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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000117-MR

JENNIFER L. HUCK — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 95-CI-00203

BENJAMIN F. HUCK, JR. — APPELLEE

OPINION

REVERSING

** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER AND TACKETT, JUDGES.

EMBERTON, CHIEF JUDGE. This is the third opinion of this court in this procedurally complex litigation concerning the dissolution of the parties' marriage. The matter currently before us focuses solely upon the propriety of orders entered October 16 and December 17, 2001, which credited child support payments paid while the children resided with appellee against previously accrued arrearages. Because in our opinion the

decision of the trial court cannot be reconciled either with the facts or the opinion of the Kentucky Supreme Court in Price v. Price,[1] we are constrained to reverse the orders giving him credit against the arrearage.

The facts of this case have been sufficiently detailed in our previous opinions and we will not reiterate them except as necessary to an understanding of our opinion. Suffice it to say that on August 10, 2000, the trial court conducted a hearing on appellee's motions to require appellant to return the children to Oldham County for the purpose of enrolling them in school and on appellant's motion for leave to continue to reside with the children in Tennessee and to continue as the primary care custodian. At the hearing, appellant made clear to the trial court her intention to return to her job in Tennessee even if the court determined that the children should stay in Kentucky. The trial court thereafter entered the order which lies at the heart of this appeal. After reaffirming the imposition of joint custody and the designation of appellant as primary care custodian, the trial court denied appellant's request for leave to take the children and return to Tennessee and made the following finding with respect to child support:

> The Court also affirms all previously entered Orders concerning child support and for which the father is under a good faith

[1] Ky., 912 S.W.2d 44 (1995).

> obligation to meet the same when due. The Court recognizes that there is an arrearage. [Entered August 14, 2000.]

The children were subsequently enrolled in school in Oldham County and resided with appellee, who with some small exceptions continued his obligation to make child support payments of $160 per week. The orders precipitating this appeal came in response to appellant's motion to hold appellee in contempt for failure to make support payments totaling $640 for the motion of April 2001, and three additional payments totaling $480. Appellant also alleged that appellee had failed to make payments on previously established arrearages of $5,645 and $5,175, which are set out in orders dated February 14, 2000, and June 9, 1999. After a hearing, Judge Karen Conrad, who succeeded Judge Fritz on the Oldham Circuit Court, entered an order crediting appellee for child support paid while the children resided with him during the 2000-2001 school year based upon the following finding:

> It is clear that the court, in its August 14, 2000 Order, was aware that the mother was back in Kentucky with the children. Further by reaffirming its designation of Jennifer Huck as primary residential parent, the court was obviously under the impression that Mrs. Huck would keep the children with her, but at the same time it was understood that the children were to remain in Kentucky. From this, it appears to the undersigned that the court was under the impression that Mrs. Huck

> would remain with the children and that she would be primary residential custodian. (Emphasis added).

A review of the video transcript of the hearing conducted by the trial court on August 10, 2000, convinces us that this finding is clearly erroneous.

Throughout the hearing, appellant made clear to the trial court her desire to return to the state of Tennessee with the children, but she was quite emphatic in expressing her intent to return to her employment and residence there even if the court denied her request for leave to take the children back with her. Thus, we cannot agree that the trial court was under any misapprehension as to the facts when it decided to continue appellant as primary care custodian and to continue previous orders with respect to child support.

This being the case, we find no basis for failing to adhere to the dictates of Price, supra, in which the Supreme Court, under similar factual circumstances set out the following analysis of the statutory requirements for modifying child support:

> As an initial matter, the legislature has expressly spoken on this matter. KRS 403.213 defines when and upon what circumstances a child support order may be modified. The statute explicitly states that "[t]he provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of a motion for modification

> and only upon a showing of a material change in circumstances. . . .” The statute mandates that child support orders may only be modified prospectively and only after a motion for modification. There is no ambiguity in the wording of this statute.
>
> . . . .
>
> Appellee urges that equitable principles require the courts to relieve him of the court ordered child support because he, in fact, supported his child while Child lived in Father’s home. We understand that “equity provides relief where the law does not furnish a remedy.” Heisley v. Heisley, Ky. App., 676 S.W.2d 477, 478 (1984). Here, appellee’s recourse was at law by the filing of a motion for modification of the child support decree or at least coming to an agreement with the custodial parent when circumstances warranted. . . . The support given, while admirable, is the support of a parent. That does not impact the court ordered child support.[2]

As was the case in Price, once the trial court continued previously entered orders with respect to child support, appellee’s remedies were at law by way of a motion to alter or amend, by appeal, or by a subsequent motion for modification. As Price makes abundantly clear, relief from child support obligations may only be granted prospectively. Thus, the subsequent attempt to alter the August 14, 2000, order by crediting appellee’s continuing child support obligation against previously accrued arrearages cannot be sustained.

[2] 912 S.W.2d at 46-47.

The orders purporting to credit against existing arrearages child support payments appellee made pursuant to the order of August 14, 2000, are reversed and the case remanded for entry of a judgment consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Robert S. Silverthorn, Jr. Louisville, Kentucky	James L. Theiss WILLIAMSON, SIMPSON, COMBS & THEISS LaGrange, Kentucky