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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001893-ME

CHARLES LAMAR JOHNSON — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NOS. 04-J-500469 AND 87-FP-004897

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KELLER AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Charles Lamar Johnson appeals from a Jefferson Circuit Court judgment entered on September 1, 2009, which denied his motions challenging the garnishment of his bank accounts. Discerning no reversible error, we affirm.

On May 28, 2008, the Cabinet for Health and Family Services filed six orders of garnishment (non-wage) with the Jefferson Circuit Family Court pursuant to Kentucky Revised Statutes (KRS) 205.778(1). These six orders named Charles Lamar Johnson, a prisoner at the Kentucky State Reformatory, as the judgment debtor, listed National City Bank as the garnishee, and included the total amount due as $32,067 for past due child support. On June 4, 2008, National City Bank closed several of Johnson's bank accounts and tendered the funds in the accounts, totaling approximately $30,000, to the Cabinet for Health and Family Services.

On June 23, 2008, Johnson filed a writ of prohibition in the Court of Appeals, which challenged the above garnishments. Johnson's writ was denied by both this Court and the Kentucky Supreme Court because "Johnson has a clear remedy by appeal that is specifically set forth in the [o]rder of [g]arnishment form." *Johnson v. Haynie*, 2009 WL 1108799 (Ky. 2009)(2008-SC-000776-MR). Specifically, the form stated that any debtor who wished to challenge a garnishment of property must "immediately request a hearing in the court listed above by filing a sworn written request with the Clerk of the Court within ten (10) days of the [g]arnishee's [d]ate of [r]eceipt noted above." *Id.* at 2. Because sworn written requests challenging the above garnishments were filed by Johnson on July 8, 2008, the Supreme Court held that Johnson "will be able to participate in a hearing challenging the garnishments."

In his written affidavits, Johnson contended that money in his bank accounts were exempt from garnishment because "all my children receive monthly checks from my Social Security Benefits [sic]." On August 4, 2008, Johnson set forth additional grounds for his garnishment challenges and motioned to set the matter for a hearing. Principally, Johnson contended that he was not notified of the garnishment proceedings in a timely manner.

Despite Johnson's motion, a hearing was never set. Then, on May 26, 2009, the Jefferson County Attorney's office moved to set a hearing to address Johnson's garnishment challenges. In its motion, the County Attorney explained that Johnson's challenges were never heard because his writs of prohibition were pending at the appellate level. On June 15, 2009, the County Attorney's motion for a hearing on Johnson's garnishment challenges was heard. The trial court entered a "Paternity Calendar Court Order" listing Johnson's status as "custody-prison." The order indicated that a telephonic hearing to address Johnson's garnishment challenges shall be conducted on August 3, 2009.

On August 3, 2009, a telephonic hearing was conducted. At the initiation of this call, the trial court asked Johnson to address his garnishment challenges. Johnson replied that he needed appointed counsel or a legal aide to assist him with his case. The trial court stated that since this was a civil matter, Johnson was not entitled to the appointment of counsel or a legal aide.

Johnson then stated that he was unprepared and did not have his paperwork with him. To this, the trial court replied, "Well, today's the day." The

County Attorney asked Johnson whether he remembered being sent notice of the hearing. Johnson replied that he never received any notice.

The trial court again asked Johnson to set forth the grounds for his garnishment challenges. Johnson replied that he did not owe back child support because his children received social security disability payments in satisfaction of his child support obligations. The County Attorney then asked Johnson whether he received copies of the audits she sent him. Johnson replied in the affirmative and the County Attorney then explained that the back child support owed by Johnson was accrued prior to his disability.

After some discussion, the trial court again asked Johnson to set forth his grounds for challenging the garnishments. Johnson repeated that he was not prepared for the hearing, that he did not have his paperwork in front of him, and that he needed a legal aide to assist him. The trial court then ended the hearing by stating that it would take the case under submission.

On September 1, 2009, the trial court entered an order denying Johnson's garnishment challenges. In so ordering, the trial court concluded that "sufficient evidence has not been shown by [Johnson] to justify an order releasing the garnishments and returning the money to [Johnson]." An appeal to this Court now follows.

In his appeal, Johnson claims the trial court violated his due process rights by denying him a legal aide or guardian *ad litem* to assist him in preparing

and presenting his case.[1] According to Johnson, he was in need of such assistance "to facilitate the request and production of records from the Social Security Administration . . . ."

Except in very limited circumstances, there is no constitutional right to the assistance of counsel in civil cases. *May v. Coleman*, 945 S.W.2d 426, 427 (Ky. 1997). For prisoners, Kentucky Rule(s) of Civil Procedure (CR) 17.04(1) provides the following circumstances in which they are entitled to the appointment of a guardian *ad litem* in civil matters:

> Actions involving adult prisoners confined either within or without the State may be brought or defended by the prisoner. If for any reason the prisoner fails or is unable to defend an action, the court shall appoint a practicing attorney as guardian *ad litem*, *and no judgment shall be rendered against the prisoner until* the guardian *ad litem* shall have made defense or filed a report stating that after careful examination of the case he or she is unable to make defense.

Id. (Emphasis added).

This case involves post-judgment garnishment proceedings. *See* CR 69.02. Pursuant to its plain language, CR 17.04 does not provide for the appointment and assistance of a guardian *ad litem* after the entry of a final judgment. *See May*, 945 S.W.2d at 427; *Davidson v. Boggs*, 859 S.W.2d 662, 664 (Ky. App. 1993) (implying that CR 17.04 only applies prior to trial). Accordingly,

[1] Johnson claims in his brief that he made a written motion for appointment of guardian *ad litem*. After thorough review of this record, we cannot find it. However, for the purposes of this appeal, we will presume that such a motion was filed.

Johnson's claim that he had a constitutional right to the appointment of counsel in these post-judgment civil garnishment proceedings is without merit.

Johnson also complains that he was not afforded a meaningful hearing. He contends that the hearing was "cursory" and that "he was repeatedly cut off by the judge and constantly interrupted by the Commonwealth." In *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987), the Kentucky Supreme Court explained that a "meaningful hearing" requires, at a minimum, that the defendant be given a fair opportunity to present evidence to the fact-finder before that fact-finder has made up his or her mind. *Id.* at 596. Upon review of this hearing, we discern no violation of Johnson's right to a meaningful hearing. Johnson was permitted plenty of opportunity to present his arguments and evidence before the trial court. His assertion to the contrary is without merit.

Johnson next argues he is entitled to a new hearing because the trial court failed to make findings addressing: (1) his claim that the Social Security Administration did make enough payments to offset all child support obligations, even those that accrued prior to his disability; and (2) whether he was provided sufficient statutory notice of the garnishment proceedings. He further claims the trial court's order is nonsensical to the extent that it refers to back child support being owed to the state; however, the County Attorney admitted that money seized from his bank accounts was not being paid to the state, but rather to the mothers of his children.

While the trial court's order may not be a model of clarity or detail, there are sufficient findings to address the issues raised by Johnson. In any event, final orders shall not be reversed for failure to make findings unless such failure is brought to the attention of the trial court. CR 52.04. Johnson never brought these alleged deficiencies to the attention of the trial court.

And even if there was some deficiency in the trial court's findings, Johnson fails to demonstrate how he was prejudiced by any delay in notification of these proceedings. Moreover, Johnson concedes that he failed to obtain the necessary documents from the Social Security Administration to support his claim. Johnson argues that a guardian *ad litem* was necessary to assist in these tasks; however, as set forth above, Johnson was not entitled to such assistance under our law. Nothing prevented Johnson from seeking these documents himself and the fact that Johnson chose not to do so is not grounds for the granting of a new hearing in this case. *See* CR 43.03 (trial may be postponed on account of absence of evidence, but only upon showing that party exercised due diligence in attempt to obtain evidence prior to trial); *see also* Kentucky Rule(s) of Criminal Procedure (RCr) 9.04.

Having been presented with no reversible error, we hereby affirm the Jefferson Circuit Court's September 1, 2009, order denying Johnson's garnishment challenges.

ALL CONCUR.

BRIEF FOR APPELLANT:

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