

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001670-MR

COMMONWEALTH OF KENTUCKY,
EX REL, MARY EVALYNN HERBERT BERRY
(NOW WALLACE)

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE BENJAMIN L. DICKINSON, JUDGE
ACTION NO. 91-CI-000321

STEVEN DOUGLAS BERRY

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, DYCHE, and HUDDLESTON, Judges.

BUCKINGHAM, JUDGE. Commonwealth of Kentucky ex rel. Mary Evalynn Herbert Berry (now Wallace) appeals from an order of the Barren Circuit Court which reduced the monthly child support to be paid by her ex-husband, Steven Douglas Berry, to \$177.02 per month. Pursuant to Eiland v. Ferrell, Ky., 937 S.W.2d 713 (1997), we affirm.

Berry was employed by Venture Contracting, Inc., and was under an order of the trial court to pay child support in the amount of \$380.94 per month when a wage assignment was served on

his employer. Berry quit his employment the same day and began working as a self-employed cabinet maker at an income in a considerably lesser amount than that he had received while working at Venture. Berry subsequently moved the trial court to modify his child support, and a domestic relations commissioner (DRC) heard the motion on May 5, 1997, and tendered a recommended order on May 28, 1997, recommending that the trial court reduce Berry's child support obligation to \$177.02 per month.¹ The clerk distributed the tendered order to the attorneys,² and the trial court approved the order and entered it on June 10, 1997, as no exceptions had been filed by either party within the ten-day period allowed by Kentucky Rule of Civil Procedure (CR) 53.06(2). This appeal followed.

CR 53.06(2) provides in pertinent part that "within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties." Furthermore, "[i]n general, a party who desires to object to a report must do so as provided in CR 53.06(2) or be precluded from questioning on appeal the action of the circuit court in confirming the commissioner's report." Eiland, supra at 716. Thus, the failure to file exceptions to the DRC's report is fatal to this appeal.

The order of the Barren Circuit Court is affirmed.

¹ The DRC found that Berry's change of employment was not made in good faith and imputed the minimum wage to him for purposes of computing his support obligation.

² Wallace was represented by the Barren County Attorney who had previously intervened in the case on her behalf.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ben Rogers
Barren County Attorney
Glasgow, KY

BRIEF FOR APPELLEE:

Robert M. Alexander
Glasgow, KY