

Commonwealth Of Kentucky
Court of Appeals

NO. 2002-CA-001535-MR

LISA ANN THOMPSON (NOW P'SIMER)

APPELLANT

v.

APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 99-CI-00354

PAUL RICHARD THOMPSON

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BAKER, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Lisa Thompson appeals from an order entered by the Carter Circuit Court determining the amount of child support owed by her former spouse, Paul Thompson, during the period between December 1999 and August 28, 2000. She argues that the circuit court lacked jurisdiction to modify the amount of child support owed during that period due to a previous temporary child support order from the Carter District Court contained in a Domestic Violence Order. We disagree and affirm the circuit court's order.

On December 10, 1999, Lisa obtained a Domestic Violence Order (DVO) from the Carter District Court granting her temporary custody of the couple's two minor children, restraining Paul from any contact with Lisa, and requiring him to pay \$500.00 per week in temporary child support. Paul then filed a petition on December 13, 1999, with the Carter Circuit Court requesting that his marriage to Lisa be dissolved. The circuit court entered a decree of dissolution on July 28, 2000, awarding Lisa custody of the children and ordering the parties to submit income schedules within thirty days prior to determining the amount of child support. On August 28, 2000, a hearing was held on Lisa's motion to establish child support and Paul was ordered to pay \$568.00 per month to support their two children.¹

Lisa filed a motion, on December 20, 2000, asking that Paul be held in contempt for failing to comply with the provisions of the dissolution decree. On May 1, 2001, the Domestic Relations Commissioner (DRC) recommended that Paul's child support be set at \$500.00 per week, under the terms of the DVO, from December 1999 until August 2000 when a hearing in

¹ In her brief, Lisa denies that this hearing ever took place, and the record does not contain an account of it or a copy of the child support order. However, the Domestic Relations Commissioner refers to the August 2000 hearing and the \$568.00/month child support order in a set of May 2001 recommendations following a contempt proceeding against Paul. Moreover, Lisa subsequently filed a motion asking the circuit court to confirm the DRC's recommendations and stating that there were no exceptions to them.

circuit court had established Paul's child support obligation as \$568.00 per month. Lisa filed a motion stating that there were no objections to the DRC's recommendations and asking the circuit court to confirm them. The circuit court confirmed the DRC's recommendations by an order June 8, 2001.

Paul filed a motion to amend, alter or vacate stating that he was without counsel at the time of the contempt hearing and had no notice of the proceeding. By agreement between the parties, the circuit court granted Paul's motion and vacated its former order on August 14, 2001. The agreed order stated that his child support obligation was set at \$568.00 per month from August 2000 forward. The case was returned to the DRC in order to determine Paul's child support obligation for the period between December 1999 and August 2000. The DRC held another hearing in March 2002 and recommended that child support be set at \$822.24 per month retroactive to December 1999.

Despite the fact that she agreed to the circuit court's August 2001 order, Lisa filed exceptions to the recommendation arguing that the circuit court lacked jurisdiction to establish child support between December 1999 and August 2000. The circuit court rejected her argument and confirmed the DRC's recommendations. This appeal followed.

Lisa argues that the circuit court had no jurisdiction to modify the temporary child support ordered under the DVO

until August 28, 2000, when a hearing was held in circuit court to determine child support. In support of her argument, she cites Kentucky Revised Statute (KRS) 403.160 which states in pertinent part as follows:

(2) (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. . . . [T]he ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.

We must note at the outset that KRS 403.160 is titled "Temporary orders; maintenance, child support, injunction" and the August 2000 order establishing Paul's child support was entered pursuant to the final dissolution decree; therefore, it was not a temporary order for child support. Moreover, the statute states that child support orders are retroactive to the date of the filing of a motion for temporary child support "unless otherwise ordered by the court." Consequently, even if this statute applied, it would seem to suggest that the court has the authority to establish child support which is retroactive to some date other than the filing of the motion requesting it.

Finally, were we to accept Lisa's argument that the circuit court lacked jurisdiction to establish Paul's child support obligation until August 28, 2000, we would be left with the absurd result of a court which had jurisdiction to dissolve

a marriage on July 28, 2000, but somehow did not acquire jurisdiction to order support for the children of that marriage until one month later. Lisa has failed to cite persuasive authority in support of her argument that the circuit court lacked jurisdiction to establish child support from December 1999 until August 2000.

For the forgoing reasons, the judgment of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Malenda S. Haynes
Grayson, Kentucky

Arnold Scott Coburn
Hensley & Coburn, P.S.C.
Grayson, Kentucky

BRIEF FOR APPELLEE:

Robert W. Miller
Grayson, Kentucky