RENDERED: SEPTEMBER 28, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001625-ME

EDWARD MICHAEL GOODY — APPELLANT

v.

APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 10-CI-00219

JOANNA LYNN GOODY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: Edward Michael Goody (Ed) has appealed from an order of the Trimble Circuit Court requiring him to pay child support to his former spouse, Joanna Lynn Goody (Joanna), and a subsequent order denying his post-judgment motion to alter, amend or vacate the initial order. After a careful review of the record, the briefs and the law, we affirm.

Ed and his former wife, Joanna, are the parents of two minor children. During the pendency of their divorce proceedings, the parties were able to negotiate a partial settlement agreement resolving all issues between them except the payment of child support which was reserved for determination by the trial court. Following a hearing, the trial court issued its findings of fact, conclusions of law, judgment and decree of dissolution. The decree incorporated the parties' separation agreement but modified the agreed-upon parenting schedule contained therein to establish nearly equal timesharing. The trial court awarded Joanna child support in the amount of $498.33 per month.

Ed subsequently moved the trial court to alter, amend or vacate the decree based on the modification of the parenting schedule and award of child support. He also requested further findings pursuant to CR[1] 52.02. He contended the trial court had failed to make any finding with respect to the parties' incomes—a threshold matter for the award of child support. He further argued the trial court had not referenced the Kentucky Child Support Guidelines[2] on the record or in its order nor had it set forth any reasoning for deviating from the guidelines. Ed additionally argued that, pursuant to *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007), he should not be required to pay any support to Joanna as they earned nearly the same income and they shared parenting time equally. Joanna filed a response opposing the requested relief and contending the trial court's rulings were

[1] Kentucky Rules of Civil Procedure.

[2] Kentucky Revised Statutes (KRS) 403.211 *et seq*.

supported by ample evidence, were in the best interests of the children, and were not arbitrary or erroneous.

The trial court entered a final order on August 11, 2011. That order acknowledged a downward deviation from the guidelines and stated the variation was based on the significant parenting time Ed would be exercising. More specifically, the order stated "[w]hile the Court did not specifically provide a rational[e] for a deviation from the guidelines, the Court considered the positions of the parties and recognized that [Ed] had more than minimal contact with the children." The trial court stated the evidence "could have" supported a ruling that Ed be required to pay $612.12 per month in support, but it believed the lower amount was "appropriate given the incomes of the parties and the needs of the children." This appeal followed.

Ed raises three allegations of error in seeking reversal. First, he alleges the trial court erred in awarding child support without first making any findings in regard to the parties' income. Second, he contends the trial court's award was arbitrary and failed to take the specific facts of this mater into consideration. Finally, he argues the trial court erred in awarding any child support at all. We disagree with these contentions and affirm.

> 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*, Ky., 521 S.W.2d 512 (1975). This discretion is far from unlimited. *Price v.*

> *Price*, Ky., 912 S.W.2d 44 (1995); *Keplinger v. Keplinger*, Ky. App., 839 S.W.2d 566 (1992). But generally, 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. *Bradley v. Bradley*, Ky., 473 S.W.2d 117 (1971).

Van Meter v. Smith, 14 S.W.3d 569, 572 (Ky. App. 2000). A reviewing court will defer to the trial court's decision in the absence of an abuse of the trial court's substantial discretion. *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001).

Ed first alleges the trial court's failure to make specific findings regarding the parties' income prior to awarding child support to Joanna was a fatal error requiring reversal. He states this factual determination must be made prior to making a legal determination regarding proper application of the child support guidelines. In support of his contention, Ed cites the language of CR 52.01 requiring a trial court to make specific factual findings and separately state its conclusions of law. No other legal support is cited.

We have reviewed the record and conclude the trial court adequately complied with the requirements of CR 52.01.[3] It is clear that sufficient evidence and testimony regarding the parties' respective incomes was produced to permit the trial court to fashion its ruling on child support. In its final order, the trial court

[3] We believe it important to note that the trial court's final order, while technically complying with the letter of the rule, could have been more thorough and precise. The trial court admitted the initial decree was deficient in that it failed to explain the rationale for its ruling on child support. The final order included a minimal amount of fact-finding and explanation for its earlier ruling. Implementing more complete factual findings can serve to ward off the litigation of issues such as those presented in this appeal and result in greater judicial economy.

indicated the salary information it had received would have justified an order of support of $612.12 per month under the guidelines. Although the trial court did not specifically set forth the salary information upon which it relied in making its calculations—which we agree would be a better practice—it is clear the trial court did, in fact, have the necessary income information before it. The record contains W-2 wage information statements, paycheck stubs, banking account statements, child support worksheets submitted by each party, and other financial information upon which the trial court could rely. Likewise, the parties testified extensively about their respective incomes and the sources of same. Contrary to Ed's assertion, we fail to discern any abuse of the trial court's substantial discretion nor can we conclude reversible error occurred simply because of the failure of the trial court to include more detailed findings of fact.

Next, Ed contends the trial court's award of support was arbitrary because it failed to take into account the specific facts adduced during the pendency of the suit below. He agrees that a deviation from the guidelines was appropriate, but believes the deviation applied by the trial court was insufficient to account for "numerous factors in this case that warranted a substantial deviation" from the statutory guidance. Again, we disagree.

According to the plain language of KRS 403.211, the statutory guidelines contained in KRS 403.212 "serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate." If a

deviation is deemed to be warranted, the trial court's reasoning must be set forth on the record or in a written order. *Id*. Clearly, a decision on whether to deviate from the guidelines lies within the trial court's discretion. *Redmon v. Redmon,* 823 S.W.2d 463 (Ky. App. 1992). As previously stated, Ed agrees that a deviation from the guidelines was warranted. Thus, the only issue to be determined is whether the amount awarded by the trial court was an arbitrary sum. We conclude it was not.

It has long been the law in this Commonwealth that trial courts are vested with broad discretion in determining the proper amount of child support to be paid by a parent and fashioning awards complying with those determinations. *Jones v. Hammond*, 329 S.W.3d 331, 336 (Ky. App. 2010). In this case, we cannot say the trial court abused its discretion in departing downwardly from the amount specified by the guidelines. The final order clearly reflects that in determining the proper amount of child support to award, the trial court took into account the disparities in the parties' incomes, the needs of the children, and the relatively equal amount of time each parent would have with the children. Because the factors relied upon justify a deviation from the guidelines, the decision of the trial court on the amount of that deviation will not be disturbed on appeal. *Van Meter*, 14 S.W.3d at 572.

Finally, Ed contends the trial court's award of any child support constituted an abuse of discretion. He alleges the facts presented are nearly identical to those in *Plattner*, and thus, as was arguably held in that opinion, no

support was warranted. We believe the holding in *Plattner* is factually distinguishable and inapposite to the case *sub judice*. We are also unconvinced *Plattner* requires trial courts to forego awarding child support as Ed alleges.

The child support guidelines "reflect equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes." *Id*., 228 S.W.3d at 580. It is clear that equal timesharing by parents "**may** constitute valid grounds for **deviating** from the guidelines. *Brown v. Brown,* 952 S.W.2d 707 (Ky. App. 1997); *Downey v. Rogers,* 847 S.W.2d 63 (Ky. App. 1993)." *Id*. at 579 (emphasis added). However, contrary to Ed's assertion, we do not believe this language mandates the elimination of the obligation to pay support simply because parents equally share in parenting time with their children. The use of the permissive term "may" rather than a mandatory term bears out our conclusion. Likewise, *Plattner* and the cases cited therein specifically discuss deviating from the guidelines rather than completely eliminating the necessity of an award in such situations.

In *Plattner*, a panel of this Court determined it would be inequitable to award support to either parent based on the unique facts presented therein. Similar to the case at bar, the Plattners were awarded joint custody of their children, neither was designated as primary custodian, and they shared parenting time on an equal basis with each bearing nearly identical shares of the day-to-day child-rearing expenses. Conversely to the facts of this case, the Plattners enjoyed relatively high incomes and the disparity between their incomes was

proportionately minor.[4] Based on these unique facts, this Court determined it would be inappropriate to award support to either parent.

Contrary to Ed's assertion, there is a significant disparity in his and Joanna's incomes. The undisputed evidence before the trial court revealed Ed earned approximately sixty percent of the parties' combined annual income. Although he attempts to square this case with the holding in *Plattner* by stating the actual monetary difference between his and Joanna's incomes is less per month than that in *Plattner*, he fails to recognize that the combined incomes in that case were nearly $100,000.00 more than his and Joanna's combined incomes.[5] Thus, the comparison of actual dollar amount of income disparity does not yield a reliable indicator of the significance of the disparity. We therefore believe the holding in *Plattner* is inapposite based on the facts presented. *Plattner* presented a unique factual situation requiring unique analysis and flexibility by both the trial court and this Court. That uniqueness is not present here. The trial court did not abuse its discretion in awarding child support.

For the foregoing reasons, the judgment of the Trimble Circuit Court is affirmed.

ALL CONCUR.

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[4] The Plattners were found to have a combined annual income in excess of $155,000.00, with the husband's income representing fifty-two percent of the parties combined income and the wife's share representing forty-eight percent.

[5] The Plattner's combined monthly income was $13,013.00; the monthly income disparity between them was $633.00. Ed and Joanna's combined monthly income, as reflected on the child support worksheet, was $5,068.01; the monthly disparity between them was $915.99. Using the highest possible figures contained in the record, their combined incomes would be $5,291.13 and they would have a monthly income disparity of $428.87.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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