

NOT DESIGNATED FOR PUBLICATION

No. 95,832

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

MICHAEL FELLOWS,
Appellant,

and

PAMELA FELLOWS,
Appellee.

MEMORANDUM OPINION

Appeal from Ellis District Court; JOHN WECKEL, judge. Opinion filed March 2, 2007. Affirmed.

Michael Fellows, appellant pro se.

Randy M. Barker, of Kansas Department of Social and Rehabilitation Services, for appellee.

Before GREEN, P.J., MARQUARDT, J., and BRAZIL, S.J.

Per Curiam: In this postdivorce action, Michael Fellows appeals the trial court order on child support for his three children. He raises four issues on appeal.

First, Michael argues that the involvement of a court trustee in the court proceedings was a constitutional violation of his parental rights. For reasons stated, we find no merit in this argument.

Second, he argues the trial court abused its discretion when it refused to deduct his moving expenses and maintenance expenses for his house in Hays from his income for child support purposes. We find no abuse of discretion.

Third, he contends his child support should have been adjusted to account for the tax exemption benefit for Pamela and his long distance visitation expenses. Again, we find no abuse of discretion.

Finally, he mistakenly argues that the trial court did not impute wages for Pamela's income for 2003. We affirm.

Michael and Pamela Fellows were married in August 1986 and divorced in March 1999. They had three sons born of the marriage: Geoffrey, born December 7, 1986;

Nathanael, born June 3, 1990; and Zachary, born January 10, 1993. In the July 1999 order, the trial court divided the property and gave joint custody of the children to the parties but designated Pamela as residential and custodial parent. The court ordered Michael to pay \$1,600 for child support and \$1,700 for maintenance per month. The court calculated these amounts finding Michael's gross income for 1999 to be \$115,000 and Pamela's \$10,000.

As evidenced by the record on appeal, since their divorce, the parties have filed numerous motions, objections, and requests regarding the custody, visitation schedules, and support payments.

In July 2003, the court held that Michael had overpaid maintenance and child support in the amount of \$697.33, and the overpayment would be credited against his child support obligation which then was \$630 per month. From August 2003 until March 2004, the children lived with Michael except Geoffrey, who returned to Pamela's house.

In April 2004, Pamela filed a motion to modify custody, stating Michael had moved to Boonville, Missouri, in March 2004. The court ordered continuing joint custody of the children and residential custody be with Pamela and awarded Michael reasonable and liberal parenting time.

Michael appealed this order in December 2004. He argued that the trial court erroneously found a material change in circumstances based on his relocation to Missouri, the trial court abused its discretion in changing the residential custody of children back to Pamela, and the trial court erroneously adopted the case manager's proposed visitation schedule. The Court of Appeals affirmed in part and dismissed in part. *In re Marriage of Fellows*, No. 93,750, unpublished opinion filed November 18, 2005.

On March 18, 2005, a hearing was held before the court with Richard Buck of Kansas Legal Services representing Pamela, Lee Fisher, appearing as a court trustee, and Michael appearing pro se. The issues included the child support payment due Pamela and Michael. Pamela's income in 2004 was \$14,608.54; she earned \$6,821 in 2003 working part time. Michael's income was \$66,877 in 2003, and \$62,289.13 in 2004.

Michael requested the court to consider the expenses of maintaining a second house, including house payments and utilities in the amount of \$9,562.31. Michael also requested the medical care expenses for his Type 1 diabetes in the amount of \$166.05 per month to be excluded from his gross income. Michael asked for a deduction of his child support obligation by \$214 per month based on the expenses of traveling to Topeka to meet Pamela and pick up the children.

The trial court ordered Michael to pay child support in the amount of \$1,313 per month given credit for all direct payments made previously and entitled to an offset for a medical judgment against Pamela. The court denied the deduction of child support obligation based on housing expenses or visitation travel expenses but granted an allowance of \$125 per month for the medical expenses for his diabetic condition.

Michael filed a timely notice of appeal.

Court trustee

Michael argues the court trustee in this case appeared in the court proceedings without authority and in violation of Michael's constitutional rights.

The district court may establish the office of court trustee, and the trustee has the responsibility for collection of child support at the request of an obligee or by the order of the court. K.S.A. 2006 Supp. 23-494; K.S.A. 2006 Supp. 23-495. The court trustee is authorized to pursue all civil remedies in enforcing support payments and file motions for an increase or a decrease of the amount of support on behalf of a child. K.S.A. 2006 Supp. 23-496.

The Secretary of Social and Rehabilitation Services (SRS) provides child support enforcement services under Title IV-D of the federal Social Security Act, 42 U.S.C. § 651 *et seq.* (2000). The applicant is deemed to have made an assignment of support rights to SRS by applying for or receiving support enforcement services under K.S.A. 39-756. According to the appearance docket entry, notice of IV-D status was filed on December 10, 2003, and March 24, 2005. Although Michael argues that neither he or Pamela signed the document to assign the rights, it is irrelevant based on the statutes. Further, SRS was not required to give Michael notice of the assignment under K.S.A. 39-754(b). See *In re Marriage of Walje*, 19 Kan. App. 2d 809, 812, 877 P.2d 7 (1994).

Michael relies on cases where the issue was termination of the parental rights; Michael's parental rights are not at stake in this case. Contrary to his argument, Michael does not have protected liberty interest in child support; instead, he has obligations to provide support to his children. His argument has no merit.

Moving and maintenance expenses

Michael argues that the trial court abused its discretion in denying his request to reduce his 2004 income by the moving expenses and maintenance expenses of his home in Hays.

The standard of review of a trial court's order determining the amount of child support is whether the trial court abused its discretion, while interpretation and application of the Kansas Child Support Guidelines is subject to unlimited review. *In re Marriage of Paul*, 32 Kan. App. 2d 1023, 1024, 93 P.3d 734 (2004), *aff'd* 278 Kan. 808, 103 P.3d 976 (2005).

According to the Child Support Guidelines, section II.A.:

"The purpose of child support is to provide for the needs of the child. The needs of the child are not limited to direct expenses for food, clothing, school, and entertainment. Child support is also to be used to provide for housing, utilities, transportation, and other indirect expenses related to the day-to-day care and well-being of the child." (2006 Kan. Ct. R. Annot. 105).

The Guidelines note in section II.D. that the gross income of the wage earner is "income from all sources, including that which is regularly or periodically received, excluding public assistance and child support received for other children in the residency of either parent." (2006 Kan. Ct. R. Annot. 106).

Michael requested the court to reduce his 2004 income by subtracting \$5,000 which was a one-time moving expense reimbursement. Michael claims this one-time

reimbursement was not a part of his regular income and it should not be considered in calculating child support. Contrary to his argument, there is no record to support his claim; his W-2 form in 2004 listed \$62,289.13 as wages and there are no other documents showing the moving expense reimbursement.

Michael also requested the court to reduce his income for his expense of maintaining his home in Hays in the amount of \$9,562.31. Michael left Hays to take a new job in Boonville, Missouri, in March 2004, and he had to pay mortgage, utilities, and maintenance of his home in Hays until the house was sold on November 1, 2004. There is no record showing that proceeds from the sale was added to Michael's income for 2004. It seems only fair to add the profit from the house to Michael's income if the expenses were allowed to be deducted. The children lived with Pamela from March to November 2004, and they did not get any benefit from the house in question. Under these circumstances, the court did not abuse its discretion when it refused to reduce Michael's income by these expenses of maintaining the house in Hays.

The trial court did not abuse its discretion in refusing to adjust Michael's income by considering the expenses for moving or the maintenance of the second house.

Tax exemption benefits and long distance visitation expense

The standard of review on this issue is the same as issue II. Michael argues that the trial court abused its discretion in failing to adjust his child support. In the Guidelines, section IV.E states:

"Child support adjustments apply only when requested by a party. If no adjustment is requested, this section does not need to be completed. All requested adjustments are discretionary with the court. The party requesting the adjustment is responsible for proving the basis for the adjustment. The court shall determine if a requested adjustment should be granted in a particular case based upon the best interests of the child." (2006 Kan. Ct. R. Annot. 117-18).

The trial court determined that Pamela was entitled to two exemptions for income tax purposes and Michael to one exemption for tax year 2004. Michael agreed to this arrangement for 2004 and further agreed that Pamela would take two exemptions for the tax year 2005, since the oldest son would be over 18.

Michael does not complain of this exemption arrangement; instead, he suggests that the tax benefit derived from the exemptions should be shared by Pamela and Michael credited in proportionate to their income. Michael calculated the dollar amounts of tax

benefits from claiming the children as dependents using the Turbo tax program.

According to Michael's calculations, the annual tax benefits for 2004 was \$8,450 and for 2005, Michael predicted the benefits to be \$7,578.

Michael attempts to take credits from the tax benefits which Pamela received.

There is no authority in the Guidelines or case law which allows credit back to a parent from the tax benefits of the other parent from claiming children as dependents. Michael fails to meet his burden to prove the basis of the adjustment.

Next, Michael argues that his child support should be reduced in consideration of the "substantial and weighty expense in exercising visitation with his sons." According to his calculations, the long distance visitation cost was estimated as \$2,472.61 for mileage, telephone calls, lodging, food, and entertainment. The cost per month was \$336.43. Michael argues that he is entitled to the credit of these travel expenses to visit his children.

Michael and Pamela agreed to meet in Topeka which is halfway from Hays and Boonville. Michael does not complain about this arrangement; rather, he requests to have his child support adjusted for his expenses for visitations. In *In re Marriage of McPheter*, 15 Kan. App. 2d 47, 803 P.2d 207 (1990), father argued that additional expenses of

transporting the children during visitation periods should be borne by mother, since she was the one who moved. The district court found that the mother moved to obtain employment which was a legitimate reason and ordered the cost be split 50/50 by the parties, and this court affirmed 15 Kan. App. 2d 50.

In this case, Michael moved away for his new job in Missouri and Pamela agreed to drive the children to Topeka to meet Michael halfway. Michael admitted that Pamela should be entitled to credit for her expenses of driving to Topeka. According to Michael's logic, the children would receive less support because of the expenses of traveling to visit their father who moved out of state. This result is not in accord with the best interests of the child standard of which the Guidelines are based.

The trial court did not abuse its discretion in refusing to adjust child support for tax benefits of exemptions or long distance travel expenses for visitation.

Imputed wages

Michael argues that the trial court should have imputed minimum wage for Pamela's 2003 income instead of using her actual income from her part-time work.

As SRS points out, the trial court did impute the federal minimum wage to Pamela in order to calculate her child support obligation. The trial court arrived at \$893 per month for Pamela's income for child support purposes which was based on annual wages of \$10,712 (minimum wage \$5.15 x 40 hours x 52 weeks). If the trial court had used Pamela's actual wages, her monthly income for child support purposes would be \$568.42. Michael is mistaken.

Affirmed.