

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

NO. 2011-CA-000978-ME

ELIZABETH LEIGH NEALE  
(FORMERLY KUHN)

APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE STEPHEN M. GEORGE, JUDGE  
ACTION NO. 08-CI-502202

GREGORY SCOTT KUHN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MOORE, NICKELL AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Elizabeth Leigh Neale (formerly Kuhn) appeals from a Jefferson Family Court order awarding child support in the amount of \$730.28 per month to her former husband, Gregory Scott Kuhn. We affirm.

Elizabeth and Gregory's marriage was dissolved by a limited decree entered on March 24, 2009. During the marriage, the parties lived in Louisville where Gregory still resides. Elizabeth has moved to Asheville, North Carolina, a five-hour drive from Louisville. Under the terms of their property settlement agreement, which was filed on September 15, 2009, Elizabeth and Gregory assumed joint custody of their three minor children. The agreement provides that the children reside with Elizabeth on the first, third and fifth weekends of every month, plus any days not in school attached to her weekend; all of the summer except for two weeks; two out of three spring breaks; and one-half of the Christmas break. The agreement also provides that neither party would pay child support through February 2011.

On February 10, 2011, Gregory moved the trial court to award him child support. Following a hearing, the trial court found that Gregory is employed by Jefferson County Public Schools as an assistant principal earning \$94,294 per year. He further earns \$100 per month from an outside business. His total monthly gross income is \$7,958. He pays \$150.96 monthly for health and dental insurance for the children. Elizabeth has a Ph.D. and is employed as a clinical psychologist. She also maintains a separate private practice. Her salary is \$42,500 per year. The trial court found that she should be able to earn an additional \$500 per month from her private practice. The court found her total monthly gross income to be \$4,000.

In calculating timesharing, the trial court found that the children were with Elizabeth for 120 nights, or approximately thirty-two percent, of the total nights of

the year. The trial court found no reason to deviate from the child support guidelines and awarded Gregory child support in the amount of \$730.28 per month. This appeal followed.

“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). “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).

Elizabeth argues that the trial court used an arbitrary and unfair method to calculate the parties’ respective parenting times. She contends that the trial court should have used the number of days, rather than the number of overnights, to arrive at the correct percentage. She contends that the children reside with her for 147 days of the year, or over forty percent of the total time. The trial court rejected this means of calculating the amounts of timesharing because Gregory also has the children a portion of the days that they are with Elizabeth and, if both were counted, it would result in more than 365 days in a year.

We disagree with Elizabeth’s contention that the trial court’s method of calculation was arbitrary. It represents a fair reflection of the parties’ timesharing responsibilities; taking the “days” approach would be confusing and arbitrary in having to account for days when the children are with each parent only part of the

time. Elizabeth argues that it is unfair that, on days when she drives the children to Louisville and transports them to Gregory's house in the evening, the travel day is counted as "his" because the children stayed overnight with him. But, presumably, the same situation works to her advantage on the days that Gregory drives the children to her home. "[T]he findings of a trial court will not be disturbed by this Court if they are supported by substantial evidence." *Gossett v. Gossett*, 32 S.W.3d 109, 111 (Ky.App. 2000); Kentucky Rules of Civil Procedure (CR) 52.01. The trial court's calculation of the parenting time is supported by substantial evidence. It is neither arbitrary nor unreasonable and will not be disturbed on appeal.

Elizabeth further argues that their nearly equal parenting time and her low income qualifies as an extraordinary circumstance that warrants deviation from the child support guidelines. Under Kentucky Revised Statutes (KRS) 403.211(2), a trial court may decide to deviate from the guidelines "where their application would be unjust or inappropriate." The statute provides several factors that may justify such an adjustment, including any "factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate." KRS 403.211(3)(g). Elizabeth likens the circumstances of this case to those in *Plattner v. Plattner*, S.W.3d 577 (Ky.App. 2007), in which a panel of this Court held that "[t]he 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. Elizabeth’s argument is premised on her assertion that she and Gregory share virtually equal parenting time. But the trial court in this case did not find an equal division of physical custody. While it is true that Elizabeth’s income is lower than Gregory’s, we do not find that fact alone to be sufficient to warrant reversing the trial court’s order and mandating a deviation from the guidelines.

Finally, she argues that the trial court erred in not allowing an abatement of her summer child support payments, which she contends would help equalize her income disadvantage. Although she will incur higher expenses during the summer months when the children reside solely with her, her expenses are correspondingly lower during the course of the school year when they reside primarily with their father. The trial court did not abuse its discretion in refusing to abate the summer payment of child support.

For the foregoing reasons, the Jefferson Family Court’s child support order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven J. Kriegshaber  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Cindy Harrington Napier  
Louisville, Kentucky