

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-000930-MR

BELINDA YVONNE HOWARD  
(NOW FLETCHER)

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE DAVID D. FLATT, JUDGE  
ACTION NO. 87-CI-00494

LESLIE MARK HOWARD

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: CLAYTON, MOORE AND NICKELL, JUDGES.

CLAYTON, JUDGE: This is an appeal of a decision of the Greenup Circuit Court, Division II, Family Court concerning the denial of interest on child support arrearages on the Appellee, Leslie Mark Howard. Mother of the children, Belinda Howard (now Fletcher), brings this appeal asserting that the trial court abused its

discretion in its denial of interest on the child support arrearages. After careful review, we affirm.

### BACKGROUND INFORMATION

Leslie Howard and Belinda Howard were divorced on July 12, 1988, by a decree entered in Green Circuit Court. Custody of their two minor children, M.A.H. and M.D.H., was awarded to Belinda. Leslie was ordered to pay \$300 per month in child support. In 1995, Leslie was accused of sexually abusing his then eleven (11) year-old daughter and was tried and acquitted of the charges in Boyd Circuit Court. (Appellee's Brief at 2). Contrary to the jury's verdict, Belinda remained adamant in her belief that Leslie had sexually assaulted their daughter. Belinda obtained an order from the Greenup Circuit Court that temporarily suspended Leslie's visitation with the children in 1995; Leslie has not seen Belinda or the children since that time.

There has been no child support paid on behalf of the children since the time of the charges in 1995 in a hearing in which Leslie did not appear.<sup>1</sup> Inclusive of medical expenses of \$3,795 and braces in the amount of \$2,000, the parties stipulated that the principle amount in arrearages for support payments was \$29,485. From May 1995 until November 2004, there were no motions filed to obtain the unpaid child support. Even so, in November 2004, Belinda sought a felony non-support criminal charge against Leslie, and in February 2011, a motion was filed seeking to hold Leslie in contempt for failure to make payments. During

---

<sup>1</sup> Leslie has not appeared in the felony non-support case nor in proceedings regarding this appeal.

prior proceedings, Belinda testified that she intentionally waited until her daughter had turned eighteen (18) because Leslie would be less likely to seek visitation with the children. Approximately seven (7) years after the daughter turned eighteen (18) years of age, Belinda brought her contempt motion.

In April 2011, the trial court entered an order denying the payment of any interest upon the determination that Belinda failed to timely enforce her rights. The total amount of principle and interest payment requested by Belinda is \$90,926.15. Following Belinda's motion to alter, amend or vacate, the trial court entered its final order on May 6, 2011, which in relevant part, denied Belinda's motion. The trial court determined the enforcement and award of interest payments would be inequitable. (Appellant's Brief at 2). This appeal followed.

#### ISSUE

Belinda contends that the trial court abused its discretion in failing to award interest on the child support arrearages. Moreover, she contends that waiting until a time of her choosing to assert her rights should not make the award of interest payments inequitable. This issue has been properly preserved before the trial court for review. Belinda argues that based upon the findings of *Gibson v. Gibson*, 211 S.W.3d 601 (Ky. App. 2006), the denial of interest payments is only permitted upon a finding of factors making it inequitable to require payment of interest.

#### STANDARD OF REVIEW

To amount to an abuse of discretion, the trial court's decision must be "arbitrary, unreasonable, unfair, or unsupported by sound legal principle." *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007), quoting *Commonwealth v. English*, 933 S.W.2d 941, 945 (Ky. 1999). *See also, Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004) (footnote omitted). Absent a "flagrant miscarriage of justice," the trial court will be affirmed. *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983). We review this matter with this standard in mind.

#### ANALYSIS

It has long been recognized that the courts of this Commonwealth have discretionary power to award interest on child support arrearages. "[I]f there are factors making it inequitable to require payment of interest it may be denied." *Gibson*, 211 S.W.3d at 611 (footnote omitted). Interest should be allowed in the "absence of factors making it inequitable." *Guthrie v. Guthrie*, 429 S.W.2d 32, 36 (Ky. 1968). *See Young v. Young*, 479 S.W.2d 20 (Ky. 1972), reaffirming the holding of *Guthrie*. *Id* at 22. The trial court made a specific determination that the award of interest in this case would be inequitable based upon Belinda's failure to timely assert her rights. We are of the opinion that the trial court properly denied the award of interest. "As long as the trial court's decision comports with the guidelines, or any deviation is adequately justified in writing, this Court will not disturb the trial court's ruling." *Commonwealth, Ex rel. Marshall v. Marshall*, 15 S.W.3d 396, 400-01 (Ky. App. 2000)(footnote omitted). Further, "[t]here are few matters over which the trial court has more discretion than cases involving

domestic relations issues.” *Id.* at 400. Finally, we note that “[e]ven after the enactment of the Family Support Act in 1988, our statutory scheme for the establishment and modification of child support, the trial court still retains considerable discretion.” *Id.* citing Kentucky Revised Statutes (KRS) 403.211-403.213; (footnote omitted).

It would be inequitable to require the payment of interest after an intentional sixteen (16) year delay. It is elementary that the law disapproves of sitting on one’s rights. Basic legal principles such as statute of limitations and laches are founded on the notion of timeliness.

“Child support is a statutory duty intended to benefit the children, rather than the parents.” *Gibson*, 211 S.W.3d at 609 (footnote omitted). As it presently stands, both of Appellant’s children are well over the age of majority. A judgment by this Court to demand Respondent to pay a massive amount of interest spanning over sixteen (16) years at the statutory rate of 12 percent per annum interest, per child is indeed inequitable.

Belinda alleges that delay in pursuing interest on arrearages was motivated by a conscious decision of her own; a tactic in which she felt it would be in the best interest of the children to avoid contact with Leslie. Further, Belinda argues that she was concerned for the well-being of her children and was concerned that executing judicial proceedings against her ex-husband may have thrust Leslie back into the children’s lives if he then decided to seek visitation with them. This Court does not question Belinda’s pronouncement as to her reason for

delay, nor to her choice in exercising parental discretion in decisions that would affect her family; however, Belinda chose to wait an additional seven (7) years after the court could have enforced visitation. Appellant has not been left to bear the financial burden as is suggested in her brief; by the contrary, she has been awarded interest running from April 2011, in addition to a judgment of \$23,690 for delinquent child support, \$3,795 for health insurance, \$2,000 for braces, \$4,422.75 in attorney's fees and \$350 in accounting fees.

All other arguments of Belinda are rendered moot. Hence, we affirm the trial court's order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

R. Stephen McGinnis  
Greenup, Kentucky

BRIEF FOR APPELLEE:

Michael A. Frye  
Russell, Kentucky