NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

N.L.C., Appellee v. W.J.B., Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1172 WDA 2012

Appeal from the Order of June 25, 2012,
in the Court of Common Pleas of Erie County,
Domestic Relations at No. NS 200002722/Pacses No. 854-102781

BEFORE: BOWES, LAZARUS and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: **FILED MAY 29, 2013**

Father appeals, *pro se*, from the order seizing assets from his bank account in order to satisfy his child support obligation. Father raises nineteen claims of trial court error with respect to the manner in which the hearing was conducted and the evidence presented at the hearing.[1] We affirm.[2]

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[1] Father has waived issues 14 through 19, which appear on the third page of his statement of questions, by virtue of his failure to comply with amended Pennsylvania Rule of Appellate Procedure 2116, Statement of Questions Involved, (a) General rule, which provides:

> The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement shall

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*Retired Senior Judge assigned to the Superior Court.

Mother and Father are the parents of one minor child who is the subject of the instant support action. Pursuant to a September 26, 2002, order, Father's monthly child support obligation was initially set at $300.00. Mother petitioned for modification of the support order in May 2006.

(Footnote Continued) ——————————

> be no more than two pages and will be deemed to include every subsidiary question fairly comprised therein. . . .

Pa.R.A.P. 2116(a). The accompanying note to Rule 2116 explains that the 2008 amendments "are intended to reinforce the importance placed upon a party's statement of a limited number of concise questions that enable the court to understand the nature of the legal issue . . .." The note further provides:

> Appellate courts may find issues to be waived when they are not set forth in compliance with the Rules of Appellate Procedure. The increase from one to two pages should provide ample space for most parties to articulate their questions in an informative yet concise manner. A party requiring more than two pages for a statement of questions should file an application under Pa.R.A.P. 123 asking for extra pages, explaining why additional pages are needed, and attaching the proposed questions to the application. *See* Pa.R.A.P. 105.

Note to Rule 2116. Because Appellant's statement violates Rule 2116 and he did not apply to this Court for permission to include extra pages, we confine our review to the questions raised on the first two pages, and exercise our discretion to find questions 14 through 19 to be waived.

[2] Father filed a motion requesting this Court to "strike any and all confidential documents regarding [his] financial accounts from the record of this case." Father's Motion to Strike. The documents were produced in response to a subpoena and considered by the court in determining whether to seize Father's assets. Following its decision, the trial court ordered that the documents be made part of the record transmitted to this Court for purposes of disposing of Father's appeal, but directed that they be placed under seal in order to maintain Father's confidentiality. We decline to strike said documents from the certified record. Father's "Motion to Strike" is denied.

Pursuant to a June 20, 2006, interim order, Father was assessed an earning capacity of $1960.00 net per month based upon his prior employment and his support obligation was increased to $433.33 per month. This order became a final order. In September 2006, Father filed a petition for modification requesting a decrease in support, due, in relevant part, to his claim that he does not earn the income that has been assessed for calculation of support. Following a hearing, the court entered an interim order denying Father's petition for modification as a final order. Father did not appeal this order. Thereafter, on August 31, 2007, Father petitioned the court for modification requesting a decrease in support due to a material and substantial change in the custody and visitation schedule. On February 27, 2008, following a hearing, the court entered its interim order dismissing Father's petition as a final order. This order was subsequently affirmed by this Court. [***N.L.C. v. W.J.B.***], 964 A.2d 449 (Pa. Super. 2008) (unpublished memorandum).

On April 12, 2010, Father filed a motion for modification of the support order alleging that an accident rendered him unable to work. Following a support conference, the Court issued a May 26, 2010 recommended order of support in the amount of $433.33 per month.[3] The order reflected a downward deviation in Father's support obligation in consideration of his care of another minor child, but denied suspension of the support obligation based on the court's finding that Father's alleged disability was not

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[3] Father was assessed a net monthly income of $1,978.52 based on an earning capacity previously established by the court.

preventing him from earning income. Following a *de novo* hearing, the court issued an August 25, 2010, order making the May 26, 2010, order a final order. Father appealed the August 25, 2010, order, however, he discontinued the appeal. On March 4, 2011, Father filed a petition for modification of the support order alleging that he was disabled and requesting a decrease in his support obligation. The court, by an April 14, 2011 order, dismissed Father's Petition and continued his support obligation at $433.33/month. Following a *de novo* hearing at which Father's counsel presented documentation indicating that Father was hospitalized, the court issued a June 16, 2011, order dismissing Father's petition without prejudice and making the April 14, 2011, order a final order.

The trial court summarized the additional relevant facts as follows:

> . . . Father, on August 22, 2011, filed a Motion for Modification and Leave to Bypass Support Conference requesting modification of his $433.33 per month child support obligation. Father alleged, in relevant part, that his medical condition and ability to work required the Court's consideration. A *de novo* hearing was scheduled.
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> On November 1, 2011, the Domestic Relations Section filed a Petition for Contempt against Father alleging that he failed to pay support as ordered and had accumulated arrearages of $9,087.92. A hearing on the Petition was scheduled for the same time as the *de novo* hearing on Father's August 22, 2011 Motion for Modification.
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> Following the February 1, 2012 *de novo* hearing, this Court issued a February 14, 2012 Order as follows:
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> > Defendant to pay $433.33/month for the support of one child through 02/29/12. The Court is prorating the defendant's settlement of $65,614.71 over 38 months (03/01/12-04/30/15) giving the defendant additional income of $1726.70/month net. Defendant's

> income/earning capability $3705.22/month net ($1978.52 plus $1726.70). Plaintiff's income/earning capability $1216.28/month net. Effective 03/01/12 through 04/30/15 (38 months) defendant to pay $633.56 per month for the support of one child. This order allows a 10% downward deviation in consideration of the defendant's other child. Effective 05/01/15 this order is to be automatically decreased to $433.33/m for the support of one child and continue until the child is emancipated (18 and graduated from high school). All other terms of the prior order are to stand.

Father, on March 13, 2012, filed a Notice of Appeal from the February 14, 2012 Order.[4]

As Father did not appear for the February 1st contempt hearing, a bench warrant was issued for his arrest. The warrant was served and a hearing on the warrant was held on March 26, 2012. By a March 26, 2012 Order, this Court found Father in contempt of court for willfully failing to pay child support and ordered his incarceration for a six month period or a purge in the amount of $3,000.00. Father, on March 27, 2012, paid the purge and was released from incarceration. He also filed an appeal from the March 26, 2012 Order.[5]

When Father paid for his appeal from the March 26, 2012 Order, the personal check that he used led the Domestic Relations Section to new information regarding his financial assets. See N.T., Support Contempt Hearing, June 21, 2012 at 2-3. Accordingly, on May 3, 2012, the Court issued to PNC Bank an Order to Freeze Assets up to $9,088.36 belonging to Father. The Domestic Relations Section sent a Notice/Freezing/Seizing of Assets dated May 8, 2012, to Father. Father, by a May 11, 2012 letter to the Domestic Relations Section, objected to the Order freezing assets in the PNC account. Father's objections were: (1) that the account is held jointly by his brother, [R.B.]; (2) that the money within the account belongs to his mother and the funds were urgently needed to pay her ongoing medical care; (3) that the account should not have been frozen because he

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[4] Father's appeal of this order is docketed at 443 WDA 2012 in this Court.
[5] Father's appeal of this order is docketed at 705 WDA 2012 in this Court.

> had a pending appeal to the Superior Court; and (4) that he had recently paid a $3,000.00 purge which he believed would settle further enforcement actions. A hearing was scheduled for June 21, 2012 on Father's objections. Father failed to appear at the hearing, however, he called the Court and indicated that his car broke down and he did not believe that he would be able to attend. The Court, on June 21, 2012, issued an order to seize Father's account at PNC Bank, with the specifics of the freeze order detailed in a June 25, 2012 Order to Seize Assets.[6] Father appealed the orders and filed a nineteen paragraph Statement of Matters Complained of on Appeal.

Trial Court Opinion, 09/13/12, 1-3 (certain citations to record omitted).

In reviewing Father's claims, we note that our standard of review in matters of support will allow us to reverse the trial court only when there has been an abuse of that court's discretion. ***Ney v. Ney***, 917 A.2d 863, 866 (Pa. Super. 2007).

The Domestic Relations Section has the authority to "[i]ssue orders in cases where there is a support arrearage to secure assets to satisfy current support obligation and the arrearage by: . . . [a]ttaching and seizing assets of the obligor held in financial institutions." 23 Pa.C.S.A. § 4305(b)(10)(iii). The Rules of Civil Procedure implementing this provision are set forth in Pa.R.C.P. 1910.20(b)(3) and Pa.R.C.P. 1910.23. Rule 1910.20 provides that

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[6] The order was entered pursuant to 23 Pa.C.S.A. § 4304.1 (cooperation of government and nongovernment agencies) and § 4305 (general administration of support matters), and the procedures established by Pennsylvania Rules of Civil Procedure 1910.23 (providing for the enforcement of support orders by the attachment of assets held by financial institutions) and 1910.26 (providing for special relief in proceedings to enforce support orders).

"[u]pon the obligor's failure to comply with a support order, the order may be enforced . . . pursuant to Rule 1910.23, attaching and seizing assets of the obligor held in financial institutions." Pa.R.C.P. 1910.20(b)(3). Rule 1910.23 provides, in relevant part as follows:

> (a) Upon identification of an obligor's assets held by a financial institution, the court shall, upon certification of the overdue support owed by the obligor, enter an immediate order prohibiting the release of those assets until further order of court. . . . Service of the order on the financial institution shall attach the asset up to the amount of the overdue support until further order of court.
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> (b) The domestic relations section shall provide written notification of the attachment to the obligor. The obligor and any joint owner of the account who has been notified by the financial institution may object to the attachment in writing or by personal appearance before the domestic relations section within 30 days after issuance of the notice. The grounds for an objection are limited to the following: (1) no overdue support exists under the support order or there is a mistake in the certified amount of overdue support; (2) there is a mistake in the identity of the obligor; or (3) the account is not subject to attachment as a matter of law.
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> (c) If no objection is made within 30 days after notice was issued, the court shall, upon proof that obligor was properly served with notice of the attachment, enter an order seizing the assets up to the amount of overdue support owed. The order shall be served on the financial institution and a copy of the order provided to both parties.

Pa.R.C.P. 1910.23(a)-(c). "[T]he Rule implies, and common sense dictates, that the court should take some action to consider and dispose of the objections before proceeding further with a seizure order." ***Cutlip v. Shugars***, 815 A.2d 1060, 1062-63 (Pa. Super. 2003).

The trial court found that, with the exception of Father's objection that his brother was an owner on the account or that the assets were really his mother's, Father's objections were outside the scope of allowable objections. With regard to Father's argument that the funds are not his, the trial court found that although Father's brother became a joint owner on the account on February 12, 2007, the documentation supplied by PNC Bank in response to subpoena clearly indicated that the present interest in the account was that of Father, *i.e.*, that Father was the creator of the account and the transactions on the account clearly indicated Father was the owner in possession and control of the account. The trial court found the funds were not Father's brother's nor were they under Father's control only for the use of his mother's medical care as there was no apparent activity on the account by anyone other than Father or that was not for Father's benefit. The court found Father did not have a valid ground for objecting to the attachment and entered the order seizing his assets not to exceed $9,088.36.

The majority of Father's appellate claims challenge the manner in which the hearing was conducted and the evidence and testimony presented at the hearing, as well a claim that the trial court erred in not recusing itself from the proceedings. ***See*** Father's claims numbered 1-4, 6, 9-12.[7]

[7] Specifically, Father claims the court erred by: reviewing *ex parte* evidence of his financial information in advance of the hearing and basing its judgment upon such evidence; allowing hearsay testimony as evidence; allowing testimony based on evidence that was irrelevant and obtained in violation of Father's constitutional rights, federal law, and proper procedure; allowing unsworn testimony; continuing with a hearing where Mother was
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However, Father was not present at the hearing and, thus, did not raise any of these objections to trial court. Thus, we find Father's issues to be waived. ***See*** Pa.R.A.P. 302(a) (stating "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal."); ***see also Daniel v. Wyeth Pharmaceuticals, Inc.***, 15 A.3d 909, 923 (Pa. Super. 2011) (stating "[i]ssues not raised by timely objection at trial are waived for purposes of appeal."); ***Crawford v. Crawford***, 633 A.2d 155, 159-60 (Pa. Super. 1993) (stating "[a] party seeking recusal or disqualification must raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred. . . . Failure to request recusal before the trial judge has ruled on the substantive matter before him or her precludes the right to have a judge disqualified."). We further note that although Father asserts the trial court erred in allowing the proceeding to continue when it was aware that Father was unable to obtain representation, Father did not requested a continuance of the hearing or the appointment of counsel.

In his fifth claim, Father argues the court erred in denying his petition to allow his brother to testify by telephone.

(Footnote Continued) ———————————

provided with counsel, Father was unrepresented, and the court was aware Father was unable to obtain representation; not adjourning a flawed and prejudicial proceeding; not recusing itself from the hearing; allowing the introduction of *ex parte* evidence and testimony by a party without standing in the case; and allowing the improper use of taxpayer resources to gather evidence to bolster the case against Father.

Pa.R.C.P. 1930.3 provides, that "[w]ith the approval of the court upon good cause shown, a party or witness may be deposed or testify by telephone, audiovisual or other electronic means at a designated location in all domestic relations matters." Pa.R.C.P. 1930.3. The comments to the rule state that "[i]t is contemplated that use of telephone testimony will be the exception rather than the rule." Pa.R.C.P. 1930.3, Explanatory Comment-1994.

The trial court explained its decision as follows:

> Father, by Motion for Leave to Take Telephone Testimony, requested permission for his brother to testify telephonically to establish ownership of the frozen assets. As this testimony at issue was a key issue in the case, the Court wanted the witness present before the Court in order to fully evaluate his credibility. Moreover, Father's credibility has been a substantial issue throughout the history of the case and the Court wanted to be able to view his witness to be assured that Father's credibility issues had not tainted his witness. Accordingly, the Court denied Father's request.

Trial Court Opinion, 09/13/12, at 7-8. We cannot conclude the trial court erred in determining Father did not demonstrate good cause to allow his witness to participate by telephone at the hearing on Father's objections to the seizure of Father's assets. Given the court's past concerns with Father's credibility and that Father's witness would be testifying to a key issue in the case, the court's desire for Father's witness to be present before the court when testifying was not unreasonable. Father is entitled to no relief on this claim.

In his seventh claim, Father argues the court erred in not sending notice of the hearing to his counsel of record. Father provides no citation to

the record to support this claim; accordingly, he has failed to demonstrate that he is entitled to relief on this issue. However, as the trial court noted, Father clearly received notice as he filed timely objections to the notice of attachment and Father filed a motion for leave to take telephone testimony in advance of the hearing in which he acknowledged the date of the scheduled hearing. Father's claim fails.

In his eighth claim, Father asserts the trial court erred in improperly serving the orders resulting from the hearing to an address that is different from Father's address of record "jeopardizing [Father's] ability to file a timely appeal." Father's Brief at 22. Father provides no citation to the record to support this claim; accordingly, he has failed to demonstrate that he is entitled to relief on this claim. Nonetheless, the trial court found this issue to be moot as Father clearly received the orders resulting from the June 21, 2012, hearing as he filed a timely appeal.

In his final claim, Father argues the court erred in failing to find that he is disabled and incapable of complying with the support order. We note, Father did not present any evidence to support this claim at the hearing, thus, the trial court had no evidence in this regard to consider. Nevertheless, as the trial court correctly noted, Father's argument is outside the scope of allowable objections to a freeze order. ***See*** Pa.R.C.P. 1910.23(b). Thus, Father is entitled to no relief on this claim.

Order affirmed. Father's "Motion to Strike" denied.

Judgment Entered.

Nicholas V. Cosetti

Deputy Prothonotary

Date: 5/29/2013