

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001849-MR

HAL D. FRIEDMAN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 00-FC-002319

SUSAN E. LEA

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Hal E. Friedman brings this appeal from an August 31, 2011, Order of the Jefferson Circuit Court, Family Court Division, granting a motion filed by Susan E. Lea to increase Hal's child support obligation. We affirm.

Hal and Susan were previously married, but the marriage was dissolved by decree of dissolution in the Jefferson Circuit Court, Family Court

Division, on June 30, 1994. Sometime after the parties divorced, they cohabitated and had a son together on December 20, 1999. On March 14, 2000, Hal filed a Verified Petition for Child Custody, Time-Sharing, and Child Support. The parties were able to reach an agreement, and the terms of that agreement were incorporated into a court order entered on August 14, 2000. Per the terms of the August 14, 2000, order, the parties shared joint custody of their son, and Susan was designated primary residential custodian. Additionally, the parties' time-sharing arrangement essentially provided that Hal would have the child every Tuesday, Tuesday night, Wednesday, and a portion of every weekend. Relevant to child support, Hal was ordered to pay child support of \$576.63 per month.¹

Over the next several years, the parties were frequently unable to agree on issues involving their son. The family court ultimately employed myriad alternatives to assist the parties in reaching a resolution of their disputes, including mediation, court ordered family counseling, and a custodial evaluator. And, over the years, Susan filed multiple motions to increase child support.

Eventually, by agreed order entered April 24, 2009, Hal's child support obligation was increased to \$700 per month. On May 13, 2011, Susan filed another motion to increase child support that is the subject of this appeal. Therein, Susan estimated that Hal's income had dramatically increased to exceed \$250,000 per year. Susan contended that this increased income placed the parties' combined

¹ The parties' incomes were not specifically set forth in the August 14, 2011, order, but the order did provide that Hal Friedman's proportionate share of the parties' combined gross monthly income was 58.6 percent and Susan Friedman's share was 41.4 percent.

gross monthly income well above \$15,000 per month, the upper limit of the child support guidelines (Kentucky Revised Statutes (KRS) 403.213), and thus warranted modification.

The family court conducted a hearing on Susan's motion, and the following evidence was produced. Susan's income for 2008, 2009, and 2010 was \$64,759, \$70,864 and \$79,000, respectively; Hal's income for the same three years was \$191,849, \$159,260, and \$408,425, respectively. Both parties estimated that their income for 2011 would be commensurate with their 2010 income. Thus, their combined gross monthly income was approximately \$40,619 in 2010. By order entered August 31, 2011, the family court granted Susan's motion and increased Hal's child support obligation to \$1,292 per month. This appeal follows.

Hal contends that the family court erred by granting Susan's motion to modify child support and by increasing Hal's child support obligation to \$1,292 per month. Hal specifically alleges that the family court abused its' discretion "by using an arbitrary mathematical 'share the wealth' formula" to calculate his child support obligation. Hal's Brief at 12. Susan responds that the increase in Hal's income constitutes a material change in circumstances that is substantial and continuing, thus justifying the increase in his child support obligation.

The Kentucky child support guidelines are codified in KRS 403.212. Under the guidelines of KRS 403.212, child support is calculated based upon the combined monthly adjusted gross income of both parents. *Dudgeon v. Dudgeon*, 318 S.W.3d 106 (Ky. App. 2010). The guidelines were developed "based on the

theory that a child should receive as child support the same proportion of parental income that he or she would have received had the parties lived together as an intact, two-parent family.” *Dudgeon*, 318 S.W.3d at 110 (quoting 16 Louise E. Graham and James E. Keller, *Kentucky Practice – Domestic Relations Law* § 24:15 (3d. ed. 2008)). However, the child support guidelines are not applicable where the parents’ combined monthly adjusted gross income exceeds the uppermost level of the child support guidelines. KRS 403.211(3)(e); *Dudgeon*, 318 S.W.3d 106.

Where the child support guidelines are inapplicable, the proper standard for modification of child support is found in KRS 403.213(1). KRS 403.213(1) provides for modification of child support if there exists a material change in circumstances that is both substantial and continuing. *See Dudgeon*, 318 S.W.3d 106. When child support falls outside the guidelines, the amount of support must be rationally related to the reasonable needs of the child. *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001). In so determining, we must be cognizant that “the concept of ‘reasonable needs’ is flexible and may vary depending upon the standard of living to which [the children] have become accustomed.” *Id.* at 457. Any determination of the “child’s reasonable needs should also be based upon the parents’ financial ability to meet those needs.” *Id.* at 457. And, if there is evidence to support the family court’s award of child support above the guidelines, we will not disturb such award absent an abuse of discretion. *Id.*

In the case *sub judice*, evidence was presented that the parties' combined gross monthly income for 2010 was \$40,619 per month, which was more than double the parties' income in 2009. And, both parties expected their income for 2011 to be similar to that of 2010. Also, Susan presented evidence regarding the child's needs by introducing an exhaustive list of expenses she regularly incurs on the child's behalf. The family court also considered the testimony of both parties in determining the child's reasonable needs.

In short, there was ample evidence of a probative value evidencing a substantial and continuing change in circumstances justifying modification of child support under KRS 403.213 when considering the parties' combined monthly income of \$40,619 and the child's reasonable needs. Accordingly, we do not believe the family court abused its discretion in awarding \$1,292 per month in child support, nor do we conclude that the family court employed a "share the wealth" model to determine child support as rejected in *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001). In sum, we conclude Hal's contention that the family court erred by modifying and increasing his child support obligation to be without merit.

For the foregoing reasons, the Order of the Jefferson Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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