

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001397-ME

CINDY RUNNER BREWER

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT  
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE  
ACTION NO. 96-CI-01060

JORDAN MATTHEW BREWER

APPELLEE

AND NO. 2003-CA-000347-ME

CINDY RUNNER BREWER AND  
CABINET REGARDING CHILD SUPPORT

APPELLANTS

v. APPEAL FROM WARREN FAMILY COURT  
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE  
ACTION NO. 96-CI-01060

JORDAN MATTHEW BREWER

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, AND VANMETER, JUDGES; BUCKINGHAM, SENIOR JUDGE.<sup>1</sup>

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<sup>1</sup> Senior Judge David C. Buckingham, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

DYCHE, JUDGE: Cindy Runner Brewer and Matthew ("Matt") Brewer were married on November 15, 1980, in Warren County, Kentucky. The marriage produced four children. Matt owned and operated the J & M Gunshop, Inc., first located in Bowling Green and then later in Cave City, Kentucky. Cindy did not work outside the home besides offering occasional assistance at the gun shop.

The parties separated on September 19, 1996, and Cindy filed a Petition for Dissolution of Marriage on September 26, 1996. Matt assumed a monthly child support obligation in the amount of \$723.00 by an agreed order entered on October 31, 1996. The Warren Circuit Court entered a Decree of Dissolution on December 28, 1999. The court set Matt's monthly maintenance obligation at \$500. The amount of Matt's child support and maintenance obligations would remain unchanged until January 2003.

In 2002, Matt experienced business difficulties with the gun shop and the shop was ordered to be closed because of the company's insolvency and tax obligations in March of that year. Thereafter, Matt's only source of income was employment as an attendant at LifeSkills, Inc., in Bowling Green. He filed a motion to modify child support and maintenance on June 24, 2002. The court reduced Matt's child support obligation to \$447.18 per month and his maintenance obligation was reduced to \$200 per month. This appeal follows.

First, Cindy argues that the trial court erred by reducing the child support obligation because Matt was voluntarily underemployed.

KRS 403.212(2)(d) sets forth the standard for imputing income to persons who are voluntarily underemployed in the child support context. The statute states that the determination of potential income shall be based on employment potential and probable earnings level based upon the individual's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. Further, KRS 403.212(2)(d) provides that a court may determine a parent to be underemployed without a finding of bad faith or an intent to avoid the child support obligation.

The modification and enforcement of child support is set out by statute and left to the sound discretion of the trial court. Wilhoit v. Wilhoit, 521 S.W.2d 512 (Ky. 1975).

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. Bradley v. Bradley, 473 S.W.2d 117 (Ky. 1971).

Under the standards set forth above, our review of the record indicates that the trial court considered the issues

raised and its finding was supported by substantial evidence. There was no abuse of discretion.

Next, Cindy argues that the trial court erred by reducing maintenance because the changed circumstances were not continuous.

KRS 403.250(1) provides that maintenance obligations may be modified "upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable." The trial court found that a 50 percent decrease in Matt's salary was a substantial change in circumstance and that it was continuous because his business license had been revoked because of tax obligations and acknowledged that he had been unable to find work within his area of expertise. There was no abuse of discretion.

Finally, Cindy argues that the trial court erred in its determination of the priority of liens on certain marital property in this case. However, this issue is not properly before us for failure to conform with the notice of appeal requirements set forth in CR 73.02.

Therefore, the orders of the Warren Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Nancy Oliver Roberts  
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Frank Hampton Moore, Jr.  
Joseph Ryan Loney  
Cole & Moore, P.S.C.  
Bowling Green, Kentucky