RENDERED: November 12, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001491-MR

MARTY D. NEAL — APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 02-FC-502852

REBECCA C. NEAL
(NOW GESELBRACHT) — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: SCHRODER AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.[1]

EMBERTON, SENIOR JUDGE. The single issue in this appeal is whether the trial court erred in entering a judgment in the amount of $10,583.20 for arrearages in child support payments, daycare expenses and car and credit card expenses. Appellant, Marty Neal, argues that appellee, Rebecca Neal, was not entitled to arrearages because the parties' mediation agreement relieved

[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.

him of any obligation for amounts ordered *pendente lite*. We disagree and affirm.

On September 19, 2002, the trial court entered an order in accordance with the Commissioner's recommendation for temporary child support amounting to $988 per month and ordering appellant to continue to be responsible for the payments made by him at the time of separation including appellee's car payment and payments toward the credit card debt. The parties subsequently entered into a mediated agreement, which became an order of the court entered November 6, 2002. That agreement specifically provided that permanent support started on October 3, 2002, the date of mediation, and that "any arrears to be paid at $100 per month." The agreement also provided that daycare and uncovered medical expenses would be divided 52% to appellant and 48% to appellee.

On November 22, 2002, appellee filed a motion to hold appellant in contempt for failure to pay *pendente lite* child support, daycare expenses, car payments and credit card payments as directed in the September 19, 2002, order. After a hearing, the trial court granted appellee's motion and entered a judgment against appellant in the amount of $10,583.20. Appellant argues in this appeal that appellee's execution of the mediation agreement relieves him of any obligation for claims arising before October 3, 2002, which are not specifically provided for

in the mediation agreement and not reserved in the decree of dissolution. We disagree.

A reading of the mediation agreement makes clear that it was not intended to relieve appellant from his obligation under the September 19, 2002, order and, in fact, makes specific provisions for child support arrearages. Furthermore, nothing contained in the briefs filed in this court or in the record of the proceedings below indicates that appellant contested the amount of arrearages or even responded to appellee's contempt motion. Based upon this record and a fair reading of the parties' mediated agreement, we find no basis for disturbing the decision of the trial court.

Appellant relies upon the following preprinted language in the mediation agreement for the proposition that it extinguished his obligations under the September 19, 2002, order:

> 15. The parties hereby mutually release each other of any and all claims either may have against the other, including, but not limited to, support, maintenance, alimony, curtsey, dower, decent [sic] and distribution, except as otherwise provided for hereinabove. (Emphasis added.)

We are convinced that specifically agreed upon terms satisfy that requirement. Furthermore, we agree with appellee that the circumstances of this case fall within the rationale of

Price v. Price,[2] concerning the effect of the support order of September 19, 2002. The Price court reiterated the well-established principle that child support can only be modified prospectively and that unpaid periodic support payments become vested when due. Nothing in the parties' mediation agreement can be construed as evincing intent to relieve appellant from liability for vested *pendente lite* obligations, and certainly not the fact that he simply chose not to pay them.

Finally, because this record is totally devoid of any indication that the arguments appellant advances in this appeal were presented to the trial court, we have a serious question as to whether this issue has been properly preserved for our review.

Accordingly, the judgment of the Jefferson Family Court is, in all respects, affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Ray H. Stoess, Jr. Louisville, Kentucky	Lawrence I. Young Louisville, Kentucky

[2] Ky., 912 S.W.2d 44 (1995).