

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000206-MR

EARL L. BELLAR

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 02-CI-00505

COMMONWEALTH OF KENTUCKY,
EX REL., GERTRUDE MARION
BELLAR (NOW SKAGGS)

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

DYCHE, JUDGE: Earl L. Bellar and Gertrude Bellar Skaggs were divorced by decree of the Greenup Circuit Court on November 13, 1980. The decree provided that Gertrude would have custody of their two daughters, then ages five and fifteen, and that Earl would pay "\$200.00 per month child support. The support will cease when the daughter becomes eighteen years of age."

Earl apparently paid little or no support, and on August 9, 2002, the Commonwealth of Kentucky, on behalf of Gertrude, moved to redocket the case and establish arrearages and order a method of repayment. The Commonwealth alleged that Earl owed \$28,822.55, this sum being calculated from date of the decree until the younger daughter became emancipated, at the rate of \$200.00 per month.

Earl defended by asserting that he was prejudiced by the long delay in collection attempts, having misplaced the records of the payments he had made. He also claimed that KRS 413.090, the fifteen-year statute of limitations on enforcement of judgments, would bar collection of any amounts accruing prior to July 24, 1988, fifteen years prior to the filing of the motion to determine arrearage. He also argued that the support should have been halved when the older daughter turned eighteen years of age.

The domestic relations commissioner agreed in part, recommending to the court that Earl pay \$9800.00, the amount due from August 1, 1988, until the younger child turned eighteen. The commissioner cited Mauk v. Mauk, 873 S.W.2d 213 (Ky.App. 1994) as authority on the limitations issue.

Both parties filed exceptions to the commissioner's recommendations, and the trial court ruled for the Commonwealth, citing Harvey v. McGuire, 635 S.W.2d 8 (Ky.App. 1982) as

authority, and ordering Earl to pay \$28,400.00. This appeal followed.

The Commonwealth has filed no brief. As we are allowed by CR 76.12(8), we summarily reverse the trial court on the issue of limitations, finding that Earl is responsible for support from no earlier than August 1, 1988. We affirm the trial court on the required monthly payment of \$200.00, finding no support for Earl in the record for any reduction when the older daughter turned eighteen.

The order of the Greenup Circuit Court is affirmed in part, reversed in part, and remanded for entry of an order consistent with this opinion.

TACKETT, JUDGE, CONCURS.

HENRY, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

HENRY, JUDGE: I respectfully dissent. I agree with the trial court that this case is controlled by Harvey v. McGuire, 635 S.W.2d 8 (Ky. 1982), and I would therefore affirm. Our application of CR 76.12 (8) in this way is discretionary¹ and I would not disturb the trial court's carefully-reasoned order.

¹See for example Kupper v. Kentucky Bd. of Pharmacy, 666 S.W.2d 729, 730 (Ky. 1983).

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Bruce E. Blackburn
Spear & Blackburn, P.S.C.
Raceland, Kentucky