

STATE OF MICHIGAN
COURT OF APPEALS

KATHERINE GLEASON,
Plaintiff-Appellee,

UNPUBLISHED
December 15, 2009

v

GREGORY GLEASON,
Defendant-Appellant.

No. 286639
Ingham Circuit Court
LC No. 82-044931-DO

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from the circuit court's order denying his objection to an investigation/post-conciliation order of the Friend of the Court (FOC) regarding his child support arrearage. We affirm.

The parties were divorced in 1983. The circuit court's register of actions lists several orders against defendant for income withholding, dating from 1986, and interspersed among them are several indications of show-cause or contempt proceedings. Bench warrants were issued against defendant in 1992, 1995, and 1997.

Plaintiff reports that defendant stopped paying child support entirely late in 1996. Defendant reports that he suffered a severe work-related injury in 1997 that rendered him disabled and unable to pay child support. However, there was no motion to terminate support obligations, and a substantial arrearage accumulated.

The Ingham County FOC sent defendant a letter dated June 14, 2005, setting forth his balance as \$66,612.57, but offering an amnesty agreement, whereby defendant's case would be "considered paid in full and closed" in exchange for his timely payment of \$482.25. Defendant paid as asked, and apparently the FOC closed his case.

Plaintiff objected to closing the case upon learning that defendant was receiving disability payments from Social Security. A referee hearing "on objection to case closure and final determination of child support arrearage" was scheduled for February 14, 2006. An order of the circuit court followed on February 28, 2006, reporting that plaintiff attended the hearing but that defendant did not, and declaring that "in regards to child support this case shall remain open for collection of . . . arrearages owed by [defendant] to [plaintiff]," and that "child support due and owing on March 12, 2005" was reinstated.

On November 14, 2006, the FOC issued a recommended order to reinstate defendant's child support obligations. The FOC referenced "a long and difficult payment history," and recommended that the circuit court's February 28, 2006, order be kept in full force.

Defendant filed an objection to the order, arguing that the amnesty payment closed the case, and that all arrearages were eliminated when plaintiff failed to file timely objections. Defendant acknowledged that the FOC mistakenly treated his arrearages as canceled, but argued that he should get the benefit of that mistake. The circuit court retorted, "He doesn't owe the money to the Friend of the Court. He owes the money to [plaintiff]." The court concluded, "It does look like there was most probably some sort of an administrative error made. . . . [W]hile that's unfortunate, that isn't going to change the fact that he owes this money, so I'm reopening the case."

We review questions of law de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994).

Defendant argues that he and the FOC contracted for the cancellation of his arrearages in exchange for the amount of money he paid. However, as the circuit court noted, the arrearages were owed to plaintiff, not to the FOC. Although the FOC was acting substantially on behalf of plaintiff and the children to enforce defendant's child support obligations, it was doing so as a public servant, not as plaintiff's agent with the power to waive or otherwise compromise her financial entitlements. See MCL 552.1312(2) ("This act does not create or negate a . . . fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.").

Further, defendant cites no authority for the proposition that any action of the FOC can eviscerate the circuit court's February 28, 2006, order declaring that "in regards to child support this case shall remain open for collection of . . . arrearages," and reinstating "child support due and owing on March 12, 2005."

Moreover, the statute authorizing the one-time arrearage amnesty, effective June 1, 2005, provides not for the cancellation of any actual arrearages, but instead provides for amnesty in the form of "waiving all criminal and civil penalties provided by law for the payer's failure or refusal to pay past due child support." MCL 400.233b(1). No mistake on the part of the FOC can have the effect of broadening that agency's authority under the statute.

The FOC closed defendant's case as part of the amnesty offer. Doing so extinguished neither the underlying support obligation nor plaintiff's right to seek enforcement of it. Accordingly, the circuit court properly recognized defendant's continuing obligation to pay his arrearages.

Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder