[Cite as *In re T.N.*, 2015-Ohio-603.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101430

IN RE: T.N.

[Appeal by E.N., Father]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. PR 97771590

BEFORE: Kilbane, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: February 19, 2015

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MARY EILEEN KILBANE, P.J.:

{¶1} Appellant, E.N., the father of T.N., appeals from a May 2014 order of the juvenile court that denied his motion to vacate a child support order for T.N., who is now emancipated. For the reasons set forth below, we affirm.

{¶2} T.N. was born on June 24, 1995. Appellant, who was a musician for a nationally known singer and songwriter, acknowledged paternity on the child's birth certificate. On May 7, 1997, the mother of T.N. filed an action in the juvenile court seeking to establish a parent-child relationship between appellant and T.N. for child support. On April 12, 1999, the parties informed the juvenile court that they would submit an agreed judgment entry. On this same date, a support calculation worksheet outlining the parties' incomes was prepared and filed with the court. Appellant's gross income was $171,508 and mother's income was $6,000. The parties filed their agreed judgment entry on September 27, 1999. Pursuant to this entry, appellant was ordered to pay mother $1,500 per month for child support, plus a 2 percent fee per month, until the child's emancipation. The record indicates that a certified copy of this agreed judgment entry was sent to the parties on September 29, 1999.

{¶3} On September 17, 2001, mother filed a letter with the juvenile court requesting termination of the child support order, advising the court that the parties were living together.[1] The trial court notified the parties that the letter would be treated as a motion to terminate the child support order; however, this motion was later dismissed after the parties repeatedly failed to appear for hearing.

{¶4} On September 23, 2003, Cuyahoga Job and Family Services — Office of Child Support Services ("CJFS"), filed a motion to show cause in the juvenile court, seeking

enforcement of the $1,500 per month child support order. At the hearing on CJFS's motion to show cause, mother asked the court "for an order suspending the current support order, retroactive to August 1, 2000." In support of her request, mother testified that she and appellant were living together and that appellant was providing for the child. In an order dated March 11, 2004, the juvenile court found good cause to suspend the child support order.[2]

{¶5} Several months later, on July 28, 2004, mother advised the juvenile court that she and appellant were no longer living together and requested reinstatement of the child support order. On July 26, 2005, she also filed a motion to modify the child support obligation. The juvenile court held a hearing on the matter on February 23, 2006. Appellant appeared at the hearing, but the matter was continued in order "to produce the necessary documents and information related to child support." Additional hearings were held on May 15, 2006, June 19, 2006, and August 22, 2006. Appellant appeared at these hearings, and the matter was set for trial on October 6, 2006. Appellant appeared for trial, and the juvenile court magistrate subsequently issued an order concluding that appellant should pay $1,398 per month for child support.

{¶6} On March 18, 2008, the CJFS filed a motion to reinstate the juvenile court's order of support. The matter was set for hearing on July 1, 2008. Appellant's newly retained counsel filed a notice of appearance and requested a continuance of the hearing, which was denied. The record further indicates that appellant appeared at the July 1, 2008 hearing. On July 3, 2008, a juvenile court magistrate issued a decision reinstating the $1,500 per month support order. The court's docket indicates that this order was mailed to appellant at his Lakeshore Boulevard

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[1]The parties had a second child, B.N., who was born on December 27, 2001.

[2]The magistrate did not indicate whether this order would be retroactive.

address and was also mailed to appellant's original counsel. No objections to this decision were filed, and the juvenile court approved and adopted it as an order of the court on July 23, 2008. According to the docket, notice of the court's order was again mailed to the appellant and to his original counsel.

{¶7} On August 17, 2010, CJFS filed a motion to show cause in order to hold appellant in contempt "for failure to comply with the Orders requiring [him] to pay $1,500 per month plus 2% effective 09/29/99, suspended 08/01/00 and then reinstated to $1,500 per month plus 2% effective 05/20/08 [sic] [.]" This motion was sent to appellant at his residence in Richmond Heights at an address listed in the court file.[3] The court appointed counsel for appellant.

{¶8} The matter proceeded to hearing on July 6, 2011. Appellant appeared with counsel, waived reading of the allegations against him, and waived his "relevant constitutional rights in open Court." According to the journal entry issued on the date of the hearing:

> The Magistrate further finds that [Appellant] understanding [his] rights and consequences, voluntarily and knowingly elected to proceed in this matter with an attorney and admitted the allegations in the Motion to Show Cause for failure to pay child support.
>
> The Magistrate further finds, based upon all of the evidence submitted, including arguments of the parties, that [Appellant] had been previously ordered by this Court to pay $1,530.00 per month as current child support, which sum includes a 2 % processing fee.
> The Magistrate further finds that as of June 30, 2011, [there is] an arrearage of $40,294.52. * * *
>
> Therefore, the allegations are true, and as a result, the court finds [Appellant] guilty of contempt for failure to pay child support as ordered.

{¶9} The court also set forth conditions for purging this contempt citation.

{¶10} The following month, on August 29, 2011, appellant, through retained counsel,

[3]The record suggests that appellant moved from his Lakeshore Boulevard address.

filed a motion to modify the child support obligation, asserting that there had been "a substantial change in circumstances that requires a downward modification" of his child support obligation. At a hearing on May 22, 2012, the court determined that appellant had purged the contempt citation, but there were no further proceedings on appellant's motion to modify his child support obligation, presumably because it was not properly served upon the mother.

{¶11} The court scheduled a hearing on June 27, 2013, regarding the emancipation of T.N. The juvenile court notified appellant of the hearing by certified mail, which was unclaimed. Appellant was then served by ordinary mail, which was not returned. On June 28, 2013, the juvenile court issued an order[4] that provided the date of June 24, 2013, for the termination of the child support obligation. The juvenile court noted, however, that appellant owed $67,075 in child support arrearages, and it ordered appellant to pay $1,800 per month in arrearage payments. The following week, on July 3, 2013, mother filed a motion to show cause to hold appellant in contempt of court. In relevant part, this motion provided, "the Order for child support as journalized [in 1999] in the amount of $1,500.00 plus a 2% fee per month" had been ordered by the court. Appended to this motion, were the copies of the previous support orders issued by the court. This motion was served upon appellant at the Richmond Heights address and also at his place of employment.

{¶12} Approximately nine months later, on April 22, 2014, appellant filed a motion for relief from the "child support orders in this case," pursuant to both the common law and pursuant to Civ.R. 60(B)(4) and (5), alleging that some of the orders, including the June 28, 2013 order that was journalized in October 2013, were not properly served upon him, and that the 1999 support order was unsupported by proof of his income. Within this motion, appellant asserted

that he was a musician for a well-known performer but following the performer's death in 2006, appellant's income has declined. He maintained that "it is very unlikely that the financial details that the 2006 order of $1,398 was based on are accurate," and that "[h]ad the parties' actual incomes been disclosed and used in the 2006 proceeding the child support would have been much lower." In addition, appellant asserted that when he appeared for a contempt hearing in that year, a public defender was appointed to represent him. On May 12, 2014, the trial court denied appellant's motion for relief from judgment.

{¶13} Appellant now appeals, assigning two errors for our review:

Assignment of Error One

> The trial court committed reversible error when it denied Appellant's common-law motion to vacate the void judgment of June 28, 2013 without an evidentiary hearing.

Assignment of Error Two

> The trial court committed reversible error when it denied Appellant's common-law motion to vacate the void judgment of July 17, 2008 where the child support order had not been calculated or issued in a manner that complies with Ohio law requiring the use of child support guidelines, worksheets, and the determination of actual income.

Common Law Motion to Vacate

{¶14} In his first assignment of error, appellant argues that the trial court erred in denying his motion to vacate.

{¶15} In order for a court to acquire jurisdiction over a party, there must be proper service of a summons and complaint; or, in the alternative, the party must have entered an appearance,

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[4]This entry was formally adopted as an order of the court on October 2, 2013, and mailed to appellant.

affirmatively waived service, or otherwise voluntarily submitted to the court's jurisdiction. *Maryhew v. Yova*, 11 Ohio St.3d 154, 156-157, 464 N.E.2d 538 (1984); *Money Tree Loan Co. v. Williams*, 169 Ohio App.3d 336, 2006-Ohio-5568, 862 N.E.2d 885, ¶ 8 (8th Dist.). A judgment rendered without proper service or entry of appearance is a nullity and void. *State ex rel. Estate of Miles v. Piketon*, 121 Ohio St.3d 231, 2009-Ohio-786, 903 N.E.2d 311, ¶ 23; *Thomas v. Corrigan*, 135 Ohio App.3d 340, 343, 733 N.E.2d 1213 (11th Dist.1999); *In re R.D.A.*, 8th Dist. Cuyahoga No. 98306, 2013-Ohio-935, ¶ 14. However, where a party appears in the action and does not contest jurisdiction, he or she has waived the issue. *Maryhew* at 156-157; *Cooper v. Cooper*, 10 Ohio App.3d 143, 460 N.E.2d 1137 (3d Dist.1983).

{¶16} Where a party claims that a judgment rendered by a court is void because the court has not acquired personal jurisdiction over the defendant, the party may file a common-law motion to vacate the judgment. *In re B.P.H.*, 12th Dist. Butler No. CA2006-04-090, 2007-Ohio-1366, ¶ 14; *Motorists Mut. Ins. Co. v. Roberts*, 12th Dist. Warren No. CA2013-09-089, 2014-Ohio-1893, ¶ 30. Such motions do not arise from Civ.R. 60, but rather, are derived from the court's inherent authority. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph four of the syllabus.

{¶17} An appellate court reviews the denial of a common-law motion to vacate under an abuse of discretion standard. *Roberts*, citing *Ohio State Aerie Fraternal Order of Eagles v. Alsip*, 12th Dist. Butler No. CA2013-05-079, 2013-Ohio-4866, ¶ 10. The existence of personal jurisdiction, however, presents a question of law we review de novo. *Fraley v. Estate of Oeding*, 138 Ohio St.3d 250, 2014-Ohio-452, 6 N.E.3d 9, ¶ 11, citing *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784.

{¶18} In this matter, the record indicates that appellant and mother voluntarily appeared

before the juvenile court on April 12, 1999, and informed the juvenile court that they would submit an agreed judgment entry. Pursuant to this agreement, which was filed in September 1999, appellant was ordered to pay the mother $1,500 per month and a 2 percent fee per month for child support, until the child's emancipation. Two days later, a certified copy of this agreed judgment was sent to appellant and mother.

{¶19} With regard to the 2006 order that appellant pay $1,398 per month, the record likewise demonstrates that this order was issued following various hearings that appellant attended. The 2008 order issued following the suspension of payments was also issued following the July 1, 2008 hearing that appellant attended. Notice of the court's order was then sent to appellant at his Lakeshore Boulevard address and to his counsel. Appellant also appeared at a 2011 contempt hearing with counsel to address his failure to pay child support. Therefore, the record clearly establishes that the trial court properly obtained jurisdiction over appellant. Then, having obtained jurisdiction over appellant, the trial court determined that after T.N. became emancipated, there were arrearages in the amount of $67,075. This order was not mailed to appellant until October 2, 2013, but on July 3, 2013, mother filed a motion to show cause to hold appellant in contempt of court. This motion, as well as copies of the previous support orders issued by the court, were served upon appellant at the Richmond Heights address and also at his place of employment. In light of all of the foregoing, and pursuant to our de novo review, we conclude that the trial court had personal jurisdiction over appellant in this matter, and he was provided with reasonable notice of the support orders. *Atkinson v. Grumman Ohio Corp.*, 37 Ohio St.3d 80, 85, 523 N.E.2d 851 (1988), paragraphs 2a., 2b., and 2c. of the syllabus. Accordingly, the first assignment of error lacks merit.

Civ.R. 60(B)

{¶20} In the second assignment of error, appellant argues that the trial court erred when it denied his motion for relief from judgment pursuant to Civ.R. 60(B).

{¶21} Civ.R. 60 states in relevant part:

> (B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence[,] which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. * * * The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

{¶22} In order to prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and, (3) the motion is made within a reasonable time and where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order, or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Indus., Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. The issue of whether a movant who seeks to invoke the catchall provision of Civ.R. 60(B)(5) has filed the motion within a "reasonable time" depends on the facts and circumstances of the case. *Cleveland Elec. Illum. Co. v. Tomson*, 8th Dist. Cuyahoga No. 57940, 1992 Ohio App. LEXIS 471 (Feb. 6, 1992).

{¶23} If one of the three *GTE Automatic* requirements are not met, then the motion is not

well taken. *Strack v. Pelton,* 70 Ohio St.3d 172, 174, 1994-Ohio-107, 637 N.E.2d 914. A trial court's decision to grant or deny a motion for relief from judgment pursuant to Civ.R. 60(B) lies within its sound discretion of the trial court, and therefore, the decision will not be disturbed absent an abuse of discretion. *Id*. It is well settled, however, that Civ.R. 60(B) "is not available as a substitute for a timely appeal * * * nor can the rule be used to circumvent or extend the time requirements for an appeal." *Blasco v. Mislik,* 69 Ohio St.2d 684, 686, 433 N.E.2d 612 (1982). *See also Doe v. Trumbull Cty. Children Serv. Bd.,* 28 Ohio St.3d 128, 502 N.E.2d 605 (1986), paragraph two of the syllabus.

{¶24} With regard to the issue of whether appellant has a meritorious defense, we note that

> [i]n any action in which a court child support order is issued or modified * * *, the court or agency shall calculate the amount of the obligor's child support obligation in accordance with the basic child support schedule, the applicable worksheet, and the other provisions of sections 3119.02 to 3119.24 of the Revised Code.

R.C. 3119.02; *Marker v. Grimm,* 65 Ohio St.3d 139, 601 N.E.2d 496 (1992). In this matter, the worksheet was prepared in connection with the original agreed support order and there were no modifications. As explained in *Grubb v. Grubb*, 8th Dist. Cuyahoga No. 87799, 2006-Ohio-6760, the invited error doctrine bars a party's claim that the amount of child support ordered by the court deviated significantly from the amount set forth in the child support guidelines, where the order was based upon the provisions of the parties' agreement. As to the further claim that, following the 2006 death of appellant's employer, appellant's income had declined and had again declined since 2011, the trial court could properly conclude, without holding a hearing, that the April 22, 2014 motion for relief from judgment was essentially a substitute for an appeal and was without merit.

{¶25} In addition, the motion for relief from judgment was filed 15 years after the original order was put into place, 6 years after the 2008 order that again contained the same support amounts, and almost 1 year after the court's followup hearing held upon the child's emancipation. The trial court could properly conclude, within the sound exercise of its discretion, that the motion was not timely filed.

{¶26} Therefore, this assignment of error therefore lacks merit.

{¶27} Judgment affirmed.

It is ordered that appellees 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR