

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

DEBRA SUE BEAIR

CASE NO. 1-01-56

PLAINTIFF-APPELLANT

v.

TERRY ALAN BEAIR

OPINION

DEFENDANT-APPELLEE

(ALLEN COUNTY CSEA, APPELLANT)

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Domestic Relations Division**

JUDGMENT: Appeal Dismissed

DATE OF JUDGMENT ENTRY: November 28, 2001

ATTORNEYS:

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For Appellant**

Walters, P.J. This appeal arises from a decision of the Allen County Court of Common Pleas, Domestic Relations Division, to overrule a Motion filed by the Allen County Child Support Enforcement Agency to modify child support and add a third party payee following a guardianship determination by the Allen County Court of Common Pleas, Probate Division. Because we find that Appellant is not properly before this court, we dismiss the appeal.

On November 17, 1989, the Allen County Court of Common Pleas, Domestic Relations Division, entered a Divorce Decree dissolving the marriage of Debra and Terry Bear. Following the dissolution, sole custody of their minor child, Sonya Bear, was granted to Debra Bear, and Terry Bear was ordered to pay child support. Thereafter, on August 16, 1996, the Domestic Relations Division granted a modification of child support in response to the Allen County Child Support Enforcement Agency's ("CSEA") administrative review pursuant to R.C. 3113.216.

On July 10, 1998, the Allen County Court of Common Pleas, Probate Division, issued Letters of Guardianship over Sonya Bear to Kimberly Weis, the child's aunt. Shortly thereafter Sonya Bear resumed living with her mother, Debra Bear. Meanwhile, upon learning of the guardianship determination, the CSEA began escrowing the child support previously ordered by the Domestic Division.

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On March 5, 1999, the CSEA filed a Motion to Join a Party, Change Payee and Determine Accounting in the Domestic Relations Division to add Kimberly Weis as a party to the original divorce and custody case and to establish a child support order in her favor. On March 11, 1999, the Domestic Relations Division joined Kimberly Weis as a third party to the action but did not enter judgment on the other portions of the motion.

Thereafter, a hearing was held before the magistrate, and on March 15, 2000, the magistrate filed her recommendation. The CSEA filed objections to the magistrate's decision. These objections were overruled by a decision of the trial court, holding that it alone had continuing jurisdiction over the custody and support of the minor child pursuant to the prior divorce and support proceedings; furthermore, since no order granting custody of the minor child had been sought or granted by the Domestic Relations Division, the motion to change the child support payee was overruled and dismissed.

From this decision the CSEA appeals and asserts the following sole assignment of error.

Assignment of Error I

The trial court below committed prejudicial error holding that letters of guardianship issued by the Probate Division of the Court of Common Pleas after a decree of dissolution issued by the Domestic Relations Division of the Court of Common Pleas were void and not to be given any weight.

Because we find that the CSEA is not a proper party before this court, we must *sua sponte* dismiss the appeal for the following reasons.

Generally, one who was not a party to a case in a trial court has no right to directly appeal a judgment.¹ An exception to this rule pertains to a person who has attempted to intervene as a party in the proceedings below.² In other words, “appeal lies only on behalf of a *party* aggrieved by the final order appealed from” and “[a]ppeals are not allowed for the purposes of settling abstract questions, but only to correct errors injuriously affecting the appellant.”³ Additionally, in order to initiate an appeal, one must be able to demonstrate a “present interest in the subject matter of the litigation” and prejudice resulting from the trial court’s judgment.⁴

Applying these rules to the case herein, we find that the CSEA never attempted to intervene in the trial court proceedings to become a party to this action. Furthermore, the record reflects that the CSEA merely moved the Domestic Relations Division to make Kimberly Weis the child support payee without any prior attempt to intervene and without any other involvement in this case aside from its administrative powers pursuant to R.C. 3113.216. While R.C.

¹ *In re Kei’ Andre P.* (Feb. 16, 2001), Lucas App. Nos. L-00-1203, JC-99-7186, unreported, citing *Januzzi v. Hickman* (1991), 61 Ohio St.3d 40, 45; *State ex rel. Lipson v. Hunter* (1965), 2 Ohio St.2d 225, 225.

² *State ex rel. Lipson*, 2 Ohio St.2d at 225. *In re Collier* (Feb. 4, 1992), Athens App. No. CA-1494, unreported.

³ *Ohio Savings Bank v. Ambrose* (1990), 56 Ohio St.3d 53, 55-56 at fn. 3, citing *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.* (1942), 140 Ohio St. 160, syllabus (emphasis added).

⁴ *In re Collier*, *supra*, citing *In re Guardianship of Love v. Tupman* (1969), 19 Ohio St.2d 111, 113.

3113.216 affords the CSEA the ability to periodically review child support awards, the final determination of whether or not a change in the amount of support will occur is ultimately left to the court. Thus, the CSEA's failure to intervene and properly become a party to this action is fatal to any argument that it has standing to appeal from the order of the trial court.⁵ Any injury arising from the trial court's decision does not affect the CSEA because they were not a party to the action. Consequently, there is no justiciable issue before this court.

While a proper intervention would have given the CSEA standing to initiate this appeal, we must also point out that intervention in this situation is not envisioned in the applicable statutory provisions. R.C. 3113.21(G)(4)(a), (b), and (c) state the following:

(4)(a) The parent who is the residential parent and legal custodian of a child for whom a support order is issued or the person who otherwise has custody of a child for whom a support order is issued immediately shall notify * * * the child support enforcement agency of *any* reason for which the support order should terminate[.] * * * Upon receipt of a notice pursuant to this division, the agency immediately shall conduct an investigation to determine if any reason exists for which the support order should terminate. * * * If the agency determines the order should terminate, it immediately shall notify the court that issued the support order of the reason for which the support order should terminate.

(b) Upon receipt of a notice given pursuant to division (G)(4)(a) of this section, the court shall order the division of child support to impound any funds received for the child pursuant to the

⁵ *Januzzi*, 61 Ohio St.3d at 45.

support order and the court shall set the case for a hearing for a determination of whether the support order should be *terminated or modified* or whether the court should take any other appropriate action.

(c) If the court terminates a support order pursuant to divisions (G)(4)(a) and (b) of this section, * * * the court immediately shall notify the appropriate child support enforcement agency that the order or notice has been terminated, and the agency immediately shall notify each payor or financial institution required to withhold or deduct a sum of money for the payment of support under the terminated * * * order * * *.⁶

In this case, the guardianship determination by the Probate Division created a necessary reason for Debra Bear, Terry Bear or Kimberly Weis to notify the CSEA, pursuant to R.C. 3113.21(G)(4)(a), that the original support order should be terminated. Once notified, the CSEA then must conduct an investigation and report its findings to the court if the support order should terminate. The statute never authorizes nor contemplates the CSEA's involvement beyond its duty to investigate and notify the trial court of the results of its investigation.⁷ To find otherwise would render the directive found in R.C. 3113.21(G)(4)(c), "the court immediately shall notify [after hearing] the appropriate child support enforcement agency that the order or notice has been terminated[,]" superfluous.

This rationale is further buttressed by an examination of Civ.R. 75, which controls intervention in domestic relations cases. The pertinent section provides that a party may be joined if they have "possession of, control of, or claim[] an

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interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support * * *.”⁸ This section further bars any intervention by the CSEA in this case because they neither have control, possession, or an interest in any child support award.

The possession and control of the child support award rests directly with Terry Bear and his employer pursuant to a wage withholding and indirectly with the trial court. Furthermore, the CSEA does not have an interest in the child support payment because its role is limited to a mere conduit of the support between Terry and Debra Bear. The CSEA itself has no interest in the child support payment, apart from its purely administrative poundage assessment, which we find to be insufficient to support a “claim of interest in the property.”⁹

This case, where the CSEA’s role is limited, is distinguishable from those cases in which the obligee of support receives public assistance. As explained above, in cases such as the one herein, the CSEA has no interest in the child support payment aside from its purely administrative role. However, in situations where the obligee is receiving public assistance the obligee has, in effect, assigned their rights to child support to the Ohio Department of Human Services, of which

⁶ R.C. 3113.21(G)(4)(a), (b), & (c) (emphasis added).

⁷ *Rampi v. Rampi* (Nov. 2, 1999), Stark App. No. 1999CA00011, unreported.

⁸ Civ.R. 75(B)(1).

⁹ *Rampi v. Rampi*, *supra*.

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the CSEA is a representative, thus giving the CSEA standing to initiate an action concerning child support.¹⁰

Because the CSEA was not a party to this action and did not attempt to intervene to become a party, the CSEA does not have standing to bring this appeal. Accordingly, we must dismiss the appeal.

Appeal dismissed.

HADLEY and BRYANT, J.J., concur.

/jlr

¹⁰ See, generally, *Cuyahoga Cty. Support Enforcement Agency v. Lozada* (1995), 102 Ohio App.3d 442; *Cuyahoga Cty. Support Enforcement Agency v. Lovelace* (Dec. 7, 1995), Cuyahoga App. Nos. 68708, 68709, unreported; *State ex rel Lamier v. Lamier* (1995), 105 Ohio App.3d 797.