

RENDERED: NOVEMBER 20, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000275-ME

MARY ASHLEY PAYNE

APPELLANT

v. APPEAL FROM LAUREL FAMILY COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 08-D-00173

RICKEY LYNN CASEBOLT

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: NICKELL AND WINE, JUDGES; HARRIS,¹ SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Mary Payne appeals from a Laurel Family Court order entered on January 13, 2009, finding her in contempt for the violation of a domestic violence order and imposing a jail sentence. On February 12, 2009,

¹ Senior Judge William R. Harris 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.

Payne filed her notice to appeal in the trial court. On April 23, 2009, Payne filed her brief with this Court. The appellee did not file a brief. Kentucky Rules of Civil Procedure 76.12(8)(c) provides:

If the appellee's brief has not been filed within the time allowed, the court may: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

Pursuant to CR 76.12(8)(c)(iii), we elect to regard the appellee's failure to file a brief as a confession of error. Accordingly, we reverse the January 13, 2009, order of the Laurel Family Court without considering the merits of the case.

ALL CONCUR.

BRIEF FOR APPELLANT:

No appellee brief filed.

Elizabeth M. Isaacs
Barbourville, Kentucky