

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001991-MR

MITCHELL JOE MUSSER

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
ACTION NO. 94-CI-00328

SUSAN G. MUSSER, NOW  
HENDERSON

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: COMBS, DYCHE, AND MILLER, JUDGES.

DYCHE, JUDGE: Mitchell J. Musser appeals from an order of the Boyd Circuit Court denying his motion to extend the time within which he could appeal from another order of that court which related to the custody of the parties' daughter. We affirm.

The original order, from which appellant desires a belated appeal, granted sole physical custody of the parties' daughter to appellee, and also granted her the "final decision" on matters of the child's education, and medical and psychological treatment. That order was entered and served on appellant on May 13, 1998. The time to appeal from that order

expired on June 12, 1998. Kentucky Rule of Civil Procedure ("CR") 73.02(1)(a).

On June 18, 1998, appellant filed a motion seeking an extension of the time for filing his notice of appeal. The ground given for such an extension was,

Due to his heavy work schedule and the press of other matters, he did not immediately learn of the entry of said Order and subsequent thereto had to miss two appointments scheduled with his attorney to discuss same, and his appellant [*sic*] rights pertaining thereto, due to unavoidable health problems he endured.

CR 73.02(1)(d) provides,

Upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment or an order which affects the running of the time for taking an appeal, the trial court may extend the time for appeal, not exceeding 10 days from the expiration of the original time.

The trial court conducted a hearing on appellant's motion, and entered an order denying same, due to the fact that appellant did not allege failure to learn of entry of the May 13 order. We affirm.

The rule allowing the trial court to extend the appeal period is very specific and limited; for excusable neglect in finding out about the entry of an order or judgment, the aggrieved party may be granted up to 10 days additional time within which to file a Notice of Appeal. No other grounds are allowed.

[The trial court] may not extend the time for taking any action under Rule[] . . . 73.02 . . . except to the extent and under the conditions stated in [it].

CR 6.02(b).

The trial court sympathized with appellant's predicament, as do we, but illness is not given as an acceptable reason for extending the time for appeal. The order of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gerald B. Reams, Jr.  
Catlettsburg, Kentucky

BRIEF FOR APPELLEE:

Jeffrey L. Preston  
Catlettsburg, Kentucky