

RENDERED: JANUARY 29, 2010: 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000122-MR

DAVID A. LAWRENCE, JR.

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 05-CI-01066

THE MEDICAL CENTER AT
BOWLING GREEN

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT AND NICKELL, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: David A. Lawrence, Jr., appeals from a Warren Circuit Court order, entered on December 18, 2008, denying his motion to vacate an order of wage garnishment and for reimbursement. The sole issue presented by

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

this appeal is whether an allocation of marital debt to one spouse supersedes a court order for garnishing the wages of the other spouse. We find that it does not and thus affirm the Warren Circuit Court.

This appeal arises from a marital debt incurred by Kathleen Lawrence. Between November and December 2003, Kathleen received medical services from The Medical Center at Bowling Green totaling \$10,612.92. Kathleen did not pay for the services. The Medical Center filed a complaint against both Kathleen and her husband, David. Although they were properly served, neither Kathleen nor David responded to the complaint.

On August 10, 2005, the Warren Circuit Court issued a default judgment against Kathleen and David. Kathleen was unemployed at the time that the judgment was entered. Therefore, on August 22, 2005, the Warren Circuit Court issued a wage garnishment order against David to satisfy the judgment.

On April 17, 2008, the Jefferson Family Court entered a decree of dissolution ending Kathleen and David's marriage. In its decree, the court allocated marital debt to each party. David was apportioned debt from an automobile. Kathleen was deemed "liable for all medical bills in her name or associated with her care."

On November 26, 2008, pursuant to Kentucky Rules of Civil Procedure (CR) 60.02, David moved the Warren Circuit Court to vacate its prior

order of wage garnishment and moved for reimbursement of the wages garnished after the divorce decree was entered. The court denied David's motion. This appeal follows.

David argues that the allocation of debt alleviates his obligation to the Medical Center. Therefore, he claims his CR 60.02 motion to vacate the order of wage garnishment should have been granted. We disagree.

The language of CR 60.02 unequivocally provides that a motion to set aside a final judgment may only be granted in the following circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) perjury or falsified evidence; (4) fraud affecting the proceedings; (5) the judgment is void or has been satisfied or released or discharged; and (6) any other reasons of extraordinary nature justifying relief. CR 60.02. David's claim appears to be most appropriate under subsections (5) or (6), but neither section actually provides David with an avenue of relief.

David claims that his obligation to pay the hospital debt was discharged, but nothing in the decree relieved David of his obligation. It merely allocated debt between the spouses. Both David and Kathleen are still responsible to the Medical Center for the debt. The divorce decree merely provides David the right to be reimbursed for the garnishment. Therefore, we find that the decree neither discharged David's obligation nor provided an extraordinary reason justifying relief.

In addition, David claims that the court erroneously concluded that the “defenses raised in a CR 60.02 motion must have been raised in the earlier default judgment proceeding.” While we agree that such a conclusion would be erroneous, the trial court did not make that conclusion in either its order or orally at the hearing. Therefore, we find no error.

Accordingly, we affirm the Warren Circuit Court order denying David’s CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Melanie Foote
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Charles W. Adams
Bowling Green, Kentucky