

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002992-MR

MARY ANN WEST

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 96-CI-00102

TERRY WAYNE WEST

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: GUDGEL, CHIEF JUDGE; DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Mary Ann West brings this appeal from an "Order Modifying Final Decree" of the Lyon Circuit Court entered November 9, 1998. We affirm.

We are somewhat handicapped in evaluating this case inasmuch as we are furnished with only appellant's brief. We rely heavily upon the revelations therein. We try to understand the situation as best we can.<sup>1</sup>

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<sup>1</sup>We can well understand why appellee did not file a brief. This is a civil action gone criminal. Appellee has, of course, little or no interest in the criminal proceeding.



October 22, 1998, charging Mary Ann with bigamy. Kentucky Revised Statutes 530.010.

On October 28, 1998, Mary Ann, through counsel, moved the court to enter a decree of dissolution. On November 2, 1998, the court entered "Findings of Fact, Conclusion of Law and Decree of Dissolution of Marriage." The decree provided that it was to be effective October 21, 1996, *nunc pro tunc*.

On November 4, 1998, for some inexplicable reason, Terry, through counsel, filed a document styled "Response to Motion to Submit." Therein, he stated that the parties had reconciled and lived together after the execution of the "Property Settlement Agreement".<sup>2</sup> The response further stated that "matters of child custody and support have changed in that the child is now living with Terry's mother pursuant to an Order of the Marshall District Court." He suggested the matter was not ripe for final determination in absence of additional proof.

On November 9, 1998, the circuit court entered an "Order Modifying Final Decree", which provided in part:

that the Conclusion of Law and Decree entered on November 2, 1998, are hereby **MODIFIED** to delete the words "effective October 21, 1996, *nunc pro tunc*;" and the divorce shall be effective as of the date of the entry of the Decree, more specifically November 2, 1998.

This appeal ensued.

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<sup>2</sup>Doubtless, he was referring to the "Marriage Dissolution Agreement With Children" of September 23, 1996.

Appellant contends the decree was properly entered *nunc pro tunc* and the court erroneously modified the decree to negate same. We disagree.

Ky. R. Civ. P. 52.02 provides:

Not later than 10 days after entry of judgment the court of its own initiative, or on the motion of a party made not later than 10 days after entry of judgment, may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

In the case at hand, the decree was modified within ten days of its entry. Thus, the circuit court clearly acted within its jurisdiction to amend same. We must also conclude the court's amendment was proper.

A *nunc pro tunc* order may be entered only "for the purpose of placing in the record evidence of judicial action that has actually been taken, and not to . . . supply an omission of judicial action." Carroll v. Carroll, Ky., 338 S.W.2d 694, 696 (1960) (citations omitted). Indeed, in Hundley v. Hundley, Ky., 198 S.W.2d 971, 973 (1947), the court emphasized that:

the entering, recording, or signing the judgments are mere ministerial acts separate from the judicial act rendering the judgment. The judicial act is the rendering of the judgment. The recording of and signing the judgment is the ministerial act.

We do not think there exists a basis for a *nunc pro tunc* entry of judgment. This is not a case where a mere ministerial act remained unaccomplished. Rather, the record suggests the judicial act of rendering judgment did not take place until the actual decree was entered on November 2, 1998. As such, we are

of the opinion the circuit court did not commit reversible error by modifying the decree.

We view appellant's remaining contentions moot.

For the foregoing reasons, the order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

James E. Story  
Eddyville, Kentucky