[Cite as *Li v. Yang*, 2010-Ohio-654.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
**No. 92258**

## WEI QI VINCENT LI

PLAINTIFF-APPELLEE

vs.

## JI HONG YANG, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:**
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-243475

**BEFORE:** Celebrezze, J., Gallagher, A.J., and Stewart, J.

**RELEASED:** February 25, 2010
**JOURNALIZED:**

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FRANK D. CELEBREZZE, JR., J.:

**{¶ 1}** Defendant-appellant, Ji Hong Yang ("appellant"), appeals the decision of the domestic relations court modifying the child support obligation of plaintiff-appellee, Wei Qi Vincent Li ("appellee"). For the following reasons, we reverse and remand to the domestic relations court for proceedings consistent with this opinion.

**{¶ 2}** The parties were married on August 31, 1991. During the marriage, the parties had one child, a son, born March 2, 1993. On October 19, 1995, appellee filed for divorce in the Cuyahoga County Court of Common Pleas, Domestic Relations Division. A divorce was eventually granted; the remainder of the proceedings in the trial court revolved around child support and visitation issues. While a recap of the complete background of this matter would be quite lengthy, a review of the procedural background precipitating this appeal is necessary.

**{¶ 3}** After the parties were divorced, appellee remarried. Appellee's new wife owns and operates several business entities. At one point, one of the businesses was incorporated in appellee's name. According to appellee, the business was in his name because it was a franchise of a California corporation that required specialized training in order to become a franchisee. Because appellee's new wife speaks little English, appellee completed the training in his wife's place and the business was placed in his name.

Appellant alleges that appellee has an interest in the businesses, that appellee placed the businesses in his wife's name to lower his child support obligation, and thus the business income should be considered when determining appellee's child support obligation.

**{¶ 4}** In April 2006, an administrative hearing was held in the Cuyahoga County Child Support Enforcement Agency ("CSEA") upon the request of appellee, who was seeking a modification of his child support obligation. As a result of that hearing, CSEA determined that appellee's support obligation should be increased from $210.00 per month to $1,309.84 per month, plus a two percent processing fee, for a total of $1,336.04 per month.[1]

**{¶ 5}** On October 13, 2006, appellee requested a hearing in the domestic relations court to review CSEA's determination. The domestic relations court set a general hearing for December 18, 2006. On December 19, 2006, appellant filed a motion to modify child support and a motion to show cause alleging that appellee had failed to pay medical expenses as required by his child support obligation.

**{¶ 6}** After several continuances of the hearing date, the trial court scheduled a full evidentiary hearing for May 20, 2008 and informed the

[1] This amount was based on income attributed from the businesses appellee asserts are owned and operated solely by his wife.

parties that no further continuances would be granted. The parties then notified the court that they had reached a settlement agreement and intended to file an agreed judgment entry to that effect. The parties were given until June 10, 2008 to file the agreed judgment entry. Appellant then discharged her counsel, who withdrew from the matter.

**{¶ 7}** On July 1, 2008, appellant filed a motion requesting a hearing on child support modification and nonpayment of medical expenses. Based on this motion, the domestic relations court set a general hearing for August 1, 2008. On July 16, 2008, however, the domestic relations court issued a journal entry that adopted CSEA's determination and raised appellee's child support obligation to $1,336.04 per month. This left nonpayment of medical expenses to be the only issue to be addressed at the August 1, 2008 hearing.

**{¶ 8}** On July 22, 2008, appellee filed a motion to vacate the domestic relations court's judgment entry that raised his child support obligation. He also requested a hearing on his objections to CSEA's determination.

**{¶ 9}** On August 1, 2008, the domestic relations court granted appellee's motion to vacate and stated that it was granting appellee's motion for a hearing on his objections to CSEA's administrative modification of his child support obligation. The trial court held the hearing the same day. Appellant was present for this hearing and prepared to present evidence of appellee's alleged nonpayment of medical expenses. The trial court

entertained evidence related only to appellee's income for purposes of calculating his child support obligations and refused to address the nonpayment of medical expenses.

**{¶ 10}** On August 8, 2008, the magistrate issued her decision wherein she lowered appellee's child support obligation to $433.64 per month, which included a two percent processing fee. Appellant filed objections to the magistrate's decision. On September 22, 2008, the trial judge overruled appellant's objections and adopted the magistrate's decision. This appeal followed.

**{¶ 11}** Appellant presents three assignments of error for our review. In her first assignment of error, appellant argues that the trial court committed reversible error by ignoring verifiable records when determining appellee's child support obligation. In her second assignment of error, appellant argues that the trial court erred when it ignored the presumption in favor of CSEA's determination based on the demeanor of one witness, namely, appellee's new wife. In her third assignment of error, appellant argues that the trial court committed reversible error when it vacated its July 16, 2008 judgment and held a hearing on appellee's objections to CSEA's determination the same day.

## Law and Analysis

**{¶ 12}** For ease of discussion, appellant's assignments of error will be addressed out of order. Before addressing appellant's argument on the merits, however, we must address appellee's contention that the issue is not properly before us on appeal. More specifically, appellee argues that appellant is challenging the trial court's grant of appellee's motion to vacate. Because the grant of a motion to vacate is a final appealable order, appellee argues that this issue must have been raised within 30 days of the August 1, 2008 journal entry granting the motion to vacate. This argument is misguided.

**{¶ 13}** Appellant is not challenging the trial court's grant of appellee's motion to vacate. Appellant is specifically challenging the hearing held by the trial court on August 1, 2008 where it addressed appellant's challenges to CSEA's determination. Appellant argues that she was entitled to 30 days notice before such a hearing could be held. After the hearing, the magistrate issued her decision, which was not a final appealable order. The domestic relations court adopted the magistrate's decision on September 22, 2008, and appellant filed her notice of appeal on October 16, 2008. As such, appellant's appeal was timely, and appellee's arguments to the contrary are overruled.

## Notice of Hearing

**{¶ 14}** We will now address appellant's third assignment of error wherein she argues that the trial court did not give her sufficient notice

before holding a hearing on appellee's objections to CSEA's administrative determination.

**{¶ 15}** Courts are required to provide 30 days notice of hearings to review child support orders. R.C. 3119.67. In this case, the trial court granted appellee's motion to vacate its earlier determination and motion for a hearing on his objections to CSEA's determination on August 1, 2008. Rather than issue a notice to appellant, the trial court held the hearing that same morning. Appellant happened to be in the courthouse awaiting the scheduled hearing to address appellee's alleged nonpayment of medical expenses.

**{¶ 16}** This case is comparable to *Bourne v. Bourne* (June 2, 2000), Darke App. No. 1508. In *Bourne*, the trial court sua sponte modified a child support order based on a hearing held to address a contempt motion. In *Bourne*, the court specifically said: "Mr. Bourne contends that all parties, including Ms. Bourne, were on notice of the hearing on the contempt motion, and therefore had an opportunity to be heard on issues relating to support. We are unpersuaded by this argument. The only issue upon which the parties had notice that the hearing would be concerned was the issue of Mr. Bourne's alleged contempt for failure to have paid child support in accordance with the existing order. There is nothing in the record to reflect that any

party had notice that the hearing would be concerned with a proposal to modify child support."

**{¶ 17}** We recognize that when appellant filed the motion for a rehearing, her request specifically mentioned modification of child support and nonpayment of medical expenses. This motion was purportedly granted on July 10, 2008. On July 16, 2008, however, the trial court modified appellee's support obligation and raised it to $1,336.04, as appellant had requested. This led appellant to believe that the only issue to be addressed at the August 1, 2008 hearing would be appellee's alleged nonpayment of medical expenses.

**{¶ 18}** A review of the trial transcript further reflects that appellant thought the August 1, 2008 hearing would address the nonpayment of medical expenses. When cross-examining appellee, appellant's first question was: "You never paid the medical expense, right? I send the certified mail to you." Before appellee could respond, the magistrate said: "That's not what we are here for. This is all about income — everything he just said. This is your chance now to ask him a question about that."

**{¶ 19}** Appellee also argues that the August 1, 2008 hearing was scheduled at appellant's request, and thus, she was not prejudiced by the fact that the court entertained arguments related to appellee's income for the purposes of calculating child support. We find this argument unpersuasive.

Before the hearing occurred, the trial court modified appellee's child support obligation to $1,336.04, as appellant had requested. This likely led appellant to believe that the only issues to be addressed at the August 1, 2008 hearing would be related to the nonpayment of medical expenses. Had appellant been notified that appellee's income was going to be the subject of the August 1, 2008 hearing, she may have considered hiring an attorney who has specialized knowledge of such matters rather than choosing to represent herself.

**{¶ 20}** A review of the trial transcript also reveals that the hearing was held pursuant to appellee's motion for a new hearing rather than at appellant's request. Specifically, the trial judge said: "We are here on the Plaintiff's request for a judicial hearing on the findings and recommendations of CSEA as to child support. There is also a couple of other pending motions on the docket which are going to be rendered moot by this hearing because they basically are asking for the hearing.

**{¶ 21}** "There is a motion for rehearing which is going to be rendered moot because that's what we are doing. There is a motion to reinstate pending which is also going to be rendered moot because that's what we are doing. That's because Judge O'Malley has granted by judgment entry the

Plaintiff's request to vacate the order of court. That was granted on July 22nd."[2]

**{¶ 22}** It is obvious from the record that the domestic relations judge granted appellee's motion to vacate on August 1, 2008 and further granted his request for a hearing on his objections to CSEA's determination. The judgment entry did not specify when appellee's requested hearing would be held, but a review of the trial transcript reveals that the hearing was held the same day. Pursuant to R.C. 3119.67, appellant was entitled to 30 days notice of this hearing.

**{¶ 23}** Since appellant was not provided the requisite notice that appellee's income for purposes of calculating his child support obligation would be addressed at the August 1, 2008 hearing, appellant's third assignment of error is sustained.

**{¶ 24}** Our disposition of appellant's third assignment of error renders her first and second assignments of error moot. Accordingly, those arguments will not be addressed. See App.R. 12(A)(1)(c).

## Conclusion

[2] Although the magistrate indicated that the motion to vacate was granted on July 22, 2008, appellant did not even respond to the motion to vacate until July 29, 2008. The docket further reflects that the motion to vacate was actually granted on August 1, 2008.

**{¶ 25}** Pursuant to R.C. 3119.67, appellant was entitled to 30 days notice before the domestic relations court held a hearing related to appellee's income for purposes of calculating his child support obligation. Since the hearing was held on the same day the motion was granted, appellant's third assignment of error is well-taken.

**{¶ 26}** This matter is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, A.J., and
MELODY J. STEWART, J., CONCUR