

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000990-ME

KRISTIE J. BOLING

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 06-C-00340

CHARLES BROCK

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KELLER, THOMPSON, AND WINE, JUDGES.

WINE, JUDGE: Kristie J. Boling, *pro se*, appeals from an order of the Knox Circuit Court, Family Court Division, ordering her to pay child support to Charles Brock. She argues that the trial court erred in determining her income for purposes of setting her child support obligation. Finding no error, we affirm.

Kristie is the mother of Kyle Boling, who was born on June 29, 2002. Charles is the child's father. Kristie and Charles were never married to each other.

Shortly after Kyle's birth, Kristie and the child moved to Cincinnati, Ohio. The record indicates that Charles obtained custody of Kyle pursuant to an Ohio court order in 2005.

On July 13, 2006, the Commonwealth, on behalf of Charles, filed a complaint seeking child support from Kristie. Following a hearing, the trial court ordered Kristie to pay \$161.00 per month in child support to Charles. Kristie now appeals.

Kristie is proceeding *pro se* in this appeal, and a significant portion of the statement of the case in her brief is devoted to unsubstantiated allegations about Charles. We have disregarded these allegations to the extent that they involve facts which are not part of the record. Neither the Commonwealth nor Charles has filed a brief. While a party's failure to file a brief may be taken as a confession of error, CR 76.12(8)(c), such a sanction is inappropriate in appeals involving child custody or support. *Galloway v. Pruitt*, 469 S.W.2d 556, 557 (Ky. 1971).

Kristie's central argument in this appeal concerns the sufficiency of the evidence supporting the trial court's findings regarding her income. At the hearing on March 7, 2007, Kristie testified that she was currently unemployed and her only income was \$579.00 a month in social security benefits. She also stated that she had left her previous job because she had developed carpal tunnel syndrome in her hands and she had recent surgery for that condition. She also noted that she is deaf and has had difficulty finding employment with all of her disabilities. Given these circumstances, Kristie contends that it was unreasonable for the trial court to impute a minimum wage income to her.

The trial court noted that Kristie did not present any documentation or other evidence to support her testimony about her carpal tunnel syndrome or her difficulty in working. Furthermore, Kristie did not attempt to provide supporting documentation until after the hearing. The Commonwealth also argued that Kristie had been working and earning \$7.25 per hour. Based on both parties' work history, the Commonwealth argued that the court should impute at least a minimum wage income to both parents, which the trial court did.

Determinations about the credibility of witnesses are within the sole province of the trial court. CR 52.01. Although the trial court could have found Kristie's testimony to be credible even without corroboration, we cannot say the trial court clearly erred by declining to give full credence to her testimony about her carpal tunnel syndrome. And while a court may not impute income to a parent who is physically or mentally incapacitated, KRS 403.212(2)(d), Kristie's work history demonstrates that she is capable of some employment notwithstanding the fact that she is deaf. Consequently, we cannot find that the trial court clearly erred by imputing a minimum wage income to Kristie for purposes of setting her child support obligation.

Accordingly, the order of the Knox Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Kristie J. Boling, *pro se*
Cincinnati, Ohio