

RENDERED: OCTOBER 27, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-01931-MR

PAULA WILLIAMS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE CHRISTOPHER MEHLING, JUDGE  
ACTION NO. 99-CI-01274

PAUL DUGAN

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: KRAMER; CHIEF JUDGE, ACREE and JOHNSON, JUDGES.

JOHNSON, JUDGE: Paula Williams (“Williams”), appeals from the November 18, 2015 Order of the Kenton Circuit Court, Family Division, ordering her to amend her 2011 tax returns. After reviewing the record in conjunction with the applicable legal authority we VACATE AND REMAND for further proceedings in accordance with this Opinion.

## **BACKGROUND**

This case arises out of a custody action filed June 30, 1999, regarding a child born out of wedlock. The original Agreed Order of October 25, 1999, addressed custody, parenting time, child support and the right to claim the tax exemptions for the parties' minor child (in even-numbered years Williams would claim the child as a dependent and in odd-numbered years Paul Dugan ("Dugan"), would claim the child as dependent.)

Over the course of time, various motions for contempt were filed by Williams due to Dugan's failure to timely pay child support and school expenses. On April 30, 2014, Williams asked the court to grant her permission to take the tax exemption in relation to the minor child for all remaining years. On July 9, 2014, the court ordered that the tax exemption should remain as stated in the October 25, 1999 Order, but stated that if Dugan was not current on all child support payments, tuition payments, and unreimbursed expenses, he was subject to losing the exemption. The court further stated that if Dugan lost the exemption, Williams must notify him that she is taking the exemption.

On October 28, 2015, both parties appeared before the court on cross-motions for contempt regarding several issues including the issue of who could claim the tax exemption of 2011. Williams alleged at the hearing that she and Dugan entered into a verbal agreement which allowed Williams to claim the minor child on her tax returns for the year 2011, in lieu of her attempting to enforce the

child support arrearage against Dugan for that year. At the hearing held before the court, Dugan denied any such agreement existed. Based upon that information the court determined it could not enforce an alleged oral agreement between the parties in the absence of any signed, written order. In addition, the court pointed out that if the parties were to reach an oral agreement outside of the court, it would be at their own risk and the court could not enforce “side deals.” The court further stated that if there were some problem, the parties needed to submit a motion and be heard. As a result, the court entered an order on November 18, 2015, compelling Williams to amend her 2011 tax return to allow Dugan to take the tax exemption for that year. It is from this order that Williams now appeals. Dugan has filed no response or brief.

### **STANDARD OF REVIEW**

In reviewing a court order awarding a tax exemption as part of a child custody agreement, the court will review the issue as one of child support. *Adams-Smyrichinsky v. Smyrichinsky*, 467 S.W.3d 767 (Ky. 2015). The standard of review when establishing, modifying, or enforcing an award of child support is abuse of discretion. *McCarty v. Faried*, 499 S.W.3d 266, 271 (Ky. 2016). The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

### **ANALYSIS**

In this case, Williams alleges that the court abused its discretion when it declined to take any evidence relating to her taking the tax exemption for the dependent child in 2011. At the hearing the court inquired as to whether or not an agreement had been reached between the parties as to who was entitled to take the exemption with Williams saying that an oral agreement had been reached while Dugan said it had not. The court proceeded no further in taking evidence on this issue, stating that any alleged oral agreements between the parties must be approved by a court of law which was not done in this case.

The issue of which parent was entitled to claim the tax exemption for the parties' child was raised previously on July 9, 2014, with the court issuing an order stating that the tax exemption would remain as previously ordered in the original agreement of 1999, but allowed that if Dugan was not current on all child support payments, "[i]n the year in which he is able to claim the exemption, he loses the exemption. If he loses the exemption, then mother must notify father that she is taking the exemption." It is important to note that the issue of the 2011 tax exemption was not addressed at this hearing.

In this case, one party said such an agreement was reached four years ago in 2011, and the other party denies any such agreement. Each party filed a motion to hold the other in contempt.

Williams' argument is that she was denied a meaningful opportunity to be heard at the 2015 hearing as to whether she was entitled to the exemption in 2011. While she did not file a separate motion in 2015 concerning her right to take the

tax exemption, the court took no evidence in the 2015 hearing concerning the issue. This effectively denied Williams an opportunity to be heard. This is especially true because Williams' motion for contempt concerned Dugan's child support arrearages. While both parties agree that Williams took the tax exemption for 2011, no mention is made of how Dugan filed his tax returns that year, nor why he waited until the hearing of 2015 to challenge the issue. As a result, the court found Dugan in contempt for failing to keep up his child support responsibilities and ordered Williams to amend her 2011 tax return; thus allowing Dugan to take the exemption. This was error on the part of the court. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Williams has a right to be heard on the issue.

Based upon the foregoing, the Order of the Kenton Circuit Court, Family Division is hereby VACATED, and this matter is REMANDED to the Kenton Circuit Court, Family Division for a hearing on this matter consistent with this Opinion, taking evidence as to whether the parties did have an agreement concerning the 2011 tax returns having acted in reliance on the original 1999 court order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Tasha K. Schaffner  
Florence, Kentucky.

BRIEF FOR APPELLEE:

NO BRIEF FILED FOR  
APPELLEE