

STATE OF MICHIGAN
COURT OF APPEALS

ANJANETTE MCLAUGHLIN,
Plaintiff-Appellee,

v

KEVIN BRIAN MCLAUGHLIN,
Defendant-Appellant.

FOR PUBLICATION
February 21, 2003
9:15 a.m.

No. 235959
Wayne Circuit Court
LC No. 86-636065-DM

Updated Copy
April 25, 2003

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

COOPER, J.

Defendant appeals by leave granted from a July 31, 2001, order denying his motion to terminate his child-support obligation during his period of incarceration. We affirm.

Plaintiff and defendant were divorced on August 21, 1987. Plaintiff was awarded custody of the two minor children and defendant was ordered to pay plaintiff \$40 a week for the support and maintenance of each minor child until age eighteen or graduation from high school. Defendant was further ordered to pay \$10 a week for child-support arrearages under the ex parte order of child-support entered prior to the parties' divorce.

On May 14, 1990, defendant was incarcerated for a term of six months to five years for bank robbery. He was released on October 10, 1990, but received another sentence of eight to fifteen years for third-degree criminal sexual conduct that he began to serve on March 11, 1991. Defendant was paroled on July 22, 1999, but returned to prison as a parole violator on July 6, 2000.

As of February 23, 2001, defendant owed \$78,410.78 in child-support arrearage. Defendant requested an incarceration credit to his arrearage for the time he served in prison for the third-degree criminal sexual conduct conviction. The trial court in accepting the friend of the court recommendation, found that case law holding that a noncustodial parent's support arrearage which accrued while the parent was imprisoned should be discharged was inapplicable. *Pierce v Pierce*, 162 Mich App 367; 412 NW2d 291 (1987). The trial court reasoned that *Pierce*, did not control in this case because "the defendant committed criminal sexual conduct with his own child, and—or at least one of them"

We find it unnecessary to address these arguments on appeal because retroactive modification of child-support is prohibited by statute. Pursuant to MCL 552.603(2):

Except as otherwise provided in this section, *a support order that is part of a judgment or is an order in a domestic relations matter . . . is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification.* Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support. [Emphasis added.]

Consequently, defendant's child-support order is not subject to retroactive modification for the time that he was incarcerated. See *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 158; 555 NW2d 738 (1996).

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder