

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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-000644-MR

MYRON ADDISON SPEARS, JR.

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 92-CI-01168

DORIS ANNAMARIE SPEARS (NOW GOODIN)

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, KNOPF, AND MINTON, JUDGES.

KNOPF, JUDGE: In 1992, the twelve-year marriage of Doris Goodin (formerly Spears) and Myron Spears was dissolved by decree of the Hardin Circuit Court. In 1997, Spears retired from the army and a dispute arose over the division of his pension. By order entered October 17, 2000, the circuit court ruled that Goodin is entitled to 17.3% of Spears's disposable retirement pay or, at that time, about \$228.00 per month. Arguing that the trial

court had incorrectly accounted for his federal disability benefits, Spears appealed. By an opinion rendered in March 2002, this Court affirmed the trial court's ruling.¹ In December 2002, our Supreme Court denied Spears's petition for discretionary review. Spears did not seek review by the United States Supreme Court.

That was not the end of the matter. In January 2003, when Spears refused to abide by the court's order, Goodin sought to have him held in contempt. In the course of the ensuing proceedings, Spears moved pursuant to CR 60.02 (a), (b), (c), and (d) to have the October 2000 order vacated. By orders entered August 26 and November 6, 2003, the circuit court denied CR 60.02 relief. Impervious to these many adverse rulings, in March 2004 Spears, pro se, again moved to have the October 2000 order vacated, this time invoking CR 60.02(e). The trial court denied the motion by order entered March 24, 2004.

It is from that order that Spears, still pro se, has appealed. Noting that CR 60.02(e) permits a trial court to grant relief from its otherwise final judgment if the judgment is void, he contends that the October 2000 order requiring him to pay Goodin 17.3% of his disposable retirement benefits is void because it runs afoul of federal statutes prohibiting the

¹ Spears v. Spears (now Goodin), 2000-CA-002678-MR (rendered March 1, 2002).

attachment of a serviceman's disability benefits. Spears has misunderstood the difference between a void judgment and one merely voidable. Because the error he alleges would give rise to the latter but not the former, the trial court correctly denied CR 60.02(e) relief.

A civil judgment is void "only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law."² "[I]f the court has jurisdiction of the subject matter and the parties, its judgment, whether erroneous or not, is not void."³ An erroneous judgment is voidable. Voidable judgments are subject to correction by appeal. They are not subject to collateral attack under CR 60.02.⁴ Generally, mistakes of law that survive the appellate process are imperfections our system tolerates in the interest of finality. Because courts and litigants have only limited resources, litigation must at some point come to an end.

² United States v. Buck, 281 F.3d 1336 (2002) (citation and internal quotation marks omitted) (construing the federal equivalent of CR 60.02(e)).

³ Skinner v. Morrow, Ky., 318 S.W.2d 419, 423 (1958).

⁴ *Id.*

The federal Uniformed Services Former Spouses' Protection Act⁵ subjects disposable military retirement pay to state laws regarding the division of marital assets upon divorce. As Spears observes, however, the act excludes from disposable retirement pay disability benefits the retired serviceman receives in lieu of retirement benefits.⁶ Spears has replaced some of his retirement benefits with disability benefits. Because some of Spears's pension accrued after his divorce from Goodin, his pension is partially marital property and partially non-marital. In determining Goodin's share of Spears's retirement pay, the trial court ruled in effect that some of Spears's disability benefits should be deemed to replace non-marital benefits and some marital benefits. Spears contends that the federal laws protecting his disability benefits from attachment require that all of them be deemed to replace marital benefits, thus minimizing Goodin's entitlement.

Spears argues that by misinterpreting the federal law the trial court acted beyond its jurisdiction. As noted above, however, a court does not lose its jurisdiction merely because it makes a mistake. The trial court had jurisdiction over the parties and over their divorce, including the division of

⁵ 10 U.S.C. § 1408.

⁶ *Id.*; 38 U.S.C. § 3101(a); Mansell v. Mansell, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989).

property. Spears was accorded all the process that was due. Even if Spears's construction of the federal statutes were correct, therefore, that would not make the trial court's order void. Spears's remedy was his appeal. It was his burden to convince an appellate court that the trial court erred. He failed to meet that burden. CR 60.02 does not give him a second appeal merely because with the benefit of hindsight he has thought of another argument for his position.

This appeal has so little basis in the law that it comes close to being frivolous.⁷ Because pro se litigants are entitled to some leeway, we shall give Spears the benefit of the doubt. The trial court, however, need not tolerate further proceedings that it determines were undertaken for the purpose of delay or harassment. We affirm the March 24, 2004, order of the Hardin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Myron Addison Spears, Jr.
Pro se
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

William L. Hoge III
Louisville, Kentucky

⁷ CR 73.02.