

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001598-ME

MARY E. HAZELWOOD

APPELLANT

APPEAL FROM HENDERSON CIRCUIT COURT,
FAMILY COURT DIVISION
v. HONORABLE SHEILA NUNLEY-FARRIS, JUDGE
ACTION NO. 03-CI-00823

BRADLEY K. HAZELWOOD

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Mary E. Hazelwood brings this appeal from June 1, 2007, and July 26, 2007, Orders of the Henderson Circuit Court, Family Court Division. We dismiss as being taken from interlocutory orders.

On April 28, 2006, and June 29, 2006, Mary filed motions seeking an increase in child support for two minor children of the parties and requesting attorney's fees.¹ By order entered June 1, 2007, the circuit court modified child support.

¹ By motion filed May 11, 2007, Mary K. Hazelwood later informed the circuit court that one of the parties' children would graduate from high school on May 18, 2007, and, thus, become emancipated.

Subsequently, on June 6, 2007, Mary filed a postjudgment motion pursuant to Kentucky Rules of Civil Procedure (CR) 59.05, and on June 20, 2007, Mary filed another CR 59.05 postjudgment motion. Therein, Mary requested the circuit court to increase her child support payments and requested an award of attorney's fees. By order entered July 26, 2007, the circuit court denied the postjudgment motions but reserved the claim of attorney's fees for later adjudication:

The issue of payment of Respondent's attorney fees is hereby **RESERVED** until the Court has reviewed the file to determine whether that issue was properly presented and properly brought before the Court.

Mary then filed a notice of appeal seeking review of the June 1, 2007, and July 26, 2007, orders.

Pursuant to CR 54.01, a final and appealable judgment adjudicates all rights of all the parties or is made final in limited circumstances under CR 54.02. *King Coal Co. v. King*, 940 S.W.2d 510 (Ky.App. 1997). In this case, the circuit court's July 26, 2007, order plainly stated that the claim for attorney's fees was reserved for later adjudication. Thus, we are presented with the legal question of whether an order is final and appealable when the only claim remaining unadjudicated was for attorney's fees. Recently, the Court of Appeals was squarely faced with this precise legal question in *Francis v. Crouse Corporation*, 98 S.W.3d 62 (Ky.App. 2002). In *Francis*, the Court refused to adopt a "bright-line rule" to determine finality. Instead, the Court held:

We decline to adopt such a "bright-line rule." We conclude that the determination of whether the judgment is final when the amount of the attorney fees has not been resolved should rest on whether attorney fees were part of the claim or whether they were collateral to the merits of the action as was the case in *Shelton*. If attorney fees were part of Francis's civil rights violation claim, then the judgment was not final and appealable under CR 54.02(1).

Id. at 67.

Applying the rule enunciated in *Francis* herein, we conclude that Mary's claim for attorney's fees were not "collateral" but rather were part of her underlying claim. In reaching this decision, we view as pivotal the fact that Mary requested an award of attorney's fees in her motion for child support modification. Additionally, Mary's claim for attorney's fees are pursuant to statute (Kentucky Revised Statutes 403.220) and may be awarded concomitant with Mary's underlying claim (child support modification). See 16 Louise E. Graham & James E. Keller, *Kentucky Practice – Domestic Relations Law* § 19.1 (3d ed. 2008).

As the claim of attorney's fees remains adjudicated, we hold that neither the June 1, 2007, Order nor the July 26, 2007, Order constituted final and appealable orders. See *Francis*, 98 S.W.3d 62.

Now, therefore be it ORDERED that Appeal No. 2007-CA-001598-ME is DISMISSED as being taken from interlocutory orders.

NICKELL, JUDGE, CONCURS.

CLAYTON, JUDGE, CONCURS IN RESULT ONLY.

ENTERED: May 23, 2008

/s/ Jeff S. Taylor
Judge, Court of Appeals

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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