RENDERED: NOVEMBER 15, 2013; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000181-ME

RACHEL ADAMS-SMYRICHINSKY APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 10-CI-01235

PETER T. SMYRICHINSKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, NICKELL, AND STUMBO, JUDGES.

COMBS, JUDGE: Rachel Adams (f/k/a Smyrichinsky) appeals the order of the Oldham Family Court which set child support and assigned tax deductions. After our review, we affirm.

Rachel and Peter Smyrichinsky have been involved in litigation since the commencement of their dissolution proceedings in September 2003. The

dissolution took place in Harrison County, Indiana. The court awarded joint custody of their two sons to both parties, designating Rachel as the primary residential custodian. Eventually, they all moved to Kentucky. Therefore, in 2011, the Indiana court relinquished jurisdiction in order for the Oldham Family Court to assume jurisdiction.

Rachel then filed a motion in Oldham Family Court requesting a new calculation of child support. The court entered an order setting child support at $1,791 per month in September 2011. It amended the amount to $1,100 in April 2012.

In August 2012, Peter filed a motion seeking a reduction in child support because the older son had reached the age of majority and had started college. On January 9, 2013, the trial court entered an order reducing Peter's child support obligation to $875 per month. It also ordered Rachel to sign the documents necessary for Peter to claim tax deductions for tax years 2009, 2010, and 2011. However, it directed that Rachel could claim both children as an exemption for tax year 2012 and allowed her to continue to claim the younger son until he reached the age of majority. It is this order that Rachel appeals.

Matters concerning child support are prescribed by statute and are also entrusted to the discretion of the trial court. *Nosarzewski v. Nosarzewski*, 375 S.W.3d 820, 822 (Ky. App. 2012). Child support obligations may be modified within the sound discretion of the court. *Snow v. Snow*, 24 S.W.3d 668, 672 (Ky. App. 2000). We may not disturb the findings of the trial court unless it has abused

its discretion by making decisions that were "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Clary v. Clary*, 54 S.W.3d 568, 570 (Ky. App. 2001).

Rachel argues that the family court erred by not applying Indiana law to the modification of the child support order. She relies on Kentucky Revised Statute[s] (KRS) 407.5611(3), which directs that the law of the issuing state controls. However, KRS 407.5611 only applies if the petitioner does not live in this state. KRS 407.5611(1)(a)(2). The petitioner was Peter, and he resides in Kentucky.

In this case, the court properly relied upon KRS 407.5613, which permits a family court to modify an order of child support if "all of the parties who are individuals reside in this state and the child does not reside in the issuing state[.]" KRS 407.5613(1). The issuing state was Indiana, and both the parties and the children live in Kentucky. Therefore, the court did not err by modifying the child support order that had been issued by Indiana.

Kentucky has adopted the Uniform Interstate Family Support Act (UIFSA). KRS 407.5101. It provides that "[t]he law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order." KRS 407.5604. Although Kentucky courts have not applied this statute, all fifty states have adopted the UIFSA. With regard to its choice-of-law provision, sister states have consistently held that once a child support order is modified by a state that has continuing and exclusive jurisdiction, the law of the forum state supersedes and controls. A

Florida court has reasoned as follows: "once a judgment is registered and modified in another state, that state becomes the issuing state and the forum state's law governs modification of the support order." *Spalding v. Spalding*, 907 So.2d 1270, 1272 (Fla. Dist. Ct. App. 2005). Alaska's highest court has pointed out that this interpretation is consistent with the official comments to the UIFSA. *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 190 (Alaska 1999).

In this case, there is no dispute that Kentucky has assumed continuing and exclusive jurisdiction. Indiana transferred its jurisdiction over all child custody, visitation, and support matters and divested itself of the matter. As the Alaska Supreme Court pointed out, application of local law "to the maximum degree possible" promotes judicial efficiency. *Id*. at 190 (quoting Unif. Interstate Family Support Act § 303 commentary, 9 U.L.A. 360 (Supp. 1998)). Thus, in the case before us, it was entirely appropriate for the family court to base its decisions on the laws of Kentucky.

Although Rachel charges that Peter is forum shopping, she did not object to the application of Kentucky law **until the third time** that the court modified the child support order. Arguably, her failure to object sooner constitutes a waiver at this juncture. *See Ballard v. American Hemp Co*., 30 Ky. L. Rptr. 1080, 100 S.W. 271 (1907).

Rachel also contends that it was error for the family court to assign the tax exemptions of the children for specific years. We disagree. This court has held that it is permissible for family courts to allocate the exemptions between the

parents. *Hart v. Hart*, 774 S.W.2d 455 (Ky. App. 1989). Rachel has not provided any persuasive authority to the contrary, and we have no basis to overrule our own precedent.

Rachel's final argument is that the trial court did not equitably assign the tax exemptions "so as to maximize the amount available for the care of the children." *Id*. at 457. However, she provides no evidence to support her position. Therefore, we are unable to conclude that the family court abused its discretion.

We affirm the order of the Oldham Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael R. Slaughter
Louisville, Kentucky

BRIEF FOR APPELLEE:

Oliver H. Barber, Jr.
Rebecca A. Reichenbecher
Louisville, Kentucky