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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001386-ME

DEANNA MOODY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DEANA C. MCDONALD, JUDGE
ACTION NO. 13-CI-501557

DEAN DEMALA

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, LAMBERT, AND L. THOMPSON, JUDGES.

LAMBERT, JUDGE: Deanna Moody (the Mother) appeals from the Jefferson Circuit Court's order awarding Dean Demala (the Father), as child support payments, a portion of the children's monthly social security benefits. We affirm.

The parties were married in 2006, separated in 2013, and their marriage was dissolved in 2014. They are the parents of three minor children, born

in 2007, 2008, and 2010. The parties were able to reach a settlement agreement wherein they would share joint custody of the children, with the Mother having them four nights per week, and the Father the remaining three. Neither party would receive maintenance. The Father, who has been disabled since birth, received monthly assistance of \$684.00 per child.

Prior to their agreed settlement order, the Mother had been injured in a vehicle accident and was awaiting resolution of her disability benefits. On May 29, 2014, the Father was ordered to share 50% of the children's benefits with the Mother. In August of that year, the Father moved to modify support because the Mother had received her disability award and, because her award was higher than the Father's monthly benefits, the children's benefits were increased accordingly, with 100% of those benefits going to the Mother. Since the Father had been ordered to share the children's benefits when they went to him, he argued that the Mother likewise should be ordered to do the same now that she was receiving them.

Other motions were filed the next two years. The circuit court held a hearing consolidating all outstanding motions on November 15, 2016. An order was entered two weeks later. The circuit court made the following findings regarding the children's support:

Both parties are unemployed as a result of disabilities. [The Father] has a brain injury from birth

and has never been able to work. As a result, his disability payment when he was receiving it for the children was a total of \$684.00 per month [per child]. [The Mother] was injured in a car accident and had worked until that time. When her benefits commenced she began receiving \$791.00 per child per month. She also received a lump sum payment of approximately \$23,000.00 for the children for unpaid benefits up to that time. At that time [the Father] ceased receiving any benefits for the children as [the Mother's] benefits were higher. When he no longer received benefits for the children his monthly income dropped to \$1,460.00 per month. He has no other sources of income.

[The Father] believes the child support Order should be amended to order [the Mother] to pay to him one-half of the amount she receives on behalf of the children. Additionally he claims the Court should order [the Mother] to pay him one-half of the amount she has received, from the date of the filing of his motion to present. In light of the circumstances of this matter the Court orders that the child support shall be modified to reflect that [the Mother] shall pay to [the Father] one-half of the amount of social security benefits she receives on behalf of the children. This modification shall be retroactive to the date of the filing of the motion seeing same, November 17, 2014. The Court does not have information as to the date benefits began, etc.[,] nor the specific amount of the lump sum payment received by [the Mother] for the children so an amount due and owing to [the Father] cannot be calculated by the Court at this time. The Court instructs counsel for [the Mother] to provide the necessary information to counsel for [the Father] and attempt to work out an amount due and owing to [the Father]. The Court will not order a division of the lump sum award as it represents retroactive sums owed and to order division of same and repayment of retroactive amounts received would result in double dipping in the event counsel cannot reach

agreement as to what is owed the Court will reserve a portion of the April 19, 2017 hearing to address the issue.

Subsequently, the Mother moved to alter, amend, or vacate the order, arguing that the award was in error because the children's benefits were received because of her disability and she was entitled to retain 100% of them. She further contended that it was error for the circuit court to consider the benefits as child support, thus making the division of those benefits erroneous as well. The Mother also requested that the circuit court amend its order regarding retroactivity to November 2014. The circuit court entered its order denying the Mother's motion on February 17, 2017. The Mother filed an appeal from that order as well as the prior order entered in November 2016.¹

We begin our discussion by enunciating the standard of reviewing the issue of child support obligations:

As the courts of this Commonwealth have repeatedly stated, trial courts have broad discretion in determining child-support matters. *See Artrip v. Noe*, 311 S.W.3d 229, 232 (Ky. 2010) ("The trial court is vested with broad discretion in the establishment, enforcement, and modification of child support."); *Van Meter v. Smith*, 14 S.W.3d 569, 574 (Ky. App. 2000) ("[T]his state's domestic relations law is founded upon general statutory guidelines and presumptions within which the trial court has considerable discretion. The trial court has discretion in many instances, moreover, to deviate from the

¹ The Mother's initial appeal was dismissed as interlocutory because the circuit court had not concluded its evaluation of custody and other pending matters. *See* Case No. 2017-CA-000358-ME, dismissed by this Court's order dated April 12, 2017. This appeal was taken after the circuit entered its final ruling on August 9, 2017.

statutory parameters, but only if it makes findings clearly justifying the deviation.”). “[T]hat discretion extends, pursuant to KRS [Kentucky Revised Statute] 403.211(2)-(4), to deviations from guidelines-determined child support amounts.” *Commonwealth, Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 329 (Ky. 2011).

C.D.G. v. N.J.S., 469 S.W.3d 413, 418 (Ky. 2015). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Id.* at 421 (quoting *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)).

Here, we are asked by the Mother to find error in the circuit court’s determination that the children’s benefits be shared beginning November 2014. The Father insists that the order should have reflected retroactivity to August 2014, when he claims his motion was filed. We affirm.

The child support guidelines found in KRS 403.212 “do not contemplate . . . a shared custody arrangement” between parents. *Plattner v. Plattner*, 228 S.W.3d 577, 579 (Ky. App. 2007). Rather, the child support guidelines were designed so that child support would be paid by the noncustodial parent to the custodial parent. It must be recognized that the guidelines were intended to apply to a traditional post-dissolution familial model where one parent (usually the mother) was the primary custodial parent and earned substantially less income than the noncustodial parent (usually the father). By contrast, the modern complexities of family life have resulted in myriad and unique familial circumstances. **Strict application of the child support guidelines contained in KRS 403.212 to these myriad and unique familial circumstances often leads to unjust results.**

To avoid such, our courts must be fully cognizant of and give credence to these myriad and unique familial circumstances when considering child support. KRS 403.211(3) provides our Courts with such a mechanism.

Dudgeon v. Dudgeon, 318 S.W.3d 106, 111 (Ky. App. 2010) (footnote omitted)

(our emphasis). The *Dudgeon* court concluded thusly: “Hence, the proper standard for modification of child support is found in KRS 403.213(1) and is simply whether there exists a material change in circumstances that is substantial and continuing.” *Id.* at 112.

In the case before us, the circuit court found that there existed such a change. It referred to previous orders entered in the record and stated in its February 2017 order: “A thorough review of the record indicates that the Court has, on more than one occasion, addressed the special circumstances surrounding this matter. The Court has made findings insuring the children are provided for with whatever form of support is available to the parties.” It matters not that the Mother disagrees with this holding but only that she demonstrates that the circuit court abused its discretion.

We have also conducted a thorough review of the record and cannot discern that the circuit court’s decision to divide the children’s benefits was erroneous. This Court cannot find, nor does the Mother append, any information supplied by either party to the circuit court that makes its decision an abuse of

discretion. *C.D.G.*, 469 S.W.3d at 421. The child support guidelines were appropriately not employed in reaching that decision. *Dudgeon*, 318 S.W.3d at 111-12. Accordingly, we hold that its division was appropriate.

We also find no error in its order of retroactivity to November 2014. *See* KRS 403.213(1). The Father's argument that it should have been made retroactive to August 2014 is contradicted by testimony at the November 2016 hearing that the date of his *pro se* motion was November 17, 2014.

The orders of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Ray H. Stoess, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kimberly Withers Daleure
Louisville, Kentucky