

[Cite as *Bell v. Bell*, 2010-Ohio-5276.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

NATALIE I. BELL	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23714
vs.	:	T.C. CASE NO. 04DR1511
MICHAEL B. BELL	:	(Civil Appeal from
Defendant-Appellant	:	Common Pleas Court,
	:	Domestic Relations Div.)

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O P I N I O N

Rendered on the 29th day of October, 2010.

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GRADY, J.:

{¶1} This is an appeal from a final order of the domestic relations division of the court of common pleas that modified Defendant-Appellant Michael B. Bell's child support obligation to Plaintiff-Appellee, Natalie I. Bell, for the benefit of their minor child.

{¶2} Michael<sup>1</sup> and Natalie were divorced on May 25, 2006. Natalie was designated the residential parent of their minor child. Michael was awarded parenting time, and was ordered to pay \$599 per month in child support. Michael's monthly child support obligation was subsequently increased to \$745 in 2007.

{¶3} On October 4, 2007, Michael filed a motion asking the court to modify his child support obligation. As grounds for the request, Michael's written motion stated: "A reason for the Motion Defendant would submit that there has been a substantial change in circumstances in that he has lost his job and is currently unemployed through no fault of his own." (Dkt. 105).

{¶4} Michael's motion came on for hearings before a magistrate on August 12 and November 18, 2008, along with other motions in contempt and to modify parenting time. The magistrate filed a decision on December 4, 2008. (Dkt. 127).

{¶5} The magistrate found that Michael lost his job as a teacher in June of 2007 and has since "diligently sought other employment" unsuccessfully. Michael had been earning \$55,000 per year as a teacher. The magistrate found that, with the income he earned as a teacher in 2007 and small amounts from other sources, Michael's federal adjusted gross income for 2007 was \$48,394, and

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<sup>1</sup>For clarity and convenience, the parties are identified by their first names.

that “[s]ince the beginning of 2008 [Michael] has experienced an involuntary and substantial decrease in income.” The magistrate found that Michael’s annual income for 2008 was \$21,396. Applying the statutory criteria, the magistrate modified Michael’s monthly child support obligation from \$745 to \$330, plus an additional sixty-four dollars for cash medical support in lieu of insurance.

{¶ 6} Michael filed timely objections to the magistrate’s decision, among them that “[t]he magistrate erred by making the effective date of child support January 1, 2008[.]” The court sustained the objection, stating:

{¶ 7} “Defendant’s objection as to the effective date of the reduction in child support is found with merit. The magistrate

{¶ 8} decision does not provide rationale for setting the effective date for reduction of child support as of January 1, 2008.

{¶ 9} “It is well settled in Ohio law that a trial court has broad discretion to make a determination as to the effective date of a child support order. The earliest effective date for any modification of child support would be the date the party files the motion requesting such action. Where circumstances demand an alternative date, the Court must provide justification for that date.

{¶ 10} “In the instant case, defendant’s request for reduction

of child support was filed October 4, 2007. The record reflects that both parties for various reasons continued this matter for approximately nine months. The Court finds that the date the parties first presented testimony on this matter was August 12, 2008. The Court finds that, as a matter of equity and fairness to both parties, the effective date of defendant's reduced child support obligation shall be the date of that first hearing, namely August 12, 2008.

{¶ 11} "Defendant's first objection is with merit and is sustained." (Dkt. 146, p. 2-3).

{¶ 12} Michael filed a notice of appeal to this court.

{¶ 13} ASSIGNMENT OF ERROR

{¶ 14} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY UNREASONABLY AND ARBITRARILY DECIDING THAT THE EFFECTIVE DATE OF MODIFICATION OF APPELLANT'S CHILD SUPPORT OBLIGATION SHOULD TAKE EFFECT ON THE DATE OF THE FIRST HEARING IN THE MATTER AND NOT ON THE DATE THAT APPELLANT FILED HIS MOTION TO MODIFY CHILD SUPPORT."

{¶ 15} We review error assigned with respect to an order concerning child support on the abuse of discretion standard. *Booth v. Booth* (1989), 44 Ohio St.3d 142.

{¶ 16} "'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, 19 OBR 123, 126, 482

N.E.2d 1248, 1252. It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.

{¶ 17} "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *AAAA Enterprises, Inc. V. River Place Community Redevelopment* (1990), 50 Ohio St.3d 157, 161.

{¶ 18} In *Quint v. Lomakoski*, 173 Ohio App.3d 146, 2007-Ohio-4722, at ¶49, we wrote:

{¶ 19} "If a court determines that a support order should be modified, it may make the modification order effective from the date the motion for modification was filed. *Murphy v. Murphy* (1984), 13 Ohio App.3d 388, 389, 13 OBR 471, 469 N.E.2d 564. Indeed, '[a]bsent some special circumstance, an order of a trial court modifying child support should be retroactive to the date such modification was first requested.' *State ex rel. Draiss v. Draiss* (1990), 70 Ohio App.3d 418, 421, 591 N.E.2d 354. Any other holding might produce an inequitable result in view of the substantial time it frequently takes the trial court to dispose of motions

to modify child-support obligations. *Murphy*, 13 Ohio App.3d at 389, 13 OBR 471, 469 N.E.2d 564.”

{¶ 20} Michael filed his motion to modify his child support obligation on October 4, 2007. When such a motion is granted, the court abuses its discretion if it selects a date other than the date on which the application was made, when the date the court selects fails to coincide with any significant event in the litigation. *Ebersole v. Ebersole*, Montgomery App. No. 23493, 2009-Ohio-6581, ¶10.

{¶ 21} The date the magistrate selected, January 1, 2008, coincided with the date on which Michael’s federal adjusted gross income declined from \$44,394 to \$21,396 annually. That decline reflected the loss of his teaching position, which was the grounds for Michael’s application to modify his child support obligation.

{¶ 22} The date the trial court selected, August 12, 2008, was the first date on which the court took evidence on Michael’s motion.

The record reflects that Michael’s motion and several pending motions that had previously been filed were consolidated for hearing on that date, after several continuances were ordered. One continuance was occasioned by the court’s referral of the case for mediation. (Dkt. 104). Others were related to the taking of depositions. Still others were related to a substitution of new counsel for Michael and to inclement weather. The resulting

delays in bringing Michael's motion on for a hearing are typical of "the substantial time it frequently takes the court to dispose of motions to modify child support obligations." *Quint*.

{¶ 23} The alternative of selecting an effective date for an ordered modification because it coincides with a "significant date in the litigation," *Ebersole*, implies a significance in relation to the grounds for the modification ordered. That is not to say that some form of delay in the proceedings cannot be chargeable to the movant. However, a movant is unlikely to purposely delay obtaining the relief he seeks, being anxious to have it as soon as he can.

{¶ 24} The first date on which Michael's motion of October 4, 2007 was heard, August 12, 2008, bears no significance in relation to the grounds for the relief the court ordered, which arose from the loss of his teaching position in June of 2007. The domestic relations court therefore abused its discretion in selecting a date other than October 4, 2007, or some other date that coincided with an event of significance in relation to the grounds for the modification that was ordered, as the effective date for that relief.

{¶ 25} The assignment of error is sustained. The final order from which the appeal was taken will be reversed with respect to the effective date of the modification of child support ordered,

and the case will be remanded for further proceedings concerning that matter. The final order will otherwise be affirmed.

DONOVAN, P.J., And FAIN, J., concur.

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Hon. Denise L. Cross