

RENDERED: SEPTEMBER 30, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000235-ME

ERIC STRATTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELEANORE M. GARBER, JUDGE
CIVIL ACTION NO. 97-FC-002040

CAUSANDRA M. STRATTON AND
COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

MINTON, JUDGE: Eric Stratton brings this *pro se* appeal of the Jefferson Family Court's order denying his motion to modify child support. Finding no error, we affirm.

When Eric and Causandra Stratton divorced in 1997, Eric was serving time in prison and Causandra was given custody of their two small children. Under the terms of their property

settlement agreement, which was incorporated into the decree, the issue of child support was "reserved until further order of the court." And the decree made no mention of child support. Under the agreement, Eric also released any claim he may have had to two pieces of real estate.

Because Causandra received welfare payments for the support of these children, the Cabinet for Families and Children was allowed to intervene in the divorce case in 1999 to set a child support obligation. A hearing on child support was held before a Domestic Relations Commissioner (DRC) who recommended a finding that Eric's incarceration did not relieve him of his obligation to pay child support. And the DRC recommended imputing \$6.00 per hour as income to Eric, which, based upon the child support tables, caused Eric's child support obligation to be \$301.60 per month. Eric objected to the DRC's recommendation. But the Family Court, without mentioning Eric's objections, signed an order adopting the DRC's recommendation. This is Eric's appeal from that order.

In September 2002, while Eric's first appeal was pending, the Family Court denied Eric's motion to modify the child support without comment. In January 2003, we dismissed Eric's first appeal because his notice of appeal had not been timely filed.

The case was dormant until April 2004, when Eric filed another motion to modify the child support and to hold the child support in abeyance during his incarceration. Although the Family Court denied Eric's motion to modify, it did suspend the enforcement of the child support order during Eric's incarceration, meaning that he was not required to make payments while incarcerated (although his support obligation still accumulated at the rate of \$301.60 per month during his incarceration). Eric then filed this appeal.

It is difficult to discern the meaning of much of Eric's brief, but we construe it to be a general argument against the imposition of a child support obligation while he is incarcerated. Kentucky law is clear, however, that suspending child support obligations simply because a parent is incarcerated is improper.¹ Incarceration is equated with voluntary underemployment, meaning that for child support purposes, income may be imputed to the incarcerated parent.² Furthermore, we find no fault with the Jefferson Family Court's decision to impute an hourly income of \$6.00 for a 40-hour week to Eric. That income level is only slightly higher than the minimum wage, and it is below the \$7.00 to \$8.75 hourly wage

¹ Commonwealth ex. rel. Marshall v. Marshall, 15 S.W.3d 396, 401 (Ky.App. 2000).

² *Id.*

Eric earned before incarceration. This conclusion is reinforced by the fact that the Family Court's order explicitly provides that if Eric "find[s] that he cannot obtain gainful employment at a salary of \$6.00 per hour or more [upon his release], he can then bring that issue before the Court when the payment schedule for arrearages is set up." Furthermore, we reject Eric's argument that he should not have to pay child support because he relinquished whatever interest he may have had in two pieces of real property under the parties' property settlement agreement. That agreement contains no *quid pro quo* provision stating that Eric's relinquishment of his rights, whatever they may have been, in the real estate somehow exempts him from paying child support.

For the foregoing reasons, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Eric Stratton, *Pro se*
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BRIEF FOR APPELLEES:

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