

RENDERED: February 18, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000069-MR

ROY GLEN JONES

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 02-CI-00490

JUDY CAROLYN JONES

APPELLEE

OPINION
VACATING

** ** * * * * *

BEFORE: KNOPF AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: Roy Glen Jones and Judy Carolyn Jones were divorced by a decree of dissolution entered on September 25, 2003. The decree disposes of the parties' marital and non-marital property and debts, and recites that it is a final and appealable order. Despite that the circuit court recognized that Judy had filed a motion for temporary and permanent maintenance, no denial or award of maintenance was made in the

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

decree. On October 21, 2003, Judy filed a pro se motion requesting a hearing concerning the "property division, items allegedly missing, and Jones's monthly retirement income." Having noted that through its own inadvertence there was an omission of a maintenance award to Judy, the court by amended decree of October 28, 2003, corrected such omission by awarding her \$200 per month for eleven years. Roy filed a motion to vacate the amended decree on the basis that the circuit court lacked jurisdiction to amend the decree after the expiration of ten days from its entry. It was denied and this appeal followed.

Our civil rules permit relief from a final judgment but only under certain conditions and within applicable time limitations. A court can always amend a judgment either on its own initiative or on the motion of a party within ten days after its entry.² But in this case the ten-day period had passed when Judy filed her pro se motion.

CR 60.01 permits the correction of clerical mistakes at any time with or without a motion being filed by a party. Its application, however, is limited to clerical mistakes and cannot serve as a basis for the court to make substantive changes in the judgment.³ The award of maintenance in the

² Kentucky Rules of Civil Procedure (CR) 52.02.

³ Potter v. Eli Lilly and Co., 926 S.W.2d 449 (Ky. 1996).

amended decree was not the correction of a clerical mistake but was a substantive amendment to the original decree.

CR 60.02 permits the reopening or vacating of a judgment after ten days but is available only to a party or his legal representative and cannot be used as a means for the circuit court on its own initiative to amend its judgment.⁴ And "this Rule is not available for correction of an error or mistake of law by the court."⁵ Although Judy filed a motion requesting a hearing for the court to reconsider the property distribution, there is no mention of mistake, inadvertence, surprise or excusable neglect that would justify relief under CR 60.02.

Judy relies on Potter where it was held that the courts have the inherent authority and duty to determine that its judgments accurately reflect the truth; Potter, however, simply has no application to this case. In Potter, there was evidence that the parties had not been honest with the circuit court concerning settlements reached prior to submission of the case to the jury, and finding that there had been possible fraud or misrepresentation affecting the integrity of the judicial proceeding, the Supreme Court held that the circuit court was within its authority to investigate and, if necessary, to amend

⁴ Id. at 452.

⁵ James v. Hillerich & Bradsby Co., 299 S.W.2d 92, 93 (Ky. 1957).

its judgment to reflect the actual facts. In this case, there is no fraud or suggestion that any party was less than truthful with the court. The omission of the maintenance award was a judicial error that could be corrected only pursuant to CR 52.02. After the ten-day time limitation passed, the court lost authority to amend its judgment.

The amended decree is vacated.

ALL CONCUR.

BRIEF FOR APPELLANT:

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