

RENDERED: October 29, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001384-MR

JERRY WAYNE EVANS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 02-CI-03194

KENTON DISTRICT COURT;
KENTUCKY CABINET FOR HUMAN RESOURCES/
CHILD SUPPORT ENFORCEMENT UNIT; AND
THE COMMONWEALTH OF KENTUCKY,
REAL PARTY IN INTEREST

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

TAYLOR, JUDGE: Jerry Wayne Evans brings this pro se appeal from
a June 6, 2003, Order of the Kenton Circuit Court. We affirm.

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.

In November 1989, Paternity Judgment was entered by the Kenton District Court finding Evans to be the biological father of a infant child born out of wedlock. As a result, Evans was ordered to pay child support in the amount of \$27.50 per week. Having failed to pay child support, he was indicted for flagrant non-support in 2001. In April 2002, Evans disputed the Paternity Judgment and moved the circuit court to permit DNA testing. The circuit court complied and ordered testing on April 19, 2002. Subsequently, DNA testing proved that appellant was not the biological father of the infant child.

The circuit court vacated the paternity judgment by order entered August 7, 2002. Appellant then filed a Petition for Writ of Replevin, which he asserted, among other things, that he was entitled to be reimbursed for the costs (\$495.00) he paid for DNA testing. By order entered June 6, 2003, the circuit court denied Evans' motion. This appeal follows.

Evans contends the circuit court erred by denying his motion for reimbursement of \$495.00, representing the sum paid for DNA testing. In support, Evans cites this Court to Shaw v. Seward, Ky. App., 689 S.W.2d 37 (1985), for the proposition that an indigent putative father must be provided DNA blood testing free of charge in a paternity action. We view Shaw as distinguishable from the case at hand. In Shaw, the putative

father was indigent. Here, a copy of Evans' Kentucky State Penitentiary monthly income statement indicates that approximately \$1,327.68 had been deposited into his account from December 1, 2002, to May 31, 2003. Under these circumstances, we do not believe that Evans qualifies as an indigent father within the meaning of Shaw.

Kentucky Revised Statutes (KRS) 406.081 provides the authority for genetic testing in paternity disputes. Upon the request of a party, the court is required to order the mother, child and alleged father to submit to genetic testing, which occurred in this action at the request of Evans. The payment of costs for these tests is governed by KRS 406.091(7) which states as follows:

Except where the Cabinet for Families and Children administratively orders genetic testing, all costs associated with genetic testing shall be paid by the parties in proportions determined by the court.

In this case, the court determined Evans to be responsible for paying the costs of the DNA tests he requested. Evans has cited no facts or legal authority to this Court that would indicate the circuit court abused its discretion in denying his motion for reimbursement for the costs of the DNA testing. Since we conclude Evans was not indigent, we perceive no error in the circuit court's ruling.

For the foregoing reasons, the Order of the Kenton
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Jerry Wayne Evans, Pro Se
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