[Cite as *Durst Brigham v. Durst,* 2010-Ohio-3679.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

DONNA M. DURST BRIGHAM,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-P-0085**
- vs -	:	
STEVEN CHARLES DURST,	:	
Defendant-Appellant,	:	
(PORTAGE COUNTY CHILD SUPPORT ENFORCEMENT AGENCY,	:	
Appellee).	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 1981 CV 0692.

Judgment: Affirmed.

Melissa R. V. Roubic, Roubic Law Offices, L.L.C., 218 West Main Street, Suite 150, Ravenna, OH 44266-2744 (For Plaintiff-Appellee).

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TIMOTHY P. CANNON, J.

{¶1} Appellant, Steven Charles Durst ("Durst"), appeals the judgment entered by the Domestic Relations Division of the Portage County Court of Common Pleas.

{¶2} The instant proceedings arose out of a motion filed by the Portage County Child Support Enforcement Agency ("CSEA") to calculate Durst's child-support arrearages. Following a hearing on the matter, the trial court calculated Durst's past child-support arrearages and entered judgment ordering Durst to pay those arrearages.

{¶3} Durst was married to Appellee Donna M. Durst Brigham ("Brigham"). Two children were born of this marriage—one in 1972 and one in 1975. The parties divorced in 1977.

{¶4} At the hearing, Brigham testified that the original divorce decree from Portage County ordered Durst to pay child support in the amount of "$50 per week, per child." However, she also testified that Durst's total child support obligation was $200 per month. If the original support obligation was $50 per week, per child, the total child support obligation would be approximately $400 per month. The magistrate and the trial court both found that Durst's obligation was $50 per week, per child. In his brief, Durst asserts that the original child support order was $25 per week, per child. Although he does not cite to the record in support of his assertion, it appears Durst is correct. In addition to her testimony that the total child-support obligation was $200 per month, Brigham submitted an arrearage worksheet as an exhibit. This exhibit indicates Durst's child-support obligation totaled $50 per week, or approximately $2,600 per year. The trial court's ultimate award is based on the calculations contained in Brigham's exhibit No. 1. Neither Brigham nor CSEA has filed a cross-appeal challenging the trial court's determination. Accordingly, for the purpose of this appeal, we will presume that Durst's original child-support obligation was $25 per child, per week (for a total of $50 per week), or approximately $200 per month.

{¶5} Brigham married her second husband, Joseph Brigham, in 1978. Joseph Brigham adopted the parties' children on August 18, 1988.

{¶6} Prior to the parties' divorce, Durst moved to Florida. Durst remained in Florida for the relevant time periods of this matter. Various judgment entries from Florida courts were entered pertaining to Durst's child support obligation.

{¶7} In 1979, the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County, issued an entry purporting to modify Durst's child-support obligation to $109 per month.

{¶8} In 1981, a show cause hearing was held in the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County. The court discharged the request to show cause as a result of Durst's recent child-support payments. The court ordered that Durst continue to make child-support payments of $109 per month. Also, the court determined that arrearages totaled $2,119 as of August 1981.

{¶9} In 1982, a show cause hearing was held in the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County. The court found Durst in contempt for his failure to pay child support. The court determined that arrearages totaled $2,823 as of June 1982. The court sentenced Durst to 30 days in jail, but provided a means for Durst to purge the contempt—by making monthly child-support payments of $109 and, in addition, monthly payments of $50 to be applied to the arrearage.

{¶10} In 1983, the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County considered and ratified a "stipulation" filed in that court. The court ordered Durst to pay $75 toward "welfare reimbursement for the State of Ohio." Also, the court

determined that arrearages totaled $3,183.24 as of August 1983. This entry did not mention Durst's child-support obligation.

{¶11} In 1984, the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County entered an "order on contempt and income deduction." The court determined that arrearages totaled "$3,183.24 as of January 20, 1983 [sic]." The order required Durst to pay $75 per month, which was to be applied to his welfare reimbursement to the state of Ohio.

{¶12} In 1986, the Circuit Court of the Ninth Judicial Circuit of Florida, Orange County reviewed the matter for a final time. The court determined that arrearages totaled $2,043.24 as of April 1986.

{¶13} In March 2009, CSEA filed a motion "to determine arrearages and for payment of arrearages" in Portage County. In response, Durst filed a "motion to terminate child support order and eradicate the child support arrearage." In this motion, Durst claimed Brigham failed to terminate the child-support order following the adoption of the children by Joseph Brigham.

{¶14} In September 2009, a magistrate's hearing was held on CSEA's motion, at which Durst and Brigham both testified. In addition to the parties' testimony, several exhibits were admitted. Following the hearing, the parties were permitted to file post-hearing briefs; however, only Durst and CSEA filed post-hearing briefs for the magistrate's consideration.

{¶15} The magistrate issued his decision on October 28, 2009. The magistrate recommended that Durst's arrearages be calculated at $17,826.45. The basis of the magistrate's recommendation was that the Florida court did not have jurisdiction to

modify Durst's child-support obligation and his obligation continued until 1988, when the children were adopted.

{¶16} Durst did not file objections to the magistrate's decision pursuant to Civ.R. 53.

{¶17} On November 19, 2009, the trial court issued a judgment entry adopting the magistrate's decision as an order of the court. The trial court confirmed that the child-support arrearages in this matter totaled $17,826.45. The trial court ordered Durst pay $350, plus poundage, per month toward the arrearage until it is paid in full.

{¶18} Durst has timely appealed the trial court's judgment entry ordering him to pay the arrearages. Durst raises three assignments of error:

{¶19} "[1.] The trial court erred to the prejudice of the appellant because it decided the issue of modification under the 1994 Full Faith and Credit Child Support Orders Act (FFCCSOA) which was not in effect when the Florida child support orders were issued, and the children have been [adopted] for over 20 years.

{¶20} "[2.] The trial court erred to the prejudice of the appellant in ruling that both Florida and Ohio did not permit the modification of support orders under the Uniform [Reciprocal] Support Enforcement Act.

{¶21} "[3.] The judgment entry appealed from is unclear as to the findings of facts and conclusions of law to such an extent that it cannot properly be reviewed by an appellate court."

{¶22} We will address Durst's assigned errors in a consolidated fashion.

{¶23} A review of the record on appeal reveals that Durst failed to file objections to the October 28, 2009 magistrate's decision. Civ.R. 53(D)(3) states, in pertinent part:

{¶24} "(b) Objections to magistrate's decision.

{¶25} "(i) Time for filing. A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

{¶26} "(ii) Specificity of objection. An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

{¶27} "(iii) Objection to magistrate's factual finding; transcript or affidavit. An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

{¶28} "(iv) Waiver of right to assign adoption by court as error on appeal. Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption

of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

{¶29} Pursuant to the foregoing rule, a party's failure to file objections to a magistrate's decision waives all but plain error. Civ.R. 53(D)(3)(b)(iv). Regarding plain error, the following standard of review was averred by the Supreme Court of Ohio in *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, syllabus:

{¶30} "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself."

{¶31} With this highly-deferential standard of review in mind, we turn to the merits of Durst's assignments of error.

{¶32} Durst argues the trial court's judgment entry is not reviewable because it does not contain findings of fact pursuant to Civ.R. 52. We note that the magistrate made findings of fact pursuant to Civ.R. 53(D)(3)(a)(ii). Thus, Durst's argument lacks merit. Furthermore, Durst has waived any perceived error regarding factual findings as a result of his failure to file objections to the magistrate's decision. See, e.g., *Stauffer v. Stauffer*, 11th Dist. No. 2008-G-2860, 2009-Ohio-998, at ¶21. (Citations omitted.)

{¶33} Durst claims the trial court erred by calculating his child-support arrearages at $17,826.45. Instead, he argues that the arrearage should be calculated based on the Florida court's modification of the child-support order to $109 per month.

In addition, he contends his support obligation terminated in 1983, instead of 1988 as found by the trial court.

{¶34} There are three statutory schemes at issue in this matter: the Uniform Reciprocal Enforcement of Support Act ("URESA"), the Uniform Interstate Family Support Act ("UIFSA"), and the Full Faith and Credit for Child Support Orders Act ("FFCCSOA"). "URESA, which had been codified at R.C. Chapter 3115, was repealed by the General Assembly effective January 1, 1998, and replaced by [UIFSA]." *Smith v. Smith*, 9th Dist. No. 21204, 2003-Ohio-1478, at ¶11, fn. 1. In addition, we note "the UIFSA priority rules are nearly identical to the existing requirements of the FFCCSOA." *Dunn v. Dunn* (2000), 137 Ohio App.3d 117, 123. (Citations omitted.) In this matter, the trial court applied UIFSA. See R.C. 3115.01 et seq., the original version of which was effective January 1, 1998.

{¶35} "A tribunal of this state has continuing, exclusive jurisdiction over a child support order it issues as long as the obligor, individual obligee, or child subject to the child support order is a resident of this state, unless all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction." R.C. 3115.07(A).

{¶36} In addition, R.C. 3115.09 provides, in part:

{¶37} "(B) If a proceeding is brought under sections 3115.01 to 3115.59 of the Revised Code, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall do the following:

{¶38} "(1) If only one of the tribunals would have continuing, exclusive jurisdiction, recognize the child support order of that tribunal as controlling.

{¶39} "(2) If more than one of the tribunals would have continuing, exclusive jurisdiction, recognize the child support order issued by the tribunal in the current home state of the child as controlling, but if a child support order has not been issued in the current home state of the child, recognize the child support order most recently issued as controlling.

{¶40} "(3) If none of the tribunals would have continuing, exclusive jurisdiction, the tribunal of this state having jurisdiction over the parties shall issue its own child support order which shall be controlling."

{¶41} In this matter, the magistrate found that neither Brigham nor CSEA ever consented to the Florida court having jurisdiction to modify the child-support award. Thus, under R.C. 3115.07, the Florida court did not have jurisdiction to modify the child-support award. Moreover, the trial court found that there were two competing child-support awards in this matter, but, pursuant to R.C. 3115.09(B)(1), only the Portage County court had exclusive jurisdiction. Thus, the trial court ordered that the Portage County order should be enforced.

{¶42} Durst argues that the trial court erred in retroactively applying the FFCCSOA to this matter. As previously noted, the UIFSA priority rules are substantially similar to the requirements of the FFCCSOA. *Dunn v. Dunn*, 137 Ohio App.3d at 123. (Citations omitted.) While the trial court considered this matter under UIFSA, we will address Durst's contention. The Twelfth Appellate District has held that the FFCCSOA is a remedial statute and, therefore, can be applied retroactively. Id. at 124.

Accordingly, the trial court did not err by applying the provisions of R.C. Chapter 3115 retroactively.

{¶43} Moreover, even if this case was decided under the former URESA statutes instead of UIFSA, the result would be the same. As the Ninth Appellate District noted in a similar case, "'it is inconceivable that URESA would require (wife) to travel [to] Florida to defend a child support modification case filed under the standard URESA petition completed by (wife) for the sole purpose of collecting unpaid child support.'" *Smith v. Smith*, 2003-Ohio-1478, at ¶23. Thus, in this matter, the Florida court was without jurisdiction to modify the original child-support award. Id. at ¶24. In addition, the Ninth District held:

{¶44} "[T]he Ohio Supreme Court specified that 'the amount of support ordered in an initial proceeding under (URESA) must conform to the amount determined in a previous divorce case(.)' [*San Diego v. Elavsky* (1979), 58 Ohio St.2d 81, paragraph one of the syllabus.] In a traditional URESA proceeding, therefore, Ohio courts lack subject matter jurisdiction to modify support obligations established in the initiating court's orders. [*Walker v. Amos* (2000), 140 Ohio App.3d 32, 38.]" Id. at ¶14.

{¶45} Again, in this matter, the record indicates that Brigham was never notified about the Florida proceedings. Thus, even under prior URESA law, the Florida court was not permitted to modify the original Ohio support order. See *San Diego v. Elavsky*, 58 Ohio St.2d 81, paragraph two of the syllabus.

{¶46} Durst cites the Supreme Court of Florida's decision in *Koon v. Dept. of Social Serv.* (Fla.1986), 494 So.2d 1126, 1129, where the court held that, under URESA, a responding state court had the authority to issue a support order

"commensurate with the current needs" of the minor children and was not bound by orders from the issuing state. However, in 1996, the First District Court of Appeals of Florida noted that "the 1994 federal legislation [FFCCSOA] has preempted Florida law with respect to the modification of child support orders in a URESA enforcement action. Under the act, modifications are prohibited unless the exceptions *** are satisfied." *State v. Fleet* (Fla.App.1996), 679 So.2d 326, 329.

{¶47} Durst argues the trial court erred by determining that his child support obligation terminated in 1988, when the children were adopted, rather than 1983, when he signed a form giving his consent for the adoptions. This was a factual determination by the magistrate, and, since Durst did not file objections to the magistrate's decision, he has waived his ability to challenge this issue on appeal. Civ.R. 53(D)(3)(b)(iv).

{¶48} When reviewing the entire record in this matter, we conclude that Durst has not demonstrated plain error occurred in regard to the trial court's calculation of his child-support arrearages or its order that he pay those arrearages.

{¶49} Durst's assignments of error are without merit.

{¶50} The judgment of the Domestic Relations Division of the Portage County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.