

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000260-MR

LARRY REINLE

APPELLANT

v.

APPEAL FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 93-CI-00194

COMMONWEALTH OF KENTUCKY
CABINET FOR FAMILIES & CHILDREN
EX REL DELLA M. REINLE

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: GUIDUGLI AND HENRY, JUDGES; POTTER, SENIOR JUDGE.¹

HENRY, JUDGE: Larry Reinle appeals, pro se, from a ruling of the Nelson Circuit Court ordering that \$1,200.00 be disbursed from property sale proceeds towards the payment of owed child support. Upon review, we affirm.

On July 8, 1993, a judgment was entered in which Reinle was directed to pay child support in the amount of

¹ Senior Judge John Woods Potter, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

\$200.00 per month for his minor children. On December 16, 1998, the Nelson County Grand Jury indicted Reinle on counts of first-degree arson, first-degree assault, and the attempted murder of his wife. He was subsequently convicted on the assault and arson charges and was sentenced to thirty (30) years imprisonment. As a result of being incarcerated, Reinle became unable to pay his child support obligation once his funds were exhausted. The former Cabinet for Families and Children² subsequently filed an action against him to recover the child support for which he was in default—an amount totaling \$10,934.50 plus taxable costs and 12% interest from December 31, 2002.

As a result of this proceeding, a lien was placed against all land owned by Reinle to secure payment of the owed child support. On February 7, 2003, a Complaint for Foreclosure was filed against Reinle, which resulted in his property being sold for \$40,000.00 at a public auction on December 17, 2003. After a deduction of fees and costs, \$37,925.03 was left in the possession of the Master Commissioner.

On April 30, 2004, Reinle's child support arrearage was valued at \$16,273.13. Reinle asserted that he was entitled to a \$5,000.00 homestead exemption from the proceeds of the

² On December 23, 2003, Governor Fletcher signed an Executive Order merging the former Cabinet for Families and Children and the Cabinet for Health Services to form the present Cabinet for Health and Family Services.

property sale, as well as a 50% exemption on the sale price pursuant to KRS³ 405.470(2). In decisions rendered on May 14 and May 20, 2004, the Master Commissioner was directed to disburse \$13,962.52 of the property sale proceeds for the payment of Reinle's defaulted child support obligation as of April 30, 2004. This sum represents the difference between 50% of the property sale price and the \$5,000.00 homestead exemption claimed by Reinle. The Master Commissioner continued to hold the remaining balance.

On October 1, 2003, the trial court ruled that the claimed \$5,000.00 homestead exemption was not exempt from disbursal. Reinle appealed this decision, but voluntarily dismissed this claim on May 7, 2004, in Case No. 2003-CA-002731. As to Reinle's contention that he was entitled to a 50% exemption on the property sale price, this court held in Reinle v. Commonwealth, 170 S.W.3d 417 (Ky.App. 2005), that KRS Chapter 405 was not applicable and, accordingly, Reinle was not entitled to the 50% exemption he claimed.

On November 15, 2004, the trial court ordered that the remaining owed child support balance of \$2,310.60 be disbursed from the property sale proceeds and paid to the division of child support. The court further ordered that the Master Commissioner disburse \$1,200.00 as the value of owed child

³ Kentucky Revised Statutes.

support between April 30, 2004 and November 15, 2004, for a total disbursed amount of \$17,473.12.

On appeal, Reinle argues that the trial court acted without jurisdiction when it ordered that \$1,200.00 be disbursed to cover his child support obligation from April 30, 2004 to November 15, 2004. Reinle specifically contends that jurisdiction was lacking because the \$1,200.00 was improperly deducted from his share of the sale proceeds, because the order was rendered while his appeal on the issue of whether he was entitled to 50% of the sale proceeds was pending before this court, and because the \$1,200.00 was disbursed without the Cabinet having filed a separate child support arrearage action seeking this amount.

We question whether Reinle's argument that the \$1,200.00 was improperly deducted from his exempted share of the sale proceeds has been properly preserved for our review upon examination of the record on appeal. Nevertheless, we find that this assertion can be easily rejected as a result of our holding in Reinle, supra, that Reinle was not entitled to a 50% sale price exemption under KRS Chapter 405. Moreover, even assuming that he was entitled to this exemption, the record reflects that the trial court could have ordered disbursement of \$1,200.00 from the sale proceeds without encroaching upon his purported interest. Consequently, Reinle's argument is without merit.

As to Reinle's contention that the trial court lacked jurisdiction to order disbursal of the \$1,200.00 because an appeal was pending, in Johnson v. Commonwealth, 17 S.W.3d 109 (Ky. 2000), the Kentucky Supreme Court held: "As a general rule, except with respect to issues of custody and child support in a domestic relations case, the filing of a notice of appeal divests the trial court of jurisdiction to rule on any issues while the appeal is pending." Id. at 113 (Emphasis added) (Citations omitted). The issue at hand is clearly one involving child support, and Reinle has presented nothing of substance to indicate why this rule is not applicable here or why this case is distinguishable. Accordingly, we must reject his argument.

Reinle's final contention is that the \$1,200.00 should not have been disbursed without the Cabinet filing a separate child support arrearage action seeking this amount. Our review of the record shows that this assertion has not been properly preserved for our review. "An appellate court will not consider a theory unless it has been raised before the trial court and that court has been given an opportunity to consider the merits of the theory." Shelton v. Commonwealth, 992 S.W.2d 849, 852 (Ky. App. 1998) (citing Hopewell v. Commonwealth, 641 S.W.2d 744, 745 (Ky. 1982)). "Regardless of the merits of this argument, these grounds, being different from those asserted in the court

below, are not properly preserved for appellate review."

Daugherty v. Commonwealth, 572 S.W.2d 861, 863 (Ky. 1978).

We do note, however, that as a substantive matter Reinle provides absolutely nothing in terms of authority to support his argument, with the exception of a vague reference to KRS 403.211. Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority in support of the issues and arguments advanced on appeal. See Elwell v. Stone, 799 S.W.2d 46, 47-48 (Ky.App. 1990); Pierson v. Coffey, 706 S.W.2d 409, 413 (Ky.App. 1986). "[W]ithout any argument or citation of authorities, [an appellate] [c]ourt has little or no indication of why the assignment represents an error." State v. Bay, 529 So.2d 845, 851 (La. 1988). It is not our function as an appellate court to research and construct a party's legal arguments, and we decline to do so here. See, e.g., Doherty v. City of Chicago, 75 F.3d 318, 324 (7th Cir. 1996) (citations omitted); CR⁴ 76.12(4)(c)(v). Consequently, we shall not consider this issue further.

The ruling of the Nelson Circuit Court is affirmed.

ALL CONCUR.

⁴ Kentucky Rules of Civil Procedure.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

John S. Kelley, Jr.
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