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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001554-ME
AND
NO. 2012-CA-000422-ME

CHARLOTTE ANN LUNSFORD — APPELLANT

v.

APPEALS FROM KENTON CIRCUIT COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NOS. 08-J-01048 & 11-CI-01056

STATE OF KENTUCKY, AND
THERESA LUNSFORD — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, STUMBO, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: The Appellant, Charlotte Ann Lunsford, appeals the August 4, 2008, order of the court granting custody of her minor child, S.A., to her aunt, Theresa Lunsford, as well as the August 11, 2011, order of the Kenton Circuit Court, denying her request to retroactively modify child support, and

asserts numerous other grounds for appeal pertaining to support, custody, competency, ineffective assistance of counsel, and visitation. In response, the Commonwealth asserts that a number of these issues were unpreserved and, alternatively, that the court below appropriately denied Lunsford's requests. Upon review of the record, the arguments of the parties and the applicable law, we affirm.

Lunsford is the biological mother of a minor child, S.A. By order entered on August 4, 2008, S.A. was removed from Lunsford's custody, and placed with Theresa Lunsford. Thereafter, on October 14, 2008, Lunsford was ordered to pay child support in the amount of $195.00 per month, effective November 1, 2009. Pursuant to the court's November 2009 order, Lunsford was granted supervised visitation with S.A. Throughout this period of time, Lunsford was represented by attorney Robert J. Howell. A separate order was entered on May 22, 2010, reiterating the same terms of child support.

On February 23, 2011, Lunsford filed a motion through Attorney Thomas Kerr for suspension of child support and visitation with S.A. After Lunsford appeared before the court on March 30, 2011, and July 20, 2011, the trial court lowered her child support to $60.00 per month but refused her request to make the modification retroactive to November 1, 2009, the effective date of the original child support order. Lunsford's motion concerning visitation was not addressed at the hearings on March 30, 2011, July 20, 2011, nor in the order

entered on August 11, 2011. It is from the August 11, 2011, order that Lunsford now appeals to this Court.

Prior to addressing the arguments of the parties on appeal, we note that as are most other aspects of domestic relations law, the establishment, modification, and enforcement of child support are prescribed in their general contours by statute and are largely left, within the statutory parameters, to the sound discretion of the trial court. KRS 403.211-KRS 403.213; *Wilhoit v. Wilhoit,* 521 S.W.2d 512 (Ky. 1975). Provided that 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. *Bradley v. Bradley,* 473 S.W.2d 117 (Ky.App. 1971); *Van Meter v. Smith,* 14 S.W.3d 569, 572 (Ky.App. 2000). The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Downing v. Downing,* 45 S.W.3d 449, 454 (Ky.App. 2001).

Concerning custody determinations, we note that appellate review of a trial court's decision on custody related issues is limited to a clearly erroneous standard. CR 52.01; *Reichle v. Reichle,* 719 S.W.2d 442, 444 (Ky. 1986). Findings of fact are clearly erroneous if they are manifestly against the weight of the evidence. *Wells v. Wells,* 412 S.W.2d 568, 571 (Ky. 1967). We review the arguments of the parties with these standards in mind.

On appeal, Lunsford seeks relief from the orders placing her child with Theresa Lunsford, and from the original child support order requiring her to pay $195.00 per month, effective November 1, 2009. It does not appear that she is appealing the court's modification of her support to $60.00 per month, but rather the court's refusal to make the modification retroactive to November 1, 2009.[1]

Concerning the placement of her child with Theresa Lunsford, Charlotte Lunsford argues that Theresa is not a fit custodian for the child because Theresa's estranged husband was convicted of sexual[2] and drug-related offenses, and because Theresa was ordered to have supervised visits with her own son for the reason that he was sexually molested by an individual with whom Theresa left him in a hotel where they were residing at the time. Moreover, Lunsford asserts that she only agreed to give Theresa custody because she thought it was a temporary situation, and because she was afraid that if she did not do so she would go to jail for non-support. Charlotte argues that her attorney did not properly

[1] Upon review of Lunsford's pro se brief, we note that it includes numerous and varied arguments. As clearly as this Court can discern, these arguments include the assertion that: (1) Her counsel, Robert Howell III, was ineffective for not exploring a "defense of mental defect"; (2) That the court did not enter an appropriate order giving custody of S.A. to Theresa Lunsford; (3) That Charlotte Lunsford is "mentally challenged," and that the court was required to conduct an evidentiary hearing concerning her competency to "stand trial"; (4) That her Fourteenth Amendment Due Process rights were violated because she did not enter a voluntary and intelligent plea; (5) That the trial judge should have recused himself because he was not impartial; and (6) That she is entitled to relief from the court's orders pursuant to CR 60.02. Having attempted to discern the nature of these arguments, and their relation to the proceedings below, and in light of what was actually preserved and included in Lunsford's prehearing statement, we believe these arguments to be more appropriately summarized as we have done herein, and we address same accordingly.

[2] Theresa Lunsford's husband, Raleigh Lunsford, was convicted of loitering for prostitution purposes. This Court has reviewed the record and found no other evidence of convictions for crimes of a sexual nature.

discuss the case with her, or realize her disability and communicate with her on an appropriate level.

With respect to the argument concerning support, the Commonwealth argues that this issue was ultimately unpreserved and, alternatively, that the court correctly declined the motion based upon applicable law concerning support and the time that the motion was filed. With respect to the argument concerning the placement of S.A. with Lunsford, the Commonwealth argues that this issue was unpreserved and not properly before our Court.

Concerning the order of $60.00 support per month, our review of this record indicates that this issue was ultimately unpreserved. On March 30, 2011, Lunsford's counsel asked that child support be suspended pending the outcome of her social security claim. Thereafter, at the hearing on July 20, 2011, Lunsford's counsel asked that her support be lowered to $60.00 per month. At no time did Lunsford argue that she should not have a support obligation. Lunsford did not object to the court's decision to lower her support to $60.00 per month, and indeed was granted the relief she requested, which was to have the amount of support lowered. Thus, we believe this issue is not properly before our court on appeal.

Having so found, we turn to Lunsford's argument that the modification of support should have been made retroactive to November 1, 2009, the effective date of the original support order. Again, we disagree. Below, Lunsford's counsel made the motion for modification pursuant to CR 60.02 on the ground that Lunsford's former attorney was not aware of her claimed disability.

Below, the court correctly denied the motion, as it was not made within one year of the entry date of the order, and as there was no showing of fraud, perjury, or falsified evidence. Moreover, it is well-settled that a child support order may not be retroactively modified. *Price v. Price*, 912 S.W.2d 44 (Ky. 1995). Accordingly, we believe that the trial court correctly denied Lunsford's request for a retroactive modification.

Regarding Lunsford's argument that S.A. should not have been placed with Theresa Lunsford, we again find that this argument is not properly before our court. The trial court's ruling placing S.A. with Lunsford was entered in 2008 and was not appealed. There has been no motion filed seeking that the child be returned to Lunsford. Neither the motion heard on July 20, 2011, nor the order entered on August 11, 2011, addresses the removal of S.A. or her placement. Accordingly, we do not believe this issue to be properly before our court, and we decline to address it further herein.[3]

Wherefore, for the foregoing reasons, we hereby affirm the orders of the Kenton Circuit Court concerning custodial placement and child support.

ALL CONCUR.

[3] In so finding, we do note with some concern certain documents which were included with the record on appeal concerning custody issues with respect to Lunsford's biological son, and the supervised visitation that was ordered in that case. However, these issues are not presently before our court at this time, and would be more properly pursued through the appropriate channels in the circuit court.

BRIEF FOR APPELLANT:

Charlotte Lunsford, *Pro Se*
Crossville, Tennessee

BRIEF FOR APPELLEE:

Thomas Kerr
Covington, Kentucky