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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002740-MR

JOHN PETER VINCENT HOLLIS, DVM — APPELLANT

v.

APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 99-CI-00152

CHERYL HOLLIS — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: DYCHE, KNOPF, AND MINTON, JUDGES.

DYCHE, JUDGE: John and Cheryl Hollis were married in 1986 and separated in 1999. The parties have three children. Their marriage was dissolved in 2000, and this Court, in a twenty-one page opinion rendered May 2, 2003, affirmed all aspects of the dissolution judgment. However, issues continued to arise between John and Cheryl, and court intervention became necessary more than once. The appeal before us, brought by John *pro se*, contains three arguments. We affirm.

John first disagrees with the trial court's finding that he was in contempt for failing to cooperate with Cheryl over the visitation schedule. The court had ordered that the parties work together to establish a yearlong visitation schedule by January 31, 2003; the order further stated that, should an agreement fail to be reached, the court would set the schedule and the non-cooperating party would be sanctioned. John was found in contempt, and he appeals that finding, arguing that "[t]he language in the order did not specify adequately the criteria to be used to determine fault."

The record indicates that the January 31, 2003, deadline was set by order entered July 3, 2002, giving the parties half a year to agree to a schedule. Once the deadline passed and Cheryl moved for sanctions, John was given an opportunity to answer and a hearing at which he could present his side of the story. The Domestic Relations Commissioner filed its recommendations in April 2003, after which John filed no exceptions. The trial court adopted those recommendations in May 2003, and the record contains no further challenge from John until after the trial court's November 2003 order finding him in contempt for not paying the sanctions imposed in the May 2003 order. Therefore, this issue is not properly before us. Furthermore, John has not met his burden on appeal, and we have no recourse but to affirm the finding.

John's second argument concerns the parental counseling sessions. In its Final Order dated March 27, 2002, the trial court included this finding: "The Court determines that it is in the best interest of the parties and their minor children to continue family and parental counseling with Dr. Diana Hartley with the parties being responsible for the cost associated with this counseling on a 50-50 basis."

However, after these sessions proved fruitless, the trial court, in its November 2003 order, amended its earlier finding, thereby suspending the parental counseling. This finding was prompted by John's motion to hold Cheryl in contempt for refusing to attend any further meetings with the counselor. John insists that this finding should be reversed, that Cheryl should be held in contempt, and that she should be ordered to pay half of the family therapist's bill. The record supports the trial court's findings on this issue in all respects, and we affirm it.

Appellant's last argument is that the wage assignment should have been changed to reflect his deduction for paying health insurance premiums. This issue is not properly before us, not having been addressed by John in his initial appeal to this Court. John is again attempting to bypass the rules of civil procedure in an effort to reduce his child support payment. The trial court correctly denied his motion.

The judgment of the Woodford Circuit Court is affirmed.

MINTON, JUDGE, CONCURS.

KNOPF, JUDGE, CONCURS WITH SEPARATE OPINION.

KNOPF, JUDGE, CONCURRING: I agree with most of the reasoning and the result of the majority opinion. But I write separately because I do not agree that the third issue raised in John's appeal is not properly before this Court. To the extent that John sought reimbursement for health-insurance premiums which he had paid prior to filing his motion, I agree that this was an improper attempt to circumvent the final and unappealed support order entered in 2002.

However, KRS 403.213 permits a party to move to prospectively modify a support order. While John's *pro se* motion was poorly drafted, he specifically requested a modification of his support obligation prospectively as well as retroactively. Furthermore, when calculating a child-support obligation, the child's health insurance premium is added to the total child-support obligation, which is then allocated proportionally between the parents based on their respective incomes. When the court orders the non-custodial parent to pay the child's health insurance premium, the premium is subtracted from the total amount of support owed by the non-custodial parent. KRS 403.211(7). Thus, John had a reasonable basis to

argue that he may be entitled to an adjustment in his support obligation to reflect the health-insurance premium which he pays on behalf of his children. Therefore, I disagree with the trial court that John's motion violated CR 11.

Nevertheless, any error by the trial court in this regard did not affect John's substantial rights. Although the trial court found that John violated CR 11, it declined to impose any sanctions. Moreover, John's motion did not state any grounds for prospectively modifying child-support. He did not attempt to show that his support obligation would be reduced by more than 15% under a proper application of the child-support guidelines. KRS 411.213(2). Furthermore, in its original support order, the trial court deviated from the child-support guidelines, reducing John's child support obligation to account for the nearly equal amount of custodial time granted to each parent. John was not entitled to an additional reduction in his child-support to reflect the amount of the health insurance premiums which he paid on behalf of the children. Consequently, I agree with the majority that the trial court did not err in denying John's motion to modify child support.

APPELLANT *PRO SE*	BRIEF FOR APPELLEE:
John P. Hollis, DVM Frankfort, Kentucky	James L. Thomerson Lexington, Kentucky