

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000607-ME

JAMES EDWARD THOMAS

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 02-CI-00152

JULIE LYNN THOMAS (NOW BRADY)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: James Edward Thomas appeals from the Marion Circuit Court's order sustaining the motion of Julie Lynn Thomas (now Brady) to offset the parties' respective child support obligations. We affirm.

The parties divorced in February 2003. The decree of dissolution granted them joint custody of their three minor children and named Julie as the primary residential custodian. Eventually, the parties divided residential custody so that their son resided with Eddie while their two daughters resided with Julie. In November 2005, the

trial court entered an amended order noting that Eddie had been awarded Supplemental Security Income (SSI) benefits because of his disability, and that each of the children therefore was entitled to an SSI payment of \$190 per month. The court found that the SSI payments, totaling \$380 per month for two children, would satisfy Eddie's obligation to pay Julie \$271.64 per month as child support for their daughters. However, the court ordered Julie to continue paying Eddie \$225.09 per month as child support for their son.

In March 2006, Julie was held in contempt of court for failure to pay child support. She timely filed a motion to alter, amend or vacate that order, asserting that she “should have been given credit against any child support arrearage for Social Security” payments to the daughters. The motion was denied in April 2006, and a similar pro se motion was denied in August 2006. In January 2007 counsel filed a motion seeking a termination of Julie's child support obligation. The trial court granted the motion, noting that because of their split custody arrangement the parties' child support obligations should be offset against one another, thereby obligating Eddie to pay Julie \$46.55 per month. However, the court determined that because the daughters' monthly SSI payments of \$380 exceeded Eddie's monthly child support obligation of \$271.64, neither party was obligated to pay child support to the other. Further, because the court's prior orders were “contrary to law[,]” Julie owed no child support arrearage to Eddie. Finally, the contempt citation against Julie was set aside as she could not be “held in contempt for failing to pay an obligation that she did not owe.” The court subsequently denied Eddie's motion to alter, amend or vacate the order, noting that relief had been granted “pursuant

to CR 60.01 and CR 60.02” because of mistakes that “required correction as a matter of law and in the interest of justice[.]” This appeal followed.

KRS 403.212(3) provides that parents' respective child support obligations will be divided between them “in proportion to their combined monthly adjusted parental gross income.” According to KRS 403.212(2)(b), parental gross income includes not only employment income, but also Social Security and SSI benefits. However, any money which a child receives because of a parent's disability “shall not be counted as income to either parent when calculating a child support obligation[.]” but instead “shall be credited against the child support obligation of” the disabled parent. KRS 403.211(14). Finally, if parents have a split custody arrangement whereby each is the residential custodian for at least one child for whom they share joint legal responsibility, KRS 403.212(2)(h), their respective child support obligations will be calculated pursuant to KRS 403.212(6) as follows:

(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.

(b) The nonresidential custodian with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.

Here, in accordance with KRS 403.212(6), separate child support worksheets were prepared for each party's household to reflect their division of residential custody. Neither party challenges the findings that Julia owed Eddie \$225.09

as monthly support for their son, that Eddie owed Julia \$271.64 as monthly support for their daughters, and that a simple offset of those obligations pursuant to KRS 403.212(6) required Eddie to pay Julie \$46.55 in child support each month.

However, Eddie asserts that the court erred by offsetting the parties' obligations by simply concluding that Eddie's obligation is fully satisfied by the daughters' receipt of SSI payments, as the end result is that Julie inequitably has been relieved of her obligation to provide support for the parties' son. We disagree. Admittedly, the SSI payments to the daughters exceed Eddie's court-ordered child support obligation, with the result that Julie's household now receives more money than it would have received in regular child support from Eddie even though Julie is not required to pay a proportionately higher level of child support for the parties' son. Nevertheless, it should be noted that the parties' son receives the same \$190 monthly SSI payment as his sisters, and Eddie benefits from the fact that the SSI payments to his daughters relieve him from the responsibility for paying the amount of child support he otherwise would be obligated to pay each month after the offset of the parties' respective obligations. Even if the end result is not perfect, it is clear that the trial court did not err by concluding, in light of the exclusion of the daughters' SSI benefits from parental income and the offset mandated by KRS 403.212(6)(b), *see Skagg v. Fyffe*, 266 Ky. 337, 98 S.W.2d 884 (1936), that the parties' child support obligations did not change and neither party was required to pay additional child support to the other.

Eddie also contends that the trial court abused its discretion by setting aside the November 2005 order pursuant to CR 60.01 and CR 60.02. While we agree that CR 60.01 did not provide a basis for setting aside the prior order since the mistakes therein were substantive rather than clerical, the court did not abuse its discretion by granting relief pursuant to CR 60.02. *See Fortney v. Mahan*, 302 S.W.2d 842 (Ky. 1957). We need not determine whether Julie timely preserved her right to seek the requested relief under CR 60.02(a), as relief was properly granted pursuant to CR 60.02(f), which simply requires the motion seeking relief to be made “within a reasonable time[.]” Clearly, the trial court's failure to comply with the mandate of KRS 403.212(6)(b), despite Julie's multiple efforts to bring the error to the court's attention, constituted a “reason of an extraordinary nature justifying relief.” CR 60.02(f).

Finally, given the trial court's own conclusion that it violated legal mandates by failing to offset the parties' respective child support obligations, we conclude that the court did not abuse its discretion by setting aside its previous orders finding Julie in arrears as to child support and in contempt of court for failing to pay that arrearage.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Susan Hanrahan McCain
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BRIEF FOR APPELLEE:

James L. Avritt, Jr.
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