

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-000293-MR

MATTHEW FREDERICK

APPELLANT

v. APPEAL FROM ANDERSON CIRCUIT COURT  
HONORABLE WILLIAM F. STEWART, JUDGE  
ACTION NO. 95-CI-00090

TRACI HANKS

APPELLEE

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BARBER, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: This is an appeal from an order increasing weekly child obligations from \$78.00 per week to \$103.86 per week and setting an arrearage payment structure for past child support obligations. We affirm.

Appellant and Appellee, Traci Frederick (now Hanks) were divorced by final decree of the Fayette Circuit Court in 1988. The action was subsequently transferred to the Anderson

Circuit Court in 1995. They have two children together. The court ordered Appellant to pay child support to Appellee.

Since 1995, the primary point of contention between Appellant and Appellee has been Appellant's income for child support purposes. Appellant is the owner of a vinyl siding business. Appellant started the business as a sole proprietorship in November of 1994. Appellant continued to operate as a sole proprietorship, including filing tax returns and paying self-employment tax solely in his name, until he incorporated the business in April of 1996. In September of 1995, Appellant married his current wife, Carmen Frederick.

When Appellant incorporated the business, Frederick Construction, Inc. (the Company), in April of 1996, he made Carmen Frederick a fifty percent owner. Carmen Frederick made a \$3,000 contribution when Appellant incorporated the Company. The contribution was a loan from Appellant's parents to Carmen Frederick. Appellant and Carmen Frederick repaid the loan from assets of the Company, and the couple deducted the interest on the loan as a business expense of the Company. Appellant performs the majority of vinyl siding work and supervises the job site. Carmen Frederick provides some bookkeeping service for the Company.

The sole issue on appeal is whether the trial court erred in calculating Appellant's income for child support

purposes as the amount of Appellant's "gross receipts from his business activities after deducting the Cost of Goods Sold and other remaining expense deductions claimed with the exception of a limit of \$3,600 per year as the value of the services of Carmen Frederick for bookkeeping/rent and fifty percent (50%) of the auto expense, auto liability insurance and telephone expense deductions." Aside from the \$3,600 exception for Carmen Frederick's contributions, the trial court took the specified amounts from the income tax returns of the Company.

Appellant argues that his child support obligation should only be based on fifty percent of the net income of the Company because he and Carmen Frederick are co-owners, each owning one-half of the outstanding shares. Moreover, Carmen Frederick provided the startup capital and performs managerial duties for the Company on a daily basis. Finally, Carmen Frederick draws no salary from the Company. Her only compensation from the business is her share of the profits, while Appellant draws an hourly wage for his work for the Company.

The standard of review on appeal of a determination of child support is whether the trial court abused its discretion. See Wilhoit v. Wilhoit, Ky., 521 S.W.2d 512,513 (1975).

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. This discretion is far from unlimited. But generally, as long as the trial court gives due consideration to the parties' financial circumstances and the child's needs, and either conforms to the statutory prescriptions or adequately justifies deviating therefrom, this Court will not disturb its rulings.

Van Meter v. Smith, Ky. App., 14 S.W.3d 569, 572 (2000)

(internal citations omitted).

Appellant argues that the trial court should have looked to Kentucky partnership law for guidance in determining Appellant's income for child support calculations. We disagree. The trial court was correct in following the applicable child support guidelines rather than looking to partnership law. In pertinent part, KRS 403.212(2)(c) and (d) state as follows:

- (c) For income from self-employment . . . or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. . . . Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-

employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.

- (d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. . . . Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

As recognized by the statute, income taxation and child support serve different purposes. "Trial courts establishing child support thus have the discretion and the duty to scrutinize taxable income and to deviate from it whenever it seems to have been manipulated for the sake of avoiding or minimizing a child support obligation or when deviating from it is clearly in the best interest of the child." Snow v. Snow, Ky. App., 24 S.W.3d 668, 672 (2000).

In reaching its determination of Appellant's income, the trial court considered Appellant's gross receipts from the Company minus his ordinary and necessary expenses. Moreover,

the trial court noted that Appellant started the Company originally as a sole proprietorship after previously working in the same field for another construction company. Appellant performs the majority of the labor and site supervision.

The trial court did acknowledge the contributions of Carmen Frederick to the operation of the business, but found them to be limited to bookkeeping services. The trial court was not persuaded that Carmen Frederick's \$3,000 contribution was significant in increasing her role in the business when she obtained the money from Appellant's parents and the Company repaid the loan from corporate funds. Thus, the trial court did not find it appropriate to impute one-half of the income of the Company to Carmen Frederick in computing Appellant's earning potential. Instead, the trial court found Appellant to be voluntarily underemployed and made an allowance for Carmen Frederick's services to the Company by excepting \$3,600 per year from the total net income of the Company.

In conclusion, the trial court was not bound by the couple's income tax returns to determine the level of gross income available to Appellant to satisfy his child support obligation. It was not an abuse of discretion for the trial court to conclude, based on the child support guidelines, that one-half of the Company income should not be imputed to Appellant's current wife. Further, it was not an abuse of

discretion for the trial court to determine that Appellant was voluntarily underemployed. Accordingly, the trial court based Appellant's income on his earnings level calculated by his potential earning capacity which excluded Carmen Frederick's claimed one-half of the Company income, and only allowed a \$3,600 yearly exception for her services.

For the foregoing reasons, the order of the Anderson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James F. Gibbs, Jr.  
Lawrenceburg, Kentucky

BRIEF FOR APPELLEE:

Betty A. Springate  
Anderson County Attorney  
Lawrenceburg, Kentucky