RENDERED: MAY 23, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002098-MR

ROBIN MICHELLE ARCHER — CROSS-APPELLANT

v.

CROSS-APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 05-CI-501661

TIMOTHY ALYN POCKER — CROSS-APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON AND NICKELL, JUDGES; KNOPF,[1] SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Robin Michelle Archer cross-appeals the August 16, 2005, and September 28, 2005, orders of the Jefferson Circuit Court regarding the child support obligation of Timothy Alyn Pocker. We affirm.

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

On September 18, 1990, Robin and Timothy executed an agreement pertaining to their minor children. That agreement was incorporated into a judgment of the trial court. The agreement provided that Timothy would pay $50.00 per week to Robin as child support, a one time sum of $500.00 for reimbursement of her attorney's fees, and a one tine sum of $2,000.00 for child support arrearages and extraordinary medical costs already accrued.

Beginning on August 5, 2004, Robin began to file affidavits for writs of non-wage garnishment against Timothy for his failure to pay according to the September 18, 1990, agreement and court order. Multiple garnishment orders were then entered. On June 30, 2005, Timothy filed a motion for a hearing on the matter of child support and moved that the garnishment orders be set aside. A hearing was held on August 3, 2005, and on August 16, 2005, the trial court ordered, amongst other things, the following:

> [Robin] shall be awarded a common law judgment against [Timothy] in the amount of $500.00, together with interest thereon at the rate of 8% from September 18, 1990, when it was originally entered, until the date of entry of this judgment and at the judgment rate of 12% from the date of entry of this judgment until fully satisfied. This amount represents the attorney fess that [Timothy] agreed to pay [Robin]. . .
>
> [Robin] shall be awarded a common law judgment against [Timothy] in the amount of $2,000.00, together with interest thereon at the rate of 8% from September 18, 1990, when it was originally entered, until the date of entry of this judgment and at the judgment rate of 12% from the date of entry of this judgment until fully satisfied. This amount represents [Timothy]'s child support arrearages that he agreed to pay [Robin]. . .

> [Robin] shall be awarded a common law judgment against [Timothy] in the amount of $24,510.00, together with interest thereon at the rate of 8% from the date that each payment was due until the date of entry of this lump sum judgment and at the judgment rate of 12% from the date of entry of this lump sum judgment until fully satisfied. This amount represents [Timothy]'s child support owed to [Robin] for the period between September 18, 1990 and October 7, 2004.

Timothy filed a motion to alter and amend the August 16, 2005, order and Robin filed a motion to amend the August 16, 2005, order. Both motions were denied, in separate orders entered by the trial court on August 31, 2005, and September 28, 2005. On September 30, 2005, Timothy filed a notice of appeal. On October 10, 2005, Robin filed a notice of cross-appeal. On January 10, 2007, Timothy's appeal was dismissed.[2]

In Robin's cross-appeal, she makes the following arguments: 1) the trial court abused its discretion by failing to award her interest at the rate of 12% per annum on child support when it became past due and payable; and 2) the trial court erred by failing to award her the legal rate of interest set out in KRS 630.040 on the two common law judgments.

KRS 630.040, which mandates the accrual of interest on judgments, states:

> A judgment shall bear twelve percent (12%) interest compounded annually from its date. A judgment may be for the principal and accrued interest; but if rendered for accruing interest on a written obligation, it shall bear interest in accordance with the instrument reporting such

[2] Timothy's appeal was 2005-CA-002033-MR.

> accruals, whether higher or lower than twelve percent (12%). Provided, that when a claim for unliquidated damages is reduced to judgment, such judgment may bear less interest than twelve percent (12%) if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than twelve percent (12%). All interested parties must have due notice of said hearing.

In support of her first argument, Robin cites to *Gibson v. Gibson*, 211 S.W.3d 601 (Ky.App. 2006). The Court in *Gibson* found that the trial court had erred by failing to calculate interest on child support and medical arrearages. *Id.* Robin argues that *Gibson* does not grant the trial court the discretion to refuse the imposition of 12% interest. We disagree.

In its order, the trial court, citing *Stewart v. Raikes*, 627 S.W.2d 586 (Ky. 1982) and *Courtenay v. Wilhoit*, 655 S.W.2d 41 (Ky.App. 1983) as authority, stated "any sum of money due at a specified time under an [o]rder or an agreement becomes a judgment when the time has passed and the sum has not been paid." The trial court went on to explain that because Robin had waited almost fourteen years before attempting to collect the arrearages from Timothy, even though he had been continuously residing in Louisville, Kentucky, that an order of 12% interest would be inequitable. Specifically, the trial court stated: "[t]herefore, the [c]ourt finds that [Robin] is not entitled to 12% interest from the date of entry of each judgment due to her failure to timely enforce her rights."

The Court in *Gibson* stated:

> It is clearly discretionary with the court to award interest on a child support arrearage; if there are factors making it

> inequitable to require payment of interest it may be denied. However, in this case, the trial court did not make a finding of such inequity.

Id. at 611 (citation omitted). The Court is *Gibson* clearly gave the trial court discretion to deny interest on judgments, just not on that court's judgment, because there were no findings supporting such a decision. This fact makes *Gibson* distinguishable to the case sub judice, where the trial court clearly made findings that a 12% interest requirement was inequitable. However, instead of denying the interest altogether, the trial court chose to simply reduce it. We do not believe this to be an abuse of discretion.

While the facts in *Gibson, supra*, relate to child support and medical reimbursements, we believe that the proposition that interest can be denied, when found to be inequitable, applies generally to judgments. Accordingly, we fail to find error in the trial court's decision to reduce the interest on all of the judgments against Timothy in favor of Robin.

For the foregoing reasons, the August 16, 2005, and September 28, 2005, orders of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR CROSS-APPELLANT:

J. Russell Lloyd
Louisville, Kentucky

NO BRIEF SUBMITTED ON BEHALF OF CROSS-APPELLEE.