

NOT DESIGNATED FOR PUBLICATION

KEVIN HAWKINS * **NO. 2009-CA-0135**
VERSUS *
JANNIE BUTLER HAWKINS * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-10686, DIVISION "C-DRS 1"
Honorable Sidney H. Cates, Judge

* * * * *

Judge David S. Gorbaty

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(Court composed of Judge David S. Gorbaty, Judge Edwin A. Lombard, Judge Roland L. Belsome)

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REVERSED

In this appeal, plaintiff-appellant Kevin Hawkins argues that the trial court erred in finding good cause not to make the child support retroactive. For the reasons set forth below, we reverse.

FACTS AND PROCEDURAL HISTORY

As a result of a 2001 judgment, Kevin Hawkins and Jannie Hawkins were awarded joint custody of their minor children. Jannie Hawkins was named as the domiciliary parent. In March 2005, Ms. Hawkins moved to Alabama with the children and her new husband. In May 2005, Mr. Hawkins filed an objection to this relocation. In August 2006, judgment was rendered maintaining the objection to relocation and ordering the children's immediate return to New Orleans. In March 2007, Mr. Hawkins filed a Rule to Change Custody. The children began residing with Mr. Hawkins shortly thereafter. On June 20, 2007, physical custody of the children was awarded to Mr. Hawkins, along with domiciliary parent status for the summer of 2007. When the 2007 school year began, Ms. Hawkins informed Mr. Hawkins that the children should remain with him, and they have

resided with him since that time. On September 27, 2007, Mr. Hawkins filed a Rule for Child Support, which was originally set for hearing on November 13, 2007. Mr. Hawkins' March 2005 Rule to Change Custody was also reset for hearing on that same day.

The November 13 hearing was continued by the trial court because of a scheduling conflict. Subsequently, the matter was continued because of Ms. Hawkins' attorney's medical problems. The matter was continued again due to Ms. Hawkins' attorney's scheduling issues. The matter was continued yet again by the trial court. Finally, on May 19, 2008, the custody trial took place, but the trial court continued the child support issue without date, pending decision on the issue of custody. On June 23, 2008, the trial court issued its ruling from the May 19 trial, naming Mr. Hawkins as domiciliary parent of the children. The judgment did not address the September 2007 Rule for Child Support.

In July 2008, Mr. Hawkins filed a Motion to Reset the Rule for Child Support. The matter was set for trial and continued twice at Ms. Hawkins' attorney's request. The Rule was finally heard in September 2008, and judgment was rendered in November 2008. At that time, the trial court awarded child support to Mr. Hawkins, retroactive to June 23, 2008, the date on which permanent domiciliary parent status was awarded to Mr. Hawkins. Mr. Hawkins subsequently filed this appeal.

DISCUSSION

Mr. Hawkins argues that the trial court erred in finding good cause not to make the child support award retroactive to September 27, 2007, the date of demand.

To reverse the trial court's decision, an appellate court must "find that a reasonable factual basis does not exist for the trial court's finding, and that the record establishes that the finding is clearly wrong." *Walker v. Walker*, 02-0606 (La. App. 3 Cir. 12/4/02), 832 So.2d 1098.

La. R.S. 9:315.21, "Retroactivity of Child Support Judgment," requires a child support order from the trial court to be retroactive "to the date of the filing of the petition for support unless good cause is shown for electing some later date." *State through Department of Health and Human Resources in Interest of Lymuel v. Duvigneaud*, 97-0988, p.3 (La. App. 4 Cir. 12/10/97), 704 So.2d 398, 401. The burden of demonstrating good cause not to make the child support award retroactive is on the defendant, not the claimant spouse. *Cupstid v. Cupstid*, 97-2392 (La. App. 4 Cir. 11/10/98), 724 So.2d 238; *Roberts v. Roberts*, 95-1626 (La. App. 4 Cir. 6/5/96), 677 So.2d 1042.

In *Welborne v. Welborne*, 29,479, p.9 (La. App.2 Cir. 5/7/97), 694 So.2d 578, 584, the court refused to find good cause when the trial was suspended for over a year due to procedural delays and joint continuances. The court stated that to "prevail under La. R.S. art. 9:315.21 and demonstrate good cause, the obligor is required to show" that the child was not in need of increased support or that the

obligor was not able to pay the increased support retroactively to the date of demand. *Id.*

In this case, Ms. Hawkins has made absolutely no showing of good cause to deny Mr. Hawkins retroactivity of support to the date of demand. No evidence, argument, or testimony was introduced at the September 30, 2008 hearing, or at any other time. Ms. Hawkins is fully capable of paying child support, and in fact earns \$10,000.00 a year more than Mr. Hawkins.

We find no reasonable basis for the trial court's decision not to award child support retroactive to the date of demand. Mr. Hawkins never desired a continuance of his Rule for Child Support, and frequently attempted to have the matter heard, but was deterred because of opposing counsel's health and schedule and the actions of the trial court. The delays were not the fault of Mr. Hawkins, and Ms. Hawkins should not receive a financial windfall as a result of these delays.

CONCLUSION

Accordingly, for the foregoing reasons, we find that the trial court erred in not making the child support award retroactive to September 27, 2007, and reverse that ruling. We order that the monthly child support payment of \$1,450.00 per month be awarded retroactive to September 27, 2007.

REVERSED