

[Cite as *Taskey v. Bonner*, 2010-Ohio-5488.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 94601 and 94602

CAROLYN TASKEY

PLAINTIFF-APPELLEE

vs.

THOMAS A. BONNER

DEFENDANT-APPELLEE

**[APPEAL BY CUYAHOGA
SUPPORT ENFORCEMENT AGENCY]**

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case Nos. D-030066 and D-168279

BEFORE: Gallagher, A.J., Kilbane, J., and Jones, J.

RELEASED AND JOURNALIZED: November 10, 2010

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SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant Cuyahoga Support Enforcement Agency (“CSEA”) brings this appeal challenging the trial court’s decision to modify the arrearage amounts owed by appellee Thomas Bonner (“Bonner”). For the reasons set forth herein, we reverse and remand.

{¶ 2} Bonner has been married several times.¹ Bonner had two children while he was married to Carolyn Taskey. In 1972, the couple’s marriage ended (D-030066), and Bonner was ordered to pay child support for his children. In 1980, as a result of Bonner’s failure to make all the court-ordered support payments, the trial court found he owed an arrearage of \$14,280. After Bonner’s children with Taskey reached the age of majority, his child support obligation terminated, but he still owed an arrearage. In May 2005, the trial court ordered Bonner to pay \$195 per month to liquidate the arrearage.

{¶ 3} Bonner had three children with his wife, Kathleen Bonner. In 1986, the couple’s marriage ended (D-168279), and Bonner was ordered to pay child support for his children. In January 2004, an agreed judgment entry showed that Bonner owed over \$61,000 in unpaid child support, that the three children were emancipated, and that Bonner was ordered to pay \$300

¹ At the November 2009 hearing, Bonner testified he and his present wife, Cheryl, were married in 2002.

per month toward the arrears. In February 2006, an agreed judgment entry showed that Bonner owed over \$57,000; the trial court ordered Bonner to continue paying \$300 per month to liquidate the arrearage.

{¶ 4} Bonner was incarcerated from 1986 to 2001, during which time he failed to make any child support payments; furthermore, Bonner did not file any request for modification of the support orders while he was incarcerated. As a result, the unpaid support amounts continued to accumulate. After Bonner was released from prison, he neglected to make any payments under the two outstanding child support orders.

{¶ 5} As of 2009, Bonner owed \$9,173.83 in D-030066, and he owed \$50,968 in D-168279. A portion of those amounts is owed to the Ohio Department of Health and Human Services, and a portion is owed to CSEA. In March 2009, CSEA filed motions to show cause in the two cases. It argued in part that Bonner was collecting Social Security retirement benefits, but he was not paying his support obligation from his income. Prior to the May 15, 2009, scheduled hearing, Bonner filed motions to modify child support. CSEA opposed Bonner's motions, arguing that R.C. 3121.36 and R.C. 3123.14 prohibit a trial court from modifying payments on arrearages. The hearing was rescheduled to November 9, 2009.

{¶ 6} At the November 2009 hearing, the magistrate found that the total child support arrearage Bonner owed was \$50,968. Bonner presented

evidence that he was unable to work, that his income from Social Security retirement benefits was \$1,363 per month, and that his monthly expenses were \$2,670. Because of the evidence, the magistrate recommended that Bonner's total payments be reduced to \$90 per month.

{¶ 7} The magistrate found that Bonner demonstrated that if he continued to pay the original amount he owes under the child support orders,² his financial circumstances would work a substantial hardship on him. Specifically, the magistrate stated: "In this present circumstance, it is for the court to take note of the inequity that would be visited upon the Defendant, and indeed the State[,] should the operative statutes [R.C. 3121.36 and 3123.14] cited above be enforced. It is the court's duty to review the relevant evidence, and the law, and make a determination as to whether a particular statute will be applied. That court in issuing its order must be able to find that its order is fair, just and equitable. * * * [T]he Magistrate concludes that this court should grant the Defendant's motion, decline to apply ORC 3123.14 and ORC 3121.36, and reduce the Defendant's arrearage payments * * *."

{¶ 8} CSEA filed its objections, but the trial court adopted the magistrate's findings. CSEA timely filed this appeal, raising one assignment

² According to the parties, Bonner is subject to a third child support order, not subject to this appeal. His total monthly payment under all three orders would be \$816.67, which constitutes 59 percent of his monthly income.

of error for our review.

{¶ 9} “I. The trial court abused its discretion by declining to apply two unambiguous statutes prohibiting modification of child support arrearage payments.”

{¶ 10} CSEA argues that the trial court cannot choose to ignore applicable statutes simply because their application works any, even a substantial, hardship on the affected individual. In this case, if Bonner were bound by the previous child support orders, his monthly payments would be 59 percent of his total income. Bonner argues that the trial court is not bound to follow statutory law, regardless of its applicability, where to do so would be unjust or place him on the state’s government assistance program.

{¶ 11} Generally, we review an appeal from a trial court’s order adopting or modifying a magistrate’s decision under an abuse of discretion standard. *O’Brien v. O’Brien*, 167 Ohio App.3d 584, 2006-Ohio-1729, 856 N.E.2d 274. “However, where a trial court’s order is based on an erroneous standard or a misconstruction of the law, it is not appropriate for a reviewing court to use an abuse of discretion standard. In determining a pure question of law, an appellate court may properly substitute its judgment for that of the trial court, since an important function of appellate courts is to resolve disputed propositions of law.” *Castlebrook, Ltd. v. Dayton Properties Ltd. Partnership* (1992), 78 Ohio App.3d 340, 604 N.E.2d 808.

{¶ 12} We agree with Bonner that the trial court maintains continuing jurisdiction to modify child support orders. Nonetheless, continuing jurisdiction does not allow a court to ignore or circumvent a statutory mandate.

{¶ 13} “It is a well-established rule of statutory construction that if words in a statute are unambiguous, a court must look no further than the face of the statute and simply apply its terms.” *In re Ryan G.*, Erie App. No. E-01-027, 2002-Ohio-1520.

{¶ 14} Pursuant to R.C. 3121.36, the court’s order to liquidate the arrearage must be for an amount “at least equal to the amount that was withheld or deducted under the terminated child support order.” R.C. 3123.14 provides for the collection of an arrearage when a child support order has terminated. This section states, in pertinent part: “the amount withheld or deducted from the obligor’s personal earnings, income or accounts shall be at least equal to the amount that was withheld or deducted under the terminated child support order.” R.C. 3123.14.

{¶ 15} In *Sinnott v. Sinnott*, Franklin App. No. 02AP-1277, 2003-Ohio-4571, the Tenth Appellate District reversed the trial court’s decision to reduce the obligor’s payments from \$360 to \$200 because the reduction was not in compliance with R.C. 3121.36. In *Bennett v. Bennett*, Summit App. No. 22798, 2006-Ohio-1305, the Ninth Appellate District

affirmed “the trial court’s decision that because Father was ordered to pay \$389.80 per month for past due support since March 2000, his arrearage support payment should remain at \$389.80.” These cases are directly on point with the case before us.

{¶ 16} Both parties recognize, as do we, that the Eighth Appellate District has not ruled on this precise issue. CSEA argues that we follow the law from the Ninth and Tenth Appellate Districts, while Bonner suggests that we ignore the rulings from the other districts.

{¶ 17} We find that the mandates in R.C. 3121.36 and R.C. 3123.14 take precedence over Bonner’s argument that “equity” demands we ignore legislative authority.³ While we agree that the trial court made every effort to reach a just result, the court cannot circumvent applicable statutory provisions, as it did here, by reducing Bonner’s monthly arrearage payments to an amount below what he had previously been ordered to pay. Until the legislature gives the trial court the discretion to modify arrearage payments in the way it finds equitable and just, we are constrained to apply the mandates set forth in R.C. 3121.36 and R.C. 3123.14.

{¶ 18} On this basis, CSEA’s sole assignment of error is sustained.

Judgment reversed.

³ Bonner’s reliance on *Reed v. Morgan*, Butler App. No. CA2008-09-233, 2009-Ohio-4130, is misplaced, as the issue in that case was one of continuing jurisdiction over child support orders, which is not at issue here.

It is ordered that appellant CSEA recover from appellee Thomas Bonner 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
LARRY A. JONES, J., CONCUR