RENDERED: JULY 20, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-002042-MR

DAVID REDD — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELEANORE GARBER, JUDGE
ACTION NO. 88-FP-000120

CHERYL YVETTE SHIVELY — APPELLEE

OPINION
AFFIRMING IN PART AND
DISMISSING IN PART

** ** ** ** **

BEFORE: CAPERTON, LAMBERT, AND MOORE, JUDGES.

MOORE, JUDGE: Given the disposition of this case on appeal, it is necessary to outline the procedural history in some detail. On July 8, 2010, the Jefferson County Attorney's Office sent David a letter regarding collection of his child support arrearage. On July 14, 2010, David, proceeding *pro se*, filed a motion to enforce the family court's order of March 26, 2001 requiring Cheryl Shively to

appear with the parties' child (now emancipated) for DNA testing and to hold Cheryl in contempt. The family court denied David's motion on August 2, 2010 by written order. David filed a timely motion to reconsider, and the family court denied his motion for reconsideration on August 9, 2010 by written order.

David also filed a motion on August 9, 2010, which questioned the validity of his child support obligation. Although this motion was set to be heard on August 23, 2010, the record reflects that David raised his arguments with respect to his child support obligation at the August 9, 2010 hearing. David argued that Cheryl was barred from seeking payment of his child support arrearage by the doctrine of laches. The family court orally denied his motion based upon the fact that David had previously entered two agreed orders admitting paternity and establishing child support.[1]

On August 23, 2010, David, by counsel, again filed motions to set aside the family court's prior orders denying DNA testing and arguing that his child support arrearage should be terminated because collection was barred by the statute of limitations. On October 5, 2010, the family court denied both motions by written order. In its ruling on the child support issues, the family court determined that, because KRS[2] 413.090(5) provides that the statute of limitations for the collection of child support does not begin to run until the obligation ceases

[1] Although the family court orally denied David's motion concerning his child support obligation at the August 9, 2010 hearing, it did not enter any written order reflecting its ruling. The family court's written order of August 9, 2010 only addressed David's motion regarding DNA testing. No written order regarding child support was entered until October 5, 2010.
[2] Kentucky Revised Statute.

as to the last child covered by the order, the time did not begin to run until David's daughter was emancipated in 2006.[3] David filed his notice of appeal on November 2, 2010. On appeal, David argues that the rulings of the family court were erroneous with respect to each of his above referenced motions. Upon review, we affirm in part and dismiss in part.

We must first dismiss David's appeal with respect to the DNA testing issue, as it is untimely. A litigant may make only one motion for reconsideration of a final judgment. *Cloverleaf Dairy v. Michels*, 636 S.W.2d 894, 896 (Ky. App. 1982).[4] A timely motion to reconsider terminates the running of the time for appeal, and the time for an appeal does not begin to run until the court enters an order granting or denying the motion. CR 73.02(1)(e). Thereafter, the appropriate remedy is an appeal to this Court, and the trial court lacks authority to entertain a second motion for reconsideration. *Cloverleaf*, 636 S.W.2d at 896. Moreover, the filing of a second motion does not "terminate the running of the time for an appeal when such motion was filed more than ten days after the judgment." *Judd v. Judd*, 387 S.W.2d 311, 312 (Ky. 1964).

As previously mentioned, the family court entered its written order denying David's request to enforce the DNA testing order on August 2, 2010 and denied David's first motion to reconsider by written order dated August 9, 2010.

[3] David's child support obligation was on behalf of the parties' two children.

[4]Although at least one exception to the rule exits, this case does not fall within that exception. *See, e.g., Cumberland Valley Contractors v. Bell County Coal Corp.*, 238 S.W.3d 644, 648 (Ky. 2007).

David filed a second motion to set aside the August 2, 2010 and August 9, 2010 written orders on August 23, 2010.[5] Therefore, not only did the family court lack the authority to address his August 23, 2010 motion, the motion was outside the ten-day period within which David would have been permitted to file any motion to reconsider under the civil rules. *Cloverleaf*, 636 S.W.2d at 896; *Judd*, 387 S.W.2d at 312. Additionally, the thirty-day period for an appeal began to run upon the family court's entry of its August 9, 2010 written order denying David's first motion to reconsider. CR 73.02(1)(a),(e). Accordingly, David's November 2, 2010 notice of appeal was untimely. We therefore dismiss this portion of David's appeal.

We now turn to David's argument that the statute of limitations bars collection of his child support arrearage. Upon review, we find no error in the family court's ruling to the contrary.[6]

The family court correctly noted that KRS 403.090(5) tolls the time within which to bring an action until the obligation ceases with respect to all children covered by the child support order. To that effect, KRS 403.213(3) provides that, unless otherwise agreed to, a parent's child support obligation is terminated at the child's emancipation, which occurs when the child reaches the

[5] David does not cite to any civil rule as the basis for his motions, and we leniently interpret them as motions to alter, amend, or vacate the judgment pursuant to CR 59.05.

[6] A court speaks only through its written orders entered upon the official record, *Midland Guardian Acceptance Corp. of Cincinnati v. Britt*, 439 S.W.2d 313, 314 (Ky. 1968), and no written order with respect to David's argument regarding his child support arrearage had been entered prior to the October 5, 2010 order. Thus, we believe that it is appropriate to treat David's appeal as stemming from the family court's written order of October 5, 2010.

age of eighteen or later if the child is still in high school. Here, the youngest child covered by the order did not turn eighteen until 2006, and David presents no evidence that the parties agreed to an alternate termination date. Accordingly, collection of David's child support obligation is not barred by the statute of limitations.

Accordingly, we affirm in part and dismiss in part.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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