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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001805-ME

KATHERINE EMILY WILLIAMS APPELLANT

ON REMAND FROM THE KENTUCKY SUPREME COURT
APPEAL FROM HENDERSON FAMILY COURT
v. HONORABLE SHEILA N. FARRIS, JUDGE
ACTION NO. 04-CI-00494

MICHAEL GENE WILLIAMS APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, J. LAMBERT, AND NICKELL, JUDGES.

DIXON, JUDGE: Appellant, Katherine Emily Williams, appeals from an order of the Henderson Family Court modifying the child support obligation of Appellee, Michael Gene Williams. Finding no error, we affirm.

The parties herein were married on December 28, 1994. Two children were born during the marriage, a daughter born in 1996 and a son born in 2002.

The parties were divorced by a decree entered on December 2, 2005, and were awarded joint custody of the children with Michael being entitled to parenting time every other weekend from Friday evening until Monday morning, as well as one additional overnight visit during the week. At the time of the divorce, the family court determined that Appellee's income was $9,111.65 per month and income of $3,020.32 per month was imputed to Appellant. A subsequent order was entered on March 29, 2006, setting Appellee's child support obligation at $1,504.82 per month effective December 2005.

In late 2006, Appellee filed a motion to modify child support on the basis that he had been terminated from his prior employment. Initially, the family court reduced Appellee's support obligation to $263.34 per month. However, following Appellant's motion to reconsider, the family court entered a second order on February 7, 2007, finding that as of January 2007, the parties were, in fact, sharing equal parenting time with the children. Relying on case law setting forth child support computation in shared custody arrangements (referred to as the "Colorado Rule"), the family court calculated Appellee's support obligation at $70.68 per month.

In August 2007, Appellee's support obligation was again recalculated at $798.76 following his regaining full-time employment. The same shared custody calculation method was employed by the family court. Subsequently, in May 2008, the family court entered an agreed order setting Appellee's support obligation at $1,017.59 per month, noting that "[s]aid amount [was] computed in

compliance with the Kentucky Basic Child Support Guidelines taking into consideration the Colorado Rule . . . ."

On July 1, 2015, Appellant again filed a motion for review of Appellee's support obligation. That same day, Appellee filed a motion to modify child support based on the parties' older child having turned eighteen years old in October 2014 and graduated high school in May 2015. Appellant then filed a motion requesting the family court determine the new support obligation pursuant to Kentucky Revised Statute (KRS) 403.215, arguing that Appellee's income of approximately $15,000 per month resulted in an adjusted parental income in excess of that provided for in the child support guidelines.

An evidentiary hearing was held on August 19, 2015. On November 16, 2015[1], the family court entered a final and appealable order setting Appellee's support obligation at $644.35 per month, again using the Colorado Rule. Therein, the family court specifically found:

> The parties earn in excess of the Kentucky Child Support Guidelines and the parties have one minor child and share parenting time with that child.
>
> The Petitioner earns approximately $14,904.00 per month and the Respondent earns approximately $4,125.51 per month. The combined parental income is in excess of the Kentucky Child Support Guideline monthly combined gross income. The Respondent presented evidence of expenses for the child in order to maintain a lifestyle at her home similar to the lifestyle at Dad's home. The Court recognizes the disparity in income between the parties[;] however[,] the parties

[1] The family court entered an initial order on September 8, 2015, but later rescinded such order due to "errors and omissions . . . not reflecting the opinion of this court."

> were divorced in December of 2005. N.W. was an infant at the time of the parties' divorce. He did not reside in an intact household with a combined parental income in excess of the child support guidelines. To require Dad to pay Respondent a sum to equalize the standard [of] living at two homes would be unfair. This Court finds that it is fair and just to extrapolate from the guidelines and add an additional $176.00 to the base child support amount and finds that this is an appropriate amount based on the difference between base child support amounts with a gross combined income of $19,030.00.
>
> The Court also finds that it is appropriate to use the Colorado model in this situation due to the parties' shared parenting arrangement.
>
> Therefore the base amount of support is $1,401.00. Pursuant to the Colorado Model calculations this is multiplied by 1.5% for a sum of $2,102.00. One half of this amount is subject to the parties' proportionate income in accordance to the Colorado Model and offset against the same derivative of other party.
>
> Wherefore, the Petitioner shall pay to Respondent the amount of $644.35 per month in child support for their minor child, or $148.70 per week. See attached Colorado Model Worksheet.

The family court further ruled that the reduction in child support was retroactive to the filing of Appellee's motion on July 1, 2015. Appellant thereafter appealed to this Court.

It is well-settled 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. *Jones v. Hammond*, 329 S.W.3d 331, 334 (Ky. App. 2010). Although "this discretion is far from unlimited[,] . . . 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." *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000) (citations omitted); s*ee also Bradley v. Bradley*, 473 S.W.2d 117 (Ky. 1971). Thus, 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, 454 (Ky. App. 2001). Notwithstanding, a reviewing court must reverse an order of child support if the family court fails to comply with the statutorily-mandated requirements, even if the propriety of deviating from the guidelines was not in question.[2]

On appeal, Appellant argues that the family court erred in modifying child support solely using a mathematical calculation rather than making specific findings as to the needs of N.W. Appellant further contends that the family court failed to set forth sufficient findings of fact to justify a deviation from the child support guidelines. In a similar vein, Appellant also argues that the family court erred by using the Colorado Rule and considering the parties' shared parenting arrangement in setting Appellee's child support obligation. We disagree.

In setting or modifying child support, a family court has the discretion to deviate from the child support guidelines. However, KRS 403.211(2) and (3) clearly require the court to make "a written finding or specific finding" on the

[2] A panel of this Court held as much in the unpublished decision in *Doughty v. Doughty*, 2005 WL 3001919 (Nos. 2003-CA-002385-MR, 2003-CA-002466-MR, 2004-CA-001400-MR, 2004-CA-001502-MR (Ky. App. Nov. 10, 2005)).

record justifying any such deviation. With respect to a shared custody arrangement's effect on child support, a panel of this Court in *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007), observed,

> While Kentucky's child support guidelines do not contemplate such a shared custody arrangement, they do reflect the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes. They also provide a measure of flexibility that is particularly relevant in this case. Under the provisions of KRS 403.211(2) and (3), a trial court may deviate from the child support guidelines when it finds that their application would be unjust or inappropriate. The period of time during which the children reside with each parent may be considered in determining child support, and a relatively equal division of physical custody may constitute valid grounds for deviating from the guidelines. *Brown v. Brown*, Ky. App. 952 S.W.2d 707 (Ky. App. 1997); *Downey v. Rogers*, 847 S.W.2d 63 (Ky. App. 1993).

Id. at 579. Consideration of a shared parenting arrangement in calculating child support is what is referred to as the Colorado Rule or Colorado Model.

Herein, the family court determined that the parties' combined monthly gross income was in excess of the minimum support guidelines; also the shared custody arrangement warranted a deviation from the guidelines. Appellant argues that the family court ignored her evidence concerning N.W.'s needs and instead relied solely on a mathematical extrapolation to reach the child support amount. To the contrary, the family court simply concluded that Appellant was seeking to maintain a lifestyle at her home similar to that which exists at Appellee's home. However, as the family court noted, N.W. was only an infant at the time the parties

divorced in 2005, and he has never resided in a household with a combined parental income in excess of the support guidelines. The family court concluded then, that although a disparity exists between the parties' incomes, it would be unfair to require Appellee to pay Appellant a sum of money to equalize the standard of living at the two homes.

We find it significant that Appellant's requested child support amount of $1,223.44 is higher than the amount of support Appellee had paid when both children were minors. Further, Appellant's tendered expense summary assigns approximately $1,386.50 of her monthly expenses to the care of N.W. Consequently, she seeks to have Appellee cover all but $163 of her expenses. While Appellant does not readily admit such, it appears to this Court that she essentially believes the family court should have adopted a "share the wealth" approach, which was specifically rejected by this Court in *Downing*, 45 S.W.3d at 455.

As previously noted, the family court must specifically set out its reasons for deviating from the child support guidelines, and in this case, it did specifically justify that deviation based on the shared-parenting schedule. *See McGregor v. McGregor*, 334 S.W.3d 113 (Ky. App. 2011). Appellant and Appellee share equal physical custody of N.W. and bear identical day-to-day expenses as they relate to food, clothing, shelter, and entertainment. Appellant does not dispute that Appellee contributes at least fifty-percent and often more to N.W.'s expenses. A relatively equal division of physical custody may constitute valid grounds for

deviating from the guidelines. *Plattner*, 228 S.W.3d at 577. *See also Downey v. Rogers*, 847 S.W.2d 63, 65 (Ky. App. 1993). Given the shared-custody arrangement, the family court was within its discretion to deviate from the guidelines and utilize the Colorado Rule to compute Appellant's monthly child support obligation. [3]

For the reasons set forth herein, the order of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:
William B. Norment, Jr.
Henderson, KY

BRIEF FOR APPELLEE:
Allison Bowers Rust
Henderson, KY

[3] We would observe that Appellant did not object to the family court's use of the Colorado Rule in setting the parties support in January 2007.