

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000171-ME

KEITH DOHN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A. CHRISTINE WARD, JUDGE
ACTION NO. 16-CI-501546

JESSICA MILLER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

THOMPSON, L., JUDGE: Keith Dohn appeals from an order of the Jefferson Circuit Court, Family Court Division, ordering him to pay Jessica Miller \$447 per month in child support. He also appeals the order denying his motion to alter or amend the child support order. Appellant argues on appeal that the trial court should have deviated from the child support guidelines because he and Appellee

have equal parenting time with the child and similar incomes. Appellee argues that the trial court did not abuse its discretion in declining to deviate from the child support guidelines. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

The parties in this case have one minor child. Per an agreed order entered in 2016, the parties share equal parenting time and Appellant was paying Appellee \$623.54 per month in child support. Appellee was to pay for the child's health insurance and daycare. In April of 2018, Appellant moved to modify child support. He based his motion on the fact that he was now paying for the child's health insurance.

The trial court held a hearing in September of 2018. Appellant and Appellee both testified. The trial court ultimately lowered Appellant's child support obligation to \$447 per month. Appellant then filed a motion seeking to alter or amend the child support order. Appellant argued that the trial court should have deviated from the child support guidelines because he and Appellee have equal parenting time and similar incomes. The trial court denied the motion. This appeal followed.

ANALYSIS

On appeal, Appellant argues that he should not be required to pay child support since the parties share equal parenting time and similar expenses and

income. The trial court declined to deviate from the guidelines. The court held that Appellant initially agreed to pay almost \$200 more in child support even though, at the time, his income and parenting time were similar to that when he requested modification. The court believed it would be unfair to eliminate child support altogether.

“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.” *Van Meter v. Smith*, 14 S.W.3d 569, 572 (Ky. App. 2000) (citations omitted). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001) (citation omitted).

Kentucky Revised Statute (KRS) 403.211(3)(g) allows a court to deviate from the child support guidelines under any extraordinary circumstances as the court finds would “make application of the guidelines inappropriate.” Appellant believes equal parenting time and finances would be such a reason to deviate from the guidelines. He is correct. Courts have used equal parenting time to deviate from the child support guidelines. “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.” *Plattner v. Plattner*, 228 S.W.3d 577, 579 (Ky. App. 2007) (citations omitted). However, a trial court is not required to deviate from the guidelines under these circumstances. *Macleon v. Middleton*, 419 S.W.3d 755, 775 (Ky. App. 2014).

We do not believe the trial court abused its discretion in not deviating from the child support guidelines. As the trial court indicated, Appellant initially agreed to pay over \$600 per month in child support. When he agreed to this amount, his income was similar to what it is now, and he had equal parenting time with Appellee. The trial court reduced Appellant’s child support payment but believed it would be unfair to eliminate it completely. Based on the trial court’s broad discretion regarding this issue, we find no error.

CONCLUSION

Based on the foregoing, we affirm the judgment on appeal.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Christopher Harrell
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jason A. Dattilo
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