

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001857-MR

ROBERT NEAL PETTIT

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT  
HONORABLE BETH LEWIS MAZE, JUDGE  
ACTION NO. 95-CI-00174

SUSAN KAY PETTIT

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

BUCKINGHAM, JUDGE: Robert Neal Pettit appeals from an order of the Rowan Circuit Court denying his motion for modification of child support. We affirm.

The pertinent court proceedings involve a motion and order entered in the year 2000 and another motion and order entered in the year 2001. On July 14, 2000, Robert filed a motion to modify his child support payments and arrearages. Therein, he requested a reduction of his child support obligation from \$299.20 per month to \$60 per month. In addition, he

requested that the reduction be applied retroactively beginning July 13, 1995, the date he alleged his disability began.<sup>1</sup>

On September 12, 2000, the circuit court entered an order modifying Robert's child support obligation from \$299.20 per month to \$120 per month effective July 1, 2000. Since social security benefits received by the child due to Robert's disability were \$354 per month and exceeded the amount of his current child support obligation, the court ruled that Robert was not responsible for making any current monthly payments. Further, Robert was awarded a credit against his arrearages of \$1,062, representing the April, May, and June 2000 social security checks of \$354 each received by the child. In addition, the court reserved for later determination issues of the amount of the arrearages and the possibility of crediting the child's excess social security benefits to the arrearages.

On July 13, 2001, Robert filed another motion for modification of child support. Therein, he moved the court to modify his child support retroactively from \$229.20 per month to \$60 per month for the period from October 1, 1997, through June 30, 2000. In support of his motion, Robert stated and proved that the Social Security Administration had determined that his disability began in October 1997. In addition, Robert moved the court to modify the September 2000 order as it related to the application of social security benefits to his arrearages. On

---

<sup>1</sup> Robert apparently suffers from a mental disability and has been awarded SSI because of it. His child also receives social security benefits due to Robert's disability.

July 27, 2001, the circuit court denied Robert's motion.<sup>2</sup> This appeal by Robert followed.

Robert's first two arguments relate to the trial court's denial of his motion to the extent it requested the retroactive modification of his child support obligation. As we have noted, Robert was under an obligation to pay child support at the rate of \$299.20 per month until July 1, 2000, when his support was modified to \$120 per month. Based on the Social Security Administration finding that Robert began suffering a mental disability as of October 23, 1997, Robert asserts that his child support obligation should be retroactively modified to that date to the amount of \$60 per month in accordance with that determination.

The applicable statute states in part that "[t]he provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing." KRS<sup>3</sup> 403.213(1). [Emphasis added.] See also Van Meter v. Smith, Ky. App., 14 S.W.3d 569, 572-73 (2000). Thus, to the extent Robert's motion sought a retroactive modification of his child support obligation, it was not allowed by Kentucky law. In short, the trial court did not err in denying Robert's motion in this regard.

---

<sup>2</sup> The court denied the motion by making a notation on the circuit court calendar for July 27, 2001, and did not give reasons for such denial.

<sup>3</sup> Kentucky Revised Statutes.

Robert also argues that the trial court erred by not applying social security payments received by his child which are in excess of his monthly obligation as a credit to his accrued arrearage. From reading Robert's *pro se* motion, we fail to see where he requested the trial court to rule on this matter. Further, there is no record as to what transpired at the hearing on Robert's motion, other than the court calendar which notes the court's denial of the motion. Nevertheless, both Robert and Susan address this issue in their briefs.

The applicable statute states as follows:

A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency. [Emphasis added.]

KRS 403.211(14). Pursuant to the statute, Robert is entitled to credit toward arrearages for social security benefits paid to his child in excess of the monthly support obligation accrued after the date of disability but not to those arrearages which accrued before said date. Although the parties briefed the issue and Robert's argument appears to have merit, we decline to reverse

the trial court since we see no evidence that the matter was ever submitted to the court for ruling.<sup>4</sup>

The order of the Rowan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert Neal Pettit, *Pro Se*  
Morehead, Kentucky

BRIEF FOR APPELLEE:

Dana B. Quesinberry  
Morehead, Kentucky

---

<sup>4</sup> This court will not review issues on appeal if the trial court has not first been given the opportunity to rule on the question. Swatzell v. Commonwealth, Ky., 962 S.W.2d 866, 868 (1998).