

RENDERED: SEPTEMBER 3, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2009-CA-002032-ME

MARK SPAULDING

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT  
HONORABLE LISA O. BUSHELMAN, JUDGE  
ACTION NO. 01-CI-00895

JULIE SPAULDING

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: MOORE AND THOMPSON, JUDGES; WHITE,<sup>1</sup> SENIOR JUDGE.

THOMPSON, JUDGE: Mark Spaulding appeals from an order of the Boone Circuit Court that increased his child support obligation for his two children from \$1,200 to \$2,000 per month based on an increase in his income. The issues presented are whether the family court erred when it ordered Mark to pay an amount above the Kentucky Child Support Guidelines and whether it made

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<sup>1</sup> Senior Judge Edwin M. White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

sufficient written findings of fact. We conclude that the family court applied an erroneous standard when determining Mark's child support obligation and that it made insufficient findings of fact. We, therefore, reverse and remand for further findings of fact.

Mark and Julie Spaulding were divorced by a decree of dissolution of marriage entered on October 15, 2001, which incorporated by reference the parties' separation agreement. Pursuant to the agreement, the parties agreed to share joint custody of the parties' minor children who were then six and three-years old with Mark designated as the primary residential custodian. In addition to \$1,200 per month for child support to Julie, Mark agreed to pay the children's public education costs, daycare expenses, and medical and dental expenses not covered by insurance. There was no provision in the agreement regarding the payment of extracurricular activities or interests.

Five years after entry of the decree, Julie filed a *pro se* motion seeking an increase in Mark's child support obligation. After she retained counsel, a hearing was held at which the parties produced the following evidence:

Since the date of the decree, Mark's gross income from operating Mark Spaulding Construction Co. and Mark Spaulding Properties, LLC, increased from \$7,600 to over \$27,359 per month. Julie's income increased from zero to \$2,465.28 per month. The remaining evidence focused on the lifestyles enjoyed by the parties and their children following the decree.

Mark's lifestyle is commensurate with his income level. He resides in a \$194,600 four-bedroom home with an in-ground pool on thirty-five acres that he inherited. The evidence established that Mark frequently enjoys vacations on his yacht, valued at \$425,000. In the fourteen months preceding the motion for an increase in child support, Mark had taken the parties' children to Florida six times and on one vacation to Gatlinburg, Tennessee. Mark Spaulding Construction provides Mark with a 2007 Chevrolet Tahoe, a cell phone, health insurance, and as reflected in his business tax returns, substantial reimbursements for meals and entertainment.

Julie resides in a three-bedroom house appraised at \$127,500, which she received debt free as a result of the dissolution. However, she testified that the house needed maintenance, including a new roof, windows and carpet, which she financed through a home equity loan. Julie owns a 2004 Ford Expedition subject to a \$475 monthly installment loan and a salvage car. Julie's roommate owns a boat which Julie helped finance in exchange for free access to the boat and for which the roommate pays Julie \$437 per month.

As his income increased, Mark voluntarily paid expenses for the children beyond those mandated in the decree. He pays for the children's extracurricular activities including riding lessons, cheerleading and music lessons. Additionally, Mark frequently provides the children with money for shopping. Prior to the motion for increase in child support, Mark willingly reimbursed Julie

for expenses she incurred on behalf of the children but Julie ceased requesting reimbursement in anticipation of an increase in child support.

The family court found the parties' combined monthly gross income was \$29,824.87 of which Julie earns eight percent while Mark earns ninety-two percent. Because the amount exceeded the uppermost level of the Kentucky Child Support Guidelines set out in KRS 403.212, which currently terminates at \$15,000, the family court deviated from the guidelines and awarded \$2,000 per month as child support to be paid by Mark.

Mark contends that the children's reasonable needs are met under the child support established in the decree. He points out that both residences are suitable for the children, their medical and clothing needs are met, and their entertainment and extracurricular activities are paid. In essence, despite the substantial increase in income following the decree, he urges that the *status quo* be maintained. Julie argues that the reasonable needs of the children must be assessed in the context of the parties' incomes and are to be defined in that context. She does not dispute that Mark has paid the children's expenses beyond those ordered in the decree but argues that the money should go directly to her as child support rather than paid based on Mark's generosity to the children.

The child support guidelines establish a rebuttable presumption for an original award or modification of child support. The trial court may deviate from the guidelines when it makes specific findings that the application of the guidelines would not be just or appropriate. KRS 403.212(2). The trial court may invoke its

broad judicial discretion to determine child support when the combined parental adjusted gross income exceeds the uppermost level of the guidelines. KRS 403.212(5). “As long as the trial court’s discretion comports with the guidelines, or any deviation is adequately justified in writing, this Court will not disturb the trial court’s ruling in this regard.” *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky.App. 2001). However, the discretion is not unrestricted. “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Id.*

This Court made clear in *Downing* that a legal principle to which the trial court must adhere is that “any decision to set child support above the guidelines must be based primarily on the child’s needs, as set out in specific findings.” *Id.* at 456.

The focus of this inquiry does not concern the lifestyle which the parents could afford to provide the child, but rather it is the standard of living which satisfies the child’s reasonable and realistic needs under the circumstances.

*Id.* at 457. Any method of calculating child support that resulted in an amount above the children’s reasonable needs was rejected because to accept such a result would accrue to the benefit of the custodial parent by transferring the discretionary spending on the children to the parent receiving the support. *Id.* at 455-456.

Unfortunately, the family court’s approach in this case has such a result.

The family court found that as the children aged, their expenses increased. However, its order is devoid of any specific findings that identify the

increased expenses. Furthermore, no finding is stated as to what, if any, of the children's reasonable needs are not being met by the current child support paid by Mark. Instead, the family court focused on the disparity in the parties' incomes and justified the increase in child support on the basis that it "serves to regulate the children's ability to live in similar environments under each parent." Thus, in the family court's view, in joint custody arrangements, the children's reasonable needs are not the controlling factor when considering support; rather, it is the equalization of the standard of living provided by both households.

Although such an approach may be appropriate when considering maintenance, we reiterate the holding in *Downing* that the children's reasonable needs are the predominate factor when considering whether to deviate from the child support guidelines. We adopt the reasoning of the Minnesota Appellate Court when confronted with the same misapplication of the law:

[C]hild support should not be used as a means of equalizing income between parents who share the obligation of physical custody. Disparity in income must be related to the needs of the children. Absent a showing that the children's needs require a higher level of support from the parent with higher income, we believe the guidelines should be straightforwardly applied.

*Broas v. Broas*, 472 N.W.2d 671, 674 (Minn.App. 1991)(quoting *Hortis v. Hortis*, 367 N.W.2d 633, 635-36 (Minn.App. 1985)).

Accordingly, we reverse and remand the order of the family court with instructions to reconsider the motion to modify child support under the proper

standard set forth in *Downing* and to make specific findings of fact as to the reasonable needs of the children.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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