

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000188-MR

KELLEY S. HOUSE

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE REED RHORER, JUDGE
ACTION NO. 99-CI-00291

TOM L. ROBERTS

APPELLEE

AND

NO. 2004-CA-000194-MR

KELLEY S. HOUSE

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 92-CI-01137

STEVEN N. CASTANIS

APPELLEE

OPINION AND ORDER
DISMISSING APPEALS

** ** * * * * *

BEFORE: SCHRODER, JUDGE; KNOPF AND ROSENBLUM, SENIOR JUDGES.¹

SCHRODER, JUDGE: These are consolidated appeals from orders denying appellant's CR 60.02 motions to set aside or vacate earlier orders imputing income to appellant and requiring her to pay child support for her two children. Because appellant failed to file appeals from the earlier orders setting child support and the CR 60.02 motions raised issues that could have been raised on appeal, the appeals herein are dismissed.

Appellant, Kelley House, is the mother of two minor daughters, Tessa Castanis and Erica Roberts, from two different fathers. On January 21, 2003, the Franklin Circuit Court entered an order in case no. 99-CI-00291 requiring Kelley to pay child support for Erica and holding Kelley in contempt for violations of previous orders. On January 14, 2003, the Franklin Circuit Court entered an order in case no. 92-CI-01137 requiring Kelley to pay child support for Tessa and holding Kelly in contempt for violations of previous court orders. On January 23, 2003, Kelley filed a motion to alter, amend or vacate the January 14, 2003 order in 92-CI-01137, which the court denied by order entered on January 28, 2003. Kelley never filed appeals from any of the above orders.

¹ Senior Judges William L. Knopf and Paul W. Rosenblum sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On June 18, 2003, Kelley filed CR 60.02 motions to set aside the judgments of child support in 92-CI-01137 and 99-CI-00291. Kelley stated as grounds for her motions that the amount of child support in the previous orders was incorrectly calculated because income was improperly imputed to her, the support orders exceeded her income, and she was not credited for expenditures for the children's medical and dental insurance. The court denied the motions on September 16, 2003. Kelley then filed a motion to alter or amend those orders. From the orders entered December 1, 2003, denying those motions, Kelley now appeals *pro se*.

All of the issues raised in Kelley's CR 60.02 motions were either previously raised below or could have been raised on direct appeal. "Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal . . ."

McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997), cert. denied, 521 U.S. 1130, 117 S. Ct. 2535, 138 L. Ed. 2d 1035 (1997) (quoting Gross v. Commonwealth, 648 S.W.2d 853, 855-856 (Ky. 1983)). A party may not resort to CR 60.02 to gain an additional extension of time to prevent the application of CR 73.02 for a timely appeal. United Bonding Ins. Co., Don Rigazio v. Commonwealth, 461 S.W.2d 535 (Ky. 1970). Here, Kelley failed to file an appeal from the January 21 and 28, 2003 orders.

Clearly, her CR 60.02 motions were an attempt to relitigate the same issues and appeal the court's prior orders. While Kelley is entitled to some leniency due to her *pro se* status, the time limit in CR 73.02 is mandatory and jurisdictional. Burchell v. Burchell, 684 S.W.2d 296 (Ky.App. 1984).

It is therefore ORDERED that the appeals be, and are, DISMISSED.

ALL CONCUR.

ENTERED: September 8, 2006

/s/ Wilfrid A. Schroder
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEES:

Kelley S. House, *pro se*
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Roy Gray
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