

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

DEIDRA NEWTON,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-L-048
MARK ALLEN NEWTON,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Juvenile Division, Case No. 2009 SE 00512.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

James W. Reardon and *James R. Flaiz*, Carrabine & Reardon Co., L.P.A., 7445 Center Street, Mentor, OH 44060 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated-calendar appeal, taken from two final judgments of the Juvenile Division of the Lake County Court of Common Pleas. In those judgments, the trial court overruled the objections of appellant, Mark Allen Newton, and adopted the written recommendation of the court magistrate regarding the payment of child support arrearages. As the sole basis of his appeal, appellant asserts that the trial court lacked the requisite subject matter jurisdiction to issue the support order.

{¶2} In March 2009, the Lake County Department of Job and Family Services initiated an action to establish a child support order against appellant before the juvenile court. The Department brought the proceeding on behalf of appellee, Deidra Newton. In the complaint, it was alleged that appellant and appellee were the natural parents of a son, born in January 1999. It was further alleged that, although appellant and appellee have been married since June 1998, he had been separated from her and the child for a substantial period, and that he had not provided financial support for his son during that period. Based on this, the complaint sought an order requiring appellant to pay support covering the “separation” period.

{¶3} After appellant was duly served with the complaint, the matter was assigned to a juvenile court magistrate for final disposition. Over the following 12 months, the magistrate attempted to set the case for a pretrial conference or actual trial on three occasions. In two of these instances, the case did not proceed because either one or both of the parties were not present. On the third occasion, a pretrial conference was held because neither side was prepared for trial.

{¶4} In his fourth notice to the parties, the magistrate scheduled the matter for trial on April 13, 2010. At the outset of the proceeding, the magistrate was informed that appellant had recently filed a divorce action against appellee in the Domestic Relations Division of the Lake County Court of Common Pleas. As a result, the magistrate issued an order staying the “support” case during the pendency of the divorce action.

{¶5} The final decree in the divorce action was rendered in August 2010. As to the parties’ minor son, the domestic relations court adopted the shared parenting plan which the parties had negotiated. Concerning the issue of child support, the domestic

relations court ordered that, effective June 1, 2010, appellant would not be required to pay any support to appellee.

{¶6} Upon the completion of the divorce case, the juvenile court magistrate set the “support” complaint for trial on November 23, 2010. As had been the case in three of the first four scheduled proceedings, appellant was not present at the trial. In light of the evidence submitted by the Department, the magistrate expressly found that, for the period from September 2003 through January 2010, appellant owed appellee the sum of \$21,070.28 in child support arrearages. Thus, in his written decision, the magistrate recommended that appellant be ordered to pay the amount of \$100 per month until the arrearages had been satisfied.

{¶7} Fifteen days after the release of the magistrate’s decision, appellant filed his objections to the ultimate recommendation. As his sole argument, he asserted that the juvenile court no longer had the authority to address the basic issue of child support because the point had been resolved in the divorce action. In support of his argument, appellant attached a copy of the final divorce decree to his objections.

{¶8} Prior to being informed of the filing of appellant’s objections, the trial court issued a judgment in which it adopted the magistrate’s finding as to the actual amount of the arrearages and his recommendation as to the manner of payment. This judgment stated that the court had already independently reviewed the magistrate’s decision and had found it to be proper in all respects. Therefore, appellant was ordered to repay the arrearages at a rate of \$100 per month.

{¶9} After appellant submitted a second copy of his written objections, the trial court conducted an oral hearing on the matter. Upon considering the oral arguments of

both sides, the court released a second judgment in which it rejected appellant's "lack of authority" argument. Specifically, the trial court first indicated that, under the governing statutory scheme, a juvenile court had current jurisdiction over the "child support" issue with the domestic relations court. The court then held that, since the instant "support" case had been instituted before the divorce action, the issuance of the divorce decree had no effect upon authority to go forward. Consequently, the trial court overruled the objections and reaffirmed the support order in its first judgment.

{¶10} In appealing the foregoing decision, appellant has raised one assignment of error for review:

{¶11} "The Trial Court erred when it ordered appellant to pay child support as the Juvenile Court lacked jurisdiction to do so."

{¶12} Under this sole assignment, appellant has reasserted the same argument that formed the basis of his objections at the trial level. He submits that the new child support order should be found void because the trial court, as the county juvenile court, did not have the authority to consider that particular issue. Specifically, he argues that only the county domestic relations court had jurisdiction to render such a support order because: (1) the domestic relations court issued a judgment on the issue before the juvenile court; and (2) the domestic relations court never issued a separate order transferring jurisdiction over child support to the juvenile court.

{¶13} As an initial point, this court would note that our review of the trial record demonstrates that it does not contain any indication that, as part of the separate divorce proceeding, the domestic relations court rendered an order transferring jurisdiction over the child support issue. The record before us only has a copy of the final decree in the

divorce action, and a review of that document readily shows that it did not contain any reference to a transfer of jurisdiction. Thus, to the extent that the trial court may have had the authority to proceed on appellee's complaint, it was not based upon a transfer of jurisdiction under R.C. 3109.06.

{¶14} As a second preliminary matter, this court would emphasize that a reading of the two disputed support orders readily indicates that they were not intended to cover the same time frame. In the final divorce decree, the domestic relations court expressly stated that its order of no child support would be "effective June 1, 2010 and continuing thereafter ***." In contrast, our review of the magistrate's decision and the trial court's two judgments in the underlying "juvenile" case indicate that the child support order of \$100 per month was meant to cover the period prior to the filing of the divorce case; i.e., the time frame from September 2003 through January 2010. Hence, the exact question before this court concerns whether the issuance of the divorce decree had the effect of giving the domestic relations court exclusive jurisdiction over all child support disputes.

{¶15} The basic scope of the jurisdiction of both a domestic relations court and a juvenile court is governed entirely by statutory law. Under R.C. 3105.011, the domestic relations division of a court of common pleas has full authority to determine all domestic relations matters. In relation to the question of child support, R.C. 3109.05(A)(1) states that, in the context of a divorce proceeding, a domestic relations court "may order either or both parents to support *** their children, without regard to marital misconduct." R.C. 3109.06 then states that, once any court renders a proper order for the support of minor children, that court shall retain jurisdiction for that purpose throughout the minority of the children.

{¶16} As a “juvenile” court, the jurisdiction of the trial court is controlled by R.C. 2151.23. As to the issue of child support, this statute provides, in pertinent part:

{¶17} “(A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

{¶18} “***

{¶19} “(11) *** to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, ***.”

{¶20} In interpreting the foregoing provisions as they relate to the jurisdiction of juvenile and domestic relations courts, the appellate courts of this state have held that there are instances in which those two courts can have concurrent authority over a child support dispute. See, e.g., *Madewell v. Powell*, 12th Dist. No. CA2006-05-053, 2006-Ohio-7046, at ¶5. However, in regard to a child support order covering the period prior to the institution of a divorce action, no such concurrent jurisdiction is possible. Despite the broad grant of jurisdiction under R.C. 3105.011, a domestic relations court does not have the authority to issue a retroactive order of child support. *Trump v. Trump* (1999), 136 Ohio App.3d 123, 127. Instead, only a juvenile court has the jurisdiction to order a child support order for the period between a married couple’s actual separation and the commencement of the divorce proceeding. *Id.*, at fn. 2; *Thelmond H.S. v. Angela L.S.*, 6th Dist. No. L-02-1172, 2003-Ohio-685, at ¶11.

{¶21} In the instant matter, the trial record before this court establishes that the complaint filed by appellee and the Department sought only one form of relief before the juvenile court; i.e., an order for the payment of child support. The record also indicates

that appellee's complaint was pending for over 11 months before the separate divorce action was filed. Therefore, since appellee's request for a support order was not made in conjunction with a divorce proceeding, the trial court's juvenile jurisdiction under R.C. 2151.23(A)(11) was properly invoked.

{¶22} Moreover, a review of the allegations in appellee's complaint shows that she did not seek a support order governing appellant's future obligation, but rather for a prior period of time in which she and appellant had lived apart and he had not paid any support. Similarly, the trial court's final support order was limited to the arrearages from that prior time frame. Under the *Trump* and *Thelmond* precedent, only a juvenile court would have the subject matter jurisdiction to grant that particular relief.

{¶23} In essentially contending that the child support order of the domestic relations court was controlling because it was issued before any order of the trial/juvenile court, appellant has based his entire position upon the presumption that the two courts were exercising concurrent jurisdiction over the same issue. Leaving aside the question of whether the fact that the domestic relations order was issued first was legally important in this type of situation, it must be emphasized that appellant's underlying presumption was incorrect as a matter of law. That is, as to the specific issue of whether appellant should be required to pay child support for the period prior to February 2010, there was no concurrent jurisdiction. Regardless of what took place before the domestic relations court, only the juvenile court had the authority to proceed on that limited point.

{¶24} As an aside, this court would note that, as part of its second judgment, the trial court held that it and the domestic relations court did have concurrent jurisdiction

over the issue, but that it had the authority to proceed because the action before it had been filed first. If the instant situation did involve a true case of concurrent jurisdiction, we would agree that the “first action filed” would take precedent over the second action filed, even if the second proceeding comes to judgment first. See, generally, *Thelmond*, 2003-Ohio-685, at ¶10. Accordingly, even if the juvenile court did not have original exclusive jurisdiction over the “back” child support question, appellant’s jurisdictional contention would still be flawed.

{¶25} To the extent that the trial court did not find that it had original exclusive jurisdiction over the child support claim asserted in appellee’s complaint, its analysis on the jurisdictional issue was incorrect. Nevertheless, the trial court’s ultimate conclusion that it had the requisite subject matter jurisdiction to proceed, was proper under the facts of this case. Thus, as appellant has failed to demonstrate error in this matter, his sole assignment of error lacks merit.

{¶26} It is the order of this court that the judgments of the trial court are affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J,

concur.