

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001091-MR

DONALD WILSON ROBERTS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN JAEGER, JUDGE
ACTION NO. 91-CI-01382

KATHLEEN M. LEWIS
(PREVIOUSLY ROBERTS)

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. This is a pro se appeal from an order of the Kenton Circuit Court entered April 1, 1998, denying Donald Wilson Roberts' (Roberts) motion to amend the separation agreement and grant him the right to claim his two minor children as tax exemptions on his federal income tax return. We affirm.

The parties were divorced by a decree of dissolution entered October 29, 1991, in the Kenton Circuit Court. Their separation agreement of June 28, 1991, was incorporated into said decree. The separation agreement set child support at \$75.00 per week for the parties' two minor children, but failed to allocate the tax exemptions with regard to these children.

On January 8, 1998, Roberts filed a motion for child support reduction and a motion to claim his dependent children on his federal income tax return. On February 2, 1998, the trial court reserved ruling on the motions until such time as both parties filed briefs concerning same. Both parties submitted briefs to the court, albeit the trial court allowed the appellee to file her brief late. On March 20, 1998, Roberts moved the court to withdraw his motion for child support reduction. The trial court sustained Roberts' motion in its April 1, 1998, order. However, in that same order, the trial court denied Roberts' motion to claim his dependent children on his federal income tax return based upon 1) insufficient grounds to hear the matter, and 2) the inability of Roberts to provide sufficient grounds to support the motion. Thereafter, Roberts appealed to this Court.

The trial court is vested with broad discretion in domestic matters and this Court will not interfere with its decision unless that discretion is abused. Sommerville v. Sommerville, Ky., 339 S.W.2d 940 (1960). Initially we should point out that the appellee did not file an opposing brief. Although we are aware of our options under CR 76.12(8)(c), we choose not to exercise those options as we believe the trial court properly disposed of Roberts' motion.

We are all familiar with the old adage "an attorney who represents himself has a fool for a client." However, in this case we do not have an attorney representing himself but instead a law student. We emphasize "student" because by its very nature

the word means that one is in the process of learning.

Unfortunately for Roberts, the price of learning from his mistakes in this instance will prove costly.

First and foremost Roberts failed to observe the basic rules of appellate procedure with regard to his brief. According to CR 76.12(4) (c) (iv), a brief must contain:

An "ARGUMENT" conforming to the Statement of Points and authorities, with ample supportive reference to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner. (Emphasis added).

Roberts' brief failed to refer this Court to any point in the trial court record where he preserved his issue for appeal. As a penalty for not complying with CR 76.12(4) (c) (iv), this Court could refuse to address Roberts' sole issue on appeal regarding the child tax exemptions. Pierson v. Coffey, Ky. App., 706 S.W.2d 409 (1985); Elwell v. Stone, Ky. App., 799 S.W.2d 46 (1990). However, despite Roberts' failure to comply with CR 76.12(4) (c) (iv), we choose to dispose of this case on the merits.

The trial court entered its order denying Roberts' motion to claim his dependent children on his federal income tax return on April 1, 1998. Thereafter, Roberts promptly filed a notice of appeal with this Court. However, the trial court did not make specific findings of fact concerning its decision other than stating that the motion was denied for 1) insufficient grounds to hear the matter, and 2) the inability of Roberts to provide sufficient grounds to support the motion. At that point

a motion for more specific findings pursuant to CR 52.04 would have been appropriate. Specific findings would have provided this Court with the trial court's reasoning as well as provided Roberts with more ammunition on appeal.

However, even without specific findings of fact, we cannot say that the trial court abused its discretion by denying Roberts' motion. A thorough review of the record shows that although Roberts made several allegations concerning his income, the income of the appellee and the benefit of the child tax exemptions with regard to each parent, at no point did Roberts support those allegations with evidence. Roberts did not use the tools provided to him in the Kentucky Rules of Civil Procedure to subpoena records, submit interrogatories or take depositions to substantiate his allegations. At the very least he should have subpoenaed birth records, tax records and pay stubs from the appellee and either produced them at the first hearing or attached them to the pleadings. The only evidence Roberts provided to the trial court was his own personal affidavit, which some may consider self-serving, a letter from his law school showing a work restriction on law students and one unauthenticated page from the federal tax table. Without appropriate supporting evidence the trial court had no other choice but to deny Roberts' motion and we do not believe this constitutes an abuse of discretion.

For the foregoing reasons, we affirm the order of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT PRO SE:

No Brief for appellee

Donald Wilson Roberts
Cincinnati, OH