[Cite as *Jones v. Jones*, 2010-Ohio-744.]

IN THE COURT OF APPEALS FOR CHAMPAIGN COUNTY, OHIO

TYRIN R. JONES :

Plaintiff-Appellee : C.A. CASE NO. 2008 CA 34

v. : T.C. NO. 1994 DR 224

ARLESTER E. JONES : (Civil appeal from Common Pleas Court, Domestic Relations)

Defendant-Appellant :

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O P I N I O N

Rendered on the 26th day of February, 2010.

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TYRIN R. JONES, 3537 Golden Meadows Court, Dayton, Ohio 45404
Plaintiff-Appellee

ARLESTER E. JONES, 1830 Yellowstone Court, Apt. C, Gastonia, NC 28054
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Arlester E. Jones (hereinafter "Arlester") appeals, pro se, from a decision of the Champaign County Court of Common Pleas in which the court adopted in part and modified in part an order of the magistrate regarding Jones' motions for the suspension and modification of child support, as well as for genetic testing on his two children in order to determine paternity. Jones also appeals from the trial court's adoption

of the magistrate's order denying his motion for reimbursement of his 2007 federal tax refund which was intercepted by the Champaign County Child Support Enforcement Agency (hereinafter "CSEA") and applied towards an outstanding child support arrearage allegedly owed by Arlester. The judgment entry adopting in part and modifying in part the decision of the magistrate was issued by the trial court on November 6, 2008. Arlester filed an appeal with this court on December 2, 2008.

I

{¶ 2} Arlester Jones and Tyrin Jones (hereinafter "Tyrin") were married on January 21, 1984. During their marriage, the parties had two children: Shauna R. Jones, born May 31, 1984; and Michael D. Jones, born April 19, 1986.

{¶ 3} Arlester and Tyrin finalized their divorce on October 19, 1995. As part of their divorce order, Tyrin was awarded custody of Shauna and Michael, while Arlester was ordered to pay child support for the two children. Shauna was emancipated by order of the court in May of 2003, and Michael was emancipated approximately one year later, in May of 2004. From August 23, 2003, until December of 2004, the parties reconciled to the extent that they lived together at the same residence. During the time in which Arlester and Tyrin lived together, no motion to modify child support was filed by either party.

{¶ 4} On January 12, 2005, Arlester filed a motion in which he requested that the trial court permit him to claim Shauna and Michael as his dependents for tax purposes, and enjoin Tyrin from doing the same. Arlester asked the court to eliminate any child support arrearage he owed Tyrin. Moreover, Arlester requested that the court order Tyrin to pay him spousal support in the amount of $200.00 per month. A hearing was held before the

magistrate on February 10, 2005. In a written decision filed on February 25, 2005, the magistrate denied all of Arlester's requests . The magistrate also noted in the order that Arlester's remaining child support arrearage was $14,887.06. Arlester filed objections to the magistrate's order on March 9, 2005.

{¶ 5} On January 11, 2007, Arlester filed a motion in which he asked the trial court to rule on his pending objections to the magistrate's order. On the same day, Arlester filed a motion to vacate the petition for divorce, a motion to vacate the child support order and arrearages [sic], a motion for relief, and a motion to stay the support. As a basis for these new motions, Arlester disputed that he was the biological father of either Shauna or Michael. In a "motion to amend" filed on March 8, 2007, Arlester also requested that the court order Shauna and Michael to submit to genetic testing in order to determine whether Arlester was the father of either child.

{¶ 6} In an entry filed on March 26, 2007, the trial court overruled Arlester's pending objections. Specifically, the court held that since Arlester did not file a transcript of the hearing held on February 10, 2005, the court was required to accept the magistrate's findings as true and could only examine the legal conclusions. *Harris v. Mapp*, Franklin App. No. 05AP-1347, 2006-Ohio-5515. Thus, the court denied Arlester's requests regarding the elimination of the child support arrearage, the granting of spousal support, and allowing him to claim Shauna and Michael as dependents. Arlester did not file an appeal of this decision rendered by the trial court on March 26, 2007.

{¶ 7} In regards to Arlester's motion to vacate, the trial court withheld a ruling until the Champaign County CSEA was properly served with a copy of the motion and had an

opportunity to respond. The CSEA filed its response on April 10, 2007. On June 5, 2007, the trial court filed a written decision in which it overruled Arlester's motion to vacate. In particular, the court held that with the exception of the request for genetic testing, Arlester's motion was prematurely filed and did not comply with R.C. § 3119.962. Simply put, the court declined to order that Tyrin, Shauna, or Michael submit to genetic testing because Arlester did not first attempt to have them voluntarily submit to testing.

{¶ 8} On February 14, 2008, Arlester filed a motion in which he requested that Shauna and Michael be joined as parties to the litigation, and that the child support order be modified. Arlester stated in his motion that he served Tyrin, Shauna, and Michael pursuant to the court's instruction and requested that they voluntarily submit to genetic testing. Arlester stated that as of the date of the filing of his motion, neither Tyrin nor the children had agreed to be tested. Thus, Arlester requested in the motion that the court order Tyrin and the children to submit to genetic testing. Additionally, on April 4, 2008, Arlester filed a motion in which he requested that the Champaign County CSEA reimburse his 2007 tax refund which it intercepted and paid towards the existing child support arrearage he owed to Tyrin.

{¶ 9} On May 9, 2008, the magistrate issued an order in which he recommended that the trial court dismiss Arlester's motion to join, motion to modify support, and motion for genetic testing. The magistrate also overruled Arlester's motion to reimburse his tax refund. Arlester filed objections to the magistrate's decision on May 22, 2008. Tyrin failed to file any response to Arlester's objections. We note that Arlester failed to object to the magistrate's denial of his motion for reimbursement of his tax refund.

{¶ 10} As previously noted, on November 6, 2008, the trial court filed an entry in which it adopted in part and modified in part the magistrate's order. Specifically, the trial court granted Arlester's motion to join Shauna and Michael as parties to the instant litigation. Pursuant to R.C. § 3119.961, the trial court held that it had the authority to order Shauna and Michael to submit to genetic testing in order to determine whether Arlester was, indeed, their biological father. The court, therefore, ordered Arlester to serve Shauna and Michael with copies of the motion for genetic testing after properly joining them as parties. The court also stated as follows:

{¶ 11} "Insofar as [Arlester's] request for [child support] modification is based upon anticipated results of genetic testing, said motion is not ripe for adjudication as no genetic test results have been submitted, and a motion for relief filed pursuant to R.C. § 3119.961 et seq. is not currently pending."

{¶ 12} First, with respect to Arlester's claim that he was entitled to modification and/or suspension of child support payments due to his residing with Tyrin in 2003 and 2004, the trial court agreed with the magistrate and denied Arlester's objection. The trial court noted that the sole motion left pending was Arlester's motion for genetic testing, and the court stayed any ruling on that motion until Shauna and Michael were properly served as new parties to the litigation.

{¶ 13} It is from this judgment that Arlester now appeals.

II

{¶ 14} Initially, we note that Arlester has failed to comply with App. R. 16(A)(3) and (7) insofar as he has not set forth any specific assignments of error for us to review.

Instead, Arlester has provided us with six "issues" in which he essentially argues that the trial court erred in its November 6, 2008, ruling. It would be well within our authority to dismiss the instant appeal for failure to comply with the appellate rules. *State v. Peoples*, Miami App. No. 2005 CA 20, 2006-Ohio-4162. For the purposes of clarity, however, we will address Arlester's "issues."

{¶ 15} In "Issue[s] 2, 4, 5," and "6," Arlester essentially argues that the trial court erred when it denied his motion to modify and/or vacate the amount of child support he owed based upon the length of time he resided with Tyrin in 2003 and 2004. Arlester asserts that because he financially supported Tyrin while she was in nursing school and provided additional support to Shauna and Michael during this time period, he was entitled to a modification in his child support obligation.

{¶ 16} Arlester originally advanced the foregoing argument in his motion filed on January 12, 2005. The magistrate overruled said motion in a written decision filed on February 25, 2005. The trial court subsequently issued a decision on March 26, 2007, in which the court overruled Arlester's pending objections and adopted the magistrate's order. Arlester failed to appeal the trial court's decision. Thus, he waived his right to appeal the court's decision regarding the modification and/or elimination of his child support obligation based upon his alleged financial support of Tyrin, Shauna, and Michael during 2003 and 2004, and he is foreclosed from advancing this argument in the present appeal.

{¶ 17} Moreover, we previously noted that Arlester failed to object to the magistrate's denial of his motion for reimbursement of his 2007 tax refund in his objections to the magistrate's order filed on May 22, 2008. Thus, Arlester has waived any argument

regarding said denial.

{¶ 18} In "Issue[s] 1" and "3," Arlester states that the trial court erred when it failed to immediately order Shauna and Michael to submit to genetic testing. Arlester's argument in this regard is undermined by the fact that the court specifically noted that his motion for genetic testing was pending, and a judgment on the motion would be issued once Arlester joined Shauna and Michael as parties to the litigation and properly served them with the motion. Thus, any issues regarding the genetic testing of Shauna and Michael are not properly before us. The court properly required Arlester to serve Shauna and Michael with requests for genetic testing. Moreover, the court did not abuse its discretion when it ordered Arlester to request that Shauna and Michael voluntarily submit to genetic testing prior to the court conducting a hearing pursuant to R.C. § 3119.961. As the trial court stated, any decision to modify the amount of arrearage owed by Arlester would be premature until genetic testing is performed on Shauna and Michael in order to determine whether Arlester is their biological father.

II

Judgment affirmed.

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GRADY, J., concurs.

HARSHA, J., concurring in part and dissenting in part:

{¶ 19} I concur in the judgment and opinion as it addresses "Issues 2, 4, 5 and 6." But I dissent from the resolution of "Issues 1 and 3." Because the matters raised in those issues are still pending before the trial court, I conclude we have no jurisdiction to review

them and would simply dismiss that portion of the appeal.

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(Hon. William H. Harsha, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Tyrin R. Jones
Arlester E. Jones
Hon. Roger B. Wilson