

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001932-MR  
AND  
NO. 2004-CA-001987-MR

BERT PATTON, JR.

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM BOYD CIRCUIT COURT  
v. HONORABLE MARC I. ROSEN, JUDGE  
ACTION NO. 96-CI-00031

VERONICA PATTON CATLIN

APPELLEE/CROSS-APPELLANT

### OPINION

- (1) AFFIRMING DIRECT APPEAL
- (2) AFFIRMING CROSS-APPEAL

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

BEFORE: BARBER AND VANMETER, JUDGES; EMBERTON,<sup>1</sup> SENIOR JUDGE.

VANMETER, JUDGE: This is an appeal and cross-appeal from an order entered by the Boyd Circuit Court adopting the recommendations of a Domestic Relations Commissioner (DRC) in a postdissolution proceeding relating to child support. Bert Patton, Jr. contends on direct appeal that the court erred by determining that his child support arrearage should be

---

<sup>1</sup> 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.

retroactively calculated to the date when Veronica Patton Catlin filed a motion for a change of custody and reinstatement of an award of child support, rather than only to the date of the order granting the motion. Catlin asserts on cross-appeal that the court erred by failing to retroactively calculate Patton's child support arrearage to the date when the parties' son resumed living with her, rather than only to the date of her motion for a change of custody. She also contends that the court abused its discretion by failing to award her attorney's fees and costs, and by failing to allocate to her the right to claim the son as a dependent for income tax purposes. For the reasons stated hereafter, we affirm.

The parties married in 1983 and divorced in 1996. They shared joint custody of their son, who was born in 1987. Catlin was awarded primary physical custody of the son, and Patton was ordered to pay child support in the amount of \$455.21 plus school expenses. Subsequently, by agreement of the parties, Patton's child support obligation was reduced to \$365.70 per month.

An agreed order was entered on December 21, 1999, transferring the son's primary physical custody to Patton and suspending Patton's child support obligation. Some two and one-half years later, in May 2002, the son returned to live with Catlin. Although no custody order was entered at that time, on

August 29, 2002 Catlin filed a motion seeking both a change of physical custody and an order compelling Patton to pay child support in the amount of \$365.70 per month in accordance with the court's previous orders. Patton originally objected to the change in custody but, during an October 2002 hearing before the DRC, the parties agreed that primary physical custody would return to Catlin. However, Patton's draft of an agreed order was never executed. In August 2004, in accordance with the DRC's report and recommendations, the court transferred primary physical custody to Catlin and ordered that the previous child support order, requiring Patton to pay \$365.70 per month, was reinstated as of the filing date of the August 2002 motion, resulting in a child support arrearage of \$7,728.46 plus interest. Finally, the court directed that the parties should pay their own attorney's fees, and that until further notice Patton should continue to claim the son as a dependent for income tax purposes. This appeal and cross-appeal followed.

Patton's sole contention on direct appeal is that the trial court erred by reinstating his child support obligation as of the August 2002 filing date of Catlin's motion seeking a change of custody and award of child support, rather than as of the August 2004 order granting the motion. Catlin asserts on cross-appeal, by contrast, that the court should have reinstated Patton's child support obligation as of the date of the son's

return to Catlin's home rather than as of the date of her subsequent motion. We affirm in all respects.

The parties' arguments turn on the wording of the December 1999 agreed order, which provided in part:

1. The parties have joint custody . . . with Bert Patton, Jr. having primary physical custody until further orders of the court.
2. [Patton] shall provide suitable care, custody and control of the minor child.
3. No child support shall be paid by either party so long as minor child . . . resides with [Patton].
4. [Catlin] shall have visitation as was previously granted to [Patton].
5. In the event that primary physical custody is returned to [Catlin], all previous orders of the court shall be in full force and effect.
6. All other portions of the court's previous order shall remain in full force and effect.

Catlin asserts that under the terms of this agreed order, Patton's support obligation was automatically reinstated when the son returned to Catlin's home in May 2002. However, we agree with Patton's assertion that under the terms of the agreed order, his child support obligation could not automatically be reinstated before entry of the August 2004 court order which returned the son's primary physical custody to Catlin, as Patton

specifically retained such custody "until further orders of the court."

Nevertheless, the court was not precluded from retroactively awarding child support for the period between the August 2002 filing of Catlin's motion and the August 2004 order. Catlin's request for the reinstatement of the suspended support obligation certainly operated as a request to modify the existing child support agreement. KRS 403.213(1) permits child support to be modified "only as to installments accruing subsequent to the filing of the motion for modification[.]" Thus, in accordance with *Price v. Price*,<sup>2</sup> Patton's child support obligation could only prospectively be modified after Catlin filed her motion for modification. It follows that although the court was precluded from awarding child support to Catlin for any dates preceding the filing of her motion, it did not exceed its authority when it reinstated Patton's child support obligation retroactive to the August 2002 filing of Catlin's motion seeking custody and child support.

Catlin next asserts that she should have been awarded attorney's fees and costs because Patton's refusal to pay the child support arrearage lacked legal justification. Certainly the trial court was in a much better position than this court to observe whether there was any need to make such an award to

---

<sup>2</sup> 912 S.W.2d 44, 46 (Ky. 1995).

sanction or discourage conduct which wasted the court's and attorneys' time.<sup>3</sup> We will not disturb the trial court's exercise of its broad discretion in this regard.<sup>4</sup>

Finally, Catlin asserts that the court erred by refusing to allocate to her the right to claim the parties' son as a dependent on her income taxes. Again, we will not disturb the court's exercise of its broad discretion in this regard.<sup>5</sup>

The court's order is affirmed on both direct appeal and cross-appeal.

ALL CONCUR.

BRIEF FOR APPELLANT/  
CROSS-APPELLEE:

Jeffrey L. Preston  
Catlettsburg, Kentucky

BRIEF FOR APPELLEE/  
CROSS-APPELLANT:

Patrick M. Hedrick  
Ashland, Kentucky

---

<sup>3</sup> See *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990).

<sup>4</sup> KRS 403.220. See, e.g., *Gentry*, 798 S.W.2d at 938; *Wilhoit v. Wilhoit*, 521 S.W.2d 512 (Ky. 1975).

<sup>5</sup> See *Pegler v. Pegler*, 895 S.W.2d 580 (Ky.App. 1995); *Hart v. Hart*, 774 S.W.2d 455 (Ky.App. 1989).