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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000092-ME

BOBBY RAY WARDRIP — APPELLANT

v.

APPEAL FROM BRECKENRIDGE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 07-CI-00252

KATHERINE JOYCE WARDRIP — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, DIXON AND TAYLOR, JUDGES.

CAPERTON, JUDGE: Bobby Ray Wardrip (Bobby) appeals from the Breckinridge Circuit Court's judgment whereby the court denied Bobby's motion to modify child support, granted Katherine Joyce Wardrip's (Kathy) motion to set child support for the parties' youngest child, and found Bobby to be voluntarily unemployed or underemployed. Bobby argues that the court erred in its

determination that he was voluntarily unemployed or underemployed. After a careful review of the parties' arguments, the record, and the applicable law, we disagree with Bobby and accordingly affirm the judgment of the Breckinridge Circuit Court.

The facts that give rise to the appeal now before this Court may be briefly summarized. The parties were married and have two children. Upon filing for dissolution of marriage, the parties went before the Domestic Relations Commissioner ("DRC") for a final hearing. The DRC determined that Bobby's monthly gross income was $3,552.33 from his employment with the telephone company and accordingly set child support for the parties' first child.

Prior to the trial court's adoption of the recommendations of the DRC, a second child was born of the marriage; Kathy moved for the trial court to set child support for the youngest child. Correspondingly, Bobby moved for a modification/reduction in child support for the oldest child as he had recently lost his job with the telephone company. The trial court held a hearing on the matter.

Post-hearing the trial court entered its findings of fact, conclusions of law, and judgment on December 15, 2008. In the judgment the trial court found Bobby to be voluntarily unemployed or underemployed. However, the trial court explicitly did not find Bobby to be intentionally avoiding employment in an attempt to avoid or reduce child support.

In making the finding that Bobby was not intentionally avoiding employment, the trial court relied on evidence from the hearing that Bobby worked

for the telephone company for two and a half years, and that prior to that employment Bobby had worked for two other companies as a technician. The court noted that Bobby had been continually employed as a technician for a significant period of time considering his age; it was only after Katherine filed for dissolution of marriage and the final hearing was held that Bobby become unemployed.

At the child support hearing, evidence established that after Bobby was fired from the telephone company he sought unemployment benefits. Bobby was denied unemployment benefits as a Referee for the Kentucky Division of Unemployment Insurance found that Bobby was not honest with his employer and this was the reason he was fired. Thus, he was discharged for misconduct and not for economic reasons beyond his control.[1] Given Bobby's three degrees or certificates,[2] and combining those with his past employment record, the trial court determined that Bobby should be able to find employment in the near future.[3]

Thus, the trial court found Bobby to be voluntarily unemployed or underemployed and imputed his prior gross monthly income from the telephone

[1] Bobby denies these allegations and instead asserts that the telephone company had asked him to change an incident report, and upon his refusal to do so he was fired.

[2] General occupational technical studies, electronics computer technician, and electronics communications technician.

[3] The trial court was well aware of the difficulties that Bobby faced in light of the current economic conditions. However, the court found that Bobby's own misconduct would likely impact his job search and as such, Bobby should not be awarded a reduction of child support because of his own actions. Thus, the court concluded that if after a reasonable period of time Bobby could not find employment due to the economic conditions, and not his own misconduct, he could once again move the court to review his child support obligation.

company to Bobby in order to establish his child support obligation. It is from this judgment that Bobby now appeals.

Bobby argues but one issue on appeal, whether the trial court erred when it ruled that Bobby was voluntarily underemployed or unemployed with the intention to avoid or reduce his child support obligation. As we shall discuss later, this is not a proper characterization of the issue as the trial court did not find Bobby to be voluntarily underemployed or unemployed with the intention to avoid or reduce his child support obligation.

KRS 403.212(d) permits the trial court to impute potential income to a parent found to be voluntarily unemployed or underemployed. Whether a child support obligor is voluntarily unemployed or underemployed under KRS 403.212(2)(d) is a factual determination for the trial court. This Court shall not disturb the findings of the trial court, provided that they are supported by substantial evidence. *Gossett v. Gossett*, 32 S.W.3d 109, 111 (Ky.App. 2000). The trial court is vested with broad discretion in the establishment, enforcement, and modification of child support. Accordingly, this Court reviews child support matters under an abuse of discretion standard, i.e., whether the decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *McKinney v. McKinney*, 257 S.W.3d 130, 133 (Ky.App. 2008).

In the case *sub judice*, the trial court found that Bobby was voluntarily unemployed or underemployed. KRS 403.212(d) requires that, before a court may find voluntary unemployment or underemployment, a court shall consider

"employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community." The record is clear that the trial court made the explicit findings as required by statute. Moreover, these factual findings are supported by substantial evidence of the record. We cannot say that the trial court's finding of voluntarily unemployment or underemployment is clear error, or rises to an abuse of discretion. Thus, we affirm the trial court's finding that Bobby was voluntarily unemployed or underemployed.

Contrary to Bobby's argument, the trial court did not find that Bobby was voluntarily unemployed or underemployed with the intention to avoid or reduce his child support obligation. In fact the trial court made the exact opposite finding in its judgment, i.e., that Bobby did not intend to avoid or reduce his child support obligation. Such a finding is allowed pursuant to the statute. *See* KRS 403.212(2)(d). This allows a trial court to find an individual with a child support obligation to be voluntarily unemployed or underemployed for reasons other than to avoid a child support obligation. The trial court certainly did not err by making such a finding.

In light of the foregoing, we hereby affirm the Breckinridge Circuit Court's judgment entered December 15, 2008.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEE:
Herbert M. O'Reilly Hardinsburg, Kentucky	Justin S. Keown Hartford, Kentucky