NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BONNIE K. VOGT, Appellant v. RICHARD C. MCCLELLAND, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1754 EDA 2012

Appeal from the Order entered May 30, 2012,
in the Court of Common Pleas of Monroe County,
Civil Division, at No(s): 147 D.R. 1985 & Pacses #371001587.

BEFORE: PANELLA, ALLEN, and PLATT,* JJ.

MEMORANDUM BY ALLEN, J.: Filed: March 8, 2013

Bonnie K. Vogt ("Wife") appeals from the trial court's order denying her motion to reopen her support case against Richard C. McClelland ("Husband"). We affirm.

The trial court previously summarized the pertinent facts and procedural history as follows:

> [T]he parties to this long-running support case[] are the divorced parents of four children. [Wife] is remarried and the children are all now adults.
>
> The parties separated in November of 1984. In January of 1985, [Wife] filed a complaint for spousal support and child support. After substantial procedural wrangling and several initial support proceedings, including an early appeal to the Superior Court, this Court issued an order obligating [Husband] to pay both child and spousal support.

*Retired Senior Judge assigned to the Superior Court.

On October 22, 1987, a petition for contempt was filed against [Husband] for failure to pay support. A rule to show cause why [Husband] should not be held in contempt of court was issued and made returnable for hearing. The petition and rule were served on [Husband], who at that time was represented by an attorney.

On November 19, 1987, after [Husband] failed to appear for the contempt hearing, [a] bench warrant . . . was issued. The warrant was entered based on this Court's finding "that [Husband] has willfully failed to appear to answer a rule to show cause why he should not be held in contempt for non payment [sic] of support, after he had received notice to do so." Significantly, neither [the Domestic Relations Office ("the DRO")] nor [Husband] appealed the issuance of the bench warrant and no person or entity has substantively challenged the validity of the warrant.

Throughout this case[, Husband] has historically failed to pay support and has demonstrated a pattern of failing to appear and of evading or attempting to evade service. In 1987 when the contempt petition which led to the bench warrant was filed, [Husband] owed support of $104,500, plus service costs. As of today, [Husband] owes support arrears in excess of $680,000.

On June 28, 2007, [the] DRO sent [Wife] a notice of proposed termination and a sixty (60) day case closure letter. The notice indicated that termination was sought pursuant to Pa.R.C.P. 1910.19(f) based on [the] DRO's assertion that the Support Order could no longer be enforced under state law. [Wife] objected to and contested the termination. Following a hearing, the Support Master recommended that the request for termination be denied. On December 17, 2007, the recommendation was accepted and approved as an order of this Court. Significantly, neither [Husband] nor [the] DRO filed exceptions and no appeal was taken from that order.

In February of 2009, [the] DRO again initiated . . . a proposed termination and case closure procedure. [Wife], through counsel, submitted a timely objection. [The] DRO

> [did] not request a hearing on its second request for termination.
>
> In addition, on February 26, 2009, [the] DRO submitted an application, dated February 9, 2009, to vacate the bench warrant. The application was based on the assertion that [Husband's] whereabouts were unknown.
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> On March 4, 2009, this Court entered an order vacating the bench warrant. This order was signed on the belief that [Wife] had been given notice of the application and had not contested or objected to [the] DRO's request. [The] DRO did not mail the order to [Wife] until March 27, 2009.
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> On April 6, 2009, [Wife] filed a motion to reinstate the bench warrant alleging, among other things, that (1) she was not given prior or contemporaneous notice of the filing of the application to vacate bench warrant; and (2) that she had objected to termination and case closure and had filed information that she believed might lead to the location of [Husband]. The next day, this Court issued an order temporarily reinstating its bench warrant and scheduling a hearing on [Wife's] motion.
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> The hearing was held on April 30, 2009. At [the] hearing, neither [the] DRO nor [Wife] presented testimony. However, both recounted the history of this case and presented argument.
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> On May 7, 2009, this Court issued an order confirming reinstatement of the bench warrant and directing that [Wife] and her attorney be served with all future pleadings, motions, filings, and notices.

Trial Court Opinion, 8/6/09, at 1-4 (citations and footnotes omitted). Although the DRO filed a timely appeal, it was later discontinued.

On July 13, 2009, the DRO issued a notice of proposed modification, seeking to remit all support arrearages owed to Wife. In response, Wife filed a motion for special relief in which she requested that the trial court keep

the case open, and enjoin the DRO from filing any further petitions to close it, absent changed circumstances. As a result of the filing of the motion for special relief, the DRO dropped all pending petitions to modify or terminate the existing support order. Thus, as of September 10, 2009, the case was open, and the bench warrant against [Husband] was active.

On December 29, 2011, the DRO once again issued a sixty-day case closure letter to Wife. On January 25, 2012, [Wife], by her counsel, filed a response. Notwithstanding this response, and without any notice to Wife, the DRO closed the case on March 8, 2012. Upon discovery, Wife, on March 16, 2012, filed a motion to reopen the case. The trial court subsequently entered the following order:

> 1. The above captioned support case shall be marked administratively closed.
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> 2. The Court retains jurisdiction to enforce the previously entered arrearages and bench warrant.
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> 3. The bench warrant previously issued shall remain in full force and effect.
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> 4. Upon execution of the bench warrant, or the filing by [Wife] of a certification as to the present whereabouts of [Husband], this case shall immediately be reinstated and re-opened pursuant to the applicable rules.

Order, 5/30/12, at 1.

The DRO filed a timely appeal from this order and Wife filed a cross-appeal. The DRO refused to cause the bench warrant to be reinstated, however, and filed a motion for reconsideration and stay, requesting that the May 30, 2012 order be vacated. Wife filed an answer to the motion for

reconsideration in which she requested the case be reopened, the bench warrant reissued, and the support arrearages reinstated. On July 10, 2012, the trial court granted the DRO's motion for reconsideration and scheduled a hearing for August 29, 2012. Because the trial court's grant of reconsideration was untimely, this Court by order entered August 14, 2012, stated that the trial court was without jurisdiction to proceed with the reconsideration hearing. Subsequently, the DRO discontinued the appeal. Thus, only Wife's cross-appeal is at issue. The trial court did not require Pa.R.A.P. 1925 compliance.

Wife raises the following issues on appeal:

> I. Did the Trial Court commit reversible error by failing to re-open a support case which had been terminated, without notice, hearing or court order by the support office, in contravention of law?
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> II. Did the Court's failure to reinstate arrearages in excess of $680,000 violate the provisions of 23 Pa.C.S.A. §4352(e)?

Wife's Brief at 4.

Our standard of review in matters relative to child support is well settled:

> When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly

> unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused.

Sirio v. Sirio, 951 A.2d 1188, 1192-93 (Pa. Super. 2008) (citation omitted).

In her first issue, Wife claims that she was denied procedural due process when the DRO unilaterally closed her case without a court order, and without the opportunity for Wife to be heard in violation of the trial court's prior order regarding notice, and in violation of the procedures set forth in the pertinent rules of civil procedure. Wife's Brief at 11.

The DRO responds that the May 30, 2012 order "was issued after a conference in chambers with the trial court, counsel, the DRO director, and [Wife], along with a family member." DRO Brief at 4. Although the DRO concedes that this proceeding was not transcribed, and that no testimony or evidence was taken, the DRO maintains that Wife did not object at that time to the lack of a formal hearing. According to the DRO, Wife participated in this conference with her counsel present. The DRO further asserts that Wife was given appropriate notice of the case closure, and because her response did not offer any new information as to Husband's whereabouts, Wife's case was closed.

Rule 1910.19(f) of the Pennsylvania Rules of Civil Procedure provides for a court's termination of a support order and the remittance of arrears when a support order is no longer enforceable. Rule 1910.19(f) reads as follows:

> (f) Upon notice to the obligee, with a copy to the obligor, explaining the basis for the proposed modification or

> termination, the court may modify or terminate a charging order for support and remit any arrears, all without prejudice, when it appears to the court that:
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> (1) the order is no longer able to be enforced under state law; or
>
> (2) the obligor is unable to pay, has no known income or assets and there is no reasonable prospect that the obligor will be able to pay in the foreseeable future.
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> The notice shall advise the obligee to contact the domestic relations section within 60 days of the date of the mailing of the notice if the obligee wishes to contest the proposed modification or termination. If the obligee objects, the domestic relations section shall schedule a conference to provide the obligee the opportunity to contest the proposed action. If the obligee does not respond to the notice or object to the proposed action, the court shall have the authority to modify or terminate the order and remit any arrears, without prejudice.

Pa.R.C.P. 1910.19(f). An accompanying 2006 Explanatory Comment to subdivision (f), provides: "Both the rules and federal guidelines for child support under Title IV-D of the Social Security Act provide for circumstances under which a support order shall not be entered or under which a child support case may be closed. Subdivision (f) expands the authority of the courts to respond to case management issues brought about by changes in circumstances of the parties of which the courts become aware[.]"

In this case, Wife timely received a sixty-day notice of closure and responded to it. The resulting conference in the trial court's chambers satisfies Rule 1910.19(f)'s suggestion that the DRO provide the obligee (Wife) an opportunity to contest the DRO's proposed action. Wife cites no authority for her proposition that "due process" requires an "appropriate

hearing" to be held before a support case is closed. Wife's Brief at 12. In fact, within her brief, Wife proffers no new information or changed circumstances to support the trial court's reopening of her case. ***See*** 45 C.F.R. § 303.11 (b)(4) (providing that a case may be closed if the "noncustodial parent's location is unknown, and the State had made diligent efforts using multiple sources . . . all of which have been unsuccessful, to locate the noncustodial parent"); 45 C.F.R. § 303.11(c) (explaining that federal law requires that, if the "recipient of services" supplies information in response to the closure notice that could lead to the enforcement of the support order, the DRO must keep the case open; after the case is closed, the recipient may request it be opened upon a change in circumstances that would lead to enforcement of the order). We therefore find no abuse of discretion by the trial court in "marking the case administratively closed." Order, 5/30/12.

In her second issue, [Wife] argues that the DRO had "no power to remit arrearages, as such action is in contravention of 23 Pa.C.S.A. §4352(e)." Wife's Brief at 11. According to Wife, "[o]ur legislature has expressly prohibited this very action taken by [the DRO]." ***Id.*** at 14. In support of this claim, Wife merely quotes section 4352(e) and states that "the arrearages must be reinstated." ***Id.*** Because this issue is undeveloped, we will not address it further. ***See e.g. Commonwealth v. Tielsch***, 934 A.2d 81, 93 (Pa. Super. 2007) (holding that undeveloped claims will not be

considered on appeal). Nevertheless, we note that nothing in section 4352(e) references its applicability to case closure. In addition, 23 Pa.C.S.A. §§ 4352(d) and (d.1) specifically allow an obligee to reduce an arrearage to judgment, which can be executed against the obligor or the obligor's property.[1]

Order affirmed.

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[1] Given our disposition, Wife's motion for preemptory mandamus is denied as moot.