

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0426

STATE OF LOUISIANA

VERSUS

LINDA DUNCAN

Judgment Rendered: October 29, 2010

**Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 014827-IV-D**

The Honorable Timothy C. Ellender, Judge Presiding

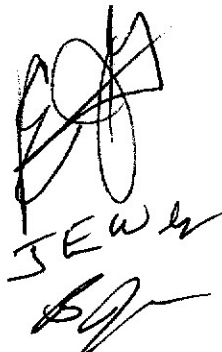
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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.



GAIDRY, J.

MEMORANDUM OPINION

The defendant, the noncustodial mother of a minor child whose guardian received support enforcement services (SES) benefits, appeals a judgment of the 32nd Judicial District Court in favor of the State of Louisiana, through the Department of Social Services (the State), accepting the findings and recommendations of a hearing officer relating to child support pursuant to La. R.S. 46:236.5(C).¹ For the following reasons, we vacate the judgment and remand this matter to the district court for further proceedings.

The State initiated these proceedings by filing a contradictory “Motion to Set Child Support, for Medical Support and for Income Assignment Order” against defendant, pursuant to La. R.S. 46:236.2, 46:236.3, and Rule 14A.7, 32nd Judicial District Court. The motion was fixed for hearing on September 10, 2009 by a hearing officer appointed by the district court. *See* La. R.S. 46:236.5(C)(1) and Rule 14A, 32nd Judicial District Court. Defendant was unrepresented at the hearing. The minute entry reflects that evidence was introduced and that defendant’s “sworn testimony” was heard, after which the hearing officer issued his

¹ Parenthetically, we note that the record contains a minute entry dated February 4, 2010, relating to a review hearing on that date before the hearing officer. The minute entry states: “[A]t the request of the non-custodial parent, Linda Duncan, the [h]earing [o]fficer ordered that the appeal previously filed herein and any objections filed previously are hereby dismissed.” The record contains no order signed by either the hearing officer or the district court purporting to dismiss this appeal. Even if it did, the district court was already divested of jurisdiction when the district court granted the order of devolutive appeal on November 6, 2009, and any such order would be null and without effect. *See* La. C.C.P. art. 2088 and *Washington v. La. Dep’t of Transp. & Dev.*, 593 So.2d 665, 666 n.2 (La. App. 1st Cir. 1991). Further, it stands to reason that if the district court has no jurisdiction to dismiss a pending appeal, the hearing officer, whose authority is limited to that expressly granted by statute, has no such authority. *See* La. C.C.P. art. 2162; La. R.S. 46:236.5(C)(3),(4); and *State, Dep’t of Soc. Services, Office of Family Support v. Pickins*, 42,721 pp. 4-5 (La. App. 2nd Cir. 12/5/07), 972 So.2d 1225, 1227-28.

recommendations, fixing child support at \$245.00 per month with a 5% administrative fee, among other recommendations.

The recommendations were embodied in a preprinted form entitled "Hearing Officer Recommendations – Rules." The form contains a paragraph notifying defendant of her right to file a written objection to the recommendation "on or before 4:30 p.m. on **September 15, 2009**" and that failure to file an objection to any finding or recommendation would be deemed an acceptance. *See* La. R.S. 46:236.5(C)(7) and Rule 14A.4, 32nd Judicial District Court. Defendant's signature and address appear beneath that notice. On the same page of the form, beneath the hearing officer's signature, there is a certificate of the clerk of court, dated September 16, 2009, verifying that no objection was timely filed. Finally, the form contains a completed judgment form, signed by the district court on September 16, 2009, approving the hearing officer's recommendations.

Defendant assigns as error the district court's approval of hearing officer recommendations that (1) contained insufficient findings of fact and no conclusions of law, and (2) were apparently based upon receipt of supplemental security income (SSI) benefits, excluded by statute from the definition of income. Defendant further contends that to the extent that SSI benefits were considered by the district court, its action was preempted by federal law. Because we find merit in defendant's first two assignments of error, we pretermitt consideration of the third.

Louisiana Revised Statutes 46:236.5(C)(3) provides that the hearing officer "*shall* act as a finder of fact and *shall* make written recommendations to the court." (Emphasis added.) Subsection (C)(5) sets forth the mandatory contents of the written recommendations:

The written recommendation of the hearing officer *shall* contain all of the following:

- (a) A statement of the pleadings.
- (b) A statement as to the findings of fact by the hearing officer.
- (c) A statement as to the findings of law based on the pleadings and facts, including his opinion thereon.
- (d) A proposed judgment.

(Emphasis added.)

The preprinted form has a section entitled "Findings of Fact," with four blank lines provided for insertion of the hearing officer's statement of the findings of fact. The hearing officer's handwritten statement in the space provided is limited to the following notations:

* NCP -- 1256.25 \leftrightarrow I get SSI for Seizures.
CP -- Weddle [?] Duncan -- \$ ~~1256.25~~ 0 - Deceased [?]²

We agree with defendant that the hearing officer's statement of the findings of fact is ambiguous or cryptic at best. For all practical purposes, it fails to comply with the statutory mandate of La. R.S. 46:236.5(C)(5) that the hearing officer's recommendations contain statements of the findings of fact. The hearing officer's recommendations likewise contain no minimal statement of the findings of law based on the pleadings and facts. The "Obligation Worksheet A" (the statutory form set forth in La. R.S. 9:315.20) was attached to the Hearing Officer Recommendations - Rules form and listed Ms. Duncan's monthly gross income as \$1,256.57, a figure nearly identical to that listed in the hearing officer's statement relative to the receipt of "SSI for Seizures." As emphasized by defendant, to the extent that the recommendations may be read as being based upon SSI benefits, they

² We assume that "NCP" is an abbreviation for "noncustodial parent," and that "CP" stands for "custodial parent." The notation relating to "Weddle [?] Duncan" might refer to the deceased father of the minor child, but this is only speculation on our part.

conflict with the statutory exemption of such benefits from gross income under La. R.S. 9:315(C)(3)(d)(i). If such is the case, the recommendations also deviate substantially from the statutory child support guidelines and would require that specific reasons be given for such deviation and placed in the record. *See* La. R.S. 9:315.1(B)(1) and Rule 14A.6, 32nd Judicial District Court..

The record contains no transcript of the testimony taken and no copies of any exhibits introduced into evidence. The State argues that the hearing officer's recommendations were based upon a finding that defendant was voluntarily unemployed, and that the monthly gross income figure of \$1,256.57 was based upon earnable income of Federal minimum hourly wage for fulltime employment. *See* La. R.S. 9:315.11. However, it concedes in its brief that "[t]here is no supporting evidence in the record to review the correctness of the [h]earing [o]fficer's findings." It also urges us to remand this case to the district court to conduct a contradictory hearing pursuant to La. R.S. 46:236.5(C)(6) to remedy the evidentiary deficiencies of the record.

Because of the legal deficiencies described above, we conclude that defendant is not precluded from contesting the hearing officer's recommendations by reason of her failure to file a written objection or exception within three days. Defendant cannot be expected to present a cogent objection to factual and legal findings that are not reasonably understandable and amount, in effect, to no findings at all. *See State v. Vallot*, 05-0532, pp. 10-11 (La. App. 3rd Cir. 4/5/06), 926 So.2d 98, 103-04. The district court committed legal error by rendering judgment approving and adopting the legally deficient recommendations of the hearing officer.

Accordingly, we vacate the judgment of the district court and remand this matter to the district court for further proceedings consistent with this opinion, directing that the hearing officer issue recommendations complying with the requirements of La. R.S. 46:236.5(C)(5), after which either party may request a contradictory hearing pursuant to La. R.S. 46:236.5(C)(6) and Rule 14A.4, 32nd Judicial District Court. *See Crawford v. Crawford*, 02-168 (La. App. 3rd Cir. 11/13/02), 833 So.2d 361. All costs of this appeal, in the amount of \$121.50, are assessed to the plaintiff, the State of Louisiana, through the Department of Social Services. This memorandum opinion is issued pursuant to Rule 2-16.1(B) of the Uniform Rules of Louisiana Courts of Appeal.

JUDGMENT VACATED AND CASE REMANDED WITH INSTRUCTIONS.