

RENDERED: JULY 5, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2012-CA-001549-MR

GENEVA M. HICKS

APPELLANT

v.

APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE DAN KELLY, JUDGE  
ACTION NO. 09-CR-00207

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; LAMBERT AND STUMBO, JUDGES.

STUMBO, JUDGE: The appellant, Geneva Hicks, appeals a Taylor Circuit Court order declining to modify her judgment pursuant to Kentucky Rule of Civil Procedure (CR) 60.02(e) or CR 60.02(f). Hicks asserts, pursuant to Kentucky Revised Statutes (KRS) 439.3401(5), that she is not required to serve 85% of her sentence because she was the victim of domestic violence at the hands of her husband, the victim. The circuit court conducted a hearing and determined that she

was not entitled to the parole eligibility exception because she was not the victim of domestic violence. We affirm.

Hicks pled guilty on March 18, 2011, to first-degree manslaughter as well as other charges that are not relevant to this appeal. On May 3, 2011, Hicks was sentenced to twenty years in prison for the manslaughter charge, and five years on the additional charges, to run consecutively for twenty-five years. On September 2, 2011, four months after sentencing, Hicks filed a motion “for hearing for determination pursuant to KRS 439.3401(5)[.]” However, no hearing was conducted because the circuit court found that it lacked jurisdiction. Hicks appealed the finding, but eventually dismissed the appeal and filed another motion for relief, this time made pursuant to CR 60.02(e) and CR 60.02(f). The circuit court conducted a hearing and determined that Hicks was not entitled to application of the statute.

On appeal, Hicks argues the court erred in not amending her final sentence. Hicks asserts that KRS 439.3401(3), which requires Hicks to serve 85% of her twenty-year sentence, is made inapplicable by KRS 439.3401(5) because she was the victim of domestic violence at the hands of her husband who she ultimately killed. At the conclusion of the hearing on the motion, the court was not satisfied that Hicks was the victim of domestic violence and also noted that Hicks plea negotiations specifically contemplated that she would be eligible for parole after serving 85% of her sentence.

Generally, we review the trial court's determination regarding domestic violence to determine if the finding was clearly erroneous. *Holland v. Commonwealth*, 192 S.W.3d 433, 437 (Ky. App. 2006).

The trial court's standard in adjudging whether the defendant has established that she is a victim of domestic violence is whether it was shown by a preponderance of the evidence. The fact-finder must believe from the evidence that the defendant more likely than not was a victim of domestic violence.

*Id.* (citations omitted). This case, however, is an appeal from the denial of relief pursuant to CR 60.02. Orders granting or denying relief under CR 60.02 are reviewed for abuse of discretion. *Lawson v. Lawson*, 290 S.W.3d 691, 693 (Ky. App. 2009). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Toler v. Rapid Amer.*, 190 S.W.3d 348, 351 (Ky. App. 2006).

Hicks's motion was made pursuant to CR 60.02(e) and CR 60.02(f). Subsection (e) allows for relief when "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" and subsection (f) provides relief for "any other reason of an extraordinary nature[.]" CR 60.02(e), (f). Thus, we must determine if the court abused its discretion in denying relief under the rule.

Hicks is not entitled to relief pursuant to CR 60.02(e) because the judgment is not void, nor has it been satisfied or released. Further, there is no

indication that it is no longer equitable for the judgment to have prospective application. Thus, the court did not abuse its discretion when it denied Hicks's relief pursuant to this section.

Likewise, the circuit court did not abuse its discretion when it declined to relieve Hicks from final judgment under CR 60.02(f). The court determined that the evidence of abuse was insufficient. Further, the court determined that parole eligibility was considered during the plea negotiations and there is no reason of an extraordinary nature that would justify relief from this determination.

For the foregoing reasons, we affirm.

ALL CONCUR.

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