

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001291-MR

PAUL JAMES LANIER

APPELLANT

v. APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 87-CI-00015

DONNA BETH LANIER (NOW THOMAS)

APPELLEE

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Paul James Lanier appeals from a May 28, 2004, Order of the Ballard Circuit Court awarding Paul \$10,577.60 against Donna Beth Lanier (now Thomas) for child support payments made by Paul to Donna that were procured by her fraud. The original order, entered April 23, 2002, awarded Paul \$25,029.35. We dismiss.

Paul and Donna were married on December 14, 1985, and divorced by decree of dissolution of marriage entered in the Ballard Circuit Court on September 15, 1988. One child was born of the parties' marriage. Paul was ordered to pay child support.

In October 9, 2000, Paul filed a motion to terminate child support. Attached to the motion was a copy of a DNA Parentage Test Report. The report stated that within a 99.95% probability, Warren L. Thomas was the father of the parties' child. On January 15, 2002, Paul filed a "Motion For Return Of Child Support Paid." Paul alleged that Donna had "perpetrated a fraud upon the Court" and that he was "entitled a refund of the child support he has paid as well as an award of damages for the times that he was held in contempt for failure to pay child support." On April 23, 2002, the circuit court entered an order granting Paul judgment against Donna for the total amount of child support paid, \$25,029.35.

On April 22, 2004, almost two years after the circuit court's judgment was entered, Donna filed a "Motion To Amend Prior Order." The motion stated as follows:

Much discussion was had as to the time frame and the Court came to the conclusion that [Donna] should repay the support she had received for the five years prior to the date of her paternity test. When the final Order was provided to the Court, it erroneously required [Donna] to repay the

entire amount of support she had received from [Paul].

Donna requested the court to amend its judgment to reflect an amount equivalent to child support Paul paid in the five years immediately preceding the date of the paternity test.

The circuit court granted Donna's motion on May 28, 2004, and specifically stated as follows:

IT IS HEREBY ORDERED, DECREED AND ADJUDGED:

1. That the Order entered April 19, 2002, contained a clerical error setting the judgment amount at \$25,029.35.
2. That the Order of the Court in open Court on March 1, 2002, was for payment for five years next preceding the discovery of the fraud.
3. That the correct amount of payment due by [Donna] is \$10,577.60.
4. That the Order entered by this Court on April 19, 2002, be and is hereby amended to reflect the above amended amount of \$10,577.60.

This appeal follows.

Paul contends that the circuit court erroneously amended the judgment from the full amount of child support he paid Donna to the amount he paid her in the five years immediately preceding the paternity test. Specifically, Paul contends that Donna's motion to amend the judgment "pursuant to CR 60.02" was not appropriate and was not timely filed and that "there was no 'clerical error' in the damages awarded."

A review of the record reveals that Donna's motion was not made pursuant to Ky. R. Civ. P. (CR) 60.02. The motion merely requested that the April 23, 2002, order be amended to "correct" the amount of the judgment and the court clearly treated the motion as one made pursuant to CR 60.01.

CR 60.01 states, in relevant part, as follows:

Clerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

CR 60.01 balances the interests of accuracy and finality in judgments. See Aurora Loan Services v. Ramey, 144 S.W.3d 295 (Ky.App. 2004). The balancing of accuracy and finality is accomplished by applying the unlimited time frame of the rule to the very narrow scope of clerical errors. See id. This Court explained the rationale for the rule as follows:

The rationale for the provision that a motion to correct a clerical error may be made "at any time" is that the judgment simply has not accurately reflected the way in which the rights and obligations of the parties have in fact been adjudicated.

Id. at 298-299 (citation omitted).

In the case *sub judice*, it is clear that the circuit court was merely correcting the judgment so that it accurately reflected the ruling previously announced from the bench. At the March 1, 2002, hearing on Paul's motion, the court stated

that judgment was for an amount equal to the support paid in the five years immediately preceding discovery of the fraud. The court's written order entered on April 23, 2002, through what appears to be a clerical error, stated that judgment was for an amount equal to all the support Paul paid. We believe that the error in the court's April 23, 2002, order is clearly the type of error CR 60.01 was intended to correct.

It is also well-established that an appeal may not be taken from an order correcting a clerical mistake in a judgment. See Maslow Cooperage Corp. v. Jones, 316 S.W.2d 860 (Ky. 1958). Where the time for taking an appeal has expired, entry of an order correcting a clerical mistake does "not operate to revitalize the judgment in such a way as to start anew the running of the period for taking an appeal." Id. at 862. In this case, the original judgment was entered April 23, 2002. Paul filed the instant notice of appeal on June 28, 2004. As such, the notice of appeal was not filed within thirty days as required by CR 73.02(1)(a). Accordingly, we must conclude the instant appeal was untimely filed.

Now therefore be it ORDERED that Appeal No. 2004-CA-001291-MR is dismissed.

BUCKINGHAM, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

ENTERED: November 4, 2005

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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