

RENDERED: AUGUST 9, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001673-ME
AND
NO. 2012-CA-002088-ME

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN;
AND LORI ANNE GREEN

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PATRICIA WALKER FITZGERALD, JUDGE
ACTION NO. 02-CI-504547

JAMES MICHAEL GREEN

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

** ** * * * * *

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: In this appeal, the Cabinet for Families and Children
(hereinafter the Cabinet) appeals from a September 5, 2012 order which declined
to reverse a credit for child support payments made by James Green and which

failed to award a judgment for extraordinary medical expenses and child support arrearages. For the following reasons, we affirm as to the child support credit, but reverse and remand for an order directing Mr. Green to pay his share of the submitted extraordinary medical expenses and for a ruling as to the child support arrearages for the period of May 31, 2007, to October 3, 2007.

The marriage of Mr. Green and Lori Green was dissolved on January 22, 2003. They have one minor daughter. This case has been in litigation for many years now and has a complex history. We will only discuss those facts which relate directly to the issues being appealed and will do so as they become relevant.

The first issue being appealed relates to a credit Mr. Green was awarded for child support payments he made directly to Ms. Green. After a hearing held on November 18, 2008, Mr. Green was given a \$2,800 credit toward child support arrears. This \$2,800 came from payments he made directly to Ms. Green before a court order was entered regarding the issue. Those payments included a \$1,500 payment made on January 4, 2007, and a \$250 payment made on May 9, 2007. These payments were proven by deposit receipts Mr. Green provided to the court. Ms. Green did not object to Mr. Green being given the credit.

At a hearing held on September 8, 2010, Ms. Green provided bank statements to the court and Mr. Green as part of discovery. Those bank statements also showed the January 4, 2007 payment of \$1,500 and the May 9, 2007 payment

of \$250. Counsel for Mr. Green requested Mr. Green be given credit for these payments.¹ On January 5, 2011, the court entered an order which, among other things, granted Mr. Green a credit of \$1,750.

In March of 2011, the Cabinet moved for the trial court to set aside the \$1,750 credit given to Mr. Green. The Cabinet argued that this was a duplicate credit Mr. Green already received. A hearing was held on July 6, 2011, at which multiple outstanding issues were discussed and argued. One such issue was that Mr. Green was credited with the same \$1,750 worth of payments twice, once as part of the \$2,800 credit awarded after the November 18, 2008 hearing, and again as a \$1,750 credit in the January 5, 2011 order. The trial court entered an order on September 5, 2012, which denied the motion because it was made outside the Kentucky Rules of Civil Procedure (CR) 59 time limit.

“A motion to alter or amend a judgment, or to vacate a judgment and enter a new one, shall be served not later than 10 days after entry of the final judgment.” CR 59.05. The trial court granted Mr. Green the duplicate credit on January 5, 2011. Neither Appellant moved to alter or amend that judgment until March of 2011. This is well beyond the ten-day limit to alter a judgment. While Mr. Green was granted a duplicate credit, we are procedurally barred from reversing that judgment.

The second argument on appeal concerns extraordinary medical expenses of the minor child. The previously discussed order of January 5, 2011, set forth a

¹ It appears as though both parties forgot that these two credits had already been awarded to Mr. Green.

procedure by which Ms. Green had sixty days to provide receipts showing medical expenses to Mr. Green and the court. Mr. Green then had fifteen days to object if he felt he did not owe a contribution for the payments presented. On February 28, 2011, the Cabinet, on behalf of Ms. Green, filed proof with the court of extraordinary medical expenses for the minor child totaling \$4,178.58. Mr. Green's expected contribution would be \$2,089.29. Mr. Green did not file any objection to these receipts. This issue was also discussed at the July 6, 2011 hearing. The trial court's September 5, 2012 order declined to make a ruling on this issue because it had been pending for so long and the trial court desired finality. This was in error. The issue of these past medical expenses was before the trial court and required a ruling. Proof had been submitted to the trial court showing \$4,178.58 in extraordinary medical expenses and Mr. Green did not object within fifteen days. We therefore reverse and remand this issue to the trial court for it to enter an order awarding Ms. Green \$2,089.29.

The third issue on appeal concerns child support arrears for the period of May 31, 2007, to October 3, 2007. This issue had been reserved multiple times due to the lack of discovery.² As this issue was still outstanding at the July 6, 2011 hearing, it, too, was discussed and argued. In the trial court's September 5, 2012 order, the trial court found that Ms. Green had stated that Mr. Green was not in arrears. The court therefore declined to award her arrears for this period of time.

² Specifically, Mr. Green wanted Ms. Green to provide him with her bank statements for this period of time in order to show that he made more child support payments to her than he was given credit.

The Court of Appeals . . . [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 353-354 (Ky. 2003)(citations omitted).

The trial court's finding that Ms. Green stated Mr. Green was not in arrears is clearly erroneous. The statement attributed to Ms. Green that the court is referring to was made at a September 9, 2010 hearing. While Ms. Green did state that Mr. Green was not in arrears, it was made mistakenly. This is shown by an affidavit filed with the court on March 8, 2011, in which Ms. Green clarified her statement and admitted she misspoke. In addition, during a hearing held on March 7, 2011, counsel for all parties admitted Mr. Green was in arrears for the period of May 31, 2007, to October 3, 2007. At that same hearing, the trial court also stated that it would modify a prior order to reflect that the arrearage for this period of

time was still outstanding.³ Based on these facts, we remand this issue to the trial court for a ruling on the amount Mr. Green owes in child support for the period of May 31, 2007, to October 3, 2007.

For the foregoing reasons we affirm in part the order of September 5, 2012, as it pertains to the \$1,750 credit and reverse and remand in part. We direct the trial court to enter an order awarding Ms. Green a judgment for \$2,089.29 in extraordinary medical expenses and for the court to make a ruling on the issue of child support arrearages for May 31, 2007, to October 3, 2007.

MAZE, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT
COMMONWEALTH OF
KENTUCKY, CABINET FOR
FAMILIES AND CHILDREN:

Michael West
Ryan Halloran
Frankfort, Kentucky

BRIEF FOR APPELLEE:

James Michael Green, *pro se*
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NO BRIEF FILED FOR LORI ANN
GREEN.

³ This modification never occurred.