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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002268-ME

STANLEY BENNETT RICHARDSON APPELLANT

APPEAL FROM RUSSELL CIRCUIT COURT
FAMILY COURT DIVISION 2
v. HONORABLE JENNIFER UPCHURCH CLARK, JUDGE
ACTION NO. 08-CI-00125

ALLISON MARIE RICHARDSON APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, STUMBO, and WINE, JUDGES.

COMBS, JUDGE: Stanley Richardson appeals an order of the Russell Circuit Court that modified visitation and child support. Following our review, we affirm.

Stanley and Allison Richardson divorced in 2008. They have one child, who was five years of age at the time of the court's order. According to the divorce

decree, Stanley and Allison were awarded joint custody of the child. Additionally, Stanley was required to pay $200 per month for child support.

In September 2009, Allison filed a motion to modify custody, visitation, and child support. She sought sole custody, visitation pursuant to the local standards, and child support according to the standard guidelines. In March 2010, Stanley responded with a motion to dismiss Allison's motion as well as a motion to modify visitation. He did not seek a modification of custody but requested that the court designate him as the primary residential parent.

The court held a hearing on June 4 and August 3 of 2010. It entered its findings on November 23, 2010. The court ordered that joint custody would continue with Allison as the primary residential parent. It also ordered Stanley to pay $398 per month for child support. These are the only two findings from which Stanley appeals.

Our standard of review is governed by Kentucky Rule(s) of Civil Procedure (CR) 52.01. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986) (The rule applies to child custody cases); *Ghali v. Ghali*, 596 S.W.2d 31, 32 (Ky. 1980) (CR 52.01 applies to domestic cases). It provides that in actions without juries, the trial court's findings of facts should not be reversed unless they were clearly erroneous. Clear error occurs only when there is not substantial evidence in the record to support the court's findings. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

Kentucky Revised Statute(s) (KRS) 403.320(3) provides that a court may modify visitation arrangements as long as the modification "would serve the best interests of the child[.]" It further charges that a parent's existing visitation rights shall not be restricted "unless [the court] finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health." *See Stewart v. Burton*, 108 S.W.3d 647, 650 (Ky. App. 2003).

Stanley has not provided any proof that the court abused its discretion in its decision regarding visitation. Although Stanley disagrees with the trial court's decision and does not think it was "fair," he has failed to provide or to cite to any legal basis of error. He cites *Davis v. Collinsworth*, 771 S.W.2d 329 (Ky. 1989), in support of his constitutional right to raise his child. However, that case is not on point. In *Davis*, the lower court found the parent to be unfit and awarded custody to a grandparent. Stanley has not been found unfit; nor has he been denied custody. Furthermore, none of the child's grandparents was a party to this case.

Stanley's main contention is that it is not in the child's best interest to be allowed to visit with Stanley's parents when the child is with Allison. However, the family court found that the child's relationship with his paternal grandparents does not create any risk of danger and is actually beneficial. We have reviewed the entire record, and the court's decision is supported by substantial evidence. Though Stanley does not want his child to spend time with his parents, the court received substantial testimony from Allison and from others that supported the

opposite outcome. Therefore, we are not persuaded that the court abused its discretion in this matter.

Stanley further argues that the family court erred when it increased his child support obligation. Again, he does not provide a legal foundation for his assertion but merely points out that he and Allison share expenses for the child.

KRS 403.213(1) directs that the amount of child support may be modified "only upon a showing of a material change of circumstances that is substantial and continuing." A rebuttable presumption of a material change arises if application of the guidelines causes a child support obligation to be increased by at least fifteen percent. KRS 403.213(2); *Tilley v. Tilley*, 947 S.W.2d 63, 65 (Ky. App. 1997). The guidelines are contained in KRS 403.212. They set forth a method of examining each parent's income by determining the percentage of the total income that each parent contributes and then by applying that percentage to the total statutory obligation.

The family court utilized and followed the guidelines of KRS 403.212 in determining the revised amount of the obligation. The worksheet is included with its findings. It shows that Allison earns 40.27% and Stanley earns 59.73% of their combined income. The result is that Stanley, as the noncustodial parent, is responsible for $398 of the child's monthly support. This is nearly a one-hundred-percent increase from the prior obligation of $200. Thus, the rebuttable presumption was created.

However, Stanley has not provided evidence to rebut the presumption. Although he argues that documentation of income is not included with the court's findings, the record includes testimony from both Stanley and Allison reflecting the court's data. Stanley also urges us to consider *Dudgeon v. Dudgeon*, 318 S.W.3d 106 (Ky. App. 2010), in which our court held that the child support guidelines were inappropriate. However, it involved significantly different circumstances; *i.e.,* nearly equal incomes. Thus, it is not applicable.

We conclude that the Russell Circuit Court did not commit clear error. Therefore, we affirm its order.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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