

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001827-MR

MICHAEL C. ROSE

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS FOUST, JUDGE
ACTION NO. 95-CI-00254

PATRICIA F. AMIS-ROSE

APPELLEE

OPINION
AFFIRMING
** **

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

MILLER, JUDGE: Michael C. Rose appeals from a July 7, 1999, Order of the Marshall Circuit Court. We affirm.

Michael and Patricia F. Amis-Rose were divorced on December 1, 1995. The decree of dissolution reserved for later adjudication all remaining issues. On July 26, 1996, the circuit court entered a "Recommended Agreed Order" settling all such issues. Pursuant to said order, each party was "responsible for credit cards or other consumer indebtedness incurred solely in their name during the marriage and shall hold the other harmless from any claim from said creditors." In addition, Michael was awarded certain property, located in Marshall County, titled in

both of their names. Patricia was ordered to convey all interest in said property by quitclaim deed. On September 5, 1996, she signed a quitclaim deed -- conveying all her interest in said property -- and delivered it to Michael. Michael neglected to record the quitclaim deed until some two and one-half years later on March 29, 1999. In the interim, Patricia failed to settle her debt with Providian Bancorp, a debt she incurred during marriage. Pursuant to the Agreed Order, she was solely responsible for this debt. Providian obtained a judgment against her, and on June 7, 1997, a judgment lien was filed in the Marshall County Court Clerk's Office, affecting all real estate held in Patricia's name. As the quitclaim deed was not recorded, the aforementioned property was still in Patricia's name and, thus, attached.

Upon learning of the lien, Michael petitioned the circuit court to require Patricia to show cause why she should not be held in contempt for failing to comply with the agreed order. On July 7, 1999, the circuit court entered an order declining to hold Patricia in contempt of court. Such was based on the court's belief that Michael's inaction was the cause of the lien being placed on his property. The court, nevertheless, noted that Patricia was obligated, under the agreed order, to indemnify and to hold Michael harmless for this debt. This appeal followed.

Michael argues the circuit court erred by failing to hold Patricia in contempt of court. In Smith v. City of Loyall, Ky. App., 702 S.W.2d 838 (1986), this Court opined that a trial

court has almost "unlimited discretion" in exercising its civil contempt powers. Regardless of whether we may have held to the contrary, we cannot say the circuit court abused its discretion in this matter. Although Patricia did not satisfy her debt with Providian, it was not immediately apparent that her failure to do so would cast a cloud on Michael's property. Furthermore, she is required to indemnify Michael if he incurs loss as a result of the judgment lien being placed on his property. In sum, we cannot say the circuit court erred in refusing to hold Patricia in contempt for noncompliance with the agreed order. If Michael actually incurs a loss, the matter may be revisited, and the circuit court may, of course, fashion an appropriate remedy with incarceration being of last resort.

For the foregoing reasons, the Order of the Marshall Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert L. Prince
Benton, Kentucky

BRIEF FOR APPELLEE:

Patricia F. Amis-Rose, Pro Se
Hardin, Kentucky