

Court of Appeals, State of Michigan

ORDER

B Sherrel Byrd v DeShawn Byrd

Docket No. 294012

LC No. 03-334147-DM

Kirsten Frank Kelly
Presiding Judge

Michael J. Talbot

Brian K. Zahra
Judges

On July 9, 2009, Wayne County Circuit Court Judge Richard Halloran signed a uniform child support order modification, which indicated that neither party has a monthly child support obligation, effective December 5, 2005, for their two children and stated “RESERVED” for the base support of each child. The second page of the order also stated, “Support reserved until further order of the Court.” Plaintiff filed a delayed application seeking leave to appeal from this order arguing that there was no just cause to terminate defendant’s child support payments and arrearage.

This Court requested the lower court record, which revealed that the parties’ marriage was terminated on November 23, 2004 upon entry of a judgment of divorce that awarded the parties “joint custody” of their two children, but referred the matter of “primary residence” and parenting to the Friend of the Court, Family Evaluation, Mediation and Counseling Unit. The judgment also reserved the issue of child support until the parenting matter was resolved. The parties reached an agreement on parenting through mediation, and in November 2005, a FOC referee made a recommendation on the matter of child support. Defendant filed objections to the recommendation, but on December 12, 2005, an order was signed that directed defendant to pay \$876 per month for his two children. The order also stated on the third page that it was an interim order, which would become a final order if no objections were filed within 21 days. Defendant subsequently filed objections. Although MCR 3.215(F) requires that a judicial hearing be held within 21 days after written objections are filed, Judge Halloran failed to conduct any hearing on either of defendant’s filed objections. Instead, over the course of three years, defendant filed numerous motions relating to child support and custody and plaintiff filed show cause motions, in pro per, alleging that defendant failed to pay child support, all of which Judge Halloran continuously referred to the FOC. During this period of time, it appears that the FOC and Judge Halloran ignored defendant’s repeated assertions in various pleadings that the December 12, 2005 order was improperly entered and that his objections to the December 12, 2005, order were never resolved. Although the FOC made recommendations on the various motions, and the trial court entered orders addressing the motions, it is apparent that Judge Halloran never conducted a de novo hearing on the objections filed by defendant, as the judge was required to do pursuant to MCR 3.215(F), and that a final order relating to child support was never properly entered. The length of time that passed, along with the numerous referrals to the FOC on the various motions filed by the parties, is inexcusable.

Defendant was also subject to a criminal proceeding due to his failure to pay child support, which led to incarceration in the county jail in December 2008, and caused him to miss a de novo hearing that was scheduled in December 2008 on his objection to a recommendation made by the FOC in May 2008 relating to his motion to decrease child support. In April 2009, defendant filed a motion for rehearing, and two months later, Judge Halloran entered the July 9, 2009 order, which effectively eliminated any child support obligation, retroactive to December 5, 2005.

On April 16, 2010, this Court issued an order holding the delayed application in abeyance and directing the court reporter to produce and file transcripts for two hearings conducted in June 2009. The order also directed the trial court to forward a written opinion explaining the justification for entry of the July 9, 2009, order and to explain whether the order was a final order regarding child support. The transcripts reveal that Judge Halloran, again, sought assistance from FOC to resolve the parties' dispute over defendant's child support obligation. In his written explanation, Judge Halloran stated that he "immediately" entered the July 9, 2009, order (which he clarified was not a final order) upon receiving a report from Stephen Malyn, an attorney at the FOC, that apparently found defendant "did indeed overpay on his support obligation." Malyn's report was not provided to this Court. Further, it is not clear from the explanation offered by Judge Halloran that the report was a written report that was provided to the parties, or that plaintiff had an opportunity to file objections to Malyn's findings. This Court is greatly troubled by Judge Halloran's refusal to make an independent finding on the child support matter, which has resulted in an injustice to both parties, who at times did not have the assistance of counsel to guide them through these post-judgment proceedings.

This Court removes the delayed application from abeyance, and in lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), orders that the July 9, 2009, order is REVERSED. By simply eliminating any child support obligation, Judge Halloran again avoided his duties to both parties to conduct a de novo hearing and to enter a final order regarding child support. Accordingly, this matter is REMANDED to Judge Halloran, who shall conduct a hearing and allow both parties an opportunity to testify and introduce evidence relating to their wages and parenting time, and shall determine on the record the amount, if any, defendant should pay until the children reach the age of majority. Judge Halloran is directed to begin a de novo hearing within 56 days, if this time frame is convenient for the parties' work schedules, and to notify this Court of the hearing date(s). Judge Halloran is also prohibited from referring the matter to the FOC, but he may allow Mr. Malyn to provide testimony at the hearing if it is helpful in accounting for the amount of child support that plaintiff received from defendant over the years, and the monies that have been refunded to defendant.

This order is to have immediate effect, MCR 7.215(F)(2), and the Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 13 2010
Date

Sandra Schultz Mengel
Chief Clerk