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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-000770-MR

JOHN PETER VINCENT HOLLIS APPELLANT

v.

APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE REED RHORER, SPECIAL JUDGE
ACTION NO. 99-CI-00152

CHERYL LEE HOLLIS APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND STUMBO, JUDGES; KNOPF,[1] SENIOR JUDGE.

STUMBO, JUDGE: John Hollis appeals from an order of the Woodford Circuit Court granting the motion of Cheryl Hollis to amend a wage assignment order, and denying John's motion requesting the court to provide a videotaped recording of the proceedings. For the reasons stated below, we affirm the order on appeal.

John and Cheryl Hollis were married in 1986 and separated in 1999. The marriage produced three children, and was dissolved by way of a judgment rendered in

[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 KRS 21.580.

2000. A panel of this Court, in a twenty-one page opinion rendered May 2, 2003, affirmed all aspects of the dissolution judgment.

An extensive procedural history followed, with John, through counsel, filing numerous motions, followed by several *pro se* motions and an action against circuit court judges and attorneys in Federal District Court. The matter before us appears to be the sixth of John's seven appeals.

On November 29, 2004, Cheryl filed a motion to amend an existing wage assignment order. She sought to reduce to zero John's obligation to pay a portion of the child care costs. On December 1, 2004, John filed a "Motion to Request Recording of Hearings." In that motion, he requested that all proceedings be videotaped at no expense to the parties. The motions were heard together at a hearing conducted on December 8, 2004.

On December 15, 2004, the court rendered an order denying John's motion for a court-provided videotaping service, but stating that he was free to record the proceedings at his own expense. As to Cheryl's motion, the court eliminated John's obligation to pay $146.48 per month in child care costs. It also ordered that Cheryl reimburse a portion of previously paid costs. John's motion to alter, amend or vacate the December 15, 2004, order was denied by way of an order rendered on March 11, 2005. This appeal followed.

John, *pro se*, now argues that the trial court violated his rights set forth in Section 115 of the Kentucky Constitution and the 14th Amendment to the United States

Constitution. Specifically, John appears to maintain that he is entitled to exercise a constitutional right to have his civil hearings videotaped at no expense. In support of this contention, he directs our attention to an opinion which he maintains sets forth this constitutional right and forms a basis for reversing and remanding the order on appeal.

John's claim of error on this issue may be summarily denied. Setting aside his failure to comply with CR 76.12(4)(c)(v), which requires a statement showing that this issue is preserved and, if so, in what manner, the sole case relied upon in support of his argument is an unpublished opinion. Civil Rule 76.28(4) bars the citation of or reliance on any unpublished opinion.[2] Even if the Civil Rules did not bar the use of such an opinion, our research reveals that the case does not address the recording of <u>civil</u> proceedings nor constitutional issues arising therefrom.

While, in general, we believe that all proceedings should be on the record, the method for insuring this varies from Circuit to Circuit. Where a videotape system is available, it should be used when requested or as a matter of course. Where videotaping is not available, local rules make provision for preservation of the record. The Local Rules of the 14th Judicial Circuit state that should a litigant desire a court reporter for a civil hearing, "the responsibility for arranging for a court reporter shall lie with that party." *Local Rules, 14th Judicial Circuit, Rule XI.* Thus, the local rules do provide John with the means to obtain a record for use on appeal that he chose not to employ. The

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[2] CR 76.28(4)(c), which formerly prohibited citation of all unpublished opinions, was amended, effective January 1, 2007, to permit reference to unpublished opinions rendered after January 1, 2003, when no published opinion addressed the issue raised. Appellant cites an opinion rendered significantly earlier than the permitted date.

burden, then, rests with John to overcome the strong presumption that the lower court's ruling denying him a record without cost is correct.[3] *City of Louisville v. Allen*, 385 S.W.2d 179 (Ky. 1964). He has not met that burden, and accordingly we find no error on this issue.

John also contends that the trial court erred in failing to require Cheryl to reimburse him for all child care sums not expended. John's written argument on this issue makes little sense. Again, the preservation requirement of CR 76.12(4)(c)(v) has not been met. It is not clear if this argument was raised below or, if so, in what manner. No written motion on this issue is contained in the certified record, other than Cheryl's November 29, 2004, motion to reduce John's child care obligation to zero.

Furthermore, CR 76.12(4)(c)(v) also requires the written argument to contain ". . . ample supportive references to the record and citations of authority pertinent to each issue of law . . ." The sole case cited by John in support of his argument, namely *Connelly v. Degott*, 132 S.W.3d 871 (Ky. App. 2003), has little to do with the issue at bar other than setting forth the general rule that child care expenses may be reimbursable if the payor and the court are "misled" by the payee. In the case at bar, John cites nothing in the record from which one could reasonably conclude that Cheryl misled either him or the circuit court as to the actual child care expenses that had been paid. Rather, Cheryl sought to *reduce John's child care obligation to zero* in her November 29, 2004, motion.

[3] John has not demonstrated that he is indigent or otherwise unable to pay for the services of a court reporter. Had there been such a showing, our ruling might be different.

Ultimately, John has done nothing to show that the circuit court erred on this issue, nor that he is entitled to the relief sought.

We conclude by reminding John that the appellate courts frown on the bringing of meritless or frivolous appeals. CR 73.02(4) provides that “[i]f an appellate court determines that an appeal or motion is frivolous, it may award just damages and single or double costs to the appellee or respondent. An appeal or motion is frivolous if the court finds that it is so totally lacking in merit that it appears to have been taken in bad faith.” By our count, there have been seven appeals filed in this dissolution of marriage, of which two will remain to be resolved when this opinion is rendered. Additionally, John has been sanctioned repeatedly by the circuit court. While we do not now find that John should be directed to show cause why he should not be sanctioned, we give fair warning that this Court is not to be used as a tool to frustrate the peaceful resolution of a broken marriage.

For the foregoing reasons, we affirm the order of the Woodford Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John P. Hollis, DVM, *pro se*
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BRIEF FOR APPELLEE:

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