

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-002061-MR

GEORGE C. STEGE III

APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE ELEANORE GARBER, JUDGE  
ACTION NO. 02-CI-500923

DIANE P. STEGE

APPELLEE

OPINION  
REVERSING & REMANDING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR  
JUDGE.

CLAYTON, JUDGE: The sole issue presented by this appeal is whether the trial  
court's modification of a judgment constituted the correction of a clerical error,  
under the Kentucky Rules of Civil Procedure (CR) 60.01, or made a substantive

---

<sup>1</sup> 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.

change to the prior judgment. We find that the mistake was a substantive alteration of the agreement and, therefore, reverse and remand to the Jefferson Family Court.

Dr. George Stege and Diane Stege were married on June 18, 1976.

The marriage was dissolved by decree on March 13, 2003. At the time of the divorce the couple had two children at the age of majority and one child, Elizabeth, who was twelve years old. Along with divisions of property and custody matters, the trial court's divorce judgment included child support obligations for Elizabeth. The court provided instructions for payment of Elizabeth's tuition at Louisville Collegiate School (Collegiate). The judgment stated:

If the parties jointly decide to continue Elizabeth in Collegiate after the present school year, then each shall be responsible for payment of tuition in proportion to the family income, 61% for Dr. Stege and 39% for Diane Stege. Dr. Stege shall be permitted to deduct **his** share of the tuition from his child support payments to Diane.

Elizabeth continued to attend Collegiate from 2003 – 2007. During that time Dr. Stege paid 61 percent of her tuition and Diane Stege paid 39 percent of the tuition. Dr. Stege claims in 2007 he realized that he failed to deduct the amount of tuition that he paid from the amount of child support he owed.

Therefore, Dr. Stege filed a motion to recoup an overpayment in child support.

On August 21, 2007, the trial court heard Dr. Stege's motion concerning the payment, deductibility, and recoupment of the tuition amounts. Dr.

Stege argued that the judgment clearly authorizes him to deduct 61 percent of the tuition. Diane Stege argued that Dr. Stege was only allowed to deduct an amount from the child support payments if he paid the entire amount of tuition. Dr. Stege could then deduct Diane Stege's 39 percent from his child support obligation.

The trial court denied Dr. Stege's motion and reasoned that Dr. Stege's interpretation of the judgment did not reflect the intent of the court. Utilizing CR 60.01, the trial court amended the judgment on September 17, 2007, and provided:

If the parties jointly decide to continue Elizabeth in Collegiate after the present school year, then each shall be responsible for payment of tuition in proportion to the family income, 61 % for Dr. Stege and 39% for Diane Stege. Dr. Stege shall be permitted to deduct **Diane Stege's** share of the tuition from his child support payments to Diane.

Dr. Stege argues that the trial court erred in its alteration because CR 60.01 is an avenue for the court to modify a judgment which contains a clerical error instead of a substantive error. The statute states:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

In *Potter v. Eli Lilly and Co.*, 926 S.W.2d 449, 452 (Ky. 1996), the Kentucky Supreme Court clearly stated that CR. 60.01 "allows a trial court to correct clerical mistakes in its judgments and errors therein arising from an oversight or omission at any time on its own initiative." The Court described such

clerical errors in *Buchanan v. West Kentucky Coal Co.*, 218 Ky. 259, 291 S.W. 32, 35, 51 A.L.R. 281 (Ky. App. 1927) described clerical errors as:

universally defined by both courts and text-writers as inadvertences or oversights by the maker of the record (usually the clerks), and which are apparent on the face of the document or record in which they appear, and are, therefore, discoverable by inspection.

However, the Court also found that CR 60.01 does not grant a trial court with the “jurisdiction or authority to make substantive changes in a judgment”. *Hutson v. Com.*, 215 S.W.3d 708, 717 (Ky. App. 2006). Dr. Stege maintains that his rights were substantially changed by the clarification, under *Hinshaw v. Hinshaw*, 216 S.W.3d. 653 (Ky. App. 2006). *Hinshaw* involved a party whose right to receive attorney fees was removed by an amended judgment. The right to receive a monetary advantage was viewed a substantial change with legal significance beyond that of a clerical error. Although there is no indication that either party previously recognized the right of tuition recoupment that Dr. Stege now asserts, we cannot deny that Dr. Stege’s right to recoup tuition was substantively changed by the trial court’s amended judgment. Therefore, we reverse and remand the amended order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Sammy Deeb  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Richard H. Nash, Jr.  
Louisville, Kentucky