

[Cite as *Westmoreland v. Westmoreland*, 2011-Ohio-604.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94670

NALISESA N. WESTMORELAND

PLAINTIFF-APPELLANT

vs.

ANDRE D. WESTMORELAND

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-264767

BEFORE: Gallagher, P.J., Blackmon, J., and Cooney, J.

RELEASED AND JOURNALIZED: February 10, 2011

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SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant Nalisesa Westmoreland (“mother”) appeals the judgment of the Cuyahoga County Court of Common Pleas, Division of Domestic Relations, that was issued on January 22, 2010. For the reasons stated herein, we affirm.

{¶ 2} Mother and Andre Westmoreland (“father”) were divorced on August 2, 2001. The court awarded custody of the parties’ three minor children to mother and ordered father to pay child support.

{¶ 3} In June 2008, the Cuyahoga Support Enforcement Agency filed a motion to show cause, asserting that father was in arrears on his child support, later determined to be in the amount of \$28,586.25 as of January 1, 2009. Thereafter, father filed several motions, including, among others, a motion to modify parental rights and responsibilities and a motion to modify child support. In the meantime, mother moved to West Virginia.

{¶ 4} On March 26, 2009, the trial court issued a notice setting a full hearing for April 13, 2009. On March 30, 2009, the trial court granted a motion to withdraw filed by mother’s attorney. The hearing proceeded as scheduled; however, mother failed to appear.

{¶ 5} The magistrate issued a decision that designated father as the residential parent and legal custodian of the minor children. The decision also ordered mother to pay child support, with the amount of monthly support to be offset against father’s arrearage until satisfied. Mother filed objections to the magistrate’s report. On January 22, 2010, the trial court issued a judgment that overruled mother’s objections and adopted the magistrate’s decision. Mother filed this appeal.

{¶ 6} Mother has raised two assignments of error for our review. Her first assignment of error argues that the trial court erred when it “issued a child support order which is inconsistent with the magistrate’s decision regarding offsetting mother’s current child support obligation against father’s extensive child support arrearage.” A review of the record reflects that the trial court adopted the magistrate’s decision in its entirety and included the offset on page three of the judgment entry. Furthermore, mother withdrew this assignment of error at oral argument.

{¶ 7} Mother’s second assignment of error argues that the trial court erred “when it granted [mother’s] counsel leave to withdraw and failed to insure that appellant mother was served with notice of the trial court date or to afford appellant mother adequate time to find replacement counsel or prepare to represent herself at trial.”

{¶ 8} Mother claims that the trial court should not have proceeded with the hearing on April 13, 2009, without her being present, and that the court failed to ensure that all parties received a fair hearing and fair consideration.

She states no attempt was made to reach her by phone. She also argues the court should have taken into account the recent withdrawal of her attorney, the short notice of the hearing, and the amount of time mother had to seek a continuance or obtain new counsel.

{¶ 9} This court has previously recognized the following: “Trial courts are afforded considerable discretion when scheduling hearings. *In re Disqualification of Aubry*, 117 Ohio St.3d 1245, 1246, 2006-Ohio-7231, 884 N.E.2d 1095. A trial court also has the discretion to continue hearings. The trial court must balance its own interests of maintaining its docket with the potential prejudice to the parties. A trial court’s decision on scheduling and continuing matters will not be reversed absent an abuse of discretion.” (Internal citations omitted.) *Calhoun v. Calhoun*, Cuyahoga App. No. 93369, 2010-Ohio-2347, ¶ 24.

{¶ 10} In this case, the hearing was set more than two weeks ahead of time. After mother’s counsel withdrew from the matter, mother never made a formal request of the trial court for a continuance, nor did she request additional time to obtain new counsel. We find no abuse of discretion by the trial court in proceeding with the hearing. Furthermore, in objecting to the magistrate’s decision, mother did not assert that she did not receive notice of the hearing, that she was denied an opportunity to request a continuance, or that she needed more time to get new counsel. Therefore, mother has waived these issues for appeal. See *Najjar v. Najjar*, Cuyahoga App. No. 91789, 2009-Ohio-3880, ¶ 14. Appellant’s second assignment of error is overruled.

Judgment affirmed.

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 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
COLLEEN CONWAY COONEY, J., CONCUR