

STATE OF MICHIGAN
COURT OF APPEALS

SHERYLL A. CARRUTH,

Plaintiff-Appellee,

v

ROBERT ALLEN CARRUTH,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223753

Wayne Circuit Court

Family Division

LC No. 94-428040-DM

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted the family court's order denying his motion to terminate his child support obligation during the period of his incarceration. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were divorced in 1995. The judgment of divorce required defendant to pay child support in the amount of \$140 per week for the parties' son (DOB 06-21-90). Subsequently, the family court modified defendant's support obligation to \$95 per week. Defendant fell into arrears on his support obligation.

On September 3, 1999 defendant was sentenced to a term of seven to twenty years in prison for an offense unrelated to his support obligation. On October 12, 1999 the family court granted plaintiff's motion for a lien on any property awarded to defendant in his divorce proceedings from his current wife. Defendant moved to terminate his support obligation during the period of his incarceration. The family court denied the motion, holding that defendant's support obligation would continue to accrue while defendant was incarcerated, but that his obligation to pay would be reserved until his release.

A family court can modify a support order upon a showing by the petitioner of a change in circumstances justifying modification. MCL 552.17. A family court's findings of fact are reviewed for clear error, but its disposition is subject to de novo review on appeal. We will not reverse the family court's disposition unless we are convinced that we would have reached a different result. *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992).

Defendant argues that the family court erred by denying his motion to terminate his support obligation during the period of his incarceration. We agree, reverse the family court's order, and remand for entry of an order terminating defendant's support obligation for the duration of his incarceration, effective on the date of sentencing. In *Pierce v Pierce*, 162 Mich App 367; 412 NW2d 291 (1987), this Court held that a noncustodial parent incarcerated for a crime other than nonsupport is not liable for payment of child support during the period of incarceration, unless it is affirmatively shown that the parent has income or assets from which to make such payments. Any income or assets held by the noncustodial parent may be applied against an outstanding support obligation. *Id.*, 370-371. Defendant was incarcerated for a crime other than nonsupport, and would have no income during his incarceration. Plaintiff was granted a lien on any property awarded to plaintiff in divorce proceedings from his current wife. Pursuant to *Pierce, supra*, defendant is entitled to termination of his support obligation during the period of his incarceration, and to have any property awarded to plaintiff pursuant to the lien applied to his support arrearage that accumulated prior to his incarceration.

Reversed and remanded for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin