

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001757-MR

MARK PADGETT, SR.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 06-CI-00112

SUSAN PADGETT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON AND THOMPSON, JUDGES.

CLAYTON, JUDGE: Mark Padgett (“Mark”) has appealed from a Campbell Circuit Court’s order determining child support and property distribution issues.

After reviewing the record and the applicable law, we affirm.

This case involves a dissolution of marriage proceeding between Mark and Susan Padgett (“Susan”). The parties were initially referred to mediation, and in June 2006, the parties arrived at an agreement in which Mark

consented to pay \$800 per month in child support. The agreement stipulated that Mark had already paid \$800 for July 2006 by check. The parties further agreed that Mark would be awarded certain personal items, but included no terms as to how those items would be retrieved by Mark from Susan. The agreement also provided that Susan would keep her pension plans and stated that the parties agreed to equally divide all equity in the residence.

Following the mediation, a final hearing on the parties' divorce was held in May 2007. Thereafter, the trial court entered an order dated June 12, 2007, in which it found that the parties had entered into the mediation agreement voluntarily and with the assistance of counsel, that the parties believed that the mediation agreement determined all of the outstanding matters in the case, and that the mediation agreement should be enforced. Based on the agreement, the trial court awarded Mark his personal property, awarded Susan her pension plans, and stated that the parties were to divide the home equity. The trial court further required Mark to pay \$800 per month in child support beginning from the date of the final hearing on May 15, 2007.

Thereafter, Susan filed a motion for clarification and instruction asking the trial court to determine that Mark's child support obligation began in June 2006 when the parties entered into the mediation agreement. No hearing was held on this motion, and Susan later filed a second pleading again arguing that Mark was responsible for child support beginning when the parties entered into the mediation agreement. Mark claimed that he should receive money for the personal

property that he was awarded by the trial court but never received, and that he should receive a credit for retirement funds he claimed that he used to purchase the marital residence.

The trial court entered a second order in August 2008 in which the court recognized that it had erroneously commanded Mark to begin paying child support on May 15, 2007, but had intended to enforce the mediation agreement by requiring Mark to pay child support from the time the parties entered into the mediation agreement. The court also found that Mark had failed to offer any proof that he had non-marital interest in the marital residence, and that the parties would split the proceeds equally. Lastly, the trial court found that Mark had failed to establish that he had not received his personal property, and that he had sufficient opportunities to obtain his property, but did not do so.

Mark appeals from this order, claiming that the trial court's award of child support from the date of the mediation agreement was "completely inappropriate," that the trial court improperly found that he had no non-marital interest in the marital residence, and that the trial court had improperly permitted Susan to withhold the personal property awarded to him by the court.

An appellate court's review of child support awards and the division of marital property upon divorce is governed by the abuse of discretion standard. *See Holland v. Holland*, 290 S.W.3d 671, 674 (Ky. App. 2009) (citing *Plattner v. Plattner*, 228 S.W.3d 577, 579 (Ky. App. 2007)); *Overstreet v. Overstreet*, 144

S.W.3d 834, 838 (Ky. App. 2003). An abuse of discretion will only be found “when a trial court’s decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Holland*, 290 S.W.3d at 674, (citing *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001)). “We will disturb a trial court’s findings of fact only if they are clearly erroneous.” *Holland*, 290 S.W.3d at 674, (citing *Wilhoit v. Wilhoit*, 521 S.W.2d 512, 513 (Ky. 1975)).

In the case at bar, Mark’s argument that the trial court improperly awarded child support from the date of the mediation agreement is without merit. The trial court’s conclusion that the payment of child support by Mark should have commenced at the time of the mediation agreement is sustained by the statement in the mediation agreement that Mark paid child support for the month of July 2006. One can logically infer from this statement that the parties believed that the payment of child support was to begin immediately. Therefore, the trial court did not abuse its discretion in awarding child support payments from the date that the mediation agreement was entered into.

Similarly, the trial court’s decision regarding the equal division of the equity in the marital residence simply enforces the mediation agreement as arranged by the parties. Mark failed to adduce any evidence to the trial court that he had a non-marital interest in the property, and he failed to adduce new or additional evidence on appeal. Consequently, he cannot prove that the trial court’s decision represented an abuse of discretion.

With regard to Mark's claim that Susan withheld personal property awarded to him by the court, the trial court found that Mark had come to the residence four different times to retrieve his personal items, and had made no other attempts to get any other items after the fourth trip. Mark failed to direct this Court to any evidence that was not considered by the trial court, or any evidence upon which the trial court incorrectly based its decision upon. As such, there is no finding of an abuse of discretion.

Based on the foregoing, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Theodore Knoebber
Newport, Kentucky

BRIEF FOR APPELEE:

Stacey L. Graus
Daniel E. Linneman
Covington, Kentucky