

STATE OF LOUISIANA, DEPARTMENT OF
CHILDREN AND FAMILY SERVICES IN THE
INTEREST OF E. R. AND O. R.

NO. 17-CA-50

FIFTH CIRCUIT

VERSUS

COURT OF APPEAL

KIRK REDMANN

STATE OF LOUISIANA

ON APPEAL FROM THE JEFFERSON PARISH JUVENILE COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 06-NS-49, DIVISION "C"
HONORABLE BARRON C. BURMASTER, JUDGE PRESIDING

October 25, 2017

MARC E. JOHNSON
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Robert A. Chaisson

**JUDGMENT VACATED IN PART; MATTER REMANDED FOR NEW
HEARING**

MEJ

JGG

RAC

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JOHNSON, J.

This is a child support case in which Defendant appeals the juvenile court's judgment finding that he owes \$845.00 for child support expenses. In the judgment, the juvenile court granted Defendant a temporary reduction of his monthly child support obligations, but concluded he owed \$1,345.00 for his proportionate share of extraordinary expenses minus a \$250.00 credit for each of the two minor children. The juvenile court further determined that Defendant is not owed any reimbursement for any of the health insurance premiums he paid. For the following reasons, we vacate the juvenile court's judgment and remand the matter for a new hearing.

FACTS & PROCEDURAL HISTORY

According to the record before us, the State of Louisiana Department of Social Services through the District Attorney for the Parish of Jefferson ("State") began providing support enforcement services to Helen Redmann on January 11, 2006. As such, all child support issues between Helen Redmann and Kirk Redmann were transferred from the 24th Judicial District Court to Juvenile Court for the Parish of Jefferson.

This appeal arises from Kirk's motion for reduction of child support and for future credit for amounts owed, which he filed in proper person on April 1, 2015. In his motion, he sought a reduction in the amount of monthly child support he owed for his two minor children on the basis he had been unemployed since January 31, 2015. He also sought a credit for Helen's proportionate share of health insurance premiums for the children that she allegedly had not paid. Kirk maintained that he had paid the totality of health insurance premiums for the children from September 2007 through March 2015 in the amount of \$19,927,

despite a court order dated December 16, 2002 in which Helen was ordered to pay 46% of the premiums.

A hearing on the motion was held on July 9, 2015 before the hearing officer. The hearing officer recommended that Kirk's motion to reduce child support be granted and that his child support obligation be reduced on an interim basis from \$786 per month¹ to \$265.65 per month, retroactive to the filing date of April 1, 2015 once a permanent order was entered. The hearing officer also recommended that each parent be responsible for his or her percentage share of extraordinary medical expenses.² The hearing officer did not address the issue of credits and instructed the parties to meet with the State to review the receipts submitted by each as they related to requested credits. Helen disagreed with the recommendation, specifically the interim reduction of child support, and a disagreement hearing before the juvenile court judge was set.

The parties appeared in proper person before Judge Barron Burmaster on August 10, 2015 for a disagreement hearing. Among the issues was who owed whom what in terms of extraordinary medical expenses, school expenses, and other expenses incurred on behalf of the children over the past seven or eight years. Specifically, Kirk claimed Helen owed him over \$9,000 for her proportionate share of health insurance premiums that he had paid for the children since 2007, and Helen claimed Kirk owed her approximately \$9,000 for his proportionate share of other expenses she had paid on behalf of the children. Helen admitted that she had not paid Kirk her 46% proportionate share of health insurance, but stated that she instead paid all the additional necessary expenses for the children which she

¹ The hearing officer noted that the current support order of \$786 per month was entered on December 16, 2002. A copy of that judgment, which is repeatedly referred to throughout the record as a consent judgment, is not included in the appellate record despite a notation on the July 9, 2015 family support order recommendation indicating that Kirk provided the consent judgment as exhibit D-2.

² Again, the 2002 judgment that purportedly set forth each parties' proportionate share is not included in the appellate record; however, the parties do not appear to dispute that the 2002 judgment set Kirk's proportionate share at 54% and Helen's proportionate share at 46%.

indicated she documented by her canceled checks. Kirk challenged Helen's claimed expenses on the basis that either she had already been reimbursed for the expenses, the expenses were ones covered by the basic monthly child support, or the expenses were not owed as child support.

During the hearing, Helen requested a continuance so she could retain counsel. The trial judge granted Helen's requested continuance and set the interim child support owed by Kirk at \$400 per month, as opposed to his prior obligation of \$786 or the hearing officer's recommendation of \$265.65.

The parties again appeared in court on October 19, 2015 for the continuation of the disagreement hearing. Both parties again appeared in proper person, at which time Helen advised the court that she opted not to obtain counsel because of the cost. The parties discussed the documentation, namely spreadsheets, and lack of documentation provided by each to support his or her position and to controvert that of the opposing party. The trial judge noted that at that juncture, the only way for him to figure it all out was to bring in a forensic accountant, which he warned was very expensive. In an effort to avoid the expense of a forensic accountant, the trial judge instructed Helen to provide Kirk with "all her tax returns and everything," including an itemized list of what she claims Kirk owes her. He also instructed Kirk to show the court what he has paid. Kirk again voiced his objection that some things included on Helen's spreadsheet were non-covered expenses and, therefore, not reimbursable.

The court again continued the hearing on the issue of credits pending further documentation by the parties relating to expenses incurred and paid. The court ordered Kirk to continue paying the reduced child support amount of \$400 per month.

The disagreement hearing resumed on November 30, 2015. The trial judge noted that the parties had yet to come to any agreement about the expenses and

continued the matter in order for the parties to provide a listing of everything they had paid and any supporting documents to the court within two weeks. The parties indicated they had already submitted various documentation and the trial judge seemed to agree, stating that “there is a lot of paperwork here,” and at one point, referring to “two thick volumes in this Record.” He advised the parties to submit whatever they had at that time and told them they had two weeks to supplement it. The trial judge stated that he would review everything and either render his judgment on December 28, 2015 or order a forensic accounting.

Finally, on December 28, 2015 the disagreement hearing concluded with the trial judge rendering judgment on the issue of reimbursements and credits. The trial judge stated that he had reviewed all of the documents submitted and found that Kirk’s share of the expenses owed was \$1,345, minus a \$250 credit for each child, resulting in \$845 owed to Helen. Kirk requested an opportunity to retain counsel. The trial judge indicated that he had rendered judgment but would give Kirk three months to obtain counsel to file a motion to reconsider or appeal.

Kirk obtained counsel who subsequently filed a motion to reconsider the December 28, 2015 judgment on March 11, 2016, which was within the three-month time period set by the trial judge. The trial judge denied the motion to reconsider on June 20, 2016, and Kirk filed a motion for appeal on July 6, 2016.

ISSUES

Kirk raises several issues in challenging the trial court’s December 28, 2015 ruling. First, he argues the trial court erred in failing to introduce evidence presented by both parties into the record. Second, he maintains the trial court erred in determining the expenses paid by Helen fully satisfied her obligation to reimburse him for 46% of the health insurance premiums he paid. As such, he contends the trial court erred in determining that he owed Helen \$1,345. Third, Kirk asserts the trial court failed to follow La. R.S. 9:315.5 when it only gave a

single \$250 credit per child as opposed for \$250 per child per year for extraordinary medical expenses. Fourth, Kirk avers the trial court erred in failing to adjust his proportionate share when it granted his request for the reduction of his monthly child support obligation. And, finally, he argues the trial court erred in summarily denying his motion to reconsider the judgment.

PRELIMINARY ISSUE

In its appellee brief, the State argued that this Court lacks jurisdiction to consider this appeal because the appeal is untimely, having been filed outside the 15-day time delay set forth in La. Ch.C. art. 332. In response, this Court issued a Rule to Show Cause as to why the appeal should not be dismissed for untimeliness, to which Appellant filed a response.

In *State v. Bye*, 16-102 (La. App. 5 Cir. 5/12/16); 191 So.3d 1207, this Court held that the 15-day time delay for filing an appeal set forth in La. Ch.C. art. 332 applies to the exclusion of the 30-day time delay set forth in La. C.C.P. art. 3942 in cases originating from Juvenile Court. In this case, the judgment at issue was rendered on December 28, 2015, with the notice of the signing of judgment being issued on December 30, 2015. Thus, Appellant's motion for appeal, filed on July 6, 2016 appears untimely.

However, a review of the record reveals an error by the trial judge that was so prejudicial to Appellant that fundamental fairness and justice dictate we address the merits of this appeal. Specifically, during the December 28, 2015 hearing, the trial judge stated on numerous occasions that he was giving Kirk three months to obtain an attorney to file a motion to reconsider and that he would, in fact, entertain the motion.

Initially, we note that the Louisiana Code of Civil Procedure does not provide for a motion to reconsider with respect to any judgment, and that such a motion is generally treated as a motion for new trial. *Jynes v. Diddon*, 07-1660, *3

(La. App. 1 Cir. 3/26/08); 978 So.2d 1261, n.3; *Chance v. Chance*, 00-1658 (La. App. 3 Cir. 5/2/01); 784 So.2d 817, 822. In this case, Kirk's motion to reconsider was clearly a motion for new trial.³ Because it was filed more than three days after the mailing of the notice of judgment,⁴ it was untimely and without legal effect. The law is clear – the filing of an untimely motion for new trial does not extend the delay period for filing an appeal, even if the trial court does not recognize that it is untimely, conducts a hearing and considers the motion for new trial. *Nelson v. Teachers' Ret. System of LA*, 10-1190 (La. App. 1 Cir. 2/11/11); 57 So.3d 587, 589-90.

Although the trial judge attempted to extend the appeal delays by giving Kirk three months to file his motion for new trial, the law is again clear – a trial judge possesses no discretion or equitable power to extend the delay within which to apply for new trial. *Madere v. St. John the Baptist Parish*, 04-1036 (La. App. 5 Cir. 3/1/05); 900 So.2d 73, 77; *Roan v. Roan*, 38,383 (La. App. 2 Cir. 4/14/04); 870 So.2d 626, 642; *Gottsabend v. Aetna Casualty & Surety Co.*, 273 So.2d 637 (La. App. 4th Cir. 1973). While we recognize that the trial judge was only trying to help Kirk, who appeared in proper person, the law does not allow the action taken.

However, the trial judge's error in this matter is so egregious that it results in the miscarriage of justice. As such, we cannot, in good conscience, impute the trial judge's error to Appellant. Under La. C.C.P. art. 2164, "[t]he appellate court shall render any judgment which is just, legal and proper upon the record on appeal."

Based on the circumstances presented in the record, we find that fundamental

³ Courts should look through the caption of pleadings in order to ascertain their substance and to recognize the true nature of the pleadings. *9029 Jefferson Highway, LLC v. S&D Roofing, LLC*, 13-588 (La. App. 5 Cir. 2/26/14); 136 So.3d 313, 316.

⁴ See La. Ch.C. art. 332, "The delay for applying for a new trial is three days, exclusive of holidays, and shall commence to run from the mailing of notice of judgment. A motion for new trial shall be decided expeditiously and within seven days from the date of submission for decision." Compare La. C.C.P. art. 1974 which provides for a seven-day time delay for applying for a new trial, which commences to run the day after the notice of judgment is mailed.

fairness and the proper administration of justice dictate that we consider the merits of this appeal.

DISCUSSION

Upon review of the record, we find that we cannot address the propriety of the December 28, 2015 judgment because we cannot ascertain what evidence the trial court considered in reaching its decision. Evidence must be properly and officially introduced and accepted into evidence during a hearing before being considered by the trial court in deciding the merits of a case. *See Touzet v. Mobley*, 612 So.2d 890, 893 (La. App. 5th Cir. 1993), *writ denied*, 614 So.2d 1263 (La. 1993). Courts of appeal are courts of trial record. This Means, for purposes of our review, the record consists of the testimony, exhibits and other evidence **introduced during trial**. *Lewis v. Borne*, 625 So.2d 273, 275 (La. App. 1st Cir. 1993).

While we recognize that evidentiary standards can be relaxed in certain juvenile court matters under La. C.E. art. 1101, child support is not listed among them. Additionally, there is no exception to the general rule that evidence must still be offered and accepted before being considered.

The record is replete with statements from the parties that they submitted various documentation. The trial judge further noted several times that the record was very thick with documentation. However, he also noted that the District Attorney's file was different from the court's file. There was apparent confusion among the parties as to how to submit the evidence, as demonstrated by Kirk's statements on several occasions that he submitted certain documents to the clerk of court. Even Helen seemed uncertain as to the procedure noting, in response to the trial judge's statement that he was giving them two more weeks to submit all documentation, that she had already submitted everything. The record shows that

the parties did not understand the trial court's desire for additional documentation when they believed they had submitted everything.

The only exhibits in this appeal are certain documents submitted to the hearing officer on July 9, 2015. There is absolutely no indication of what exhibits, if any, were admitted during the August 10th, October 19th, and November 28th hearings and during the two-week period the trial court gave after the November 28th hearing.

When rendering its judgment, the trial court stated that it considered all the documents submitted during all the hearings and the subsequent two-week period, but it never identified any of the documents. Based on the record before us, it is unclear what documents, if any, were actually admitted into evidence. Thus, it is impossible for us to ascertain from the record before us how the trial court reached its determination that Kirk owed Helen \$1,345 and for what. Accordingly, we find it necessary to vacate that portion of the December 28, 2015 judgment and remand the matter for a new hearing. We caution the trial court during the hearing on remand to make clear what documents are accepted into evidence and which of the submitted incurred expenses, if any, it determines fall outside the basic child support obligation and are owed as necessary and/or extraordinary, taking into consideration each parties' proportionate share.

DECREE

For the foregoing reasons, we vacate that portion of the juvenile court's December 28, 2015 judgment finding Kirk Redmann owes Helen Redmann \$845 and remand the matter for a new hearing on Kirk Redmann's motion for credits.

**JUDGMENT VACATED IN
PART; MATTER
REMANDED FOR NEW
HEARING**

SUSAN M. CHEHARDY
CHIEF JUDGE

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MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
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JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **OCTOBER 25, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-CA-50

E-NOTIFIED

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