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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001923-ME
AND
NO. 2015-CA-000199-ME

CARL E. KNOCHELMANN, JR. APPELLANT

v.

APPEALS FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 97-CI-00860

MARY E. BJELLAND APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND NICKELL, JUDGES.

LAMBERT, J., JUDGE: Carl E. Knochelmann, Jr., a licensed attorney who is proceeding *pro se* in these consolidated appeals, has appealed from five orders entered by the Campbell Family Court in a twenty-year-old case related to the

custody of a child, who is now an adult, and related issues. Finding no error or abuse of discretion, we affirm.

To describe this twenty-year litigation between Knochelmann and Mary Bjelland as contentious would be an understatement. The procedural history of this case is critical to our review. But in an attempt to abbreviate this opinion, we shall rely upon the statement of the facts and partial procedural history as set forth by this Court in an earlier opinion from his second appeal, *Knochelmann v. Bjelland*, 2005 WL 3487955 (2003-CA-002258-MR and 2003-CA-002308-MR) (Ky. App. Dec. 22, 2005):[1]

> Bjelland and Knochelmann were never married, nor did they ever co-habitate. Their son was born June 27, 1997, and Bjelland filed a petition in circuit court the following month seeking custody and child support. In August, Knochelmann sought to have the case dismissed because paternity had not been determined. The district court entered an agreed order in March 1998 adjudging Knochelmann to be the natural father of Bjelland's child. The [Domestic Relations Commissioner] held a hearing on the temporary child support in June 1998 and issued a report the following month recommending a finding that personal and subject matter jurisdiction existed. Both parties filed objections to the report; the trial court reviewed the record, conferred with the DRC, and overruled all objections.
>
> The proceedings which followed are far too numerous to list in their entirety and culminated in the trial court's final order, dated August 6, 2003, which is the subject of this appeal. The trial court's order adopted the DRC's findings of fact contained in the April 2003

[1] Knochelmann's first appeal, Appeal No. 2002-CA-001353-MR, was taken from several orders entered in 2002 relating to counsel for both parties and denying his motions to strike. The appeal was dismissed as interlocutory on October 28, 2002, and that order became final on December 17, 2002.

> report. Bjelland was granted the right to decide which school the child would attend. Knochelmann's objection, claiming that the DRC's function was unconstitutional, was overruled. Pursuant to *Clary v. Clary*, 54 S.W.3d 568 (Ky. App. 2001), the trial court included the income from the sale of property which Knochelmann had owned for some twenty years prior to the birth of his son in calculating his child support obligation. Knochelmann was ordered to pay child support of $281.71 per month from July 21, 1997 through June 29, 1999; $111.40 per month from June 29, 1999 through April 25, 2001; and $867.30 per month from April 25, 2001 through December 21, 2002. The trial court calculated Knochelmann's arrearage at $14,847.39, then subtracted prior payments plus the amount intercepted from his 2002 federal income tax refund and ordered him to pay Bjelland $9,632.29, plus 12% interest as of December 31, 2002.

Id. at *1. Also in its August 6, 2003, order, the circuit court addressed Knochelmann's argument that any function by the DRC was unconstitutional, noting that this objection had not been preserved at the DRC hearing. The court, nevertheless, overruled the objection "due to the authority of the Chief Justice to allow for the continual use of domestic relations commissioners in this Circuit for a limited period of time during the transition to Family Court."

In its 2005 opinion, this Court identified the issues Knochelmann raised in his appellate brief as follows:

> Karl [sic] Knochelmann appeals from an order of the Campbell Circuit Court determining the amount of child support, including arrearages, he must pay to Mary Bjelland for the support of their minor child and also refusing to require the child to attend parochial school as his father prefers. On appeal, Knochelmann challenges the trial court's subject matter jurisdiction, the constitutionality of Kentucky's child support statutes, the

> inclusion of proceeds from the sale of real estate in his income, the jurisdiction of the Domestic Relations Commissioner (DRC), the procedures followed by the trial court, and the refusal of the DRC to recuse himself due to an alleged conflict of interest. He also claims the existence of an agreement between the parties for Bjelland to accept non-monetary support and the right to present a claim for fraudulent contraception. We find all of these issues thoroughly meritless. Bjelland cross-appeals alleging that the trial court improperly credited a tax intercept against Knochelmann's child support arrearage. Due to the trial court's failure to make a factual finding as to which party received the proceeds of the intercept, we vacate this portion of the trial court's order. The remainder of the order is affirmed.

Id.

This Court analyzed, and rejected, Knochelmann's arguments related to the circuit court's jurisdiction to decide paternity and the calculation of his income for child support purposes. Related to child support, this Court held:

> Next, Knochelmann claims that the trial court erred by including proceeds from the sale of real estate as income for the purpose of calculating his child support obligation. His income in 2000, 2001, and 2002 increased substantially due to the sale of some real estate he owned and for which he received a payment of $211,000.00 in each of those years. The trial court adopted the DRC's finding that [Kentucky Revised Statutes] KRS 402.212(b) and our previous holding in *Clary* required these proceeds to be included as income for the purpose of calculating Knochelmann's child support obligation. In *Clary*, which also involved the sale of real estate, we addressed the argument that such income ought to be prorated over a period of twenty-eight years. We disagreed and held that "when a parent receives income from a nonrecurring event, the trial court should include that amount in the year received. . . ." *Clary* at 574. Knochelmann argues that our decision in

> *Clary* misinterprets that statute and should be reversed. We disagree.

Id. at *2. As to the remaining arguments, the Court held:

> We find Knochelmann's remaining claims of error regarding the DRC, the procedures followed by the trial court, the constitutionality of Kentucky's child support laws, his claim regarding an agreement between the parties to allow him to furnish non-monetary support, and his demand to present a claim of fraudulent contraception without merit and decline to address them separately. The trial court's order is affirmed with respect to these issues.

Id. at *3. On Bjelland's cross-appeal, this Court reversed the circuit court's order as to the amount of the child support arrearage and remanded for the court to make a factual finding related to a $5,215.00 tax intercept and, if necessary, recalculate the arrearage. *Id*. The Supreme Court of Kentucky denied Knochelmann's motion for discretionary review on June 7, 2006. The United States Supreme Court denied his petition for writ of certiorari on November 13, 2006, and finality was reinstated on November 16, 2006.

While the above appeals were pending, litigation continued in the family court. In March 2004, Knochelmann filed a motion for child support effective January 1, 2003, citing his minimal income. Bjelland, in response, stated that Knochelmann had sold a farm for $800,000.00 a few years prior and believed he was living off the income from that sale, which she asserted should be taken into consideration for child support calculation purposes. She requested permission to conduct discovery on the issue. Knochelmann objected, stating the

court had considered that issue previously. In August 2004, Knochelmann sought to change the child's school. The circuit court referred the child support matter to mediation and denied the motion to change the school, as that had previously been litigated and was on appeal.

In November 2004, Bjelland moved the court to hold Knochelmann in contempt for failing to pay child support in the amount of $110.00 per month. He had refused to pay until the matter had been decided on appeal. She also raised the issue of medical insurance for the child, requesting that Knochelmann be required to carry the necessary insurance for him. Bjelland again moved the court to hold Knochelmann in contempt in December 2004 for failure to pay child support. In a docket order entered January 5, 2005, the court ordered the parties to submit briefs on the child support issue and ordered each party to pay half of the child's medical expenses as he was uninsured. In her brief, Bjelland argued that Knochelmann was manipulating the system to cause her to incur substantial economic hardship and abandon her efforts. Bjelland's counsel sought an award of attorney fees for bringing the contempt motion. In response, Knochelmann stated that the child support issue was on appeal and that he had posted a supersedeas bond in the amount of $9,623.39.

By docket order entered January 24, 2005, the family court found that Knochelmann's appeal did not stay his obligation to pay current child support and that he owed $2,664.00 from January 1, 2003, through January 1, 2005. The court indicated that he would be held in contempt if that amount had not been paid by

March 15, 2005. The court re-entered the order as of March 1, 2005, the date Knochelmann's counsel learned of the order. On March 11, 2005, Knochelmann moved the court for a new trial, to alter, amend, or vacate, and for findings. He argued that the court ordered him to pay additional payments in 2003 that he had already paid.

The court scheduled a hearing on child support for August 2005, and prior to that hearing, the Campbell County Child Support Office filed a memorandum seeking to clarify the issues to be decided. The court entered an order on August 22, 2005, related to where the child would attend school, and the court scheduled a hearing in September on child support and health insurance issues. Knochelmann moved the court to alter, amend, or vacate its order related to where the child would attend school, which the court denied in a docket order entered September 27, 2015, following a hearing a few days earlier. In the same order, the court denied the motion to modify child support, finding that there had not been a material change in circumstances to support the motion. The court went on to find that the issue of Knochelmann's underemployment had been heard and found it would be inappropriate to impute additional income to him. Therefore, Knochelmann's child support obligation would continue to be $111.40 per month. The court also ordered Bjelland to maintain health insurance on the child through her employment and ordered Knochelmann to reimburse her in the amount of $55.00 per month. They were to share equally any uninsured medical expenses. Knochelmann moved to alter, amend, or vacate that ruling, requesting that Bjelland

be required to maintain medical insurance for the child, that Bjelland pay him $270.00 per month in child support, and that he pay Bjelland $200.00 per month in child support, both inclusive of insurance payments for the child. The court denied the motion on October 25, 2005, in a docket order.

In February 2006, after this Court rendered its opinion in the second appeal, Bjelland moved the court for a hearing regarding the $5,215.00 income tax intercept per our direction. She claimed this amount was credited against the amount of the arrearage, despite the fact that the funds had been returned to Knochelmann. Knochelmann objected to the motion, stating that the opinion was not yet final, and the matter was stayed pending finality in the appeal. Once the Supreme Court denied Knochelmann's motion for discretionary review, Bjelland made a second request for a hearing and moved the court to enforce its 2003 order. The court ordered the cash bond to be released to Bjelland and credited to Knochelmann's arrearage. It also ordered Knochelmann to file a response related to the tax intercept credit, interest, and attorney fees issues.

In July 2006, Knochelmann filed a motion to review child support, stating in an affidavit that the capital gain income was no longer applicable. Knochelmann also objected to Bjelland's motion to enforce. He continued to argue that the court did not have subject matter jurisdiction, that he should not have to pay any of Bjelland's attorney fees, that Bjelland was not entitled to any interest, and that the court had previously misapplied *Clary v. Clary*, *supra*.

The matter was scheduled for a hearing in September 2007. The Campbell County Child Support Office filed a notice regarding the tax refund intercept. It stated that on June 19, 2003, a federal income tax intercept in the amount of $5,215.00 was posted to Bjelland's account; that on July 12, 2004, Knochelmann posted a $9,632.39 bond; and that on July 12, 2004, the full amount of the income tax refund was returned to Knochelmann. Prior to the hearing, Knochelmann filed a motion for temporary custody. The court continued the September hearing until October. Bjelland identified the issues to be heard at the hearing as: 1) a motion for contempt due to Knochelmann's failure to reimburse her for his portion of the health insurance cost; 2) the transfer of the health insurance coverage from her to Knochelmann; 3) a review of child support, including her income and imputed income for Knochelmann; 4) the tax intercept, the total amount of child support arrearage, and interest; 5) Knochelmann's failure to pay his share of the child's uncovered medical expenses; 6) Knochelmann's failure to pay attorney fees to her; and 7) Knochelmann's motion for temporary custody. In his filing, Knochelmann included the additional issues of: 1) jurisdiction of the court based on its lack of ability to determine paternity as well as the abolishment of the DRC; 2) the effect of a prior judge's recusal; and 3) where the child would attend school. The matter was continued until the end of October 2007. Bjelland filed a supplemental list of issues to be decided, including custody/visitation arrangements and the child's participation in sports.

The court held a hearing on October 31, 2007. It heard testimony from several witnesses and permitted the parties to submit briefs. The court entered a lengthy order on April 11, 2008, ruling on the various issues. The court found that it had proper jurisdiction over the case; found the $110.40 per month child support obligation to be reasonable under the circumstances; ordered Bjelland to submit detailed records of her monthly insurance costs; found a child support arrearage of $2,902.94 and ordered Knochelmann to pay an additional $100.00 per month towards this arrearage; found that Knochelmann failed to show sufficient evidence to justify a change in custody; addressed the child's extracurricular activities; and ordered Knochelmann to pay Bjelland's attorney $1,000.00 in fees within sixty days. The order was re-served on the parties in July 2008 due to clerical errors in the service of several orders.

In July 2008, Knochelmann filed a motion for a new trial pursuant to Kentucky Rules of Civil Procedure (CR) 59.01, citing errors and inconsistencies in the April 2008 order and arguing that the court did not allocate enough time at the October 2007 hearing to permit a complete review of the facts. Knochelmann also filed a motion to alter, amend, or vacate the April 2008 order and for findings, stating that the court had never directly addressed the jurisdictional issue he had raised.

In August 2008, Bjelland moved the court to hold Knochelmann in contempt for failing to pay the ordered attorney fees, for a lump sum judgment on

the child support arrearage, for interest, to address unreimbursed medical and dental bill issues, to receive the tax exemption, and for an award of attorney fees.

The court entered an order on March 3, 2009, denying Knochelmann's motions, in part, and granting it with respect to the portion requiring him to pay $1,000.00 in attorney fees dating from 2003. The court rejected Knochelmann's arguments that he was not provided with enough time to present his case, that the court lacked jurisdiction, and that he should not have been ordered to pay child support. Knochelmann timely moved to alter, amend, or vacate that order, and he specifically requested that the court consider information in a separate case involving Bjelland. The court denied this motion on July 14, 2009. Knochelmann appealed from "all orders entered on or after October 1, 2003" including the April 11, 2008, March 3, 2009, and July 14, 2009, orders (Appeal No. 2009-CA-001488-MR). This appeal was dismissed by this Court on March 28, 2012, for failure to prosecute it in substantial conformity with the Rules of Civil Procedure. The Supreme Court denied Knochelmann's motion for discretionary review on February 13, 2013, and this Court's ruling became final on February 18, 2013.

Meanwhile, the litigation continued in the family court. In April 2011, Knochelmann moved the court for an order designating him as the final decision-maker as to the child's education. By order entered August 8, 2011, the family court found that it was in the child's best interest to attend the high school Knochelmann chose.

Issues arose concerning transportation, extra-curricular activities, and the child's diagnosis with Attention Deficit Disorder. In November 2013, Knochelmann moved the court to award him sole custody of the child. The court set the matter for a hearing in February 2014, after which both parties tendered proposed findings of fact and conclusions of law. The court entered an order on May 5, 2014, ruling on the pending issues. The court denied the motion to modify custody, denied the motion to review child support as Knochelmann failed to provide any evidence of the parties' incomes, and granted Bjelland's motion for Knochelmann to reimburse her in the amount of $55.00 per month for health insurance and ordered him to pay $100.00 per month on the $5,555.00 arrearage. The court stated that Knochelmann's proposed findings of fact and conclusions of law included sections addressing jurisdictional issues and a retrial of issues dating from 2003 regarding the child support arrearage and the tax refund intercept. The court held that "[s]uch was not an issue in his pleadings, nor raised before the Court at the hearing on February 21, 2014 and is denied." Knochelmann moved the court to alter, amend, or vacate its order, which the court denied on May 29, 2014. Knochelmann also moved to alter, amend, or vacate that order. The family court entered an order on October 23, 2014, denying Knochelmann's motion. Knochelmann filed a notice of appeal from the court's November 6, 2013, May 5, 2014, May 29, 2014, and October 23, 2014 orders (Appeal No. 2014-CA-001923-ME).

While the above issues were being litigated, on May 20, 2014, Bjelland, through the County Attorney, moved the court to hold Knochelmann in contempt for failing to pay his child support obligation as ordered. The arrearage amount was $2,886.54 as of April 30, 2014. Knochelmann objected to the motion, stating that the County Attorney had not fully researched the issue. An affidavit from Desiree Burton Ryan, a case worker in the Campbell County Child Support Office, attached to Bjelland's memorandum in support of her motion for contempt provided that she had calculated the amount of the child support arrearage to be $2,885.74, after a credit of $17.40 for amounts paid toward the arrearage. The arrearage amount had been added into the KASES system in 2014 after the dismissal of Knochelmann's appeal became final.

By order entered January 8, 2015, the court ruled on Bjelland's motion for contempt related to the child support arrearage. The court explained that in September 2003, it confirmed its ruling that Knochelmann owed Bjelland $9,632.39 plus 12% interest for the arrearage, established as of December 31, 2002. Knochelmann paid $9,632.39 to Bjelland on June 28, 2006. In April 2008, the court ruled that there was a child support arrearage in the amount of $2,902.94 and ordered Knochelmann to pay an additional $100.00 per month on the arrearage. While Knochelmann contended that he had paid the entire arrearage before the 2008 order and argued that the Child Support Office had made an unauthorized adjustment in March 2014, Bjelland argued that the amount could not be loaded into the accounting system until the pending appeal was final. The court

found that the record was clear that Knochelmann had not paid the additional $100.00 per month after the entry of the April 2008 order. The court agreed with Bjelland that additional arrearages had accrued since April 2008, and while Knochelmann had the opportunity to seek review of that order, his appeal was dismissed. The court held that Knochelmann's conduct in failing to pay the extra $100.00 per month towards the arrearage was contemptuous. The court sentenced Knochelmann to thirty days in jail, conditionally discharged if he paid $2,100.00 within thirty days and $100.00 per month until the arrearage was paid. Knochelmann filed a notice of appeal from the January 8, 2015, order (Appeal No. 2015-CA-000199-ME). These two consolidated appeals are now before the merits panel for review.

In his brief, Knochelmann states that with the child's emancipation in 2015, the issues on appeal are limited to the DRC's authority after that position had been abolished by statute, whether he was entitled to a child support review, payment of medical of insurance, and what he owed in child support. In her brief, Bjelland contends that all of the issues Knochelmann raises in his brief have been previously appealed and that he does not have the right to seek further review in the present appeals.

Knochelmann's first argument addresses whether the child support arrearage Bjelland claims is void based upon the abolishment of the DRC position in January 2003. The DRC's recommendations in this matter were entered in April 2003. This issue was raised in Knochelmann's 2003 appeal and was found to be

without merit by this Court in the 2005 opinion. Knochelmann again raised this issue in 2007, and the family court found that jurisdiction was proper in its 2008 ruling. Knochelmann attempted to appeal the 2008 ruling, but his appeal was dismissed for failing to substantially comply with the appellate rules. In the 2014 order, the family court declined to address this argument because Knochelmann had not raised it in his pleadings or during the February 2014 hearing. Because this issue has already been raised multiple times and decided at the appellate level, or could have been raised in an appeal that was dismissed, we decline to address it any further, other than to note that the DRC held the hearing upon which the recommendations were based prior to the abolishment of the position.

Next, Knochelmann contends that he could not be held in contempt for failing to pay a child support arrearage that he claimed had been included in an amount he had previously paid. In *Commonwealth, Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011), the Supreme Court of Kentucky addressed a court's contempt powers and an appellate court's standard of review:

> A trial court, of course, has broad authority to enforce its orders, and contempt proceedings are part of that authority. *Lewis v. Lewis*, 875 S.W.2d 862 (Ky. 1993). KRS 403.240, moreover, provides that a party's noncompliance with a support or custody decree "shall constitute contempt of court," and shall be addressed as such. We review the trial court's exercise of its contempt powers for abuse of discretion, *Lewis*, 875 S.W.2d at 864, but we apply the clear error standard to the underlying findings of fact. *Blakeman v. Schneider*, 864 S.W.2d 903 (Ky. 1993).

Knochelmann's argument addresses the $2,902.94 arrearage added to his child support account. This matter was decided by the family court in its April 2008 order, which found that an arrearage in the amount of $2,902.94 had accrued based upon information provided by the Child Support Office.[2] Knochelmann had the opportunity to appeal this ruling, but his appeal was dismissed, he admits, for his failure to file a brief. Therefore, the 2008 ruling must stand as the law of the case, and Knochelmann's argument that he could not be held in contempt for failing to pay the arrearage because the arrearage amount was incorrect cannot have any merit. We find no error in the family court's finding that Knochelmann failed to pay the arrearage or abuse of discretion in holding him in contempt.

Next, Knochelmann argues that Bjelland is not entitled to the payment of medical insurance premiums she did not incur for the child. Knochelmann had been ordered to pay Bjelland $55.00 per month toward the cost of the insurance premium beginning in 2005. In the April 2008 order, the family court recognized that the testimony on the issue of whether Bjelland had maintained coverage on the child on a regular basis was unclear. Therefore, it ordered Bjelland to submit detailed records within 60 days establishing her monthly costs since the September 27, 2005, order was entered. The court provided Knochelmann thirty days to respond. Bjelland filed this information on June 10, 2008, and resubmitted additional information on September 15, 2008. She certified in both filings that she served Knochelmann and his attorney with the documentation. The family

[2] In its 2014 order, the family court found that the arrearage had decreased slightly to $2,885.74 due to some minor overpayments Knochelmann had made.

court later denied Knochelmann's motions to alter, amend, or vacate, the first of which confirmed its ruling on the medical insurance reimbursement issue. Knochelmann's 2009 appeal from that series of orders was dismissed for failure to file a brief, as discussed earlier.

Knochelmann states in his brief that he had not received several court orders that had been entered, including the April 2008 order. He also states that he had not received Bjelland's medical insurance information she filed with the court and that Bjelland testified at the February 21, 2014, hearing that she had not provided this information to Knochelmann. Our review of Bjelland's testimony establishes that she stated that she provided proof of insurance coverage to the Child Support Office, but not directly to Knochelmann. She was not, in our opinion, testifying about the information she filed with the court on June 10, 2008, which she certified was served on Knochelmann.

In ruling on this issue in the May 5, 2014, order, the family court stated that "[Knochelmann] could not direct the Court to an Order which contradicted the Order mandating him to reimburse Mother $55.00 per month for health insurance, nor could the Court find anything upon its own search through the record." In its October 23, 2014, order ruling on Knochelmann's motion to alter, amend, or vacate, the family court more specifically addressed this issue after re-examining the court record. The court confirmed that it "could not find another Order terminating this obligation or mitigating the amount owed and shall not reconsider the previous Judge's decision regarding such." We agree with the

family court and because Knochelmann had the opportunity to appeal the 2008 and 2009 rulings, but failed to properly prosecute his appeal, we find no error or abuse of discretion in the family court's ruling that Knochelmann owed $55.00 per month in health insurance reimbursement, or in the amount of arrearage, and the requirement that he pay an additional amount per month towards the arrearage.

Finally, Knochelmann contends that he is entitled to a review of child support pursuant to KRS 403.213(1), stating that the last review was in 2008, when the family court imputed income to him. In the May 5, 2014, order, the court stated that Knochelmann "did not provide any evidence regarding the parties' incomes" and therefore denied his motion. In his brief, Knochelmann has failed to point to anything in the record to dispute the family court's finding. Therefore, we find no error or abuse of discretion in this ruling.

This Court has considered Bjelland's requests in her appellate brief that we impose severe fines on Knochelmann for "gross abuse of the appellate process," recommend the case to the Kentucky Bar Association, and award her attorney fees, as well as Knochelmann's reply brief objecting to these suggestions. We decline Bjelland's requests to do so.

For the foregoing reasons, the orders of the Campbell Family Court are affirmed.

ALL CONCUR.

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