

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000675-MR

BRANDON PAGE

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 99-CI-00504

JENNIFER DAWN LARGE AND
HONORABLE ROGER HALL

APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** * * *

BEFORE: DYCHE, McANULTY, AND TACKETT, JUDGES.

DYCHE, JUDGE: Brandon Page and Jennifer Large are the parents of a child born in May 1999. After the child's birth, Large sought child support payments from Page. It was determined that Page was, in fact, the father of the child. Support was set at \$194.03 per month; Page was also ordered to reimburse Large for maternity and delivery expenses, to maintain health insurance on the child, and to be responsible for 50% of any extraneous medical expenses. A visitation schedule was set, and Page, who

lived out of state, was ordered to report to the court any change of address or income.

In May 2004 the Boyd Circuit Court entered an order asking the parties to state any reasons why the matter should not be removed from the active docket. Large responded that Page be brought before the court for child support arrearages; she further sought to have his parental rights terminated, as he had not had contact with the child since May 2000.

The court held two hearings. At the first hearing in December 2004, Page revealed enough information about his income to warrant the court to schedule another hearing at which Page would be given the opportunity to supplement his testimony with specific factual data. After learning that Page's earnings had significantly improved over the years, Large then moved for a retroactive increase in child support.

Page failed to appear at the second hearing (held on March 3, 2005), although his counsel was present. No new evidence was presented on Page's behalf. Counsel did have some unsigned tax returns, but the trial court refused their admission into evidence. The trial court ultimately ruled that Page owed a net child support of \$51,117.00. Attorney fees of \$2,500.00 were awarded to Large and her counsel. Page consented to the termination of parental rights, which was effective January 1, 2005. Page appeals the ordered amount of child

support and attorney fees. We affirm in part, reverse in part, and remand.

Page first complains that the trial court abused its discretion in "speculating on income amounts without any proof." To the contrary, the record supports the trial court's findings concerning Page's income as the amounts were supplied by Page under oath at the December 2004 hearing. The child support guidelines (KRS 403.212) are based on "gross income," thus it was not erroneous for the trial court to use the figures testified to by Page. Furthermore, Page lost the opportunity to present further evidence of his net income by his own failure to appear at the March 2005 hearing. The evidence before the trial court supports its finding.

We nonetheless reverse the trial court's increase of child support payments. KRS 403.213(1) limits the retroactive application of any increase to "installments accruing subsequent to the filing of the motion for modification." Because Large did not move to modify Page's obligation until January 25, 2005, after the effective date of the termination of Page's parental rights, the trial court was without authority to order the increase for the sixty-three months in question. The court did have the right to enforce its earlier order holding appellant responsible for maternity expenses, health insurance, and his share of unreimbursed medical expenses. We reverse the trial

court's increase in child support and remand the matter for calculation of appellant's obligation, with legal interest, regarding expenses owed to Large.

We likewise hold that the trial court reasonably exercised its discretion in awarding attorney fees to Large and her counsel. See KRS 403.220. We affirm that aspect of the trial court's judgment.

The judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard A. Hughes
Ashland, Kentucky

BRIEF FOR APPELLEES:

Roger W. Hall
Ashland, Kentucky