

RENDERED: JUNE 6, 2003; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001009-MR

MIKELL GRAFTON SKINNER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JERRY J. BOWLES, JUDGE
ACTION NO. 01-FC-005294

WILLIAM F. MCMURRY

APPELLEE

OPINION

AFFIRMING

** ** *

BEFORE: BAKER AND HUDDLESTON, JUDGES; and JOHN D. MILLER,
SPECIAL JUDGE.¹

BAKER, JUDGE. Mikell Grafton Skinner brings this appeal from a
November 21, 2001, order of the Jefferson Family Court. We
affirm.

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Appellant and appellee were married in 1981, and a decree dissolved that marriage in September 1994. The decree incorporated a property settlement agreement whereby appellee agreed to pay child support in the amount of \$1,500.00 per month for the benefit of the parties' two minor children. In 1996, that amount was decreased by agreement to \$1,300.00 per month, and in 1999, the amount was increased by agreement to \$2,000.00 per month.

In September 2001, appellant filed a motion to increase child support, and on September 4, 2001, appellee served upon appellant's counsel a Request for Production of Documents and Interrogatories (request for interrogatories). Appellant failed to timely answer the request for interrogatories, and as a result, appellee filed a motion to compel on October 11, 2001. The Jefferson Family Court entered an order on October 15, 2001, requiring appellant to "provide complete answers and complete copies of all documents . . . to [appellee's] Attorney on or before 30th of October 2001." Thereafter, appellee's counsel sent a letter to appellant's counsel dated November 1, 2001, requesting answers to the request for interrogatories. In response, appellant's counsel sent a letter dated November 7, 2001, to appellee's counsel which enclosed a copy of appellant's 2000 tax return and stated that appellant had complied with the request for

interrogatories. Thereupon, appellee filed a motion to dismiss for failure to answer the request for interrogatories. A hearing was held on the motion to dismiss, and appellant's counsel failed to appear. Appellant alleged that she had the flu on that day. The family court granted appellee's Motion to Dismiss and dismissed appellant's motion to increase child support. Appellant then filed a motion to reconsider the dismissal. The court ultimately held a hearing on appellant's motion to reconsider; on April 12, 2002, the family court denied the motion thus precipitating this appeal.

Appellant contends the family court erred by dismissing her motion to increase child support. Specifically, appellant contends that the sanction of dismissal is a draconian sanction and that the family court abused its discretion by imposing same. We must disagree.

The interrogatories served upon appellant requested that appellant provide a current list of mortgages, loans, debts, liabilities or other obligations of appellant. It also requested a list of expenditures and expenses paid by appellant for the benefit of the parties' two minor children and a list of gross receipts from any business in which appellant may have an interest. Appellant believes that she is not required to create such lists and states that she does not have in her possession such lists. We think that appellee was indeed entitled to such

lists. We observe that the parties' income were above the child support guidelines; therefore, evidence of income and expenses were relevant to the determination of child support. Kentucky Revised Statute 403.211. Moreover, we are of the opinion that appellant's continual refusal to answer the interrogatories formed a sufficient basis upon which to justify the circuit court's dismissal of the current action. It is well established that dismissal of an action is an appropriate sanction where a party has failed to respond to interrogatories. Benjamin v. Near East Rug Co., Inc., Ky., 535 S.W.2d 848 (1976); Naive v. Jones, Ky., 353 S.W.2d 365 (1961). We also note that appellant has suffered little prejudice by the dismissal as appellant may file another motion to increase child support. Upon the whole, we are unable to conclude that the family court abused its discretion by dismissing appellant's motion to increase child support.

For the foregoing reasons, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas E. Clay
Louisville, KY

BRIEF FOR APPELLEE:

Teresa M. Kinberger
Louisville, KY