

RENDERED: JANUARY 27, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED  
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# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002171-MR

FASIKA A. SHIFERAW

APPELLANT

v. APPEAL FROM CLARK FAMILY COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NO. 99-CI-00123

SAMUEL D. MILLS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON, KNOPF, AND VANMETER, JUDGES.

VANMETER, JUDGE: Fasika A. Shiferaw appeals pro se from a postdissolution order of the Clark Family Court directing the release of funds held in escrow after the sale of the parties' marital residence. For the reasons stated hereafter, we affirm.

This is one in a series of appeals which Shiferaw has filed concerning various actions related to the dissolution of her marriage to appellee Samuel David Mills. The particular matter now before us relates to an order, entered on September 22, 2004, in which the trial court directed as follows:

1. The net proceeds from the sale of the parties' marital residence, in the amount of \$12,382.89, shall be immediately distributed from escrow pursuant to the terms set forth in this Order.
2. \$9,191.44 of the foregoing amount shall be paid to the Petitioner. This sum represents Petitioner's one-half of the net proceeds, plus an additional \$3,000.00 for income taxes he paid on Respondent's behalf and to reimburse Petitioner for the marital property removed by Respondent from the parties' residence at the time of separation.
3. Next, the Guardian Ad Litem fees of Brian N. Thomas, Esq. shall be paid. Mr. Thomas shall submit a bill to M. Alex Rowady and file a copy with the Court.
4. Next, \$300.00 shall be paid to M. Alex Rowady, Esq. pursuant to the Order entered herein on October 22, 2003 requiring Respondent to pay Petitioner's attorney's fees in said amount.
5. The balance in escrow shall be paid to Respondent.

Shiferaw contends on appeal that the trial court erred by entering the September 22, 2004 order for the release of escrow funds because she was not served with a copy of the motion seeking the release of funds, and she was not present in court for a hearing on the motion. More specifically, Shiferaw indicates that her correct address is 1317 Centre Parkway Apt. 52 in Lexington, and that the motion mailed to her at 1317

Centre Parkway Apt. 14 on September 14, 2004 never reached her.<sup>1</sup> She alleges that she therefore was unaware of the pending motion until after the court's September 22 order was entered and mailed to her correct address.

However, the record shows that even after Shiferaw received a copy of the September 22 order, she neither filed a motion to set aside that order, nor took any other action in the circuit court. Instead, she simply filed this appeal "from order for release of escrow funds." As the allegation of improper service of the motion was not timely raised or addressed below, it was not preserved for review and is not properly before this court on appeal.<sup>2</sup>

Further, in any event the order from which Shiferaw appeals merely directs that the funds held in escrow should be distributed in accordance with various orders previously entered by the trial court. As those underlying orders are not before

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<sup>1</sup> Appellee's brief on appeal states that the motion "was mailed to Appellant one week before the scheduled hearing date," that the motion's certificate of service "indicated the copy was addressed to Appellant at a unit she previously occupied in the same apartment complex where she continues to reside" with the result that "there can be little doubt she received the motion in a timely manner given the proximity of her previous and current addresses," that Shiferaw's "correct address was listed on the order entered by the lower court, thus dispelling any notion Appellee or the trial court intended to hide the existence of a hearing or its outcome from" Shiferaw, and that "the envelope containing [the] motion was never returned by the Postal Service to" counsel for appellee.

<sup>2</sup> CR 76.12(4)(c)(iv). See, e.g., *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750 (Ky. 2005); *Skaggs v. Assad, by and through Assad*, 712 S.W.2d 947 (Ky. 1986).

us in this appeal from the order disbursing escrow funds, we lack jurisdiction to address the equity of such orders herein.

The order of the Clark Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Fasika A. Shiferaw, pro se  
Lexington, Kentucky

BRIEF FOR APPELLEE:

M. Alex Rowady  
Winchester, Kentucky