

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002465-MR

TERRI N. SUITER

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 01-CI-00262

PATRICK RAY SUITER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: Terri N. Suiter appeals an order of the Logan Circuit Court that awarded her \$750 per month in child support. She asserts that the court erred when it deviated from the child support guidelines and failed to include child care expenses in the support ordered. We affirm.

Terri and Patrick Suiter have three minor children, Kaitlyn, age seven and twins, Alexandria and Nelson, age four.

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In June, 2001, Terri filed a petition for dissolution of marriage and a hearing was held on temporary child support and custody. At that time, Terri had not worked outside the home during the past four years. Patrick worked at his business, Bluegrass Recycling, Inc., which was found to produce income of \$3,000 per month. Patrick was ordered to pay child support in the amount of \$200 per week. He was also ordered to pay \$500 per month for temporary maintenance. After Terri was convicted of driving under the influence, in November, 2001, Patrick was designated as the temporary residential custodian under a joint custody arrangement. Child support was abated but Patrick continued to pay maintenance.

In January, 2002, custody was again modified. The children were with Terri at the marital residence from Thursday morning at 8:00 a.m. until 5:00 p.m. on Monday. In March, the parties began alternating equal custody week to week. Since the parties shared custody equally, no support was paid by either.

Terri moved to Tennessee and in June, 2002, filed a motion for temporary custody and child support. She also requested child care expenses because of her recent employment. Although she did not submit any receipts or evidence that the children were enrolled in a day care facility, she submitted day care expenses in the amount of \$1,100 per month. Following a hearing on temporary custody, the domestic relations

commissioner recommended that the children reside with Terri in Tennessee Monday through Thursday and then with Patrick the remainder of the week.

A hearing was held on the support motion and child support worksheets were submitted by each party. Terri's income was submitted at \$1,386 per month and Patrick's was imputed at \$3,000 monthly. Prior to a decision, the parties entered into a settlement agreement regarding custody. Under the agreement, the parties had joint custody of the children with Terri the residential custodian as stated in the temporary order. Additionally, custody was equally divided during the summer months and holidays. There was no agreement as to child support.

According to the guidelines set forth in KRS 403.212 the parties' total joint child support obligation is \$2,586 per month, and based on the income of each party, Terri is responsible for 31.3% of that amount and Patrick 68.7%. Terri contends that the court erred when it required Patrick to pay only \$750 per month instead of \$1,436.58, representing Patrick's obligation under the guidelines minus the amount he pays for the children's health insurance premiums.

Pursuant to KRS 403.211(2), the court may deviate from the guidelines where the application would be "unjust or

inappropriate.” In Brown v. Brown² we held that the statute permits the court to consider the period of time the children reside with each parent when determining child support. In this case the court considered that although the children reside primarily with Terri, under the agreement, the children are with Patrick every weekend of the year and on extended visitations at other times throughout the year. The court specifically found that deviation from the guidelines was justified because the children will reside with Patrick at least forty percent of the year. We find no error.

Terri complains that the court made no allocation for child care expenses. She correctly points out that child care expenses are to be awarded in addition to the amount ordered under the child support guidelines.³ Because it is not child support as the term is used in the statutes, it is not subject to the modification standard imposed by KRS 403.213(1) and may either be increased or decreased at anytime upon a showing of circumstances requiring a change.⁴

We agree with Terri that the lower court’s reason for denying her child care expenses is flawed. It found that \$1,100 for child care for three children was unreasonable and that if

² 952 S.W.2d 707 (Ky.App. 1997).

³ KRS 403.211(6).

⁴ Olson v. Olson, 108 S.W.3d 650, 652 (Ky.App. 2003).

that was the cost, Terri simply should not work. This logic is erroneous for several reasons. First, this court can not agree that it is absolutely unreasonable, or impossible, for child care in a licensed facility to cost \$90 to \$95 per week per child. Also child care expenses are temporary in nature decreasing as each child enters school. Therefore, it is entirely reasonable for a parent to work, often paying child care expenses in an amount representing a significant portion of their income, in order to have employment and earnings when the child care expenses decrease.

Despite our disagreement with the circuit court's reasoning, we agree with its result. Child care expenses are for amounts actually incurred and are easily documented.⁵ Terri failed to submit any evidence that the children are enrolled in a day care facility but only what it would cost if she enrolled them in various facilities. As previously stated, modification of child care expenses may be made upon a showing of a change of circumstances at any time. Therefore, should Terri actually enroll the children and incur such expenses, upon presentation of sufficient evidence of the cost, she will be able to again seek payment from Patrick for his proportionate share.

The judgment of the Logan Circuit Court is affirmed.

ALL CONCUR.

⁵ Id.

BRIEF FOR APPELLANT:

D. Bailey Walton
LANPHEAR & WALTON, P.L.L.C.
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

J. Stewart Wheeler
WHEELER & WHEELER
Russellville, Kentucky