[Cite as *Kimber v. Davis*, 2013-Ohio-1872.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Traci Kimber,	:	
Plaintiff-Appellee,	:	No. 12AP-888 (C.P.C. No. 85PA-09-7674)
v.	:	(REGULAR CALENDAR)
Marvin Davis,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 7, 2013

Mark Fisher, for appellee.

Eric J. Hoffman, and *Adam S. Eliot*, for appellant.

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

BROWN, J.

{¶ 1} Marvin Davis, defendant-appellant, appeals from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court sustained the objections to the magistrate's decision filed by Traci Kimber, plaintiff-appellee.

{¶ 2} On July 5, 1984, appellee gave birth to T.K. On January 29, 1986, the trial court established the father-child relationship between appellant and T.K. The court ordered appellant to pay child support in the amount of $25 per week, effective February 7, 1986.

{¶ 3} On March 16, 1992, appellee gave birth to M.K. Through Franklin County Child Support Enforcement Agency ("FCCSEA"), appellee requested that paternity be

established between appellant and M.K. and sought child support. Although paternity was established, no child support was ordered.

{¶ 4} On June 1, 2003, T.K. was emancipated. However, neither party requested that child support terminate, and FCCSEA did not initiate a termination of child support.

{¶ 5} On August 16, 2010, FCCSEA held an administrative hearing on the termination of support for T.K. On September 16, 2010, FCCSEA issued findings and a recommendation to terminate the support order and found appellant made overpayments of $9,408.78. The termination of support for T.K. coincided with the emancipation of M.K.

{¶ 6} On December 6, 2010, FCCSEA held a hearing to determine how appellant would receive reimbursement of his overpayment. On December 15, 2010, FCCSEA issued a decision and recommendation, finding that the issue was beyond the scope of the hearing and sustained its September 16, 2010 decision. The December 15, 2010 decision was never adopted by the trial court because FCCSEA never requested that the court do so.

{¶ 7} On November 3, 2011, appellee filed an objection to the administrative decision, arguing that FCCSEA led her to believe that the seven years of overpayments by appellant were actually child support payments for M.K. Appellee also claimed she did, in fact, object to FCCSEA's December 15, 2010 decision, although FCCSEA has no record of such.

{¶ 8} On May 25, 2012, a magistrate heard appellee's objections. On July 3, 2012, the magistrate issued a decision, in which she dismissed appellee's objection to the December 15, 2010 decision as being untimely filed. Appellee filed objections to the magistrate's decision on July 18, 2012.

{¶ 9} On August 6, 2012, the trial court held a hearing on appellee's objections. On September 13, 2012, the trial court issued a decision and judgment entry. In the judgment, the trial court sustained appellee's objections, finding that appellee timely filed her objection to FCCSEA's December 15, 2010 decision, appellee timely filed her objections to the magistrate's July 3, 2012 decision, and appellant's seven-year delay in raising the issue of overpayments was prejudicial to appellee. Appellant appeals the judgment of the trial court, asserting the following assignments of error:

> [I.] The trial court erred as a matter of law in finding that Plaintiff-Appellee timely filed an objection to the December 15, 2010 Administrative Termination Hearing Decision and Recommendation.
>
> [II.] The trial court erred as a matter of law in finding that Plaintiff-Appellee timely filed an objection to the July 3, 2012 Magistrate's decision.
>
> [III.] The trial court erred as a matter of law, reached a decision against the manifest weight of the evidence and abused its discretion in sustaining Plaintiff-Appellee's objections to the Magistrate's Decision and entering a final judgment establishing no over-payment of child support without conducting an evidentiary hearing.

{¶ 10} Appellant argues in his first assignment of error that the trial court erred when it found that appellee timely filed an objection to the December 15, 2010 FCCSEA decision. R.C. 3119.91 provides that a child support enforcement agency must issue a decision that includes, among other things, a notice stating that a party may object to the decision by filing a motion in the court of common pleas within 30 days after the issuance of the decision, and that if neither party "files the motion within the thirty-day period, the administrative hearing decision is final and will be filed with the court or in the administrative case file." R.C. 3119.92 provides that "[i]f neither the obligor nor the obligee files a motion as described in section 3119.91 of the Revised Code within the thirty-day period, the administrative hearing decision is final and will be filed with the court or in the administrative case file." Thus, both statutes are clear that the administrative hearing decision becomes final if neither party files an objection within 30 days of its issuance.

{¶ 11} In the present case, FCCSEA issued its decision on December 15, 2010. Appellee did not file her objection to FCCSEA's decision until November 3, 2011. Thus, appellee's objection was filed over ten months after FCCSEA's decision, and over nine months beyond the 30-day period delineated in R.C. 3119.91 and 3119.92. Therefore, on its face, the objection was untimely.

{¶ 12} Appellee counters that, because FCCSEA failed to file its decision with the court as required by R.C. 3119.91 and 3119.92, FCCSEA's decision was not final, and the

time for filing her objection with the court did not lapse. In construing statutes, we must read words and phrases in context and construe them in accordance with rules of grammar and common usage. *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 11. We cannot restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly's wording. *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390, 2004-Ohio-6549, ¶ 13, citing *Wachendorf v. Shaver*, 149 Ohio St. 231 (1948), paragraph five of the syllabus. Instead, we must accord significance and effect to every word, phrase, sentence, and part of the statute, and abstain from inserting words where words were not placed by the General Assembly. *State v. S.R.*, 63 Ohio St.3d 590, 594-95 (1992). When we conclude that a statute's language is clear and unambiguous, we apply the statute as written. *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 9. Under such circumstances, we must give effect to its plain meaning. *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus.

{¶ 13} Here, appellee fails to cite any authority to support her contention that FCCSEA's decision was not final because the agency failed to file its decision with the court as required by R.C. 3119.91 and 3119.92, and such a view is not consistent with the plain language of the statutes. Both statutes plainly indicate that, if neither party files an objection within 30 days, the administrative decision is final. The statute contains no further qualifying language on the finality of the order. The language in both statutes indicating that the agency's decision "will" be filed with the court does not qualify the prior directive that the administrative decision is final absent objections within 30 days. The operation of the finality clause and the filing clause are independent of each other. Indeed, the statutes do not even use any mandatory "shall" language when directing the agency to file the decision with the court, and, in fact, allow for the decision to be filed with the court "or in the administrative case file." Therefore, we find the statutory language relied upon by appellee does not persuade us that an agency's decision is not final but is infinitely appealable if it is not filed with the court.

{¶ 14} Appellee also counters that, pursuant to Civ.R. 6(B), a court may, in its discretion, enlarge the period in which objections must be filed. Civ.R. 6(B) provides, in pertinent part:

> When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

{¶ 15} Therefore, Civ.R. 6(B) is very specific that extensions of time apply to acts required to be done within a specific time, pursuant to the Ohio Rules of Civil Procedure, to notices given under the rules, or to orders of the court. Civ.R. 6(B) does not mention acts required to be done pursuant to a statute, such as R.C. 3119.91 or 3119.92. *See Hughes v. Fed. Mogul Ignition Co.*, 5th Dist. No. 06 CA 27, 2007-Ohio-2021 (had the rulemakers intended that Civ.R. 6(B) be applied to statutory provisions, they would have so specified, as they did, for example, with the time-computation provisions of Civ.R. 6(A), which expressly governs the Ohio Rules of Civil Procedure, local rules of any court, order of court, or any applicable statute), citing *Williams v. E. & L. Transport Co.*, 81 Ohio App.3d 108 (9th Dist.1991). Furthermore, Civ.R. 6(B) requires a motion for extension be filed if the time period permitting the act to be done has expired, but appellee never filed such a motion in the present case. *See Ruch v. Ohio Dept. of Transp.*, 10th Dist. No. 03AP-1070, 2004-Ohio-6714, ¶ 23 (a party must move for an extension of time in the trial court, pursuant to Civ.R. 6(B), and seeking entitlement to a Civ.R. 6(B) extension of time upon appeal is untimely); *Green v. Price*, 11th Dist. No. 91-A-1650 (July 10, 1992) (once time has expired, Civ.R. 6(B)(2) permits an extension of time only after a motion has been made). In addition, appellee never showed any "cause" for her untimely filing or "excusable neglect," as required by Civ.R. 6(B). *See id*. (before granting an extension of time under Civ.R. 6(B), the trial court must make a determination that the failure to act was the result of excusable neglect).

{¶ 16} The remainder of appellee's argument outlines FCCSEA's failings in this case, including FCCSEA's failure to establish a support order for M.K., the younger child, despite appellee's requests, FCCSEA's failure to terminate the support order for T.K. until seven years after her emancipation, and FCCSEA's failure to file with the court its decision

and recommendation. The trial court found that, due to FCCSEA's failure to properly pursue this matter from the outset, and the fact that FCCSEA did not request that the trial court make the administrative termination hearing decision an order of the court, appellee's position was "compelling" and found her objection to the administrative decision was timely.

{¶ 17} However, FCCSEA's prior failures to properly pursue this matter do not impact the issue of whether appellee timely filed an objection to the administrative decision and the finality of the decision. None of FCCSEA's actions or inactions in handling the matter prevented appellee from filing a timely objection, and FCCSEA's failure to file its decision with the trial court did not affect the finality of the decision, as explained above. Although we fully comprehend the equitable principles at play and can sympathize with appellee's position, the statutes at issue are clear in their legal requisites. While it may be true that equity is an important concern in juvenile and domestic relations matters, equitable concerns must follow the law, especially when that law is clear and based upon statutory provisions, as it is in the present case. *See Civ. Serv. Personnel Assn., Inc. v. Akron*, 48 Ohio St.2d 25, 27 (1976) (when the rights of parties are clearly defined and established by law, especially when the source of such definition is through a constitutional or statutory provision, the maxim "equity follows the law" is usually strictly applied); *Caldwell v. Caldwell*, 12th Dist. No. CA2008-02-019, 2009-Ohio-2201, ¶ 80 (even when obvious concerns over equity emerge, the appellate court is not in the position to rewrite state law to permit a more equitable result); *In re Barone*, 11th Dist. No. 2004-G-2575, 2005-Ohio-4479, ¶ 19 (equity follows the law and cannot be invoked to destroy or supplant a legal right). *See also Bagley v. Bagley*, 181 Ohio App.3d 141, 2009-Ohio-688, ¶ 33 (2d Dist.) (it is fundamental that equity follows the law). Thus, "while it may be tempting to decide [a] case on subjective principles of equity and fundamental fairness, [a] court has a greater obligation to follow the law." *State ex rel. Schwaben v. School Emps. Retirement Sys.*, 76 Ohio St.3d 280, 285 (1996). Accordingly, despite the equity and fairness principles involved in this case, we cannot use these concepts to override the clear statutory language of R.C. 3119.91 and 3119.92. For these reasons, we find the trial court erred when it found that appellee timely filed an objection to the December 15, 2010

FCCSEA decision. Therefore, appellant's first assignment of error is sustained. Given this determination, appellant's second and third assignments of error are rendered moot.

{¶ 18} For the foregoing reasons, appellant's first assignment of error is sustained, his second and third assignments of error are rendered moot, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is reversed.

Judgment reversed.

KLATT, P.J., and SADLER, J., concur.
