

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-003266-MR

RONALD E. WATKINS

APPELLANT

v. APPEAL FROM McCracken Circuit Court  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 90-CI-00729

JUDY CAROL WATKINS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUDGEL, Chief Judge; BUCKINGHAM, and JOHNSON, Judges.

BUCKINGHAM, JUDGE. Ronald E. Watkins appeals from orders of the McCracken Circuit Court which denied his motion for an annulment of his marriage to Judy Carol Watkins. We have reviewed the record, the arguments of counsel, and the applicable law. Being sufficiently advised, we affirm.

Ronald and Judy became engaged to be married in August 1966, and were married on April 24, 1967. In 1967, Ron was in boot camp in Great Lakes, Illinois, while Judy lived in St. Louis, Missouri. During Ronald's stint at boot camp, Judy had unprotected sex with another man. Around March 1967, she called Ronald and told him that she was pregnant. Within a few days of

Ronald's return from boot camp, he and Judy were married. A child, Rodney Shane Watkins, was born six months later.

In May 1989, the parties separated. In September 1990, Ronald filed a petition for dissolution of marriage, and a divorce decree was entered by the court on February 15, 1991. The decree merely granted a dissolution of marriage and reserved all other issues for a later determination. On May 18, 1992, a judgment was entered disposing of the remaining issues, and Ronald was ordered to pay Judy maintenance of \$300 per week until she remarries, attains the age of 65, or dies, whichever occurs first.

Problems concerning the maintenance payments soon arose. In September 1992, the court ordered Ronald arrested for his failure to pay maintenance in accordance with the judgment and held him in contempt for such failure. In March 1996, Ronald was ordered to appear before the court to show cause why he should not be held in contempt for failing to make the maintenance payments. In response, he filed motions to reduce his maintenance payment, to compel blood tests, and to join his son as an indispensable party. The court found Ronald in contempt and determined his total arrearage to be \$8,364. He purged himself of contempt by paying the arrearage in full shortly before the deadline given to him by the court.

After blood tests excluded Ronald as Rodney's biological father, Ronald amended his motion in order to request that the marriage be annulled and that the decree of dissolution and judgment be set aside. As ground for his motion, he cited

Kentucky Revised Statute (KRS) 402.030 and Kentucky Rule of Civil Procedure (CR) 60.02(d), (e), and (f).<sup>1</sup> After a hearing before the court, Ronald was denied relief by an order entered October 8, 1997, and by supplemental findings entered on November 20, 1997. His appeal followed.

In denying Ronald's motion for annulment of the marriage or for relief from the maintenance order, the trial court found that Ronald "knew, prior to filing for divorce that he was not the biological father and chose to waive his right at that time to raise the issue. Further, at the time the petitioner was pregnant, the parties were already engaged to be married. Therefore, they already had the intent to marry one another." The court stated that Ronald was required to show that he had newly discovered evidence in order to obtain relief under CR 60.02. The court further held that Ronald knew he was not Rodney's father in 1990 and that he voluntarily chose not to ask for an annulment of the marriage when he filed for the divorce.

Ronald argues in his appeal that the trial court's findings of fact are not supported by the evidence and that the trial court's ruling was contrary to applicable case law. Defendant's Exhibit 1, a December 10, 1990, letter from Ronald's attorney to Judy's attorney, contained the following statement:

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<sup>1</sup> KRS 402.030(1) provides that "[c]ourts having general jurisdiction may declare void any marriage obtained by force or fraud." CR 60.02 provides in part that "[o]n motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void . . .; or (f) any other reason of an extraordinary nature justifying relief."

"Ron has discovered that Rodney S. Watkins, age 23, born six months after these parties were married is not his child. Mrs. Watkins concealed this fact from him over the years, and he has raised and supported the child as his own." The letter also stated that Ronald would offer to pay no maintenance in the divorce settlement for this reason. We believe this evidence to be a clear indication that Ronald knew during the divorce proceedings in 1990 that Rodney was not his son. The findings of the trial court in this regard are not clearly erroneous.

In support of his arguments, Ronald cites Eck v. Eck, Ky. App., 793 S.W.2d 859 (1990), and Cain v. Cain, Ky. App., 777 S.W.2d 238 (1989). The facts in the Eck case are distinguishable in that Mr. Eck was induced to marry Mrs. Eck by her representation that he was the father of her unborn child. In the case sub judice, however, Ronald and Judy had dated for four years and had been engaged for approximately seven months when she learned that she was pregnant. There is no indication that Ronald was induced into the engagement by this future pregnancy with another man's child. The Cain case is also distinguishable in that the father in that case did not have reason to suspect that he was not the child's father until years after the divorce was final.

"In those instances where grounds relied upon for relief under a 60.02 motion are such that they were known or could have been ascertained by the exercise of due diligence prior to the entry of the questioned judgment, then relief cannot be granted from the judgment under a 60.02 proceeding." Board of

Trustees of Policemen's & Firemen's Retirement Fund v. Nuckolls,  
Ky., 507 S.W.2d 183, 186 (1974). We conclude that the trial  
court properly denied Ronald's motion.

The orders of the McCracken Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Richard W. Jones  
Murray, KY

BRIEF FOR APPELLEE:

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