

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-002142-MR

ONETA BULLOCK LEWIS

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN D. MINTON, JR., JUDGE
ACTION NO. 93-CI-000825

CHARLES ALBERT LEWIS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, KNOPF AND KNOX, JUDGES.

KNOX, JUDGE: Appellant, Oneta Bullock Lewis (Oneta), appeals a judgment of the Warren Circuit Court granting appellee's post-dissolution motion for reimbursement of tax liability paid by appellee on appellant's behalf. Having reviewed the record, we affirm.

Oneta's marriage to appellee, Charles Albert Lewis (Charles), was dissolved by a final decree of dissolution entered April 19, 1994. Thereafter, the parties received notice from the Internal Revenue Service (IRS) concerning their 1992 joint tax return. Apparently, the parties had incurred both Federal and State tax liability for the year 1992. Since this was the first

occasion the parties had any knowledge of an outstanding tax liability, the subject was never before the court during the dissolution proceedings.

Charles paid one-half the amount owed to the IRS and further proceeded to make payments to the Kentucky Revenue Cabinet. Charles requested Oneta pay her proportionate share but she failed to cooperate. Eventually, the above-mentioned taxing authorities garnisheed Charles' wages in an effort to recover the sums owed. As a result, in June 1995, Charles moved the Warren Circuit Court to either indemnify him from the outstanding liability, or, in the alternative, reopen the dissolution proceeding in order to determine the division of this marital debt.

For reasons that are not clear, the matter was routinely continued until heard by the domestic relations commissioner on February 26, 1996. The commissioner filed his report on April 8, 1996, recommending Oneta be required to reimburse Charles the sums of \$1,158.20, reflecting payment to the IRS on November 22, 1994, and \$328.18 paid to the Kentucky Revenue Cabinet on December 26, 1994. The commissioner specifically denied Charles' motion to have the matter reopened. Oneta filed exceptions, yet the circuit court approved and adopted the commissioner's recommendations without modification. This appeal ensued.

On appeal, Oneta argues she was denied due process under the United States Constitution and the Kentucky Constitution in that she was not permitted to appear and testify

on her own behalf. She further argues the circuit court abused its discretion in reopening the final dissolution action. We find no merit in either contention.

First, we dispose of the argument that the court abused its discretion in reopening the matter by way of the court's order. In affirming the domestic relation commissioner's report and recommendation, in toto, the court affirmed that portion which provided, "[Charles'] motion to reopen the case should be overruled." As such, it is clear the case was never reopened and the subject is moot.

There is, likewise, as little support for Oneta's argument addressing lack of due process. The record reflects that, on March 6, 1996, Oneta's attorney sent counsel for Charles the following correspondence:

Dear David,

In response to your letter of March 4, 1996 it is fine with me to submit the issue to Commissioner Reeves on what has been filed to date for a decision.

Sincerely yours,

Kelly Thompson, Jr.

We believe this letter serves as undisputable evidence reflecting Oneta's express consent to have the court take the matter under submission without further pleadings, oral argument, or other proof. We have no basis for disturbing the circuit court's judgment on this point.

We decline to impose the CR 76.02(4) sanctions requested by appellee.

In accordance with the above stated facts, the order of the Warren Circuit Court directing appellant to reimburse appellee for sums relating to tax liability is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kelly Thompson, Jr.
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

David Lanphear
Bowling Green, Kentucky