[Cite as *Owen v. Owen*, 2010-Ohio-2708.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

VALERIE K. OWEN, et al.,	:	
Plaintiffs-Appellees,	:	CASE NO. CA2009-10-260
	:	O P I N I O N
- vs -		6/14/2010
	:	
THOMAS K. OWEN,	:	
Defendant-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR06-05-0602

Valerie K. Owen, 206 Webster Avenue, Hamilton, Ohio 45013, plaintiff-appellee, pro se

Brian Davidson, Government Services Center, 315 High Street, 8th Floor, Hamilton, Ohio 45011, for plaintiff-appellee, Butler County Child Support Enforcement Agency

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant

YOUNG, J.

{¶1} Defendant-appellant, Thomas A. Owen (husband), appeals the decision of the Butler County Court of Common Pleas, Domestic Relations Division, finding that the child support order for husband's three children not yet emancipated

remained in effect as of June 8, 2007.

{¶2} Husband and plaintiff-appellee, Valerie K. Owen (wife), divorced on March 5, 2007. The divorce decree stated that wife owed husband $3,672 for reimbursement of marital debt paid by husband as of January 10, 2007. It also explained that such marital debt would be payable by placing a stay on husband's payment of child support to wife, which would serve to offset the debt owed to husband by wife.

{¶3} The incorporated shared parenting plan stated that husband was to pay wife $208.03 monthly for each of the parties' four children. The shared parenting plan also mandated that support payments be stayed until the $3,672 debt was paid by way of offset.

{¶4} The parties' oldest child, T.O., was born November 13, 1988, and according to the agreement, was emancipated upon the earlier of either attaining the age of 19 or his graduation from high school if he was 18 at that time. The Butler County Child Support Enforcement Agency (BCCSEA) issued a "Notice of Child Support Investigation, Termination of Support," prior to T.O.'s completion of high school on June 8, 2007. At the time of BCCSEA's notice, the stay of support was still in effect, as the entire amount wife owed to husband had not yet been offset.

{¶5} A magistrate of the court issued a decision and judgment entry indicating that T.O. was emancipated effective June 8, 2007. In addition, the entry indicated that there were three remaining minor children. The entry then stated that the current support order was $0 monthly, with $0 monthly per child. The trial court adopted the magistrate's decision, without objection, on July 10, 2007.

{¶6} Following BCCSEA's attempt to enforce the original child support order,

husband filed a motion on August 19, 2009 to modify/terminate a July 1, 2008 order to withhold income for child support in a monthly amount of $636.57. He also moved the court to set aside arrearages that BCCSEA claimed he owed. Husband argued he was not obligated to pay child support pursuant to the above June 8, 2007 order. Husband dismissed these motions on December 3, 2008, without prejudice.

{¶7} Thereafter, on March 10, 2009, BCCSEA filed a motion for clarification of the divorce decree for child support and the emancipation order. On June 2, 2009, the court issued a final appealable order providing that the divorce decree ordered an obligation of child support, and an offset against the amount due was issued to "deplete arrears owed to [husband] from [wife]. After the arrears were paid in full [husband's] obligation of child support was to commence." Neither party appealed the trial court's determination.

{¶8} On June 18, 2009, BCCSEA and wife simultaneously filed additional motions to set aside the magistrate's June 8, 2007 order pursuant to Civ.R. 60(A) and 60(B), or in the alternative, to issue child and medical support orders for the parties' three remaining minor children. Following a hearing, the magistrate issued an order denying the motion, as the magistrate believed the final appealable order issued by the court on June 2, 2009, "resolved any confusion regarding the child support language in the shared parenting plan." The magistrate also stated the order requiring husband to pay $208.03 per month, per child remained in effect.

{¶9} Husband filed an objection to the magistrate's decision. The trial court denied the objection and found that pursuant to Civ.R. 60(A), the magistrate erred in reducing the support obligation to zero when the parties still had three minor children. The court also found that Civ.R. 60(B)(5) applied, as equity dictated a correction of

the record where three minor children would be denied support on the basis of a court's mistake.

{¶10} Husband timely appeals the court's order, asserting a sole assignment of error:

{¶11} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT GRANTED THE CHILD SUPPORT ENFORCEMENT AGENCY'S MOTION FOR RELIEF FROM JUDGMENT."

{¶12} Husband argues that the trial court erred in overruling his objection and asserts that Civ.R. 60(A) and Civ.R. 60(B)(5) cannot be applied to this case.

{¶13} A trial court's decision to grant or deny a Civ.R. 60(B) motion for relief from judgment will not be reversed on appeal absent an abuse of discretion. *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 1994-Ohio-107. An abuse of discretion is more than an error of law or judgment; it implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} To prevail on a Civ.R. 60(B) motion for relief from judgment, the movant must demonstrate (1) a meritorious claim or defense, (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5), and (3) timeliness of the motion. *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, 150-151.

{¶15} Civ.R. 60(B)(5) is a catch-all provision reflecting the inherent power of a trial court to relieve a person from the unjust operation of a judgment; it only applies when a more specific provision does not apply. In addition, Civ.R. 60(B)(5) relief is to be granted only in unusual or extraordinary circumstances. *Adomeit v. Baltimore*

(1974), 39 Ohio App.2d 97, 105. A court's own errors or omissions are grounds for relief under Civ.R. 60(B)(5). *State ex rel. Gyurcsik v. Angelotta* (1977), 50 Ohio St.2d 345, 347; *Blacker v. Blacker*, Montgomery App. No. 20073, 2004-Ohio-2193, ¶13.

{¶16} In this case, the court stated that it erred in reducing the child support obligation for the parties' three remaining minor children to zero in its June 8, 2007 order. Moreover, it also acknowledged that it "is with out [sic] authority to summarily terminate an obligation for support without an actual filing of motion or hearing."

{¶17} It is well-established that a parent must provide financial support for his minor children. *J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750, ¶15 (Cupp, J., dissenting). Thus, as the trial court stated, it is inequitable for three minor children to be denied support as a result of the court's mistake in reducing the support obligation to zero. Furthermore, the motion addressing the mistake was made in a timely manner, given the specific circumstances of this case. Therefore, we find the court did not abuse its discretion in overruling husband's objections to the magistrate's decision, as the requirements to prevail on a Civ.R. 60(B) motion were met in this case. Husband's sole assignment of error is overruled.

{¶18} Judgment affirmed.

POWELL and HENDRICKSON, JJ., concur.