

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of:	:	
Angela D. Morgan [Baker],	:	
	:	
Plaintiff-Appellant,	:	No. 12AP-694
	:	(C.P.C. No. 00DP-351)
v.	:	
	:	(REGULAR CALENDAR)
Alvon L. Williams,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on July 16, 2013

Angela D. Morgan [Baker], pro se.

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

TYACK, J.

{¶ 1} Plaintiff-appellant, Angela D. Morgan, now known as Angela D. Baker, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, terminating the child support arrearage defendant-appellee, Alvon L. Williams, owed to appellant. Appellant assigns a single error:

The trial court erred by terminating the arrearages of child support with Alvon Williams for Angela Baker.

Because the trial court committed plain error by terminating appellee's arrearage, we reverse.

I. History

{¶ 2} Appellant filed a complaint against appellee on April 25, 2000, to establish paternity of a child, A.W., born on April 24, 1997. After appellee failed to answer the complaint, a magistrate, on April 16, 2001, entered a default judgment finding appellee to be the father of the child, ordering him to pay child support in the amount of \$171.33 per month plus processing charge, and establishing arrears in the amount of \$1,713.00 as of March 31, 2001, to be liquidated at the rate of \$34.26 per month plus processing charges. The trial court adopted the magistrate's written decision in a judgment entry issued on April 16, 2001.

{¶ 3} The Franklin County Child Support Enforcement Agency ("FCCSEA") filed an administrative mistake of fact findings and hearing decision on January 9, 2004, determining appellee's arrearage increased to a total of \$7,195.56 as of November 30, 2003 because appellee failed to make any child support payments. Without objection from either party, FCCSEA ordered appellee's monthly arrearage payment increased to \$75. The trial court adopted the decision on February 26, 2004, as an order of the court.

{¶ 4} On July 13, 2007, appellant filed a motion to hold appellee in contempt for failing to pay child support and to determine the amount of the child support arrearage. A magistrate issued a decision on December 12, 2007, finding appellee in contempt for failing to pay child support and suspending appellee's sentence on the condition that he purge the contempt by liquidating the arrearage established in the amount of \$13,831.61 as of October 31, 2007 at the rate of \$76 per month plus processing charge. The trial court adopted the magistrate's decision on the same day and entered judgment accordingly. On May 16, 2008, the trial court issued a judgment entry finding appellee failed to purge the contempt and sentencing appellee to ten weekends in the Franklin County Corrections Center.

{¶ 5} Following an administrative review, FCCSEA filed an administrative adjustment decision on February 10, 2011, recommending appellee pay \$165.80 per month plus processing charge for child support and \$76.00 per month as payment on the arrearage. Appellee objected to the recommendation, and FCCSEA notified both parties that it would hold an administrative hearing on March 8, 2011. Appellee alone appeared at the hearing and presented evidence demonstrating he was receiving Supplemental

Security Income ("SSI") because the Social Security Administration classified him as disabled. On April 25, 2011, FCCSEA filed an administrative modification hearing decision recommending appellee's child support payments be eliminated because SSI is expressly excluded as income for child support. On May 26, 2011, the trial court issued a judgment entry adopting the administrative modification hearing decision terminating appellee's child support obligation.

{¶ 6} Appellee filed a motion on November 16, 2011, requesting termination of his child support obligation and arrearages. A magistrate scheduled a hearing on the motion and sent notice of the hearing to appellant by certified mail. A November 23, 2011 docket receipt confirms delivery of the certified letter. At the subsequent hearing, the magistrate received testimony from appellee who appeared pro se; appellant neither attended the hearing nor had an attorney present to represent her. The magistrate noted in the record that appellee's on-going child support obligation had already been terminated and filed a written decision, terminating appellee's arrearages owed to appellant, but preserving any arrearages owed to the Ohio Department of Job and Family Services. On the same day, the trial court adopted the magistrate's decision in a judgment entry.

{¶ 7} Appellant timely filed an objection to the magistrate's decision on February 29, 2012. The trial court held a hearing on plaintiff's objection and denied it in a judgment entry filed on August 9, 2012.

II. Assignment of Error

{¶ 8} In her objection to the magistrate's decision, appellant essentially argued that the magistrate erred in terminating the arrearages because appellee should help with supporting the child and appellant did not know she should appear at the hearing and was deprived of the opportunity to testify.

{¶ 9} R.C. Chapter 3119 governs child support orders and R.C. Chapter 3123 governs default under a child support order. Three sections of those chapters are relevant to appellant's appeal. Pursuant to R.C. 3123.18, if a court or child support enforcement agency finds an obligor to be in default under a support order, "each payment or installment that was due and unpaid under the support order that is the basis for the default determination plus any arrearage amounts that accrue after the default determination and during the period of default shall be a final judgment which has the full

force, effects, and attributes of a judgment entered by a court of this state for which execution may issue under Title XXIII [23] of the Revised Code." R.C. 3119.83 similarly states that "[e]xcept as provided in section 3119.84 of the Revised Code, a court or child support enforcement agency may not retroactively modify an obligor's duty to pay a delinquent support payment." Lastly, R.C. 3119.84 provides that "[a] court with jurisdiction over a court support order may modify an obligor's duty to pay a support payment that becomes due after notice of a petition to modify the court support order has been given to each obligee and to the obligor before a final order concerning the petition for modification is entered."

{¶ 10} Here, appellee was subject to a court order establishing the total amount of his child support arrearage. The court's termination of appellee's duty to pay his delinquent child support payments is contrary to the express terms of R.C. 3119.83. *Byrd v. Knuckles*, 120 Ohio St.3d 428, 2008-Ohio-6318, ¶ 5 (noting "R.C. 3119.83 prohibits judges from retroactively modifying child-support orders" but does not "nullify reasonable agreements reached by the parties to a child-support order"). Although R.C. 3119.01 prohibits inclusion of SSI payments in calculating gross income for child support, nothing in the record demonstrates appellee received SSI during the time his arrearages accumulated. *See Bonenfant v. Bonenfant*, 12th Dist. No. CA2005-03-065, 2005-Ohio-6037, ¶ 14, 19 (concluding trial court erred in retroactively modifying a child support arrearage).

{¶ 11} Because the termination of appellee's child support arrearages contradicts R.C. 3119.83, we sustain appellant's assignment of error.

III. Disposition

{¶ 12} Having sustained appellant's single assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, and remand with instructions to apply R.C. 3119.83.

*Judgment reversed
and cause remanded.*

BROWN and SADLER, JJ., concur.
