RENDERED: DECEMBER 22, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002258-MR

CARL E. KNOCHELMANN, JR. — APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE WILLIAM J. WEHR, JUDGE
ACTION NO. 97-CI-00860

MARY E. BJELLAND, PETITIONER;
HON. BERNARD J. BLAU, ATTORNEY FOR
PETITIONER; HON. JAMES W. MORGAN, JR.,
FORMER ATTORNEY FOR RESPONDENT; AND
HON. J. ROBERT JENNINGS, CAMPBELL
COUNTY DOMESTIC RELATIONS
COMMISSIONER — APPELLEES

AND NO. 2003-CA-002308-MR

MARY E. BJELLAND, AND
BERNARD J. BLAU — CROSS-APPELLANTS

v.

CROSS-APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE WILLIAM J. WEHR, JUDGE
ACTION NO. 97-CI-00860

CARL E. KNOCHELMANN, JR. — CROSS-APPELLEE

OPINION
AFFIRMING IN PART, VACATING IN PART
AND REMANDING

** ** ** ** **

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

TACKETT, JUDGE: Karl Knochelmann appeals from an order of the Campbell Circuit Court determining the amount of child support, including arrearages, he must pay to Mary Bjelland for the support of their minor child and also refusing to require the child to attend parochial school as his father prefers. On appeal, Knochelmann challenges the trial court's subject matter jurisdiction, the constitutionality of Kentucky's child support statutes, the inclusion of proceeds from the sale of real estate in his income, the jurisdiction of the Domestic Relations Commissioner (DRC), the procedures followed by the trial court, and the refusal of the DRC to recuse himself due to an alleged conflict of interest. He also claims the existence of an agreement between the parties for Bjelland to accept non-monetary support and the right to present a claim for fraudulent contraception. We find all of these issues thoroughly meritless. Bjelland cross-appeals alleging that the trial court improperly credited a tax intercept against Knochelmann's child support arrearage. Due to the trial court's failure to make a factual finding as to which party received the proceeds of the intercept, we vacate this portion of the trial court's order. The remainder of the order is affirmed.

Bjelland and Knochelmann were never married, nor did they ever co-habitate. Their son was born June 27, 1997, and

Bjelland filed a petition in circuit court the following month seeking custody and child support. In August, Knochelmann sought to have the case dismissed because paternity had not been determined. The district court entered an agreed order in March 1998 adjudging Knochelmann to be the natural father of Bjelland's child. The DRC held a hearing on the temporary child support in June 1998 and issued a report the following month recommending a finding that personal and subject matter jurisdiction existed. Both parties filed objections to the report; the trial court reviewed the record, conferred with the DRC, and overruled all objections.

The proceedings which followed are far too numerous to list in their entirety and culminated in the trial court's final order, dated August 6, 2003, which is the subject of this appeal. The trial court's order adopted the DRC's findings of fact contained in the April 2003 report. Bjelland was granted the right to decide which school the child would attend. Knochelmann's objection, claiming that the DRC's function was unconstitutional, was overruled. Pursuant to Clary v. Clary, 54 S.W.3d 568 (Ky. App. 2001), the trial court included the income from the sale of property which Knochelmann had owned for some twenty years prior to the birth of his son in calculating his child support obligation. Knochelmann was ordered to pay child support of $281.71 per month from July 21, 1997 through June 29,

1999; $111.40 per month from June 29, 1999 through April 25, 2001; and $867.30 per month from April 25, 2001 through December 21, 2002. The trial court calculated Knochelmann's arrearage at $14,847.39, then subtracted prior payments plus the amount intercepted from his 2002 federal income tax refund and ordered him to pay Bjelland $9,632.29, plus 12% interest as of December 31, 2002. This appeal and cross-appeal followed.

Knochelmann argues that the Campbell Circuit Court did not have jurisdiction to determine custody and child support of his and Bjelland's child because Kentucky Revised Statute (KRS) 406.051 vests exclusive jurisdiction to determine paternity in the district court. The statute actually reads as follows:

> **406.051 Remedies; District Court's concurrent jurisdiction for child custody and visitation in paternity cases**
>
> (1) The District Court has jurisdiction of an action brought under this chapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for children born out of wedlock. An appeal may be had to the Circuit Court if prosecuted within sixty (60) days from the date of judgment. The court has continuing jurisdiction to modify or revoke a judgment for future education. All remedies under the uniform reciprocal enforcement of support act are available for enforcement of duties of support under this chapter.
>
> (2) The District Court may exercise jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases where

> paternity is established as set forth in this chapter. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation. The District Court may decline jurisdiction if it finds the circumstances of any case require a level of proceedings more appropriate to the Circuit Court.

There is no mention of exclusive jurisdiction being vested in the district court. Moreover, this is irrelevant because Bjelland did not file a paternity action; rather she filed a petition for custody, pursuant to KRS 403. In addition, she filed a second action asking for temporary custody and child support. Knochelmann contends that Cann v. Howard, 850 S.W.2d 57 (Ky. App. 1993), divests the circuit court of jurisdiction to determine child custody and support when paternity has not been established. We strongly disagree with his interpretation of our holding in Cann, a case which involved interpreting the provisions of the Parental Kidnapping Protection Act and the Uniform Child Custody Jurisdiction Act, and which dealt not at all with establishing paternity between unmarried parents. Thus, Knochelmann fails to persuade us that the circuit court had no jurisdiction to determine custody and child support in the present case.

Next, Knochelmann claims that the trial court erred by including proceeds from the sale of real estate as income for the purpose of calculating his child support obligation. His

income in 2000, 2001, and 2002 increased substantially due to the sale of some real estate he owned and for which he received a payment of $211,000.00 in each of those years. The trial court adopted the DRC's finding that KRS 402.212(b) and our previous holding in Clary required these proceeds to be included as income for the purpose of calculating Knochelmann's child support obligation. In Clary, which also involved the sale of real estate, we addressed the argument that such income ought to be prorated over a period of twenty-eight years. We disagreed and held that "when a parent receives income from a nonrecurring event, the trial court should include that amount in the year received. . . ." Clary at 574. Knochelmann argues that our decision in Clary misinterprets that statute and should be reversed. We disagree.

We find Knochelmann's remaining claims of error regarding the DRC, the procedures followed by the trial court, the constitutionality of Kentucky's child support laws, his claim regarding an agreement between the parties to allow him to furnish non-monetary support, and his demand to present a claim of fraudulent contraception without merit and decline to address them separately. The trial court's order is affirmed with respect to these issues. We will, however, address the remaining issue which was raised in Bjelland's cross-appeal.

Bjelland asks us to reverse the trial court's order with regard to the amount of arrearage set. Initially, the trial court calculated Knochelmann's total child support owed to date as $26,253.13. The trial court then subtracted payments Knochelmann had already made totaling $11,405.74. In addition, the trial court credited Knochelmann with a payment of $5,215.00 through an income tax intercept which occurred in July 2003. Bjelland claims that, although the money was intercepted, Knochelmann succeeded in persuading the division of child support to refund the money to him and, thus, she never received this amount as child support. Knochelmann has not contested this issue; moreover, the trial court made no separate findings of fact in its order beyond the findings contained in the DRC's report. The DRC's report was dated April 2003 which was three months before the tax intercept occurred. Thus, at no time has there been a finding with regard to who received the proceeds of the tax intercept. Therefore, we vacate the portion of the trial court's order setting Knochelmann's arrearage and remand for the trial court to make a factual finding as to the ultimate disposition of the $5,215.00 tax intercept and, if necessary, correct the calculation of Knochelmann's arrearage.

The order of the Campbell Circuit Court is affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS APPELLEE:

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BRIEF FOR APPELLEES/CROSS APPELLANTS:

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