FILED BY CLERK
AUG 14 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA ex rel. DEPARTMENT OF ECONOMIC SECURITY and MARIA TERESA ZUNIGA, Petitioners/Appellees, v. BRIAN L. LARUE, Respondent/Appellant.	2 CA-CV 2008-0195 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. DR-08-077

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 In this domestic relations action, appellant Brian Larue challenges the trial court's judgment ordering him to pay past child support to appellees Maria Zuniga and the State of Arizona. Larue argues the court lacked statutory authority to require him to pay child support for any period before the date these proceedings were commenced. He further contends he was denied due process because he had not been given prior notice of the specific date from which child support was sought by appellees and assessed by the court. For the following reasons, we affirm.

Facts and Procedural Background

¶2 We view the record in the light most favorable to upholding the superior court's decision. *Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999). Larue and Maria Zuniga are the parents of E., who was born out of wedlock in December 2005. In March 2008, the state filed a petition to establish paternity and to require Larue, pursuant to A.R.S. §§ 25-809 and 46-295, to pay child support and expenses incurred by Zuniga and the state relating to her pregnancy and childbirth and the past medical care of E.[1] In his response, Larue admitted paternity but opposed an award of past child support because he and Zuniga had "lived together with [E.] from his birth into July 2006 and because of

[1]Section 46-295 enables the state to recover public assistance payments through proceedings against a legally responsible person.

[Zuniga]'s conduct." After a hearing, the trial court ordered Larue to pay $9,705.50 for past care and support over the period from November 2006 to November 2008. It awarded prospective support of $481.30 per month. This appeal followed.

Discussion

¶3 Larue argues the trial court lacked authority under § 25-809 to award past child support for the seventeen-month period before the state filed the petition.[2] Because this is an issue of statutory interpretation, our standard of review is de novo. *City of Tucson v. Clear Channel Outdoor, Inc.*, 209 Ariz. 544, ¶ 8, 105 P.3d 1163, 1166 (2005); *see State v. Huskie*, 202 Ariz. 283, ¶ 4, 44 P.3d 161, 162-63 (2002) (interpreting child support statutes). In construing a statute, "our primary goal is to give effect to the intent of the legislature," and the statute's language is the most reliable indicator of that intent. *Jones v. Weston*, No. 2 CA-CV 2008-0145, ¶ 6, 2009 WL 1070290 (Ariz. Ct. App. Apr. 22, 2009).

¶4 Section 25-809(B), provides that a trial court

> shall enter an order for support determined to be due for the period between the commencement of the proceeding and the date that current child support is ordered to begin. The court shall not order past support retroactive to more than three years before the commencement of the proceeding unless the court

[2]The state contends this argument was waived by Larue's failure to raise it below. However, to the extent the argument implicates the court's "jurisdiction to render the particular judgment or order entered," it cannot be waived. *In re Hadtrath*, 121 Ariz. 606, 608, 592 P.2d 1262, 1264 (1979); *see City of Ava v. Yost*, 375 S.W.2d 884, 886 (Mo. App. 1964) ("When [a] question goes to the *power* of [a] court under a statute . . . to render [a] particular judgment . . . the jurisdiction partakes of the nature and character of subject matter and cannot be waived."). In any event, "the rule that issues not objected to at trial are waived is procedural, not jurisdictional, and we may suspend it at our discretion." *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 39, 945 P.2d 317, 350 (App. 1996).

> makes a written finding of good cause after considering all relevant circumstances.

Larue argues this subsection "appears to contain a gap or void with no authority stating in *affirmative* language that the court can award retroactive child support *prior* to the commencement of the proceeding and up to and including [three] years prior to the commencement of the proceeding."

¶5 However, § 25-809(A) provides, without any time limitation or requirement for findings, that, "if a respondent admits parentage . . . the court shall direct . . . the amount, if any, the parties shall pay for the past support of the child and the manner in which the payment shall be made." Thus, § 25-809(A) gives a trial court general authority to assess past child support, whereas § 25-809(B) limits that authority when the court orders support retroactively to more than three years. Subsection (B) also provides that, if support is owed, it must be assessed at least from the commencement of proceedings.

¶6 If we correctly understand Larue's argument with respect to § 25-809(A), he suggests we read this subsection as applying only to the periods of time specified in § 25-809(B). But the plain language of the statute contains no such restriction, *see Jones*, 2009 WL 1070290, ¶ 6, and Larue provides no argument or authority in support of such an interpretation. We therefore find ample authority in § 25-809(A) for the court's order requiring him to pay child support for the seventeen months prior to the commencement of these proceedings.

¶7 Larue also argues he was "given absolutely no notice that Appellees were seeking past child support back to November 2006 or any other specific date" and claims this

violated his constitutional right to due process under the United States and Arizona Constitutions. However, by virtue of the state's petition, Larue was clearly on notice that medical costs associated with Zuniga's pregnancy and past child support from the time of E.'s birth were at issue, and he failed to object below to the lack of notice of a specific date. To the extent this argument has any merit, he has therefore waived it on appeal. *See State v. Lefevre*, 193 Ariz. 385, ¶ 15, 972 P.2d 1021, 1025 (App. 1998) (arguments not raised in trial court waived on appeal "even if the alleged error is of constitutional dimension").

Disposition

¶8 For the reasons stated above, we affirm the trial court's order. Larue requests attorney fees on appeal pursuant to A.R.S. § 25-324. After considering the financial resources and reasonableness of the positions of each party pursuant to this section, we deny his request. *See Leathers v. Leathers*, 216 Ariz. 374, ¶ 22, 166 P.3d 929, 934 (App. 2007). Zuniga also requests attorney fees but cites no statutory basis for such an award. We therefore deny her request. *See In re Marriage of Williams*, 219 Ariz. 546, ¶ 16, 200 P.3d 1043, 1047 (2008). However, as the prevailing party she is entitled to costs upon compliance with Rule 21, Ariz. R. Civ. App. P.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge