

RENDERED: AUGUST 31, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-000155-MR

THOMAS P. OSBORN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JOHN P. SCHRADER, JUDGE  
ACTION NO. 08-CI-01450

LINDA K. WEDDINGTON (FORMERLY OSBORN)

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: COMBS AND MOORE, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Thomas Osborn appeals from various orders entered by the Fayette Family Court as part of the dissolution of his marriage to Linda Weddington. He raises numerous claims of error relating to alleged bias of the trial judge, denial of his motions to set aside the parties' settlement agreement,

---

<sup>1</sup> Senior Judge Joseph E. Lambert 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.

and the trial court's orders finding him in contempt for violation of its orders and judgment. Discovering no merit in any of these arguments, we affirm.

### **Relevant Facts**

Thomas Osborn and Linda Weddington were married in 1981 and separated in December 2005. There were no children born of the marriage. Weddington filed a petition for dissolution of the marriage on March 25, 2008. During the discovery phase of the dissolution proceedings, Osborn withdrew more than two (2) million dollars from several accounts and transferred those funds to various foreign accounts. He also transferred another one million dollars to various persons outside of the United States. Furthermore, he incurred considerable debts on credit accounts. Weddington moved to hold Osborn in contempt for transferring the funds without court order.

In response, Osborn stated that he had made the transfers as part of a loan and investment scheme in Ghana. He alleged that the funds were being held in the United Kingdom (UK) by British Customs. Osborn stated that he had traveled to the UK and to Ghana in an attempt to retrieve the funds, but he was unsuccessful. The trial court ordered Osborn to surrender his passport while discovery on this matter was pending. On November 5, 2009, the trial court entered an order requiring Osborn to advance Weddington \$10,000 for attorney fees which she incurred as a result of his actions.

Osborn failed to pay the required fees, and Weddington moved to hold him in contempt. Osborn asserted that he lacked any funds to pay. Following a

hearing on November 20, 2009, (at which Osborn appeared without counsel), the trial court found him in contempt for violation of its November 5 order. The court ordered that he be incarcerated for thirty (30) days, but allowed him to purge his contempt by paying the \$10,000. The court also held that he would be eligible for work release at the discretion of the Detention Center.

Thereafter, Osborn retained new counsel and the parties entered into a settlement agreement. The trial court adopted and incorporated this agreement into the decree of dissolution entered on January 19, 2010. In pertinent part, the agreement required Osborn to pay Weddington the sum of \$800,000 for her interest in the marital estate. Osborn was required to pay this amount no later than February 3, 2010.

However, he failed to pay either the \$10,000 in attorney fees or the \$800,000 required under the settlement agreement. Weddington again moved for contempt.

On February 24, 2010, the trial court found Osborn in contempt and ordered him incarcerated until such time as an ankle monitoring device was placed on his person. Once the device was installed, the court directed that Osborn be subject to home incarceration and remain within twenty (20) miles of the circuit courthouse until he purged his contempt. The trial court entered another order on March 4, 2010, allowing Osborn an additional week to pay the \$800,000.

Shortly after entry of this order, the court received reports that Osborn had violated the conditions of his home incarceration. On March 9, 2012, the trial

court ordered him incarcerated for 180 days based on his failure to pay the purge amount and for violation of the conditions of his home incarceration. On March 26, 2010, the trial court entered an order releasing Osborn from the Detention Center to allow him to serve the remainder of his contempt on monitored home incarceration. On the same date, the trial court entered an agreed order directing that the marital residence and its furnishings be sold to satisfy Weddington's judgment.

On April 6, 2010, the trial court again held Osborn in contempt after receiving evidence that Osborn had attempted to tamper with his monitoring device. Osborn was also criminally charged with second-degree escape based on this conduct. He subsequently pleaded guilty to an amended charge of third-degree escape. On April 23, 2010, the trial court entered an order directing that Osborn serve an additional 180 days incarceration for violation of the terms of his home incarceration.

On August 30, 2010, Osborn filed a motion to set aside the settlement agreement under Kentucky Rules of Civil Procedure (CR) 60.02 due to mistake, inadvertence or newly discovered evidence. He stated that he had agreed to pay Weddington \$800,000 based on the expectation that he would be receiving funds from his loan/investment in Ghana, but that he now realized he had been defrauded. He also requested that the court set aside the order of contempt for violation of the terms of his home incarceration on the grounds that the sentence violated his rights against double jeopardy. On October 11, 2010, Osborn filed a

separate, *pro se* motion to recuse the trial judge based on alleged bias. He also asked the court to set aside the agreement's non-dischargability provisions; to remove the lien against the marital residence; to set aside the order of attorney fees and the contempt order based on his failure to pay that amount; to return his passport; to order restoration of his Social Security benefits; and to impose sanctions against Weddington's counsel.

Osborn's counsel withdrew after he filed the latter motion, and Osborn proceeded *pro se* from that point on. The parties took depositions of relevant witnesses and presented arguments to the court on October 22, 2010. On November 12, 2010, the trial court entered findings and an order denying Osborn's motions. Osborn now appeals. Additional facts will be set forth below as necessary.

Osborn served a notice of appeal on Weddington's counsel on November 19, 2010, purportedly appealing from the trial court's November 12 order. However, the record indicates that he did not pay the filing fee and the notice of appeal was not filed. About that same time Osborn did file a motion seeking to proceed *in forma pauperis* on appeal. On December 3 the trial court denied Osborn's motion to proceed *in forma pauperis* and ruled on several other pending motions. Osborn properly filed a notice of appeal on January 6, 2011. Weddington moved this Court to dismiss based on the untimely filing of the notice of appeal. This Court denied the motion on May 18, 2011.

On appeal, Osborn, still proceeding *pro se*, raises a number of arguments challenging the trial court's rulings on various issues. The issues presented into his brief tend to relate to three broad categories: (1) Motion to recuse the trial judge due to bias; (2) Motions to set aside the settlement agreement; and (3) Motions to set aside the contempt findings and sentences. We will address each of these categories in turn.

### **Recusal of trial judge for bias**

Osborn primarily contends that the trial judge was biased against him and demonstrated improper partiality toward Weddington and her counsel. Consequently, he argues that the biased rulings should be set aside and that the trial judge should be recused from any further participation in this case. The rule for recusal is that “[a] trial judge should disqualify himself in any proceeding where he has knowledge of any circumstances in which his impartiality might reasonably be questioned.” *Webb v. Commonwealth*, 904 S.W.2d 226, 229 (Ky. 1995). KRS 26A.015(2) requires recusal when a judge has “personal bias or prejudice concerning a party, . . .” or “has knowledge of any other circumstances in which his impartiality might reasonably be questioned.” KRS 26A.015(2)(a) and (e); *see also* Supreme Court Rules (SCR) 4.300, Canon 3C(1). “The burden of proof required for recusal of a trial judge is an onerous one.” *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky. 2001). “There must be a showing of facts ‘of a character calculated seriously to impair the judge’s impartiality and sway his judgment.’” *Id.*, quoting *Foster v. Commonwealth*, 348 S.W.2d 759, 760 (Ky. 1961), *cert.*

*denied*, 368 U.S. 993, 82 S. Ct. 613, 7 L. Ed. 2d 530 (1962); *see also Johnson v. Ducobu*, 258 S.W.2d 509 (Ky. 1953). “A party’s mere belief that the judge will not afford a fair and impartial trial is not sufficient grounds to require recusal.” *Webb*, 904 S.W.2d at 230.

Most of Osborn’s complaints of bias relate to the trial court’s substantive rulings concerning the contempt proceedings; the trial court’s decisions regarding the admissibility of evidence and arguments of Weddington’s counsel; and the trial court’s determinations regarding the credibility of witnesses. Each of these issues involves matters within the sound discretion of the trial court and cannot be disturbed except for abuse of that discretion. Moreover, “the trial court’s adverse rulings, even if erroneous, does not provide a basis for finding bias.” *Bissell v. Baumgardner*, 236 S.W.3d 24, 29 (Ky. App. 2007).

Certainly, a trial court’s decisions on issues in litigation cannot be affected by extrinsic influences or bias. However, a trial judge is not subject to recusal based on knowledge obtained or opinions formed in the course of his earlier participation in the same case. *Marlowe v. Commonwealth*, 709 S.W.2d 424, 428 (Ky. 1986). *See also Liteky v. U. S.*, 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings,

and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task.

*Id.* at 550-51, 114 S. Ct. at 1155. There is no indication in this case that the trial judge's opinions regarding Osborn were based on influences or contacts outside of the regular course of the proceedings.

Nevertheless, Osborn maintains that the trial judge's actions crossed the line, showing undue favoritism toward Weddington. Most notably, he complains that the trial judge acted improperly by insisting on an additional term in the parties' settlement agreement. On January 4, 2010, the parties appeared before the trial court and read the outlines of their settlement agreement into the record. Weddington's counsel mentioned that the parties had not yet agreed about what would happen if Osborn failed to make the required payment. The trial court suggested that the obligations be stated in the form of a domestic support obligation, which cannot be discharged in bankruptcy. Osborn's counsel did not object to the suggestion, and the final written settlement agreement included the following language:

9. **BANKRUPTCY.** The assumption of indebtedness by both parties shall be considered an obligation directly related to the support and maintenance of the other party, although payments of said debts shall not be considered deductible or taxable as alimony or maintenance for income tax purposes. The parties further stipulate that they intend that these debts and liabilities listed shall be non-dischargeable under Section 523(a)(5) of the Bankruptcy code.



Osborn contends that the trial court improperly interjected itself into the parties' negotiations and insisted on a provision favorable to Weddington. However, the record clearly refutes this allegation. Osborn was represented by counsel at all times during these negotiations and did not object to the inclusion of the language. The specific language was drafted after the hearing and agreed to by the parties themselves.

Furthermore, the parties admitted that they had not reached an agreement to ensure enforcement of their settlement. The trial court was within its discretion to suggest the non-dischargeability clause while analyzing the agreement for unconscionability. KRS 403.180(2) & (3). And finally, the trial court's conduct of the hearing does not indicate any improper partiality or favoritism toward any party. Therefore, Osborn has failed to make any showing that the trial judge's impartiality might reasonably be questioned.

### **Motions to set aside the Settlement Agreement**

Osborn next argues that the settlement agreement should be modified or set aside due to a change in his circumstances. Osborn states that he agreed to pay Weddington \$800,000 because he expected that he would be receiving funds from his investment/loan in Ghana. Since those funds have never materialized and will likely never materialize, he contends that he should be excused from that obligation on the ground that performance is now impossible. For similar reasons, he argues that the non-dischargeability clause of the agreement should also be set aside.

The trial court expressly found that the settlement agreement was not unconscionable when the parties entered into it. Osborn does not point to any evidence of fraud, undue influence or overreaching when the parties entered into the agreement. And as noted above, he was represented by counsel at the time he entered into it. A settlement agreement cannot be set aside solely on the basis that it proves to be a bad bargain. *Peterson v. Peterson*, 583 S.W.2d 707, 712 (Ky. App. 1979).

Rather, a party seeking modification of a settlement agreement has the burden of proving that the agreement is “manifestly unfair or inequitable.” *Id.* at 711, citing *Wilhoit v. Wilhoit*, 506 S.W.2d 511 (Ky. 1974). However, fraud, duress, coercion and overreaching are separate grounds for setting aside an agreement, and are not prerequisites for a finding of unconscionability. *Shraberg v. Shraberg*, 939 S.W.2d 330, 333 (Ky. 1997). Rather,

[w]hat is required is a showing of fundamental unfairness as determined “after considering the economic circumstances of the parties and any other relevant evidence. . . .” KRS 403.180(2). Undoubtedly, the trial court is in the best position to make such an analysis and the cases reflect broad deference to the trial court in this regard.”

*Id.*

In addition, Osborn seeks relief under CR 60.02, which allows a court to relieve a party of judgment based upon:

- (a) mistake, inadvertence, surprise or excusable neglect;
- (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified

evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.

We agree with the trial court that Osborn has failed to make a showing that he is entitled to relief from the settlement agreement, either on grounds of unconscionability or under CR 60.02. As the trial court noted, Osborn willingly, voluntarily and knowingly transferred more than three (3) million dollars in marital assets out of the United States into foreign accounts. He continued to insist that the funds were in transit for more than six (6) months after he entered into the agreement. Thereafter, he claimed that he was defrauded, but he has provided very little documentation or proof showing any diligent attempts to pursue the confidence artists. Yet during this period, \$125,000 was transferred into the escrow account of Osborn's attorney.

Understandably, both Weddington and the trial court were dubious about Osborn's claims because of the unlikelihood that a person with an extensive background as a financial consultant would fall victim to such an obvious scam. The court was led to further skepticism due to Osborn's changing stories and his inability to provide documentation regarding the transfers.

Nevertheless, even if Osborn was defrauded, his actions clearly amount to a dissipation of the marital estate. There is no allegation that Weddington had any involvement in this scheme. Indeed, she objected to the

transfer of assets as soon as she learned of it. Furthermore, Osborn had already transferred the assets when he signed the settlement agreement. Any mistake was his alone and does not form a basis for setting aside the agreement. Likewise, Osborn's poor decisions do not form a basis for setting aside the non-dischargeability clause.

Osborn also argues that the trial court erred by failing to set aside the order directing sale of the marital residence and setting aside the lien against the marital residence. The parties entered into an agreed order on March 26, 2010, to sell the marital residence in order to secure payment of the \$800,000 provided under the settlement agreement. Weddington later filed the lien to secure her interest in the proceeds of the sale. Since Osborn has failed to show any grounds to set aside the agreement, there is also no basis to set aside the order of sale or the lien.

### **Contempt Issues**

Osborn next challenges the trial court's orders finding him in contempt. As an initial matter, we note that the trial court issued a number of different orders relating to contempt findings against Osborn:

- Nov. 20, 2009 – Contempt for failure to pay \$10,000 for Weddington's attorney fees – 30 day sentence with work release.
- Feb. 24, 2010 – Contempt for failure to pay \$800,000 per settlement agreement – home incarceration with monitoring until amount paid.
- March 9, 2010 – contempt for failure to pay \$800,000 per settlement agreement – 180 day sentence.
- March 12, 2010 – home incarceration rescinded due to violation of conditions of release.
- March 26, 2010 – home incarceration restored for two (2) weeks.

- April 6, 2010 – contempt for violation of conditions of home incarceration – tampering with ankle monitor.
- April 9/April 16, 2010 – imposed sentence of 180 days for violations of conditions of home incarceration.

Osborn first argues that his ability to pay is a relevant factor to determine whether he may be held in contempt for his failure to comply with orders imposing attorney fees and enforcing the settlement agreement. *Lewis v. Lewis*, 875 S.W.2d 862, 864 (Ky. 1993). He contends that the trial court failed to find that he has the means to pay these amounts. The contemnor bears the burden of proving his or her inability to meet the purge condition, but in imposing that burden the court should be mindful of the contemnor's overriding interest in not being required to perform an impossible act. *Id.* However, the inability of a contemnor to pay the purge amount is a fact to be determined by the trial court. *Clay v. Winn*, 434 S.W.2d 650, 652 (Ky. 1968). The trial court's factual findings on this issue "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01.

With respect to the November 20, 2009, contempt order, the trial court found that Osborn had deliberately transferred marital assets out of the country. The trial court simply did not find his explanation of these actions to be credible and concluded that he was likely attempting to conceal assets. Furthermore, at that point, Osborn was still claiming that he could recover the funds from his

investment. Under the circumstances, the trial court did not clearly err by finding that Osborn had the ability to pay the \$10,000.

Osborn also argues that the trial court was required to appoint counsel for him prior to entering the contempt order, since he was appearing *pro se* at the time. If imprisonment is a potential consequence of a civil contempt action, then counsel may be appointed. *Lewis*, 875 S.W.2d at 862. However, the trial court must first determine that a party qualifies as an indigent under KRS 31.120 and is entitled to appointed counsel. *Id.* Osborn never requested appointment of counsel. Indeed, his prior counsel had withdrawn shortly before the contempt hearing and Osborn never indicated that he lacked the funds to hire new counsel. In addition, he was still employed and receiving Social Security benefits at this time. There is no basis to conclude that the trial court should have appointed counsel for Osborn on its own motion.

With respect to the later orders requiring Osborn to pay \$800,000 as provided by the settlement agreement, the trial court again found Osborn's claims of poverty not credible. As noted above, Osborn repeatedly changed his stories about the nature of the investment, to whom he had sent the money, and why the expected repayment never materialized. Osborn could never adequately document his version of events or the transactions.

At best, Osborn dissipated marital assets through his own reckless actions. Viewed less charitably, he has attempted to conceal assets in foreign accounts. But in either case, he cannot reasonably claim poverty when he has

placed himself in this very position. *Campbell County v. Commonwealth, Kentucky Corr. Cabinet*, 762 S.W.2d 6, 10 (Ky. 1988). Consequently, we agree with the trial court that Osborn presented insufficient evidence to establish an impossibility defense.

Osborn next argues that the trial court's contempt orders violate his rights against double jeopardy. Contempt sanctions are classified as either criminal or civil depending on whether they are meant to punish the contemnor's noncompliance with the court's order and to vindicate the court's authority and dignity, or are meant to benefit an adverse party either by coercing compliance with the order or by compensating for losses the noncompliance occasioned. *Gormley v. Judicial Conduct Comm'n*, 332 S.W.3d 717, 725–726 (Ky. 2010). Coercive sanctions, such as daily fines or incarceration, are punishments imposed until the contempt is purged by compliance with an order. “For the punishment to retain its civil character, the contemnor must, at the time the sanction is imposed, have the ability to purge the contempt by compliance and either avert the punishment or at any time bring it to an end.” *Commonwealth, Cabinet for Health and Family Serv. v. Ivy*, 353 S.W.3d 324, 334 -35 (Ky. 2011).

The trial court's April 6, 2010, contempt order, and its follow-up orders on April 9 and 16, 2010, are not clearly civil in nature. These orders were intended to punish Osborn for violating the conditions of his home incarceration rather than to coerce his compliance with the court's orders. Thus, it appears that the trial court's sanction for the latest contempt was criminal and not civil in

nature. “[T]he protections against double jeopardy extend to non-summary criminal contempt prosecutions.” *Schroering v. Hickman*, 229 S.W.3d 591, 595 (Ky. App. 2007), citing *U. S. v. Dixon*, 509 U.S. 688, 696, 113 S. Ct. 2849, 2856, 125 L. Ed. 2d 556 (1993), and *Commonwealth v. Burge*, 947 S.W.2d 805, 812 (Ky. 1996).

Since Osborn pleaded guilty to third-degree escape, he contends that the trial court’s order holding him in contempt for the same conduct violates his rights against double jeopardy. The trial court correctly pointed out that Osborn was still represented by counsel when this contempt order was entered and he did not raise a double jeopardy challenge at that time. However, a failure to object to a double jeopardy violation “did not constitute a waiver of the right to raise the issue, [even for] the first time on appellate review.” *Gunter v. Commonwealth*, 576 S.W.2d 518, 522 (Ky. 1978).

Yet even assuming that the trial court imposed a criminal contempt sanction on Osborn, we find no double jeopardy violation in this case. The trial court found Osborn in contempt for violation of its March 26, 2010, order releasing him on home incarceration. That order specifically provided:

7. In the event that the Respondent [Osborn] violates any of the above terms his release shall [be] revoked and he will be subject to the contempt powers of this[]court[]to[]include additional time added to the original Order of Incarceration.

The trial court’s contempt order was based on Osborn’s violation of its prior order, not upon violation of the escape statute. *See* KRS 520.040, for



third-degree escape. Thus, the contempt and the escape charges each required proof of different elements. *Burge*, 947 S.W.2d at 811, citing *Blockburger v. U. S.*, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932). Moreover, the trial court also noted that it found Osborn in contempt two (2) days before he pleaded guilty to the escape charge. While he may have had a double-jeopardy defense in that proceeding, jeopardy had not attached when the court found him in contempt. For these reasons, the trial court's April 6, 2010, contempt order did not violate Osborn's rights against double jeopardy.

Osborn also complains that the trial court improperly relied on the testimony of Lexington Police Sergeant Sean Hubbard in finding that he had tampered with his monitoring bracelet. He maintains that Sgt. Hubbard's testimony was false and amounted to perjury. Sgt. Hubbard was subject to cross-examination and the trial court found his testimony to be more credible than that of Osborn's witnesses. In the absence of a showing of clear error, we cannot disturb the trial court's findings concerning the credibility of witnesses.

Osborn also seeks the return of his passport. At a pre-trial conference on October 1, 2009, Weddington's counsel alerted the court to Osborn's actions in transferring assets out of the country. Osborn briefly testified about the transactions. Weddington's counsel argued that his actions amounted to dissipation and attempted secreting of marital assets. Counsel also pointed to Osborn's recent foreign travel, arguing that he may attempt to flee the country and remain outside of the court's jurisdiction. Osborn maintained that he needed to

travel to facilitate the return of the funds. At the conclusion of the hearing, the trial court ordered Osborn to surrender his passport and to seek court approval for any future foreign travel. Subsequently, the trial court denied Osborn's requests for the return of his passport.

The trial court had not held Osborn in contempt when it directed him to surrender his passport. Rather, the court acted to ensure his appearance in court and to prevent his removal of additional marital assets from the country. Osborn notes that he never failed to appear for a meeting or a scheduled court date. Consequently, he argues that the trial court had no basis to conclude he is a flight risk or that surrender of his passport was necessary to ensure that he remain within the court's jurisdiction.

The trial court had authority to enter orders directing the parties not to dispose of any assets while the action was pending. The trial court was concerned that Osborn was removing marital assets from the country and that he might attempt to flee from the court's jurisdiction. Considering his behavior, this concern seems entirely justified. Thus, the court was within its discretion to enter orders directing Osborn not to leave the United States without prior permission. In view of Osborn's failure to comply with other orders and the trial court's subsequent contempt findings, Osborn has not shown any change in his circumstances which would warrant the lifting of these restrictions.

### **Conclusions**

Osborn repeatedly expresses his belief that he a victim of misconduct by his ex-wife, by the attorneys involved in this case, by the trial judge, by witnesses, and by his business partners. He refuses to acknowledge any personal responsibility. Osborn transferred more than three million dollars in marital assets out of the country. His explanations for these transfers have been inconsistent and poorly documented. He now claims that he was defrauded, but he fails to acknowledge how suspicious his behavior appears.

Likewise, Osborn voluntarily signed the settlement agreement based on his nebulous expectation that the funds would be repatriated. When those funds failed to appear, he now expects to be excused from that obligation. The trial court repeatedly gave him chances to remain out of jail, but he was unwilling to comply with the conditions of his release. Yet somehow, he claims to be a victim of bias by the trial judge and perjury by a police officer.

Osborn's predicament is of his own making and not from the mendacity of the judicial system. There is no basis for recusal of the trial judge. Osborn has not shown entitlement to relief from his obligations under the settlement agreement or to have relief from the contempt findings.

Accordingly, the judgment of the Fayette Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Thomas P. Osborne, Pro Se  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Sandra Mendez Dawahare  
Lexington, Kentucky