

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000641-MR

COMMONWEALTH OF KENTUCKY,
EX REL. EDWARD RYAN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
INDICTMENT NO. 99-CI-00938

TRINA LANE

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND TACKETT, JUDGES.

TACKETT, JUDGE: This case involves the status of a child support order issued by a court in Florida, and subsequently registered in Kentucky pursuant to the Uniform Interstate Family Support Act (UIFSA) that was adopted by Kentucky in 1998. See KRS 407.5101 et seq. After confirming the Florida order, the Fayette Circuit Court discovered, on the basis of evidence offered by the parties and in consultation with the issuing court in Florida, that the order was based on a mistake of fact.

Consequently, the trial court ordered the child support stayed and unenforceable in the state of Kentucky. The Fayette County Attorney appeals, citing KRE 407.5608, and the Full Faith and Credit to Child Support Orders Act, 28 U.S.C. 1738B. No brief was filed for the appellee. Because KRS 407.5608 unequivocally states that a child support order, once confirmed, may not be contested, we reverse.

Trina Lane and Edward Ryan were divorced in Florida in 1996. Ryan was granted custody of their two children, Nicholas (born February 9, 1982) and Edward (born September 26, 1984). The divorce decree purportedly included a child support provision ordering Lane to pay Ryan \$380.00 per month for child support. Lane subsequently moved to Lexington, Kentucky. On March 17, 1999, the Clerk of the Fayette Circuit Court, pursuant to KRS 407.5605, sent a notice to Lane, informing her that the Florida support order would be registered in Kentucky and enforced against her. Lane requested a hearing, claiming that the order had been obtained by fraud.¹

At the hearing, Lane alleged that she and Ryan had an agreement to abate any payment of child support until she was

¹ This type of hearing is contemplated under KRS 407.5606(1), which states: A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty (20) days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to the allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to KRS 407.5607.

financially able to begin paying it. The matter was continued to September 3, 1999, but Lane failed to appear in court on that date. At the September 3 hearing, the Fayette County Attorney submitted Ryan's written response to Lane's charges, which stated that he and Lane had agreed to abate enforcement of the child support order for a time, with the missed payments to be made up later.

The circuit court confirmed enforcement of the Florida order in Lane's absence, in the nature of a default judgment. Lane was ordered to pay \$380.00 per month in child support, and an additional \$50.00 per month towards her arrears totalling more than \$12,000. The court entered a written ruling to this effect on September 14, 1999. The record indicates that Ryan was still a resident of Florida at the time the order was confirmed.

On March 10, 2000, the Fayette County Attorney filed a motion to hold Lane in contempt of court for failing to pay child support. Lane thereafter appeared in court at what would prove to be a protracted series of hearings at which she alleged that under the actual terms of the divorce decree her child support obligation was set at zero. The court requested Ryan to attend a hearing on the matter. He responded by letter, stating that he could not be present as he was unable to leave his employment with the U.S. Coast Guard in New Jersey.

On September 1, 2000, Lane's attorney filed a motion to vacate, alter or amend the 1996 Florida decree on the basis of fraud. The motion also asked for reimbursement (as Lane claimed she had already been sending her children money which had not been credited) and for modification of the custody decree. After lengthy testimony from Lane and speaking twice to Ryan on the telephone, the judge stated that she would make a ruling after conferring with the judge who had presided over the divorce action in Florida.

On December 14, 2000, the circuit court entered an order stating that the Florida judgment was stayed and unenforceable in the state of Kentucky on the grounds of mistake of fact. Upon reviewing the entire record, and speaking with the judge in Florida, the circuit court concluded that the Separation Agreement referred to in the Florida Judgment and signed by both parties did not provide for any child support to be paid by Lane. There was a handwritten addendum providing for child support but it was not signed by either party. The circuit court's order stated as follows:

[T]his Court finds that said Florida Judgment was issued based upon a mistake in fact; specifically, that there was a valid, signed agreement by and between the parties establishing child support. This Court also finds that the Florida Judgment was signed and entered in error [by the Florida court] based on the assumption that there was an agreement between the parties as to payment

of child support when, in fact, there was no such agreement. Accordingly, Respondent has satisfied her burden of proof under KRS 407.5607[1](e) and the enforcement of Florida Judgment pertaining to the child support obligation of Respondent, Trina R. Lane to Petitioner, Edward J. Ryan, Jr., is stayed and is unenforceable in this state.

Lane has since left Kentucky and is now living in Texas. It is unclear whether she plans to return to Kentucky. Ryan continues to reside in New Jersey. Nicholas and Edward are now both over eighteen years of age.

The Fayette County Attorney argues that the circuit court's order of December 14, 2000, deeming the Florida Judgment unenforceable should be overturned and the original order reinstated. The primary argument advanced by the County Attorney is that, under KRS 407.5608, the circuit court was powerless to vacate the order after it was confirmed on September 14, 1999.

KRS 407.5608 states:

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further context of the order with respect to any matter that could have been asserted at the time of registration.

The Court of Appeals of Virginia has defined confirmation as follows:

An order is confirmed after the court has issued notice to the non-registering party

of the registration and the amount of the alleged arrearages, if any, . . . and has provided the non-registering party with an opportunity for a hearing to contest the registration and amount of arrearages. Slawski v. Commonwealth Dep't of Social Servs., 514 S.E.2d 773, 774 (Va. App. 1999); Graham & Keller, West's Kentucky Practice, Domestic Relations Law §14.61 (1997, supp. 2003).

Lane was given notice of the registration and the amount of the alleged arrearages, and the opportunity to contest the order prior to its confirmation, but she failed to attend the September 3, 1999 hearing. She did not come forward again until some six months later when she was threatened with contempt of court. Had Lane pursued the issue prior to its confirmation by the circuit court, the court could have stayed the enforcement of the order pursuant to KRS 407.5607(1)(e), which states that "[a] party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving . . . [t]here is a defense under the law of this state to the remedy sought."

Clearly, when the court in its order of December 14, 2000, relied on KRS 407.5607(1)(e), it failed to recognize that such an action was precluded under KRS 407.5608 because the order had already been confirmed on September 14, 1999.

It should be noted that the County Attorney did not raise the issue of the preclusive effect of KRS 407.5608 until

it filed a motion with the court to reconsider its holding on December 22, 2000. In a final hearing held on January 19, 2001, the circuit court explained that in spite of the technicalities raised by the County Attorney, it could not in good faith order the enforcement of an erroneous order confirmed as such by the court in Florida. Although we agree that the result may be harsh in this case, the clear language of KRS 407.5608 leaves us with no choice but to reverse the holding of the lower court.

Furthermore, any resort to the provision of CR 60.02, which permits the vacating of an order for a mistake of fact, is futile since "where the statute . . . sets forth the procedure, the rules must give way to it if they are in conflict or inconsistent with the statute." See Ky. R. Civ. P. 1; Dawson v. Department of Economic Security, Ky. App., 423 S.W.2d 911, 912 (1968).

Because the effect of KRS 407.5608 is dispositive in this case, we will not address the other arguments raised in the appellant's brief.

For the foregoing reasons, the order of the Fayette Circuit Court is reversed.

BUCKINGHAM, JUDGE, CONCURS.

GUIDUGLI, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Margaret H. Kannensohn
Fayette County Attorney
Lexington, Kentucky