

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JILL WETZEL

Appellee

v.

RICHARD ANDREW DADDARIO, SR.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 945 MDA 2012

Appeal from the Order Entered May 2, 2012
In the Court of Common Pleas of Northumberland County
Civil Division at No(s): CV-2012-00992
Docket No. 01129S
PACSES 302101403

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J.

Filed: February 21, 2013

Richard A. Daddario, Sr., appeals *pro se* from the order entered on May 2, 2012, entered in the Court of Common Pleas of Northumberland County, which denied Daddario's petition to modify his child support obligations to terminate his arrears. We affirm.

As we write primarily for the parties, who are familiar with the factual context and legal history of this case, we set forth only so much of the facts and procedural history as is necessary to our analysis.

Daddario is incarcerated at S.C.I. Cresson where he is serving a 25 to 90 year sentence for convictions stemming from his sexual assault of a teenage girl. He owes \$2,320.66 in arrears for child support. Daddario's children have reached the age of majority, thus he only owes the arrears.

Daddario previously appealed an order entered on January 20, 2011, in which the trial court directed him to pay \$2,445.15 in arrears. In that appeal, Daddario argued that the trial court erred in failing to terminate his arrears due to his incarceration. This Court disagreed and affirmed the trial court's order. *See Wetzel v. Daddario*, 943 MDA 2011 (Pa. Super., filed January 20, 2012) (unpublished memorandum decision).

Thereafter, Daddario filed another petition in the trial court seeking again to terminate his arrears. The basis for the termination was a change in circumstances: he lost his employment in the prison; his monthly income went from about \$34.00 per month to \$8.74 per month. The trial court held a hearing on the petition. After the hearing, on May 2, 2012, the trial court entered an order granting the petition in part and denying it in part. Specifically, the trial court ordered that the enforcement action be stopped and that the balance due be "held in abeyance pending defendant having income." Order, 4/27/12. The order provides that "enforcement shall be reactivated" once Daddario "becomes gainfully employed or otherwise has an income source." *Id.* The trial court denied Daddario's request to have his arrears terminated. This timely appeal followed.

Daddario raises two issues in this appeal.¹ In his first issue on appeal, Daddario argues that the trial court erred in refusing to terminate his arrears.² Our standard of review over the modification of a child support award is well settled. A trial court's decision regarding the modification of a child support award will not be overturned absent an abuse of discretion, namely, an unreasonable exercise of judgment or a misapplication of the law. **See *Schoenfeld v. Marsh***, 614 A.2d 733, 736 (Pa. Super. 1992).

An award of support, once in effect, may be modified *via* petition at any time, provided the petitioning party demonstrates a material and substantial change in their circumstances warranting a modification. **See** Pa.R.Civ.P. 1910.19(a). "The burden of demonstrating a material and substantial change rests with the moving party, and the determination of whether such change has occurred in the circumstances of the moving party rests within the trial court's discretion." ***Kimock v. Jones***, 47 A.3d 850, 855 (Pa. Super. 2012) (citation omitted).

¹ Daddario's second issue is waived as it was not raised in his Rule 1925(b) statement. **See *Commonwealth v. Lord***, 553 Pa. 415, 719 A.2d 306 (1998).

² To the extent that Daddario's brief can be read as somehow trying to reargue the arguments this Court rejected in the previous appeal, **see *Wetzel v. Daddario***, 943 MDA 2011 (Pa. Super., filed January 20, 2012) (unpublished memorandum decision), such claims are barred by *res judicata*.

Modification and/or termination is appropriate where it is clear to the court that 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. **See** Pa.R.Civ.P. 1910.19(f)(2). The explanatory comment accompanying Rule 1910.19(f) states the following:

New subdivision (f) addresses an increasing multiplicity of circumstances in which the continued existence of a court-ordered obligation of support is inconsistent with the rules or law. An obligor with no known assets whose sole source of income is Supplemental Security Income or cash assistance cannot be ordered to pay support under Rule 1910.16-1. Likewise, an obligor with no verifiable income or assets whose institutionalization, incarceration, or long-term disability precludes the payment of support renders the support order unenforceable and uncollectible, diminishing the perception of the court as a source of redress and relief. Often, the obligor unable or unaware of the need to file for a modification or termination, or the parties abandons the action. In those circumstances, the courts are charged with managing dockets with no viable outcomes. Both the rules and the federal guidelines for child support under Title IV-D of the Social Security Act provide for circumstances under which a child support case may be closed.

Pa.R.Civ.P. 1910.19(f)(2), *Explanatory Comment*—2006.

Therefore, the law of this Commonwealth affords an incarcerated parent the ability to petition to modify or terminate their support obligation where they are able to prove that the order is no longer able to be enforced under state law or that the incarcerated obligor parent is without the ability to pay their child support obligation and there is no reasonable prospect that they will be able to do so for the foreseeable future. **See Nash v. Herbster**, 932 A.2d 183, 188 (Pa. Super. 2007).

Modification is even permissible with respect to arrears. Rule 1910.19(f) states that the trial court may remit any arrears under a charging order of support when the obligor is unable to pay and there is no prospect that the obligor will be able to pay for the foreseeable future. “However, the Rule does not automatically entitle an obligor to this broad relief.” ***Plunkard v. McConnell***, 962 A.2d 1227, 1231 (Pa. Super. 2008) (citation omitted). Where the arrears were incurred prior to the incarceration, the support obligor will be “estopped” from benefiting from his incarceration. ***Id.***

At the outset, we observe that Daddario accrued the arrearages prior to his incarceration and, as such, he should not be able to benefit from his incarceration. In refusing to terminate his arrears, the trial court explained that given the reduction of his monthly income it was appropriate to stay enforcement of his outstanding arrears, but that “there did not exist any reason to remit his arrears, fees, and costs.” Statement in Lieu of Opinion, 8/13/12, at 2. The trial court noted that this Court previously denied his request for a “blanket remittal” of his arrears and that his arrears “largely consist of an obligation that existed prior to his incarceration[.]” ***Id.*** The trial court further explained that

[t]his [c]ourt’s latest decision allows [Daddario] to use all of his current earnings to buy his toiletries. Finally, his release date is not in the too distant future [i.e., his minimum sentence expires in 2031], at which time he can obtain employment to take care of his past financial obligations to his children. Once again, Appellant’s avoidance of his past support obligation by remitting arrears is not justified.

Id.

We find no abuse of discretion with the trial court's decision. The trial court stayed enforcement of collection of the arrears to a future date when Daddario has a change in employment circumstances. We agree with the trial court that permitting termination of the arrears would unduly benefit Daddario and relieve him of an obligation he accrued prior to his incarceration. Such an outcome would be simply unreasonable.

Order affirmed.