

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-002242-MR

SHERRI ANNE TEWELL (FORMERLY STONE)

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN SCHRADER, JUDGE
ACTION NO. 10-CI-07298

KELLY CLARK STONE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, COMBS AND NICKELL, JUDGES.

NICKELL, JUDGE: Sherri Anne Tewell has appealed from a portion of the Fayette Circuit Court's findings of fact, conclusions of law, and decree of dissolution of marriage, wherein the trial court determined the split custody arrangement between Tewell and her ex-husband, Kelly Clark Stone, warranted a downward deviation from the Kentucky child support guidelines.¹ Tewell

¹ Kentucky Revised Statutes (KRS) 403.212.

contends the trial court's decision constitutes an abuse of discretion. Following a careful review of the record, the briefs, and the law, we disagree and affirm.

Tewell and Stone's eleven-year marriage produced two minor children. Tewell filed for dissolution on December 28, 2010, and the matter progressed to a contested hearing on August 29, 2011, to address issues of maintenance, child custody and child support. Prior to the hearing, the parties submitted proposed timesharing arrangements and child support worksheets. At the hearing, Tewell and Stone stipulated their respective incomes,² childcare expenses and health insurance costs for the children.

At the conclusion of the hearing, the trial court orally awarded joint custody of the minor children to Tewell and Stone, ordered an equal division of timesharing, and calculated the child support obligation. The trial court found a downward deviation from the Kentucky child support guidelines was warranted based on the shared parenting arrangement between Tewell and Stone and other factors. It provided the parties a worksheet reflecting its calculation of support due from Stone to Tewell of \$454.00 per month, reduced by an offset for the childcare and health insurance costs paid by Stone on Tewell's behalf of \$235.00,³ for a total monthly amount actually due to Tewell of \$219.00.

² According to the stipulations, Tewell's monthly income was \$2,076, and Stone earned \$6,537 per month.

³ Stone pays \$818.00 per month for childcare and health insurance expenses. The amount cited by the trial court represents Tewell's proportionate share of those expenses.

Following the denial of Tewell's motion to reconsider, the trial court entered its findings of fact, conclusions of law and decree memorializing its earlier verbal rulings. This appeal followed.

Tewell contends the trial court's decision to deviate from the child support guidelines was unsupported by sound legal principles and was unreasonable and unfair under the facts presented. We disagree.

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).

Tewell's central allegation is that the trial court erred in deviating from the guidelines on the sole basis of an equal division of timesharing. Citing *Downey v. Rogers*, 847 S.W.2d 63 (Ky. App. 1993), and *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007), she contends a deviation on grounds of equal timesharing is only permissible where there is no disparity in the parties' incomes.

Relying further on several unpublished opinions,⁴ Tewell argues a substantial disparity in income mandates strict adherence to the guidelines, and seeks a decision from this Court prohibiting trial courts from deviating from the guidelines under such circumstances. We disagree with Tewell's contentions and decline her invitation to establish a bright-line rule.

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 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). 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 is well-settled in this Commonwealth that trial courts are vested with broad discretion in determining proper amounts of child support to be paid and fashioning awards complying with those determinations. *Jones v. Hammond*, 329 S.W.3d 331, 336 (Ky. App. 2010). In the case *sub judice*, we cannot say the trial court's decision to depart downwardly from the amount specified by the guidelines constituted an abuse of discretion. The final order clearly reflects the

⁴ We note Tewell has failed to attach copies of the unpublished decisions upon which she relies to her brief filed with this Court in contravention of the plain language of Kentucky Rules of Civil Procedure (CR) 76.28(4)(c).

trial court took great pains in determining the proper amount of child support to award, taking into account the disparities in the parties' incomes, the "economic crisis" being faced by the parties, the needs of the children, the necessary shifting of expenses related to the children's care, and the relatively equal amount of time each parent would have with the children.

Income and parenting time are entwined concepts that trial courts must weigh in determining the appropriateness of a child support award. This calculus rests in the discretion of the trial court which is free to give weight as it sees fit. Here, the trial court obviously gave more credence to the shared parenting time than the disparity in the parties' incomes, which it was well within its discretion to do. 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. We have closely examined the holdings in *Downey* and *Plattner* and, contrary to Tewell's assertions, neither of those Opinions mandates an opposite result under the facts presented in this appeal.

In reaching our decision today, we are mindful the child support guidelines, in their current iteration, give precious little guidance to our trial courts and litigants when faced with matters such as the one presented at bar. Because we are constrained to act within the boundaries of the statutes the Legislature has enacted, we are unable to provide the assistance our trial courts so desperately desire and need. We encourage the Legislature to fashion and adopt adequate

standards comporting with the realities of modern divorce and covering situations such as this one. However, until such time as the Legislature revises the guidelines to account for the changing face of custody and visitation matters in domestic relations cases,⁵ this Court and the trial courts across the Commonwealth will struggle to fashion appropriate awards and remedies in cases not fitting within the narrow parameters of our rapidly aging guidelines.

For the foregoing reasons, the judgment of the Fayette Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gerry L. Calvert, II
Lexington, Kentucky

BRIEF FOR APPELLEE:

John H. Rompf, Jr.
Nanci M. House
Winchester, Kentucky

⁵ We are aware proposed legislation was introduced in the 2013 Regular Session intended to update the child support guidelines to address the issue of determining child support in shared parenting arrangements. Unfortunately, after unanimously passing the House, the proposal died in committee after being introduced in the Senate.