

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED
MODIFIED: JULY 21, 2006; 10:00 A.M.

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-001411-MR

R.F.

APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE KEVIN L. GARVEY, JUDGE
ACTION NO. 87-FP-004739

R.P.H.

APPELLEE

OPINION
AFFIRMING

** **

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

TACKETT, JUDGE: R.F. appeals from an order of the Jefferson Family Court dismissing her motion to set aside a 1990 judgment in her paternity action against R.P.H. R.F., who represents herself, presents no legal arguments in her support of her motion, rather she relies on a lengthy recitation of facts in an attempt to persuade this Court that the trial court ruled

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.

incorrectly. We disagree and affirm the decision of the family court.

R.F. filed a paternity action in Jefferson District Court in 1987 seeking to have R.P.H. adjudged the father of her unborn child. The child was born June 17, 1988. R.F. and R.P.H. signed an agreed order, dated September 13, 1990, dismissing the paternity action with prejudice. The parties were both represented by attorneys at the time. R.F. contends that there was an agreement between the parties regarding child support; however, such an agreement has never been made a part of any court record. In fact, R.F. states in her brief that she considered signing the agreement and decided not to.

In February 2004, R.F. filed a motion, through counsel, asking the Family Court to set aside the 1990 order which had dismissed her paternity action against R.P.H. According to a note on the March 5, 2004, court calendar, the case was passed until May 7th after counsel advised the court that the parties planned to arrange for DNA tests. After citing her failure to cooperate with him, R.F.'s counsel was permitted to withdraw from her case at the end of May. She subsequently filed a *pro se* motion requesting, among other things, that R.P.H. be held in contempt of court for failure to comply with a non-existent court order to undergo DNA testing. R.P.H. filed a motion with a supporting memorandum requesting that the action

be dismissed. On July 16, 2004, the Family Court entered an order stating that the "case was dismissed with prejudice on 9-13-90. [Plaintiff] has no standing to bring any of these motions." This appeal followed.

As previously stated, R.F. cites no legal precedents in support of her argument that the trial court erroneously dismissed her motion. Kentucky Rule of Civil Procedure (CR) 60.02 allows the court to set aside its previous judgment against a party on the following grounds:

- (a) mistake, inadvertence, surprise or excusable neglect;
- (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02;
- (c) perjury or falsified evidence;
- (d) fraud affecting the proceedings, other than perjury or falsified evidence;
- (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) any other reason of an extraordinary nature justifying relief.

The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

R.F. does not cite to CR 60.02, nor does she argue any of the grounds contained in the rule in support of her motion to set

aside the 1990 judgment. Further, CR 60.02 requires that motions to set aside final judgment be filed within a reasonable time, or on grounds (a), (b) and (c), within one year of the entry of judgment. R.F. fails to present any legal grounds which would entitle her to have the 1990 agreed order set aside.

Consequently, the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

R.F., *Pro se*

BRIEF FOR APPELLEE:

Steven J. Kriegshaber
Louisville, Kentucky