RENDERED: OCTOBER 19, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000541-ME

JON JONES — APPELLANT

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 90-CI-00248

JAMISUE ELAM (NOW MOORE) — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: Jon Jones appeals from an order entered by the Grant Circuit Court determining the total sum of his child support arrearage. We affirm.

Jon and appellee Jamisue Jones (now Moore) married in 1987 and divorced in 1991. Based on Jon's suggestion that he should pay child support of $150 per month for each of the two children born during the marriage, the court directed him to pay $75 per week for the two children.

In December 1997, after genetic testing excluded Jon as the father of one of the children, the court amended the dissolution decree to state that only one child was born of the marriage. The court subsequently set Jon's support obligation for the single child at the rate of $74.60 per week, effective immediately, but it declined to retroactively apply the modification. On appeal[1] this court agreed with the trial court's determination that the support obligation could be modified only prospectively, but it found that the modification should occur as of the date of the motion for modification, rather than as of the date of the court's order granting the modification. Later, the child support obligation was reduced to $47.62 per week. Finally, in February 2007, the trial court reviewed the issue of arrearages and determined that Jon owed Jamisue the sum of $9,328.71. This appeal followed.

On appeal, Jon in essence asserts that the arrearage accumulated because of Jamisue's wrongdoing in representing to the trial court that both children were born of the marriage. He argues, as he did in his prior appeal to this court, that once the issue of paternity was resolved, a great injustice occurred when the trial court failed to retroactively calculate child support for only one child from the date of dissolution. As before, he relies on several cases to support his argument, including *Moore v. Commonwealth, Cabinet for Human Res.,* 954 S.W.2d 317 (Ky. 1997), *Cain v. Cain,* 777 S.W.2d 238 (Ky.App. 1989), and *Crowder v. Commonwealth of Kentucky ex rel. Gregory,* 745 S.W.2d 149 (Ky.App. 1988). Further, he asserts that all but $115.28 of the arrearage should be set aside as relating to the child who is not his.

[1] Jones v. Jones, No. 1998-CA-002614-MR (Ky.App. Sept. 8, 2000).

This same argument was rejected by this court in the prior appeal. Not only did this court distinguish the cited cases, as turning on issues of paternity rather than the issues of past-due child support and noncompliance with court orders presented in both appeals, but it also noted the well-established rule in Kentucky that child support may be modified only as to those installments which accrue after the filing of a motion for modification. KRS 403.213(1). *See Guthrie v. Guthrie,* 429 S.W.2d 32 (Ky. 1968); *Pretot v. Pretot,* 905 S.W.2d 868 (Ky.App. 1995). Further, not only is our prior decision *res judicata* as to the issues raised in this appeal but, in any event, the prohibition against retroactively modifying child support continues to prevent the relief which Jon seeks herein.

The trial court's order is affirmed.

ALL CONCUR.

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