IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 10, 2020 Session

MICHELLE A. MOREL v. CHRISTOPHER R. NOCHERA

Appeal from the Juvenile Court for Williamson County
No. 23778 Sharon Guffee, Judge

No. M2019-00347-COA-R3-JV

Mother sought a judgment for child support arrears tracing back to January 2010. Relief was denied when it was determined that a prior order suspending child support in January 2010 had been a final order. Having determined that the order suspending child support was not a final order and was entered in error, we hereby reverse the dismissal of the case and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed and Remanded

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

Charles G. Blackard, III; Franklin, Tennessee, for the appellant, Michelle A. Morel.

Judy A. Oxford, Franklin, Tennessee, for the appellee, Christopher R. Nochera.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

Michelle Morel[1] ("Mother") and Christopher Nochera ("Father") are the parents to a child born in July 2000. Although there was litigation over various matters between the parties in the years following the child's birth, we center our discussion herein on events occurring in 2009 and thereafter.

In early 2009, Father's child support obligation was reduced to $429.00 per month. Shortly after this reduction in support, Father filed a petition in March 2009 with

[1] Mother's surname is spelled alternatively as "Morrell" at various places in the record, evidently in error. We employ the spelling utilized in Mother's brief.

the Williamson County Juvenile Court alleging that Wife had given notice that she was planning on relocating with the parties' child to Zambia. Father stated that he was opposed to the proposed relocation, and he argued that it posed a threat of serious harm to the child. Among other articulated concerns, Father alleged that Zambia was not then a member of the Hague Convention.

When the matter came before a Juvenile Court referee, the referee held that Mother "shall not relocate with the child to Zambia." Mother then filed a request for a rehearing before the Juvenile Court judge, however, and the Juvenile Court judge later ruled that the referee's order "should be overturned permitting the mother to relocate to Zambia with the child."

Following the Juvenile Court's ruling that Mother could relocate with the child, issues arose in the case regarding Mother's failure to repay a $1,500.00 loan, her failure to pay certain awarded attorney's fees, her failure to transport the child for visitation, and her failure to allow Skype calls between Father and the minor child. This prompted the filing of a number of petitions for contempt and issuances of orders to show cause. In December 2009, Mother's counsel filed a motion to withdraw. The motion contained notice that it was set to be heard on January 7, 2010. A hearing did later occur on that date as indicated,[2] and thereafter, on January 22, 2010, the Juvenile Court entered an order permitting the withdrawal of Mother's counsel. In addition to addressing the issue of counsel's withdrawal, however, the January 22 order ruled on other matters in the case. For instance, the order also took note of Mother's alleged failures regarding visitation, Skype calls, and attorney's fees,[3] and the order stated that another attachment and show cause order should issue, with a court date set for April 8, 2010.[4] Moreover, the Juvenile Court held that "as a further inducement to have Mother comply with the court's orders, Father's obligation to pay child support should be suspended effective January 7, 2010." Additionally, the order denied, for the time being, certain requests by Father in regards to custody. The order concluded by noting that the case would be reviewed in April of that year.[5]

During the summer following the entry of the withdrawal/suspension of support

[2] Interestingly, neither Mother nor her counsel was present on January 7. According to the order permitting withdrawal, "Mother's attorney . . . had left a handwritten note to the Court." Although the Juvenile Court order of January 22 reflects that the note was made an exhibit to the January 7 hearing, it was not included in the record on appeal.

[3] Regarding the issue of the $1,500.00 loan that Mother had previously failed to repay, the Juvenile Court observed that it had now been paid.

[4] Although not necessarily relevant to this appeal, in another order stemming from the January 7 hearing date (but entered on April 20, 2010), the Juvenile Court held Mother in contempt. This is somewhat confusing in that the court, as already noted, also ordered at the January 7 hearing that there would be future dates regarding *potential* contempt over the same conduct.

[5] This 2010 order was entered by a now-retired Juvenile Court Judge.

order, other orders in the case were entered. These orders reflected that the case came for review and stated that it would be set for further review in the future, for which Mother would need to be served by registered mail. According to an order entered on August 2, 2010, the case came for review on July 22, 2010, at which time Mother did not appear. In its August 2 order, the court held that the matter should "be continued indefinitely to have [Mother] served with notice to appear."

Thereafter, no activity occurred in the case for many years. Then, on June 22, 2018, Mother filed a pleading with the Juvenile Court styled "Mother's Answer and Counter-Petition to Establish Child Support Arrears Judgment and Set Appropriate Child Support." This filing averred that Mother was not guilty of certain allegations of contempt and asked, among other things, that the suspended child support be reinstated and that she be given an arrears judgment. A magistrate subsequently determined that the "Counter-Petition" embodied in Mother's filing should be re-filed and proceed as a new action, and upon the separate filing of "Mother's Petition to Establish Child Support Arrears Judgment and Set Appropriate Child Support," Father moved to dismiss Mother's prayers for relief. Contending that the order suspending support in 2010 was a final order, Father argued in relevant part as follows:

> That order was a final order. It was not appealed. Thus, Father's child support obligation was set at $0 at that time. Any modification of child support obligation at the present time would constitute an impermissible retroactive modification of child support, in contravention of Tennessee Code Annotated § 36-5-101(f).

In response, Mother argued that the suspension of support had been temporary, and among other raised issues, she questioned "Whether a court's 'suspension of child support' is authorized by a court without a hearing and proper Notice to all parties."

A magistrate ultimately held that Mother should be denied all relief except as to a period of time between June 22, 2018 and July 10, 2018, the period spanning the date Mother requested a reinstatement of support and the date of the child's emancipation. Regarding Mother's request for a reinstatement of support from January 2010, when support had been suspended, the magistrate ruled that the January 2010 order had been final and appealable, and that Mother had notice of the court's orders. After the ruling of the magistrate was not appealed to the Juvenile Court judge, the order became a final order of the Juvenile Court, and this appeal followed.

DISCUSSION

Mother's appellate brief raises several issues for our review.[6] Although many of

[6] Although Father's brief responds to the specifically raised issues, Father's brief also submits

her articulated concerns appear to be overlapping, she ultimately argues that the "suspension" of child support in 2010 was in error and that she should be given a judgment for back child support from January 7, 2010 to July 10, 2018. Inasmuch as an agreed order was entered concerning the issue of support for the period June 22, 2018 to July 10, 2018, which does not appear to be of any dispute, we focus our discussion herein on whether Mother is entitled to pursue an arrears judgment for the period January 7, 2010 to June 22, 2018.

As we perceive it, answering this question requires us to first consider the status of the January 2010 order that suspended support. Namely, was that order a final judgment? The parties are sharply divided on this question. For her part, Mother maintains that no final order had been entered as of 2010 regarding the suspension of child support. Father, on the other hand, submits that the order suspending support in 2010 was a final order. He therefore reasons that Mother's pursuit of child support payments going back to 2010 "would constitute an impermissible retroactive modification of child support, in contravention of Tennessee Code Annotated § 36-5-101(f)." The Juvenile Court magistrate, agreeing with the factual underpinning of Father's position, dismissed Mother's requests for relief upon noting that the January 2010 order had been final.

If Father is incorrect in his assessment of finality, then there was no impediment to Mother's request to have the propriety of the suspension considered, to have support reinstated, and to pursue the entry of an arrears judgment. *See Shofner v. Shofner*, 181 S.W.3d 703, 712-13 (Tenn. Ct. App. 2004) ("Until a judgment becomes final, it remains within the trial court's control and may be modified any time prior to the entry of a final judgment."). As explained below, there are a couple of reasons we reject Father's intended suggestion that support was finally set at $0 for the period between January 7, 2010 and June 22, 2018.

First, as we construe the suspension order, the Juvenile Court was merely attempting to adopt a temporary measure to get Mother to comply with various responsibilities pertaining to visitation and payments owed to Father. The order expressly noted that it was entered "as a further inducement to have Mother comply with" her responsibilities, and the order concluded by noting that the case would be set for review later that year. We do not interpret the suspension as anything other than a temporary measure intended to alert Mother to the areas of noncompliance highlighted by Father. The validity of such an action is another question entirely, as will be discussed below, but we do not interpret the order to prevent Mother from receiving the support to which she was entitled upon proper compliance with other obligations. We do not

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that Mother's issues on appeal should be waived due to briefing deficiencies. Although we do not disagree that, in many respects, Mother's brief could have been further developed, we are nonetheless able to adequately discern the gist of Mother's grievances. Tennessee law favors the resolution of cases on their merits. *See Norton v. Everhart*, 895 S.W.2d 317, 322 (Tenn. 1995) (stating that "the clear policy of this state favor[s] the adjudication of disputes on their merits").

construe the order, for instance, of necessarily barring Mother, at a later date, from receiving support relative to January 2010. In our view, the order was merely providing temporary relief to Father's obligation to presently pay in order to spring Mother into action. Of course, as we noted earlier, although the case would later come for review on a number of occasions in the wake of the suspension of support, the case was ultimately continued "indefinitely" and thereafter languished for many years with no developments.

Additionally, we are persuaded that the January 2010 order suspending support was not final for another reason. Specifically, we observe that the order itself does not indicate that it was sent to Mother. Indeed, as Mother remarks in her appellate brief, the certificate of service "make[s] no indication of service to the Mother." Rather, the certificate of service reflects that a copy of the order was sent to Mother's *former* counsel who had withdrawn from the case. In our opinion, therefore, the order was not compliant with Rule 58 of the Tennessee Rules of Civil Procedure. That rule provides as follows:

> Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:
>
> (1) the signatures of the judge and all parties or counsel, or
> (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or
>
> (3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

Tenn. R. Civ. P. 58.

As this Court has explained, if a judgment is not compliant with Rule 58, it does not represent a final judgment:

> "The purpose of [Tenn. R. Civ. P. 58] is to insure that a party is aware of the existence of a final, appealable judgment in a lawsuit in which he [or she] is involved." *Masters ex rel. Masters v. Rishton*, 863 S.W.2d 702, 705 (Tenn. Ct. App. 1992); *see also* Tenn. R. Civ. P. 58, advisory comm'n cmt. (stating that Rule 58 is "designed to make uniform across the State the procedure for the entry of judgment and to make certain the effective date of the judgment"). Compliance with Rule 58 is mandatory, *State ex rel. Taylor v. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291, at *2 (Tenn. Ct. App. Mar. 13, 2006) (quoting *Gordon v. Gordon*, No. 03A01-9702-CV-00054, 1997 WL 304114, at *1 (Tenn. Ct. App. June 5, 1997)), and "[t]he failure to adhere to the requirements set forth in Rule

> 58 prevents a court's order or judgment from becoming effective." *Blackburn v. Blackburn*, 270 S.W.3d 42, 49 (Tenn. 2008) (citing *DeLong v. Vanderbilt Univ.*, 186 S.W.3d 506, 509 (Tenn. Ct. App. 2005)). This means that an order that does not comply with Rule 58 "is not a final judgment and is ineffective as the basis for any action for which a final judgment is a condition precedent." *Citizens Bank of Blount County v. Myers*, No. 03A01-9111-CH-422, 1992 WL 60883, at *3 (Tenn. Ct. App. Mar. 30, 1992) (holding that an execution and garnishment was improper when based on a judgment that did not comply with Rule 58); *see also State ex rel. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291, *3 (Tenn. Ct. App. March 13, 2006) (dismissing the appeal for lack of a final order when the order appealed from did not comply with Rule 58).

Steppach v. Thomas, No. W2008-02549-COA-R3-CV, 2009 WL 3832724, at *4 (Tenn. Ct. App. Nov. 17, 2009).

Given that we conclude that the 2010 order was not final, it was proper for Mother to seek a reinstatement of support and a judgment for arrears in 2018. Nothing certainly prevented her from doing so, and it was error for her requests for relief to be dismissed on the basis that the 2010 order was final. We, therefore, conclude that Mother's pursuit of a judgment for the period January 7, 2010 to June 22, 2018 should have been allowed to proceed.

Moreover, it is quite clear that the suspension of support order itself was improper, despite the assertions to the contrary by Father on appeal. Mother has criticized the Juvenile Court's withholding of support in 2010 as an impermissible use of leverage to enforce visitation. We agree. In fact, the withholding of support was improper on a couple of levels, and it was error to dismiss Mother's requests for relief to pursue an arrears judgment. As previously discussed, the order suspending child support detailed a number of areas of noncompliance on Mother's part, including her failure to pay certain attorney's fees and failure to facilitate visitation. To the extent that the Juvenile Court expressly suspended Father's child support obligation as "further inducement" to have Mother comply with her visitation and attorney's fees responsibilities, the Juvenile Court's actions were not supported by the law. As to the visitation component of this issue, the Tennessee Supreme Court has offered the following guidance regarding cases where a support order has already been put into place:

> [W]e do not intend to permit relief from existing child-support orders upon mere allegations that a custodial parent has interfered with visitation. As we observed in *Rutledge*, "the custodial parent's conduct cannot extinguish the non-custodial parent's legal responsibility. Under well-recognized principles of Tennessee law, the obligation of support and the right of visitation are both intended for the benefit of the child, and the two are not

interdependent."

In re T.K.Y., 205 S.W.3d 343, 356 (Tenn. 2006).

As to the attorney's fees component of this issue, we observe that this Court has previously expressed disdain at a trial court's decision to use child support as leverage in the enforcement of a monetary obligation of one parent to the other:

> Notwithstanding the fact that the question of whether the trial judge was in error in suspending child support payments to satisfy a judgment of Husband against Wife is now moot, it needs to be addressed. Child support payments are basically an obligation of the parent-in this case Husband-to support his child. The obligation of a parent to support a child should have no bearing on the obligation of one parent to the other. We think the trial court's action was bad policy and that it sets a dangerous precedent. This Court frowns upon this type of action, for the net result would likely be that the child would be punished while the parent is rewarded.

Harvey v. Harvey, CA No. 865, 1990 WL 14565, at *3 (Tenn. Ct. App. Feb. 21, 1990).

Given all of the above discussion, we agree with Mother's positions on the issues in this appeal.[7] The January 2010 order was not final, the suspension of support was improper,[8] and Mother's request to pursue an arrears judgment back to January 7, 2010 was improperly dismissed. As the dismissal below was in error, the case is remanded for such further proceedings as may be necessary and consistent with this opinion.

CONCLUSION

The order of dismissal is reversed, and we hereby remand the case for further proceedings on Mother's request for an arrears judgment.

ARNOLD B. GOLDIN, JUDGE

[7] Given our disposition herein, we respectfully deny a request made by Father in his appellate brief that he be awarded attorney's fees for this appeal.

[8] Although not necessary to the resolution of this appeal, we observe that, in addition to the substantive concerns surrounding the suspension of support, there are procedural concerns. It is not clear that Mother had notice that there would be action with respect to her receipt of child support. In defense of this issue, Father states in his brief that "[t]here was notice to both parties that the case would be before the court on January 7, 2010." Of note, however, Father, in support of this assertion, cites to the notice of hearing regarding a motion to withdraw on that date, not any notice of hearing on a child support issue.