

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000325-MR

WILLIAM D. LOBDELL

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 00-CI-00162

MISTY ROBIN LOBDELL

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND BUCKINGHAM, JUDGES.

EMBERTON, CHIEF JUDGE. William Lobdell seeks to set aside a part of a judgment entered in a dissolution action directing him to pay child support, certain marital debts and child support arrearages. Lobdell, a resident of Virginia, claims that the court lacked personal jurisdiction over him, and therefore, the personal judgments of the Kentucky court are void. We find that Lobdell entered an appearance in the action, and therefore, affirm.

William and Misty Lobdell married in June 1995 in Virginia and prior to 1999, moved to Kentucky. Misty filed a petition for dissolution of marriage in the Bell Circuit Court on April 7, 2000. William, then a resident of Virginia, was served with summons by certified mail on April 12, 2000, but did not respond to the petition. Misty's deposition was scheduled for June 2, 2000, and William was notified by service at his Virginia address. The deposition was taken without the presence of William or his counsel. A motion to submit the case for decision was filed by Misty, and again, William was notified by mail at his Virginia address. On June 27, 2000, the Bell Circuit Court entered a decree of dissolution and William was ordered to pay temporary child support in the amount of \$70 per week for the parties' two children. The payments were to continue until the amount of William's income could be determined. William was ordered to provide evidence of his income within twenty days and was further ordered to assume a \$7,000 debt for a pickup truck owned by the parties. The decree specifically states that William had not filed an answer nor made an appearance in the action.

On August 2, 2000, the circuit court entered an order stating that it had received information from William regarding his wages. Based on that information and the child support guidelines, child support was set at \$325 per month. On

September 18, 2000, the Commonwealth filed a petition to have the court determine that Kentucky had exclusive jurisdiction over the child support. The motion alleged that Misty had been receiving public assistance from Kentucky since mid-1999, and that an order had been entered in Virginia against William establishing child support at \$95 per week. There is, however, no Virginia order in the record.

On September 18, 2000, the court held a hearing on the Commonwealth's motion following which the court entered an order finding that Kentucky has continuing exclusive jurisdiction in the matter. The court specifically noted that Misty's counsel and William appeared at the hearing. On October 12, 2000, William entered into an agreed order whereby he agreed to pay \$3,053.62 in child support arrearages.

After William failed to comply with the child support orders and failed to pay for the vehicle as ordered by the court, Misty filed a motion for contempt. It was not until November 15, 2002, in a response to the contempt order, that William filed a pleading entitled "Special Appearance and Motion to Vacate" challenging the personal jurisdiction of the court.

Service by certified mail is sufficient to authorize a personal judgment if the party against whom the judgment is

entered has appeared in the action.¹ Smith v. Gadd² is one of the few cases discussing the conduct sufficient to constitute an "appearance." That case dealt with CR³ 55.01 and its notice provisions for entry of a default judgment against parties that have appeared in an action. However, the law relied upon by the court is useful to our present analysis. Citing from legal treatises the court recited the general law:

In 13 Am.Jur., Appearances, Section 10, it is said:

'A general appearance may arise by implication from the defendant's seeking, taking, or agreeing to, some step or proceeding *in the cause*, beneficial to himself or detrimental to the plaintiff, other than one contesting the jurisdiction only. The purpose of the appearance, however, must bear some substantial relation to the cause. In other words, it must be a purpose *within the cause*, not merely collateral thereto.'
(Emphasis original.)

In 6 C.J.S., Appearances, Section 12 a, the general rule is thus stated:

'An appearance may be expressly made by formal written or oral declaration, or record entry, to the effect that the defendant appears; or it may be implied from some act done with the *intention*

¹ Kentucky Rules of Civil Procedure (CR) 4.04(8).

² Ky., 280 S.W.2d 495 (1955).

³ Kentucky Rules of Civil Procedure.

of appearing and submitting to the court's jurisdiction;'⁴
(Emphasis original.)

William did not appear before the court prior to the entry of the decree of dissolution. However, his subsequent responses to the court's orders, physical appearance in court, and acknowledgment of the agreed order, are sufficient to submit him to the jurisdiction of the court.

William also complains that the trial court should have rejected the agreed order for payment of the arrearages since there was no documentation as to the amount of the arrearage submitted to the court. There is no evidence that William signed the order under duress or that it was obtained by fraud.⁵ We find no error.

The order denying the motion to vacate is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gerald L. Greene
GREENE & LEWIS
Pineville, Kentucky

BRIEF FOR APPELLEE:

Bill Hayes
HAYES LAW OFFICE
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⁴ Id. at 497.

⁵ See Smith v. Smith 295 Ky. 50, 173 S.W.2d 813 (1943).