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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000333-MR

HUBERT GREENWOOD

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 06-CI-01744

SANDRA GREENWOOD

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

** ** * * * * *

BEFORE: DIXON, LAMBERT AND VANMETER, JUDGES.

VANMETER, JUDGE: Hubert Greenwood appeals from a Hardin Family Court order denying his motion to alter, amend, or vacate its November 3, 2009 award of child support and medical bill reimbursement to Sandra Greenwood. For the reasons discussed herein, we affirm in part, reverse in part, and remand.

Hubert and Sandra, formerly husband and wife, were married on July 5, 1986. During their marriage, the parties had two children, a daughter and a son. In 2006, Sandra petitioned the Hardin Family Court for dissolution of marriage. The parties entered into a settlement agreement that divided the parties' marital assets in March 2007. The agreement specifically reserved issues of "custody, visitation, child support, dependency exemptions and payment of the children's medical insurance and expenses" for the trial court's determination. Following a hearing in October 2007, the trial court issued findings of fact, conclusions of law, and an order concerning those issues. The court ordered that the parties were to share joint custody of their children and "that neither party shall pay child support to the other party as long as the parties have joint-shared custody." Thereafter, the trial court entered a decree divorcing Sandra and Hubert.

On direct appeal, Sandra maintained that the trial court erred by awarding the parties' joint custody, failing to award child support during the pendency of the dissolution proceedings, and failing to award her reimbursement for one-half of the children's medical expenses incurred during the pendency of the dissolution proceedings. This court affirmed the trial court's award of joint custody but reversed the trial court's orders regarding child support and reimbursement of medical expenses.¹ Those issues were remanded to the Hardin Family Court for further proceedings.

¹ *Greenwood v. Greenwood*, 2007-CA-002571-ME (Ky.App. Dec. 19, 2008).

On remand, the trial court entered additional findings of fact, conclusions of law, decree and order on November 3, 2009. Having previously found that the children primarily resided with Sandra from November 2006 to October 2007, the court awarded Sandra past child support for that period in the amount of \$681 per month, for a total arrearage in the amount of \$7,831.50.² The trial court gave Hubert an equitable credit against this total in the amount of \$1,669, which represented Sandra's share of their daughter's car repair bill that Hubert had paid in full. The court also ordered Hubert to reimburse Sandra for his share of the children's medical bills which Sandra claimed to have paid in full in the amount of \$1,154.91. Hubert filed a motion to alter, amend, or vacate the court's order, which the trial court denied. This appeal followed.

When examining a trial court's child support determination, we are mindful that awards of child support ordinarily rest in the sound discretion of the trial court. *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky.App. 2000). In *Van Meter*, the court stated that "as long as the trial court gives due consideration to the parties' financial circumstances and the child's needs, and either conforms to the statutory prescriptions or adequately justifies deviating therefrom, this Court will not disturb its rulings." *Id.* (citation omitted). We will not set aside a trial court's findings of fact unless they are clearly erroneous. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005). A court's finding of fact "is not clearly erroneous if it is supported by substantial evidence." *Id.* (citations omitted).

² According to the "child support worksheet," Hubert is responsible for 44.3% of expenses.

Hubert claims that the trial court erred in determining that he owed Sandra child support from November 1, 2006 to October 15, 2007, and by failing to recognize that the parties had equal timesharing of the children beginning in August 2007. Hubert also claims that the trial court erred by setting child support at \$681 per month and by failing to account for Hubert's payment of medical insurance for the children, \$120 per month.

Hubert alleges that the trial court's child support determination should have considered his \$120 monthly payment for the children's medical insurance.

We agree. KRS³ 403.211(7)(a) provides:

If private health care insurance coverage is reasonable in cost and accessible to either parent at the time the request for coverage is made, the court shall order the parent to obtain or maintain coverage, and the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care insurance coverage for the child, in addition to the support ordered under the child support guidelines.

The trial court did not allocate the costs of the children's medical insurance in proportion to the parents' adjusted gross incomes, and thus failed to provide Hubert with a credit toward his child support payments to reflect Sandra's share of the children's health insurance. Therefore, we vacate the trial court's award of \$681 per month in child support to Sandra and remand the issue with instructions for the Hardin Family Court to enter an order that allocates the expense of the children's medical insurance between each party with respect to their income during the relevant time period and then credit Hubert's monthly child support

³ Kentucky Revised Statutes.

payments to reflect that he paid Sandra's portion of the health insurance costs for the children.

Hubert also claims that the trial court should have awarded him child support for the months of August 2007 to October 2007 based upon his assertion that the parties had equal timesharing during this period. We disagree. The trial court found that Sandra was the primary residential parent from November 2006 to October 2007, and Hubert has failed to present evidence to rebut that finding. We find no error, and therefore affirm the court's decision not to award Hubert child support from August 2007 to October 2007.

Hubert also claims that he should have received a credit towards his child support arrearage based on his payment of expenses for their daughter's car repairs following an automobile accident, for their daughter's car insurance, medical expenses not covered by insurance, and other related expenses, totaling \$10,771.65. Our review of the record indicates that Hubert provided the trial court with copies of cancelled checks, receipts, and billing statements to support his request for reimbursement. However, the trial court failed to address the issues of whether Hubert should be credited for his payment of their daughter's car insurance expenses, the children's medical costs, and other miscellaneous expenses. As a result, we remand this issue to the Hardin Family Court with instructions to hold a hearing to determine what percentage, if any, of these expenses should be credited against Hubert's child support arrearage.

Finally, Hubert claims that the court's order requiring him to reimburse Sandra for the children's medical expenses was unsupported by substantial evidence. We agree. CR⁴ 43.01(2) provides that the burden of proof on the issue "lies on the party who would be defeated if no evidence were given on either side." In this case, the burden lies on Sandra as she seeks reimbursement for payments she allegedly made. While Sandra provided the trial court with copies of medical bills owed on behalf of the children, she failed to provide any proof of her payment. Without proof of payment, we cannot be sure that Sandra covered Hubert's share of the original expenses. Thus, the trial court allowed reimbursement without requiring Sandra to meet her burden of proof. We vacate the order requiring Hubert to reimburse Sandra \$1,154.91 and remand this issue to the Hardin Family Court with instructions to require Sandra to produce proof of payment for these expenses before the court orders Hubert to reimburse her.

The Hardin Family Court's findings of fact, conclusions of law, decree, and order are affirmed in part, reversed in part, and remanded to the trial court as instructed herein.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Douglas E. Miller
Radcliff, Kentucky

BRIEF FOR APPELLEE:

Sandra J. Greenwood
Radcliff, Kentucky

⁴ Kentucky Rules of Civil Procedure.