

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000479-ME

KEVIN HUNT

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE DANNY P. CAUDILL, JUDGE
ACTION NO. 09-J-00081

HEATHER GEARHEART

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, LAMBERT, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal of a decision regarding the contribution of the Appellant, Kevin Hunt, to his minor child's child care costs. Based upon the following, we will affirm the decision of the trial court.

BACKGROUND INFORMATION

On December 2, 2009, the Floyd Family Court entered an order in which Hunt was ordered to pay \$521.60 in child care costs. This amount

represented 65.2% of the \$800.00 in monthly child care costs that he and the Appellee, Heather Gearheart, would incur for the care of their child.

On April 13, 2010, Hunt filed a motion to reduce the costs of child care and offered his mother as a no cost alternative. On July 14, 2011, the Floyd Family Court held that the \$800.00 per month in costs was reasonable. Hunt then filed a Motion to Alter, Amend or Vacate and for a more definite statement asking that the court explain its findings. The family court reiterated its holding and Hunt then brought this appeal.

STANDARD OF REVIEW

CR 52.01 provides that “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given the opportunity of the trial court to judge the credibility of witnesses.” Findings are considered to be clearly erroneous if they are manifestly against the weight of the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky.2008); *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky.1967). We will, therefore, uphold the findings on the family court unless we find them to be clearly erroneous.

DISCUSSION

Pursuant to KRS 403.211(6), a trial court may add reasonable and necessary child care costs incurred due to employment to the amount ordered under child support guidelines. The amount of child care costs may be modified only “where a change in circumstances caused the need for childcare to end or decrease.” *Olson v. Olson*, 108 S.W. 3d 650, 652 (Ky. App. 2003).

At the hearing, Gearheart set forth that her child care costs were \$200.00 per week due to her employment. Hunt contends that his mother will care for the child for free and that, therefore, the family court abused its discretion in requiring him to pay child care costs.

As set forth above, the original order was entered on December 2, 2009. On April 13, 2010, Hunt filed a motion to modify the cost of the child care. The original award had been entered and Hunt's request was a modification. As set forth above, KRS 403.211(6) allows the court to set child care as part of child support. There is nothing, however, setting forth reasons why the child care costs should be changed. Hunt's mother was considered by the family court in its original decision to set child care costs. The family court weighed this factor and determined that the care giver who looked after the child should continue. Hunt has not shown any reason this arrangement should not continue other than costs. Thus, there is nothing which would indicate a change in circumstances and, therefore, no reason the court should have modified the original order.

Thus, we affirm the decision of the Floyd Family Court.

VANMETER, JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

LAMBERT, JUDGE, DISSENTING: I respectfully dissent, and would follow the dictates of *Olson v. Olson*, 108 S.W.3d 650 (Ky. App. 2003) and *O'Bryan v. O'Bryan*, 2008-CA-001354-MR (Ky. App. 2009), in deciding this matter presently before us.

BRIEF FOR APPELLANT:

Jimmy C. Webb
Prestonsburg, Kentucky

BRIEF FOR APPELLEE:

Jerry A. Patton
Prestonsburg, Kentucky