

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002105-ME

ARLENE ERICH

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JOSEPH W. CASTLEN, JUDGE
ACTION NO. 05-CI-00341

RICHARD ERICH

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, COMBS, AND LAMBERT, JUDGES.

COMBS, JUDGE: Arlene Erich appeals the order of the Daviess Circuit Court setting child support. Following our review, we affirm.

Arlene and Richard Erich were divorced in 2005. At the time, they had four minor children for whom Richard paid child support. In 2007, the oldest child reached the age of majority, and child support was recalculated for the other

three children. Another child reached the age of majority in 2011, and soon after, Richard filed a motion for child support to be recalculated again.

The Domestic Relations Commissioner entered findings on July 20, 2012, reducing Richard's child support obligation. The circuit court adopted the recommendations of the Commissioner on November 16, 2012. Arlene filed this appeal on December 6, 2012.

Arlene argues that the Commissioner's findings were erroneous and that, therefore, the trial court committed error when it adopted them. We disagree.

Child support obligations may be modified within the sound discretion of the court. *Snow v. Snow*, 24 S.W.3d 668, 672 (Ky. App. 2000). We may disturb the findings of the trial court only if it has abused its discretion by making decisions that were "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Clary v. Clary*, 54 S.W.3d 568, 571 (Ky. App. 2001).

The General Assembly has provided child support guidelines in Kentucky Revised Statute[s] (KRS) 403.212. The guidelines set appropriate amounts of child support based upon the combined incomes of the parents up to a statutory ceiling of fifteen thousand dollars per month. Beyond that maximum sum, a court may deviate from the guidelines. *See* KRS 403.211(3)(3).

In this case, the combined income of the parties has exceeded the guidelines – a point that the parties do not dispute. They agree that it is appropriate

for the court to deviate from the guidelines. Nonetheless, Arlene argues that it was error for Richard to receive a lower child support obligation because his salary increased during the period of time between the emancipation of the oldest child and the second-oldest child.

There is no legal basis for Arlene's argument. She is asking us to follow the concept of "share the wealth" that has been specifically rejected by our Supreme Court. *Downing v. Downing*, 45 S.W.3d 449, 455 (Ky. 2001). Under that theory, child support is blindly calculated according to the income of the parents. Instead, Kentucky follows what has been dubbed the "Three Pony Rule":

While to some degree children have a right to share in each parent's standard of living, child support must be set in an amount which is reasonably and rationally related to the realistic needs of the children. . . . That is, no child, no matter how wealthy the parents, needs to be provided more than three ponies.

Id. at 456. Kentucky's standard is based on the reasonable needs of the children.

Id. It is deemed an abuse of discretion for a court to "increase [a parent's] child support obligation solely based on his increased income without supportive evidence of an increase in [the child's] reasonable needs." *Bell v. Cartwright*, 277 S.W.3d 631, 633 (Ky. App. 2009).

Nonetheless, Arlene argues that the court should have ignored the pertinent Kentucky case law focused on the needs of the children. She has not presented any evidence of the children's reasonable needs – as they were in the

past or as they exist at present. The court properly declined to increase Richard's child support obligation without supporting evidence. Furthermore, it was wholly within the sound discretion of the court to reduce Richard's obligation upon the emancipation of one of the children. KRS 403.213(3). Arlene has not offered any evidence that supports her contention that the trial court abused its discretion, nor have we discovered any in the course of our review.

Therefore, we affirm the order of the Daviess Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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