

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002038-MR

KATHRYN COMBS

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 91-FP-006112

MICHAEL SMITH

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOFF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Kathryn Combs and Michael Smith, who never married, are the parents of a son who was born in April 1991. The issue before us on appeal concerns an order entered by the Jefferson Circuit Court, Family Division, awarding Smith \$200 in attorney's fees. For the reasons stated, 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 (KRS) 21.580.

In 1992, the trial court entered a judgment of paternity and a support order after both parties filed affidavits acknowledging Smith's paternity of the child. Various disputes relating to child support, visitation, and other issues followed over the years.

On July 7, 2006, the trial court entered a standard child support order directing that a total of \$492.39 should be withheld from Smith's wages each month for child support, "[a]s determined by KY Child Support Guidelines[,] plus arrearages. The second page of the order included mathematical calculations of the amounts which should be withheld if Smith was paid weekly, biweekly, semi-monthly, or monthly. Although the second page accurately noted that Smith's weekly obligation would be \$113.63 (i.e., \$492.39 multiplied by 12 months, and then divided by 52 weeks), the front page of the order erroneously showed the weekly figure as \$133.33, or \$19.70 higher than the correct amount.

After Smith discovered the error but his employer declined to withhold the correct weekly payment, attorney Gregory C. Black, who represented Smith, contacted attorney Christopher Harrell, who represented Combs. According to Black, Harrell agreed that the figure of \$133.33 was erroneous but refused to submit to the court an agreed motion seeking a correction, noting that Smith had not yet satisfied a court order directing him to pay Harrell a \$350 attorney's fee. Although Smith agreed to allow the excess payment to be applied

toward the attorney's fee debt, he learned a few days later that Harrell had garnished his wages for the debt.

Black therefore filed a motion on July 28, seeking correction of the child support order plus an attorney's fee award against Combs. On August 9, Harrell filed a response objecting to the requested attorney's fee award, stating that the motion had cited "no authority for the Court to order Attorney's Fees in a paternity case." However, the videotape record of the August 14 hearing on the motion reflects that Harrell never appeared for the hearing. After a discussion with Black, the court ordered correction of the wage assignment and directed Combs to pay Smith \$200 in attorney's fees because Black had "waited 2 - 2 1/2 hrs" in vain for Harrell to appear. Combs filed a motion requesting the court to set aside the attorney's fee award against her, asserting that the court lacked authority to award attorney's fees under such circumstances. The motion was denied on September 11, 2006. This appeal followed.

On appeal, Combs identifies this matter as a "paternity case" and asserts that the Circuit Court, Family Division lacked "authority to award attorney's fees" in a KRS Chapter 406 action. Combs describes various provisions within that chapter, and then asserts that "even if" the attorney's fee award provisions set out in KRS 403.220 were available herein, "the Trial Court did not have the available evidence to make such an award." We disagree.

Despite Combs' claim, the matter before the trial court did not relate to paternity, as that issue was resolved by agreement in 1992. Instead, the parties'

current dispute, like many since 1992, relates to the issues of child support which were addressed in 1992 pursuant to KRS 403.212. Clearly, KRS 403.212 governs in this matter as well, as the child support guidelines apply not only to marital dissolutions, but also to pending paternity situations, *see* KRS 406.025(5), and to child support actions initiated by “parent[s], custodian[s], or agenc[ies] substantially contributing to the support of the child.” KRS 403.212(1).

Smith alternatively argues that even if the KRS Chapter 403 child support guidelines apply to this dispute, the attorney’s fee provisions of KRS 403.220 are not applicable. More specifically, Smith asserts that KRS 403.220 permits a trial court to order one party to pay a reasonable portion of the other party’s attorney’s fees and costs only when “maintaining or defending a matter in divorce.” However, KRS 403.220 in fact provides, as it has since its 1972 enactment, that the trial court may order one party to pay a reasonable amount to the other for the cost of “maintaining or defending **any proceeding** under this chapter and for attorney’s fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.” (Emphasis added.) Since an action for child support pursuant to the guidelines is a “proceeding under this chapter[,]” it clearly follows that under KRS 403.220, a party may be awarded costs and attorney’s fees for maintaining or defending such a proceeding.

Moreover, it is well established that the determination of whether to award attorney’s fees falls within the trial court’s great discretion. As noted in

Gentry v. Gentry, 798 S.W.2d 928, 938 (Ky. 1990), the trial court is in the best position to determine whether its own and opposing counsel's time have been wasted by certain conduct or tactics. Here, as noted above, the current dispute arose after Harrell declined to cooperate in correcting an obvious clerical error in the court's order, and then garnished Smith's wages to pay a \$350 attorney's fee award even though Smith had agreed to apply the weekly overpayment toward the award. To make matters worse, Harrell failed to appear for the hearing scheduled on the matter. Under such circumstances, the trial court clearly did not abuse its discretion by ordering Combs to pay \$200 towards Smith's attorney's fees.

The order of the Jefferson Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Harrell
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory C. Black
Louisville, Kentucky