

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NOT TO BE PUBLISHED

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

NO. 2017-CA-000565-ME

BYRON J. GRIMES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DEBORAH DEWEESE, JUDGE  
ACTION NO. 13-CI-503189

KIMBERLY GRIMES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KRAMER, CHIEF JUDGE; JOHNSON AND MAZE JUDGES.

JOHNSON, JUDGE: Byron Grimes (“Byron”) appeals from the March 7, 2017

Order of the Jefferson Circuit Family Court. After reviewing the record in

conjunction with the applicable law, we AFFIRM.

**BACKGROUND**

On April 18, 2005 Byron and Kimberly Grimes (“Kimberly”) were married. The parties had two children during the marriage. In 2014, the parties separated and a divorce action was filed. On September 3, 2014, the family court set temporary child support for Byron, ordering him to pay \$1,256.00 per month. On September 16, 2014, the family court dissolved the parties’ marriage, but reserved all other issues, including permanent child support.

On July 28, 2015, the court held a hearing to address several motions that had been filed by both parties. One of the motions, filed by Byron, requested the family court to reassess his monthly child support obligation. The court took evidence concerning the child support obligation and then entered its order on October 14, 2015, which concluded that Byron’s child support obligation was properly set at \$1,256.00 per month.

Byron then filed a motion, apparently pursuant to Kentucky Rules of Civil Procedure (CR) 59.05 asking the court to alter or amend its October 14, 2015 order, challenging the court’s assessment of his annual income resulting in the amount of child support due monthly. By order dated February 2, 2016, the court denied his motion.

On February 25, 2016, Byron filed an appeal with this court, which we dismissed on January 6, 2017, finding that an order of temporary child support

was interlocutory in nature and non-appealable. (*See Grimes v. Grimes*, No. 2016-CA-000261). The case was then returned to the family court.

On February 24, 2017, the court held a hearing to resolve all remaining issues, and in a final and appealable order dated March 7, 2017, made Byron's temporary child support permanent. Byron filed this appeal on April 5, 2017.

### **STANDARD OF REVIEW**

The establishment, modification, and enforcement of child support obligations are left to the sound discretion of the trial court. A family court judge has extremely broad discretion in ascertaining the reliability of the evidence presented, and we will not substitute our judgment for that of the family court unless its findings are clearly erroneous. Factual findings are not clearly erroneous if they are supported by substantial evidence. *Jones v. Hammond*, 329 S.W.3d 331, 334 (Ky. App. 2010). Questions of law are reviewed *de novo*. *Revenue Cabinet v. Comcast Cablevision of the South*, 147 S.W.3d 743 (Ky. App. 2003).

### **ANALYSIS**

This appeal raises only one issue, the court's determination of Byron's child support obligation. However, before we address Byron's appeal, we will first address Kimberly's request that this appeal be dismissed based upon Byron's failure to preserve any error relating to the assessed child support. The record

shows that Byron objected numerous times to the amount of child support awarded in the court's original order of September 3, 2014. Specifically, he noticed a motion seeking a modification of child support several times. When the court entered its October 14, 2015 Order, denying his motion for modification, he filed a motion to alter the court's award of child support on November 2, 2015. When the court denied that motion in its Order of February 2, 2015, Byron filed a notice of appeal on February 25, 2016. We dismissed Byron's appeal on January 6, 2017 as being premature.

We do not find that Byron had to continue to object when the court made the temporary support obligation a final and appealable order. His objections were on the record as was his previous appeal. In cases where the litigant filed a premature appeal, if the other party is not prejudiced, the premature notice of appeal shall relate forward to the date of entry of the final order. *Clark v. Com.* 170 S.W.3d 426, 428 (Ky. App. 2005). In this case, Byron had previously filed an appeal, was following the dictates of our previous order, and waiting until the temporary order became final. We find no prejudice to Kimberly. Therefore, we find that Byron preserved his objection and is properly before this court.

Byron's only issue on appeal concerns the court's determination of his income, stating in his brief that the court order was based on mere allegations, improper calculation of his commissions, and utilizing a base salary that he no

longer receives. Byron states that the court's calculation is "based upon no material fact presented as evidence."

However, in reading the court's October 14, 2015 Order, we find that the court based its decision upon the facts in the record. The court heard testimony and reviewed pay stubs supplied by Byron prior to setting his child support obligation. The court also expressed dismay at Byron's failure to be forthcoming concerning his current salary and commissions, and his failure to offer any additional proof to the court. The court further took notice that Byron failed to make any argument regarding the proper calculation of his income. In determining that Byron's anticipated yearly gross income is eighty-one thousand thirty-one dollars and thirty-seven cents (\$81,031.37), the court relied upon Byron's bank statements and his payroll deposits for commissions, as well as the costs of child care and the children's health and dental insurance provided by Kimberly.

The court based its decision using all of the evidence Byron put into the record, as well as information Kimberly had supplied, prior to reaching its decision. While Byron may complain about how the court determined those financial obligations, it is his burden to offer the court evidence upon which it may rely if he believes the court record is insufficient. The court stated in its February 2, 2016 Order, pp. 2-3:

In 2014 and 2015 he [Byron] has held three separate jobs with a total of six different compensation structures.

What he has not done- not to-date and certainly not prior to the July 28, 2015 hearing – was provide the Court with a timeline showing when he began and ended each position, and when his compensation structure changed. Nor did he adduce evidence, either documentary or testimonial, to provide the Court any insight into his current compensation structure or expected income.

The court then proceeded to note, that “[P]etitioner [Byron] has made practically no argument other (sic) regarding the proper calculation of his income for purposes of child support.”

This pattern of refusing to provide the court with the necessary documentation continued throughout the proceedings. Byron’s recalcitrant failure to provide any additional information concerning his earnings or financial records, works against his argument that the court relied upon allegations, improper calculation of his commissions, and incorrectly determined his base salary.

We find no error in the court’s determination of Byron’s child support obligations, which was supported by substantial evidence in the record, and is fair, reasonable, and well within the court’s discretion.

## **CONCLUSION**

Based upon the foregoing, we **AFFIRM** the order of the Jefferson Circuit Family Court.

**ALL CONCUR.**

**BRIEF FOR APPELLANT:**

Matthew Owen  
Louisville, Kentucky

**BRIEF FOR APPELLEE:**

Pamela M. Workhoven  
Louisville, Kentucky