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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001681-ME

EMILY KUHNS (F.K.A. MONTES) APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DAWN M. GENTRY, JUDGE
ACTION NO. 14-CI-01249

JOSE MONTES APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, JONES AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Emily Kuhns, formerly Montes, appeals from the judgment of the Kenton Circuit Court which ordered her to pay Jose Montes child support, denied her motion to hold Appellee in contempt, and set a specific parenting schedule for the couple's three children. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

The parties' marriage was dissolved on October 15, 2014. Incorporated into the decree of dissolution was the parties' separation and property settlement agreement. The agreement provided that the parties would have joint custody of their three minor children. Parenting time was not specifically defined in the agreement but was to be according to Appellant's work schedule. Appellant's work schedule varied as she would work three consecutive 12-hour shifts which would rotate. Essentially, Appellee would have the children when Appellant was at work. Neither parent paid the other child support. The agreement also stated that Appellant and Appellee were supposed to split the costs of the children's extra-curricular activities 50/50.

On August 29, 2018, Appellant filed three motions. The motions were as follows: a motion seeking an order requiring Appellee to split the costs of the children's extra-curricular activities; a motion seeking to hold Appellee in contempt for failing to pay the extra-curricular costs and for not picking the children up at his designated times; and a motion seeking to increase her parenting time and for Appellee to pay her child support. A hearing was held on these motions on September 27, 2018. Appellant and Appellee both testified.

Appellant testified that Appellee has not fully reimbursed her for his part of the extra-curricular costs and that he has been late in picking the children up

multiple times. Appellant set forth dates in her testimony in which Appellee was late in picking up the children. She also testified as to the extra-curricular activity items she paid for and for which Appellee did not pay his half. She also provided some receipts for these items.

Appellee testified that he had been late in picking the children up on occasion. He indicated that some of the times he was unaware that it was his turn to have the children. This was due to the fact that Appellant would make up a written visitation schedule for him once she knew her work schedule but would sometimes get the schedule to him late. He also testified that the schedule would sometimes not include times for him to pick the children up from their extra-curricular activities. He also testified that he missed some pickups because of car trouble and because of his ill father. As to the extra-curricular activity costs, he testified that he did split the cost for extra-curricular activity fees and uniforms. He further testified that as to other items, like running or soccer shoes, they agreed to each buy a set of extra-curricular activity items to keep at their respective homes. In other words, the children would have two sets of required extra-curricular activity items.

At the end of the hearing, the trial court denied Appellant's motion for contempt, ordered a consistent parenting schedule, and ordered Appellant to pay Appellee $118.49 per month in child support.[1] This appeal followed.

ANALYSIS

We will first begin with Appellant's argument regarding child support. Appellant argues that the trial court did not include Appellee's rental income when it calculated child support. The trial court found that Appellant's monthly gross income was $5,148 and Appellee's monthly gross income was $4,920.93. Appellee testified that he received $650 a month from a rental property. The trial court did not include this amount in Appellee's monthly gross income. Appellant argues that this was error. We disagree.

Kentucky Revised Statute (KRS) 403.212 states that when calculating child support, the court is to use a parent's gross income. Gross income includes money received from rent; however, that money can be offset by "ordinary and necessary expenses[.]" KRS 403.212(2)(c). In the case at hand, Appellee testified that the full $650 he receives from rent goes toward the mortgage payments for the rental property. We believe that this counts as ordinary and necessary expenses.

[1] It does not appear that the trial court directly ruled on the separate motion for reimbursement of extra-curricular activity expenses; however, the court did not hold Appellee in contempt for failing to pay these amounts. Appellant does not address this in her brief; therefore, we will only address the alleged failure to pay these expenses as it relates to the motion for contempt.

Mitchell v. Mitchell, No. 2011-CA-000193-ME, 2011 WL 6306720, at 3 (Ky. App. Dec. 16, 2011). Child support is reviewed for abuse of discretion. *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000). The trial court did not abuse its discretion by not including the $650 in Appellee's gross income.

Appellant also argues that the trial court should have held Appellee in contempt for failing to exercise his parenting time, for sometimes failing to pick up the children, and for failing to reimburse her for the children's extra-curricular activities. We find no error.

"A trial court has inherent power to punish individuals for contempt and nearly unfettered discretion in issuing contempt citations." *Crowder v. Rearden*, 296 S.W.3d 445, 450 (Ky. App. 2009) (citations omitted). Appellee testified that if he missed parenting time or was unable to pick up the children, he had a valid excuse, such as car trouble, being unaware of the schedule, or a sick father. He also testified that he paid his part for the children's uniforms and extra-curricular activity fees. He further testified that he and Appellant agreed to each purchase a set of extra-curricular equipment and other items for the children. The trial court, as fact finder, could determine which evidence to believe and is in the best position to judge the credibility of the parties. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). The court believed it did not need to hold Appellee in contempt and we find no abuse of discretion.

Appellant's final argument on appeal is that the court erred in modifying the parenting time. The original parenting time schedule in this case revolved around Appellant's work schedule. Testimony at the hearing indicated that this was causing conflict because Appellant's work schedule changed regularly. The trial court stated in its order that the children would benefit from a consistent parenting schedule. The court held that Appellee's parenting time would be alternating weekends from Friday after school until Monday before school. He would then get every Monday after school until Wednesday before school. Appellant's parenting time would be Wednesday after school until Friday before school. She also got alternating weekends from Friday after school until Monday before school. Appellant argues that her parenting time should have been increased and Appellee's time decreased because he would sometimes miss his parenting time.

> An appellate court will only reverse a trial court's determinations as to visitation if they constitute a manifest abuse of discretion or were clearly erroneous in light of the facts and circumstances of the case. . . . The test is not whether we would have decided the issue differently, but whether the findings of the trial court were clearly erroneous or an abuse of discretion.

Hudson v. Cole, 463 S.W.3d 346, 350 (Ky. App. 2015) (citations omitted). We find no error. Appellee did miss some parenting time; however, the trial court did not think it was such an issue as to require a contempt citation. Further, the parties

have joint custody of the children and this new parenting schedule will give each parent equal parenting time. It will also provide stability and consistency for the parties and the children. The trial court did not abuse its discretion in creating a new parenting schedule.

CONCLUSION

Based on the foregoing, we affirm the judgment of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Brian L. Titgemeyer Covington, Kentucky	William G. Knoebel Florence, Kentucky