

RENDERED: AUGUST 4, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-001508-MR

DAVID LEE DUKE

APPELLANT

v. APPEAL FROM CARTER FAMILY COURT  
HONORABLE KRISTI HOGG GOSSETT, JUDGE  
ACTION NO. 02-CI-00297

MELISSA ANN DUKE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; VANMETER, JUDGE; MILLER,<sup>1</sup> SPECIAL JUDGE.

COMBS, CHIEF JUDGE: David Lee Duke appeals from a decision of the Carter Family Court setting child support to be paid to him by his former spouse, Melissa Ann Duke, for the parties' minor children. On appeal, David argues that the court erred by not commencing the child support as of the date of the filing of his motion for child support -- August 5, 2004. Melissa contends

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<sup>1</sup> Retired Judge John D. Miller, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

that the court had discretion to fix the beginning of her child support obligation and that it did not abuse its discretion. We agree and affirm the order.

David first requested child support on August 5, 2004. At a hearing that same month, the family court ordered Melissa to produce within seven days evidence of her income in the form of pay stubs. When Melissa did not comply with the order, David requested that she be held in contempt in April 2005. A show cause hearing was held in June. The court held Melissa in contempt and set her child support obligation at \$226.26 per month to commence in July 2005. David requested that the support obligation relate back to the date of his original request for support nearly a year earlier. The court denied that request, and this appeal followed.

David argues that the court had "absolutely no basis" for denying his request that the order relate back to the date of his filing of the motion. He complains that the court is permitting Melissa to benefit from her wrongful refusal to comply with the court's earlier order. David cites Pretot v. Pretot, 905 S.W.2d 868 (Ky. App. 1995), in support of his contention that child support orders must relate back to the date that the motion was filed.

Pretot, however, does support his contention. In Pretot, the mother first was granted custody. Custody was then

changed to the father with the mother paying support. The court then changed custody back to the mother according to its original determination. The mother filed a motion for support, which the court granted retroactively as to the date that she filed the motion. On appeal, the mother contended that the court had erred in not making the support obligation retroactive to the earlier date of her taking custody of the child. This Court held that the trial court had acted properly in conformity with the version of Kentucky Revised Statutes (KRS) 403.213(1) then in effect.

Pretot discussed the history of the somewhat ambiguous precedents establishing the effective date of a child support obligation as either the date of taking custody of the child or the filing of the motion for support. As enacted on July 13, 1990, KRS 403.213(1) resolved the confusion and unequivocally set the effective date as no earlier than the filing of a motion to set or modify support. Pretot recites that evolution of the law but does not require that a court set the effective date of support automatically as of the date of the filing of the motion. It merely clarifies that the effective date **cannot be earlier than** the date of the motion. Thus, neither Pretot nor the relevant statutes support David's contention that the family court acted outside the scope of its discretion.

In addressing David's argument that Melissa was allowed to benefit from her violation of the court's order, we note that David waited nearly nine months (until April 2005) before requesting that the court hold her in contempt for failing to comply with its original order. David's failure to act in a more timely fashion cannot be ascribed entirely to Melissa. Melissa argues that she was unable to produce the record of her income because it did not exist. She claims that she lost her job shortly after the hearing and that she was indigent, unemployed, and unable to find work by the time of the April 2005 request for her to show cause. She also states that prior to the divorce, she was a housewife, that she did not work or go to school outside the home, and that she was left "displaced and penniless" after David filed for divorce after a flood destroyed the family home and possessions.

The family court enjoyed the discretion to weigh the merits of the relative arguments of the parties and to determine the most equitable manner of assigning the support obligation. Absent a showing of clear abuse of discretion, we cannot substitute our judgment. As we have discovered no abuse of discretion, we have no basis to second-guess the ruling of the court.

We affirm the judgment of the Carter Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Jeffrey Scot  
Grayson, Kentucky

BRIEF FOR APPELLEE:

Robin L. Webb  
Grayson, Kentucky