to show that Eric was unable to pay his debts, the trial court did not abuse its discretion by denying Eric's motion for modification.

The order of the Madison Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eric James Shaheen, *Pro se*  
Richmond, Kentucky

BRIEF FOR APPELLEE:

Andrew Stephens  
Lexington, Kentucky