

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001091-MR

AMY HAGAN (NOW ERWIN)

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 96-CI-00474

WILLIAM L. HAGAN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI, HENRY, AND TACKETT,¹ JUDGES.

GUIDUGLI, JUDGE: Amy Hagan (now Amy Erwin, and hereinafter referred to as Erwin) appeals from an order of the Nelson Circuit Court addressing post-judgment motions in her dissolution of marriage proceeding. Erwin claims that the trial court erred in failing to require her former husband and appellee herein, William Hagan, to produce income documents, and that it improperly reduced Hagan's child support obligation. Erwin also argues that the court erred in requiring her to

¹ Judge Julie K. Tackett concurred in this opinion prior to her retirement effective June 1, 2006.

refund some previously received child support. For the reasons stated below, we affirm the order on appeal.

The facts are not in controversy. Erwin and Hagan were married in 1987. The marriage produced one child, namely Kaitlyn Hagan, who was born in 1992. On November 12, 1996, Erwin filed a petition to dissolve the marriage in Nelson Circuit Court.

In January 1999, the parties entered into an agreed order and subsequent property settlement agreement. The documents were approved by way of a supplemental decree of dissolution entered on February 17, 1999. The agreements provided in relevant part that the parties would have joint custody of Kaitlyn and that Hagan would pay child support to Erwin in the amount of \$1,059 per month. The property settlement agreement also stated that yearly each party would provide the other with proof of income for the preceding year. This documentation would be used, if necessary, as a basis for adjusting future child support payments.

From May 1999 through November 2001, the parties filed numerous motions on a variety of issues. Of particular relevance to the instant appeal were Erwin's motions on the issue of child support and motions to compel Hagan to produce proof of income information for the purpose of recalculating his child support obligation. Similarly, Hagan moved to recalculate

that obligation for the years 1998 through 2001. Several other motions were tendered by the parties relating to physical damage to the marital residence, tax deductibility of Kaitlyn as a dependent, life insurance beneficiary designation, medical practice valuation, and cross-motions seeking contempt orders.

After a number of delays, on March 25, 2003, the trial court addressed these unresolved post-decree issues in its findings of fact, conclusions of law and judgment. Both parties filed motions to alter, amend or vacate the judgment, which were addressed by way of an order entered on April 23, 2003. The judgment and subsequent order reduced Hagan's support obligation and required Erwin to repay to Hagan (by way of a reduction of Hagan's support obligation) the sum that the court found Hagan had overpaid. Several other issues were addressed which are not relevant herein. This appeal followed.

Erwin first argues that the trial court erred in failing to require Hagan to verify his income through the production of tax returns from his medical practice. Erwin notes that the trial court relied on Hagan's W-2 forms and child support worksheets as a basis for establishing his income, and she maintains that additional information was required in the form of business returns in order to make a complete accounting of Hagan's income. She seeks an order reversing the trial court

on this issue and remanding the matter for the production of additional proof on this issue.

We find no basis for tampering either with the trial court's reliance on Hagan's W-2 forms and child support worksheets, or the court's income calculation derived therefrom. Erwin's claim on this issue is essentially a "sufficiency of the proof" argument. That is to say, she maintains that even though the court was availed of Hagan's personal income tax returns, a thorough accounting of Hagan's income required an examination of his business income tax returns. We are not persuaded by this argument. The trial court is in the best position to determine the sufficiency of the proof, and Erwin has not made a compelling argument that the trial court erred in relying on Hagan's W-2 forms and child support worksheets. The trial court's ruling on this issue is presumptively correct,² and Erwin has not overcome that presumption.

Erwin also briefly argues that the trial court erred in reducing Hagan's child support obligation that had accrued prior to the filing of Hagan's September 20, 2002, motion. Erwin notes that the parties did not exchange income documentation at the end of each calendar year in violation of their January 27, 1997, agreement and that this failure constituted a waiver of their child support agreement. From

² City of Louisville v. Allen, 385 S.W.2d 179 (Ky. 1964).

this, Erwin reaches the conclusion that the child support agreement is void in its entirety and that the trial court erred in failing to so rule.

This argument is specious and not persuasive. Erwin has cited no case law or statutory law in support of the proposition that the parties' voluntary waiver of one provision of a child support agreement operates to void the entire agreement. The circuit court rejected this argument and nothing in the record supports a finding of error on this issue.

Lastly, Erwin offers a short argument that the trial court erred in requiring her to repay child support for the calendar years 1998 through 2001. She maintains that the trial court improperly exonerated Hagan from support obligations already accrued and argues that the law does not allow the imposition of interest on amounts it deems an overpayment.

The child support agreement, to which each party was voluntarily bound, is dispositive. It states in clear and unambiguous terms that the child support obligation, and payments made thereunder, shall be adjusted annually based on the parties' changing incomes. The court, in the exercise of its discretion, sought to bring the parties into compliance with their agreement. The court found Hagan had overpaid child support based upon his income during those years and then deducted from Hagan's present monthly obligation the sum of \$150

per month with interest of 8% assessed thereon. This solution conforms to the terms agreed to by the parties, and Erwin has cited no statutory or case law upon which a different conclusion may be drawn. We find no error on this issue.

For the foregoing reasons, we affirm the judgment and order of the Nelson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Russell Lloyd
Louisville, Kentucky

BRIEF FOR APPELLEE:

Thomas A. Donan
Bardstown, Kentucky