

[Cite as *Sullivan v. Sullivan*, 2010-Ohio-5229.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93416

MAUREEN F. SULLIVAN

PLAINTIFF-APPELLANT/
CROSS-APPELLEE

vs.

BRIAN T. SULLIVAN

DEFENDANT-APPELLEE/
CROSS-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-289203

BEFORE: Rocco, P.J., Stewart, J., and Dyke, J.

RELEASED AND JOURNALIZED: October 28, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Plaintiff-appellant, Maureen F. Sullivan, appeals from a domestic relations court decision that released funds to the defendant-appellee, Brian T. Sullivan. She urges that (1) the court had no jurisdiction to rule on appellee's motion to release funds, (2) the court erred by finding that there was no spousal support arrearage to which the funds should be applied, (3) the court's finding that there was no arrearage contravened the manifest weight of the evidence, which showed that there was an arrearage of at least \$13,060, and (4) the court erred by granting appellee's motion without a hearing. Appellee has filed a cross-appeal in which he asserts that the court abused its discretion by denying his motion to modify spousal support. We find no error in the court's decisions and we affirm its judgments.

{¶ 2} The parties were divorced pursuant to a stipulated decree entered September 4, 2007. Three days later, on September 7, 2007, appellee filed a

motion to vacate the decree, asserting that it did not comport with the agreement the parties had previously placed on the record.

{¶ 3} In November 2007, appellee filed motions asking the court to correct the spousal support arrearages calculated by the Cuyahoga Support Enforcement Agency (“CSEA”) and to restrain the CSEA from collecting arrearages. The court ordered appellee’s employer to hold a lump sum payment due to appellee until further order of the court, but restrained the CSEA and appellant from collecting on arrearages until further court order.

{¶ 4} On August 20, 2008, appellee filed a motion to modify his spousal support obligations. In October 2008, he asked the court to release the funds being held by his employer. The court ordered appellee’s employer to continue to hold the lump sum payment due to appellee.

{¶ 5} On May 12, 2009, the domestic relations court entered two orders. In the first, the court denied appellee’s motion to vacate the divorce decree, motion to correct the stated arrearage, and the motion to modify spousal support. In the second, the court ordered that any monies currently on hold by the CSEA should be released to appellee. The parties have cross-appealed from these decisions.

{¶ 6} In her first assignment of error, appellant urges that the domestic relations court lacked jurisdiction to rule upon appellee’s motion to release funds. Appellant argues that this motion invoked the court’s continuing

jurisdiction and therefore had to be served upon her “in the manner provided for the service of process” in accordance with Civ.R. 75(J). Because the motion was not served in this manner, appellant contends that the court did not have personal jurisdiction over her.

{¶ 7} The motion to release funds was filed in response to a court order that required appellee’s employer to hold a lump sum payment due to appellee until further court order. This order was issued to aid enforcement of the divorce decree, pursuant to the court’s inherent power to enforce its judgments. Cf. *Marden v. Marden* (1996), 108 Ohio App.3d 568, 570, 671 N.E.2d 331; *Quisenberry v. Quisenberry* (1993), 91 Ohio App.3d 341, 632 N.E.2d 916. The motion to release funds did not invoke the court’s continuing jurisdiction. Consequently, Civ.R. 75’s mandate that notice must be served pursuant to Civ.R. 4 and 4.6 when the court’s continuing jurisdiction is invoked is inapplicable.

{¶ 8} The second and third assignments of error both challenge the court’s finding that no spousal support arrearage existed, so we address them together. Appellant contends the court should not have released funds being held by appellee’s employer. She asserts that there was an arrearage to which those funds should have been applied.

{¶ 9} A lump sum payment was held by appellee’s employer pursuant to court orders issued December 10, 2007 and November 20, 2008, “pending

finalization of the matter.” The order releasing this amount stated that “there is no spousal support arrearage, thus any monies currently placed on hold shall be relinquished to Obligor [appellee].” Appellant argues that there was spousal support due, and points to the April 30, 2008 testimony of Robert Sebold, apparently a representative of the Cuyahoga Support Enforcement Agency (“CSEA”),¹ who stated that appellee owed a balance of \$13,060 in spousal support as of March 31, 2008.²

{¶ 10} Neither CSEA (who intervened as a party to this action) nor appellant asked the court for a judgment for arrearages or for a finding that appellee was in contempt for failing to pay spousal support. We are not aware of any authority that would allow the court to hold and apply funds to a debt that the court has not found to be due. Therefore, the trial court properly ordered appellee’s property returned to him. The second and third assignments of error are overruled.

{¶ 11} Appellant’s final assignment of error contends that the court erred or abused its discretion by granting the motion to release funds without holding a hearing. Appellant had ample opportunity to respond to appellee’s

¹Mr. Sabol identified himself only as “Bob Sabol. I do calculations for Child Support.”

²At the hearing, appellant submitted a written accounting of support owed and paid by appellee to date. However, none of the exhibits from the hearing appears in the record.

motion before the court ruled on it more than six months later. No oral hearing was required. Therefore, we overrule the fourth assignment of error.

{¶ 12} In his cross-assignment of error, appellee argues that the court erred or abused its discretion by denying his motion to modify spousal support. However, he does not actually challenge the court's refusal to modify his support obligations. He only argues that the court's denial of his motion "with prejudice" could be construed to operate as a bar to future motions to modify support, contrary to the terms of the divorce decree under which the court retained continuing jurisdiction. We decline to provide appellant with an advisory ruling about the effect of the court's order on future motions to modify spousal support.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANN DYKE, J., CONCUR