

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000241-MR

JOSEPH W. CHAUDOIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. L. COREY, JUDGE  
ACTION NO. 1997-FC-008110

TERESA LYNNE CHAUDOIN  
(NOW SANTAMASSINO)

APPELLEE

OPINION AND ORDER  
AFFIRMING IN PART - DISMISSING IN PART  
\*\* \*\* \* \* \* \* \*

BEFORE: GUIDUGLI, HUDDLESTON AND MCANULTY, JUDGES.

GUIDUGLI, JUDGE. This is an appeal from an order of the Jefferson Family Court entered on November 19, 1997, reserving the issue of whether the parties' prior agreement was unconscionable and denying the award of child support to the appellant for payments that accrued prior to the date the appellant filed his motion to modify child support. After reviewing the record and the applicable law, we affirm in part and dismiss in part.

The parties to this appeal entered into a separation agreement on April 19, 1982, which was incorporated into their divorce decree dated April 27, 1982. Custody of the parties' two

minor children, ages two and one-half and seven months, had been awarded by the court to the appellee. Thereafter, on November 1, 1982, the parties entered into a written agreement giving custody of the children to the appellant and waiving any future child support obligation of the appellee. This separate agreement was filed with the court but never incorporated into the divorce decree.

On October 31, 1997, the appellant filed a motion in the Jefferson Family Court for entry of an order declaring the November 1, 1982, agreement unconscionable and for judgment for child support for the 15 years preceding the filing of the motion in an amount not less than \$500.00 per month. The appellant also sought an award of child support running prospectively from the date of the motion. At the hearing of this motion on November 17, 1997, the trial court reserved on the issue of unconscionability, denied the award of retroactive child support and referred the issue of prospective child support to the Commissioner. The appellant filed a notice of appeal with regard to the issues of unconscionability and retroactive child support on January 8, 1998.

The unconscionability portion of this appeal must be dismissed because this Court lacks jurisdiction. This Court's appellate jurisdiction applies only to final orders and judgments of the circuit court. See, e.g., Webster County Soil Conservation Dist. v. Shelton, Ky., 437 S.W.2d 934 (1969); Stice v. Leonard, Ky., 420 S.W.2d 672 (1967); Lebus v. Lebus, Ky., 382 S.W.2d 873 (1964). Civil Rule 54.01 defines a final or

appealable judgment as a "final order adjudicating all the rights of the parties in an action or proceeding...."

The trial court's reservation on the issue of whether the November 1, 1982, agreement is unconscionable clearly is not final and appealable. It does not terminate the action, give relief or divest any part of a right. Stewart v. Lawson, Ky., 689 S.W.2d 21 (1985); Tube Turns Div. v. Logsdon, Ky. App., 677 Sw 897 (1984); Wagoner v. Mill, Ky. App., 56 S.W.2d 159 (1977). Therefore, this Court does not have jurisdiction over the issue.

The trial court's decision with regard to child support will not be disturbed unless there was a clear abuse of discretion. Bradley v. Bradley, Ky. App., 473 S.W.2d 117 (1971); Stice v. Stice, Ky. App., 436 S.W.2d 62 (1969). The appellant contends that he is entitled to child support payments that accrued prior to October 31, 1997, the date on which he filed his motion. He argues that there is "no black line rule in the Commonwealth against retroactive orders of support." In support of this contention, the appellant cites KRS 406.030 (dealing with support in paternity cases) and KRS 403.211(5) (dealing with orders of child support).

However, the Commonwealth does have a "black line rule" against retroactive orders of child support contained in KRS 403.213, which states that "any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification...." (Emphasis added). This statute clearly and unambiguously prohibits retroactive child support and has been upheld by this Court. See, Giacalone

v. Giacalone, Ky. App., 867 S.W.2d 616 (1994). The trial court's denial of retroactive child support was correct and was not an abuse of discretion.

For the foregoing reasons, the appeal in this case is affirmed in part and dismissed in part.

ALL CONCUR.

/s/ Daniel T. Guidugli  
JUDGE, COURT OF APPEALS

ENTERED: April 16, 1999

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