RENDERED: SEPTEMBER 9, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001343-MR

JOSEPH WAYNE MCFELIA — APPELLANT

v.

APPEAL FROM LARUE CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 09-CI-00112

DORINDA MCFELIA — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

DIXON, JUDGE: In this dissolution of marriage action, Joseph Wayne McFelia (Father) appeals the final judgment of the Larue Circuit Court, contending the court erred by calculating child support without considering his nearly equal time sharing arrangement with Dorinda McFelia (Mother). We affirm.

Father and Mother married in May 1994, and they separated in February 2009. Two children were born during the parties' marriage. In June 2009, Father and Mother agreed to a temporary order regarding time sharing and child support. Pursuant to the order, Father had visitation with the children every Tuesday until 7:00 p.m., overnight Wednesday, and every other weekend. The agreed order established Father's child support obligation of $696.00 per month according to the statutory guidelines and based upon the income of each party. Approximately one month later, Father filed a motion to reduce his temporary support obligation in light of the nearly equal time sharing arrangement. Father's motion to reduce child support remained pending until the final hearing.

The trial court held a final hearing on May 21, 2010, to resolve disputed issues of property division, time sharing, and child support. After hearing the testimony and receiving evidence, the court rendered findings of fact, conclusions of law, and a decree dissolving the parties' marriage. The court found that the existing time sharing arrangement was in the best interests of the children, and the court determined that Father's child support obligation would remain $696.00 per month as calculated in the temporary agreed order. Father now appeals the court's calculation of child support.

"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). In *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001), this Court explained, "A reviewing court should defer to the lower court's discretion in child support matters whenever possible." "As long as the trial court's discretion comports with the guidelines, or any deviation is adequately justified in writing, this Court will not disturb the trial court's ruling in this regard." *Id*. "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id*.

Father asserts the court abused its discretion by setting child support according to the statutory guidelines rather than deviating from the guidelines to reduce his support obligation in proportion to the percentage of time the children reside with him. Father contends the time sharing schedule results in the children living at his home approximately 45% of the time.

"The child support guidelines set out in KRS 403.212 serve as a rebuttable presumption for the establishment or modification of the amount of child support." *Id*. Pursuant to KRS 403.211(2), a court may deviate from the guidelines if it makes a specific finding that applying the guidelines would be unjust or inappropriate. In *Plattner v. Plattner*, 228 S.W.3d 577 (Ky. App. 2007), this Court explained, "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." *Id*. at 579; *see also Downey v. Rogers*, 847 S.W.2d 63, 65 (Ky. App. 1993).

In the case at bar, the trial court was familiar with the parties' time sharing arrangement, noting the schedule worked "reasonably well." The court heard testimony regarding Father's employment in the manufacturing industry, earning $1400.00 every two weeks. Father also conceded that his income had actually increased since the entry of the temporary child support order. In contrast, Mother testified that she worked forty hours per week as a preschool teacher and earned $9.00 per hour.

While it is clear that the percentage of time sharing can be a valid basis for deviating from the guidelines, our cases do not indicate that a court is required to reduce support for that reason. *See*, *e.g.*, *Plattner*, 228 S.W.3d at 579-80; *Downey*, 847 S.W.2d at 64-65. Indeed, we are mindful of the discretion afforded trial courts tasked with establishing child support. *Van Meter*, 14 S.W.3d 569, 572 (Ky. App. 2000). Here, the trial court recognized the parties' unique time sharing schedule, but chose to rely on the child support guidelines to establish support. *See Downey*, 847 S.W.2d at 65. The evidence established that Father earns a higher salary than Mother, and Father conceded his financial circumstances had actually improved in the year following the entry of the temporary agreed order. Furthermore, it is noteworthy that Father had previously agreed to pay guideline support in conjunction with the split time sharing arrangement pursuant to the temporary order. *See id*.

In light of the evidence, we find no error in the court's refusal to use the time sharing schedule as a basis for reducing Father's child support. The court's decision to apply the statutory guidelines in setting child support based on the income of each party was not an abuse of discretion.

For the reasons stated herein, we affirm the judgment of the Larue Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry D. Raikes
Bardstown, Kentucky

BRIEF FOR APPELLEE:

Caleb T. Bland
Elizabethtown, Kentucky