

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001845-MR

TODD BLEVINS

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 88-CI-00214

CAROLYN BLEVINS

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: EMBERTON, McANULTY AND SCHRODER, JUDGES.

McANULTY, JUDGE: Todd Blevins appeals the order of the Johnson Circuit Court which modified his child support payments. He argues that it was error for the court to make the arrears retroactive to 1994 although the motion for modification was filed in May, 1998. We agree, and reverse.

Todd Blevins (hereinafter appellant) and Carolyn Blevins (hereinafter appellee) were divorced in November, 1990. The trial court entered a decree which established the amount according to the child support guidelines that appellant was required to pay until the parties' two minor children reached 18 years of age. The decree further stated, "[i]n the event there

is any change in economic circumstances such as to entitle either Party to an increase or decrease in child support under Kentucky law, the respective party shall make a Motion and ask for a hearing on same."

On April 30, 1992, appellant filed a motion to decrease child support because he had become unemployed. On June 2, 1992, the trial court granted appellant's motion and decreased his child support obligation. The court required appellant to remain responsible for the children's medical and dental expenses, and ordered that appellant "shall further notify this Court and Petitioner's [appellee's] attorney as soon as he becomes employed."

After appellant became employed, however, appellee had to file a motion on February 30, 1993, to increase child support payments and to direct appellant to pay outstanding medical bills. The domestic relations commissioner held a hearing and found that appellant had been employed since February, 1993. Accordingly, on June 3, 1993, the commissioner ordered appellant to pay \$529 a month as child support, and made the payments retroactive to February 1, 1993, "in light of the fact prior Court ORDERS had been entered directing the Respondent [appellant] to inform the Court and Petitioner's [appellee's] counsel of any change in wages." The court affirmed the order as its final judgment on September 21, 1993. This judgment was not appealed.

In 1995, appellee filed motions to compel appellant to pay medical support and medical insurance. Then, on April 9,

1998, appellee filed a motion for an increase in child support, asserting that both parties had had a change in income. On June 4, 1998, the domestic relations commissioner denied the motion to increase child support based on the fact that the parties had not experienced a change in income. The commissioner also denied appellant's motion to allocate medical expenses. Both parties filed exceptions to the commissioner's report. The trial court found that evidence was required to properly determine the questions raised by the exceptions, and referred the matter to the commissioner for recommendations on all pending issues. The commissioner held a status conference, then set the matter for an evidentiary hearing.

After holding a hearing, the commissioner filed Findings of Fact, Conclusions of Law and Order on December 10, 1998. The commissioner found that "[s]ubsequent to the Court's order of June 5, 1993, directing the Respondent to inform the Court and Petitioner's counsel of any change in wages; the Respondent's income increased dramatically" The commissioner listed appellant's changes in income. Indeed, appellant's income nearly doubled from 1993 to 1994 and remained at that level in the succeeding years. The commissioner noted that appellant testified at the hearing that he did not inform the court or appellee's attorney of his change in wages. The commissioner concluded that appellant should be assessed deficiencies in his child support obligation from January 1, 1994, because of his "failure to abide by previous orders of the Court." The court found that appellant's child support

obligation would have been as follows: 1994 - \$836; 1995 - \$857; 1996 - \$847; 1997 - \$889; and January 1, 1998-October 31, 1998 - \$837. The commissioner ordered a total judgment against appellant in the amount of \$17,806. Appellant's exceptions to these findings and conclusions were denied, and this appeal follows.

Appellant's central argument is that the trial court abused its discretion because KRS 403.213(1) does not permit the retroactive assessment in this case. KRS 403.213(1) states in pertinent part: "[t]he provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing (emphasis added)." This court has held that the legislature, by enacting this provision, obligated trial courts to limit imposition of an increase in child support to the date the motion was filed. Pretot v. Pretot, Ky. App., 905 S.W.2d 868 (1995). Moreover, we do not find any allowance in the statute's language for the trial court to exercise the discretion it assumed herein. Courts are required to give the words of a statute their plain meaning. Bailey v. Reeves, Ky., 662 S.W.2d 832, 834 (1984). Where the General Assembly has provided no exceptions to the positive terms of a statute, we must presume that the General Assembly intended none. Stone v. Kentucky Ins. Guar. Ass'n, Ky. App., 908 S.W.2d 675 (1995). The term "only" in KRS 403.213(1) evidences an intention by the General Assembly to deny the trial court discretion as to when a

modification may commence. Thus, we are constrained to find that the trial court's order was an abuse of discretion.

The court's order imposing an arrearage was based in part on its finding that appellant violated its order. We believe the court's orders as to what was required of appellant are somewhat equivocal. We conclude that the court's intent to impose a "sanction" by assessing an arrearage for failure to obey its prior orders was misplaced, particularly as there is no mechanism for doing so by the child support statutes.

We are certainly sympathetic to appellee since her children were entitled to much more child support over the years than appellant was willing to part with. And we do not condone appellant's attempts to thwart appellee's simple efforts to have appellant pay the child support and medical expenses which he properly and fairly owed. We must note that appellee was not without a remedy in the four years between the decree and the order at issue here. Appellee could have filed a motion for modification at any time during those years. However, the General Assembly did not provide for appellee to recover the money foregone when she did not file a motion for modification. Therefore, we reverse and remand this case for a determination by the trial court of appellant's child support obligation, in accordance with KRS 403.213(1).

ALL CONCUR.

BRIEF FOR APPELLANT:

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