[Cite as *Craig v. Craig*, 2012-Ohio-1073.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Dale Craig,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-178 (C.P.C. No. 96DR-06-2528)
Laura Craig (Cline),	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 15, 2012

Dale D. Craig, pro se.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

CONNOR, J.

{¶1} Plaintiff-appellant, Dale Craig ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, approving and adopting the findings and recommendations submitted by the Franklin County Child Support Enforcement Agency ("CSEA"), thereby terminating appellant's child support order and ordering the payment of arrearages in the amount of $35,976.18. For the reasons that follow, we affirm that judgment.

{¶2} Appellant and appellee, Laura Craig ("Laura"), were divorced on or about October 11, 1996. Two children were born as issue of the marriage. The first child was born in 1988 and the second child was born in 1992. Following the divorce, appellant was subsequently ordered to pay child support, effective August 4, 1999, in the amount of $189.22 per child. The first child was emancipated effective January 13, 2006, and support for that child was terminated pursuant to court order in January 2006. At issue

in this case is the trial court's order terminating child support regarding the second child and ordering the payment of arrearages based upon the CSEA's investigation findings and recommendations.

{¶3} Appellant is an inmate with the Nevada Department of Corrections. He has been incarcerated in Nevada since December 2004 as a result of felony drug trafficking charges and purportedly is serving a sentence of ten years to life. Although the record before us does not corroborate appellant's claim, appellant submits that following his incarceration in Nevada, he sought modification of his child support order and was eventually provided with forms to request an administrative review of the order.

{¶4} On December 15, 2010, the CSEA filed its "Findings and Recommendations To Terminate the Support Order," following an investigation conducted to determine whether an administrative termination reason existed to terminate appellant's child support order. This filing is also known as Form JFS 07522.

{¶5} As a result of its investigation, the CSEA found and recommended child support for appellant's daughter born in 1992 should be terminated effective September 14, 2010, due to her emancipation. The CSEA determined there was a total support arrearage of $35,976.18, plus an arrearage of $761.07 in processing charges as of December 6, 2010, and that the continued disbursement of payments would not result in an overpayment. The CSEA further found and recommended that the arrearage be liquidated by ordering appellant to pay $504.12 per month, plus processing charges, until fully liquidated.

{¶6} The "Findings and Recommendations To Terminate the Support Order" were mailed via ordinary mail to appellant at the Nevada State Prison and to Laura Craig at her last known address. On the second page of the findings and recommendations, the following notice was set forth:

ADMINISTRATIVE HEARING RIGHTS

> Both the Obligee and Obligor have the right to request an administrative hearing to object to the findings and recommendations contained in this notice.

> **To request an administrative hearing**, complete the "Request for Administrative Hearing" on the last page and return the completed "Request for Administrative Hearing" to the CSEA. **You have 30 days after receipt of the Findings and Recommendations** to return the "Request for Administrative Hearing" to the CSEA. (Receipt is defined as 3 days after the Findings and Recommendations was mailed.)
>
> If either the Obligee or Obligor requests an administrative hearing within 30 days after receipt of this notice, a revised support order **will not be** issued until a final determination is made by the Court.
>
> If neither the Obligor nor Obligee requests an administrative hearing within 30 days after receipt of this notice, a revised support order **will be** issued by the Court.

{¶7} The ordinary mail stubs associated with the CSEA's findings and recommendations are contained in the record and are date stamped December 17, 2010. Therefore, receipt of the findings and recommendations was presumed to have occurred on December 20, 2010. Consequently, a timely objection or a request for an administrative hearing was due on or before January 19, 2011. The record contains no evidence of the filing of a request for an administrative hearing or of any objections to the CSEA's findings and recommendations.

{¶8} On January 31, 2011, an entry was filed in the Franklin County Court of Common Pleas, Division of Domestic Relations. The entry, which was signed by Judge Dana Preisse, stated the parties had been served with a copy of the investigation conducted by the CSEA pursuant to R.C. 3119.87 et seq. Because neither party objected to the investigation, the court approved and adopted as an order of the court the investigation findings and recommendations filed by the CSEA on December 15, 2010. Attached to the order was a form stating appellant was unemployed and able to engage in employment, and further ordering appellant to engage in employment. The trial court's entry and the accompanying forms were sent via ordinary mail to both parties on February 3, 2011. On February 24, 2011, appellant filed the instant appeal and now asserts two assignments of error for our review:

> [I.] THE COURT OF COMMON PLEAS ERRONEOUSLY HELD THAT APPELLANT "IS ABLE TO ENGAGE IN EMPLOYMENT."
>
> [II.] APPELLANT HAS BEEN DENIED ACCESS TO THE COURTS THAT PROHIBITED APPELLANT FROM PREVIOUSLY SEEKING MODIFICATION OF THE ORIGINAL CHILD SUPPORT ORDERS.

{¶9} Appellant's first assignment of error, in essence, challenges the trial court's adoption of the CSEA's December 15, 2010 findings and recommendations which terminate the support order but assess child support arrearages in the amount of $35,976.18, and order said arrearages to be liquidated by paying $504.12 per month. Specifically, appellant challenges the trial court's determination that he "is able to engage in employment," claiming there is no work available for him while he is incarcerated and that the trial court failed to take that fact into consideration. Appellant contends he does not seek to avoid payment, but simply to postpone the effectiveness of the order and to delay the accrual of any interest or processing fees until he is released from prison and gainfully employed. Appellant further claims he has a statutory right to petition the court to seek a reduction in the child support order due to a change of circumstances.

{¶10} We begin by noting that appellant failed to object to the CSEA's December 15, 2010 findings and recommendations or to request an administrative hearing following receipt of said findings and recommendations.

{¶11} Pursuant to R.C. 3119.89, the CSEA, upon receiving notice, pursuant to R.C. 3119.87, of any reason for which the child support order should terminate, shall conduct an investigation to determine, inter alia, whether any reasons exist to terminate the order and whether the obligor owes any arrearages. Under R.C. 3119.90(B), the obligor and the obligee must be given notice of the results of the investigation, as well as notice of their right to request an administrative hearing regarding any conclusions of the investigation, as well as notice of the procedures and deadlines for requesting said hearing.

{¶12} In addition, the notice must state that the conclusions of the investigation will be submitted to the court for inclusion into a revised or terminated support order with no further court hearing, but that no revised order will be issued if either party

requests an administrative hearing on the investigation conclusions within 30 days of receipt of the notice. R.C. 3119.91 states that if one of the parties timely requests an administrative hearing, the CSEA shall schedule a hearing and upon completion of the hearing, issue a decision, to which the parties may object within 30 days after the issuance of the decision.

{¶13} Also, Ohio Adm.Code 5101:12-60-50.2 states both the obligor and the obligee to a child support order have the right to object to the administrative termination investigation findings and recommendations within 30 days after receipt of said findings and recommendations. When neither party timely objects to the JFS 07522 or the findings and recommendations regarding a court support order, the CSEA shall prepare an order that incorporates its findings and recommendations and file said order and the findings and recommendations with the court. *See* Ohio Adm.Code 5101:12-60-50.2(C)(1)(b).

{¶14} In the instant case, the applicable rules and statutory procedures were followed and the trial court was within its right to adopt the findings and recommendations of the CSEA, as appellant did not object to said findings and recommendations or request an administrative hearing on the matter. *See generally J.R. v. N.M.*, 8th Dist. No. 95255, 2011-Ohio-2782. Because appellant did not object or request an administrative hearing, we cannot say the trial court acted erroneously in journalizing the CSEA's findings and recommendations.

{¶15} However, even if we were to consider appellant's assignment of error on its merits, it would still fail.

{¶16} Despite appellant's claim to the contrary, incarceration does not constitute a change in circumstance which will warrant modification of child support orders. *See Williams v. Williams*, 10th Dist. No. 92AP-438 (Sept. 24, 1992). *See also L.B. v. T.B.*, 2d Dist. No. 24441, 2011-Ohio-3418, ¶ 12 (incarceration resulting from voluntary criminal acts does not constitute a change in circumstances justifying modification of a child support order), and *Cole v. Cole,* 70 Ohio App.3d 188, 193-94 (6th Dist.1990) (Ohio courts have refused to modify or terminate the child support obligation of a parent who, through their own volition, became unemployed or underemployed and thus failed to support

their minor child; an incarcerated parent could and should be treated like any other noncustodial parent liable for any money owed on a child support obligation; incarceration alone does not warrant a finding of a change in circumstances).

{¶17} Furthermore, incarceration does not operate to excuse a parent from the accrual of child support. *Crosby v. Crosby*, 8th Dist. No. 65357 (Oct. 28, 1993).

{¶18} Finally, appellant's claim that ordering him to pay arrearages and monthly interest and/or processing fees is a violation of his due process rights is wholly unsupported by any authority, and we fail to see any merit in this conclusory assertion. Appellant had the opportunity to object or request a hearing on these issues and he failed to do so.

{¶19} For the reasons cited above, we overrule appellant's first assignment of error.

{¶20} In his second assignment of error, which appears to have some overlap with his first assignment of error, appellant submits the lack of materials on Ohio law at the Nevada state prison where he is incarcerated has deprived him of the opportunity to petition the court for a reduction in child support. He claims this lack of access to the courts is a violation of his First Amendment rights. Appellant further submits that a request for a reduction in his child support obligation (had he been able to access the proper materials to request it at an earlier date) would have likely been granted, due to his "unemployment" since 2004. As a result, appellant now requests permission to seek a retroactive reduction in child support payments.

{¶21} As previously stated, appellant failed to file objections to the CSEA's findings and recommendations and failed to request an administrative hearing to challenge the arrearage amount as set forth in R.C. 3119.87 et seq. Nevertheless, in looking at the merits of appellant's argument, we find he cannot prevail.

{¶22} We acknowledge there is a fundamental constitutional right of access to the courts. In *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1997), the Supreme Court of the United States held "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate

assistance from persons trained in the law." Many years later, the Supreme Court of the United States decided *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), in which it announced a more restrictive interpretation of the right of access to the courts. The *Lewis* court found the Constitution does not require, as part of the right of access to the courts that a state must enable prisoners to discover grievances and litigate effectively once they are in court. *Id.*, 518 U.S. at 354. The court further stated:

> *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.

(Emphasis sic.) *Id.*, 518 U.S. at 355.

{¶23} *See also Pryor v. Cox*, 201 F.3d 441 (6th Cir.1999) (prisoner asserted law library was inadequate, making him unable to prepare a petition to file on behalf of his minor son; court ruled a prisoner's right of access to the courts only extends to direct appeals, habeas corpus petitions, and civil rights claims which challenge confinement conditions); and *Thaddeus-X v. Blatter*, 175 F.3d 378, 392 (6th Cir.1999) (the right to access the courts is limited to particularized causes of action: direct appeals, collateral attacks, and 1983 civil rights actions).

{¶24} Because appellant seeks to pursue an action which does not fall within one of the categories referenced above, the alleged inadequacy of the prison law library does not impact his right of access to the courts. Furthermore, as we stated in our analysis of appellant's first assignment of error, despite appellant's statements to the contrary, it is unlikely his support order would be reduced simply as a result of his incarceration and corresponding inability to earn income. Consequently, we reject appellant's request to remand this matter to the trial court to seek a retroactive reduction in child support and we overrule appellant's second assignment of error.

{¶25} In conclusion, appellant's first and second assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations is affirmed.

Judgment affirmed.

SADLER and TYACK, JJ., concur.
