

FILED: February 20, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Marriage of

LISA LEE PIERCE, nka Lisa Lee Vaught,
fka Lisa Lee Chatfield, aka Lisa L. Heiple, aka Lisa Pierce,
Petitioner-Respondent,

and

STATE OF OREGON, acting by and through the Division of Child Support,
Petitioner,

and

KIPPY ROBERT PIERCE, aka Kip Pierce,
aka Kippy R. Pierce, aka Kippy Pierce, Jr.,
Respondent-Appellant.

Clackamas County Circuit Court
DR0102225

A151441

Susie L. Norby, Judge.

On appellant's amended petition for reconsideration filed December 19, 2013. Opinion filed October 30, 2013. 259 Or App 200, 313 P3d 338.

Kip Pierce for petition *pro se*.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Reconsideration allowed; former disposition withdrawn; former opinion modified and adhered to as modified; supplemental judgment reversed as to finding of contempt for failure to make child support arrearage payments and as to money award for unpaid balance of arrearage and for interest on arrearage; otherwise affirmed.

1 PER CURIAM

2 Father petitions for reconsideration of our decision in *Pierce and Pierce*,
3 259 Or App 200, 313 P3d 338 (2013), to clarify the disposition of the case. We grant
4 reconsideration, modify our opinion as explained below, and otherwise adhere to the
5 opinion as modified. We also withdraw our disposition and substitute a new disposition.

6 In *Pierce*, we concluded that the trial court incorrectly determined that
7 father had violated the requirements, set forth in a 2004 supplemental judgment, to make
8 monthly payments toward a \$25,000 child support arrearage:

9 "[Father] agrees to pay this arrearage off at the rate of \$100.00 per month
10 commencing March 1, 2004, and a like payment on the first day of each
11 month hereafter until the judgment is paid in full. This judgment will be
12 without interest provided that [father] pays the monthly payment each
13 month. If any payment is not paid, then the judgment shall accrue interest
14 at the rate of 9% per annum."

15 Accordingly, we reversed the trial court's supplemental judgment as to its finding that
16 father was in contempt for failure to make child support arrearage payments and as to the
17 money award for interest on the arrearage. We otherwise affirmed.

18 Father seeks clarification of our decision. According to father, mother now
19 takes the position that the balance of the arrearage, \$17,309, is "due to [her] immediately
20 in a lump sum."¹ Mother points to the trial court's statement in its judgment that
21 "[mother] is awarded judgment against [father] in the amount of \$17,309.00 as the unpaid

¹ Mother did not file a response to father's petitioner for reconsideration, but in opposing father's petition for attorney fees, mother claims that "awarding a judgment for \$17,309.00 on the unpaid balance" was part of the trial court's decision.

1 balance of the \$25,000.00 child support arrearage judgment from the August 25, 2004
2 Supplemental Judgment plus interest at the rate of 9% per annum from September 1,
3 2009, until paid[.]" In mother's view, the trial court not only awarded interest on the
4 unpaid balance, it ruled that the balance was immediately due and that the monthly
5 payment provision of the 2004 supplemental judgment no longer applied. Mother further
6 claims that we affirmed that ruling in *Pierce*.

7 We now modify our opinion by stating that, to the extent the trial court
8 concluded that the unpaid balance of the child support arrearage was immediately due to
9 mother because father had failed to make \$100 arrearage payments, that conclusion was
10 error. Even if we assume that the 2004 supplemental judgment contains an acceleration
11 clause that is triggered by father's failure to make a \$100 monthly payment--a contention
12 that mother apparently adopts but we need not address--father did not fail to make a \$100
13 monthly payment toward the arrearage, and thus the balance of the unpaid arrearage was
14 not immediately due. We withdraw our disposition and substitute a new disposition
15 adding that the supplemental judgment is reversed as to the money award for the unpaid
16 balance on the arrearage.

17 Reconsideration allowed; former disposition withdrawn; former opinion
18 modified and adhered to as modified; supplemental judgment reversed as to finding of
19 contempt for failure to make child support arrearage payments and as to money award for
20 unpaid balance of arrearage and for interest on arrearage; otherwise affirmed.