[Cite as *Osgood v. Dzikowski*, 2008-Ohio-5065.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Nicole M. Osgood,	:	
Plaintiff-Appellee,	:	
		No. 08AP-105
v.	:	(C.P.C. No. 05JU-11-15702)
Gregory J. Dzikowski,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on September 30, 2008

Maurice M. Henderson, *III*, for appellee.

Eugene P. Weiss, for appellant.

Beth A. Dinsmore, and *Suzanne H. Hoy*, for Franklin County Child Support Enforcement Agency.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

SADLER, J.

{¶1} Defendant-appellant, Gregory J. Dzikowski ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which that court ordered that appellant pay $46,444.60 in retroactive

child support to plaintiff-appellee, Nicole Osgood ("appellee"). For the following reasons, we affirm.

{¶2} In October 1997, appellant and appellee began dating one another and engaging in sexual relations. During this time, appellant was a student at The Ohio State University ("OSU") and lived in an apartment, and appellee was a high school student living with her parents. On December 16, 1997, appellee discovered that she was pregnant. The parties had one discussion about the pregnancy immediately after appellee discovered it. During that conversation, appellant became upset that appellee had not used birth control and told her that he was too young to be a father. He suggested that appellee have an abortion and offered to pay for it. She told him that she did not intend to have an abortion. According to appellee, appellant told her he was going home to Cincinnati for Christmas break and that he would contact her. After that discussion, neither party contacted the other for any reason until May 2005, when appellee contacted appellant.

{¶3} Meanwhile, on August 17, 1998, appellee gave birth to the parties' child, Kaelah N. Osgood. According to appellee, she did not contact appellant during the remainder of her pregnancy because she feared he would pressure her to obtain an abortion, which she did not wish to do. Appellee began dating Justin Napier in February 1998, and was still dating him when she gave birth to Kaelah. The two broke up in 2002.

{¶4} According to appellee, shortly after Kaelah's birth, she left several messages with appellant's roommate, Larry, telling him that it was important that she talk to appellant. She never received a return call. When she called again, Larry informed her that appellant had moved back to Cincinnati. She did not attempt to contact him in

Cincinnati. She made no further attempts to contact appellant until 2005. She testified that, about twice per year for seven years, she would attempt to find a telephone listing for appellant and, beginning in early 2005, she "[t]ried to look for him on the Internet." (Tr. 14.) However, she stated she was unsuccessful.

{¶5} Appellee met her current husband, Matthew Smith ("Smith"), in 2003. They had a child together in 2004, and the two married in February 2006. In 2004, after appellee lost her job, an attorney friend of Smith's encouraged Smith to suggest that appellee seek child support from appellant. Appellee filed paternity and child support paperwork with the Franklin County Child Support Enforcement Agency ("CSEA").

{¶6} According to Smith, by early 2005, CSEA was still having trouble locating appellant, whereupon, Smith asked a friend who lived in Cincinnati for help locating appellant. Appellee testified that in 2005, she decided that "it was very important that [appellant] * * * was involved [with his child.]" Id. She went to the rental office for the apartment where he had lived when the couple dated, but was unable to obtain a forwarding address for appellant. Through her husband's Cincinnati friend, appellee obtained a telephone listing for appellant's parents, and called them looking for appellant. She spoke with appellant's mother. After this, appellant and appellee spoke about Kaelah for the first time. Appellee testified that she had been unable to contact appellant's parents earlier, because until 2005, she had misspelled their last name during her attempts to locate appellant.

{¶7} Appellant testified that he and appellee did not speak from December 1997 until May 2005. He knew where she lived and how to contact her, but did not contact her to inquire whether she had maintained the pregnancy to full term, or had an abortion or a

miscarriage. In June 1998, he moved from his Dublin, Ohio apartment where he had lived with Larry, to his brother's apartment, also in Dublin. He testified that appellee had been to his brother's apartment once for dinner. He and his brother share the same last name. He testified that the pager number that appellee had used to contact him while the two were dating was active until April 1999. According to appellee, she threw the pager number away after December 1997, and did not remember it or attempt to use it after that time. Appellant stated that until April 1999, he continued to attend OSU and continued to work at Circuit City, where he had worked when he dated appellee.

{¶8} Appellant testified that he never tried to hide his whereabouts from appellee. He and his mother both testified that he shares the same last name as his parents, and his parents have lived in the same location in Cincinnati since 1981, and have been listed in the telephone directory since 1981. Appellant stated that appellee knew that his parents lived in Cincinnati. Since he moved back to Cincinnati in 1999, he has been listed in the telephone directory. Appellant further testified that until May 2005, he did not know that appellee had tried to contact him, and he did not know that he had a daughter. He returned appellee's call the day after his mother informed him about her conversation with appellee.

{¶9} DNA testing revealed that appellant is Kaelah's father. According to Smith, for the first seven years of her life, Kaelah believed that Justin Napier was her father. By administrative order dated August 2, 2005, it was determined that appellant is Kaelah's biological father. On November 1, 2005, CSEA filed a complaint to set support. Appellant and appellee came to an agreement regarding ongoing child support and

entered into a shared parenting plan. Appellant has exercised his agreed parenting time with Kaelah.

{¶10} On April 20, 2006, appellee requested retroactive child support from August 17, 1998 through March 1, 2007, pursuant to R.C. 3111.13. On June 23, 2006, the magistrate held a hearing on the amended complaint to set support. On August 24, 2006, the magistrate issued a decision awarding appellee the requested retroactive support. On September 6, 2006, appellant filed objections to the magistrate's decision, and on October 26, 2006, he filed supplemental objections. Appellee responded on February 1, 2007.

{¶11} The trial court conducted a hearing on the objections, and on February 20, 2007, the court issued a decision and entry adopting the magistrate's decision and overruling the objections. Specifically, the court found that the couple's conversation about the pregnancy in December 1997, coupled with appellee's efforts to contact appellant after Kaelah's birth, which the court found reasonable and documented, were sufficient to prove that appellant had knowledge of, or had reason to have knowledge of, his alleged paternity of Kaelah. On that basis, the court determined that appellant was not exempt from the requirement to pay retroactive support.

{¶12} Appellant appealed, but then dismissed the appeal when the parties agreed they would first litigate the child support amount. The parties filed affidavits as to the child support amounts for each year, and the magistrate chose to accept appellee's evidence. Appellant did not file objections to the magistrate's decision on the amount of retroactive child support. On January 18, 2008, the trial court adopted the magistrate's decision and

issued its judgment entry awarding appellee a total of $46,444.60. Appellant timely appealed and advances one assignment of error for our review:

> THE DECISION OF THE MAGISTRATE IN AWARDING CHILD SUPPORT RETROACTIVE TO THE DATE OF THE PARTIES' CHILD'S BIRTH, AND THE DECISION OF THE TRIAL COURT TO OVERRULE FATHER'S OBJECTIONS THERETO, ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.

{¶13} In this appeal, appellant challenges the decision to award retroactive child support as being against the manifest weight of the evidence. Pursuant to R.C. 3111.13, the court is granted authority to award past child support and birthing expenses for a minor child. However, R.C. 3111.13(F)(3) provides, in relevant part:

> (a) A court shall not require a parent to pay an amount for that parent's failure to support a child prior to the date the court issues an order requiring that parent to pay an amount for the current support of that child or to pay all or any part of the reasonable expenses of the mother's pregnancy and confinement, if both of the following apply:
>
> (i) At the time of the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the child was over three years of age.
>
> (ii) Prior to the initial filing of an action to determine the existence of the parent and child relationship with respect to that parent, the alleged father *had no knowledge and had no reason to have knowledge of his alleged paternity of the child*.
>
> (b) For purposes of division (F)[3](a)(ii) of this section, the mother of the child may establish that the alleged father had or should have had knowledge of the paternity of the child by showing, *by a preponderance of the evidence, that she performed a reasonable and documented effort to contact and notify* the alleged father of his paternity of the child.

(Emphasis added.)

{¶14} Appellant argues that the exemption in R.C. 3111.13(F)(3) bars any order that he pay retroactive child support, and that the trial court's judgment that it does not apply is unsupported by the evidence. "R.C. 3111.13(F)(3)(a) provides a statute of limitations for an award of retroactive child support." *Kreitzer v. Anderson*, 157 Ohio App.3d 434, 2004-Ohio-3024, 811 N.E.2d 607, ¶9.[1] The parties do not dispute that, at the time of the original filing, Kaelah was over three years of age. Thus, the sole question before us is whether the trial court's finding that appellant knew or had reason to have knowledge of his alleged paternity of Kaelah, was against the manifest weight of the evidence.

{¶15} "[W]here an appellant challenges a trial court's judgment in a civil action as being against the manifest weight of the evidence, the function of the appellate court is limited to an examination of the record to determine if there is any competent, credible evidence to support the underlying judgment." *Lee v. Mendel* (Aug. 24, 1999), Franklin App. No. 98AP-1404, 1999 Ohio App. LEXIS 3892, at *14. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 10 OBR 408, 461 N.E.2d 1273.

{¶16} "A trial court's findings of fact are presumed to be correct and will not be reversed as being contrary to the manifest weight of the evidence if there is competent

[1] Laches may be employed as an equitable defense to a paternity action. Id. at 440, citing *Wright v. Oliver* (1988), 35 Ohio St.3d 10, 517 N.E.2d 883, syllabus, but this defense was not before the trial court in this case. Thus, whether appellant has been materially prejudiced by appellee's delay in asserting her claim for retroactive child support is an issue that is not before us.

and credible evidence supporting the finding." *Eagle Land Title Agency v. Affiliated Mtge. Co.* (June 27, 1996), Franklin App. No. 95APG12-1617, 1996 Ohio App. LEXIS 2766, at *5, citing *Wisintainer v. Elcen Power Strut Co.* (1993), 67 Ohio St.3d 352, 355, 617 N.E.2d 1136. "Further, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to decide." Id. at *6; see, also, *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶24, citing *Seasons Coal*, supra, at 80-81. "This presumption arises because the trial judge had an opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Wilson*, supra, at 387, quoting *Seasons Coal*, supra, at 80. Mere disagreement over the credibility of witnesses or evidence is not sufficient reason to reverse a judgment. Id.

{¶17} Appellant argues that, though he was aware that appellee was pregnant in December 1997, this fact is not evidence that he knew or had reason to know that appellee had actually given birth to a child. He invokes a dictionary definition of "paternity," as the "state of being a father." (Brief of appellant, 18.) He maintains that because he was not aware that a child existed with respect to which he might have been the father, he did not have "knowledge and had no reason to have knowledge of his alleged paternity of [Kaelah]." R.C. 3111.13 obviously contemplates a child who was born alive; otherwise there would be no need for either retroactive or ongoing support for that child. However, R.C. 3111.13(F)(3)(a) is concerned with knowledge (or reason to have knowledge) of one's *alleged* paternity, or an allegation of paternity, not of paternity itself. *Hills v. Patton*, Allen App. No. 1-07-71, 2008-Ohio-1343, ¶28.

{¶18} In this way, R.C. 3111.13(F)(3)(a) deals with the inchoate or uncertain state of being an alleged father, not the scientifically ascertainable state of being a father. Through the use of the word "alleged," the General Assembly has made it clear that this statute concerns knowledge of an allegation of paternity. For this reason, we decline appellant's invitation to judicially define "paternity," for purposes of R.C. 3111.13(F)(3)(a), as something of which one can only be aware *after* a child has been born, and then only *if* one is aware that the child has been born.

{¶19} Appellant also maintains that he cannot be charged with knowledge or reason to have knowledge of his alleged paternity by virtue of appellee's efforts to contact him and notify him about Kaelah after her birth. He argues that the evidence failed to demonstrate that those efforts – several calls to his former roommate shortly after Kaelah's birth and two attempts per year to locate his contact information – were reasonable, as required by R.C. 3111.13(F)(3)(b). He argues that appellee failed to avail herself of numerous methods by which she could have made contact with him much earlier than 2005, e.g., calling his pager, contacting his brother, calling him at Circuit City, or contacting his parents. Finally, appellant argues that the efforts that appellee did make to contact him and notify him of Kaelah's birth were not "documented," as required by R.C. 3111.13(F)(3)(b), because she presented no documentary evidence of those efforts.[2]

{¶20} In response, appellee argues that she left several messages with appellant's roommate, and that she was entitled to presume he received them. She

[2] Appellant cites no precedent interpreting R.C. 3111.13(F)(3)(b) as requiring physical documentation of a mother's notification efforts, relying instead on a dictionary definition of "documentation."

argues that this, along with the conversation the couple had in December 1997, gave appellant "reason to have knowledge of his alleged paternity" of Kaelah, and that her subsequent efforts to contact appellant were reasonable.

{¶21} The competent, credible evidence demonstrates that the parties discussed appellee's pregnancy in December 1997 in terms of appellant being the child's father, appellant was aware that appellee alleged that he was the father of the child and he never denied that he was the father. In fact, he discussed the pregnancy with appellee in terms of his being the father of the child, and the two discussed the options available to deal with the pregnancy. The trial court credited appellee's testimony that she left several messages with appellant's roommate shortly after Kaelah's birth, and she searched for appellant's contact information approximately 14 times until she ultimately was successful in locating him. As we noted earlier, we must presume that the trial court's factual findings are correct, and we cannot substitute our judgment as to witness credibility. On all of the foregoing facts combined, we cannot say that the trial court's judgment that appellee made reasonable efforts to contact and notify appellant about his paternity of Kaelah is against the manifest weight of the evidence.

{¶22} Appellant's argument that appellee did not present evidence of a "documented" effort is unavailing. Appellant urges us to give "documented" the dictionary definition and require that appellee supply "documents or supporting references"[3] to prove her efforts to contact and notify him. R.C. 3111.13 does not define the word "documented" as used therein. A statute's requirement of "documentation" does not

[3] Brief of appellant, 22.

always mean that supporting *documents* are required in order to meet the burden of proof. The purpose of the statute may call for "documentation" to be an explanation straightforward and detailed enough to be susceptible of meaningful challenge.

{¶23} In *Berndsen v. Westerville Personnel Review Bd.* (1984), 14 Ohio App.3d 329, 14 OBR 396, 471 N.E.2d 527, we held that when a board of education abolishes a position, the requirement under R.C. 124.321(D) for the board to first "file a statement of rationale and supporting documentation with the director of administrative services," is satisfied when the board sends one document alone, which states one of three possible rationales (lack of work, economy or efficiency), and then provides as "supporting documentation" a simple statement of what circumstances precipitated the rationale.

{¶24} In *Berndsen*, the board stated its rationale for the abolishment of bus driver positions as "lack of work," and its supporting documentation consisted of the following two statements: "a) Elimination of all transportation for high school students[;] b) Elimination of transportation for elementary students living within two (2) miles of the school of attendance." The board provided no other documents or other evidence "documenting" the rationale for the job abolishment. The employees who were laid off challenged the statement as not being compliant with the requirement of providing "supporting documentation."

{¶25} We rejected that argument, noting that "[t]he appointing authority is required further to document why there is a lack of work, but not in any particular form. * * * [The] explanations 'document' or *factually support* the general rationale of 'lack of work' given for abolishment of the positions. Documentation should not be construed in a highly technical sense that it is necessary for the appointing authority to state in writing the

factual basis for the statutory authority for abolishment of the positions." (Emphasis added.) Id. at 331. The "supporting documentation" requirement of R.C. 124.321 calls for a "straightforward explanation for the abolishment." *Penrod v. Ohio Dept. of Adm. Servs.*, 113 Ohio St.3d 239, 2007-Ohio-1688, 864 N.E.2d 79, ¶29.

{¶26} "In enacting a statute, it is presumed that * * * [a] just and reasonable result is intended[.]" R.C. 1.47(C). "The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences." *City of Canton v. Imperial Bowling Lanes, Inc.* (1968), 16 Ohio St.2d 47, 45 O.O.2d 327, 242 N.E.2d 566, paragraph four of the syllabus. To require that a mother's efforts to locate the father of her child be memorialized in writings would be unreasonable and absurd in light of the fact that some of those efforts, such as going to places where the father once lived or worked, are difficult or impossible to memorialize in writing. Moreover, such an interpretation would only encourage belated, and perhaps disingenuous, "documentation" by the mother, such as diary keeping, that would produce no more reliable evidence than would the mother's testimony about the efforts she made.

{¶27} In the present case, R.C. 3111.13(F)(3)(b) requires that a mother prove, by a preponderance of the evidence, that she performed a reasonable effort to contact and notify the father of his paternity of the child in question, and that she provide factual support for same. The statute does not specify that she do so in any particular form, and her testimony as to the steps she took in her effort to notify the father about his paternity, if it contains specific facts, will be susceptible of cross-examination and will provide the father with an opportunity to present facts to impeach the mother's evidence of her efforts, and to challenge the reasonableness of those efforts. Here, appellee's testimony

provided factual support for her contention that she made reasonable efforts, and gave appellant the opportunity to challenge the reasonableness of same. The trial court's judgment that appellee made a reasonable and documented effort to notify appellant of his alleged paternity is not against the manifest weight of the evidence simply because appellee did not produce a diary or other documents to prove her notification efforts.

{¶28} In light of the undisputed evidence in the record that the parties discussed appellee's pregnancy and which options they might pursue to deal with it, no other potential father was involved, and appellee made documented efforts to contact and notify appellant about his paternity of Kaelah following her birth, which efforts the trial court found to be reasonable, we cannot say that the trial court's judgment was against the manifest weight of the evidence when it adjudged that R.C. 3111.13(F)(3) does not exempt appellant from a retroactive child support order.

{¶29} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

PETREE and T. BRYANT, JJ., concur.

T. BRYANT, J., retired of the Third Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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