

[Cite as *Pendergraft v. Watts*, 2010-Ohio-3196.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93808

SANDRA L. PENDERGRAFT

PLAINTIFF

vs.

MICHAEL WILLIAM WATTS

DEFENDANT-APPELLEE

**[APPEAL BY STATE OF OHIO, CUYAHOGA
SUPPORT ENFORCEMENT AGENCY]**

**JUDGMENT:
VACATED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-282266

BEFORE: Rocco, J., Gallagher, A.J., and Blackmon, J.

RELEASED: July 8, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, J.:

{¶ 1} The state of Ohio, Cuyahoga Support Enforcement Agency (“CSEA”), appeals from an order of the domestic relations division of the common pleas court partially granting CSEA’s motion to show cause and determining the arrearage due on a previous support order. The court found that the obligor, defendant-appellee, Michael William Watts, was in arrears in the amount of \$5,060.74 and ordered him to continue to make support payments of \$60 per month as well as \$40 per month payments on the arrearage. In seven assignments of error, CSEA asserts, inter alia, that the court abused its discretion by failing to find Watts in contempt of court and by finding him in substantial compliance with the support order. We find the domestic relations division lacked jurisdiction to enforce this child support order under the Uniform Interstate Family Support Act (“UIFSA”). Therefore, we vacate the domestic relations court’s decision and remand for further proceedings.

Procedural History

{¶ 2} Sandra L. Pendergraft petitioned the domestic relations division of the common pleas court in September 2001 to register a North Carolina child support order for enforcement. The voluntary support order attached to the petition obligated Watts to pay \$60 per month for the support of his child; the petition indicated that \$1,142 was past due pursuant to this order. Watts did not object to the registration. On December 26, 2001, the domestic relations court

registered the North Carolina order and ordered Watts to pay current support of \$60 per month plus \$40 per month toward the arrearage.

{¶ 3} In September 2005, CSEA filed a motion to show cause why Watts should not be held in contempt for failure to comply with the support order. Watts failed to appear for the magistrate's hearing on the motion. The magistrate concluded, based upon an affidavit of arrears submitted by North Carolina, that the arrearage due on the support order was \$5,379.94 as of November 9, 2005, and found Watts in contempt for failing to pay support as ordered. No objections to the magistrate's report were filed. The domestic relations court adopted the magistrate's recommendation and sentenced Watts to 30 days in jail or, in the alternative, not less than 200 hours of community service, but gave him the opportunity to purge his contempt by paying \$500 within 30 days. The court further ordered Watts to seek employment. After Watts failed to purge his contempt, the court issued a capias for his arrest. One year later, Watts had not been apprehended and the court dismissed the capias.

{¶ 4} In March 2009, CSEA filed another motion to show cause why Watts should not be held in contempt for failing to pay support. The magistrate conducted a hearing on this motion on May 28, 2009, at which Watts again failed to appear. CSEA submitted three exhibits to the court, a payment receipt calculation, a payment record, and a certified statement of arrears from North

{¶ 5} Carolina; the magistrate found these exhibits to be true. The magistrate concluded that the arrearage reported by North Carolina was less than

the arrearage found in the domestic relations court's 2005 order. The magistrate construed this fact to mean that Watts had paid all current support due since the prior order. Although these payments were not made through CSEA, they were paid through North Carolina, so the magistrate concluded that Watts was in substantial compliance with the support order. Therefore, the magistrate recommended that the domestic relations court issue an order finding Watts in arrears in the amount of \$5,060.74 as of April 30, 2009, and order him to continue paying current support of \$60 per month plus \$40 per month toward the arrearage.

{¶ 6} CSEA objected to the magistrate's report, and the domestic relations court overruled its objection and adopted the magistrate's decision, finding Watts in arrears in the amount of \$5,060.74 as of April 30, 2009, and ordering him to continue to pay current support plus \$40 per month toward the arrearage.

Law and Analysis

{¶ 7} In *Pula v. Pula-Branch*, Cuyahoga App. No. 93460, 2010-Ohio-912, this court recently addressed the domestic relations court's jurisdiction in a case filed under the UIFSA. In *Pula*, no support order had been issued when the state of Hawaii petitioned the domestic relations division for an order of child support, presumably pursuant to R.C. 3115.31. The domestic relations court ordered the child's mother to pay support. On CSEA's appeal from this decision, we held that the domestic relations court did not have subject matter jurisdiction because the petition for child support did not relate to a divorce, dissolution of marriage, legal separation, or annulment, as required by R.C. 2301.03(L)(1).

{¶ 8} This case is in a slightly different procedural posture than *Pula* because the petition in this case did not initiate an original action for support; it sought to enforce a child support order that had already been issued by another state. However, even though the petition seeks only enforcement, R.C. 3115.55 still provides that "an action under * * * sections 3115.43 and 3115.44 of the Revised Code to register a support order * * * is an original action * * * [Emphasis added]."¹ Therefore, the principles applicable in *Pula* also apply here.

{¶ 9} R.C. 3115.39(A) provides that "[a] support order * * * of another state may be registered in this state by sending all of the following documents and

¹The notion that a petition to register a foreign judgment is an original action seems to us to be at odds with another defining principle of the UIFSA, that registration of the other state's decree does not make the other state's order an order of this court, subject to modification, but only allows this state to enforce the order. See R.C.

information to the appropriate tribunal in this state.” The “appropriate tribunal” is not defined. However, R.C. 3115.56(B) (though it directly relates to venue) provides us with some guidance for identifying the “appropriate tribunal.” R.C. 3115.56(B) states: “An original action under this chapter shall be filed with the appropriate tribunal of the county pursuant to sections 2151.23 and 2301.03 of the Revised Code in which the respondent resides or is found.” Thus, only juvenile courts (pursuant to R.C. 2151.23) or common pleas courts (pursuant to R.C. 2301.03) appear to be “appropriate tribunals.”

{¶ 10} This understanding is partially complemented by R.C. 2151.23(B), which provides that “[e]xcept as provided in divisions (G) and (I) of section 2301.03 of the Revised Code,² the juvenile court has original jurisdiction under the Revised Code: * * * (3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code * * *.” This grant of jurisdiction is not exclusive. Cf. R.C. 2151.23(A) (defining the exclusive jurisdiction of the juvenile court).

{¶ 11} R.C. 2301.03 provides for the assignment of all proceedings under the UIFSA to the domestic relations divisions of the Summit County and Richland County common pleas courts. R.C. 2301.03(G) and (I). In Cuyahoga County, however, R.C. 2301.03 does not specifically assign UIFSA matters to the judges

3115.40; Morganstern & Sowald, Ohio Domestic Relations Law (2009), Section 23:37.

²These subsections provide that all proceedings under the UIFSA in Richland and Summit Counties shall be assigned to the judges of the domestic relations division of the courts of common pleas.

of the domestic relations division of the common pleas court, nor does it assign domestic relations division judges the powers of juvenile courts. Compare, e.g., R.C. 2301.03(A) (granting judges of the Franklin County common pleas court division of domestic relations all powers relating to juvenile courts), and R.C. 2301.03(G) (assigning all proceedings arising under the UIFSA to the domestic relations division of the Richland County common pleas court) with R.C. 2301.03(L) (granting Cuyahoga County domestic relations division judges “all the powers relating to all divorce, dissolution of marriage, legal separation, and annulment cases”). We are not aware of any other statutory provision that would allow the assignment of a UIFSA matter to the domestic relations division of the Cuyahoga County common pleas court.³

{¶ 12} “Proper assignment, like jurisdiction over the subject matter, is required for the valid exercise of judicial power.” *State ex rel. Lomaz v. Portage Cty. Court of Common Pleas* (1988), 36 Ohio St.3d 209, 522 N.E.2d 551. The petition here was improperly assigned to the domestic relations division, so that court lacked the power to register and enforce the North Carolina order under R.C. 3115.39 et seq. Accordingly, we vacate the domestic relations court’s decision and remand for further proceedings not inconsistent with the opinion. Cf. *Schucker v. Metcalf* (1986), 22 Ohio St.3d 33, 37, 488 N.E.2d 210 (regarding

³We need not and do not decide whether the general division of the Cuyahoga County common pleas court has jurisdiction over UIFSA matters.

reassignment of cases improperly assigned to the wrong division of the common pleas court).

Vacated and remanded.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, JUDGE

SEAN C. GALLAGHER, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR