

RENDERED: JANUARY 5, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2023-CA-0938-ME

COMMONWEALTH OF KENTUCKY,  
EX REL. S.B.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE TERRI KING SCHOBORG, JUDGE  
ACTION NO. 11-J-00893

R.M.

APPELLEE

OPINION  
VACATING AND  
REMANDING

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BEFORE: ACREE, COMBS, AND ECKERLE, JUDGES.

COMBS, JUDGE: Appellant, Commonwealth of Kentucky, *ex rel.* S.B., (the Commonwealth), appeals from an Order of the Kenton Family Court modifying the child support obligation of Appellee, R.M. (Father). After our review, we vacate and remand.

On May 23, 2023, Petitioner, Commonwealth of Kentucky, *ex rel.*

S.B., legal guardian, by and through the Kenton County Attorney, filed a motion for modification of Respondent Father’s child support obligation pursuant to KRS<sup>1</sup> 403.213, which provides in relevant part:

(1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified . . . only upon a showing of a material change in circumstances that is substantial and continuing.

(2) Application of the . . . guidelines to the circumstances of the parties at the time of the filing of a motion . . . for modification of the child support order which results in equal to or greater than a fifteen percent (15%) change in the amount of support due per month shall be rebuttably presumed to be a material change in circumstances. . . .

The affidavit accompanying the motion reflects that Petitioner is receiving IV-D services<sup>2</sup> through its office and is the recipient of support for the minor child. The affidavit also recites the following relevant information: that

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<sup>1</sup> Kentucky Revised Statutes.

<sup>2</sup> “Congress, as part D of Title IV of the Social Security Act (hereinafter referred to as IV-D services), provided for appropriations for the purposes of enforcing child support obligations, obtaining child and spousal support and assuring that assistance in obtaining support would be available to all children[.]” *Cabinet for Human Resources v. Houck*, 908 S.W.2d 673, 673 (Ky. App. 1995).

effective November 24, 2014, Father had been ordered to pay \$280.25 per month in child support through the Kenton County Child Support Office; that there had been a material change of circumstances such that child support is not currently in compliance with the Kentucky guidelines; and that application of the guidelines to the parties' current earnings will result in a 15% change in Father's current obligation.

The Commonwealth also submitted a Child Support Guidelines worksheet showing Father as the non-custodial parent with an adjusted monthly income of \$10,212.08 and a suggested monthly obligation of \$1,074.23.

The court heard the motion on July 12, 2023. Neither S.B. nor Father was present. The Assistant Kenton County Attorney explained that this is a public assistance case. Ms. Gambrel, the case manager, testified. Her records indicated that the child is currently in the care and custody of S.B. who receives public assistance benefits, a cash benefit. Ms. Gambrel identified a printout from a database which showed that Father had reported income of \$104,187.15 for 2022 and year-to-date earnings of \$63,859.39 for 2023 with a last pay date of June 23, 2023. No employment information was established for the child's mother. The Commonwealth requested that the court issue an order setting Father's monthly child support obligation at \$1,074.23 based upon its submitted worksheet.

Upon additional questioning by the court, Ms. Gambrel testified about how she had verified Father's information and the address she had used for him. She further testified that S.B. was drawing \$372.00 in KTAP (Kentucky Transitional Assistance Program) benefits for the child per month.

Ruling from the bench, the court increased the child support to \$372.00 per month after "having heard the evidence in this case." The Commonwealth asked what the basis was for the deviation (from the child support guidelines). The court stated that "there's been no request or presence by [S.B.] asking for an increase, a modification in support."

The court's handwritten docket sheet order entered July 13, 2023, reflects the following information:

[S.B.] – not present.

Gambrel- [S.B.] collecting benefits  
[Father] income 2022 \$104,000.  
2023 YTD.

Amount of K-Taps benefits drawn by [S.B.] – Child support.

Modified [to] \$372.00 per month effective 5/23/23.

Insufficient evidence of current custody.

The Commonwealth appealed, and Father did not file an Appellee's brief. We note that mail sent to Father at an address in Grayson, Kentucky was returned to the circuit court as undeliverable. We decline to exercise any of the

options in Kentucky Rule of Appellate Procedure 31(H)(3) where an appellee's brief has not been filed. We have instead opted to address the merits of the matter.

The Commonwealth argues that the Order modifying Father's child support obligation to \$372.00 per month is arbitrary, that it is unsupported by any legal principles, and that it fails to comply with the criteria for deviation from the guidelines. We address its arguments together.

As the Commonwealth notes, KRS 205.712(1) establishes the Department for Income Support, Child Support Enforcement in the Cabinet for Health and Family Services. One of the duties of the Department or its designee is to "[e]stablish child support obligations and seek modification of judicially or administratively established child support obligations in accordance with the child support guidelines of the Commonwealth of Kentucky as provided under KRS 403.212[.]" KRS 205.712(2)(i).

Under this statute, the local county attorney shall be considered the designee of the cabinet for purposes of administering the program of child support recovery within a county. Under KRS 205.765, the cabinet or its designee may appear in any judicial proceeding on behalf of the dependent child in order to secure support for the child from his parent or parents.

*Houck, supra*, at 673-74.

"Within statutory parameters, the establishment, modification, and enforcement of child support obligations are left to the sound discretion of the trial

court. However, this discretion is not unlimited. It must be fair, reasonable, and supported by sound legal principles.” *Jones v. Hammond*, 329 S.W.3d 331, 334 (Ky. App. 2010) (citations omitted).

KRS 403.211(2) provides in relevant part that:

[I]n any proceeding to modify a support order, the child support guidelines in KRS 403.212 or KRS 403.2121 shall serve as a rebuttable presumption for the . . . modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. **Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.**

(Emphasis added.)

Once again, it is essential that a court enter findings reflecting its basis for deviating from the guidelines. “Hence, a circuit court clearly must consider and apply the guidelines in each and every proceeding which seeks modification of a support order.” *Wiegand v. Wiegand*, 862 S.W.2d 336, 337 (Ky. App. 1993).

KRS 403.211(3) further provides that:

A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate . . . shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria [in subsections (a)-(g).]

In the case before us, the court’s docket notations do not comply with the statutory mandate in KRS 403.211 and are wholly insufficient and far too meager to allow for meaningful appellate review.

Accordingly, we vacate and remand for further proceedings which shall include the making of the necessary findings. We do not direct a particular result. If the court determines that application of the child support guidelines would be unjust or inappropriate, any deviation must be accompanied by a finding specifying the reason as set forth in KRS 403.211. *See D.H. v. Cabinet for Health and Family Services*, 640 S.W.3d 736, 740 (Ky. App. 2022) (“[F]actual findings are sufficient if they identify evidence of record to show that it complied with the statutory requirements and to allow for meaningful appellate review.”).

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Galen C. Myers  
Covington, Kentucky