RENDERED: JULY 24, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001555-MR

ALVIN R. CRASK — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 05-CI-504371

COMMONWEALTH OF KENTUCKY, *EX REL.*
CABINET FOR HEALTH AND FAMILY SERVICES;
VICTORIA CRASK; AND LINDA SUE GREEN — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Alvin R. Crask brings this appeal from an August 30, 2018, Order of the Jefferson Circuit Court, Family Court Division, (family court) denying Crask's motion for reimbursement of overpaid child support. We affirm.

Crask is the biological father of three children and was ordered to pay child support for all three children. Of particular importance is Crask's youngest

child, Amber Crask. Amber was in the care of a guardian, who qualified for a Kinship Care Grant.[1] In 2005, the Commonwealth of Kentucky, *ex rel*. Cabinet for Health and Family Services, (Cabinet) initiated an action in the Jefferson Family Court to recover child support payments from Crask and Amber's biological mother. Kentucky Revised Statutes (KRS) 205.720(1). By order entered September 21, 2007, the court ordered Crask to pay $182 per month in child support and an additional $3 per week for child support arrearages. Amber's mother was also ordered to pay child support and arrearages but in a lesser amount.

Then, on April 20, 2011, Crask received a "Notice of Satisfaction" letter from an assistant Jefferson County Attorney. Therein, Crask was informed that the child support order as to the arrearage had been paid in full. The notice also stated that an amended wage withholding order was sent to Crask's employer that required withholdings of $27.69 per week for his current child support obligation.

It is uncontroverted that the Notice of Satisfaction was erroneously sent to Crask. Instead, the notice should have been sent to Amber's mother, who was also paying child support and arrearages. However, per the Notice of

[1] The Kinship Care Grant is a form of financial assistance for guardians of minor children through the Cabinet for Health and Family Services.

Satisfaction, Crask's wage assignment was decreased to $27.69 per week, when his actual ordered support was $42 per week. As a result, Crask accumulated an arrearage in child support.

During an audit, the error was discovered, and the resulting arrearage in Crask's child support was ascertained. Apparently, the Cabinet had confused the child support obligation for Crask with Amber's mother, which was a lesser amount of support. Thus it appeared Crask had satisfied his arrearage when, in fact, that had not occurred. To collect upon the arrearage, the Cabinet garnished approximately $2,984.53 from Crask's checking account on June 20, 2017. Due to the garnishment of his checking account, Crask filed a motion for the Cabinet to conduct an audit of his account on October 13, 2017. The Cabinet conducted the audit, and it revealed that Crask had a total remaining arrearage of $4,751.15. This amount was subsequently reduced to $1,182.15 after Crask's federal and state tax refunds were intercepted by garnishments.

Eventually, on December 7, 2017, Crask filed a Motion for Reimbursement for overpaid and garnished child support. Crask argued that he actually overpaid his child support obligations, or alternatively, the Cabinet should be equitably estopped from recovering any arrearage due to his reliance on the Notice of Satisfaction received from the county attorney in 2011. The family court conducted a hearing, and by order entered August 30, 2018, the court denied the

motion. The family court found that Crask did not overpay child support but in fact still owed $1,182.15 on that date. To address the remaining child support arrearage, the court ordered Crask to pay $100 per month. The family court also concluded that Crask had not demonstrated entitlement to relief under the doctrine of equitable estoppel. This appeal follows.

Crask contends the family court erroneously denied his motion for reimbursement of overpaid child support. In particular, Crask argues the doctrine of equitable estoppel operates to estop the Cabinet from recovering any arrearage in child support after he received the Notice of Satisfaction from the county attorney in 2011. Crask maintains that he relied upon the Notice of Satisfaction to his detriment and that the Cabinet misled him as to the amount of child support owed. Crask believes the Cabinet should be equitably estopped from recovering any arrearage due to his reliance upon the Notice of Satisfaction.

> In Kentucky, the principal elements of equitable estoppel are:
>
> (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. And, broadly speaking, as related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the

> truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Sebastian-Voor Properties, LLC v. Lexington-Fayette Urban County Government, 265 S.W.3d 190, 194-95 (Ky. 2008) (citations omitted). And, equitable estoppel may only be "invoked against a governmental entity . . . in unique circumstances where the court finds exceptional and extraordinary equities involved." *Weiand v. Bd. of Trs. of Ky. Ret. Sys.*, 25 S.W.3d 88, 91 (Ky. 2000).

In this case, Crask failed to satisfy the elements of equitable estoppel and to demonstrate the existence of exceptional/extraordinary equities necessary to invoke it against the Cabinet. To be entitled to equitable estoppel, Crask must prove that he had a "lack of knowledge and of the means of knowledge of the truth as to the facts in question" and "reliance, in good faith, upon the . . . statements of the party to be estopped[.]" *Sebastian-Voor Properties, LLC*, 265 S.W.3d at 194.

It is uncontroverted that Crask's child support obligation was fixed by a September 21, 2007, order at $42 per week and $3 per week for arrearages. By reference to this order, Crask was or should have been fully cognizant of his child support obligation. When Crask received the Notice of Satisfaction that was sent in error, it should have been readily apparent or discoverable that the notice

directly contradicted the September 21, 2007, order, as to the amount of his weekly child support obligation not considering any arrearage. Consequently, Crask either knew or possessed the means to discover the truth as to the status of his child support obligation and could not rely, in good faith, upon the Notice of Satisfaction erroneously sent to him. Additionally, we agree with the family court that the circumstances of this case did not create exceptional and extraordinary equities justifying the application of equitable estoppel against the Cabinet. Upon the whole, we conclude that the family court properly determined the doctrine of equitable estoppel was inapplicable.

Crask also asserts that the family court erroneously determined that his Kentucky Rules of Civil Procedure (CR) 59.05 motion was untimely. Crask maintains that the CR 59.05 motion was due on a Jewish holy day, Rosh Hashanah.[2] As his attorney was Jewish, the CR 59.05 motion was served late. Crask argues that Jewish holy days should be recognized as official holidays and failure to do so amounts to religious discrimination. However, legal holidays in Kentucky recognized by the Court of Justice are set out in KRS 2.110. The Kentucky Supreme Court has held that these are the only holidays for which the deadline for filing a legal document may be extended. *Wilkins v. Ky. Ret. Sys. Bd.*

[2] Rosh Hashanah in 2018 began in the evening of Sunday, September 9 and ended on Tuesday, September 11.

of Trs., 276 S.W.3d 812, 813 (Ky. 2009). Unfortunately, Rosh Hashanah is not a listed holiday.

Regardless, in its September 27, 2018, Order, the family court concluded that the CR 59.05 motion was untimely but indicated that the court would have denied the motion. So, the untimeliness of the CR 59.05 motion was not prejudicial. Also, we view this issue as moot in view of our disposition of the appeal on the merits.

For the foregoing reasons, the Order of the Jefferson Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Teddy B. Gordon
Andrew E. Mize
Peter Jannace
Louisville, Kentucky

BRIEF FOR APPELLEE:

Mike O'Connell
Daren C. Neel
Jefferson County Attorney
Louisville, Kentucky