

STATE OF MICHIGAN
COURT OF APPEALS

LOUIS ARTHUR LAFFIN,
Plaintiff-Appellee,

UNPUBLISHED
October 20, 2011

v

MARIZA LAFFIN,
Defendant-Appellant.

No. 298191
Oakland Circuit Court
LC No. 1999-620238-DM

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals by leave granted¹ an order denying her motion to reinstate child support arrears that accrued before April 28, 2004, and an order denying her motion to assess surcharges on all reinstated arrears. We reverse the order denying defendant's motion to reinstate child support arrears that accrued before April 28, 2004, affirm the order denying defendant's motion to assess surcharges on all reinstated arrears, and remand for further proceedings consistent with this opinion.

Defendant first argues that the trial court erred in refusing to reinstate child support arrears that accrued before April 28, 2004. We agree. Resolution of this issue requires application of our prior opinion in this case, *Laffin v Laffin*, 280 Mich App 513; 760 NW2d 738 (2008). Discerning the meaning of this Court's prior opinion presents a question of law. Questions of law are reviewed de novo. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998).

In *Laffin*, 280 Mich App at 519, this Court held that a reciprocal alimony provision in the parties' consent judgment of divorce, which provided that any child support obligation imposed on plaintiff after the exhaustion of a credit would result in a reciprocal alimony obligation imposed on defendant in the same amount, "is void as against public policy, because parties cannot bargain away their children's right to support." The trial court's April 28, 2004, and May

¹ *Laffin v Laffin*, unpublished order of the Court of Appeals, entered November 12, 2010 (Docket No. 298191).

19, 2004, orders were thus vacated because they enforced the void reciprocal alimony provision. *Id.* at 521-522. This Court determined “that defendant is entitled to relief extending back to April 28, 2004, the date the void order was entered.” *Id.* at 522. The case was remanded “to the trial court for a determination of plaintiff’s appropriate child support obligation, retroactive to April 28, 2004.” *Id.*

In concluding that plaintiff’s child support arrears should be reinstated only for the period from April 28, 2004, to the present, the trial court misunderstood the scope of relief ordered in this Court’s prior opinion. This Court did *not* state that defendant was entitled to relief only from April 28, 2004, to the present. Such a restriction on the relief granted would have been inconsistent with this Court’s conclusion that the reciprocal alimony provision was void as against public policy, because it would have effectively cancelled plaintiff’s child support obligation for the period from the date that plaintiff’s child support credit was exhausted through April 28, 2004. This Court granted relief extending back to April 28, 2004, because that was the date on which the trial court first entered an order enforcing the void reciprocal alimony provision. In stating that it was granting relief retroactive to that date, this Court expressly referred to April 28, 2004, as “the date the void order was entered.” *Laffin*, 280 Mich App at 522.

The clear meaning of this Court’s opinion, then, is that plaintiff’s child support obligation was reinstated as it existed on April 28, 2004, i.e., before the entry of the first order erroneously enforcing the void reciprocal alimony provision. That is, this Court was reinstating the status quo as it existed before the trial court enforced the void reciprocal alimony provision. That status quo included not only child support payments from that point forward to the present, but also plaintiff’s child support arrearages that existed before the entry of the April 28, 2004 order.

Although the exact amount cannot be determined from the existing record, an arrearage existed on April 28, 2004, because the Friend of the Court (FOC) had begun enforcement measures against plaintiff for collection of child support payments. A February 23, 2004, letter from the FOC referee to the parties stated that based on the FOC calculations, plaintiff’s child support credit had expired on October 1, 2003, and that child support was being charged on a monthly basis at \$1,465.95 per month, with an account balance of \$8,223.75 through February 2004. Another letter from the FOC referee on March 8, 2004, stated that despite the “oddly worded” and “conflictual [sic]” language in the consent judgment of divorce, the FOC would “continue to charge [plaintiff] child support under the terms of the Judgment until we receive an Order from [the trial court] directing us to do otherwise.” Thus, the record reflects that a child support arrearage existed before the entry of the April 28, 2004, order erroneously enforcing the void reciprocal alimony provision.

Defendant contends that the FOC erroneously calculated the arrearage by failing to take into account arrears that accrued before the entry of the judgment of divorce on December 29, 1999. Defendant calculates plaintiff’s child support credit as having been exhausted in January 2003 rather than on October 1, 2003. The record is not clear regarding whether or to what extent any arrearages accrued before the entry of the consent judgment of divorce on December 29, 1999. The judgment of divorce included a provision stating, “It is further ordered and found that there are no arrearages and any arrearages that have accrued on any interim orders are hereby cancelled.” To the extent that this provision purported to cancel any child support arrearages that

existed, it is void as against public policy because parties cannot bargain away their children's right to support. *Laffin*, 280 Mich App at 519. On remand, the trial court shall determine whether any interim child support arrearages existed for the period before the judgment of divorce was entered and, if so, those arrearages shall be included in the calculation of the total arrearages that were part of plaintiff's child support obligation before the entry of the April 28, 2004, order.

Accordingly, we reverse the trial court's order denying defendant's motion to reinstate child support arrearages that accrued before April 28, 2004. We remand the case to the trial court to calculate the amount of the arrearages and to reinstate those arrearages as part of plaintiff's child support obligation that existed on April 28, 2004, before the entry of the order erroneously enforcing the void reciprocal alimony provision.

Defendant next argues that in effectively cancelling the child support arrears that accrued before April 28, 2004, the trial court deviated from the Michigan Child Support Formula Manual (MCSFM), without stating the requisite findings that application of the formula would be unjust or inappropriate. We agree. Generally, this Court reviews child support orders for an abuse of discretion. *Fisher v Fisher*, 276 Mich App 424, 427; 741 NW2d 68 (2007). "Whether the trial court properly acted within the child support guidelines is a question of law that this Court reviews de novo." *Id.*

This Court's prior opinion in this case explained why enforcement of the reciprocal alimony provision in the judgment of divorce would violate MCL 552.605(2):

Finally, the trial court's April 28, 2004, order and any other orders that serve to recognize and enforce the reciprocal alimony provision, or nullify plaintiff's obligation to pay child support, also violate MCL 552.605(2). MCL 552.605(2) provides that the court "shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau" A court may deviate from this formula if it "determines from the facts of the case that application of the child support formula would be unjust or inappropriate" and articulates on the record its reasons for the departure. *Id.* Although MCL 552.605(3) permits the court to enter "a child support order that is agreed to by the parties and that deviates from the child support formula," that subsection further provides that such an order is permissible only "if the requirements of subsection (2) are met." Thus, the trial court must still comply with MCL 552.605(2) and ensure that a child support order is just, even if the parties agree to a support order that deviates from the guidelines. A trial court has discretion to modify a child support order "as the circumstances of the parents and the benefit of the children require," MCL 552.17(1), but a court has a statutory duty to follow the criteria set forth in the MCSFM when modifying a child support award. *Burba v Burba (After Remand)*, 461 Mich 637, 643-645, 647; 610 NW2d 873 (2000). Here, the consent judgment also violates the child support statutes, to the extent that it effectively nullifies plaintiff's child support obligation, contrary to the child support formula, without complying with MCL 552.605(2).

For the foregoing reasons, we conclude that the trial court's orders of April 28, 2004, May 19, 2004, and October 12, 2005, violate the child support statutes, because they permit plaintiff to effectively avoid his child support obligation, as prescribed by the child support formula, without the requisite findings that application of the child support formula would be unjust or inappropriate. [*Laffin*, 280 Mich App at 520-521.]

The above analysis in *Laffin*, 280 Mich App at 520-521, is controlling. By refusing to reinstate the child support arrears that accrued before April 28, 2004, the trial court effectively cancelled plaintiff's child support obligation for that period and deviated from the child support formula without articulating on the record its reasons for the departure. The trial court thus failed to comply with the requirements of MCL 552.605(2). *Id.* Accordingly, the trial court's order violated the child support statutes because it "permit[ted] plaintiff to effectively avoid his child support obligation, as prescribed by the child support formula, without the requisite findings that application of the child support formula would be unjust or inappropriate." *Id.* at 521.

Defendant's final argument on appeal is that the trial court erred in refusing to assess surcharges on all of plaintiff's reinstated child support arrears. We disagree. The determination regarding whether plaintiff must pay a surcharge requires interpretation of the relevant statute, MCL 552.603a. Statutory interpretation presents a question of law, which is reviewed de novo. *United Parcel Service, Inc v Bureau of Safety and Regulation*, 277 Mich App 192, 202; 745 NW2d 125 (2007). The primary goal in interpreting a statute is to ascertain and give effect to the intent of the Legislature. *Id.* Judicial construction is not permitted if the plain and ordinary meaning of the statutory language is clear. *Id.*

MCL 552.603a(1) provides, in relevant part: "Subject to subsection (6), for a friend of the court case, if the court determines that the payer has failed to pay support under a support order and the failure was willful, the court may order that on January 1 and July 1 of each year, a surcharge be added to support payments that are past due as of those dates."² This version of the provision was added by 2009 PA 193, effective December 31, 2009. Before the 2009 amendment, MCL 552.603a(1) stated, in relevant part: "For a friend of the court case, as of January 1 and July 1 of each year, a surcharge shall be added to support payments that are past due as of those dates." Defendant observes that surcharges were mandatory under the prior version of the statute. See *Adams v Linderman*, 244 Mich App 178, 184-185; 624 NW2d 776 (2000) (holding that a prior version of this provision was mandatory). Defendant argues that the prior version of the statute should apply here. However, subsection (5) of the current act states, "A surcharge ordered under this section in an order entered before the effective date of the amendatory act that added this subsection [2009 PA 193, effective December 31, 2009] is terminated on the effective date of the amendatory act that added this subsection. Another

² Subsection (6) provides: "After the effective date of the amendatory act that added this subsection [2009 PA 193], a court shall not order that a surcharge under subsection (1) be added before January 1, 2011." MCL 552.603a(6).

surcharge shall not be ordered in the action unless the surcharge is ordered by the court under subsection (1).” MCL 552.603a(5). Thus, under subsection (5), the current version of MCL 552.603a(1) is now the governing provision regarding any award of surcharges.³

Here, defendant has not established that plaintiff “has failed to pay support under a support order and [that] the failure was willful.” MCL 552.603a(1). Defendant has not identified any period in which plaintiff willfully failed to pay support under a support order. It was not until August 28, 2008, that this Court vacated the orders enforcing the reciprocal alimony provision that had essentially offset or nullified plaintiff’s child support obligation. *Laffin*, 280 Mich App 519-522. Following the issuance of this Court’s opinion, plaintiff paid defendant the amount that the trial court ordered him to pay. Thus, because defendant has not established that plaintiff willfully failed to pay support under a support order, the trial court did not err in declining to assess surcharges under MCL 552.603a(1).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O’Connell

³ Also, even before the 2009 amendment, surcharges were not mandatory in all situations. See MCL 552.603a(3) and MCL 552.603d.