

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000509-MR
AND
NO. 2007-CA-000777-MR

STEVEN J. LICHTENSTEIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 96-FC-007465

ROBERTA J. BARBANEL

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Steven Lichtenstein appeals the entry of two Income

Withholding Orders of the Jefferson Circuit Court, Family Division. Finding no error, we affirm.

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

In 1978, Steven Lichtenstein and Roberta Barbanel married. The couple separated in 1990. Initially, Roberta had custody of the couple's two children, who were born September 22, 1980 and February 17, 1984, with Steven under order to pay child support. By a 1996 order,² the Jefferson Circuit Court adjudged that Steven owed Roberta \$179,294.21 in child support arrearages, *pendente lite* maintenance, Roberta's share of Steven's medical practice, medical expenses and insurance arrearages, marital debt and attorneys' fees.³

By an October 1996 agreed order, the parties modified child custody and support, such that Steven was to have custody of both children and his child support obligation to Roberta terminated. The parties, however, agreed that Roberta's support obligation "shall be and is hereby reserved for further determination. . . . The amount of [Roberta's] child support obligation as required herein shall be offset against [Steven's] arrearages, provided, however, that this shall in no way effect [Steven's] obligation to pay on the remaining arrearages."

This matter then lay dormant until January 2003, when Roberta filed a motion to have Steven held in contempt for failure to pay the amounts due under the 1996 order. By this date, both children were over eighteen.⁴ At a pretrial conference in March 2003, Steven asked the trial court to establish child support

² The 1996 order was affirmed by this court. *Lichtenstein v. Lichtenstein*, 96-CA-2422-MR, 97-CA-0031-MR (Ky.App. Aug. 28, 1998).

³ The exact breakdown of this amount was \$40,000.00 for the medical practice; \$75,000.00 for attorneys' fees; \$57,765.21 for maintenance, child support and medical insurance; \$3,729.00 for children's medical expenses; and \$2,800.00 for debt reimbursement.

⁴ The older child was then 22 years old, and the younger child was almost 19 years old.

for the time during which the children had resided with him. Thus, during the 6½ years between October 1996 and March 2003, Steven took no steps to effectuate a determination of Roberta's child support obligation.

By order entered September 2, 2004, the trial court noted that the 1996 orders for Steven's obligations to Roberta were severable, and that the "Agreed Order as to a setoff applies **only to the child support arrearage issue** against both parties." (Emphasis original.) The trial court therefore bifurcated the contempt proceedings into the property division portion of the judgment and order, originally valued at \$121,529.00, and the child support and maintenance portion of the judgment and order, originally valued at \$57,765.21. The court expressly denied Steven's motion to determine Roberta's child support obligation, directed the parties to prepare for a show cause contempt hearing with respect to the \$121,529.00 judgment, permitted the parties to continue discovery on the child support arrearage contempt issue, and continued any show cause hearing as to the latter issue.⁵

⁵ On the same date, September 2, 2004, the trial court granted Roberta a judgment against Steven's professional service corporation and employer, Louisville Children's Eye Specialist, P.S.C. (PSC), in the full amount of the of \$121,529.00 judgment, plus interest, finding that the PSC had conspired with the judgment debtor, i.e., Steven, in assisting him in his efforts to evade, avoid or delay payment of Roberta under her garnishment attempts. The record discloses that Steven was the sole shareholder of the PSC. After entry of this judgment, Steven caused the PSC to file for bankruptcy and ceased working for it. However, Steven's efforts to have his debts to Roberta discharged in bankruptcy court have not been successful. *See In re: Steven Jay Lichtenstein, Barbanel v. Lichtenstein*, Nos. 04-30172, 04-3296, 2005 WL 1656924 (Bankr. W.D. Ky. June 30, 2005), *aff'd*, 2006 WL 709584 (W.D. Ky., March 20, 2006), 2006 WL 1669878 (W.D. Ky. Jun. 12, 2006). The bankruptcy court noted that Steven never maintained a bank account in his name after his 1995 marriage to his second wife, Pamela, and further that Steven and Pamela began shredding financial records in 1996 or 1997, only stopping in July 2003. Like the Jefferson Circuit Court, the bankruptcy court found that Steven's subjective intent was "to hinder, delay or defraud a creditor through the disposition of property." 2005 WL 1656924.

Over the course of the ensuing fourteen months, the court conducted three hearings on the contempt motion.⁶ In April 2006, the court entered Findings of Fact and Conclusions of Law detailing Steven's efforts over an eight-year period to avoid paying Roberta: inverting his income and that of his wife/office manager Pamela so that Pamela made twice as much as he did; maintaining bank accounts solely in Pamela's name so that any of Roberta's garnishments could not attach to those accounts; shredding financial records; concealing assets by placing assets in Pamela's name alone; and making unnecessary and improper expenditures. The trial court further found that Steven never intended to pay the judgment.⁷ The court found Steven in contempt and issued an arrest warrant for his remand to the Jefferson County Jail until the judgment is paid. Steven has not appealed that order, but instead has appealed the trial court's entry of Income Withholding Orders on Roberta's motion to enforce the amounts due under the judgment.

On appeal, Steven argues that the trial court erred in entering any Income Withholding Order before resolving the child support issue. Roberta counters that except for making the March 2003 motion, which was denied and bifurcated, Steven has taken no steps towards establishing her child support obligation. We agree with Roberta's argument.

⁶ The hearings were held on three dates: September 22, 2004, January 19, 2005, and November 2, 2005.

⁷The court further found that Steven still has no intention of paying, based on his moving to Illinois beyond the reach of the court's jurisdiction.

The record is clear that since 1996, Steven has filed one motion, in March 2003, to establish Roberta's child support obligation under the 1996 Agreed Order. While the trial court essentially agreed in September 2004 to reserve the issue for further determination, Steven points to no subsequent steps by him to bring this matter to resolution. In fact, the record contains ample evidence that Steven's full effort and focus has been to avoid his obligations under the original \$121,529.00 judgment. Steven argues that after the trial court entered the Income Withholding Order on August 29, 2006, he filed objections on September 7, 2006, including "the ground that reserved child support issue had not been addressed." While not disclosed in Steven's brief or appendix, our careful review of the record shows that this issue was not raised until Steven's Supplemental Grounds for Motion to Vacate, which was filed on February 12, 2007, **after** the trial court conducted its hearing on Steven's objections filed September 7, 2006.

Our case law is well-established that a failure to insist on a ruling or admonition from a trial court when an objection is made as to a particular matter operates as a waiver of that issue for purposes of appellate review. *Hayes v. Commonwealth*, 175 S.W.3d 574, 596 (Ky. 2005); *Commonwealth v. Pace*, 82 S.W.3d 894, 895 (Ky. 2002); *Bell v. Commonwealth*, 473 S.W.2d 820, 821 (Ky. 1971). In this instance, Steven points to no discovery request nor any action taken specifically to establish Roberta's child support obligation. Clearly, neither Roberta nor the trial court was obliged to practice Steven's case for him, and his failure to do so constituted a waiver of this issue. The trial court did not err in

overruling Steven's objection to the child support Income Withholding Order on this ground.

Steven's second objection to the trial court's entry of the child support Income Withholding Order is that the court denied him the opportunity to be heard on the child support setoff issue, resulting in a denial of due process and/or an abuse of judicial discretion. After Roberta filed her motion in January 2003 to begin collection of the amounts due, Steven retained counsel and was afforded discovery and numerous court hearings. The record shows Steven had over ten years, from and after October 1996, to resolve the issue of Roberta's child support obligation. However, as noted by the trial court, Steven instead "engaged in fraudulent and calculated shell games with his practice, income and current spouse's income to circumvent [Roberta's] collection of her property duly awarded[.]" Steven had ample and sufficient opportunity to be heard, and the trial court committed no abuse of discretion.

Finally, Steven argues that the trial court erred in entering an Income Withholding Order under KRS 407.5101, *et. seq.*, the Uniform Interstate Family Support Act, for amounts due for property or debt-related issues. We disagree.

KRS 407.5101(21) defines a "support order" as "a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief[.]" This definition is

sufficiently broad to include the items covered in the original June 1996 judgment of the trial court.

The entry of the Jefferson Circuit Court's Income Withholding Orders is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Michael Smither
Louisville, Kentucky

BRIEF FOR APPELLEE:

Helen Lucier
Louisville, Kentucky