NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0193

STATE OF LOUISIANA

VERSUS

TRINIDY DARNELLE BURTON, SR.

Judgment Rendered: DEC 18 2013

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket Number 98001665

The Honorable Robert H. Morrison, Judge Presiding

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Kathy C. Alford Amite, LA	Counsel for Plaintiff/Appellant, State of Louisiana & Rashawnda Jones
Charles E. Brumfield New Orleans, LA	Counsel for Defendant/Appellee, Trinidy Darnelle Burton, Sr.

BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WHIPPLE, C.J.

This matter is before us on appeal by plaintiff, the State of Louisiana, Department of Children and Family Services, Child Support Enforcement (hereinafter "the State"), from an order of the district court sustaining an exception to the hearing officer's recommendation filed by defendant, Trinidy Darnelle Burton, Sr.

For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

Reshawnda Jones[1] and Trinidy Burton, Sr. had a child, T.D.B., out of wedlock, on December 12, 1995. In 1998, Mrs. Jones filed the necessary paperwork to obtain an order of child support and collection from Mr. Burton through the State, pursuant to the provisions of LSA-R.S. 46:236.7.[2] In connection therewith, Mr. Burton signed an acknowledgement of paternity and stipulated in a consent judgment to pay child support in the amount of $213.15

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[1]Although the record cover and transcript of the hearing herein spell Mrs. Jones's first name "Rashawnda," the record pleadings, order, and reasons for judgment spell Mrs. Jones's name "Reshawnda." Thus, we will use the latter spelling for consistency through the opinion.

[2]Louisiana Revised Statute 46:236.7 provides, in part, as follows:

> A. (1) In cases in which the responsible parent or other person owes a duty of support to a spouse or minor child, the responsible parent or other person owing such duty and the district attorney may stipulate to an order of support. The juvenile and family courts of this state shall have the power to issue an order of support under the provisions of this Section. **This order shall be considered a civil order of support enforceable in the juvenile or family court of this state which rendered the order.** This order may be registered in other family or juvenile courts of this state pursuant to the provisions of Children's Code Article 1301.3 et seq. This support shall be ordered payable to the spouse, to the tutor or custodian of the child, to the court-approved fiduciary of the spouse or child, or to the Department of Children and Family Services in a FITAP case or in a non-FITAP case in which the department is rendering services, whichever is applicable; hereinafter, said payee shall be referred to as the "applicable payee". The amount of support as set by the court may be increased or decreased as the circumstances may require. [Emphasis added.]

per month.[3] An income assignment order was entered pursuant to LSA-R.S. 46:236.3 through which monthly support payments were garnished from Mr. Burton's employment wages.[4]

In 2002, Mrs. Jones approached Mr. Burton and asked if he would surrender his parental rights of T.D.B., as she had married and her husband wanted to adopt T.D.B. According to Mrs. Jones, she and her husband did not want Mr. Burton around T.D.B. Thus, she told Mr. Burton if he allowed the adoption to proceed, she would "take him off child support." Mrs. Jones testified that Mr. Burton agreed to surrender his parental rights and she, in turn, closed her child support collection efforts through the State. The State thereafter discontinued collecting monthly child support payments through the income assignment order and closed its administrative file in Mrs. Jones's collection case in accordance with her request.

Mrs. Jones and her husband subsequently divorced without the adoption of T.D.B. taking place. According to Mr. Burton, he and Mrs. Jones thereafter agreed that Mr. Burton would provide whatever was asked of him for the child. Mrs. Jones testified that even though Mr. Burton did not surrender his parental rights, she did not reopen her child support collection case with the State at that time "[b]ecause when [she] moved back in '06, the thing that was most important to [her] was that [T.D.B.] had a relationship with his Dad." She explained that "[s]o long as he was doing that and every now and then, if [T.D.B.] would call his dad and ask him for something, and he would do it, I was okay with that, because

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[3]Specifically, the consent judgment ordered that he pay child support, as stipulated, in the amount of $203.00, plus a 5% administrative fee of $10.15 for monthly collection through the State, for a total monthly payment of $213.15. An order in accordance therewith was rendered by the district court, with the first payment due on May 31, 1998.

[4]The parties do not dispute that during these proceedings, Mrs. Jones never received FITAP or other benefits on behalf of the minor child such that any support paid by Mr. Burton would be payable to the Department of Children and Family Services ("DCFS") for reimbursement.

I've always had my parents." Thus, after 2002, Mr. Burton provided some support, but the support was given directly to T.D.B. In 2006, Mrs. Jones, who had been living out-of-state with T.D.B. during this time, moved back to Louisiana. At the time of the hearing, T.D.B. and his siblings were residing with her parents at their home in Hammond, Louisiana, while Mrs. Jones was living nearby in Pontchatoula, where she lived with her elderly grandmother.[5]

In 2011, Mrs. Jones re-opened her case file for collection of child support through the State. Mrs. Jones later testified, "[s]o long as [Mr. Burton] didn't disappoint the child, I was fine... [b]ut when it got to the point where every time he --- [T.D.B.] would call him ... he would tell him he couldn't or he can't or no ... then that became a problem, and I decided that he needed to do what was right." On January 25, 2012, Mrs. Jones filed a rule to show cause, contending that Mr. Burton had failed to make child support payments as previously ordered and that he owed arrearages in the amount of $26,390.00. The matter was heard before a hearing officer[6] on March 29, 2012, at which time (1) an immediate income assignment order was re-entered for collection of monthly support in the amount of $213.15 per month, pursuant to the May 27, 1998 consent judgment; (2) Mr. Burton was ordered to obtain medical insurance for the child and pay 50% of all uncovered medical expenses; and (3) the issue of arrearages was continued to June 20, 2012.

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[5]Mrs. Jones testified that T.D.B. and her other children lived with her parents pursuant to an agreement with her parents that she would live with her grandmother and provide sitter services to help care for her grandmother in return for her parents' help in allowing her children to live with them.

[6]Hearing officers are appointed by judges of the court to hear, among other things, child support and support-related matters. Hearing officers are authorized to conduct hearings, after which they are to file a report and recommendation with the court. Any party aggrieved by the recommendation of the hearing officer may file a written objection to the findings of fact or law. The objection shall be heard by the judge of the district court to whom the case is assigned. See LSA-R.S. 46:236.5 and LSA-Ch.C. art. 423.

After a hearing on the matter of arrearages, the hearing officer rendered a recommendation that arrearages, presumably arising during the time in which Mrs. Jones's collection case filed through the State was closed and while Mr. Burton was paying some support to the child directly, in the amount of $19,360.00 be made executory, and that Mr. Burton be ordered to pay an additional $100.00 per month toward the arrearage balance.[7] Mr. Burton filed an exception to the hearing officer's recommendation, contending that he and Mrs. Jones had entered into an agreement that he would provide for the minor child "as requested," and that he had upheld his end of the agreement. Thus, he contended, no arrearages were due. Mr. Burton further contended that he should be relieved from paying any arrearages as the minor child did not reside in the same household as Mrs. Jones.

The exception was heard before the district court on September 17, 2012. After hearing the testimony of Mr. Burton and Mrs. Jones, the district court rendered judgment sustaining the exception and finding that Mr. Burton owed "no arrearage from the prior closure of this case in 2002 through the reinstatement of support proceedings in 2011." On October 1, 2012, the district court issued written reasons for judgment, as requested by the State, which provided as follows:

> Following a hearing conducted in this case on an exception to the award of arrearages by the Hearing Officer, this Court ruled that there was no legal arrearage, and sustained the exception. The State, through counsel which did not participate in the hearing, has now requested written reasons.
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> The only evidence submitted at the hearing was the testimony of Trinidy D. Burton, Sr., and Reshawnda Jones, mother of the child for whom support is sought. Both of these parties testified that the prior support proceedings had been voluntarily and consensually closed in 2002. Ms. Jones testified that she did this because Mr. Burton was supposed to surrender his parental rights such that the

[7]The record before us on appeal does not contain an accounting or arrearage affidavit identifying the months for which these arrearages accrued or an explanation as to how the hearing officer arrived at the $19,360.00 arrearage amount.

> child could be adopted. Mr. Burton either disagreed that this was the case, or under any circumstances, never surrendered his rights. Both parties testified that he had provided some support through other means.
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> Ultimately, Ms. Jones sought to resume her claim for child support in 2011, at which time the claim for arrearages was also apparently asserted. Ms. Jones testified that she had not received any benefits in the interim which would have triggered any claim for support. The Court therefore concluded that there simply was no established, legal claim for support from 2002-2011, and that therefore, there was likewise no legal "arrearage".

The State filed a motion for new trial, which was argued and subsequently denied by the district court on November 12, 2012. A judgment denying the State's motion for new trial was signed on November 26, 2012. The State then filed the instant appeal.

DISCUSSION

On appeal, the State contends that the district court erred: (1) in (explicitly) finding that child support does not accrue under an established, existing **child support** judgment unless the custodial party receives government "benefits" during the accrual period; and (2) in implicitly finding that the administrative closure of a Department of Children and Family Services support collection case or file has the legal effect of abrogating the obligation under a child support judgment.

The State argues that the judgment rendered by the district court was improper and predicated on legal error, as reflected in the reasons rendered by the district court. In considering the State's challenge to the underlying basis for the district court's decision,[8] regardless whether the State's interpretation of the rationale or basis underlying the district court's reasons for judgment is

[8]Citing the reasons for judgment, the State notes, "Although not discussed by the trial court, a concept implied by the trial court's decision must be the determination that CSE's internal case closure had legal [e]ffect on the underlying May 27, 1998, child support judgment, a position which is completely denied by CSE ...." According to the State, "The court's apparent construct was if [Mrs. Jones] was not receiving support from government source, no child support was owed."

completely correct, we note that reasons for judgment form no part of the official judgment, and that appeals are taken from judgments, not reasons for judgment. Doe v. Breedlove, 2004-0006 (La. App. 1st Cir. 2/11/05), 906 So. 2d 565, 571. Accordingly, on appeal we will review the correctness of the judgment herein.

In considering whether the judgment is predicated on legal error, we agree with the State that there is no legal requirement that a party must receive government benefits for child support to accrue under a CSE judgment awarding child support. Louisiana Revised Statute 46:236.1.2 provides, in part:

> A. The department is hereby authorized to develop and implement a program of family support in FITAP cases, Title IV-E Foster Care cases, Medicaid only cases, and any other category of cases to which the state is required by federal law or regulation to provide services, designed to do the following:
>
> (1) Enforce, collect, and distribute the support obligation owed by any person to his child or children and to his spouse or former spouse with whom the child is living if a support obligation has been established with respect to such spouse or former spouse.
>
> (2) Locate absent parents.
>
> (3) Establish paternity.
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> (4) Obtain and modify family and child support orders.
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> (5) Obtain and modify medical support orders.
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> B. (1) In addition, as required by federal law, the department shall provide the above services to any individual including absent or noncustodial parents not otherwise eligible for such services as provided for in Subsection A upon receiving an application from such individual and upon receiving any fee which may be assessed by the department for the services, **regardless of whether the individual has ever received public assistance** and regardless of whether there is a delinquency.

(Emphasis added.)

Moreover, we find merit to the State's argument that the payee's closure of a child support collection case through the State, standing alone, has no legal effect on a validly entered child support judgment. In Louisiana, the general

rule is that a child support judgment remains in full force until the party ordered to pay it has the judgment modified, reduced, or terminated by a court. Halcomb v. Halcomb, 352 So. 2d 1013, 1015-1017 (La. 1977). In the instant case, the May 27, 1998 child support consent judgment was never judicially modified, reduced, or terminated by the district court; thus, the judgment obligating him to pay support remained in effect, regardless whether **collection** was pursued by the payee through the State or not. Thus, to the extent that the trial court's ruling was premised on the belief that the receipt of government assistance was a predicate for the outstanding or unpaid child support to accrue, the court erred. However, while such error may affect the deference owed on review of the judgment on appeal, our inquiry does not end there.

As Mr. Burton correctly notes, in certain cases, our courts have recognized that a judgment awarding child support can be **extrajudicially** modified by agreement of the parties. Palmer v. Palmer, 95-0608 (La. App. 1st Cir. 11/9/95), 665 So. 2d 48, 50-51. Such an agreement must meet the requisites of a conventional obligation and the evidence must establish that the parties have clearly agreed to waive or otherwise modify the court-ordered payments. Trisler v. Trisler, 622 So. 2d 730, 731 (La. App. 1st Cir. 1993).[9]

Moreover, in order for such an agreement to be given effect, it must be in the best interest of the child. Gomez v. Gomez, 421 So. 2d 426, 428 (La. App.

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[9]Louisiana courts have recognized a second jurisprudential exception in cases where although there may not have been a clear agreement concerning the modification of child support, the obligation was suspended by implied agreement, where the mother delivered the physical custody of the child or children to the father who provided directly for their support. In such cases, an implied agreement has been deemed to exist, due to the mutual understanding between the parents that the father would assume sole responsibility for feeding, clothing, and sheltering the child or children in his care. See Henson v. Henson, 350 So. 2d 979, 982 (La. App. 2nd Cir. 1977); Matter of Andras, 410 So. 2d 328, 331 (La. App. 4th Cir. 1982); LeGlue v. LeGlue, 404 So. 2d 1268, 1269 (La. App. 4th Cir. 1981); Pierce v. Pierce, 397 So. 2d 62, 65 (La. App. 2nd Cir. 1981); Sims v. Sims, 422 So. 2d 618, 622 (La. App. 3rd Cir. 1982), writ denied, 427 So. 2d 870 (La. 1983). See also Bagby v. Dillon, 434 So. 2d 654, 659-660 (La. App. 3rd Cir.), writ denied, 440 So. 2d 150 (La. 1983); Hendricks v. Hendricks, 594 So. 2d 1129, 1130 (La. App. 3rd Cir. 1992); Goss v. Goss, 95-1406 (La. App. 3rd Cir. 5/8/96), 673 So. 2d 1366, 1370; and Brasfield v. Brasfield, 98-1021 (La. App. 5th Cir. 2/23/99), 729 So. 2d 83, 85-86. However, this exception does not apply here.

1st Cir. 1982). The agreement must foster the continued support and upbringing of the child; it must not interrupt the child's maintenance or upbringing or otherwise work to his detriment. Dubroc v. Dubroc, 388 So. 2d 377, 380 (La. 1980). Importantly, the party seeking to modify his obligation under the judgment has the burden of proving the existence of such an agreement. Trisler v. Trisler, 622 So. 2d at 731.

Mr. Burton testified that it was his understanding that Mrs. Jones "took [him] off support" when she closed her collection case with the State, and that once the child support case was closed, he no longer owed support to Mrs. Jones. Even if Mr. Burton was in good faith so believing, as the State correctly points out, the mere closure of the collection case through the State in no way modified, reduced, or terminated the May 27, 1998 judgment awarding child support. Absent the judicial filing of a petition to modify, reduce, or terminate the May 27, 1998 judgment of the district court ordering child support, or some other basis for modifying or setting it aside, the judgment remained intact and enforceable. See Halcomb v. Halcomb, 352 So. 2d at 1015-1017.

Mr. Burton contends that even if the district court erred in its reasoning, the judgment should be affirmed on the basis that the parties had entered into an enforceable agreement to extrajudicially modify the judgment awarding child support.

In the instant case, Mrs. Jones admitted that she asked that he surrender his parental rights of T.D.B. in order for Mrs. Jones's husband to adopt T.D.B. Mr. Burton admitted that he did not surrender his parental rights, but contends that "a year or two later," after Mrs. Jones and her husband divorced, he and Mrs. Jones entered into an oral agreement that should relieve him of his support obligation based on the agreement that "whenever she asked [him] for something" he would "get it for her ... [a]nd that's what [he's] been doing for the last ten years since

she took [him] off in 2002." Further, Mr. Burton contends (and so testified) that, as per their agreement, he then bought things for his son when the boy asked and that he thus provided support to him directly.

When asked if Mr. Burton had provided any support since the day she closed her collection case with the State, Mrs. Jones answered, "He has done things, yes." When asked if Mr. Burton had paid any actual support to her as per the judgment, Mrs. Jones testified, "I don't know that I consider it support. He's done things for the child, yes." Mrs. Jones explained her answer, stating, "He's bought things for the child, and he's given the child money." Mrs. Jones explained that after returning to Louisiana in 2006, she did not immediately re-open her child support collection case with the State because she felt it was important that T.D.B. have a relationship with his dad. She stated that as long as Mr. Burton was helping when T.D.B. would call him and ask for things, she refrained from pursuing her rights under the judgment because she was "okay with that." Mrs. Jones explained, "So long as he didn't disappoint the child, I was fine... But when it got to the point where every time he – [T.D.B.] . . . would call him, and he would tell him he couldn't or he can't or no or whatever, then that became a problem, and I decided that he needed to do what was right."

The record contains no testimony or other evidence to establish the amount or frequency of any type of support that Mr. Burton provided for the minor child. As the party seeking to modify or be relieved of his obligation under the judgment, Mr. Burton had the burden of proving the existence of a valid agreement pursuant to the jurisprudential requirements set forth above. On review of the record herein, we are unable to find he did so.

After careful review, even if we were to find that the parties had entered into some sort of understanding or agreement, such that it would serve to modify the existing child support judgment, there is nothing in the record to

show that this purported "agreement" was in the best interest of the child. Instead, considering the circumstances, as related by the parties, any such "agreement," implied or otherwise, clearly did not foster the continued support and upbringing of the child. In fact, according to Mrs. Jones's testimony, the "agreement" or resulting circumstances were shown to interrupt T.D.B.'s "maintenance or upbringing" or otherwise "work to his detriment." See Dubroc v. Dubroc, 388 So. 2d at 380; Trisler v. Trisler, 622 So. 2d at 731.

As such, we find merit to the State's appeal, as the district court erred in maintaining Mr. Burton's exception to the hearing officer's recommendation and determining that Mr. Burton owed no child support for the arrearages that accrued under the judgment after the State's closure of its collection case. As the party who bore the burden of proof, Mr. Burton was obligated to establish that he was relieved of or otherwise satisfied his obligation to support his child, as well as any credits otherwise due. On the record before us, he failed to do so.

Accordingly, the district court's judgment must be vacated and the matter is remanded to the district court for a hearing to determine the precise amount of arrearages due after applying any credits for which Mr. Burton may be entitled.

CONCLUSION

For the above and foregoing reasons, the district court's September 17, 2012 judgment, sustaining Mr. Burton's exception to the hearing officer's recommendation is hereby reversed and this matter is remanded to the district court for further proceedings consistent with the views expressed herein.

Costs of this appeal in the amount of $122.50 are assessed to the defendant/appellee, Trinidy Darnelle Burton, Sr.

REVERSED AND REMANDED.