

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002472-ME

TANYA RENEE WEST

APPELLANT

v. APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE O. REED RHORER, JUDGE
ACTION NO. 06-CI-00527

DELBERT ASHLEY WEST

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND THOMPSON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

THOMPSON, JUDGE: Tanya Renee West appeals from an order of the Franklin Family Court that reduced the child support of Delbert Ashley West (Ashley) retroactively to the date Ashley filed a motion for modification of child support.

On appeal Tanya alleges three errors: (1) the family court could not retroactively

¹ Retired Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

modify support; (2) the family court failed to assess interest on the arrearages owed by Ashley; and (3) the family court failed to make sufficient findings of fact. We find no error and affirm.²

The relevant facts are succinctly stated as follows: The parties were divorced in February 2007, and a settlement agreement entered into between the parties was incorporated into the dissolution decree. Joint custody of the parties' two children was awarded and Ashley was ordered to pay child support in the amount of \$800 per month and to provide medical insurance coverage. Unreimbursed medical expenses were to be paid equally by the parties.

In December 2006, Ashley was terminated from his employment and received unemployment benefits of approximately \$320 per week until March 2007, when he became employed by the Greenheck factory where he now earns approximately \$12.38 per hour, \$3.47 less than he earned in his prior job. At the time of the divorce, Tanya was a full time student and worked as a nurse technician earning approximately \$2,184.42 per month. She has now obtained a nursing degree and is anticipated to increase her income.

Based on the above facts, on August 3, 2007, Ashley filed a motion for modification of child support. After negotiations and delays, a hearing was held on October 29, 2007. Since Tanya does not challenge that the court properly

² Ashley contends that the appeal should be dismissed because Tanya failed to timely file her appellate brief. This issue was decided, however, when a panel of this Court denied Ashley's motion to dismiss on the same basis.

reduced the child support obligation to \$580.77 per month, much of the evidence produced at the hearing need not be recited.

Tanya objects to that portion of the court's order that modified child support retroactive to August 3, 2007. She contends that Ashley did not request that the modification be retroactive and, even if such a request was made, KRS 403.213 permits only a prospective modification from the date of the modification order. Even a cursory reading of the statute refutes Tanya's contention.

Subsection 1 provides that:

The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing.

KRS § 403.213 (1). It is within the trial court's sound discretion to order a modification of child support retroactively to the date the motion was filed.

Ullman v. Ullman, 302 S.W.2d 849 (Ky.App. 1957). A motion requesting that the court exercise its discretion is not required.

In view of the unambiguous language of the statute, this Court will not indulge further into a meaningless series of citations to authority that contradicts Tonya's contention. *See Giacalone v. Giacalone*, 876 S.W.2d 616 (Ky.App. 1994). We simply state that there was no error.

Tanya also argues that the family court erred when it did not award interest on the arrears owed by Ashley. The issue of arrears was addressed in an order entered by the family court on November 5, 2007, wherein it found that Ashley was \$922.34 in arrears, and he was ordered to pay \$100 per month but did not award interest on the amount. However, that order was vacated and a new order entered on November 20, 2007, which makes no finding in regard to an arrearage.

We are perplexed by Tanya's contention on appeal. Despite her insistence that interest should have been awarded on the arrearage, no argument is made that the family court erred when it did not order Ashley to pay the arrearages in its November 20, 2007, order. A strong argument can be made that if a court finds a child support arrearage, the court must award statutory interest unless it finds an award inequitable; however, the family court's second order and that from which this appeal is taken does not mention an arrearage. *See Guthrie v. Guthrie*, 429 S.W.2d 32 (Ky. 1968). Because there was no award of back child support owed in the order appealed, we find no error in the failure to award interest.

Finally, Tanya contends that the family court rendered insufficient findings of fact. In the absence of a properly filed motion pursuant to CR 52.04 bringing a deficiency in the findings of fact to the family court's attention, this Court will not review the issue. *Johnson v. Johnson*, 232 S.W.3d 571, 575 (Ky. App. 2007). No such motion was made and, therefore, we decline further review.

Ashley requests that this Court impose sanctions for filing a frivolous appeal. For this Court to impose sanctions, it must find that the appeal is so totally lacking in merit that it appears to have been taken in bad faith. *Kenton County Fiscal Court v. Elfers*, 981 S.W.2d 553, 559 (Ky.App. 1998). We admit that there is little merit to Tanya's appeal. However, we do not believe that it was taken in bad faith but pursued under a misguided interpretation of the law. We decline to impose the requested sanctions.

For the foregoing reasons, the Franklin Family Court's order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Nicole S. Bearse
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