

JAMES L. BATES

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NO. 2002-CA-2220

VERSUS

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COURT OF APPEAL

BETTY BATES

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-6470, DIVISION "DRS-3"
Honorable C. Hunter King, Judge

* * * * *

Charles R. Jones
Judge

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge Terri F. Love)

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REVERSED IN PART; AFFIRMED IN

PART

Plaintiff/Appellant, James L. Bates, appeals the judgment of the district court maintaining exceptions of lack of subject matter jurisdiction and no cause of action filed by Defendant/Appellee, Betty Bates, and dismissing his Petition to Reduce Child Support. We reverse in part, and affirm in part.

On April 25, 2000, James Bates filed a Petition to Reduce Child Support in the Civil District Court for the Parish of Orleans (hereinafter “CDC”), wherein he sought to reduce the amount of child support that he owed under a Shared Parenting Plan. He and Ms. Bates had mutually agreed to the plan in the 24th Judicial District Court (hereinafter “24th JDC”), Parish of Jefferson, in case # 360-680, Div. DRS 1. In response to the petition, Ms. Bates filed exceptions of lack of subject matter jurisdiction and no cause of action, asserting that the petition filed by Mr. Bates should be dismissed because of his failure to comply with the provisions of La. C.C.P. arts. 2785, et seq., the Intrastate Registration of Support Orders for Modification and

Enforcement. The exceptions were set for contradictory hearing on the same date that the rule to modify support had been set.

Thereafter, Mr. Bates filed an Ex-Parte Motion to Register Support Order seeking an order directing the Clerk to register the support order previously rendered in the 24th JDC into the records of the CDC. The district court signed an order on September 11, 2000, granting Mr. Bates' Motion to Register. Mr. Bates also filed a written opposition to Ms. Bates' exceptions, arguing that while he believed her exceptions were unfounded; he had nonetheless moved to register the 24th JDC support order in Orleans Parish. Alternatively, Mr. Bates requested that, should the district court not recognize the support order, the Petition to Reduce Child Support should be transferred to the 24th JDC, rather than dismissed. Mr. Bates also filed two supplemental memoranda opposing Ms. Bates' exceptions, and offering further support for his petition for reduction.

Following a hearing on January 29, 2001, the district court maintained Ms. Bates' exceptions and dismissed the petition of Mr. Bates "for the reason that plaintiff failed to follow the procedures set forth in La. C.C.P. arts 2785, et seq." A written judgment to that effect was rendered on March 12, 2000. This timely appeal followed.

Shortly after this appeal had been lodged, this Court noticed on its

own motion that the record indicated that this appeal had been dismissed by the district court for Mr. Bates' failure to pay the estimated costs of appeal. Mr. Bates, after being ordered to show cause why this appeal should not be dismissed, provided this Court with documentation indicating that he had, in fact, paid the costs of this appeal owed to the district court. Thus, we are satisfied that this appeal is properly before this Court.

Mr. Bates assigns two errors in this appeal. First, he claims that the district court erred in dismissing his petition to modify. Second, he asserts that even if this Court were to find that the district court lacked jurisdiction over his petition to modify, the district court nevertheless erred and abused its discretion in failing to order the matter transferred to the original court of jurisdiction in Jefferson Parish, the 24th JDC. As pointed out by Mr. Bates, this distinction between the district court's dismissal or transfer of his petition is crucial because any new petition filed in Jefferson Parish would not relate back to the April 25, 2000 filing date of his petition in CDC. Conversely, if the district court were to have transferred his petition to modify to Jefferson Parish, any judgment rendered by that court would be retroactive to the April 25, 2000 original filing of Appellant's petition in CDC.

Ms. Bates did not file a brief in this Court.

The trial court has great discretion in granting or modifying awards of child support and its judgment will not be disturbed unless there is a showing of a clear abuse of that discretion. Musacchia v. Musacchia, 00-1670, p.6 (La.App. 5 Cir. 1/30/01) 778 So.2d 1158, 1161.

Subject matter jurisdiction is defined by La. C.C.P. art. 2 as “the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted.” It is an essential element for every civil action and cannot be conferred by consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action is void. La C.C.P. art. 3.

The exception of no cause of action questions whether the law extends a remedy to anyone under the factual allegations of the petition. La.C.C.P. art. 931 mandates that “[n]o evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action.” According to La. C.C.P. art. 934:

When the grounds of the objection pleaded by a peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delays allowed by the court. If the grounds of the objection cannot be so removed, or **if the plaintiff fails to comply with the order to amend, the action shall be dismissed.** [Emphasis added].

The effect of sustaining a declinatory exception, such as lack of subject matter jurisdiction, is similar, “except that if [the action] has been brought in a court of improper jurisdiction or venue, the court **may** transfer the action to a proper court in the interest of justice.” [**Emphasis added**]. La. C.C.P. art. 932.

Mr. Bates submits that based upon a clear reading of La. C.C.P. art. 74.2, he was entitled to file his petition to reduce child support in Orleans Parish, without having first registered the support order that he was seeking to modify. La. C.C.P. art. 74.2 provides, in pertinent part, as follows:

Art. 74.2. Custody proceedings; support; forum
non conveniens

* * *

C. A proceeding for modification of support may be brought in any of the following:

- (1) The parish where the person awarded support is domiciled.
- (2) The parish where the support award was rendered if it has not been registered and confirmed in another court of this state, pursuant to the provisions of Article 2785 et seq.
- (3) The parish where the support award was last registered if registered in multiple courts of this state.

* * *

D. A proceeding to register a child support, medical support, and income assignment order, or any such order issued by a court of this state for modification, may be brought in the parish where the person awarded support is domiciled.

E. For the convenience of the parties and the witnesses and in the interest of justice, a court,

upon contradictory motion or upon its own motion after notice and hearing, may transfer the custody or support proceeding to another court where the proceeding might have been brought.

The above-quoted venue provision makes reference to La. C.C.P. art 2785, et seq. Those articles address the intrastate registration of support orders for modification and enforcement. This matter concerns a request for modification of a support order. The most relevant of those articles is La. C.C.P. art. 2786, which provides as follows:

Art. 2786. Registration of support orders for modification

A. A support order rendered by a court of this state may be registered for modification in another court of this state if all parties to the order are no longer domiciled in the parish of the rendering court.

B. A party to a support order seeking to register the support order pursuant to the provisions of this Subsection shall transmit to the clerk of the registering court all of the following:

(1) A certified copy of the support order.

(2) A verified statement of support or a federally approved URESA or UIFSA form, signed by a party to the support order, indicating all of the following:

(a) The name and street address of the obligee.

(b) The name, last known place of residence, and post office or street address of the obligor.

(c) A list of all the jurisdictions in which the order is registered.

C. Upon receipt of these documents, the clerk of court shall:

(1) Treat the documents as if they were a petition seeking relief relative to a family law matter by assigning a docket number and, if applicable,

designate a division to which the matter is allotted.

(2) Register the support order by stamping or making a notation thereof on the certified copy of the support order in substantially the following form: "REGISTERED FOR MODIFICATION by the Clerk of the [District, Family, or Juvenile] Court in and for the Parish of [name of parish] on [date]."

(3)(a) Send a copy of the registered support order, by certified or registered mail, to the obligor at the address provided in the verified statement of support, or

(b) Issue service of process as permitted by law and notice of registration in lieu of citation, which shall be served by ordinary process.

(4) Issue notice of the registration to the rendering court or, if the support order has been previously registered and confirmed for modification in another court of this state, to the last registering court.

D. The filing of a support order in compliance with the provisions hereof constitutes registration of the support order for modification, and if subsequently confirmed, shall divest the rendering court, or if registered in another court for modification, the court of last registration, of jurisdiction to modify the support order.

In the transcript of the January 29, 2001 hearing on Mr. Bates' rule to reduce child support and Ms. Bates' exceptions thereto, the district court stated that it was granting Ms. Bates' exceptions because Mr. Bates had failed to comply with the provision of La. C.C.P. art. 2786(B)(2)(b) requiring that a party seeking to register a support order provide the clerk of the registering court with the address of the obligor.

Mr. Bates had attached to his ex-parte motion to register support order an unverified document that listed his address, as the obligor in the support order, as follows:

Obligor: James Bates, For several years at 221 Lake Marina Avenue, New Orleans, La. 70124, and has been staying at 7940 Drum Street, New Orleans, La. 70126, and will eventually be moved to South Shore Harbor, New Orleans, La.

According to the transcript, the district court had, at an earlier pretrial conference on November 3, 2000, disapproved of the above statement regarding Mr. Bates' address and had ordered him to replace it with a verified statement of his specific address. Mr. Bates admitted that, in response to the earlier instruction by the district court, he simply had the previously filed statement notarized without amending it to reflect his actual address. The district court stated that it viewed those actions as a violation of its order for Mr. Bates to list clearly his one address, and that it was granting Ms. Bates' exceptions.

A large portion of Mr. Bates' brief is spent on his argument that CDC was a court of proper venue for his petition to modify support under La. C.C.P. art. 74.2. We agree and note for the record that Ms. Bates has not challenged Mr. Bates' choice of venue. Our review does not end here, however, because Ms. Bates excepted to the subject matter jurisdiction of

CDC to modify the parties' existing support order, and the district court maintained such exception.

CDC clearly had subject matter jurisdiction under La. Const. art. V, § 16(A) to adjudicate this particular class of action, specifically one involving child support. Jurado, 00-1306, p.3 (La. 3/19/01), 782 So.2d 575, 577.

Accordingly, the district court erred to the extent that its March, 12, 2001 judgment maintained Ms. Bates' exception of lack of subject matter jurisdiction.

We now turn to a discussion of whether the district court correctly maintained Ms. Bates' exception of no cause of action. Our reading of the January 29, 2001 transcript convinces us that, essentially, the district ruled that in order to maintain a cause of action in Orleans Parish for the modification of a support order previously rendered in Jefferson Parish, Mr. Bates, as obligor under that order, was required under La. C.C.P. art. 2786 to provide the registering court with his exact address.

Mr. Bates complains that because the district court had signed his Ex-parte Motion to Register Support Order on September 11, 2000, and because Ms. Bates did not file a formal objection to that registration as provided for in La. C.C.P. art. 2787, the district court should not have allowed Ms. Bates to challenge the registration and to complain about the adequacy of the

statement he had submitted regarding his address. We disagree. Ms. Bates had previously filed exceptions objecting to Mr. Bates having filed a petition to reduce child support without following the specific dictates of La. C.C.P. art. 2786 et seq. Once it was pointed out to the district court that the statement purporting to list Mr. Bates' address was defective, the district court had discretion to treat those exceptions as objections to Mr. Bates' motion to register. This argument is without merit.

Mr. Bates, who is himself an attorney and officer of the court, chose to disregard the judge's specific instructions. He failed to bring his defectively filed motion to register support order into compliance and to proceed with his petition to reduce child support. As such, the district court was well within its discretion when maintaining Ms. Bates' exception of no cause of action and dismissing Mr. Bates' Petition to Reduce Child Support. It is certainly in the best interest of the children to whom the support order pertains to have the current exact address of the obligor under that support order, especially in a case such as this, where the obligor is seeking to reduce his obligation and is already in arrears under the existing support order.

Finally, because Mr. Bates failed to comply with the district court's November 3, 2000 order that he amend the statement attached to his motion to register support order to comply with La. C.C.P. art. 2786, the district

court was required under La. C.C.P. art. 934 to dismiss Mr. Bates' action. Accordingly, the district court committed no error in failing to transfer Mr. Bates' petition to reduce child support to Jefferson Parish.

DECREE

For the foregoing reasons, the March 12, 2001 judgment is reversed insofar as it maintained the exception of lack of subject matter jurisdiction filed by Betty Bates. In all other respects, the judgment is affirmed.

REVERSED IN PART; AFFIRMED IN PART