

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000143-ME

MARK CAPPS

APPELLANT

v. APPEAL FROM CUMBERLAND CIRCUIT COURT
HONORABLE WAYNE THOMAS LIVELY, JUDGE
ACTION NO. 09-CI-00007

ANGELA CAPPS

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, D. LAMBERT AND VANMETER, JUDGES.

COMBS, JUDGE: Mark Capps appeals the order of the Cumberland Circuit Court which denied his motion to reduce child support. After our review, we vacate and remand.

Only a brief recitation of procedural facts is needed. On June 23, 2014, Mark filed a motion to reduce his monthly child support obligation to his former wife, Angela Capps. The trial court held a hearing on October 22, 2014. On

December 19, 2014, the trial court entered its order denying the motion in one sentence: “Petitioner’s Motion to Modify Child Support is DENIED.”

There are no findings which allow us to conduct a meaningful review. CR¹ 52.01 directs that a trial court **must** make findings of fact and conclusions of law in its final order. Angela argues that Mark cannot raise this omission on the part of the trial court in his appeal because he did not file a motion in the trial court to seek or to compel additional findings. She relies on CR 52.04, which provides as follows:

a final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue

Our Supreme Court has discussed the relationship between CR 52.01 and CR 52.04 in *Anderson v. Johnson*, 350 S.W.3d 453 (Ky. 2011), noting that CR 52.01 requires the trial court to make findings of fact. *Id.* at 458. CR 52.04 applies when the trial court has made findings but has omitted findings on a particular *issue*. *Id.* If the court failed to make any findings at all, CR 52.04 is not implicated.

Angela argues that the trial court made sufficient oral findings of fact to support its ruling. However, the trial court’s findings **must** be committed to writing.

CR 52.01 requires that the judge engage in at least a good faith effort at fact-finding and that the found facts be

¹ Kentucky Rules of Civil Procedure.

included in a *written* order. Failure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the trial court's attention.

Id. (Emphasis added).

Even if the trial court made oral findings of fact from the bench, written findings are nonetheless required. In *Keifer v. Keifer*, 354 S.W.3d 123, 126 (Ky. 2011), the Supreme Court emphasized the imperative nature of the requirement of **written** findings: “[T]he trial judge’s duty is not satisfied until the findings have been reduced to writing.” It further elaborated that “[a] bare-bone conclusory order . . . setting forth nothing but the final outcome, is inadequate and will enjoy no presumption of validity on appeal.” *Id.*

Part of the reasoning of the Supreme Court in requiring written findings is to enable appellate courts to readily determine a trial court’s findings without searching a video record. In this case, the video record is on a VHS tape. It has now become difficult for this Court to locate equipment with which to view the record. Written findings would greatly facilitate appellate review in addition to satisfying the requirements of the rule.

In summary, the one-sentence conclusion of the trial court fails to comply with the mandates of CR 52.01 as clarified in *Anderson* and *Keifer*. Indeed, there are no findings at all for us to review. Therefore, we are compelled to vacate the order of the trial court and remand this matter for entry of findings of fact as set forth in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

David F. Broderick
Ashley N. Payne
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Sara Beth Gregory
Lance W. Turner
Monticello, Kentucky