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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-002054-ME

BILLY ROBERTS APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 08-CI-00778

DEANNA RENEE ROBERTS APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, NICKELL, AND VANMETER, JUDGES.

NICKELL, JUDGE: Billy Roberts has appealed from the Laurel Circuit Court's denial of his motion seeking a reduction in his child support obligation. Following a careful review, we affirm.

Billy and Deanna Renee Roberts were divorced on October 16, 2008. In January of 2013, Billy sought and received additional parenting time with the parties' minor children.

On April 22, 2014, Billy filed a motion seeking modification of child support "to reflect the parties' current income." At the July 15, 2014, hearing, Billy argued the January 2013 order had resulted in his having the children nearly fifty percent of the time and requested a credit against child support owed based on this change in circumstances.

By order entered on September 11, 2014, the trial court denied Billy's request to modify child support upon concluding he had failed to show a fifteen percent difference in support due as required by KRS[1] 403.213(2). The trial court further denied Billy's request for a credit due to the parties' nearly equal timesharing upon concluding the request was untimely.

Billy's subsequent motion to alter, amend or vacate was overruled. This appeal followed.

On appeal, Billy argues the trial court erred in denying his modification motion when it refused to consider the amount of time he was spending with his children. Citing *Dudgeon v. Dudgeon*, 318 S.W.3d 106 (Ky. App. 2010), Billy contends the trial court erred in failing to consider the nearly equal amount of time each parent spent with the minor children. While we agree *Dudgeon* indicates equal timesharing is a factor to be considered in determining

[1] Kentucky Revised Statutes.

the amount of child support owed, it is not the only matter to be analyzed. Further, *Dudgeon* was the product of a unique factual scenario requiring unique analysis and flexibility, features simply not present in the instant matter. Thus, we believe *Dudgeon* is inapposite to our analysis.

> As are most other aspects of domestic relations law, the establishment, modification, and enforcement of child support are prescribed in their general contours by statute and are largely left, within the statutory parameters, to the sound discretion of the trial court. KRS 403.211—KRS 403.213; *Wilhoit v. Wilhoit*, Ky., 521 S.W.2d 512 (1975). This discretion is far from unlimited. *Price v. Price*, Ky., 912 S.W.2d 44 (1995); *Keplinger v. Keplinger*, Ky.App., 839 S.W.2d 566 (1992). But generally, as long as the trial court gives due consideration to the parties' financial circumstances and the child's needs, and either conforms to the statutory prescriptions or adequately justifies deviating therefrom, this Court will not disturb its rulings. *Bradley v. Bradley*, Ky., 473 S.W.2d 117 (1971).

Van Meter v. Smith, 14 S.W.3d 569, 572 (Ky. App. 2000). It has long been the law in this Commonwealth that trial courts are vested with broad discretion in determining the proper amount of child support to be paid by a parent and fashioning awards complying with those determinations. *Jones v. Hammond*, 329 S.W.3d 331, 336 (Ky. App. 2010). A reviewing court will defer to the trial court's decision in the absence of an abuse of the trial court's substantial discretion. *Downing v. Downing*, 45 S.W.3d 449 (Ky. App. 2001).

The child support guidelines "reflect equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes." *Plattner v. Plattner*, 228 S.W.3d 577, 580 (Ky. App. 2007). It is clear

that equal timesharing by parents "**may** constitute valid grounds for **deviating** from the guidelines. *Brown v. Brown,* 952 S.W.2d 707 (Ky. App. 1997); *Downey v. Rogers,* 847 S.W.2d 63 (Ky. App. 1993)." *Id*. at 579 (emphasis added). However, we do not believe this language mandates a deviation or modification of the obligation to pay support simply because parents equally share in parenting time with their children. The use of the permissive term "may" rather than a mandatory term bears out our conclusion. The fact that Billy artfully sought a "credit" against his child support rather than a "deviation" from the guidelines is a distinction without a difference.

In this case, we cannot say the trial court abused its discretion in denying Billy's request to modify his child support obligation. There is no allegation the trial court misapplied the law or inaccurately calculated the amount of support due based on the parties' incomes. Likewise, there is no contention the trial court erred in concluding the requirements of KRS 403.213(2) had not been satisfied. Rather, Billy simply contends the trial court erroneously refused to consider the amount of parenting time he had been exercising. However, as we have previously stated, while equal timesharing may justify a modification of support due, no such relief is required. There is no indication the trial court acted outside the statutory parameters. Therefore we will exercise the required deference and will not disturb its discretionary ruling.

For the foregoing reasons, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mary-Ann Smyth
Corbin, Kentucky

BRIEF FOR APPELLEE:

Jennifer Caudill Bundy
London, Kentucky