

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2001-CA-000657-MR

JOHN MARK HODGES

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT  
HONORABLE RON JOHNSON, JUDGE  
ACTION NO. 78-CI-00382

VEVERLEE GIBBS (now SHORT)<sup>1</sup>

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, McANULTY, and PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: John Mark Hodges appeals from an order and judgment of the Harlan Circuit Court in favor of his ex-wife, Veverlee Gibbs (now Smith), in the amount of \$34,178.59, representing past due child support and interest. We affirm.

Hodges and Smith were married in 1975 and were divorced by a decree of dissolution from the Harlan Circuit

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<sup>1</sup> It is unclear whether Veverlee's last name is now Short or Smith. In the notice of appeal, the appellant states that Veverlee's last name is now Short. However, in the order appealed from and in Veverlee's brief, it is stated that her last name is now Smith. Therefore, we will refer to her in this opinion as "Smith."

Court on October 31, 1978. Pursuant to the terms of the decree, Hodges was ordered to pay \$135.00 per month as child support for the parties' daughter. That amount was modified to \$35 per week by the court's order of April 6, 1984. On November 16, 1984, the court modified Hodges' child support obligation to \$200 per month. The order further stated that "no orders be entered with respect to the arrearage of \$280 currently and a prior arrearage of \$7,615.00, as of February, 1984."

On December 6, 1985, the court entered a wage assignment order against Hodges for \$200 per month. That order also stated that the court "withholds further action on the arrearage of \$9,415 for further orders, pending the present assignment of wages."

On March 30, 1989, the court ordered a temporary suspension of Hodges' child support obligation. A similar order was entered by the court on April 28, 1989. On June 13, 1989, the court ordered that its previous order temporarily suspending Hodges' child support obligation "shall remain in full force and effect pending further orders of this Court or other court of competent jurisdiction."

On May 8, 1992, the court entered an order finding that Hodges owed an arrearage for child support of \$15,395. The order stated that the arrearage accumulated from the date of the divorce in 1978 through March 30, 1984, when Hodges' obligation

was suspended. The order also directed Hodges to pay \$50 per month, \$25 to Smith and \$25 to his daughter. Further, the order stated that "this judgment is a final and appealable order."

On December 18, 1996, the court ordered Hodges to pay \$100 per month on the arrearage.<sup>2</sup> On June 20, 2000, the court ordered Hodges to continue paying \$100 per month on the arrearage and ordered the Cabinet for Families and Children to recalculate the arrearage for the period commencing with the date of divorce through June 12, 2000.

An evidentiary hearing was held on November 13, 2000. Hon. Shannon Doan, who had previously represented Smith, testified in her capacity as an assistant county attorney. Doan testified that Hodges owed an arrearage of \$11,171.70. Her computations began with the court's order of December 6, 1985, setting Hodges' arrearage at \$9,415.

The court rendered the order and judgment that is the subject of this appeal on November 28, 2000. Therein, the court granted Smith a judgment against Hodges in the principal amount of \$15,466.09, representing the amount owed as of December 31, 1992. Further, the judgment stated that Hodges should be credited with payments totaling \$2,134.39 made after that date. The judgment also included interest at 12% per annum from

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<sup>2</sup> By this time, the child was an adult and Hodges' child support obligation had ceased.

January 1, 1993. Therefore, the total amount of the judgment, including principal and interest, was \$34,179.59. The judgment further directed interest at 12% per annum until paid in full. This appeal by Hodges followed.

Hodges' first argument is that the court erred in calculating the arrearage amount. He asserts that the court should have used the figures given by Doan and established the arrearage amount at \$11,171.70. Doan's calculations were based on a beginning point of the December 6, 1995 order which referred to an arrearage of \$9,415. The court's computations used the order of May 8, 1992, as a beginning point.

We agree with Smith that the court's method of computing the arrearage was correct. The order of May 8, 1992, was stated to be final and appealable. As such, Hodges should have appealed from that order if he intended to challenge the arrearage amount established therein. He is now precluded from challenging those figures.<sup>3</sup>

Hodges' second argument is that the court abused its discretion by failing to credit him with payments made during the years 1986, 1987, 1991, and 1992. We again note that the May 8, 1992 order was a final judgment as to the arrearage amount owed as of that date. Therefore, Hodges was bound by the

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<sup>3</sup> The court's computation of the principal amount owing as of December 31, 1992, was apparently based on the arrearage amount of \$15,395 as stated in the May 8, 1992 order, plus \$421 for the return of the IRS intercept less \$350 for a 1992 payment.

judgment as to his claim for credit for payments made prior to the date of the judgment. As for credit for payments made after the May 8, 1992 judgment during the year 1992, the record indicates payments of \$350. As we have noted in our footnote above, it appears the court credited Hodges with this amount.

Hodges' third argument is that the judgment should be reversed or vacated based on "the preponderance of the evidence." He argues that Doan's testimony is "the only evidence of record as to the total extent of Appellant's obligations and payments from October 31, 1978, through November 28, 2000." He maintains that the court intended to rely on Doan's testimony and that it is reversible error for the entry of a judgment contrary to that testimony. Again, this argument is without merit because it overlooks the fact that the court was bound to compute arrearages beginning with the determination in the 1992 final judgment.

Hodges' last argument is that this court should reverse the portion of the judgment awarding Smith interest on the arrearages. In support of his argument, Hodges cites Guthrie v. Guthrie, Ky., 429 S.W.2d 32 (1969). Therein, the court held that interest should be allowed on child support "in the absence of factors making it inequitable." Id. at 36. The facts in the Guthrie case are very much distinguishable from the facts in this case. We conclude that the trial court did not

abuse its discretion in requiring interest and that it was not inequitable to have done so.

Hodges also contends that interest should not have been allowed because none of the prior orders establishing a lump-sum arrearage amount imposed interest. He maintains that "the orders omitting judgment interest should be considered final and cannot be modified at this late point in time."

"[T]he fact that a judgment or decree is silent as to interest will not prevent the recovery of interest thereon." Commonwealth, Dept. of Highways v. Young, Ky., 380 S.W.2d 239, 240 (1964), quoting 47 C.J.S. Interest § 21, p. 34. See also Courtenay v. Wilhoit, Ky. App., 655 S.W.2d 41, 42 (1983). In short, interest at 12% per annum pursuant to KRS<sup>4</sup> 360.040 "would run on the past due payment from its due date until paid." Id.

The judgment of the Harlan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Otis Doan, Jr.  
Harlan, Kentucky

BRIEF FOR APPELLEE:

Russell D. Alred  
Harlan, Kentucky

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<sup>4</sup> Kentucky Revised Statutes.