

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001421-MR

TERESA TWEED

APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JOSEPH W. O'REILLY, JUDGE
ACTION NO. 02-CI-503714

DANIEL RUPP

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS AND WINE, JUDGES.

ACREE, JUDGE: Teresa Tweed appeals a post-decree order of the Jefferson Family Court granting her motion to require her former husband, Daniel Rupp, to reimburse her for a portion of their children's medical insurance premiums and other costs, and denying her motion to hold Rupp in contempt. Tweed argues that the family court should have awarded her a greater sum in reimbursement and

should have held Rupp in contempt. We disagree and affirm the family court's order.

The record reflects an acrimonious relationship between the parties, both before and after entry of the decree, which we need not chronicle here. It will suffice to note that this Court is aware of the restraining and protective orders and the mutual pursuit of contempt orders. We focus, however, on the issues directly engaged.

At a time when both Tweed and Rupp were represented by counsel, they entered into an agreed order addressing how the parties would share the burden of the children's uninsured medical expenses and other costs. In pertinent part, that agreed order states as follows:

HEALTH INSURANCE

The mother shall continuously provide the health insurance for the children as long as it is available through her place of employment. The father shall continue to pay 50% of the premium associated with coverage of the children only.

The parties shall split 50/50 all uninsured medical costs.

CHILD SUPPORT

.....

The parties shall split on a 50/50 basis all extra-curricular fees for the children. Extra-curricular shall be defined as including, but not limited to, sports activities, school field trips, scouting, literary and art fees and any other activity that would ordinarily be considered an extra-curricular function.

This agreement was incorporated in the decree dissolving the marriage.

Less than two months after the decree was entered, Rupp asked Tweed for reimbursement of a variety of child-related expenses including medical co-pays, expenses related to one son's wrestling club activity and those related to the son's participation in the Boy Scouts of America. Tweed responded with a motion seeking, among other things, an order that Rupp "cease and desist from insisting on financial contributions not negotiated in mediation[.]" The family court conducted an evidentiary hearing after which an order was entered stating, relative to the reimbursement issue, that

[t]he parties shall submit proof of medical costs and extra-curricular fees to the other party for reimbursement by the tenth day of the month after they are incurred. The parties shall submit reimbursement within thirty days of receiving notice of expenses. Expenses shall be submitted to the other party without commentary or editorial remarks. . . . The parties shall reimburse each other as agreed within thirty days of being provided proof of expenses. The parties shall provide documentation of expenses

After another year or so, Tweed filed a motion seeking an order to hold Rupp in contempt and compelling him to reimburse her for "out-of-pocket" expenses of \$564.92 initially, but totaling nearly \$800 by the time the family court ruled. This amount included medical expenses incurred when one of the parties' sons was involved in an auto accident while he was on his bicycle. Rupp, believing the amount to have been covered by the auto driver's insurance, declined to reimburse Tweed based only on the bills she presented to him.

On February 27, 2006, the family court ruled that Rupp was not in contempt for failing to reimburse Tweed, but did order that,

Given the amount of time that has passed since the filing of the claim with the driver's insurance company and the presence of the unpaid bills as a debt for Petitioner, Petitioner is granted a common law judgment. Respondent shall pay this judgment within 45 days of the entry of this Order.

The order went on to require Rupp to continue the pursuit of the claim against the third party and that, "Should the parties receive any reimbursement [from the third party's insurance carrier], it shall be divided equally between Petitioner and Respondent."

In April 2009, Tweed again moved the family court to order Rupp to reimburse her for expenses she incurred and to hold Rupp in contempt for failure to have already paid them. The family court conducted a hearing on the matter and issued an order on May 5, 2009, which, in pertinent part, stated as follows.¹

Petitioner [Tweed] submitted letters [to Rupp] monthly indicating what she believed was owed to her by Respondent. Petitioner tendered some supporting documentation for the expenses. Some of the expenses were missing documentation or proof of payment. Others were indicated only by a handwritten notation by Petitioner, with no documentation for the expense or proof of payment. Still others were for expenses other than medical expenses or extracurricular fees, such as items of clothing or school supplies. . . . The Court will not require Respondent to reimburse petitioner for expenses that are not supported by both documentation or the expense incurred and proof of payment made. This

¹ A subsequent order, entered July 1, 2009, upon Tweed's motion to alter, corrected a date but otherwise left the May 5, 2009 order unaffected.

Court will also not require Respondent to reimburse petitioner for items outside the scope of the agreement.

. . . .

Based on the above findings, this Court concludes Respondent shall pay petitioner the [net] sum of [\$863.89] for his one-half portion of the above determined expenses Petitioner's motion to hold Respondent in contempt DENIED.

Tweed filed a motion to alter, amend or vacate the order essentially re-arguing her original motion, but adding the arguments that the requirement for proof of payment should be applied prospectively only, that the family court defined extracurricular expenses too narrowly, and that Rupp "essentially admitted he was in contempt of court[.]" No other arguments were presented.

On appeal, Tweed makes four arguments: (1) the family court made a mathematical error by "fail[ing] to realize that [Tweed] had already divided the amounts due" in half, so that when the family court divided it again, Rupp wound up paying only 25% and not 50% of the expenses; (2) the family court added the requirement not in previous orders that Tweed prove she paid the expenses before Rupp had to reimburse her; (3) the parties agreed to a broader definition of extracurricular activities than the court determined to be reimbursable; and (4) contempt was mandated by Rupp's admitted willful disobedience to the previous orders requiring his reimbursement of Tweed expenses.

Tweed makes no statement in her brief showing whether and where in the record any of these issues was properly preserved for review and, if so, in what

manner. This is a violation of our rules for appellate advocacy. *See* Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(v). Under such circumstances, our standard of review is for manifest injustice only. *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990).

Tweed also violates CR 76.03(8) by raising issues in her brief that were not identified in her prehearing statement. CR 76.03(8) states: “A party shall be limited on appeal to issues in the prehearing statement except that when good cause is shown the appellate court may permit additional issues to be submitted upon timely motion.” The only issues Tweed identifies in the prehearing statement are whether the family court applied the correct “[s]tandard of documentation” for reimbursement of expenses between former spouses in the parties’ circumstance and, if so, whether that standard should only be applied prospectively. No mention is made of the family court’s mathematical error. No mention is made of the family court’s rejection of certain expenses Tweed claimed were covered. No mention is made of the contempt ruling. Therefore, we are not required to consider those arguments. As our Supreme Court has said,

the significance of this rule [CR 76.03(8)] is that the Court of Appeals will not consider arguments to reverse a judgment that have not been raised in the prehearing statement or on timely motion. After all, the issues on appeal are the issues used to challenge the trial court’s judgment.

American General Home Equity, Inc. v. Kestel, 253 S.W.3d 543, 549 (Ky. 2008); *see also Sallee v. Sallee*, 142 S.W.3d 697, 698 (Ky. App. 2004) (refusing to reach

appellant's argument to reverse trial court's judgment on ground not among issues raised in prehearing statement or by timely motion under CR 76.03(8)).

Nevertheless, as is this Court's prerogative, *see Kestel* at 549, we have elected to review each of the four arguments for manifest injustice. We find none.

It is not readily apparent from the record that the family court made any mathematical error. On the contrary, the family court clearly rejected a number of Tweed's claimed expenses on a variety of grounds; that is the better explanation of the amount awarded.

Similarly, we see no manifest injustice in the family court's standard of expense documentation, including proof of payment, which, of course, applies to both parties regardless which is seeking reimbursement. Despite Tweed's argument to the contrary, there is no inconsistency between the order from which she takes her appeal and the rest of the record, including prior orders, where we find such verbiage as "out-of-pocket expenses" and "proof of expenses." While the term "expenses" can be defined merely as "charges incurred[.]" it is just as correctly defined as "money *paid* as reimbursement for such charges[.]"

Dictionary.com Unabridged. Random House, Inc. "expenses" 15 Nov. 2010.

<Dictionary.com <http://dictionary.reference.com/browse/expenses>> (emphasis supplied). We consider the anomaly in this case to be the February 27, 2006 order that required Rupp to reimburse medical expenses without prior proof of payment.

That it is an anomaly is apparent from the family court's qualifying language, "Given the amount of time that has passed . . . ," and from the requirement that

Tweed continue to pursue recovery of and to equally divide payment from a third-party insurer.

We also see no manifest injustice in the family court's interpretation of the parties' agreement regarding the definition of extracurricular expenses. School supplies are not extracurricular; they are curricular.

Finally, we see no manifest injustice in the family court's refusal to hold Rupp in contempt. A trial court's decisions regarding contempt may only be overturned if arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). The family court's decision not to hold Rupp in contempt reflected an honest disagreement about Rupp's obligation; clearly, he was right to disagree as Tweed was not awarded all she sought. We would not reverse the court's decision here even if we were applying the abuse of discretion standard.

For the foregoing reasons the decision of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Louise B. Welch
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