

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000322-ME

KEVIN BURTON

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WALTER F. MAGUIRE, JUDGE
ACTION NO. 08-CI-00625

SHARRY BURTON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, CLAYTON, AND JONES, JUDGES.

CLAYTON, JUDGE: This action comes before us on appeal from the denial of a motion to hold in abeyance a child support award due to the appellant, Kevin Burton's, incarceration. Burton argues that, pursuant to KRS 403.213(1), he is entitled to the granting of his motion. KRS 403.213(1) provides that:

The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification

and only upon a showing of a material change in circumstances that is substantial and continuing.

Burton argues that he has had a material change in circumstances, however, incarceration is not treated as such for child support awards under Kentucky law. See, *Commonwealth, ex rel. Marshall v. Marshall*, 15 S.W.3d 396 (Ky. App. 2000). Burton also argues that the trial court did not provide findings of facts and conclusions of law. However, CR 52.01 does not require findings to be made and further Burton made no such request to the trial court. He made reference to the findings in the Notice of Appeal. Thus, we affirm the decision of the trial court denying Burton's motion to hold the child support award against him in abeyance.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Kevin Burton, *Pro Se*
Burgin, Kentucky