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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-002190-ME

MARSHA LIGHT

APPELLANT

v. APPEAL FROM PULASKI FAMILY COURT
HONORABLE WALTER F. MAGUIRE, JUDGE
ACTION NOS. 03-CI-00184 AND 10-CI-00983

FRANKIE ALLEN GOODMAN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Marsha Light appeals from a Pulaski Family Court order entered November 8, 2010, modifying child support for her two minor children.

Marsha asserts that extraordinary circumstances do not exist sufficient to warrant a

deviation from the Kentucky Child Support Guidelines.¹ Following a careful review of Marsha's arguments² and the record, we affirm.

Marsha and Frankie were married in April, 1993. One child was born during their marriage, J.G. On August 4, 2003, the Pulaski Family Court entered findings of fact, conclusions of law, and a decree of dissolution of the parties' marriage. The decree incorporated a settlement agreement in which the parties agreed to share joint custody of J.G., with Marsha named as his primary residential custodian. Frankie was granted standard visitation rights. The parties also agreed that Frankie would pay child support in the amount of \$300 per month.³

Following dissolution, Marsha and Frankie reconciled without re-marrying. Their second child, E.G., was born on April 21, 2005, out of wedlock. Initially, neither party sought visitation or a child support order with regard to E.G. Thereafter, the parties separated once again but maintained an equal timesharing arrangement with both children.

On July 13, 2010, Frankie moved the Pulaski Family Court to award him joint custody and equal timesharing for E.G. He also moved the court to consolidate the motion with the previous divorce action and to modify its previous orders regarding J.G.'s custodial status. Frankie claimed that his motions reflected

¹ The Kentucky Child Support Guidelines are codified in Kentucky Revised Statutes 403.212.

² Frankie Goodman did not file an appellee brief.

³ The agreed child support obligation for J.G. was less than required by the guidelines, said deviation being expressly provided for in the parties' separation and property settlement agreement.

an agreed arrangement that the parties had maintained for almost five years. On September 22, 2010, Frankie moved that his child support obligation be terminated due to the equal timesharing arrangement that existed with Marsha. Prior to the hearing on Frankie's motions, the parties agreed to share joint custody and timesharing for both children. The hearing conducted on September 29, 2010, focused solely on Frankie's motion to cease his child support obligations.

Marsha testified that she had a high school diploma and had attended college classes. She was employed as a waitress at Cracker Barrel for eleven years and earns \$2.33 per hour, plus tips. Marsha also earns supplemental income by painting. In 2009, Marsha reported an annual income of \$11,672. For the purposes of the hearing, Marsha estimated her monthly income to be \$1,260.

Frankie testified that he has his GED. For several years, he worked for a construction company and earned approximately \$35,000 per year. In 2009, however, he lost his job and received unemployment benefits until he found new employment at the Kentucky Department of Transportation. Frankie testified that he now earns approximately \$1,930 per month.

The parties stipulated that they continue to maintain an equal timesharing arrangement with the children. Although Marsha claimed that she provides more school supplies and paid more school-related expenses for the children, the parties agreed that Frankie provides for the children's financial needs when the children reside with him. Frankie also pays for the children's health insurance in the amount of approximately \$105 per month. Additional medical

costs are divided equally between the parties. Marsha and Frankie pay equal after-school child-care costs. However, Marsha pays an additional fee for child-care during the summer months.

By order entered November 4, 2010, the family court denied Frankie's motion to terminate his child-support obligations, but reduced Frankie's child-support obligation to \$169.79 per month, below that required by the guidelines if Marsha was the primary custodian. This appeal follows.

When reviewing a trial court's decision to establish or deny child support, or the modification thereof, we are mindful of the trial court's broad discretion in these areas. *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001).

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. However, a trial court's discretion is not unlimited. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles.

Id. at 454 (internal citations omitted).

The child support guidelines create a rebuttable presumption for the establishment and modification of child support. *Id.*; Kentucky Revised Statutes (KRS) 403.211 (2). However, the guidelines do not contemplate a shared custody or equal timesharing arrangement between the parents. *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007). Courts may deviate from the guidelines upon finding that their application would create an unjust or inappropriate result.

Downing v. Downing, 45 S.W.3d 449.

It must be recognized that the guidelines were intended to apply to a traditional post-dissolution familial model where one parent (usually the mother) was the primary custodial parent and earned substantially less income than the noncustodial parent (usually the father). By contrast, the modern complexities of family life have resulted in myriad and unique familial circumstances. Strict application of the child support guidelines contained in KRS 43.212 to these myriad and unique familial circumstances often leads to unjust results. To avoid such, our courts must be fully cognizant of and give credence to these myriad and unique familial circumstances when considering child support. KRS 403.211 (3) provides our Court with such mechanism.

Dudgeon v. Dudgeon, 318 S.W.3d 106, 111 (Ky. App. 2010).

In the case at hand, the trial court deviated from the child support guidelines and provided:

Based upon the stipulated income of the parties, and Ms. Light's assertion that annual child care costs average \$153.93 per month, Mr. Goodman's monthly child support obligation, beginning July 13, 2010, shall be \$169.79. This figure represents a deviation from the child support chart which the Court has determined is appropriate under the unique circumstances of the parties and their time sharing arrangement.

We reject Marsha's contention that, under *Dudgeon*, a party seeking deviation based upon extraordinary circumstances must establish that the parties have equal incomes, equal physical custody, and equal child-related expenses. In *Dudgeon*, the Court concluded that the presence of the above factors constituted extraordinary circumstances that rendered the application of the child support guidelines unjust. *Id.* at 112. Nothing in *Dudgeon*, however, creates a litmus test

or requires the existence of equal parental incomes to justify deviation. Instead, consideration of a deviation looks to the unique circumstances of each case.

Unlike *Dudgeon*, Marsha's and Frankie's incomes do not exceed those listed on the child support guidelines. However, Marsha and Frankie appear to share most parental responsibilities on an equal timeshare basis. They cared for the children an equal amount of the time and each bears the totality of the children's costs occurring during their timesharing period. Although Marsha may have paid additional cost for child-care during her summer visitations, Frankie pays for the children's health insurance. The determination of extraordinary circumstances is within the trial court's discretion. KRS 403.211(4). We find no error in the trial court's conclusion that the parties' equal timesharing and expense sharing has created extraordinary circumstances that required deviation from the guidelines.

Accordingly, we affirm the Pulaski Family Court's order modifying child support in this case.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert E. Norfleet
Somerset, Kentucky

BRIEF FOR APPELLEE:

No brief submitted.