

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001041-MR
AND
NO. 2006-CA-001424-MR

JULIE JOHNSON

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 04-CI-01127

SHANNON JOHNSON

APPELLEE

OPINION AND ORDER DISMISSING

** ** * ** * ** *

BEFORE: ABRAMSON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Julie Johnson brings Appeal No. 2006-CA-001041-MR from a May 5, 2006, order of the Boyd Circuit Court. Johnson also brings Appeal No. 2006-CA-001424-MR from a June 9, 2006, order of the Boyd Circuit Court. We dismiss both appeals for the reasons hereafter stated.

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

Julie and Shannon Johnson were married in 1986, and one child was born of the marriage. The parties were divorced by decree of dissolution of marriage entered in the Boyd Circuit Court on August 26, 2005. The decree dissolved the marriage but reserved other issues for later adjudication. The matter was referred to the domestic relations commissioner for a hearing on the remaining issues. Ky. R. Civ. P. (CR) 53.03.

Following a hearing, the commissioner entered a Report and Recommendations on January 12, 2006. Relevant to this appeal, the commissioner recommended that Shannon be awarded full ownership and possession of the business known as Shannon M. Johnson, DC, PSC. Shannon was to pay Julie \$34,200.00 for her interest in the business. The commissioner also recommended that Shannon pay Julie maintenance of \$1,500.00 per month for a period of five years. Julie was awarded two vehicles, a Mitsubishi Gallant and a Ford F-150 truck, and Shannon was ordered to pay the remaining debt on these vehicles. Relevant to the marital residence, the commissioner recommended that Julie should have the option of either sole ownership and assumption of the debt associated therewith or allow Shannon to have possession and ownership of the residence and assume the debt. Julie was to inform the court of her decision by February 15, 2006. Shannon was to “remain responsible for the care and protection of the house until such a decision is made or the transfer takes place.” Shannon was also to be responsible for the debt owed to King's Daughters Hospital for Julie's medical expenses related to a surgery prior to dissolution of the marriage. The

parties agreed to joint custody of their daughter with Julie serving as the primary residential custodian and Shannon having guideline visitation.

Both parties filed exceptions to the commissioner's report. On March 23, 2006, the court conducted a hearing on the parties' exceptions. On March 27, 2006, Shannon filed a "Notice" requesting that he be permitted to pay Julie the \$34,200.00 owed for her interest in the business in sixty (60) monthly installments rather than in a lump sum. The court also entered an order on March 27, 2006, addressing the parties' exceptions and adopting the commissioner's report to the extent it was not inconsistent with the order. Relevant to this appeal, the court ordered Julie to vacate the marital residence within twenty days and to sign a listing agreement with a realtor. The court also ordered the Ford F-150 be sold, and the proceeds applied to the debt. Julie was ordered to submit an insurance claim for the medical expenses owed King's Daughters Hospital. The court further ordered that Shannon be permitted to pay Julie the \$34,200.00 in sixty (60) equal monthly installments, or \$570.00 per month.

On April 6, 2006, Shannon filed a motion pursuant to CR 59.05 to alter, amend or vacate the Court's March 27, 2006, order. Therein, Shannon sought to be relieved from the maintenance awarded to Julie and sought to clarify the parties' visitation schedule. On April 21, 2006, the court entered an order reducing the amount of maintenance from \$1,500.00 per month to \$750.00, until the marital residence was sold. The order also "clarified" the visitation schedule.

On May 1, 2006, Julie filed four motions. The first motion sought an order requiring Shannon to provide Julie with the keys to a vehicle. The second motion requested an order addressing Julie's exceptions. Therein, Julie claimed that the court's order of March 27, 2006, did not address her exceptions. Julie also sought clarification regarding financial responsibility for the medical bills owed to King's Daughters Hospital. The third motion requested an order establishing when maintenance would be due each month. The fourth and final motion was a "Motion To Alter, Amend Or Vacate Or In The Alternative Motion For Specific Findings of Fact." Therein, Julie requested that the April 21, 2006, order reducing maintenance be amended to award her the original amount of maintenance. In the alternative, Julie requested the court to enter specific findings of fact on the issue of maintenance.

On May 5, 2006, the court entered an order addressing all of Julie's motions. Therein, the circuit court stated, in relevant part, as follows:

With respect to the balance of \$2,974.97 owed on [Julie's] medical bills, at the hearing on March 23, 2006 the attorneys agreed to find out why the insurance claim had not been paid and advise the Court. As of this time the Court has not received any direction as to why the insurance company has not paid the claim. If the parties would advise the Court, an order concerning the responsibility of those payments would be forthcoming.

On May 19, 2006, Julie filed a notice of appeal (Appeal No. 2006-CA-001041-MR) from the May 5, 2006, order.

On June 5, 2006, Julie filed a "Motion For Clarification Of Specific Date For Business Payment And Motion For Payment Of Truck Repair Expenses And For Use

Of Truck.” On June 9, 2006, the court denied Julie's motion. On July 10, 2006, Julie filed a notice of appeal (Appeal No. 2006-CA-001424-MR) from the June 9, 2006, order. These appeals follow.

Appeal No. 2006-CA-001041-MR

A final judgment is an order adjudicating all the rights of all the parties in a particular action or proceeding. CR 54.01; *Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978). Generally, an appeal from a non-final order is interlocutory and nonappealable. *Id.* Julie brings Appeal No. 2006-CA-001041-MR from a May 5, 2006, order of the Boyd Circuit Court. In that order, the court stated that it “has not received any direction as to why the insurance company has not paid the claim [for medical expenses owed King's Daughters Hospital]. If the parties would advise the Court, an order concerning the responsibility of those payments would be forthcoming.” It is clear from the language of the court's order that the issue of financial responsibility for Julie's medical bills has not been fully adjudicated. As the May 5, 2006, order does not adjudicate all the rights of all the parties, we conclude that it is interlocutory and nonappealable.² As such, we believe Appeal No. 2006-CA-001041-MR is taken from a non-final order.

²We observe that the May 5, 2006, order did not include Ky. R. Civ. P. 54.02 language.

Appeal No. 2006-CA-001424-MR

It is well-established that the filing of a notice of appeal generally divests the circuit court of jurisdiction unless issues of child support or custody are involved. *Johnson v. Commonwealth*, 17 S.W.3d 109 (Ky. 2000)(citations omitted). The record reveals that Julie filed the notice of appeal in Appeal No. 2006-CA-001041-MR on May 19, 2006. After filing the notice, Julie then filed a motion seeking the court to order Shannon to make the monthly payments on the \$34,200.00 on a certain day each month and seeking reimbursement for repairs made to a vehicle. On June 9, 2006, the court rendered an order denying the motion, and Julie subsequently filed the second notice of appeal in Appeal No. 2006-CA-001424-MR from that order. As the notice of appeal in Appeal No. 2006-CA-001041-MR had been previously filed on May 19, 2006, the circuit court was thereupon divested of jurisdiction and, thus, was without jurisdiction to render the June 9, 2006, order. As such, we conclude that the June 9, 2006, order was a nullity. *See Johnson*, 17 S.W.3d 109.

It is hereby ORDERED that Appeal Nos. 2006-CA-001041-MR and 2006-CA-001424-MR be DISMISSED.

ALL CONCUR.

ENTERED: June 29, 2007

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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