

STATE OF MICHIGAN
COURT OF APPEALS

NANCY D. DOTY, f/k/a NANCY D. EBY,

Plaintiff-Appellant,

v

LAWRENCE J. EBY,

Defendant-Appellee.

UNPUBLISHED

October 23, 2008

No. 279665

Oakland Circuit Court

LC No. 82-249995-DM

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

This Court granted leave in this case to consider whether the trial court's order denying a motion for reinstatement of arrearages should be upheld. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Preliminarily, we note that the designated plaintiff, Nancy D. Doty, is deceased. Her widower, Donald V. Doty, is pursuing this claim. Although he has not been substituted as a party, the trial court did not find this irregularity significant below, noting that the matter could be easily remedied. Following the trial court's ruling, an estate was opened and Mr. Doty was named personal representative. Absent prejudice to defendant, substitution could now be accomplished pursuant to MCR 2.202(A)(1)(b). For the reasons stated below, we conclude that defendant would suffer no prejudice.

Defendant failed to pay support in accordance with a 1986 order modifying a consent judgment of divorce. After he evaded payment for many years, a Florida court issued an income deduction order on May 5, 2000, requiring defendant's employer to deduct \$125 per month toward child support arrearages. However, the Florida court issued an order on September 20, 2004, setting the arrearages at \$0. This action was apparently based on the closure of the Oakland County Friend of the Court's file after Nancy Doty's death. On September 30, 2005, Mr. Doty secured a probate court order assigning the arrearages to him, and he then pursued recovery. However, on November 14, 2006, the Florida Attorney General's Office advised that Florida had closed the case because Michigan was treating the arrearages as having been paid in full. Plaintiff's counsel in Florida therefore, in essence, advised plaintiff to pursue reinstatement of the arrearages in Michigan so that he could then pursue enforcement in Florida. On February 6, 2007, plaintiff moved to reinstate the arrearages. The trial court denied the request based on the doctrine of laches.

In *Twp of Yankee Springs v Fox*, 264 Mich App 604, 611-612; 692 NW2d 728 (2004), this Court stated:

The doctrine of laches is concerned with unreasonable delay that results in “circumstances that would render inequitable any grant of relief to the dilatory plaintiff.” *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 503-504; 608 NW2d 105 (2000). The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998). Laches does not apply unless the delay of one party has resulted in prejudice to the other party. *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 97; 572 NW2d 246 (1997). “It is the effect, rather than the fact, of the passage of time that may trigger the defense of laches.” *Id.*, quoting *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 578; 485 NW2d 129 (1992). The defendant has the burden of proving that the plaintiff’s lack of due diligence resulted in some prejudice to the defendant. *Gallagher, supra*, 369-370.

The trial court found that defendant would be prejudiced by reinstatement of the arrearages because he had relied on the cancellation for three years, and reinstatement would cause undue hardship. We conclude that the trial court clearly erred in making this finding. See *Twp of Yankee Springs, supra* at 611. In concluding that defendant’s reliance on the cancellation of arrearages amounted to prejudice, the trial court impermissibly equated the passage of time with prejudice. Moreover, the finding that defendant would suffer hardship was unsupported; there was no showing of hardship apart from having to pay a debt that defendant did in fact owe. Accordingly, the doctrine of laches does not apply.

We note that the amount of the arrearages is not clear based on the record, and there has been no accounting of the payments that defendant made after entry of the withholding order. Accordingly, a determination of the amount of arrearages owing must be made on remand.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood