

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000735-ME

ROBERT RAYMOND PRICE

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 04-CI-00551

BARBARA ANNE PRICE

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND KRAMER,¹ JUDGES.

KRAMER, JUDGE: Robert Raymond Price appeals the Boyd Circuit Court's order denying his motion to make a specific finding as to whether or not his daughter's extracurricular activities should be considered as part of the child support payment that he was already court ordered to pay. After a thorough review of the record, we reverse because transportation costs to and from extracurricular

¹ Judge Joy A. Kramer, formerly Judge Joy A. Moore.

activities do not justify a deviation from the child support guidelines. We remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

Barbara Anne Price and Robert Price were divorced in October of 2004 in Boyd Circuit Court. The parties had two minor children born of the marriage, B. R. P. and M. N. P. At the time of the divorce, Robert was incarcerated in North Carolina. In their settlement agreement, which was incorporated into the divorce decree, the parties agreed to have joint care, custody and control of their minor children; that Barbara should be the physical custodian of the children and Robert should have visitation based upon the Boyd Circuit Court Guidelines; that due to Robert's incarceration at that time, no child support should be required until further orders of the court; that Barbara should carry medical insurance on the children as long as it was reasonably available through her employer; and that the parties should be responsible for any medical, dental or eye-care costs for the children not covered by insurance based upon their ration of gross monthly parental income.

Several years later, after Robert was released from prison, an agreed order was entered regarding parenting time, child support, and medical/dental/eye care costs. Pursuant to that order, Robert was ordered to pay \$392 per month in child support and the parties were directed to pay their pro rata shares of the childrens' medical/dental/eye costs that were not covered by insurance, with Barbara paying 71% of those costs and Robert paying 29%.

Several years later, the parties agreed that they would have joint custody of B. R. P., with Robert having physical custody of her. The parties also agreed that neither of them should pay child support to the other for the child in their custody and that Robert should be permitted to claim B. R. P. for tax purposes. The court's prior order regarding visitation was ordered to remain in effect, with Barbara to have visitation with B. R. P. based on the Boyd County Visitation Guidelines.

The following year, Barbara moved to modify child support because B. R. P. was eighteen years old and she was going to graduate from high school approximately one week later. She argued that Robert therefore needed to pay child support for M. N. P., who was thirteen years old and in Barbara's physical custody. The court thereafter entered an order requiring Robert to pay \$546.00 per month in child support and ordering the parties to follow the current timesharing with the exception of exchanging the child.

A hearing was held on December 7, 2011, regarding who would pick up and drop off the child for visitation because Robert had filed a motion regarding the subject. During this hearing, Barbara's counsel raised the issue of whether the parties should split transportation costs for all of M. N. P.'s activities (including a trip to Florida for her to attend a sports camp). In regard to exchanging the child, the court ordered Robert to pick her up at Barbara's home to begin visitation and Barbara to pick her up at the end of visitation at Robert's home. The court also told Barbara's attorney that if he filed a motion for the parties to split the costs of

transportation for M. N. P.'s school activities, etc., the court would sustain the motion because "it [is] only fair."

Approximately one month later, Barbara moved to split transportation costs. She sought an order directing the parties to share equally M. N. P.'s transportation costs, including "mileage, plane/train/bus tickets to and from [their minor daughter's] school activities, extracurricular activities and medical visits."

The circuit court entered an order directing "[t]he parties [to] share equally in the transportation costs, including mileage, airfare, train, bus, etc. . . . to and from the minor child's school activities, extracurricular activities and medical visits." Robert then moved for the court to make a specific finding as to whether or not the extracurricular activities should be considered as part of the child support payment that he was already ordered to pay. The circuit court entered an order denying Robert's motion for a more specific finding. Robert thereafter filed his notice of appeal from the court's order denying his motion for a more specific finding.

II. STANDARD OF REVIEW

This Court recently reiterated the standard of review in child support matters:

The trial court is vested with broad discretion in the establishment, enforcement, and modification of child support. Accordingly, this court reviews child support matters under an abuse of discretion standard, *i.e.*, whether the decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. The trial court[']s findings of fact will only be disturbed if clearly

erroneous. A factual finding is not clearly erroneous if it is supported by substantial evidence.

Bjelland v. Bjelland, 408 S.W.3d 86, 87-88 (Ky. App. 2013) (citations omitted).

III. ANALYSIS

Robert contends that the circuit court abused its discretion in modifying the amount he owed in child support without hearing evidence on the matter and entering findings of fact. He also alleges that the circuit court abused its discretion in ordering him to pay one-half of the transportation costs for his daughter's extracurricular activities because such costs are not an extraordinary expense.^{2, 3}

Robert asserts that the circuit court rendered its decision modifying child support “without any findings of fact or any semblance of substantial evidence[,] which is a violation of KRS^[4] 403.211.” That statute provides, in pertinent part:

(2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the

² Barbara contends in her appellate brief that Robert's brief did not satisfy the requirements of Kentucky Rule of Civil Procedure (CR) 76.12(4)(c) because he did not include references to the DVDs of the hearing in this case. However, Robert did include references to the specific pages in the written record to show that he preserved his arguments; this is sufficient to satisfy CR 76.12(4)(c).

³ We note that Robert does not challenge the circuit court's findings regarding transportation costs for school activities and medical visits. Accordingly, our holding does not apply to those costs.

⁴ Kentucky Revised Statute.

guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.

(3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:

(a) A child's extraordinary medical or dental needs;

(b) A child's extraordinary educational, job training, or special needs;

(c) Either parent's own extraordinary needs, such as medical expenses;

(d) The independent financial resources, if any, of the child or children;

(e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;

(f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. . . .

(g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.

(4) "Extraordinary" as used in this section shall be determined by the court in its discretion.

We have not found a published case directly on point, but *Smith v.*

Smith, 845 S.W.2d 25 (Ky. App. 1992), provides sound guidance on the issue

presently before the Court. In *Smith*, the Court held that private music lessons did not qualify as an “extraordinary educational need” under KRS 403.211 to allow the court to order a deviation from the child support guidelines. The *Smith* Court held:

As used in the statute, we believe “extraordinary educational needs” refers to those things not ordinarily necessary to the acquisition of a common school education but which become necessary because of the special needs of a particular student. While we may be of the opinion that a parent ought to seek to maximize a child’s talents, we do not think the statute was intended to change the common law of this jurisdiction which requires a parent to provide only primary and secondary education.

Id., 845 S.W.2d at 26. Thus, extracurricular activities, such as private music lessons and sports activities, do not justify a deviation from the child support guidelines pursuant to KRS 403.211 and *Smith*.

Because under the guidance of *Smith* extracurricular activities do not justify a deviation from the child support guidelines, it stands to reason that transportation to and from extracurricular activities also does not justify such a deviation. Therefore, the circuit court abused its discretion in ordering Robert to pay one-half of the child’s transportation costs to and from her extracurricular activities.

Accordingly, the order of the Boyd Circuit Court is reversed and the case is remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael J. Curtis
Ashland, Kentucky

BRIEF FOR APPELLEE:

Roger W. Hall
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