

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000937-MR

CYNTHIA SHORT

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 97-CI-03695

JOHN SHORT

APPELLEE

OPINION AND ORDER

DISMISSING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE: On August 16, 1999, this Court passed appellee's motion to dismiss appeal No. 1999-CA-000937-MR to the merits panel. The Court has now reviewed the passed motion, and has determined that the notice of appeal was not timely filed.

On March 10, 1998, the Fayette Circuit Court entered an order holding Cynthia Short in contempt for failure to pay child support in accordance with a standing order of the Jessamine Circuit Court.¹ The court ordered Cynthia to serve 30 days in

¹The circuit court entered its written order on March 10, 1998, in accordance with its prior holding during a February 13,

(continued...)

the Fayette County Detention Center. However, the court suspended the sentence provided Cynthia report to the compliance officer for the purpose of obtaining gainful employment and commence making payments on her child support arrearage.

Thereafter, on April 29, 1999,² the court found that Cynthia had failed to comply with its prior orders and remanded her to the custody of the Fayette County Detention Center for 30 days. This appeal ensued.

Before this Court, Cynthia claims the circuit court erroneously held her in contempt. Specifically, she argues that incarceration for failure to pay child support operates as the equivalent of a garnishment of her SSI benefits, hence it is illegal under federal law. That is, her appellate brief argues the substantive merits of the March 10, 1998, contempt order, contending the basis for it was contrary to law. As such, in accordance with CR 73.02, Cynthia was required to file her appeal within 30 days of the entry of that order. Unquestionably, an April 30, 1999, appeal from a subsequent order of enforcement is insufficient. Therefore, although we glean Cynthia's argument to be without merit, see Commonwealth ex rel. Morris v. Morris, Ky., 984 S.W.2d 840 (1998); 42 U.S.C.S. § 659 (2000), we decline to address the issue as her appeal was not timely filed.

¹(...continued)
1998, contempt hearing.

²The written order was entered on May 1, 1999.

Therefore, appellee's passed motion to dismiss is hereby GRANTED and appeal No. 1999-CA-000937-MR is ORDERED DISMISSED this date.

ALL CONCUR.

/S/ R. W. DYCHE
JUDGE, COURT OF APPEALS

ENTERED: January 19, 2001

BRIEF FOR APPELLANT:

Thomas C. Bondurant
Lexington, Kentucky

BRIEF FOR APPELLEE:

Margaret H. Kannensohn
Fayette County Attorney

Patience W. Jazdzewski
Assistant Fayette County
Attorney
Lexington, Kentucky