

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE CENTI,

Plaintiff-Appellant,

v

KAMEL HADOUS,

Defendant-Appellee.

UNPUBLISHED

January 26, 2001

No. 218753

Wayne Circuit Court

LC No. 84-431155-DM

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the March 23, 1999, order of the Wayne Circuit Court affirming a Friend of the Court referee's recommendation to cancel defendant's child support arrearage that had accrued while he was incarcerated. We remand for further proceedings consistent with this opinion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that the trial court committed legal error when it adopted the Friend of the Court referee's recommendation to cancel defendant's arrearage, given the applicability of MCL 552.603(2); MSA 25.164(3)(2), which allows retroactive modification of a child support order only in limited circumstances, none of which apply here. Having reviewed the transcript of the March 23, 1999, hearing, we find the threshold question raised in this appeal to be whether the circuit court was vested with jurisdiction to entertain the legal issue raised by plaintiff, given that plaintiff admittedly failed to request a de novo judicial hearing within the 21-day time period under MCL 552.507(5); MSA 25.176(7)(5)¹ and MCR 3.215(E)(3)(b).²

¹ MCL 552.507(5); MSA 25.176(7)(5) provides in pertinent part:

The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party under subsection (4)

... .

² MCR 3.215(E)(3)(b) provides:

(3) A party may obtain a judicial hearing on any matter that has been the

(continued...)

Although subject matter jurisdiction is a question of law that this Court could address sua sponte, we find that the factual and procedural record made available to this Court does not allow for adequate review of the issue.³ Accordingly, we remand this matter to the trial court to re-examine the issue.⁴

On remand, we direct the trial court to clearly address the issue of subject matter jurisdiction in light of MCL 552.507; MSA 25.176(7) and MCR 3.215. In this context, the court is directed to determine whether the Wayne County FOC adequately complied with the applicable statutes and court rules, including MCL 552.507(4) and (5); MSA 25.176(7)(4) and (5), MCR 3.215(D)(2), and MCR 3.215(E)(1). If the trial court determines that the 21-day time period is jurisdictional, it is further directed to determine whether it should conduct a de novo hearing “upon motion of the court,” as permitted under MCL 552.507(5); MSA 25.176(7)(5). Finally, in the event that the trial court conducts a de novo hearing, it is directed to specifically address the issue of retroactive modification of a child support order in light of MCL 552.603(2); MSA 25.164(3)(2); *Waple v Waple*, 179 Mich App 673; 446 NW2d 536 (1989); and *Harvey v Harvey*, 237 Mich App 432; 603 NW2d 302 (1999).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White

(...continued)

subject of a referee hearing by filing

* * *

(b) a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order concerns any other matter.

³ In particular, we find our review severely hampered by the abysmal state of the lower court record, the failure of plaintiff to address on appeal the jurisdictional issue vaguely raised by the trial court, and the lack of an appeal brief filed by defendant.

⁴ We leave it to the discretion of the trial court whether the parties will be allowed to brief the issue or whether proofs should be reopened.