IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
DOMESTIC RELATIONS SECTION

CHRISTINA RAPPA,	:	
	:	**NO. DR-99902**
Plaintiff	:	
	:	**PACSES No. 228104702**
v.	:	
	:	**1313 EDA 2010**
BRIAN J. JOHNSON,	:	**1976 EDA 2010**
	:	
Defendant	:	

MEMORANDUM OPINION

Appellant Brian J. Johnson ("Appellant") appealed from this Court's Order of May 6, 2010 and separately appealed from this Court's dismissals of *de novo* hearings on July 7, 2010. On August 18, 2010, the Superior Court consolidated Appellant's appeals and directed this Court to complete its explanatory opinion. This completed memorandum opinion fully explains this Court's Orders.

In 2001, Plaintiff Christina Rappa (formerly known as Christina Golinski, referred to hereafter as "Plaintiff") and Appellant had a child together. On July 26, 2002, Plaintiff filed a complaint against Appellant, in the Northampton County Court of Common Pleas, for child support. On January 16, 2003, this Court entered the child support order.

Following entry of the original child support order, this Court entered the first of several modifications. For purposes of Appellant's

appeal, two of those modifications require discussion. First, on February 15, 2006, the Court modified the original Order by directing Appellant to pay $479.00 per month, with arrears set at $1,228.00. The monthly payment was set after determining that Appellant's monthly net income was $1,022.24. Subsequently, on August 10, 2006, Plaintiff filed a petition for modification of the February 15, 2006 Order. She sought greater support on the grounds that Appellant received a personal injury award in the amount of $950,000.00. Thus, on November 9, 2006, the Court entered a second modification Order, whereby the Court directed Appellant to pay $1,109.00 per month with arrears set at $1,613.29. This monthly payment was set after determining that Appellant's monthly net income was $5,083.83, based upon Appellant's monthly earnings and the lawsuit award prorated monthly until the child reached the age of majority.

Appellant claimed that the amount assessed against him was incorrect and sought to have the November 9, 2006 Order modified. On April 3, 2007, Appellant's Petition for Modification was dismissed on the basis that no change in circumstances justified or required modification. On April 16, 2007, Appellant filed a timely *de novo* appeal to this Court. On June 6, 2007 this Court held a *de novo* hearing and on July 18, 2007, the Honorable Stephen G. Baratta denied Appellant's Petition. Judge Baratta based the denial on

Appellant's failure to provide documentation regarding his earning capacity. Judge Baratta also found that it was appropriate to prorate the $950,000.00 award monthly until the child reached the age of majority. Appellant filed a motion for reconsideration of the Order of July 18, 2007, which was denied.

On August 15, 2007, Appellant filed an appeal of the July 18, 2007 Order to the Superior Court. This Court, in accordance with PA. R. APP. P. 1925, directed Appellant to file a Concise Statement of Matters Complained of on Appeal and Appellant complied. On appeal, Appellant questioned whether the Court abused its discretion and/or committed an error of law by recognizing the lawsuit award as income and directing Appellant to pay prorated portions of it over the life of the child.

In a decision filed May 12, 2008, the Superior Court reversed Judge Baratta's July 18, 2007 Order. Based on Appellant's testimony at the June 6, 2007 *de novo* hearing that he had received only $450,000.00 in settlement of the lawsuit, the Superior Court held that $450,000.00, rather than $950,000.00, should have been the figure used in computing Appellant's support obligation. The Superior Court also found, however, that "the trial court properly pro-rated the lump-sum proceeds over the years until the child reaches eighteen and added to that pro-rated sum Father's imputed capacity." *Golinski v.*

Johnson, 2158 EDA 2007 (Pa. Super. 2008) at 17, *citing Mencer v. Ruch*, 928 A.2d 294 (Pa. Super. 2007). The Superior Court specifically instructed this Court that "[o]n remand, the trial court must adjust the amount for the lump sum distribution in its calculation, and then enter a modified support obligation on Father which reflects that calculation." *Id*. at 17-18.

On July 3, 2008, in accordance with the Superior Court's Order, this Court entered an Order modifying Appellant's support obligation. After adjusting the amount of Appellant's lump sum distribution from $950,000.00 to $450,000.00, the Court recognized Appellant's monthly net income as $3,906.68 and reduced his monthly support obligation to $931.00.

On May 6, 2009, Appellant filed a Petition for Modification and a conference thereon was held on June 9, 2009. On June 19, 2009, this Court entered an Order denying Appellant's Petition for Modification based upon his failure to produce documents and information required by the Court. The Order also required that the parties comply with the Order of July 3, 2008.

On October 15, 2009, this Court entered an Order of Contempt and issued a bench warrant for Appellant's arrest based on his failure to comply with the Orders of July 3, 2008 and June 19, 2009. On January 4, 2010, this Court entered an Order that, among other

things, modified Appellant's support obligation to $926.00 per month. The Order also stated that the bench warrant was still in full force and effect.

On February 8, 2010, Appellant filed a Petition to Modify seeking to suspend all support payments. He claimed that he was unable to work. In response, this Court entered an Order requiring Appellant to comply with the Order of July 3, 2008 and to provide updated medical records within thirty days. On February 15, 2010, due to a decrease in her income, Plaintiff petitioned the Court to increase Appellant's support obligation to the Court-allowed maximum.

In response to the parties' petitions, this Court held a support conference on March 23, 2010. On April 27, 2010, we entered an Order requiring Appellant to pay monthly child support in the amount of $668.00. The Order granted Appellant relief in that we reduced Appellant's support obligations by approximately $240 per month because the Court determined that Appellant was temporarily unable to work. The remaining monthly support obligation of $668.00 was based upon Appellant's income from the personal injury award of $450,000.00, as directed by the Superior Court in its Order of May 12, 2008.

On April 30, 2010, as a result of his failure to pay child support, an Order was entered directing Appellant to appear in court on May 6,

2010 for a contempt hearing. On May 6, 2010 Appellant appeared and testimony was presented. At the hearing's conclusion, the Court found that Appellant was in willful contempt and entered an Order for Civil Contempt. The Court:

- ordered Appellant to pay the court costs;
- sentenced Appellant to six months in Northampton County Prison;
- made Appellant eligible for immediate work release;
- set a purge amount of $4,000.00; and
- suspended the prison sentence for six months on the condition that Appellant pay Plaintiff a lump sum of $4,000.00 within fourteen days and make regular payments in accordance with the April 27, 2010 Order.

The Court also ordered that Appellant's compliance with the Order would result in vacation of the prison sentence.

On May 11, 2010, Appellant filed his Notice of Appeal.[1] The Court ordered Appellant to file a Statement of Errors Complained of on

[1] This appeal corresponds with Superior Court docket no. 1313 EDA 2010.

Appeal[2] and on June 1, 2010, Appellant filed the same. In his statement, Appellant argued that the Court committed an abuse of discretion and/or an error of law in holding Appellant in contempt. Appellant further argued that he is shielded from paying support by PA. R. CIV. P. 1910.19(f)(2).

In an order unrelated to Appellant's first appeal, on May 19, 2010, this Court entered an ordering debiting Appellant's account $142.00. This sum represented Appellant's share of the liability for further uncovered medical expenses of the child.

Finally, on or about May 21, 2010, Appellant filed demands for two *de novo* hearings before this Court.[3] In his first demand, Appellant argued for modification of this Court's April 27, 2010 support Order. In his second demand, he alleged that he had not received any information or documentation to support this Court's order that he should pay $142.00 for uncovered medical expenses.[4]

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[2] On May 12, 2010, Appellant filed with the Superior Court an Application for an Emergency Stay of this Court's Order of May 6, 2010. In an Order dated June 11, 2010, the Superior Court denied Appellant's application for an emergency stay, citing *Pa. Public Utility Cmm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983). On July 6, 2010, Appellant filed with the Supreme Court and Application for Review of the Superior Court's Order denying Appellant's application for an emergency stay. In an Order dated July 19, 2010, the Supreme Court denied Appellant's Application.

[3] This Court can only find a copy of one demand in the record. The parties, however, recognized at the April 27, 2010 hearing that Appellant requested two *de novo* hearings. See N.T. 4/27/10 at 17.

[4] Appellant failed to file a formal Demand for a Hearing with respect to the $142 uncovered medical expense. We refer to Appellant's June 11, 2010 letter to Ms. Stacey Greaves of the Northampton County Domestic Relations Section, which Appellant asks Ms. Greaves to accept as his Demand.

A joint hearing for both appeals was held on July 7, 2010. Appellant, for whom this Court earlier issued a bench warrant for arrest, failed to appear. N.T. 7/7/10 at 14-15. Accordingly, Appellant neither testified nor offered documentary evidence. Instead, Appellant's counsel, Attorney Joseph P. Maher, attempted to present hearsay testimony to the Court. Plaintiff's counsel, Attorney John Rybak, timely objected to the hearsay evidence and this Court sustained the objections. *Id.* at 2-5, 7-8, 11, 14. Loosely citing PA. R. CIV. P. 1910.19(f) and case law,[5] Attorney Maher suggested that this Court should suspend Appellant's support obligations because he used the $450,000 personal injury award to purchase a house. *Id.* at 7, 14. He urged this court to recognize Appellant's inability to translate the house into monthly support payments and to indefinitely suspend his obligations. *See id.* at 14. With respect to his second demand for a *de novo* hearing, Attorney Maher argued that Appellant had no

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[5] Attorney Maher failed to introduce relevant evidence or present sufficient legal argument on the record. Instead, in "Case Summaries" handed up to the Court, Appellant cited generally to PA. R. CIV. P. 1910.19(f) and summarized several cases where Pennsylvania courts temporarily lifted inmates' or hospital patients' child support obligations. *See Plunkett v. McConnell*, 962 A.2d 1227 (Pa. Super. 2008); *Nash v. Herbster*, 932 A.2d 183 (Pa. Super. 2007); *Dugery v. Dugery*, 419 A.2d 90 (Pa. Super. 1980); *Commonwealth v. Soudani*, 166 A.2d 72 (Pa. Super. 1960); *Bartholomew v. Strauss*, 53 Lehigh L.J. 296 (C.P. 2009); *McIntyre v. Peterson*, 24 Crawford L.J. 261 (C.P. 1996).

At the hearing, Attorney Maher emphasized the importance of *Nash* and *Plunkett*. These cases, however, are inapplicable. PA. R. CIV. P. 1910.19(f) and its progeny refer to inmates with few, if any, recognized assets. However, Appellant—despite the bench warrant for his arrest—remains a free man and, at that, a free man in possession of a valuable, marketable asset that he could sell (or attempt to sell) to satisfy his child support obligations.

knowledge of or documentation relating to the uncovered medical expenses at issue. *Id.* at 17-18. Plaintiff, however, testified that she submitted documentation to Appellant by certified mail and a Domestic Relations caseworker testified that her office also mailed paperwork to Appellant at Appellant's last known address. *Id.* at 6-7. Further, the caseworker testified that Appellant was required to update his address within seven days if he moved. *Id.* at 7.

On July 7, 2010, the Court dismissed both *de novo* appeals. Shortly thereafter, Appellant filed a second appeal[6] and the Superior Court consolidated the appeals.

In the first issue raised on appeal, Appellant argues that he should not be held in contempt based upon Pennsylvania Rule of Civil Procedure 1910.19(f), which states that:

> [u]pon 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

[6] This appeal corresponds with Superior Court docket no. 1976 EDA 2010.

> 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.

Appellant argues that, pursuant to this section, he is not required to pay support and, therefore, the Court erred in finding him in contempt.

Appellant's reliance on PA. R. CIV. P. 1910.19(f) is substantively misplaced. The Order appealed is not a "charging order for support" under PA. R. CIV. P. 1910.19(f). Instead, it is an Order for Civil Contempt. On May 6, 2010, this Court found that Appellant was in willful contempt for failing to pay his Court-ordered monthly support payments as they came due and issued an order for civil contempt. *See* May 6, 2010 Order of Court for Civil Contempt; *see also* N.T. 5/6/10 at 25. This Court specifically noted that no justifiable excuse for Appellant's failure to make those payments existed. N.T. 5/6/10 at 25.

The Pennsylvania Rules of Civil Procedure provide for the filing of a contempt petition upon failure to comply with a support order. PA. R. CIV. P. 1910.25-1 states that "[a]fter service of the petition and order of court upon respondent there shall be . . . (2) an immediate

hearing by court, if permitted by the court." Further, PA. R. CIV. P. 1910.25-5 provides that:

> (a) No respondent may be incarcerated as a sanction for contempt without an evidentiary hearing before a judge.
>
> (b) An order committing a respondent to jail for civil contempt of a support order shall specify the conditions the fulfillment of which will result in the release of the respondent.

In the instant matter, Plaintiff filed a contempt petition after Appellant allegedly failed to comply with this Court's support order. On May 6, 2010, the Court held an evidentiary hearing. After hearing testimony from the Domestic Relations caseworker and from Appellant, the Court determined that Appellant had, in fact, violated this Court's support orders.

At the conclusion of the hearing, the Court held that Appellant acted in willful contempt and issued the Order for Civil Contempt (which is described in greater detail, below). In finding that Appellant acted in willful contempt and issuing the Order, the Court did not abuse its discretion or commit error of law. By way of example, in February 2004, the Court determined that Appellant was in arrears to the sum of $1,228.00. At the May 6, 2010 hearing, the total arrears owed in this matter were $7,906.10. N.T. 5/6/10 at 5. The ever-increasing arrears demonstrate Appellant's failure to stay current with his court-ordered monthly support payments. Further, the Domestic

Relations caseworker testified that Appellant made his last child support payment on July 2, 2009, in the amount of ten cents. *Id.*

After finding Appellant in contempt, this Court issued an Order for Civil Contempt. The Court ordered Appellant to pay costs and sentenced him to six months imprisonment in Northampton County Prison, where he was eligible for immediate work release. *See* May 6, 2010 Order of Court for Civil Contempt; *see also* N.T. 5/6/10 at 25-26. The Court also set a purge amount of $4,000.00 or six months in the work release program with regular support payments. N.T. 5/6/10 at 25-26. Finally, the Court suspended Appellant's sentence for six months on the condition that Appellant remit a lump sum payment of $4,000.00 within fourteen days and make payments in accordance with the Order of April 30, 2010. *Id*. The Court's May 6, 2010 Order provided that if Appellant complied with all of the directives contained in the Order, the sentence of imprisonment would be vacated. *Id*.

Thus, Appellant's first appeal lacks merit. Appellant's appeal erroneously rests on PA. R. CIV. P. 1910.17, a rule of civil procedure which is inapplicable to the order at issue. Further, even if Appellant had appealed the order under PA. R. CIV. P. 1910.25, the foregoing demonstrates that the record fully supported finding Appellant in willful contempt and sentencing him to a term of imprisonment. *See* PA. R. CIV. P. 1910.25 – 10190.25-5.

Appellant's second appeal, of the dismissal of his requested *de novo* hearings on July 7, 2010, also lacks merit. While Appellant had the right to demand *de novo* hearings under Pa. R.C.P. 1910.11, he failed to appear and Attorney Maher failed to present evidence to support either issue appealed (first, the calculation of Appellant's support payments and, second, Plaintiff's purported failure to provide documentary support for the money debited from Appellant's account for uncovered medical expenses).

Generally, parties to a child support dispute have the right to demand a *de novo* hearing. *See* PA. R. CIV. P. 1910.11. Under this rule, litigants have an absolute right to their "day in court." *Warner v. Pollock*, 644 A.2d 747, 751 (Pa. Super. 1994). The *de novo* hearing is not limited in scope. *Id.* "*De novo* review entails, as the term suggests, full consideration of the case anew. . . . Accordingly, the lower court [has] discretion in the *de novo* hearing to consider all the facts in determining whether to accept, reject, or modify" the existing orders. *See D'Arciprete v. D'Arciprete*, 470 A.2d 995, 996 (Pa. Super. 1984).

In the instant matter, Appellant's failure to appear at his requested *de novo* hearings proved to be determinative. Without Appellant's testimony, Appellant's counsel, Attorney Maher, attempted both to present hearsay testimony and testify on his client's behalf.

N.T. 7/7/10 at 2-4, 7. Plaintiff correctly objected to Attorney Maher's efforts, *see* PA. R. EVID. 602; PA. R. EVID. 802, and, as a result, Attorney Maher failed to present any admissible evidence to this Court. Thus, the only facts before this Court supported its decision to accept the existing orders. With respect to the first *de novo* hearing, nothing in the record supported rejection or modification or the calculation of Appellant's support obligation. With respect to the second, Plaintiff offered uncontested testimony that she and the Domestic Relations office both forwarded the appropriate paperwork to Appellant's last known address. N.T. 7/7/10 at 7.

This Court believes that, even if Appellant had appeared and testified, the Court correctly calculated Appellant's support obligation. On May 12, 2008, the Superior Court directed this Court to compute Appellant's support obligation by prorating Appellant's $450,000.00 personal injury settlement monthly until the child reached the age of majority. On July 3, 2008, this Court modified the support order accordingly. On April 27, 2010, we entered an Order requiring Appellant to pay monthly child support in the amount of $668.00. The Order granted Appellant relief in that we reduced Appellant's support obligations by approximately $240 per month because the Court determined that Appellant was temporarily unable to work. The remaining monthly support obligation of $668.00 was based only upon

Appellant's income from the personal injury award of $450,000.00, as directed by the Superior Court in its Order of May 12, 2008.

This Court has been unable to find any statutory, administrative, or case law that suggests that Appellant may relieve himself of these child support obligations by poorly handling the income—with good reason. Contrary authority would allow Appellant to escape his obligations to his child by "hiding" his income. As stated by this Court on May 6, 2010, Appellant "was . . . under a duty to put money in reserve from this lump sum payment in order to pay his monthly support payments as they came due." Appellant simply failed to do so.

Based upon all of the above, the record fully supported finding Appellant in willful contempt and sentencing him to a term of imprisonment as all of the requirements set forth in Pa.R.C.P Nos. 1910.25 – 1910.25-5 had been satisfied. The record also fully supported dismissal of Appellant's requested *de novo* hearings.

All of the issues raised by Appellant in his Statement of Matters Complained of on Appeal have been addressed herein and no further statement is required.

BY THE COURT:

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MICHAEL J. KOURY, JR., J.