

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 0601

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF SOCIAL SERVICES, OFS, SUPPORT ENFORCEMENT SERVICES, IN THE INTEREST OF P.D. (MINOR CHILD OF K.D.)

VERSUS

OSCAR HILLS, IV

Judgment Rendered: FEB 17 2017

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Appealed from the
Family Court of East Baton Rouge Parish
State of Louisiana
Suit Number F123917

Honorable Pamela J. Baker, Presiding

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BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

Defendant/appellant, Oscar Hills, IV, appeals from a trial court judgment finding him in contempt of court for failure to pay child support as ordered, failing to award a credit towards his child support arrearages, and setting the child support arrearage amount of \$19,585.12. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On April 11, 1997, the State of Louisiana, through the Department of Social Services, Office of Family Support, Support Enforcement Services (Department) filed a petition to establish paternity and support, naming Hills as defendant. In its petition, the Department requested that the court order Hills to pay child support for the minor child, P.D.¹ Thereafter, the Department filed an amended petition to establish paternity and support, requesting that the court order Hills to pay child support for P.D. and J.D.

Thereafter, on June 23, 1999, Hills and the Department entered into a consent judgment, whereby Hills, who was represented by counsel, agreed to pay \$300 per month in child support, payable to the Department, retroactive to April 11, 1997. Hills also agreed to pay the paternity blood test costs of \$234, to provide health insurance for the minor children, should such coverage be or become available through his employer, and to pay costs of the proceedings. The parties also agreed that an immediate income assignment order be imposed.

Unfortunately, Hills failed to pay his court-ordered child support obligation in accordance with the June 23, 1999 consent judgment, and on October 1, 2014, the District Attorney, on behalf of the Department, filed a rule for contempt. An affidavit of arrearages was attached to the rule for contempt.

¹ Due to the minor status of the children, we will refer to them by their initials to protect their identity.

Hills replied to the rule for contempt by filing a motion for discovery and to compel, requesting that the court order the mother of the minor children to produce her income tax returns for the years 1999 through 2013 and records for the last three years of all her income. Hills asserted that the mother had violated the June 23, 1999 judgment by claiming J.D. on her income tax returns. According to Hills, he and the mother had agreed that she would claim P.D. on her income tax returns, and he would claim J.D. on his income tax returns; however, contrary to this agreement, the mother claimed both children. Hills requested that the court stay any judgment of contempt until the mother produced the necessary documents and also requested a credit to his arrearages for the funds she received.

Following a hearing, the trial court continued the issue of contempt and sentencing; ordered the mother to produce discovery as requested in Hills' motion; set the amount of child support arrearage at \$19,740.94, subject to any credit for taxes that may be determined at a later date; ordered Hills to continue to pay his current child support obligation in the amount of \$300 per month; and ordered Hills to pay a fee for the administrative costs of expedited process.

Thereafter, on June 1, 2015, the trial court ordered Hills to produce his tax returns for the years he claims that the mother claimed both minor children on her income tax returns and he was unable to claim J.D. Following a hearing, wherein Hills failed to produce his income tax returns as ordered, the trial court signed a judgment denying Hills' request for a credit towards the child support arrearage; finding Hills guilty of contempt for failure to pay child support as ordered and sentencing Hills to serve ninety days but deferring the sentence until November 9, 2015; setting the amount of child support arrearage at \$19,585.12 as of July 20, 2015; and ordering Hills to continue to pay his current obligation of child support in the amount of \$300 per month plus an additional \$100 per month toward child support arrearages commencing August 15, 2015.

Hills now appeals from the trial court's judgment, asserting that the trial court abused its discretion in finding him in contempt of court and erred in failing to give him a credit towards the child support arrearages.

DISCUSSION

When a defendant violates a court order issued pursuant La. R.S. 46:236.1.1 et seq., 46:236.2, La. Ch.C. art. 1301.1 et seq., or La. R.S. 13:4241, requiring him to pay child support to the Department of Social Services, a representative of the child support collection agency may serve the defendant with a summons to appear and show cause before the proper court of competent jurisdiction why he should not be held in contempt of court. La. R.S. 46:236.6(A). Prior to or at a hearing, the Department of Social Services or the district attorney shall file with the court and serve on the defendant a rule for contempt, setting forth the terms of the original court order for child support and the allegations purporting to place the defendant in contempt. La. R.S. 46:236.6(A). If at the hearing of such rule the court finds the defendant guilty of contempt for failure to comply with the previous judgment, the contempt shall be deemed constructive contempt. La. R.S. 46:236.6(B).

In order to find a party guilty of constructive contempt of court, the court must determine that the party's disobedience of the court's support order is willful or a deliberate refusal to perform an act which was within the power of the parent to perform. Fink v. Bryant, 01-0987, p. 7 (La. 11/28/01), 801 So. 2d 346, 350. A trial court is vested with great discretion in determining whether a person should be held in contempt of court, and its decision will not be reversed absent an abuse of discretion. Chauvin v. Chauvin, 46,365, p. 7 (La. App. 2nd Cir. 6/22/11), 69 So. 3d 1192, 1197-98.

In the instant case, the undisputed evidence demonstrated that Hills failed to pay the child support arrearages as ordered in the June 23, 1999 consent judgment.

Further, while the record demonstrates that Hills was incarcerated for two years during the time period at issue, it also demonstrates that Hills failed to pay child support as ordered during the extensive periods before and after his incarceration. As such, we find no abuse of the trial court's discretion in finding Hills in constructive contempt of court.

Furthermore, we find no error in the trial court's determination of the amount owed by Hills in child support arrearages. Prior to the hearing, Hills alleged that he was entitled to a credit against his child support arrearages because the mother claimed both children on her income tax returns, in violation of an agreement providing that she was to claim P.D. and he was to claim J.D. The burden of proving a credit is upon the parent alleging the credit. See Fobbs v. Fobbs, 09-219, p. 4 (La. App. 3rd Cir. 11/10/09), 25 So. 3d 168, 171.

In the instant case, it is undisputed that an agreement regarding the right to claim the children on income tax returns was not included in the June 23, 1999 consent judgment. However, the trial court found, after reviewing the transcript from the hearing prior to the entry of the consent judgment, that the parties had verbally agreed that the mother was to claim P.D. on her income tax returns and Hills was to claim J.D. on his income tax returns. According to the record, the mother did not dispute that she in fact claimed both children on her income tax returns during the time period at issue. However, the court ordered that Hills produce copies of his income tax returns for the relevant years demonstrating that he was prevented from claiming J.D. on his income tax returns.

At the hearing, not only did Hills fail to present copies of his income tax returns as ordered by the court, but he admitted that he had been claiming J.D. on his income tax returns and receiving the deduction for J.D. Hills stated that because both he and the mother were claiming the same child, they were being audited by the Internal Revenue Service (IRS). As such, the trial court found that

Hills was receiving the benefit of claiming J.D. on his income taxes, which benefit was applied to his child support arrearages. See La. R.S. 46:236.9 and 42 U.S.C. 664(a)(1). As such, the trial court found that Hills was not entitled to an additional credit for that amount. Furthermore, the trial court found that Hills was not entitled to a credit for the amount received by the mother for claiming J.D. on her income tax returns, finding that was an issue to be resolved by the IRS pursuant to the audit process.²

From our review of the record, we find no error in the trial court's finding that Hills failed to establish that he was entitled to a credit against the amount owed in child support arrearages as established by the Department. Accordingly, we find no error in the trial court's order that the child support arrearage be set in the amount of \$19,585.12 as of July 20, 2015.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. Despite Hills' pauper status, the costs of this appeal are assessed to him as the unsuccessful party. See La. C.C.P. arts. 2164 and 5188; State in the Interest of EG, 95-0018, pp. 6-7 (La. App. 1st Cir. 6/23/95), 657 So. 2d 1094, 1098, writ denied, 95-1865 (La. 9/1/95), 658 So. 2d 1263.

AFFIRMED.

² The trial court stated that it was finding Hills was entitled to claim J.D. on his income tax returns pursuant to the verbal, in-court agreement reached at the hearing prior to the June 23, 1999 consent judgment. As such, the court found that the issue of the mother claiming both children on her income tax returns would be an issue to be more appropriately resolved between her and the IRS. However, we note that the trial court's judgment, again, fails to reflect any finding regarding the right of the mother to claim P.D. and the right of Hills to claim J.D. on their respective income tax returns.