

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002545-MR

RONNIE I. JOSEPH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE RICHARD FITZGERALD, JUDGE
ACTION NO. 95-FC-001606

DONNA JOSEPH

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, COMBS AND MCANULTY, JUDGES.

BARBER, JUDGE: Ronnie I. Joseph (Ronnie) appeals from an order of the Jefferson Family Court entered on September 10, 1998, ordering him to pay child support arrearage based on the total unpaid amount from the date of the original judgment. After reviewing the record and the arguments of counsel, we affirm.

The parties married in 1988 and separated in 1995. They had one child, Jonathan Joseph, born in September 1993. In May 1995, the trial court entered an agreed order placing the child in the physical possession of Donna Joseph (Donna) pending resolution on custody and requiring Ronnie to pay \$89 per week in

child support effective March 16, 1995. In July 1995, Ronnie filed a motion for modification seeking a lowering of his child support obligation because he had been laid-off from his job. The court orally granted a temporary reduction of child support to \$46.76 per week. In September 1995, Ronnie found new employment. On August 8, 1996, the trial court entered a decree of dissolution that, inter alia, granted the parties joint custody of their son with Donna having primary physical possession. The decree also ordered Ronnie to pay \$72 per week child support effective September 11, 1995, subject to revision based on his receiving additional income derived by working overtime.

In December 1996, Donna filed a motion seeking an order holding Ronnie in contempt for failing to pay child support as required by the August 8, 1995 decree. At that time, Donna alleged that Ronnie was approximately \$1,770 in arrears. On August 5, 1997, the trial court entered an order granting Donna a common-law judgment in the amount of \$1,786.49 for child support arrearage and extraordinary medical expenses through January 7, 1997.

On August 12, 1997, Donna filed another motion seeking an order holding Ronnie in contempt for failing to pay child support, which she alleged amounted to \$3,200 since December, 1996. On October 31, 1997, the Domestic Relations Commissioner (DRC) filed a report recommending that Donna be granted a common-law judgment for \$1,815.04 for child support arrearage through August 12, 1997. The DRC calculated this amount based on

evidence presented by Donna at a September 1997 hearing at which she testified that Ronnie was approximately \$3,200 in arrears, including the \$1,786.49 amount previously awarded to her in the August 5, 1997, order. Donna further indicated that Ronnie had paid her a total of \$1,384.96. The DRC noted that there was no wage assignment order in effect at that time. On November 5, 1997, Ronnie filed exceptions to the DRC's report claiming that he had made additional child support payments not credited to him by the DRC.

On November 20, 1997 the trial court entered an order consistent with the DRC's recommendation awarding Donna a common-law judgment of \$1,815.04 for child support arrearage through August 12, 1997. It also ordered that a wage assignment order be entered. In February 1998, Donna obtained an order of garnishment attaching Ronnie's wages in the amount of \$2,627.22 payable in weekly amounts of \$108.82. Also in February 1998, the trial court entered an agreed wage assignment order requiring Ronnie's employer to withhold \$86.56 per week from his wages.

In February 1998, Donna filed another motion seeking to have Ronnie held in contempt for failing to pay past and current child support. In her affidavit, she alleged that Ronnie was in arrears in the amount of \$2,518.40 as of February 3, 1998. The court referred the matter to DRC.

On July 7, 1998, the DRC issued a report recommending that Donna be awarded a common-law judgment for \$1,647.74 for past due child support covering the period from March 5, 1995 through and including June 24, 1998, based on Ronnie's failure to

comply with the circuit court's previous child support orders of August 5, 1997 and November 20, 1997. At the hearing before the DRC, Donna testified that Ronnie had not satisfied the judgments of August 1997 and November 1997, which had awarded Donna child support arrearage, that he was behind in payments for 1998 in the amount of approximately \$420.07, and that the total past due amount was approximately \$2,518.40. Ronnie admitted that he was not current in his child support payments because he had suffered an injury at his job that required him to miss approximately six to eight months of work. In determining the total child support arrearage, the DRC calculated the total amount owed based on the various orders setting and modifying Ronnie's child support obligation between March 1995 and June 1998, and then subtracting the total amount Ronnie had paid according to Donna's records and the testimony, and giving Ronnie a \$550 credit for personal property Donna had failed to return to Ronnie under the original divorce decree. The DRC estimated that Ronnie owed \$13,0221.59, and she subtracted a total credit of \$11,373.85 (\$10,823.85 paid plus \$550) to arrive at a total child support arrearage of \$1,647.74.

On July 17, 1998, Ronnie filed objections/exceptions to the DRC's report in which he challenged the method utilized by the DRC in calculating the child support arrearage and the factual finding of the amount he had already paid. On September 10, 1998, the trial court entered an order confirming the DRC's report by awarding Donna a judgment for \$1,647.74 plus interest for child support arrearage between March 16, 1995 and June 24,

1998. At the same time, the court entered a second order rejecting Ronnie's objections to the report stating that the DRC "was not precluded from setting arrearage based on a determination of the totality of the obligations and payments based on prior reduction of arrearage amounts to some certain period." This appeal followed.

On appeal, Ronnie challenges the method used by the DRC in calculating his child support arrearage. He contends that the trial court erred in approving the calculation of child support arrearage in this case based on an analysis of payments due and not paid over the entire period from the initial court order setting the child support obligation. More specifically, he argues that the court is prohibited by the principle of res judicata from recalculating an award of child support arrearage for the periods prior to the earlier court common-law judgments awarding an explicit arrearage amount. Ronnie maintains that because Donna did not appeal the earlier judgments of August 1997 and November 1997, the court is precluded from taking into consideration any non-payments during the periods covered by those judgments in arriving at a new figure for child support arrearage. While Ronnie's argument has facial appeal, we disagree with his argument.

The legal approach to handling child support obligations is somewhat different from the typical common law damages award. Res judicata is a doctrine that bars litigation of matters decided by a court of competent jurisdiction in the same or any other judicial tribunal of concurrent jurisdiction.

See Yeoman v. Commonwealth, Health Policy Bd., Ky., 983 S.W.2d 459, 464 (1998). Res judicata encompasses two separate but related aspects; 1) claim preclusion, and 2) issue preclusion (sometimes referred to as collateral estoppel).

Claim preclusion bars a party from relitigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. The issues in the former and latter actions must be identical.

Id at 465 (citations omitted). See also City of Louisville v. Louisville Professional Firefighters Ass'n, Ky., 813 S.W.2d 804, 806 (1991). While issue preclusion requires that the issue be actually decided, claim preclusion bars entire claims or causes of action that were or should have been brought in a prior action. City of Covington v. Board of Trustees, Ky., 903 S.W.2d 517, 521 (1995); Yeoman, 983 S.W.2d at 465.

However, child support payments become vested when due, so "each installment of child support becomes a lump sum judgment, unchangeable by the trial court when it becomes due and is unpaid." Price v. Price, Ky., 912 S.W.2d 44, 46 (1995) (quoting Stewart v. Raikes, Ky., 627 S.W.2d 586, 589 (1982) (emphasis in original)). A trial court has no authority to forgive or retroactively eliminate past due child support arrearage. Id.; Mauk v. Mauk, Ky. App., 873 S.W.2d 213, 216 (1994). Child support is a statutory duty intended to benefit the children rather than the parents. Clay v. Clay, Ky. App., 707 S.W.2d 352 (1986). The right to child support belongs to the child not the parents. Gaines v. Gaines, Ky. App., 566 S.W.2d 814 (1978).

Generally, child support cannot be waived or diminished solely by agreement or action of the two parents. See Whicker v. Whicker, Ky. App., 711 S.W.2d 857 (1986).

Consequently, Ronnie's position is erroneous in suggesting res judicata bars collection of any unpaid child support payment inadvertently not included in the prior collective common-law judgments. Each past due payment became a separate enforceable judgment that was not eliminated by any subsequent collective judgment. Furthermore, the DRC's method of calculating the arrearage simply attempted to consolidate all of the prior judgments and Ronnie's total child support obligation into a single judgment. The DRC attempted to give Ronnie credit for all of the payments he had made during the entire period.

Once the validity of an order setting child support is established, the non-custodial parent bears the burden of proving that he satisfied the obligation and owes no arrearage. See Raymer v. Raymer, Ky. App., 752 S.W.2d 313 (1988). Ronnie has presented no case law or factual evidence on appeal demonstrating that the DRC's calculation was erroneous or not supported by the evidence presented at the hearing. Ronnie's reliance on the garnishment order is misplaced because that document did not purport to be a binding expression of the entire arrearage due or a waiver of a further recalculation of the arrearage. We cannot say that the trial court erred in approving the method utilized by the DRC in calculating Ronnie's child support arrearage.

For the foregoing reasons, we affirm the order of the Jefferson Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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