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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1063-MR

DOUGLAS RAY LINDSEY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE LORI N. GOODWIN, JUDGE
ACTION NO. 23-CI-501695

SAMANTHA DAWN HAMMOND — APPELLEE

OPINION
AFFIRMING IN PART, VACATING
IN PART, AND REMANDING

** ** ** ** **

BEFORE: ACREE, L. JONES, AND MOYNAHAN, JUDGES.

L. JONES, JUDGE: Douglas Ray Lindsey (Douglas), *pro se*, brings this appeal from a July 22, 2025 order of the Jefferson Circuit Court granting relief pursuant to CR[1] 59.05 by vacating, in part, an order of October 16, 2024, modifying child support. We affirm in part, vacate in part, and remand.

[1] Kentucky Rules of Civil Procedure.

Douglas and Samantha Dawn Hammond (Samantha) are the biological parents of one minor child, E.J.L., born in 2021. The underlying action was initiated on June 8, 2023, when Douglas filed a petition seeking an order of shared parenting and a modification of child support (Petition). Therein, Douglas averred the following:

> 4. The parties were awarded joint custody and equal shared parenting time of the minor child in a paternity action styled *Commonwealth of Kentucky, Cabinet for Health and Family Services, ex rel. Samantha D. Hammond v. Douglas R. Lindsey, Case No. 21J501734, (sic) Jefferson Circuit Court, Family Division Three.*
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> 5. Pursuant to an order entered in said paternity action on December 14, 2022, the parties share 50/50 equal parenting time with the minor child with each party parenting the child every other week from Sunday to Sunday at 5:00 p.m. EST. In addition to the foregoing parenting schedule, [Douglas] was ordered to pay [Samantha] $300 per month for child support.

June 8, 2023 Petition; Trial Record (TR) at 1-2.

A hearing was conducted on Douglas's Petition, and by order entered October 16, 2024, the family court made the following findings of fact and conclusions of law:

> The Court finds that the parties have chosen to be voluntarily underemployed and finds that [Douglas's] gross income shall be $4,225.00, and [Samantha's] income shall be is (sic) $11,845.83 per month. The health/vision and hearing insurance costs testified to by each party shall be allowed to be claimed and [Samantha] should remit the monthly sum of $175.72 to [Douglas].

> Considering the alleviation of [Douglas's] obligation of $300.00 per month and the imposition of $175.72 per month from [Samantha] to [Douglas], the statutory requirement of 15% change has been met.

October 16, 2024 order at 4-5.[2]

Samantha filed a timely CR[3] 59.05 motion to alter, amend, or vacate the October 16, 2024 order. A hearing on the CR 59.05 motion was conducted on November 18, 2024; however, an order disposing of the motion was not entered until July 22, 2025. In the July 22, 2025 order, the family court found Douglas's gross income to be $3,356.59 and Samantha's gross income to be $7,682.13. After considering the cost of insurance paid by each party and the cost of Samantha's work-related child-care costs, the family court determined Douglas would owe Samantha $5 per month in child support. Given the nominal amount of child support owed, the family court determined it was unnecessary for either party to remit child support to the other. *See* KRS[4] 403.212(6). Accordingly, the family court vacated the portion of the October 16, 2024 order that established a monthly

[2] The October 16, 2024 order is not in the circuit court record on appeal; however, the order was located on CourtNet with an "entered" notation appearing on the bottom of the document indicating the order was entered on October 16, 2024.

[4] Kentucky Revised Statutes.

child support obligation of $175.72 to be paid by Samantha to Douglas; the child support was ordered retroactive to July 26, 2023.[5] This appeal follows.

We initially note that Douglas's *pro se* brief is deficient for failure to comply with RAP[6] 32(A)(4)[7] as there is not a proper preservation statement at the beginning of each argument. Instead of identifying the action he took to preserve the error, Douglas merely identifies the family court's ruling on the issue. Not one of the preservation statements in Douglas's brief indicates the action he took to preserve the issues for appellate review.

When a party fails comply with the rules of appellate procedure, this Court has three options: "(1) to ignore the deficiency and proceed with the review;

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[5] A motion to modify child support was filed by Douglas on July 6, 2023. However, the July 22, 2025 order modifying child support ordered that the child support was retroactive to July 26, 2023. This was likely a typographical error as child support is ordered retroactive to the date of the filing of the motion to modify. *See Giacalone v. Giacalone*, 876 S.W.2d 616 (Ky. App. 1994).

[6] Kentucky Rules of Appellate Procedure.

[7] RAP 32 provides, in relevant part:

> (A) **Appellant's Opening Brief**. An appellant's opening brief must contain the following sections, in the following order.
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> . . .
>
> (4) An **argument** conforming to the statement of points and authorities, with ample references to the specific location in the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

(2) to strike the brief or its offending portions; or (3) to review the issues raised in the brief for manifest injustice only." *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010) (citation omitted). The basis for reviewing an unpreserved error in a civil case is for manifest injustice. CR 61.02 governs and provides: "A palpable error which affects the substantial rights of a party may be considered by. . . an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error." And "the manifest injustice standard of review is reserved only for errors in appellate briefing related to the statement of preservation." *Ford v. Commonwealth*, 628 S.W.3d 147, 155 (Ky. 2021). It is also worth noting that "[r]equiring a statement of preservation saves this Court the time of canvassing the record in order to determine if the claimed error was properly preserved for appeal." *S.T. v. Cabinet for Health and Fam. Servs.*, 585 S.W.3d 769, 777 (Ky. App. 2019) (internal quotation marks and citations omitted).

Given the lack of compliance with the preservation statement requirements of RAP 32(A)(4), we have opted to review Douglas's contentions of error solely for palpable error that results in manifest injustice. *See Ford*, 628 S.W. 3d at 155. We will proceed accordingly with a review for manifest injustice rather than the otherwise applicable standards of review.

Douglas initially contends the family court erred in its calculation of child support. The entirety of Douglas's first argument is a mere four sentences and provides:

> The Family Court committed a clear error of law in its July 22, 2025 Order by invoking the exception to imputation under KRS 403.212(3)([e])1. This statute prohibits imputing potential income only for a parent caring for a child "age three (3) or younger." The minor child, born May 18, 2021, was over three years old when the Appellee filed her CR 59.05 motion on October 25, 2024, and was over four years old when the July 22, 2025 Order was entered (TR 1; Appx A). The court's subsequent decision to vacate the prior support obligation based on an inapplicable and expired statute is a fundamental error of law warranting reversal.

Douglas's Brief at 3.

KRS 403.212(3)(e)1. governs imputing income to unemployed or underemployed parents and provides, in relevant part:

> If there is a finding that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a finding of voluntary unemployment or underemployment and a determination of potential income shall not be made for a parent who is . . . caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility[.]

In the case sub judice, the family court properly applied the exception to the rule when it imputed income to Samantha after determining she was a voluntarily underemployed parent. *See* KRS 403.212(3)(e)1. The exception found

in KRS 403.212(3)(e)1. provides that income will not be imputed to a parent voluntarily underemployed if the parent is "caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility." It is undisputed that Samantha and Douglas shared joint legal responsibility of E.J.L. So, while E.J.L. was three years old, the family court properly declined to impute income to Samantha although she was voluntarily underemployed. However, after E.J.L.'s fourth birthday on May 18, 2025, Samantha was no longer entitled to the exception set forth in KRS 403.212(3)(e)1. Without application of the exception, the income imputed to Samantha as a result of her voluntary underemployment must be included in her income for purposes of calculating child support. In other words, upon E.J.L.'s fourth birthday, on May 18, 2025, Samantha was no longer entitled to the exception and the income imputed to her from voluntary underemployment must be considered in the child support calculation. Therefore, we vacate that portion of the July 22, 2025 order that failed to impute income to Samantha after May 18, 2025, and remand for entry of an order consistent therewith.

Douglas next contends the family court erred by vacating the previously ordered child support of $175.72 to be paid by Samantha to Douglas. Douglas argues that "child support payments vest when due and cannot be modified prior to the date the motion to modify was properly filed." Douglas's

Brief at 10. Douglas is correct in his argument that child support payments vest when due and cannot be modified prior to the date the motion to modify was filed. *See Gibson v. Gibson*, 211 S.W.3d 601, 609 (Ky. App. 2006). However, in this case, the child support was ordered to be paid retroactive to the date of the motion to modify, July 6, 2023. Accordingly, we affirm that portion of the July 22, 2025 order that provided child support was to be modified retroactively to the date of the motion to modify, July 6, 2023.

Douglas next contends the family court erred by not applying the shared parenting credit pursuant to KRS 403.211(2). Douglas asserts that the July 22, 2025 order did not reference the established 50/50 parenting arrangement and did not contain any findings of fact regarding application of the shared parenting credit. Douglas also noted the child support worksheet referenced in the July 22, 2025 order as being attached was not, in fact, attached to the order.

A review of the July 22, 2025 order reveals the following reference to equal parenting time as set forth in the October 16, 2024 order as follows:

> In its October 16, 2024 [o]rder, the Court considered the testimony and evidence of gross income of the parties, pursuant to KRS 403.212(2) and concluded that the equal parenting time resulted in a deviation from the child support guidelines as provided in K.R.S. (sic) 403.213(1).
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> . . .

> That portion establishing monthly obligation of child support from [Smanatha] to [Douglas] effective July 26, 2023 is hereby vacated and held for naught. The remaining holdings and provisions of the Court's October 16, 2024 order, other than as modified herein, shall remain undisturbed.

July 22, 2025 order at 1-2; TR at 281-82.

It is well established that it is the responsibility of an appellant to ensure the complete record is before the appellate court. *Brannock v. Brannock*, 598 S.W.3d 91, 95 (Ky. App. 2019) (citing *Gambrel v. Gambrel*, 501 S.W.3d 900, 902 (Ky. App. 2016)). And, when an appellate court is presented with an incomplete record, "[w]e must presume that the missing parts of the record support the findings of the trial court." *Brannock*, 598 S.W.3d. at 95 (citing *Harmon v. Harmon*, 13 S.W.2d 242, 243 (Ky. 1928)). As the record on appeal does not contain the aforementioned child support worksheet, we must assume the missing document supports the family court's award of child support as it pertains to the shared parenting credit. This conclusion is further bolstered by the language in the July 22, 2025 order that references application of the shared parenting deviation and the October 16, 2024 order which states that provisions of the July 22, 2025 order not specifically modified remained intact. This would include the deviation for shared parenting time. In other words, application of the shared parenting deviation survived the July 22, 2025 order.

We view any remaining contentions of error as moot or without merit.

For the foregoing reasons, we affirm in part, vacate in part, and remand to the family court for an order of child support to be entered in accordance with this Opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Douglas Ray Lindsey, *pro se*
Munfordville, Kentucky

BRIEF FOR APPELLEE:

Samantha Dawn Hammond, *pro se*
Louisville, Kentucky