

RENDERED: AUGUST 15, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001254-MR

TIMOTHY WAYNE ALWARD

APPELLANT

v.

APPEAL FROM OLDHAM FAMILY COURT  
HONORABLE TIMOTHY E. FEELEY, JUDGE  
ACTION NO. 09-CI-00888

KATHY LYNN STEVENS

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

DIXON, JUDGE: Timothy Wayne Alward appeals from a judgment of the Oldham Family Court modifying his child support obligation and ordering him to reimburse Kathy Lynn Stevens for expenses she incurred on behalf of their children. Finding no error, we affirm.

Timothy and Kathy were divorced in April 2002, by a decree entered in the Chancery Court of Desoto County, Mississippi. The decree incorporated the parties' marital settlement agreement, which provided that Kathy would maintain health insurance for their two children and that Timothy would reimburse her for one-half of the monthly premiums. The agreement also provided that Timothy and Kathy would be equally responsible for the children's medical expenses that were not covered by insurance. By September 2009, Timothy had moved to LaGrange, Kentucky, and Kathy had relocated to Prospect, Kentucky; thereafter, the parties litigated various matters concerning enforcement of the Mississippi decree in the Oldham Family Court.

In January 2013, the family court held an evidentiary hearing on several pending motions filed by the parties. Timothy requested a modification of his child support obligation, while Kathy sought enforcement of the settlement agreement relating to reimbursement for the children's health insurance premiums and medical expenses.

Kathy testified that she had been unemployed since 2009, and that she had previously earned a salary of \$35,000 per year selling restaurant equipment. Kathy explained she left that job in 2009 because she was suffering from Hepatitis C. Kathy also testified regarding health insurance premiums and medical bills that she had paid on behalf of the children. Timothy testified that he was unaware of his obligation to pay for half of the health insurance premiums. He further asserted

that Kathy had never advised him of the expenses relating to the children's medical bills.

The family court rendered an opinion and order reducing Timothy's child support obligation to \$441.00 per month. In the child support calculation, the court imputed minimum wage to Kathy as potential income. The court also concluded that the terms of the settlement agreement required Timothy to reimburse Kathy for one-half of the medical bills and insurance premiums that she incurred on behalf of the children; consequently, the court ordered Timothy to pay \$7,850.20 to Kathy as reimbursement for those expenses. The trial court subsequently denied Timothy's motion to alter, amend, or vacate the order. This appeal followed.

Timothy argues the trial court abused its discretion by imputing minimum wage to Kathy, rather than her prior salary of \$35,000, in the child support calculation and that the court erred by requiring Timothy to reimburse Kathy for health insurance premiums and medical bills.

We are mindful that "the establishment, modification, and enforcement of child support is generally prescribed by statute and largely left, within the statutory parameters, to the sound discretion of the trial court."

*McKinney v. McKinney*, 257 S.W.3d 130, 133 (Ky. App. 2008). As a reviewing court, we defer to the trial 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).

KRS 403.212(2)(d) requires the court to impute potential income to a voluntarily unemployed parent, considering “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.”

Timothy contends the court should have imputed potential income to Kathy of \$35,000, as that was her salary at her most recent employment. Although Kathy testified that she left her job because she was disabled by Hepatitis C, Timothy contends there was no evidence that Kathy was incapable of earning her prior salary.

Kathy testified that she is disabled due to Hepatitis C and that she stopped working in 2009 due to her health condition; thereafter, she received disability payments from a private insurance policy until 2011. At the time of the hearing, Kathy was not receiving any type of disability benefits.

We are mindful the trial court was in the best position to assess the credibility of the witnesses and determine the weight of the evidence. *Buddenberg v. Buddenberg*, 304 S.W.3d 717, 720 (Ky. App. 2010). Our review indicates Kathy clearly testified regarding her medical condition, work history, and capabilities. Despite Timothy’s argument to the contrary, we are not persuaded the court abused its discretion by imputing minimum wage to Kathy for the purposes of calculating child support.

In his second argument, Timothy acknowledges that the terms of the parties' separation agreement required him to reimburse Kathy for one-half of the insurance premiums and medical expenses for the children; however, he contends that Kathy's evidence was insufficient and that she waited too long to request reimbursement.

The record reflects that Kathy presented insurance documents, medical bills, and dental bills to establish the medical expenses she had paid on behalf of the children that were not covered by insurance. Timothy testified that he was unaware of the children's medical expenses; however, he acknowledged that he had never reimbursed Kathy for one-half of the health insurance premiums.

"Terms of the [separation] agreement set forth in the decree . . . are enforceable as contract terms." KRS 403.180(5). Timothy does not dispute that the terms of the settlement agreement required him to reimburse Kathy for one-half of the medical expenses and insurance premiums. The record reflects that the court considered the evidence presented on these issues and determined that Timothy owed Kathy \$7,850.20 pursuant to the terms of the separation agreement. We conclude the trial court properly enforced the parties' agreement.

For the reasons stated herein, the order of the Oldham Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael T. Pate  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Robert A. Riley  
LaGrange, Kentucky