

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0106

MARJORIE ANN ROMERO AMBROSE

VERSUS

STEVEN AMBROSE

Judgment rendered: November 2, 2007

On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, State of Louisiana
Suit Number 119,429

The Honorable Randall L. Bethancourt, Judge Presiding

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Steven Ambrose

KUHN, J CONCURS & ASSIGNS REASONS

BEFORE: PARRO, KUHN AND DOWNING, JJ.

DOWNING, J.

Steven Ambrose appeals a judgment sanctioning him for contempt of court. His former spouse, Marjorie Ann Romero Ambrose, filed a rule for contempt in this proceeding against Mr. Ambrose for violating the terms of a judgment rendered in another proceeding in which she was not a party. Of our own motion, pursuant to our authority under La. C.C.P. art. 927B, we notice that Ms. Ambrose had no right of action to enforce in this proceeding a judgment in favor of the Louisiana Department of Social Services and against Mr. Ambrose, which was rendered in another proceeding in which she is not a party. Accordingly, we vacate the judgment of the trial court.

PERTINENT FACTS AND PROCEDURAL HISTORY

In this proceeding entitled, “Marjorie Ann Romero Ambrose vs. Steven Ambrose,” bearing docket No. 119429, Div. E, Mr. and Ms. Ambrose were divorced on November 10, 1998. By judgment in this action dated March 14, 2002, custody issues surrounding their two children were resolved. Ms. Ambrose was given sole custody of the children, and Mr. Ambrose was given visitation.

Child support issues, however, were not resolved within this lawsuit. Rather, Ms. Ambrose made application for and received services from the Support Enforcement Services for the State of Louisiana, Louisiana Department of Social Services (“Department”) in accordance with La. R.S. 46:236.1, *et seq.*¹ Accordingly, the State filed suit on May 23, 2001, against Mr. Ambrose seeking child support and medical support. Ms. Ambrose was not a party to that action. That action was entitled, “State of Louisiana vs. Steve Ambrose,” bearing docket No. 10371-IV-D. Judgment was entered on

¹ Louisiana Revised Statutes 46:236.1 was repealed by 2003 La. Acts, No. 1068, § 4. Its provisions were re-enacted as La. R.S. 46:236.1.1, *et seq.*

October 9, 2001 in favor of the Department ordering Mr. Ambrose to pay, among other things, child support, arrearages and a percentage of the children's medical bills. Sums due were payable to the 32nd Judicial District Court IV-D Program. The judgment also made a hearing officer's recommendations the order of the court.

Ms. Ambrose subsequently filed in this proceeding the rule for contempt and to make past due child support and medical payments executory. The judgment resulting from that rule is at issue in this appeal. She filed the rule in her own name personally seeking to enforce the judgment from the other proceeding that was rendered in favor of the Department. The trial court ruled in her favor, finding Mr. Ambrose to be in contempt and ordering sanctions. The trial court denied Mr. Ambrose's motion for new trial.

Mr. Ambrose now appeals, asserting ten assignments of error. In his first assignment of error, he argues that the Department is an indispensable party to these proceedings.²

DISCUSSION

In a case where the Department is providing services, the Department has a "separate and distinct cause of action" that "need not be ancillary to or dependent upon any other legal proceeding." La. R.S. 46:236.1.2D(1).³

² While Mr. Ambrose has not filed a formal peremptory exception under La. C.C.P. art. 927, he does argue the following language found both in La. R.S. 46:236.1.5B and La. R.S. 46:236.1.9(C): "The department shall be an indispensable party to any proceeding involving a support obligation or arrearages owed under this Subpart."

We also note here that while the numbering of the pertinent provisions of Title 46 has been altered since the Department filed its petition against Mr. Ambrose, the law is substantively unchanged.

³ The full text of this paragraph is as follows:

The department, except when it is not in the best interest of the child, may without the necessity of written assignment, subrogation, tutorship proceedings, or divorce proceedings take direct civil action, including actions to establish filiation against an alleged biological parent notwithstanding the existence of a legal presumption that another person is the parent of the child solely for the purpose of fulfilling its responsibility under this Section, in any court of competent jurisdiction, to obtain an

The Department may take direct civil action “without the necessity of written assignment, subrogation, tutorship proceedings, or divorce proceedings.” *Id.* Here, upon certification by the Department that services were being provided under then La. R.S. 46:236.1 *et seq.*, the district attorney filed suit against Mr. Ambrose seeking to obtain an order of support against him for his two minor children. This was done before custody issues were settled. The Department’s action resulted in a judgment ordering Mr. Ambrose to pay child and medical support to a court-established program. Ms. Ambrose is not identified in any way as a party.

The law does allow Ms. Ambrose to have the judgment amended to require that payments be made to her under certain conditions, but nothing in the record reflects that she has done this. La. R.S. 46:236.2B & C⁴ say that upon the motion of an interested party, together with certification from the Department that neither benefits nor services are being provided by it, the court may order the judgment to be amended *ex parte* to remove the Department as payee and substitute the individual.

order, judgment, or agreement of support against the responsible person in any case in which the department is providing services under this Subpart. The amount of such support shall be set only by order of the court or by the consent of the parties, but in either case the department shall be designated as payee. Additionally, the department may take direct action to modify an order or judgment of support, including actions to increase or decrease support, in any case in which the department is providing services pursuant to this Subpart. **A separate and distinct cause of action in favor of the department is hereby created, and suits brought under this provision need not be ancillary to or dependent upon any other legal proceeding.** (Emphasis and underlining added.)

⁴ In pertinent part, these paragraphs state:

B. (1)(a) Any interested party may by a written motion, together with a written certification from the department that the department is not presently furnishing and does not contemplate furnishing FITAP for or on behalf of an individual and that no services are being rendered by the department on behalf of the individual, obtain from the court which rendered the order to support such individual an amended order to require that support payments be made payable to the individual or caretaker instead of the department.

(b) As used in this Paragraph, “interested party” shall include only the department, the person owing the support obligation, or the individual or caretaker to whom the support obligation is owed.

* * * *

C. In either of the above cases, the court shall grant its order *ex parte* and without hearing any adverse party.

Further, La. C.C.P. art. 225A⁵ provides that a rule for contempt may issue only on the court's motion or the motion of a "party to the action or proceeding." *See also* La. R.S. 46:236.6, which provides the mechanism by which the Department may initiate contempt proceedings. Ms. Ambrose is not a party to the action or proceeding that resulted in the judgment she is trying to enforce.

We conclude, therefore, that there is no judgment establishing a child support or medical obligation under "Ambrose v. Ambrose," docket No. 119429, Div. E under which Ms. Ambrose could seek a contempt citation for failure to pay child support or medical support. We further conclude that she is not a party to "State of Louisiana vs. Steve Ambrose," docket No. 10371-IV-D, the action in which judgment was rendered in favor of the Department. We know of no law that allows Ms. Ambrose to seek a contempt citation or other enforcement of this judgment in favor of the Department.

Louisiana Code of Civil Procedure art. 927B allows us to recognize the lack of a right of action on our own motion. This article provides in pertinent part: "The nonjoinder of a party, or the failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit, may be noticed by either the trial or appellate court of its own motion."

Accordingly, of our own motion, we notice that Ms. Ambrose has no right to seek enforcement of the judgment in favor of the Department. Therefore, we will vacate the judgment of the trial court in "Ambrose v.

⁵ This paragraph provides in pertinent part as follows:

Except as otherwise provided by law, a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt and punished accordingly. The rule to show **cause may issue on the court's own motion or on motion of a party to the action or proceeding** and shall state the facts alleged to constitute the contempt. (Emphasis added.)

Ambrose,” docket No. 119429, Div. E, rendered on December 6, 2005, which is at issue in this appeal. All assignments of error are pretermitted.

DECREE

For the foregoing reasons, of our own motion and pursuant to our authority under La. C.C.P. art. 927B, we notice that Ms. Ambrose has no right to seek a contempt citation or otherwise enforce the judgment in favor of the Department and against Mr. Ambrose. We vacate the judgment of the trial court in “Ambrose v. Ambrose,” docket No. 119429, Div. E, rendered on December 6, 2005, which is at issue in this appeal.

VACATED

**MARJORIE ANN ROMERO
AMBROSE**

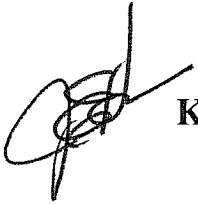
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KUHN, J., concurring in part.

I concur because the 2005 trial court judgment reviewed in this appeal is properly vacated because the State of Louisiana through the Department of Social Services (“the Department”) has not been made a party to this suit. Further, the record does not establish sufficient facts to support the majority’s conclusion that Mrs. Ambrose does not have a right of action to file her rule for contempt.

La. R.S. 46:236.1.9C provides, “The department shall be an indispensable party to any proceeding involving a support obligation or arrearages owed under [Subpart B, addressing public assistance for child support enforcement].” The majority references this statute in a footnote but does not vacate the trial court’s judgment on the basis of this statute. The record establishes that the Department was providing support enforcement services to Mrs. Ambrose in 2001 and that the Department filed proceedings against Mr. Ambrose on behalf of Mrs. Ambrose and the minor children in a suit captioned State of Louisiana v. Steve Ambrose. In that proceeding, the 2001 judgment identified that Mr. Lawrence D. Ward, Jr., Assistant District Attorney for the Department appeared on behalf of “the payee, Marjorie Ambrose,” but ordered Mr. Ambrose to pay monthly child support and 31% of unpaid medical bills to the 32nd Judicial District Court IV-D Program. See La. R.S. 46:236.1.2(D)(1). Mrs. Ambrose’s current rule, filed in a

separate action in the 32nd Judicial District Court, seeks an executory judgment for past due child support and medical payments owed by Mrs. Ambrose under the terms of the 2001 judgment.¹

The majority concludes that Mrs. Ambrose does not have a right of action to enforce the 2001 judgment. Louisiana Revised Statutes 46:236.1.5, also within Subpart B and addressing family and child support programs, provides:

A. By accepting [Family Independence Temporary Assistance Program benefits] for or on behalf of himself or another individual, the applicant or recipient shall be deemed, without the necessity of signing any document, to have made an assignment to the department of his entire right, title, and interest to any support obligation such applicant or recipient may have in his own behalf or on behalf of any family member for whom the applicant is applying for or receiving FITAP which has accrued at the time of the certification for FITAP and which accrues during the time FITAP is furnished. The assigned support rights shall constitute an obligation owed to the department by the person responsible for providing such support, and said obligation shall be established by an order of a court of competent jurisdiction, and the department may thereafter collect by appropriate process any outstanding debt thus created....

B. The applicant or recipient shall also be deemed, without the necessity of signing any document, to have consented to the designation of the department as payee in an initial or amended order of support and to have appointed the SES program administrator as his or her true and lawful attorney-in-fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders, or other negotiable instruments representing support payments which are received on behalf of such individual or his caretaker. The department shall be an indispensable party to any proceeding involving a support obligation or arrearages owed under this Subpart. The provisions of this Subpart shall apply retrospectively to all support rights assigned, whether by written assignment or by operation of law, prior and subsequent to October 1, 1981.

(Emphasis added.)

¹ Mrs. Ambrose's petition for divorce filed in 1997 was the initial pleading in the present suit.

In the instant case, Mrs. Ambrose is seeking to enforce Mr. Ambrose's payment of child support and medical payments for obligations that have accrued during 2005. While the record establishes generally that "support enforcement services" were being provided to Mrs. Ambrose under La. R.S. 46:236.1 *et. seq.* as of May 2001, the record does not establish that the Department has continued to provide services or that any services were furnished to Mrs. Ambrose during 2005, when the support obligations at issue in this rule accrued. Accordingly, the record does not clearly establish that plaintiff has assigned her rights to these benefits to the Department.

The majority reasons that Mrs. Ambrose has no right of action because she has not complied with La. R.S. 46:236.2B, which addresses the required steps that an interested party must take before it can be designated as a "payee." Although Mrs. Ambrose may be required to comply with the steps outlined in La. R.S. 46:236.2B to obtain an order requiring Mr. Ambrose to make the support payments directly payable to her, this statute does not establish that she cannot file a suit to enforce the terms of the 2001 judgment, i.e., requiring Mr. Ambrose to make payments to the 32nd Judicial District Court IV-D Program.

The function of an exception of no right of action is a determination of whether plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the petition. La. C.C.P. art. 927. The exception of no right of action serves to question whether the plaintiff in the particular case is a member of the class of persons that has a legal interest in the subject matter of the litigation. *Badeaux v. Southwest Computer Bureau, Inc.*, 05-0612 (La. 3/17/06), 929 So.2d 1211, 1216-1217. As sole custodian of the minor children at issue, Mrs. Ambrose has an interest in enforcing the judgment obtained by the Department on her behalf. See La.

R.S. 46:236.6E (providing that the “provisions and remedies of this Section [authorizing the Department to enforce the terms of a court order issued pursuant to this Subpart] shall be construed as an addition to, and not in substitution for, any other remedy otherwise available to obtain or enforce an order for support.”)

Thus, the record does not establish that Mrs. Ambrose does not have an interest in the subject matter of the suit or otherwise does not have the legal capacity to proceed with the suit. By filing this suit, she has effectively interrupted the applicable prescriptive period. But because the Department was not joined in the proceedings below, and La. R.S. 46:236.1.9 mandates that the Department is an indispensable party, the trial court’s 2005 judgment should be vacated. The matter should be remanded to the trial court for further proceedings.