

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-000850-MR

ANNETTE MARIA HUTCHINS  
(F/K/A KOCH)

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT  
HONORABLE CHARLES C. SIMMS III, JUDGE  
ACTION NO. 10-CI-00249

ANTHONY JEROME KOCH

APPELLEE

OPINION  
AFFIRMING

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

LAMBERT, SENIOR JUDGE: Annette Maria Hutchins (formerly, Koch) appeals from an order of the Nelson Circuit Court denying her motions for attorney's fees, court costs, and payment of an IOU following a decree of dissolution and a

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<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.

supplemental decree dividing marital property. Upon a review of the record, we affirm the Nelson Circuit Court on other grounds.

### **History**

Annette and Anthony were married on August 2, 1985. On March 5, 2010, Anthony filed for divorce. On May 19, 2010, the trial court entered a decree of dissolution, reserving all issues regarding division of property for later determination.

Thereafter, the parties entered into a mediation agreement regarding the marital residence, certain personal items, accounts, cash value insurance, and retirement accounts. The mediation agreement specifically reserved the issues of “necessaries,” insurance, “. . . and any other claims.” The agreement was reviewed by the court, and a final order was entered by the court on June 14, 2010. Neither party appealed from this order.

Tony moved for a hearing on the remaining issues, and Annette filed an amended counter-petition seeking maintenance and separately moved for the court to rule on her previous motion for necessaries. A final hearing was held on August 31, 2010, to address the issues of maintenance and necessaries. The court also entertained an oral motion by Annette that Tony be required to pay her certain monies allegedly owed to her. Upon completion of the proof, Annette’s motions

were denied and a supplemental decree was entered to that effect on September 3, 2010. Annette did not appeal from this supplemental decree.

Months later, in March of 2011, Annette filed a motion for attorney's fees, costs, and mediation fees, as well as reimbursement for an "IOU" from Anthony. Two weeks after this motion, she filed another motion for compensation because she was unable to claim certain deductions on the marital residence. A hearing was held on the motions and the trial court entered an order denying Annette's request for attorney's fees. While Annette demanded attorney's fees in the pleadings, they were never addressed at the final hearing. The court found that her request for fees and costs was time-barred because Annette never raised attorney's fees during the hearing, never moved for reconsideration thereafter, and never filed an appeal therefrom. Instead, she moved for attorney's fees and costs, for the first time, six months after the entry of the supplemental decree.

As to the "IOU," Annette produced a document signed by Anthony, acknowledging that he owed her \$5,985 for various gifts and other items. The court found that the letter was not newly discovered evidence because Annette requested some of the same funds that were contained in the "IOU" at the final hearing. In addition, the court noted that even if Annette had not been able to find the letter at the time of the final hearing, she could have testified as to the agreement and its contents, and Anthony could have responded regarding the same. Thus, the court found that Annette's argument regarding the "IOU" was also time-barred.

Finally, Annette claimed that she made payments on the marital residence in 2010, and that due to Anthony's obtaining a debt cancellation, she was unable to take advantage of tax deductions for the residence on her 2010 return. However, the court found that Annette also could have raised this issue at the original hearing. For this reason, the court found this issue was also time-barred.

### **Analysis**

As the court denied Annette's claims for maintenance, necessities, and repayment of certain funds at the original hearing, and Annette failed to appeal from the court's final judgment after the hearing, she waived those issues for the purposes of appeal. Likewise, by failing to raise the issues of attorney's fees and costs, she failed to preserve the same for appeal, and, moreover, no appeal was taken. The trial court would have lost jurisdiction ten days after the entry of the supplemental decree. Kentucky Rules of Civil Procedure (CR) 59.02

Although Anthony argues that Annette cannot rely upon CR 60.02, Annette's motions were not styled as motions pursuant to CR 60.02. However, it is understandable that Anthony would have assumed Annette was proceeding under CR 60.02, as more than ten days had passed since entry of the final judgment.

We agree with the trial court that each of the issues raised by Annette could have been litigated at the original hearing. However, instead of viewing the claims as "time-barred," implying that some sort of statutory period has passed barring consideration of the issues, we acknowledge the issues raised by Annette

through her subsequent motions to be barred under the doctrines of res judicata and waiver. The doctrine of res judicata mandates that:

an existing final judgment rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.

*Yeoman v. Commonwealth Health Policy Bd.*, 983 S.W.2d 459, 464 (Ky. 1998), quoting 46 Am. Jur. 2d *Judgments* § 514. If two suits concern the same controversy, then the prior proceeding is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action. *Id.* at 465. A litigant must raise any and all claims in the original proceeding, or be barred from raising such claims in the future, as “[t]he doctrine prohibits the relitigation of claims that were litigated or could have been litigated between the same parties in a prior action.” *Miller v. Admin. Office of the Courts*, 361 S.W.3d 867, 871 (Ky. 2011).

As the claims raised by Annette in the present proceeding could have been raised by her in the original proceeding, she is barred from raising them now. Annette has also waived her opportunity to raise these claims, as she filed no motion for further findings or reconsideration, and filed no direct appeal from the court’s final judgment. CR 52.04; CR 59.05; *Crain v. Dean*, 741 S.W.2d 655, 658 (Ky. 1987). Accordingly, we affirm the Nelson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry D. Raikes  
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BRIEF FOR APPELLEE:

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