

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000173-ME

CHRISTOPHER WELLER

APPELLANT

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 06-CI-01858

SHELLI RENEE SERRA

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: KELLER AND LAMBERT, JUDGES; SHAKE,¹ SENIOR JUDGE.

LAMBERT, JUDGE: Christopher Weller, proceeding *pro se*, appeals from the January 12, 2010, order of the Kenton Family Court. The sole issue Weller raises in this appeal is whether the family court properly denied his motion to dismiss a motion for contempt based upon an alleged noncompliance with filing procedures.

Because we find absolutely no merit in Weller's assertion, we affirm.

¹ Senior Judge Ann O'Malley Shake 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.

The underlying family court case arose in 2006 when Weller filed a motion for custody and visitation concerning his minor son, Corderrick Weller. Corderrick was born in 2000 during Weller's relationship with the child's mother, Shelli Renee Serra, the appellee herein. The deterioration in the relationship between Weller and Serra over the course of the proceedings is well documented in the record. In 2007, the parties entered into an agreed order concerning custody, in which the family court granted Serra sole custody of the child. In addition to detailing the parenting schedule and ordering both parents to schedule parent coordination services and complete any recommended mental health therapies, the order contained a restraining order that prohibited "either Serra or Weller from harassing, stalking, or unduly interfering in the other parent's life. Any violation of this Civil Restraining Order shall be met with a Contempt Motion and any violation found by the Court shall result in severe sanctions." Thereafter, both parties filed motions requesting that the family court hold the other parent in contempt, citing that provision.

In 2008, Serra sought permission to relocate her residence to Miamisburg, Ohio. The family court granted Serra's motion on November 14, 2008, noting that she was the sole custodial parent and that it was in the child's best interests to remain with her. The family court entered a subsequent order on January 6, 2009, establishing a parenting arrangement in light of Serra's relocation.

On March 26, 2009, Weller filed what he captioned as an emergency *ex parte* motion to modify the January 6, 2009, order. In the motion, Weller

sought permission to pick up the child from school on his weekends and to have lunch with the child on those Fridays. The motion also addressed issues concerning the coinciding of Spring Break and parenting time. The record reflects that the family court denied this motion on March 27, 2009, based upon insufficient service and improper *ex parte* filing.

On July 29, 2009, Serra filed another motion to hold Weller in contempt, again alleging that he had violated the restraining order in the agreed order by attempting to improperly use legal documents to obtain information both about her and her daughter from a previous relationship. Serra included a detailed affidavit supporting her motion and properly noticed it for a hearing. In response, Weller filed a motion to dismiss Serra's motion and requested that she be held in contempt and sanctioned for perjury. He then responded to what he claimed were the false portions of Serra's affidavit.

Pursuant to Serra's notice, the family court held a hearing on Serra's motion for contempt, as well as on Weller's motions to modify and to dismiss, on December 17, 2009. At the beginning of the hearing, Weller moved to dismiss Serra's motion for "flagrant perjury," and for violation of Kentucky Rules of Civil Procedure (CR) 7.02(4) by not filing her motion in the proper format. The family court denied Weller's motion and proceeded with the hearing.

By order entered January 12, 2010, the family court denied Weller's motions, but ordered that he may have lunch with the child on the Friday of his

weekend parenting time. The family court also found Weller in contempt and sanctioned him as follows:

a. Weller shall follow all treatment recommendations set forth in Dr. Ed Connor's Custody Evaluation Report: Weller shall provide proof of an appointment with a psychotherapist within thirty (30) days of the hearing on December 17, 2009. In the event that Weller does not provide sufficient proof then he shall serve thirty (30) days in the Kenton County Detention Center. The Court sets this matter for a show cause on February 10, 2010 at 4:00 p.m.

b. Weller shall pay to Serra's counsel the amount of Seven Hundred Fifty Dollars (\$750.00) for reimbursement of attorney fees within ninety (90) days of the December 17, 2009 hearing.

c. Weller shall not issue any subpoenas without Court approval.

Weller filed a notice of appeal from that order on January 22, 2010.²

The same day Weller filed his notice of appeal, he also filed a motion to modify or vacate the January 12, 2010, order, stating that the family court reached its decision based upon false testimony and disputing that he was contemptuous or that he should be responsible for attorney fees. However, the family court issued a notice of noncompliance related to that motion because it did not comply with the Rules of Practice of the Kenton Family Court requiring that the motion be set for the court's standing motion docket held on Tuesdays at 1:00 p.m. Weller then

² On February 10, 2010, Weller sought intermediate and emergency relief pursuant to CR 76.33 from this Court. The basis of this motion was to delay the show cause hearing scheduled for the same date to protect him from being held in contempt in the event that he was successful on appeal that the January 12, 2010, order was incorrect. This Court denied Weller's request for emergency relief that day. On January 5, 2011, the Court denied Weller's motion for intermediate relief as moot because the circuit court docket sheet reflected that the hearing had been conducted, and Weller had not filed any additional pleadings regarding the necessity of intermediate relief from the show cause hearing.

refiled the motion on February 2, 2010. The record certified for this appeal does not reflect a ruling on this motion. While not entirely germane to this appeal, we include this information because Weller references this for other purposes in his brief.

In his brief, Weller frames the issue on appeal as: “Should the hearing that occurred on December 17, 2009 have been dismissed pursuant to rule CR 7.02(4)?” He then states that he is appealing the family court’s finding of contempt on the basis that the family court should have dismissed Serra’s motion for contempt and declined to hold a hearing due to Serra’s failure to follow the rules of procedure. It follows, he contends, that any rulings that came about due to the hearing were made in error.

In support of his argument, Weller relies on CR 7.02(4), which provides as follows:

Except for exhibits and printed briefs, all pleadings and papers filed in the courts shall be typewritten in black type no smaller than 12 point on unglazed white paper 8 1/2 by 11 inches in dimension, leaving at least a double space between lines, a 1 1/2 inch margin on the left side, and shall be clearly readable. This requirement shall not apply to computer printouts or similar reproductions prescribed by the Administrative Office of the Courts for use in the district court or to orders, judgments and other papers routinely prepared by the circuit and district courts.

Weller claims that Serra’s motion for contempt somehow violated this rule. He then points to his attempt as detailed above to file a motion to modify or vacate, which the family court returned as noncompliant for procedural errors. He states,

“If the Judge can rule against the Appellant for procedural violations, the same procedural rules should apply to the Attorney for the Appellee.” We note that the Kenton circuit clerk declined to file Weller’s motion to modify or vacate because it did not comply with the family court rule that it must be set for the court’s standing motion docket. In contrast, Serra’s motion was properly noticed for the standing motion docket.

In her brief, Serra states that there does not appear to be any violation of CR 7.02(4) in the preparation of her motion for contempt, and we agree. There are no deficiencies in the motion that would prevent it from being filed, and Weller never explained how the motion actually violated the rule. We perceive no abuse of discretion in the family court’s denial of Weller’s motion to dismiss for an alleged failure to comply with CR 7.02(4). *See Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (“The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”).

We recognize that Weller is proceeding *pro se* and is afforded leeway in his legal filings. “*Pro se* pleadings are not required to meet the standard of those applied to legal counsel. This Court has also determined that *pro se* pleadings must give at least fair notice of the claim for relief to be sufficient.” *Beecham v. Commonwealth*, 657 S.W.2d 234, 236 (Ky. 1983). Because Weller chose to confine his argument to whether the family court correctly ruled on his motion to

dismiss Serra's motion on purely procedural grounds, we shall decline to review this matter any further.

For the foregoing reasons, the January 12, 2010, order of the Kenton Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Weller, *Pro Se*
Independence, Kentucky

BRIEF FOR APPELLEE:

Stacey L. Graus
Covington, Kentucky