

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002343-MR
NO. 2006-CA-001421-MR

VAUGHN W. HALLIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY N. PHILPOT, JUDGE
ACTION NO. 03-CI-03418

CATHLEEN HALLIS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM¹, SENIOR JUDGE.

DIXON, JUDGE: Appellant, Vaughn Hallis, *pro se*, appeals from the Fayette Circuit Court's decree of dissolution, award of joint custody, timesharing, child support and the designation and division of the marital estate. Appellant contends that all of the trial court's findings of facts and conclusions of law are erroneous. Finding no error, we affirm.

¹ Senior Judge Paul Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Appellant and Appellee, Catherine Hallis, were married on November 25, 1989. The parties had two children, Courtney who was born on November 15, 1991, and Diana who was born on June 9, 1995. The parties separated in June 2003, and Appellee thereafter filed a petition for dissolution in August 2003.

On a temporary basis, the parties agreed on alternating weeks for child custody. However, they were unable to agree on any permanent arrangement and therefore child custody, timesharing, child support, and division of property and debt were all issues that were determined at trial.

The trial court designated Appellee as the primary residential custodian during the school year and Appellant the primary residential custodian during the summer months. Each was to have timesharing pursuant to the local division guidelines. Numerous orders were entered pertaining to child support, but the trial court's final determination was that neither party should pay child support to the other. Further, the trial court ruled that because Appellee had filed Chapter 7 bankruptcy, discharging all of her debts, all marital debt owed by the parties was assigned to Appellant.

We begin with a statement of our standard of review. Under CR 52.01, in an action tried without a jury, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *See also Whicker v. Whicker*, 711 S.W.2d 857, 858-59 (Ky.App. 1986). A factual finding is not clearly erroneous if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414

(Ky. 1998); *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 117 (Ky. 1991).

Substantial evidence is evidence, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.

Golightly, supra; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky.App. 2002), *cert. denied*, 537 U.S. 1110 (2003). An appellate court, however, reviews legal issues *de novo*. See, e.g., *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky.App. 2001).

Appellant first challenges the trial court's custody and timesharing determinations. Specifically, Appellant maintains that “the trial judge acted 'as policy' in awarding Appellee primary custodian [sic], 'failing to make specific findings of fact,' . . . disregarding actual facts and law in the instant case per KRS 403.270.” However, Appellant's argument consists of little more than his personal commentary and character attacks on Appellee and Sue Wingate, the court-appointed Friend of the Court who conducted a custody evaluation.

In its findings of fact, the trial court found that although each party had complaints about the other, both parents appeared to be fit custodians. The court noted that Appellee is gainfully employed and was the primary caregiver of the children during the marriage. Further, although Appellant has played an active part in the girls' lives, the court found that he was not employed and had unsuccessfully attempted to obtain disability benefits. The trial court concluded that despite the lack of cooperation, the parties should nevertheless be awarded joint custody with Appellee as the primary

residential custodian during the school year and Appellant residential custodian during the summer.

We simply cannot accept Appellant's unverified claims and accusations as evidence that the trial court erred. There is nothing in the record to support Appellant's unfounded assertion that the trial court did not consider all relevant custody determination factors, including those set forth in KRS 403.207(2)(a)-(i). The trial court had the opportunity to judge the credibility of the testimony and evidence presented during the hearing. We conclude that the trial court's custody determination is supported by substantial evidence. *Whicker, supra*.

Appellant also argues that the trial court erred in the distribution of property. Admittedly, Appellant's arguments are convoluted at best and he clearly does not articulate any cognizable claim of error in the trial court's findings and conclusions with respect to the marital property. In addition to simply being angry that Appellee filed bankruptcy thus discharging her portion of marital debt, Appellant relies on an irrelevant testamentary statute, KRS 392.090(2), to suggest that he should be assigned all marital property because Appellee left him and allegedly "lives in adultery." However, KRS 403.190(1) plainly provides that a court shall divide property without regard to marital misconduct. Again, based on the substantial evidence presented, we cannot conclude that the trial court abused its discretion in dividing the marital estate. *Sherfey, supra*.

Finally, Appellant takes issue with the trial court's rulings pertaining to child support. Initially, the court imputed income of \$30,000 to Appellant based upon

evidence presented during the hearing as well as Appellant's lack of evidence that he is unable to be gainfully employed. The trial court then determined that Appellant would owe Appellee child support for the nine months that the children resided with Appellee, and Appellee would owe child support to Appellant for the three months that the children resided with him.

However, in May 2006, the trial court entered an order sustaining Appellant's motion to modify support. The court's order provided:

2. The court finds a change in circumstances has taken place which requires a modification in child support. Specifically, the Respondent had his leg amputated in November 2005 and is now receiving Social Security Disability benefits. The two minor children are also receiving benefits from the Social Security Administration.
3. Based on the above stated changes the child support should be recalculated.
4. The timesharing arrangement is such that the Mother is the primary custodian during the school year and the Father is the primary custodian during the summer months. According to the guidelines, the Mother should pay the Father \$585 for the summer months and the Father should pay \$331 for the months the children are in school.
5. The Court finds, however, that a deviation in the guidelines is appropriate in this case because of the unique circumstances. Specifically, the Court finds that the benefits the Mother receives from SSA exceed \$331. The Father should get credit for this amount and owe nothing.
6. The Father argues that he should still receive the \$585 for each of the summer months. The Court finds, however, that this is not appropriate given that the Father received a lump sum payment of \$25,000 for his disability. Technically, child support could be recalculated including this amount as the

Father's income, but the Court chooses not to do that since it was a one-time payment.

7. This Court is one of equity and this case requires deviation from the guidelines. The Court finds equity is best served by determining that neither the Father nor the Mother shall pay child support.

8. All arrears are hereby stricken.

In his brief, Appellant never references the May 2006 order, and we are unable to discern exactly what Appellant's claim of error is. The trial court noted that Appellant believed he should continue to receive child support during the summer months. However, he does not present that argument to this Court.

In any event, we find no error in the trial court's decision concerning child support. The support guidelines serve as a rebuttable presumption for the modification of child support. Although KRS 403.211(2) allows a court to deviate from the guidelines where their application would be inappropriate, any such deviation shall be accompanied by a written finding specifying the reason for deviation. *Barker v. Hill*, 949 S.W.2d 896, 897 (Ky.App. 1997); KRS 403.211(2).

The trial court followed the mandates of KRS 403.211(2) in modifying child support. Appellant has failed to present any evidence that the trial court abused its discretion, and we find none.

The Orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Vaughn Hallis, *Pro Se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

J. Scott Benton
Lexington, Kentucky