

RENDERED: DECEMBER 12, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-002462-ME

CYNTHIA RITCHIE

APPELLANT

v.

APPEAL FROM NICHOLAS FAMILY COURT  
HONORABLE DAVID E. MELCHER, JUDGE  
ACTION NO. 03-CI-00045

CLINTON HAMPTON

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND MOORE, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

MOORE, JUDGE: Cynthia Ritchie (Ritchie) appeals the Nicholas Family Court's order finding that Clinton Hampton (Hampton) did not violate an Ohio court order concerning child support. After a careful review of the record, we affirm.

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

Ritchie and Hampton have two minor children. The parties were divorced in Ohio pursuant to an order entered by the Ross County Court of Common Pleas in 2001. The Ross County Court subsequently entered a child support order directing Hampton to pay \$506.26 per month per child. A revised child support order was later entered, directing Hampton to pay \$257.67 per month per child, effective March 2002.<sup>2</sup> The revised child support order provided, in pertinent part, that Hampton's child support payments would be withheld or deducted from his wages or assets, that the

withholding or deduction requirements . . . shall be set forth in and determined by reference to the Notices that are mailed by the Court of Child Support Enforcement Agency . . . and shall be determined without the need for any amendment to the support order. *Those Notices and Court Orders, plus the Notices provided by the Court or Agency that require the person who is required to pay the support, to notify the Child Support Enforcement Agency of any change in his employment status or of any other change in the status of his assets, are final and enforceable by the Court.*

(Emphasis added).

Both parties moved to Kentucky, and Ritchie discovered that Hampton's income had increased. In 2003, Ritchie filed a motion in the Nicholas Family Court seeking an increase in child support pursuant to KRS<sup>3</sup> 403.213, claiming that she "believe[d] that a material change in circumstances exist[ed] and that application of the Kentucky State Child Support Guidelines to the present

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<sup>2</sup> It appears that there is no explanation in the record why the child support amount was so drastically reduced.

<sup>3</sup> Kentucky Revised Statutes

circumstances of the parties would result in an increase in said child support obligation of fifteen (15%) percent or more per month.” The family court overruled that motion.

In 2007, Ritchie again moved for an increase in Hampton’s child support obligation, and again alleged that she believed a material change in circumstances existed and that, if Kentucky’s Child Support Guidelines were applied, Hampton’s child support obligation would increase fifteen percent or more. Hampton agreed to an increase but noted that his income varied, depending on the net profits of the store he managed and the amount of overtime he worked. As a result, Hampton alleged that his W-2 earnings for the prior six years varied from \$34,000 to \$75,000.

The parties participated in mediation and resolved their dispute concerning the amount of child support that Hampton should pay. They agreed that Hampton would pay \$1,000.00 per month in child support. In the agreed order increasing child support, this amount, as well as the amount of child support arrearage that Hampton owed, was specified. The agreed order also provided that “the issue concerning [Hampton’s] failure to report an increase in his income and, thus [Ritchie’s] loss of additional support is reserved for future disposition.” (Capitalization changed and emphasis removed).

Ritchie then moved the family court “to conduct a hearing for the purpose of determining whether [Hampton ] was in fact under order and thus obligated to report to **Petitioner** [*i.e.*, Ritchie,] any previous change/increase of

income for child support calculation purposes[?]" (Emphasis added). Ritchie asserted that "[t]he duty, if any, would arise from [the] order of the Court of Common Pleas, Ross County Ohio." Thus, the only issue before the family court was whether Hampton was under an obligation to report any changes in his employment status or assets to Ritchie. Hampton opposed the motion.

Rather than addressing this specific question, the family court noted that the Ohio order stated that the payer was "to notify the Child Support Enforcement Agency of any change in his employment status . . . ." (Emphasis removed). The court found that it was unclear whether the Ohio order required Ritchie to report *any* income change. For example, the family court questioned whether "a yearly increase of \$100.00 [would] trigger a reporting requirement or would it have to be much greater?" The court also questioned whether the provision requiring notification was "only aimed at job changes?" The family court held that "lacking any law or clear language to establish an ongoing income reporting requirement in the Ohio [o]rder," the court found "none was violated." The family court failed, however, to address the legal significance of the Ohio order regarding Ritchie's question before it.

The only question that Ritchie presented to the family court was whether the Ohio order required Hampton to report to Ritchie.<sup>4</sup> Although the

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<sup>4</sup> Ritchie raises an issue on appeal that she did not raise in the family court: Whether the Ohio order required Hampton to report changes in his employment status or assets **to the child support enforcement agency**? Because Ritchie did not present this issue to the family court, we will not consider it. *See Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976) ("The appellants will not be permitted to feed one can of worms to the trial judge and another to the appellate court.").

family court did not directly address this question, it was the only issue presented to it. Nonetheless, we may affirm the lower court's decision on any ground. *See Jarvis v. Commonwealth*, 960 S.W.2d 466, 469 (Ky. 1998). Upon review of the Ohio order, it is apparent that, contrary to Ritchie's contention, the Ohio order included no obligation for Hampton to report to Ritchie.

Accordingly, the order of the Nicholas Family Court is affirmed.

GUIDUGLI, SENIOR JUDGE, CONCURS.

CAPERTON, JUDGE, CONCURS AND FILES SEPARATE  
OPINION.

CAPERTON, JUDGE, CONCURRING: I concur with the result reached by the majority but write separately because I believe that portion of Paragraph Three of the Child Support Order at issue does not, in and of itself, require notices to be given by anyone.

In explanation, the wording at issue in Paragraph Three of the Child Support Order states as follows:

Those Notices and Court Orders<sup>5</sup>, plus the Notices<sup>6</sup> provided by the Court or Agency that require the person who is required to pay the support, to notify the Child Support Enforcement Agency of any change in his employment status or of any other change in the status of his assets, are final and enforceable by the Court.”

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<sup>5</sup> Notices here refers to those Notices and Orders, referenced in the preceding sentence, that are mailed by the Child Support Enforcement Agency or the Court in accordance with Ohio Revised Code.

<sup>6</sup> Notices here refers to those notices otherwise provided by the Court or Agency to the person who is required to pay support.

This sentence does not provide for any party to give notice to anyone. Its purpose is to give particular notices, i.e., either those sent pursuant to Ohio Revised Code or those sent by the Court or Child Support Enforcement Agency to the person required to pay support, the effect of being final and enforceable by the Court without additional action by the Court. In short, this sentence merely makes the notices, when sent by either the Court or the Agency, final and enforceable by the Court.

Neither party presented evidence nor argued to our Court that there were notices sent by either the Court or the Agency to anyone. Therefore, there was nothing to be enforced by the Court.

BRIEF FOR APPELLANT:

James Paul Brannon  
Paris, Kentucky

BRIEF FOR APPELLEE:

Kevan Morgan  
Georgetown, Kentucky