[Cite as *Tarter v. Abney*, 2010-Ohio-328.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

ASHLEY JANINE TARTER, et al.,	:	
Plaintiffs-Appellees,	:	CASE NO. CA2009-08-051
	:	O P I N I O N
- vs -		2/1/2010
	:	
KEVIN LEE ABNEY,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 2007-JH-14811

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POWELL, P.J.

{¶1} Defendant-appellant, Kevin Lee Abney (father), appeals the award of child support from the Clermont County Court of Common Pleas, Juvenile Division.

{¶2} Plaintiff-appellee, Ashley Janine Tarter (mother), by and through plaintiff-appellee, Clermont County Child Support Enforcement Agency (CSEA), filed a complaint for child support in the juvenile court in May 2007. CSEA filed an order in June 2007,

concluding the administrative process with a notation that the parties were cohabitating and providing the necessaries for the child.

{¶3} A new motion to establish child support was filed in September 2007. Father, pro se, filed a motion in October 2007 for paternity testing.

{¶4} The juvenile court held a hearing on February 5, 2008, wherein the results of the paternity test were discussed, father's paternity was acknowledged, and an order of child support was established for father from the date of the child's 2006 birth.

{¶5} Father, who was represented by counsel after the hearing, filed objections to the magistrate's decision. The juvenile court overruled the objections in July 2009 and "affirmed" the magistrate's decision. Father filed this appeal, presenting three assignments of error for our review.

{¶6} Assignment of Error No. 1:

{¶7} "THE TRIAL COURT THROUGH THE MAGISTRATE ERRED TO THE PREJUDICE OF THE APPELLANT IN HOLDING A HEARING REGARDING CHILD SUPPORT WITHOUT PROVIDING HIM WITH PROPER NOTIFICATION."

{¶8} Father argues on appeal that he was notified that the February 5, 2008 hearing would address the genetic testing to determine paternity, but he was not aware that support would be established at that hearing. Father notes in his argument that the magistrate stated at the beginning of the February hearing that "[t]his is scheduled today to review the results of the HLA testing."

{¶9} R.C. 3111.13(C), states in pertinent part, that the "judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, and except as otherwise provided in this section, the judgment or order may contain, at the request of a party and if not prohibited under federal law, any other provision directed against the appropriate party to the proceeding,

concerning the duty of support, the payment of all or any part of the reasonable expenses of the mother's pregnancy and confinement, * * * or any other matter in the best interest of the child."

{¶10} To determine father's assertion that he failed to receive adequate notice that the February 5th hearing would also establish support, we must review the record prior to the February hearing.

{¶11} As we previously noted, the record indicates that the administrative process was concluded in June 2007, with an entry indicating that the parties were cohabitating and providing necessaries for the child. Mother renewed her request for child support in September 2007. According to the record, mother failed to appear at an October 25 administrative hearing on support and the administrative process was again concluded, with the matter to be set for further hearing in juvenile court.

{¶12} The court's journal indicates that father was served with notice of a December 18, 2007 support hearing in juvenile court. Father does not mention the December 18, 2007 hearing in his statement of facts.

{¶13} After father requested genetic testing in October, testing was ordered at a December 4, 2007 hearing in juvenile court. The December 4 entry set a further hearing date of February 5, 2008. The entry indicated that all parties were present at the December 4th hearing and, by certification of the clerk, all parties, including father, received a copy of the entry. According to the court's journal, mother, father, and CSEA were served with copies of the December 4th entry.

{¶14} The entry for the December 18th hearing shows that father was marked as both present and not present in court, with the "not present" check mark crossed through, but with no explanatory notation. That entry also set February 5, 2008 as the next hearing date. The portion of the entry that contains a certification of service of copies of the entry

does not indicate that anyone present was served with a copy. The journal entry for that hearing date only notes that CSEA was served in court with a copy of the entry.

{¶15} The December 4th and December 18th entries consisted of a pre-printed form for magistrate hearings. The form contains boxes for the magistrate to indicate that the hearing was before the court for issues of paternity, support, custody, visitation, etc. None of the boxes were checked on the court entry forms for either the December 4th or December 18th hearings.

{¶16} Clearly, the proceedings before the juvenile court were instituted for the purpose of establishing child support. While there are aspects of the record to support the contention that father received notice of the nature of the proceedings, there are other portions of the record that call the adequacy of such notice into question.

{¶17} The record demonstrates that the juvenile court had opportunities to clarify that support issues would be addressed and decided at the February 2008 hearing, and to show that father received service of such notice, but failed to do so to father's prejudice. We sustain appellant's first assignment of error. See *Ohio Valley Radiology Associates, Inc. v. Ohio Valley Hosp. Assn*., (1986), 28 Ohio St.3d 118, 124-125 (due process of law includes the guarantee of a reasonable opportunity to be heard after a reasonable notice of such hearing); see *Lowry v. Lowry* (1988), 48 Ohio App.3d 184, 190-192.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT THROUGH THE MAGISTRATE ERRED TO THE PREJUDICE OF THE APPELLANT IN AWARDING RETROACTIVE CHILD SUPPORT."

{¶20} Assignment of Error No. 3:

{¶21} "THE TRIAL COURT THROUGH THE MAGISTRATE ERRED TO THE PREJUDICE OF THE APPELLANT IN THE AMOUNT OF RETROACTIVE CHILD SUPPORT IT ORDERED."

{¶22} By sustaining father's first assignment of error, this court reverses and remands this case to the juvenile court for a support hearing. The juvenile court may again choose to award child support for a time period prior to the issuance of the award, and, therefore, we must address briefly father's second and third assignments of error. CSEA concedes error by the juvenile court for father's second and third assignments of error.

{¶23} R.C. 3119.05(J) states in part that when a court requires a parent to pay an amount for that parent's failure to support a child for a period of time prior to the date the court issues the child support order, the court shall calculate that amount using the support schedule, worksheets, and child support laws in effect, and the incomes of the parents as they existed, for that prior period of time.

{¶24} R.C. 3111.13(F)(2) states that a court shall consider all relevant factors, including, but not limited to, any monetary contribution either parent of the child made to the support of the child prior to the court issuing the order requiring the parent to pay an amount for the current support of the child.

{¶25} A review of the record in the case at bar reveals that no evidence was taken with regard to whether father provided support for the child since her birth, particularly when it was noted in the record that father and mother cohabitated at one time and provided necessaries for the child. In addition, no evidence was taken concerning the situation and incomes of the parents for the period that would encompass any retroactive support. Accordingly, father's second and third assignments of error are also sustained. See *Newbauer v. Bertrand*, Clermont App. No. CA2002-09-074, 2003-Ohio-5109.

{¶26} Judgment reversed insofar as it pertains to the award of child support, and this cause is remanded for a hearing to determine child support matters.

RINGLAND and HENDRICKSON, JJ., concur.

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