

RENDERED: October 8, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002532-DG

OWEN DAVIDSON

APPELLANT

ON DISCRETIONARY REVIEW FROM LAUREL CIRCUIT COURT
v. HONORABLE LEWIS B. HOPPER, JUDGE
ACTION NO. 03-X-00007

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN
EX REL. JOYCE ANDERSON

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Owen Davidson brings this appeal from a November 3, 2003, judgment of the Laurel Circuit Court. We vacate and remand.

In 1982, Owen and Joyce Anderson were divorced by decree of Laurel Circuit Court. During the marriage, the

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 Kentucky Revised Statutes 21.580.

parties had one child, William James Davidson, born January 24, 1981. Joyce was awarded custody of William, and Owen was ordered to pay \$100.00 per month in child support.

On December 20, 1995, the child support division of the Laurel County Attorney's Office filed a "Complaint for Child Support" in the Laurel District Court. The complaint alleged that Owen failed to make the \$100.00 per month child support payment and accumulated an arrearage. When the complaint was filed, William had not yet reached the age of majority. On October 22, 2001, the parties entered into an agreed order, wherein Owen admitted that he owed \$13,195.40 in child support to the Commonwealth of Kentucky, Cabinet For Families and Children (Cabinet). He also agreed to pay the sum of \$200.00 per month beginning November 1, 2001.

On February 20, 2003, the Cabinet filed a motion for contempt in the Laurel District Court. The Cabinet alleged that Owen failed to make the required support payments as ordered by the October 22, 2001, agreed order. The district court subsequently held a hearing on the show cause order. By order entered August 25, 2003, the district court found Owen in contempt for failure to pay child support as required by the agreed order. The district court then sentenced Owen to six months' imprisonment to be purged by payment of the child support arrearage.

On appeal, the Laurel Circuit Court affirmed the district court's order. Consequently, Owen filed a motion for discretionary review with the Court of Appeals. By order entered December 22, 2003, this Court granted Owen's motion for discretionary review. This appeal follows.

Owen initially contends the district court improperly invoked its contempt power to enforce the agreed order. Appellant essentially argues that once a child has been emancipated the district court no longer has the authority to enforce its child support orders through contempt. We disagree.

This very issue has been squarely addressed by the Court of Appeals in Goodman v. Goodman, Ky. App., 695 S.W.2d 865 (1985). Our Court held the power of contempt may be utilized to compel compliance with child support orders even after the child has reached the age of majority. The Court pointed out that a different result may have been reached if an action for child support arrearage was initially brought after the minor child reached majority. In this case, the initial action to collect child support arrearage was brought in 1995, well before the child reached the age of majority. Therefore, we hold the district court may properly utilize its contempt powers to enforce the agreed order.

Next, Owen argues the district court improperly found him to be in criminal contempt for failure to abide by the terms

of the agreed order. Having reviewed the record, we observe that the district court's order is handwritten and constitutes some eleven words. There are no findings of fact in this order. Upon review of this order, we are unable to discern whether the court intended to find Owen in criminal contempt or civil contempt.

It is our opinion that civil contempt would be appropriate under these circumstances. Before finding Owen in civil contempt, the district court has a duty to make a specific finding of fact upon his ability to pay and, then may only find him in contempt for that sum of child support arrearage for which he possesses an ability to pay. See Lewis v. Lewis, Ky., 875 S.W.2d 862 (1993); Commonwealth v. Bailey Ky. App., 970 S.W.2d 818 (1998). Upon remand, we direct the district court to conduct another hearing and make a specific finding of fact upon Owen's ability to pay.

For the foregoing reasons, the judgment of the Laurel District Court is vacated and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
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