

RENDERED: NOVEMBER 9, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000467-MR

COMMONWEALTH OF KENTUCKY,  
EX REL. DENISE SPOONAMORE  
(NOW AVAN)

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE STEVE R. JAEGER, JUDGE  
CIVIL ACTION NO. 99-CI-00200

THOMAS GRIFFIN

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: TAYLOR, JUDGE; ROSENBLUM,<sup>1</sup> SENIOR JUDGE; MILLER,<sup>2</sup> SPECIAL JUDGE.

ROSENBLUM, SENIOR JUDGE: Denise Spoonamore (now Avan) brings this appeal from an order of the Kenton Circuit retroactively modifying the child support arrearage owed by Thomas Griffin, appellee, for welfare benefits owed to the Commonwealth.

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<sup>1</sup> Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</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.

Believing that the trial court erred as a matter of law, we vacate and remand.

On July 1, 1992, the Commonwealth filed a paternity complaint in the Kenton County District Court against Griffin for the minor children, L.H. (born August 13, 1990) and A.H. (born September 26, 1991). Spoonamore, the biological mother of the children, signed the complaint. On August 26, 1992, the court heard argument of the Commonwealth, seeking default judgment on the complaint. Spoonamore and Griffin were present at the hearing and Griffin admitted paternity of both children. At the time of the hearing, Spoonamore was receiving welfare benefits from the Commonwealth. The court ordered Griffin to pay \$36.00 per week for child support, plus \$4.00 per week towards arrearages (including reimbursement for welfare benefits paid to Spoonamore on behalf of the children).

On December 9, 1997, the Kenton District Court increased Griffin's support obligation to \$129.00 per week, plus \$5.00 per week towards arrearages. On March 10, 1998, Griffin moved to vacate or set aside the paternity judgment, terminate child support, and reduce arrears because DNA testing revealed that he was not the biological father of A.H. Effective that date, the Kenton District Court granted Griffin's motion and vacated the paternity judgment, terminated his child support obligation with regard to A.H., and modified his child support

obligation to \$82.23 per week for support for L.H. and \$5.00 per week for arrearages. Over the ensuing years, several orders of the court modified Griffin's support obligation, both increasing and decreasing it.

A July 1, 2004 order of the Kenton District Court modified Griffin's child support obligation to \$89.57 per week, plus \$30.00 per week for arrearages effective from January 21, 2004, the date a motion for modification was filed by Spoonamore. On March 28, 2005, Griffin moved to terminate the child support obligation and enforce custody and visitation orders. On March 31, 2005, the Kenton Circuit Court ordered Griffin to continue paying support in the amount of \$119.57, but ordered those payments to be held in escrow pending further orders.

On November 14, 2005, by agreed order of the Kenton Circuit Court, Spoonamore waived her right to "any and all child support arrearage owed by [Griffin] as of the date of this Order." The order did not purport to include arrearages owed to the Commonwealth for welfare benefits paid on behalf of the children.

On December 16, 2005, Griffin moved to amend the order requiring him to pay the additional \$30.00 per month towards arrearages based upon Spoonamore's waiver of same. At the hearing on the motion, the Kenton Circuit Court ordered that

Griffin continue paying support for L.H. in the amount of \$89.57, reaffirmed the November 2005 order that he owed no child support arrearage to Spoonamore for L.H., and that he owed no child support arrearage to the Commonwealth for A.H. During the hearing, the Commonwealth stated that the total arrearages due it were \$5,497.57, although it did not provide an accounting of that figure determining the amount paid on behalf of each child. The court made no ruling as to child support arrearages due the Commonwealth for welfare payments made on behalf of L.H. nor did it order that Spoonamore was to be responsible for all arrearages due the Commonwealth. However, the court's written order entered on February 8, 2006, not only adjudged those matters, but additionally eliminated Griffin's obligation to pay "child support arrearage (welfare or otherwise) of any kind to the Commonwealth . . ." for both L.H. and A.H., and held Spoonamore responsible for "any and all child support arrearage or welfare payments owed to the Commonwealth of Kentucky for both minor children . . . ." We note that Griffin's attorney, Donald Nageleisen, prepared the written order on behalf of the court. This appeal followed.

The Commonwealth, ex rel. Spoonamore, avers that the court erred when it ordered that Griffin's support obligation be retroactively modified thereby eliminating his child support

arrearage obligation. The Commonwealth insists the court failed to follow Kentucky Revised Statutes (KRS) 403.213(1). We agree.

We need not belabor the issue as the law is well-settled regarding the modification of child support orders. KRS 403.213(1) provides that “[t]he provisions of any decree respecting child support may be modified only as to installments accruing **subsequent** to the filing of the motion for modification . . . .” (Emphasis ours). Thus, as we have often held, child support orders may not be retroactively modified and the statute permits no departure from this rule. See Thompson v. Thompson, 172 S.W.3d 379 (Ky. 2005)(barring retroactive modification of temporary child support order); Pecoraro v. Pecoraro, 148 S.W.3d 813 (Ky.App. 2004)(barring retroactive reduction in child support); KRS 403.213. Accordingly, when each weekly payment of reimbursement arrearages for the Commonwealth became due pursuant to the August 1992 district court order, that payment became a fixed, liquidated debt, not subject to retroactive modification. See Thompson, 172 S.W.3d at 382; Pursley v. Pursley, 144 S.W.3d 820 (Ky. 2004).

The court erred when it retroactively eliminated all of Griffin’s arrearages to the Commonwealth for both children. Griffin became responsible for each weekly arrearage payment to the Commonwealth from the 1992 order until the March 10, 1998 order for welfare benefits paid on behalf of both children.

After the March 10, 1998 order, Griffin became responsible for each weekly arrearage payment to the Commonwealth for welfare benefits paid on behalf of L.H. only. As each weekly arrearage became due for both A.H. and L.H., it vested as a fixed, liquidated debt and was not subject to retroactive modification by the court in 2006. Consequently, we vacate the court's ruling and remand for further proceedings consistent with our decision.

The Commonwealth also contends that the court erred when it ordered Spoonamore to be solely responsible for reimbursing the arrearage owed for welfare payments made on behalf of both minor children. Again, the oral order at the hearing and the written order entered on February 8, 2006 differ greatly on this matter. Spoonamore had no prior notice of the need to defend herself or present evidence on her behalf regarding this issue. Additionally, during the hearing, the court made no ruling regarding any arrearages owed by Spoonamore. Finally, Griffin's motion did not address this issue prior to the hearing. Consequently, the court's ruling was prejudicial to the substantial rights of Spoonamore to due process and we vacate the order that she be solely responsible for the arrearages. See CR 61.02.

For the foregoing reasons the order of the Kenton Circuit Court is vacated and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Gabrielle Summe  
Covington, Kentucky