**[Cite as *Reinhard v. Reinhard*, 2011-Ohio-343.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 95000**

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**LISETTE J. REINHARD,
N.K.A. LISETTE J. CARLSON**

PLAINTIFF-APPELLEE

vs.

**ROBERT W. REINHARD**

DEFENDANT-APPELLANT

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**JUDGMENT:**
REVERSED AND REMANDED

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Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-214612

**BEFORE:** Celebrezze, J., Stewart, P.J., and Jones, J.

**RELEASED AND JOURNALIZED:** January 27, 2011

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FRANK D. CELEBREZZE, JR., J.:

**{¶ 1}** Defendant-appellant, Robert Reinhard ("Robert"), appeals the trial court's decision ordering him to pay plaintiff-appellee, Lisette Reinhard, n.k.a. Lisette Carlson, $57,159.57 in overpaid child support. For the reasons that follow, we reverse and remand.

**{¶ 2}** This matter has a long and tortured history that began when Lisette filed for divorce in 1991. The parties were eventually divorced in 1993, and in April 1995, Robert was named the residential parent of the couple's two minor children. In this April 1995 order, the trial court found that Robert was owed child support in the amount of $236.16 monthly for both children from November 3, 1993 to April 3, 1995. The court then

ordered Lisette to pay $783.36 monthly from April 4, 1995 onward. When awarding this child support amount, the trial court relied on the Ohio Child Support Guideline worksheet, which calculated Robert's daycare expenses to be $4,505.00 annually. Lisette was required to pay 56.7 percent of those expenses or $2,554.34 annually.

**{¶ 3}** On June 12, 1997, Lisette filed a motion to modify child support claiming Robert was no longer incurring daycare expenses, and thus she was entitled to a reduction in her child support obligation. This motion was dismissed without prejudice on August 23, 1999.

**{¶ 4}** Lisette filed a motion to reinstate her motion to modify, which was granted on October 5, 1999. Robert appealed that decision to this court, but that appeal was dismissed due to lack of a final, appealable order. On November 24, 1999, Lisette filed another motion to modify making the same arguments articulated in her June 1997 motion.

**{¶ 5}** On July 20, 2000, the court issued a journal entry reducing Lisette's child support obligation to $522.24 monthly for both children. The court did not include daycare expenses in this calculation. The next day, the court issued another journal entry determining Lisette's child support obligation to be $616.08 monthly for both children. Again, daycare expenses were not included in this calculation.

**{¶ 6}** On October 17, 2002, the court dismissed Lisette's 1997 motion to modify child support with prejudice. On December 1, 2005, Lisette

voluntarily dismissed all her motions that were currently pending before the court.

**{¶ 7}** On February 23, 2006, the trial judge issued a judgment entry terminating child support for the couple's son as of June 28, 2005 because he had reached the age of majority and had graduated from high school. Rather than recalculating Lisette's support obligation for only one child, the judge merely reduced her child support obligation by half and ordered Lisette to pay $302 monthly in child support. Neither party appealed this decision.

**{¶ 8}** On April 18, 2006, the trial judge issued a journal entry on Robert's motion to determine Lisette's support arrearage, which was filed on August 20, 2003 and had never been ruled on. In its entry, the court said that "[a]ny order subsequent to the original order establishing child support at $783.36 monthly for both children * * * is void and of no effect whatsoever. The original order is the current child support order." The court also set Robert's motion for a hearing and placed the burden on him to show that he was paying daycare expenses for the children since June 12, 1997, when Lisette filed her first motion to modify. The judge ordered Robert to produce receipts for daycare-related expenses incurred after July 21, 2000.

**{¶ 9}** On March 8, 2007, the trial judge issued another journal entry noting that Robert had yet to produce receipts for any daycare expenses incurred after July 21, 2000. The judge ordered Robert to produce these receipts by March 15, 2007.

**{¶ 10}** On November 28, 2007, Lisette filed a motion to modify the court's April 4, 1995 child support order. This motion also included a motion to vacate in part the same judgment entry and a motion for retroactive interest on overpayment of child support.

**{¶ 11}** On February 14, 2008, Lisette filed a motion to strike Robert's oral motion to dismiss his August 20, 2003 motion to determine support arrearage. On February 21, 2008, Robert filed a written notice voluntarily dismissing the motion to determine support arrearages. Robert also filed a brief in support of this notice arguing that pursuant to Civ.R. 41(A), he could voluntarily dismiss his motion any time before trial commenced. On July 22, 2008, the trial court issued a journal entry finding that Robert could only withdraw his motion with leave of court. The court then said, "[t]he Court, in its discretion, will not permit the Defendant leave to withdraw his Motion to Determine Arrearages since the matter has been pending almost five (5) years, Defendant has submitted his arguments to the Court by filing a brief and closing arguments, and the Court has already considered the evidence and issued an order[.] * * * It would be against judicial economy to allow Defendant to withdraw his motion due to the amount of time the Court and the parties spent on this issue[.]"

**{¶ 12}** On April 30, 2009, the trial judge issued a journal entry that delineated the precise amounts of child support Lisette was required to pay throughout the pendency of the case. The court then ordered the Child

Support Enforcement Agency ("CSEA") to "determine, after modifying its records and itemizing payments, whether if [sic] there are arrears and/or overpayment of child support as follows:

**{¶ 13}** "* * *

**{¶ 14}** "2. CSEA shall deduct from that result the sum of $28,052.40. This sum represents all the plaintiff's child support obligations and payment for child care not incurred by the defendant after June 12, 1997."

**{¶ 15}** This motion also held that Lisette's motion to modify child support was rendered moot by that entry.

**{¶ 16}** On March 22, 2009, the trial court issued a journal entry where it awarded Lisette $57,159.57 as a result of her overpayment of child support. This appeal followed wherein Robert raises nine assignments of error.[1]

## Law and Analysis

**{¶ 17}** In his first assignment of error, Robert argues that the trial court erred when it refused to allow him to voluntarily dismiss his motion to determine support arrearages. In arguing this issue, both parties rely on Civ.R. 41, which allows a plaintiff to dismiss all claims asserted against a defendant by filing a notice of dismissal prior to the start of trial. We are not convinced that Civ.R. 41 applies to motion practice because it is entitled "Dismissal of actions" and speaks specifically to dismissals of causes of actions and counterclaims. Nonetheless, a similar issue was addressed in

[1]Robert's assignments of error are contained in the appendix to this Opinion.

*Gedeon v. Leiby* (1991), 73 Ohio App.3d 627, 598 N.E.2d 108, where this court said, "[t]he parties have not cited, and we do not find, any rule or case authority regarding the procedure for the withdrawal of motions in Ohio. Case authority from other jurisdictions provides for the withdrawal of pretrial motions upon leave of court. The absolute right of withdrawal of pretrial motions has been allowed only prior to submission of the motions to the court; 'submission' is defined as application for the court's consideration in whole or in part by the moving party. According to these authorities, withdrawal would not have been proper in this case because the summary judgment motions had been 'submitted,' and because appellants failed to comply with the court's deadlines." (Internal citations omitted.) *Gedeon* at 629-630.

**{¶ 18}** Pursuant to *Gedeon*, once Robert's motion to determine support arrearages had been submitted to the court, the court was permitted to exercise its discretion to determine whether such a withdrawal should be permitted. We must review that decision for an abuse of discretion. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

**{¶ 19}** What the court essentially did in this case was convert Robert's straightforward motion to determine support arrearages into a motion to modify child support. After reading Robert's motion, it is evident that he did not contemplate a complete child support modification dating back to 1997,

especially in light of the multiple motions for modification that were filed by Lisette and ultimately dismissed. In her multiple motions to modify, Lisette specifically argued that she was being required to pay daycare expenses when no such expenses were incurred. Robert did not move to withdraw or "dismiss" his motion until after the trial court placed the onus on him to produce daycare receipts dating back to July 21, 2000. In our opinion, the trial court abused its discretion in refusing to allow Robert to withdraw his motion to determine support arrearages after it placed a significant burden of proof on him to prove whether Lisette should be given a credit for unpaid daycare expenses.

**{¶ 20}** On remand, the trial court could only proceed on Lisette's motion to modify that was filed on November 28, 2007 and was still pending when the court issued its April 2009 journal entry. That motion to modify would no longer be rendered moot in light of our disposition in this case. We note, however, that "the general rule is that child support modifications may only be made retroactive to the date that the obligor was given notice that a petition to modify has been filed." *Harless v. Lambert*, Meigs App. No. 06CA6, 2007-Ohio-2207, ¶12. "'[C]ourts have recognized extreme circumstances in which equitable considerations permit retroactive modification prior to the date of the motion.'" Id.

**{¶ 21}** In this case, no exigent circumstances exist that warrant modifying child support back to 1997. Lisette has had ample opportunity to

litigate this issue and, for whatever reason, dismissed her multiple motions to modify. We are also troubled by the trial court's decision giving Lisette credit for the daycare expenses dating back to 1997 when it only ordered Robert to provide receipts dating back to July 21, 2000. On remand, the trial court may entertain Lisette's November 28, 2007 motion to modify, but making an award on that motion retroactive to 1997 would be an abuse of discretion.

## Conclusion

**{¶ 22}** It was an abuse of discretion for the trial court to refuse to allow Robert to withdraw his motion to determine support arrearages after placing the additional burden on him to provide proof of daycare expenses dating back to July 2000.

**{¶ 23}** Based on the disposition in this opinion, we overrule the remaining assignments of error as moot. See App.R. 12(A)(1)(c).

**{¶ 24}** This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

FRANK D. CELEBREZZE, JR., JUDGE

MELODY J. STEWART, P.J., and
LARRY A. JONES, J., CONCUR

**APPENDIX A**

Appellant's assignments of error:

I. "The Trial Court Erred and Abused Its Discretion By Issuing Its Journal Entry of April 28, 2009, As The Trial Court Was Without Jurisdiction To Proceed On Any Issues After The Appellant Voluntarily Withdrew His Motion(s); And Its Journal Entry is *Void Ab Initio*."

II. "The Trial Court Erred And/Or Abused Its Discretion By Proceeding On Any Issues And Modifying The Prior Child Support Order Where There Was No Motion To Modify Child Support Before The Court Upon Which The Court Proceeded."

III. "The Trial Court Erred And/Or Abused Its Discretion By Making A Child Support Order Retroactive To June 12, 1997."

IV. "The Trial Court Erred And/Or Abused Its Discretion By Improperly Shifting the Burden Of Proof To The Appellant In Regard To A Modification Of Child Support."

V. "The Trial Court Erred And/Or Abused Its Discretion By Determining Child Support Without Complying With *Marker v. Grimm* And By Failing To Attach Child Support Guidelines To Its Decision."

VI. "The Trial Court Erred And/Or Abused Its Discretion By Issuing A Judgment Entry Denying Robert's *Motion for Extension of Time to Submit Objections and Brief In Support of Objections to CSEA's Determination of Arrears or Overpayment*."

VII. "The Trial Court Erred And/Or Abused Its Discretion By Determining An Overpayment In Child Support And By Issuing A Judgment Against the Appellant."

VIII. "The Trial Court Erred And/Or Abused Its Discretion By Ordering That Defendant Pay All Court Costs."

IX. “The Trial Court’s Decision Is Against The Manifest Weight Of The Evidence.”