

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE

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FRANCES PEARL BELL,

Plaintiff/Appellee,

vs.

DANNY RAY BELL,

Defendant/Appellant.

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Humphreys Equity No. 19-492

Appeal No. 01A01-9511-CH-00493

**FILED**

**September 25, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

APPEAL FROM THE CHANCERY COURT OF HUMPHREYS COUNTY  
AT WAVERLY, TENNESSEE

THE HONORABLE ALLEN W. WALLACE, CHANCELLOR

For the Plaintiff/Appellee: \_\_\_\_\_ For the Defendant/Appellant:

Terry J. Leonard  
Camden, Tennessee

P. Edward Schell  
Franklin, Tennessee

**AFFIRMED**

HOLLY KIRBY LILLARD, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

ALAN E. HIGHERS, J.

## OPINION

This case involves a petition for modification of a child support order. Danny Ray Bell (Husband) appeals the trial court's denial of his petition to receive credit against child support arrearages owed to Frances Pearl Bell (Wife) for support payments made after his eldest child reached the age of majority. We affirm.

The parties were granted a divorce decree on March 30, 1988. The decree ordered the Husband to pay \$400 per month as child support for the couple's three minor children. On December 5, 1990, the couple's oldest child, Danny Gene Bell, attained the age of majority. Husband continued to make support payments of \$400 per month. On November 14, 1994, Husband filed a petition requesting that he receive credit against any existing child support arrearages for payments made after his oldest child reached the age of majority.

The trial court found that Husband was \$4,482 in arrears but denied Husband's petition for credit. The trial court agreed that, had Husband overpaid child support, he would be entitled to receive a credit against his arrearages; however, the trial court determined that there were no overpayments. The trial court considered Husband's average income from 1991-94 and found that, according to the Child Support Guidelines, Husband should have been making child support payments in the amount of \$453 per month for the two remaining minor children. Treating the case as if Wife had filed a petition to increase the child support order at the time her oldest child attained the age of majority, the trial court reasoned that there were no overpayments to credit against Husband's arrearages. The trial court did not retroactively modify the child support obligations and denied Husband's petition.

Husband appeals the trial court's denial of his petition to credit a portion of the child support payments against his arrearages. This Court's review of the trial court's findings of fact is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d).

Husband argues that the trial court erred in refusing to prorate the child support and to credit the amounts allegedly overpaid against his arrearages. He asserts that Tenn. Code Ann. Sec. 36-5-101(a)(1) authorized the automatic proration of child support payments when one child reaches the age of majority. Thus, Husband argues that the Chancellor should have prorated the original support order at \$133 per month per child, so that when the oldest child attained majority his total child support obligation automatically became \$266 per month. As a result, Husband

contends that he overpaid \$133 per month after his oldest child reached eighteen, and that this overpayment should have been applied against his arrearages.

Husband argues that the trial court erred in treating the case as if Wife had filed a petition to increase child support, when she filed no such petition. He contends that the Chancellor's determination that the support payments under the Child Support Guidelines should have been \$453 instead of \$400, and the refusal to prorate the \$400, amounted to an impermissible retroactive modification of a child support order in contravention of Tenn. Code Ann. Sec. 36-5-101(a).

Husband maintains that *Shupe v. Shupe*, No. 118, 1991 WL 16249 (Tenn. App. Feb. 12, 1991), is controlling. In *Shupe*, this Court addressed whether a parent's obligation to pay child support ended once the child reached the age of majority when the parent filed to obtain a court order to modify the original support order. *Id.* at \*1. At the time of the parties' divorce, an order was entered providing for child support payments of "\$200.00 per child," totaling \$400.00 per month for the parties' two children. *Id.* The father unilaterally reduced the child support payments from \$400 per month to \$200 per month when one of his two daughters reached the age of eighteen, and the trial court found that the father was therefore in arrears. *Id.* On appeal, this Court noted that a parent's legal duty to support a child ends when the child reaches majority. *Id.* The trial judge had originally ruled that the younger child was entitled to only \$200 per month, and there was no finding that the needs of the younger child required support above \$200 per month. *Id.* at \*2. Therefore, the father was obligated to pay only \$200 per month per child and was not in arrears. *Id.*

In this case, unlike *Shupe*, there was no determination that each child was entitled to a given amount per month; rather, the total support for the three children was \$400 per month. As in *Clinard v. Clinard*, No. 01-S-01-9502-CV00021, 1995 WL 563858 (Tenn. Sept. 25, 1995), had the trial court applied proration in this case, it would not be deemed a prohibited retroactive modification of the child support obligation. However, as established in *Rutledge v. Barrett*, 802 S.W.2d 604 (Tenn. 1991), the trial court is not *obligated* to apply proration where circumstances justify the original total amount of support for the remaining minor children.

The trial court in this case looked at Husband's income during the time period in question and then consulted the Child Support Guidelines. It noted that, had Wife petitioned the Court at

the time, Husband likely would have been required to pay child support in excess of \$400 per month for the remaining minor children. Under these circumstances, the trial court declined to apply proration to the child support payments made. We find no error in the trial court's decision.

Affirmed. Costs are assessed against the appellant, for which execution may issue if necessary.

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**HOLLY KIRBY LILLARD, J.**

**CONCUR:**

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**W. FRANK CRAWFORD, P.J., W.S.**

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**ALAN E. HIGHERS, J.**