

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001626-MR

MYRON ADDISON SPEARS, JR.

APPELLANT

v. APPEAL FROM HARDIN FAMILY COURT  
HONORABLE PAMELA ADDINGTON, JUDGE  
ACTION NO. 92-CI-01168

DORIS ANNEMARIE SPEARS (NOW GOODIN)

APPELLEE

OPINION AND ORDER

(1) AFFIRMING

(2) DENYING MOTION FOR SPECIAL LEAVE TO BE GRANTED ORAL ARGUMENT

\*\* \*\* \* \* \*

BEFORE: BARBER AND MINTON, JUDGES, HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

BARBER, JUDGE: Appellant, Myron Addison Spears, Jr. (Myron), and Appellee, Doris Annemarie Spears (Doris), were divorced by the Hardin Circuit Court pursuant to a decree entered November 17, 1992. The decree incorporated the parties' Separation Agreement in its entirety.<sup>2</sup> The Separation Agreement contained a

---

<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

<sup>2</sup> The parties' Separation Agreement was entered into October 30, 1992.

clause which determined Doris' interest in Myron's military retirement pay. It is this clause which has led to a continuous battle between the parties. The current appeal is the third before our court. Due to the number of prior appeals, we first examine the relevant procedural history in this matter. Appellant's pending motion to be allowed an oral argument is denied.

In 1997, Myron retired from the army and a dispute arose over Doris' interest in his military pension. Following a hearing, the Domestic Relations Commissioner (DRC) recommended in her Commissioner's Report that Doris' interest in Myron's military pension should be determined by applying a conversion factor. The conversion factor was not contained in the parties' Separation Agreement. The circuit court subsequently adopted the DRC's recommendations in their entirety on October 17, 2000. It was this adoption which was the basis of Myron's first appeal.<sup>3</sup> We approved the use of the conversion factor by the circuit court, but remanded due to a mathematical error.<sup>4</sup>

On January 14, 2003, Doris filed a motion to hold Myron in contempt for his alleged failure to pay her the awarded military retirement benefits. During the course of these

---

<sup>3</sup> Myron's first appeal was 2000-CA-002678-MR. Unpublished opinion rendered March 1, 2002.

<sup>4</sup> Myron sought discretionary review by the Kentucky Supreme Court, but was denied.

proceedings, Myron moved to have the October 2000 order vacated pursuant to Ky. CR 60.02(a),(b),(c), and (d).<sup>5</sup> Following a hearing, the circuit court denied Myron's Ky. CR 60.02(a) motion per order entered August 26, 2003. Myron subsequently withdrew his motion to reopen pursuant to Ky. CR 60.02(b),(c), and (d) on September 30, 2003. However, he filed a third motion March 12, 2004, seeking relief from judgment pursuant to Ky. CR 60.02(e) arguing that the October 2000 order was void. Specifically, Myron argued that the circuit court misinterpreted federal law which caused the court to act beyond its jurisdiction. The circuit court overruled Myron's motion. Myron again appealed.<sup>6</sup>

We affirmed the circuit court in an unpublished opinion rendered November 12, 2004.<sup>7</sup> We concluded that Myron's alleged errors would, at most, have given rise to a voidable judgment, rather than a void judgment. Voidable judgments are not subject to collateral attack under Ky. CR 60.02. We also stated that Myron's appeal was close to being frivolous pursuant to Ky. CR 73.02(4), but allowed him leeway due to his status as

---

<sup>5</sup> Myron's first motion was based on Ky. CR 60.02 (b),(c), and (d) and filed May 30, 2003. He was represented by counsel at that time. Myron's second motion was based on Ky. CR 60.02(a) and filed July 3, 2003. This motion was *pro se*.

<sup>6</sup> Myron was *pro se* during his second appeal. His second appeal was case number 2004-CA-000644-MR.

<sup>7</sup> Myron again sought discretionary review by the Kentucky Supreme Court, but was denied on October 12, 2005.

a *pro se* appellant. We now turn our attention to Myron's current appeal.

Myron filed another Ky. CR 60.02(e) motion on May 10, 2005, alleging that the October 2000 order was void because the circuit court failed to adhere to KRS 403.180, the statute governing separation agreements. The circuit court overruled Myron's motion on July 5, 2005, holding that it was barred due to *res judicata*. It is from this order that Myron has appealed.

For litigation to proceed in an orderly manner and finally settle the rights of the parties, it is necessary for parties to timely assert the rights they claim to a court with power to grant the relief sought. Williamson v. Commonwealth, 767 S.W.2d 323, 325-326 (Ky. 1989).

The doctrine of *res judicata* is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. Yeoman v. Commonwealth, 983 S.W.2d 459, 464 (Ky. 1998). *Res judicata* may be used to preclude entire claims that were brought or should have been brought in a prior action. City of Covington v. Board of Trustees of the Policemen's and Firefighters' Retirement Fund of the City of Covington, 903 S.W.2d 517, 521

(Ky. 1995). Also, *res judicata* is applicable not only to the issues disposed of in the first action, but to every point which properly belonged to the subject of the litigation in the first action and which in the exercise of reasonable diligence might have been brought forward at that time. Egbert v. Curtis, 695 S.W.2d 123, 124 (Ky.App. 1985).

Following a review of the record, we agree with the circuit court that this matter is barred due to the doctrine of *res judicata*. Myron has been fighting to have the October 2000 court order modified for nearly six years. Repeatedly, we have upheld this order. He is again before us requesting this order not be enforced.

Myron's second appeal was based on the denial of his Ky. CR 60.02(e) motion arguing that the October 2000 order was void. We acknowledge that Myron advances different arguments as to why the order was void. The second appeal argued the circuit court lost its jurisdiction because it misinterpreted federal law. In his current appeal, Myron is arguing that the order was void because the circuit court failed to comply with KRS 403.180.

We believe the issue of whether the October 2000 order was void was fully litigated at the conclusion of Myron's appeal related to his first Ky. CR 60.02(e) motion. Myron should have raised all arguments related to whether the October 2000 order

was void in his first Ky. CR 60.02(e) motion and subsequent appeal. Myron has presented no reason explaining why he was unable to make his KRS 403.180 arguments at that time. Kentucky Rule of Civil Procedure 60.02 does not give Myron a third appeal simply because he thought of another argument to support his position with the benefit of hindsight.

There needs to be finality in the legal process for all parties involved. Fortunately, individuals are not entitled to unlimited appeals. It has been nearly six years since the original order at issue was entered. It is time for this issue to be laid to rest once and for all. We believe Myron's current appeal is barred by the doctrine of *res judicata*. We hope this opinion provides a final resolution to this issue for all parties involved with this matter.

In our opinion for Myron's second appeal, we advised the circuit court not to tolerate further proceedings it determines were undertaken for the purpose of delay or harassment. We wish to remind the circuit court of this advice again. Based on the foregoing, we affirm the Hardin Circuit Court.

ALL CONCUR.

ENTERED: June 30, 2006

/s/ David A. Barber  
JUDGE

BRIEFS FOR APPELLANT:

Myron Addison Spears, Jr.  
*Pro Se*  
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Christina M. Tobin  
Louisville, Kentucky