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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-162

Filed: 6 November 2018

Sampson County, No. 09CVD1585

KEVIN PEGUES, Plaintiff,

v.

LATONYA R. MONROE, Defendant.

Appeal by Plaintiff from order entered 24 May 2017 by Judge Carol A. Jones in Sampson County District Court. Heard in the Court of Appeals 22 August 2018.

Sampson County Child Support Enforcement Agency, by Tiffany N. Naylor, for the Plaintiff-Appellant.

No brief filed for Defendant-Appellee.

DILLON, Judge.

Plaintiff Kevin Pegues (“Father”) appeals from the trial court’s order crediting funds to Defendant Latonya R. Monroe’s (“Mother”) child support arrears. Father argues that the trial court improperly modified Mother’s arrears obligation. After careful review, we vacate and remand.

I. Background

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In February 2010, the trial court entered an order requiring Mother to pay monthly child support to Father for the care of their four children. Throughout the following years, Mother fell behind on her child support obligation.

In October 2015, the trial court entered an order (the “2015 Order”) establishing a payment plan for Mother’s child support arrears. But Mother failed to meet her arrearage obligations under this payment plan. Therefore, in February 2017, Father filed a contempt motion for Mother’s failure to make payments under the 2015 Order. Mother responded with a motion to modify her obligations under the 2015 Order.

In April 2017, at a hearing on the matter, Father put forth evidence that Mother was approximately \$4,000 in arrears. Mother put forth evidence that Father and his current wife had benefited financially by claiming all four children as dependents on their 2016 tax returns, receiving dependent deductions, even though two of the children lived with Mother during most of that year.¹

By order entered in May 2017 (the “2017 Order”), the trial court dismissed Father’s contempt motion and ordered that “[t]he [Mother] shall receive a credit in the amount of \$4000 towards child support arrears due to the [Father][]” for the

¹ According to the Internal Revenue Service’s Publication 504, “Divorced or Separated Individuals,” absent some special circumstance, the parent with whom a child lives with the majority of the year claims the child as a dependent on his or her tax return.

deductions Father received for the two children living with Mother that he claimed as dependents. Father appeals from the 2017 Order.

II. Analysis

Father contends that the trial court improperly adjusted Mother's child support arrears. We review a trial court's decision regarding child support only for an abuse of discretion, and reverse only where the decision is so arbitrary that it could not have been the result of a reasoned decision. *Sergeef v. Sergeef*, ___ N.C. App. ___, ___, 792 S.E.2d 192, 193 (2016).

Past-due child support, as opposed to child support payments due in the future, is a vested right. N.C. Gen. Stat. § 50-13.10(a) (2015). Therefore, past-due child support may be retroactively modified only if the party seeking the modification files a motion giving due notice and can prove the existence of a compelling reason:

(a) Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced, or otherwise modified in any way for any reason, in this State or any other state, except that a child support obligation may be modified as otherwise provided by law, and a vested past due payment is to that extent subject to divestment, if, but only if, a written motion is filed, and due notice is given to all parties either:

(1) Before the payment is due or

(2) If the moving party is precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing a motion before the payment is due, then promptly after the moving party is no longer so precluded.

N.C. Gen. Stat. § 50-13.10(a). “Stated another way, child support payments may not be reduced retroactively so as to grant relief *from arrears*, absent a compelling reason.” *Orange Cty. ex rel. Harris v. Keyes*, 158 N.C. App. 530, 532, 581 S.E.2d 142, 143 (2003) (emphasis added).

In evaluating this case, we must first consider whether Section 50-13.10(a) applies to the present circumstances. That is, we must consider whether the trial court in its 2017 Order modified Mother’s obligation to pay arrears *or* determined that Mother “paid” her obligation by virtue of the benefit Father received by claiming all of the children as dependents on his 2016 tax return. However, under either interpretation of the 2017 Order, for the reasons below, we must vacate.

Father argues that he did not receive proper notice under Section 50-13.10 of Mother’s motion to modify her arrears obligation. Here, the record shows that Mother did not give notice of her motion for modification of her arrears obligation until February 2017, well after her arrears obligation became vested. However, Mother could seek modification “if, but only if,” she gave timely notice. Notice given after her payment obligations became past-due is not timely unless she was “precluded by physical disability, mental disability, indigency, misrepresentation of another party, or other compelling reason from filing a motion before the payment [became] due[.]” N.C. Gen. Stat. § 50-13.10(a)(2). Here, there was nothing in Mother’s motion nor any finding in the 2017 Order which showed why Mother’s motion was timely noticed.

Therefore, to the extent that the 2017 Order “vacated, reduced, or otherwise modified” Mother’s obligation to pay arrears, the order must be vacated for failure to give timely notice.

It could be argued that the trial court was not modifying Mother’s obligation, but rather the trial court was deeming her obligation satisfied.² At the hearing, Mother stated that Father³ had claimed two of their four children on his 2016 tax returns, and that those two children were living with Mother for most of that year. Mother requested that the trial court reduce the amount she owed in child support arrears by the value Father gained by claiming the two children as his dependents. Essentially, Mother sought to treat Father’s exercise of her right to claim the two children as a liquefiable asset in exchange for its value in owed arrears.

Child support obligations are generally ordered to be satisfied by payments in the form of United States dollars. However, as long as the subject of the substitute contract holds value, such as ounces of gold, the parties may elect to exchange an item of value in lieu of United States dollars.⁴ We note, though, that the value owed in child support is owed *for the benefit of the child*, not of the custodial parent. As our

² We note that the appellee-Mother did not file an appellate brief.

³ The record is a little unclear whether it was Father or Father’s current wife who claimed the children as dependents. But in either case, the trial court determined that Father benefited and, therefore, Mother’s arrears obligation should be credited.

⁴ We note that the value owed in vested child support arrears is owed for the benefit *of the child*, not the other parent, and, therefore, the child would have the right to bring suit ensuring that the value of the substituted consideration equaled the value owed in child support arrears.

Supreme Court has stated, “the ultimate object in such matters is to secure support commensurate with the needs of the child and the ability of the [parent] to meet those needs.” *Crosby v. Crosby*, 272 N.C. 235, 237, 158 S.E.2d 77, 79 (1967). That is, a purpose of child support is to ensure that there is money available for the care of the child. And based on this stated purpose of child support, we have held that a parent who owes arrears is not entitled to an offset based on the fact that the parent paid some debt of the other parent. *Nguyen v. Heller-Nguyen*, ___ N.C. App. ___, ___, 788 S.E.2d 601, 610 (2016) (reversing trial court order which had reduced the father’s arrears obligation based on his payment of *the mother’s obligation* to pay a share of fees for hiring a Parenting Coordinator).

Here, the trial court credited towards Mother’s arrears obligation the benefit Father received for claiming all of the children as his dependents in 2016, though two of the children lived with her. We note that the trial court made no findings as to how it determined the value of that benefit to Father. In any event, we conclude that such a credit is not permitted for vested arrears obligations. Father may be liable to Mother for wrongfully claiming the deduction; nonetheless, Mother’s arrears obligation is not for the benefit of Father, but for the benefit of her children. Consistent with our holding in *Nguyen*, the fact that Father may owe Mother money does not relieve Mother of the obligation to pay vested arrears due for the benefit of her children.

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VACATED and REMANDED.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).