

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002115-MR
AND
NO. 2013-CA-000923-MR

LUKE HATFIELD

APPELLANT

v.

APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 11-CI-00419

BRITTANY HATFIELD

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE AND TAYLOR, JUDGES.

DIXON, JUDGE: In this consolidated action, Luke Hatfield appeals two orders of the Grayson Circuit Court, which granted his former wife, Brittany Hatfield, sole custody of their children, established child support, and allocated debt. After thorough review, we affirm.

Luke and Brittany were married in April 2002. During the marriage, Luke finished college and obtained a master's degree in clinical mental health counseling. Brittany was primarily a homemaker, and she home-schooled their three children. In 2011, Brittany began working as a reporter for the local newspaper, and Luke's mother home-schooled the children.

Luke filed for divorce in November 2011. The court rendered a decree of dissolution shortly thereafter, but reserved ruling on any contested issues. In June 2012, the Domestic Relations Commissioner (DRC) held a final hearing. The DRC rendered a report recommending that Brittany be awarded sole custody of the children and that Luke pay \$796.51 per month in child support. Luke filed exceptions to the DRC's recommendations, which the circuit court overruled. The court also determined that Brittany was awarded the AT&T cellular telephone plan that was in her name. The cellular telephone plan also included additional phone lines used by Luke and six of his family members; consequently, the court ordered Luke and his family to remove the additional phone lines from Brittany's plan. Luke filed a notice of appeal of the court's order; however, Brittany filed a motion to alter, amend, or vacate regarding the cellular telephone plan. Luke's appeal was held in abeyance while the circuit court considered Brittany's motion. The court ultimately amended its final order to reflect additional debt that was incurred on the cellular telephone bill and allocated that debt to Luke. Luke filed a second notice of appeal, and the two appeals were consolidated for review by this Court.

On appeal, Luke disputes the court's decision awarding sole custody to Brittany, imputing income to him for child support, and allocating the cellular telephone debt to him.

I. Custody

On appellate review, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Kentucky Rules of Civil Procedure (CR) 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). Furthermore, “[a] trial judge has a broad discretion in determining what is in the best interests of children when he makes a determination as to custody.” *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983).

The circuit court adopted the DRC's recommendation that Brittany receive sole custody of the children. The court made additional findings, which stated, in relevant part:

While the parties shared parenting time during the pendency of this action, Respondent, Brittany Hatfield, was awarded exclusive possession of the parties' marital residence by Pendente Lite Order entered January 19, 2012. Yet, the Petitioner admitted he entered the residence without her consent. He got caught when he raised the allegation Brittany was pregnant by virtue of a fake pregnancy test and notes she intentionally placed on a counter. The only way Petitioner could make the allegation was by surreptitiously entering the residence in violation of the agreement. She was not pregnant.

Further, while Petitioner admitted he was to take the \$5,064.00 in federal and state tax refunds and apply same on the parties' mortgage to prevent foreclosures,

Petitioner instead admitted he 'loaned' over two thousand dollars to himself. This violated the Court's Order of February 7, 2012 ordering the tax refunds to be paid on the delinquent mortgage payments. Petitioner was ordered to continue making the house payments. At the same time, he allowed the utilities to the home in which his children were knowingly residing to be cut off.

Petitioner has not cooperated in decision making with Respondent for the 'best interests of the children.' The Domestic Relations Commissioner did not err in her findings of fact and/or conclusions of law. Petitioner's fraudulent behavior materially affected his credibility in the eyes of the Commissioner and of this Court upon a review of the record and hearing tape.

Luke believes the court's findings were inaccurate, and he contends the court improperly considered whether the parties could cooperate in the future if they were joint custodians. Luke alternatively asserts the court failed to consider the best interest of the child factors pursuant to Kentucky Revised Statutes (KRS) 403.270(2) in making its custody determination.

In challenging the accuracy of the court's findings, Luke points to testimony in the record that would have supported a ruling in his favor. Luke's argument overlooks the broad discretion afforded the circuit court as the finder of fact. This was an extremely contentious proceeding, and the parties presented conflicting testimony. Both the DRC and the circuit court noted that Luke was not a credible witness and that his behavior demonstrated an unwillingness to cooperate with Brittany regarding their children. It was also undisputed that, at the final hearing, Brittany and Luke each requested sole custody. The DRC heard extensive testimony from both parties, as well as other lay witnesses, regarding the children's

best interests. The DRC's decision recounted the evidence and considered the best interest analysis pursuant to KRS 403.270(2). Further, after considering the statutory factors, it was appropriate for the DRC and the court to consider "the likelihood of future cooperation between the parents" in making the custody determination. *Squires v. Squires*, 854 S.W.2d 765, 769 (Ky. 1993). Despite Luke's argument to the contrary, we find no error in the court's decision to award Brittany sole custody of the children.

II. Child Support

The circuit court enjoys broad discretion in establishing child support. *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000). As a reviewing court, we defer to the circuit court's discretion as long as its decision was not "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001). Likewise, we are mindful that the lower court had the opportunity to weigh the evidence and determine the credibility of the testimony. CR 52.01; *Reichle*, 719 S.W.2d at 444.

Luke worked as a therapist at Communicare from May 2007, until he voluntarily resigned in February 2012. Luke's gross monthly income was \$3833.00, and his employment records indicated he was eligible to reapply for a position at Communicare. At the time of his resignation, Luke planned to begin a new job with similar duties at H-Group; however, H-Group rescinded its offer of employment. In March 2012, Luke began counseling clients two days per week at Heartland Counseling, earning approximately \$1200.00 per month. The circuit

court concluded that Luke was voluntarily underemployed and imputed monthly income to him of \$3833.00, based on his prior employment as a therapist at Communicare. On appeal, Luke contends he was not voluntarily underemployed, and he asserts the court should have calculated child support based on his actual monthly earnings of \$1200.00.

KRS 403.212(2)(d) states, in relevant part:

(2) For the purposes of the child support guidelines:

(d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

A review of the record reflects that the circuit court was presented with substantial evidence regarding what Luke had earned during the years he was employed as a full-time therapist. Luke was a licensed professional clinical counselor, with a master's degree in clinical mental health counseling. When the job offer at H-Group was rescinded, Luke chose not to pursue reemployment with Communicare or to pursue comparable full-time employment to replace his Communicare salary. The circuit court was in the best position to weigh the testimony and evidence regarding Luke's potential income, and the court concluded that Luke was voluntarily underemployed. Based on our review of the

record, we find no error in the court's determination that Luke had the ability to earn potential income of \$3833.00 per month; accordingly, the court properly calculated child support based on Luke's potential income.

III. Division of Debt

Luke attacks the sufficiency of the evidence supporting the court's division of the debt associated with Brittany's cellular telephone contract.

The court's order stated, in relevant part:

At the hearing on objections, the issue of the AT&T telephone bill was addressed. The Petitioner, Luke Hatfield's family members in conjunction with the Petitioner incurred charges on Respondent's account. Those family members are not parties to this action for the Court to have jurisdiction over them. The bill at the time of the hearing was \$1,102.83. Respondent personally incurred \$145.00 of that bill.

Respondent seeks to recover additional charges as of October 6, 2012 increased by Petitioner and his family members which increased the AT&T bill to \$3,904.88.

This [is] probably one of the most egregious cases of a party knowingly and intentionally persisting in incurring charges through himself and his other family members upon the Respondent's cell phone account **after** their marriage was dissolved **AND** after the Court advised Petitioner at the hearing on exceptions (when he was present) [that] no one had the right to continue doing so!

Based on these findings, the court allocated \$145.00 of the debt to Brittany and the remainder of the AT&T debt was allocated to Luke.

We review the court's findings of fact regarding the division of debt for an abuse of discretion. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001).

Where debts are incurred after separation, the court may consider whether the debt

was “for the sole benefit of the party by whom it was incurred” and assign the debt to that party alone. *Id.* at 522. Further, there is no “presumption that debts must be divided equally or in the same proportions as the marital property.” *Id.* at 523.

Our review of the record indicates the court heard conflicting testimony from the parties regarding the charges on the AT&T bill. Brittany presented evidence showing the expenses incurred on each of the phone lines, while Luke testified that the debt was incurred due to Brittany’s refusal to cooperate with him and his family. The circuit court was clearly in the best position to assess the credibility of the witnesses concerning the conflicting testimony. Here, the court found the testimony and evidence presented by Brittany to be more credible and concluded that Luke incurred the debt after the parties had separated. After careful review, we are not persuaded the court’s division of the AT&T debt was an abuse of discretion.

For the reasons stated herein, the judgment of the Grayson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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