

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002613-MR

MICHAEL RAY CROLEY

APPELLANT

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 02-CI-00036

DEBORAH JUNE CROLEY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND KNOPF, JUDGES; EMBERTON, SENIOR JUDGE.¹
GUIDUGLI, JUDGE. Michael Ray Croley (hereinafter "Michael")
appeals from several orders of the Owen Circuit Court which
required him to pay "his pendente lite obligations of \$523.92 in
child support and \$664.75 for his share of the parties' mortgage
for the months of August and September, 2002." We believe his

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by
assignment of the Chief Justice pursuant to Section 110(5)(b) of the
Kentucky Constitution and KRS 21.580.

argument that "he was treated unfairly and unreasonably" is not support by the record, thus, we affirm.

Michael and Deborah June Croley (hereinafter "Deborah") were married on December 30, 1989. One child, Tommy Nash Croley, was born of the parties on July 26, 1996. The parties separated on June 1, 2001, and Michael filed for a petition for dissolution of marriage on January 29, 2002. The Owen Circuit Court entered pendente lite orders on May 5, 2002. The orders entered included the following temporary orders which are relevant to this appeal:

3. IT IS ORDERED that effective April, 2002, [Michael] shall pay [Deborah] the sum of \$523.92 monthly child support pursuant to the Kentucky Child Support Guidelines, with a Child Support Worksheet being attached hereto and incorporated herein as Exhibit 1.

...

5. IT IS ORDERED that effective April, 2002, Petitioner shall pay one-half (1/2), or \$664.75 to Respondent for application towards the monthly mortgage payment on the improvements at 10 Highway 35, Sparta, Kentucky 41086.

The matter proceeded to a final hearing on the contested matter on August 5, 2002. At that time, the parties informed the court that they had reached an agreement and desired to have it read into the record. Following the hearing, Deborah's attorney prepared a custody and property settlement agreement which was forwarded to Michael's attorney for the

necessary signatures. The proposed settlement agreement addressed those matters previously discussed, agreed to, and entered into the record on August 5, 2002. Relevant to this appeal, the paragraphs which addressed child support and the transfer of the marital property are as follows:

CHILD SUPPORT:

1. The parties agree that Mike shall continue to pay Debbie current child support of \$523.92 per month. Mike shall provide health insurance for Nash, and the parties will divide any medical, counseling, dental or prescription medicine expenses for Nash as stated by the Court in its Temporary Order in this case.

2. The tax exemption for Nash will be awarded to the parent who has Spring Break that year. Therefore, Mike shall claim the exemption for the year 2002 and Debbie will claim Nash every odd year thereafter.

10 Highway 35, SPARTA, KENTUCKY:

1. Mike agrees to Quit Claim to Debbie his interest in the property at 10 Highway 35, Sparta, Kentucky for the sum of \$10,000.00. Debbie agrees to refinance the existing mortgage to First Farmers Bank which has a present balance of \$136,425.17 and to remove Mike from any liability upon said indebtedness. A closing of this transaction shall occur within 60 days from August 5, 2002.

Michael did not sign the prepared settlement agreement but instead raised two new issues relating to visitation. Those issues were as follows:

- (1) How to alternate fall break visitation with the parties' child.
- (2) The husband's right of first refusal to care for the parties' child in the event that the wife was away from home.

In that Michael had not signed the proposed agreement, had not paid his pendente lite obligations, and since Deborah had secured the necessary financing to close on the house and transfer the required \$10,000 to Michael, Deborah's attorney filed a show cause motion on September 4, 2002. The motion requested an order for Michael to show cause why he should not be held in contempt for his failure to pay child support and mortgage payments previously ordered and to show cause why he failed to sign the settlement agreement entered upon the record on August 5, 2002. The show cause motion was noticed to be heard on September 10, 2002. On September 9, 2002, Michael's attorney served, by fax, a motion entitled "Objection to Motion and Request to Reschedule" on opposing counsel and the court. In the motion, Michael gave notice to the court that he was unavailable for the scheduled September 10, 2002, hearing and requested a continuance to a mutually convenient time.

On September 10, 2002, the circuit court entered the following decree of dissolution of marriage and order which forms the basis of Michael's appeal:

This matter having come before the
Court on September 10, 2002 pursuant to

notice and the Court having considered said Motion and Petitioner's objection and request to reschedule and being advised, now Finds and Orders as follows:

1. IT IS HEREBY ORDERED that the motions of the Respondent shall be and the same are hereby Granted. Petitioner shall pay his Pendente Lite obligations of \$523.92 in child support and \$664.75 for his share of the parties' mortgage for the months of August and September, 2002 as Petitioner has failed to sign the Custody & Property Settlement Agreement placed upon this Court's record on August 5, 2002. Respondent is granted the right to deduct the aforementioned unpaid sums from the lump sum settlement of \$10,000.00 due to Petitioner.

2. IT IS HEREBY ORDERED that the Custody and Property Settlement Agreement including the terms and conditions thereof filed with Respondent's motion and served on September 3, 2002 are hereby adopted as the Orders of this Court and are incorporated herein by reference.

3. IT IS ORDERED that the marriage of the Petitioner Michael Ray Croley and the Respondent Deborah June Croley shall be and the same is hereby dissolved restoring to each of parties all the rights and privileges of single persons.

4. IT IS ORDERED that the Master Commissioner of this Court shall cause to be prepared a Master Commissioner's Deed conveying Petitioner's interest in the parties' property located at 10 Highway 35, Sparta, Kentucky to Respondent. The Master Commissioner's cost shall be paid by Petitioner and deducted from his aforementioned \$10,000.00 payment.

5. IT IS FINALLY ORDERED that the Petitioner shall reimburse Respondent for

her attorney's fees incurred in the filing and pursuit of this Order.

There being no just cause for delay, this is a Final and Appealable Order.

This 10th day of September, 2002.

On appeal, Michael contends the order requiring him to pay child support and his mortgage obligation for August and September is "unfair" and "unreasonable." He goes on to argue that "[t]o be judged guilty of delay in the absence of opportunity to be heard is capricious." He also adds that "[t]o be ordered to pay additional payments on a house which he had "sold" on August 5, 2002, by means of his agreement with the wife is punitive in the extreme and an abuse of discretion." We disagree and believe his contentions to be meritless.

KRS 403.160 permits temporary orders relating to maintenance and child support. In this matter, the Owen Circuit Court entered a temporary order requiring Michael to pay child support and one-half of the monthly mortgage. Pursuant to KRS 403.160(6)(c), temporary orders do not terminate until the final decree is entered or the petition is voluntarily dismissed. In this case, the final decree was not entered until September 10, 2002, and only then at the specific request of Deborah. It cannot be disputed that Michael was obligated under the previously entered temporary order to pay both child support and his share of the monthly mortgage until the final decree was

entered. As such, he was legally obligated to pay both his child support and proportional share of the mortgage for both months in question. Although he may be upset with the manner in which the hearing transpired, his appeal has no legal basis.

For the foregoing reasons, the order of the Owen Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Neil E. Duncliffe
Georgetown, KY

BRIEF FOR APPELLEE:

Michael L. Judy
Frankfort, KY