[Cite as *Sweeney v. Sweeney*, 2016-Ohio-1384.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103389

ANGELA SWEENEY

PLAINTIFF

vs.

ANTONIO SWEENEY, ET AL.

DEFENDANTS-APPELLEES

[Appeal by Cuyahoga Job and Family Services]

JUDGMENT:
REVERSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-91-211566

BEFORE: E.A. Gallagher, P.J., E.T. Gallagher, J., and Celebrezze, J.
RELEASED AND JOURNALIZED: March 31, 2016

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EILEEN A. GALLAGHER, P.J.:

{¶1} Appellant Cuyahoga Job and Family Services — Office of Child Support Services formerly known as the Cuyahoga County Child Support Enforcement Agency ("CSEA") (collectively, "CJFS – OCSS") appeals from an order entered by the Domestic Relations Division of the Cuyahoga County Court of Common Pleas eliminating child support arrearages owed by appellee Antonio Sweeney ("Sweeney"). For the reasons that follow, we reverse the trial court's judgment.

Factual Background and Procedural History

{¶2} In June 1985, Angela Sweeney ("decedent") and Sweeney were married in Detroit, Michigan. Together they had two children — Alexis Sweeney ("Alexis"), born in 1983, and Alana Sweeney ("Alana"), born in 1989. On June 26, 1991, decedent filed for divorce. The parties executed an agreed judgment entry of divorce, which was filed on December 13, 1991. Decedent became the custodial parent of the two children and Sweeney was to pay child support.

{¶3} Sweeney did not make his required child support payments and decedent filed a motion to show cause regarding Sweeney's failure to pay child support. On October 9, 1992, the court granted CJFS-OCSS's motion to intervene in the proceedings as a new party defendant to address child support issues.[1] The parties resolved their dispute and, on December 22, 1992, the trial court dismissed decedent's motion to show cause.

[1]Neither decedent's motion to show cause nor CJFS-OCSS's motion to intervene is part of the record.

{¶4} In the years that followed, the parties continued to litigate various issues relating to the children including Sweeney's failure to pay child support. In support of a motion to show cause filed in August 1999, decedent submitted an affidavit in which she claimed that Sweeney's child support arrearages then exceeded $40,000.

{¶5} On July 3, 2000, an agreed judgment entry was entered that resolved a number of issues that had arisen between the parties, including Sweeney's unpaid child support. With respect to Sweeney's child support arrearages, the agreed judgment entry stated as follows:

> 5) Parties agree to a child support arrearage in favor of plaintiff, and against defendant, in the amount of $25,000, as of 9/8/99, for which judgment is rendered and execution shall issue.
>
> 6) Effective 9/8/99, defendant shall pay $229.00 per month as and for child support, as per the attached computation, plus an additional $21 per month (includes poundage) to be credited against said arrearage.

{¶6} Once again, however, Sweeney failed to make required child support payments and, in April 2004, CJFS-OCSS filed a motion to show cause why Sweeney should not be held in contempt for failure to pay child support. The motion was resolved in October 2004 through another agreed judgment entry, pursuant to which Sweeney agreed to pay $116.79 per month (including a 2% processing fee) as current support for Alana[2] plus an additional $138.21 per month towards the existing arrearage until the arrearage was paid in full or further order of the court — a total of $255.00 per month. The judgment entry indicated that Sweeney's total child support arrearage as of July 30, 2004 was $26,539.74 (including "all previously accrued support arrears and processing

[2]No child support order was entered as to Alexis because he was then 21. It is unclear from the record precisely when child support was terminated as to Alexis.

charges") and was owed to "Obligee Angela Sweeney, * * * her assignee(s), and the Cuyahoga Support Enforcement Agency." All payments were to be made through CJFS-OCSS.

{¶7} On July 31, 2008, after Alana had turned 18, the domestic relations court terminated child support payments on her behalf effective February 17, 2007 and ordered Sweeney to pay $250 per month in child support arrearages plus processing charges.[3] It is unclear from the record whether Sweeney made any of these payments or what the outstanding arrearage was, at that time. Decedent died on August 25, 2010 in Detroit, Michigan. There is nothing in the record that suggests that decedent or her children ever received public assistance.

{¶8} On September 23, 2014, Sweeney filed a "motion for relief from debt" in which he asked the domestic relations court to eliminate the $28,488.01 in child support arrearages he then owed. Sweeney indicated that he wished to visit a sick family member in Montreal, Canada and that the child support arrearages precluded him from obtaining a passport. In support of his motion, he attached affidavits from the two adult children, Alexis and Alana, who were the subjects of the child support order, in which they stated as follows: "I hereby waive my right to all the child support arrearages owed by my Dad in [Case No.] 211566, Antonio Sweeney, in this or any other case. I make

[3] The judgment entry was based on the investigative findings and recommendations of CJFS-OCSS pursuant to R.C. 3119.89 through 3119.91. Neither party objected to CJFS-OCSS's investigative findings and recommendations.

this waiver knowingly, intelligently and voluntarily." At the time Sweeney filed his motion, his son Alexis was 31 and his daughter Alana was 25. Also attached to the motion was a certificate of service in which Sweeney certified that he had served copies of the motion on Alana and Alexis electronically and via regular U.S. mail and had "hand delivered" a copy of the motion on some unspecified date in September 2014 to "the Child Support Enforcement Agency on 17th and Superior Avenue, Cleveland, Ohio."

{¶9} On January 5, 2015, the magistrate held a hearing on Sweeney's motion, which the magistrate recharacterized as a "motion to modify and/or suspend arrearages." Sweeney was the only party present at the hearing; CJFS-OCSS did not appear. At the hearing, Sweeney indicated that he was seeking to have his existing child support arrearages reduced to zero so that he could get a passport to visit his sister, niece and nephew in Montreal, Canada. He testified that he had had discussions with his CJFS-OCSS case worker about the existing arrearages and that she suggested he file a motion with the court. Sweeney argued that the arrearages belonged to his adult children and stated that they had agreed to waive their rights to the arrearages. He testified that in speaking with his daughter, Alana, who had been "very close" to her mother, he determined that decedent had not left a will and that no estate was opened following her death. Sweeney claimed that he had been his ex-wife's first and only husband and that she had only two children — Alexis and Alana. He introduced into evidence a copy of the decedent's death certificate and the affidavits from Alexis and Alana waiving their rights to any child support arrearages he owed for their support.

{¶10} On May 4, 2015, the magistrate issued a decision granting Sweeney's motion and holding that Sweeney's "child support arrearage as owed to the deceased Obligee is reduced to zero." The magistrate found that the "[s]ervice upon said motion was duly and properly made" and that "[n]otice containing the date and time of this proceeding was mailed to counsel of record and to the parties if unrepresented."[4] The magistrate further determined that "[t]he Support Obligor arrearages owed to the beneficiaries, the adult daughters [sic], is waivable" and that Sweeney's adult children had signed affidavits that "waived all child support arrears owed by their father in this case." The magistrate reduced Sweeney's child support arrearage to zero "as owed to the deceased Obligee only" and ordered that CJFS-OCSS determine "if any monies are owed to assignees" such as ODJFS "due to past welfare monies" or to CJFS-OCSS for processing fees.

{¶11} CJFS-OCSS filed objections to the magistrate's decision. On July 20, 2015, the trial court overruled CJFS-OCSS's objections and adopted the magistrate's decision in its entirety without modification.

{¶12} CJFS-OCSS appealed the trial court's decision, raising the following five assignments of error for review:

> ASSIGNMENT OF ERROR I
> The Domestic Relations Court erred, as a matter of law, by granting Defendant-Appellee Sweeney's Motion for Relief from Debt from Arrearages, because Defendant-Appellee failed to attempt and perfect service of same and thus, the Court lacked subject matter jurisdiction.

[4]There is nothing in the record indicating to whom precisely notice of the hearing was sent.

ASSIGNMENT OF ERROR II
The Domestic Relations Court erred, as a matter of law, by failing to find that child support arrears were an asset of the Estate of the Obligee, the late Angela Sweeney.

ASSIGNMENT OF ERROR III
The Domestic Relations Court erred, as a matter of law, because it failed to include the Estate as a mandatory party to this action.

ASSIGNMENT OF ERROR IV
The Domestic Relations Court erred, as a matter of law, by improperly, and without authority, modifying delinquent child support arrears retroactively in contravention of R.C. 3119.83, without the consent of the Obligee.

ASSIGNMENT OF ERROR V
The Domestic Relations Court erred, as a matter of law, by diminishing the assets of an Estate. Such matters are within the exclusive jurisdiction of the Probate Division of the Court of Common Pleas.

Law and Analysis

Standing

{¶13} As an initial matter, Sweeney argues that this appeal should be dismissed because CJFS-OCSS lacks standing to appeal the trial court's decision in this case. Standing is a preliminary issue that courts must decide prior to addressing the merits of a legal claim. *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 130 Ohio St.3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶ 27, citing *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010-Ohio-6036, 944 N.E.2d 207, ¶ 9. Accordingly, before we may consider the merits of CJFS-OCSS's assignments of error, we must first determine whether CJFS-OCSS has standing to bring this appeal.

{¶14} To have appellate standing, a party must be "aggrieved by the final order appealed from." *State ex rel. Merrill* at ¶ 28; *see also Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.*, 140 Ohio St. 160, 42 N.E.2d 758 (1942), syllabus ("Appeal lies only on behalf of a party aggrieved by the final order appealed from."). A party is "aggrieved," and thus has standing to appeal, if the party (1) has a present interest in the subject matter of the litigation and (2) has been prejudiced or adversely affected by the judgment or order appealed from. *Willoughby Hills v. C. C. Bar's Sahara, Inc.*, 64 Ohio St.3d 24, 1992-Ohio-111, 591 N.E.2d 1203; *Ohio Contract Carriers Assn.* at 161.

{¶15} Sweeney contends that CJFS-OCSS "ha[d] only a limited role of reporting here" and that "[o]nce that role was fulfilled[,] it had no standing to intervene * * * nor to initiate an appeal." Specifically, Sweeney asserts that because (1) CJFS-OCSS was not a party to the original divorce proceeding; (2) decedent, the child support obligee, is deceased; (3) the children who were to be the beneficiaries of the child support order are past majority and have not requested that CJFS-OCSS "interfere on their behalf"; and (4) the decedent and her children never received any public assistance and thus no sums are owed to Cuyahoga County or the State of Ohio (other than processing fees that were not waived by the magistrate), CJFS-OCSS has "suffered no palpable injury here," "cannot demonstrate present interest, injury, or prejudice" and, therefore, has no standing to "object, [a]ppeal, impose nor substitute, its wishes on their behalf." In response, CJFS-OCSS argues, citing R.C. 3121.36 and 3123.22 and this court's decision in *Cuyahoga Cty. Support Enforcement Agency v. Lozada*, 102 Ohio App.3d 442, 453, 657

N.E.2d 372 (8th Dist.1995), that because CJFS-OCSS was permitted to intervene in the proceedings, has actively participated in the litigation of child support issues as a party to those proceedings and is "required to collect past due support," it has standing to challenge the trial court's "eviscerat[ion] of long time child support arrearages due to Angela Sweeney, deceased." We agree with CJFS-OCSS.

{¶16} In support of his claim that CJFS-OCSS lacks standing to bring this appeal, Sweeney relies on *Beair v. Beair*, 3d Dist. Allen No. 1-01-56, 2001 Ohio Dist. LEXIS 5277 (Nov. 28, 2001), and *Burton v. Harris*, 10th Dist. Franklin No. 12AP-518, 2013-Ohio-1058.[5] Neither of these cases controls the result here. In *Burton*, the issue was whether the child support enforcement agency had a right to be a party to court hearings on objections from revised amounts of child support calculated by the agency — not whether the agency had standing to appeal the trial court's decision regarding child

[5]Sweeney also cites *Starr v. Starr*, 109 Ohio App.3d 116, 671 N.E.2d 1097 (8th Dist.1996), for the proposition that a "child support enforcement agency was not a proper party to a divorce action in which the court decided child support." That case is likewise distinguishable. In that case, the child support enforcement agency sought leave to intervene as a party and to vacate portions of a divorce decree that provided that the father would make various in-kind payments directly to the vendors for the mortgage, utilities, etc. in lieu of child support payments to the mother. *Id.* at 118-119. The domestic relations court granted the agency leave to intervene in the case but denied the motion to vacate. *Id.* at 119. On appeal, the child support enforcement agency argued that it had the right to intervene in and be heard on child support issues *at the time of the divorce action*. (Emphasis added.) *Id.* Here, by contrast, CJFS-OCSS intervened in and was a party to the post-decree child support proceedings. Although the *Starr* court held that the child support enforcement agency was not a proper party to the divorce action and could not seek to vacate the divorce decree, it also indicated that the mother's assignment of rights as a result of her acceptance of Aid to Dependent Children payments "would make [the agency] a proper party to a support action." *Id.* The court held that the child support enforcement agency had standing to enforce the payment of child support under its assignment of rights and that the domestic relations court erred in not requiring

support. *Id.* at ¶ 3-7, 9, 11. In Burton, case, the child support enforcement agency had exercised its statutory authority pursuant to R.C. 3119.60 and 3119.63 to conduct an administrative review of a child support order that had been previously entered by the trial court. *Id.* at ¶ 3-5. Following its review, the agency recommended that the trial court adopt an order modifying the parties' child support obligations. *Id.* at ¶ 5. The child's father requested a hearing to seek a deviation from the child support amount set in the administrative recommendation and the child support enforcement agency moved to be joined as a party to the proceedings. *Id.* at ¶ 6. The trial court denied the motion, holding that the agency had no statutory right to be a party to the hearing and had failed to establish a basis for intervention under Civ.R. 24. *Id.* at ¶ 9. The Tenth District affirmed the trial court's ruling holding that the child support enforcement agency does not have a statutory right to be a party to court hearings on objections from revised amounts of child support calculated by the agency and that the trial court did not err in finding that the agency did not claim a substantial enough interest to justify its intervention in the hearing. *Id.* at ¶ 34, 38. That is not the situation here.

{¶17} In *Beair,* the child support enforcement agency never even attempted to intervene in the case. *Beair* at *5. In *Beair*, the child support enforcement agency's involvement in the case was based on its investigation, as part of its periodic review of child support awards, of whether a child support order should be terminated following notice of a guardianship determination granting custody of the child to the child's aunt.

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that those payments be made through the child support enforcement agency. *Id.* at 121.

Id. at *2, 5. The court held that the child support enforcement agency was not a proper party to the appeal and dismissed the appeal reasoning that the agency's "failure to intervene and properly become a party to this action is fatal to any argument that it has standing to appeal from the order of the trial court" and that "[a]ny injury arising from the trial court's decision does not affect the [child support enforcement agency] because they were not a party to the action." *Id.* at *4-5. Once again, that is not the situation here.

{¶18} As this court recognized in *Cuyahoga Cty. Support Enforcement Agency v. Lozada*, 102 Ohio App.3d 442, 657 N.E.2d 372 (8th Dist.1995), CJFS-OCSS has a substantial interest in enforcing child support awards. As the *Lozada* court explained — in concluding that the child support enforcement agency was a proper party "in all actions for the collection of child support" — that interest is not limited to cases in which the obligee or the children who are the subject of the child support order receive or have received public assistance:

> State statutes require that support payments be made to a department of human services or a child support enforcement agency, regardless of whether the parent is a public assistance recipient. *See* R.C. 3111.28 and 3113.06. After the payment of support is made by the parent/obligee, the CSEA disburses the proper amount of support to the child. It is this regulation of child support orders which presents the CSEA with a legitimate governmental interest in ensuring that all child support orders are properly satisfied by the obligor. * * *
>
> It is the statutory duty of the child support enforcement agency of each county to develop a method for the proper collection and enforcement of child support. R.C. 5101.31. Only by being joined as a party to these child support actions can the support enforcement agencies properly effectuate that duty, thereby protecting the best interest of the children and the public fisc. * * *

> From a thorough reading of R.C. Chapters 3111 and 3113, together with the mandates of Title IV-A and Title IV-D of the Social Security Act, we find that the General Assembly intended that the child support enforcement agencies be parties to all actions for the collection of child support; any other result would hinder the legitimate state interest spelled out by the General Assembly for the enforcement of child support orders as well as the mandates of Title IV-A and Title IV-D.

Id. at 453, 455-456. Thus, CJFS-OCSS has an interest in ensuring that child support obligations are enforced in every case and that child support obligors do not shirk their duty to pay child support.

{¶19} Although the child support order in this case terminated, effective February 2007, R.C. 3121.36 makes it clear that CJFS-OCSS's authority to collect child support arrearages does not terminate with the termination of the child support order. R.C. 3121.36 provides:

> Termination of order does not abate authority to collect arrearage.
> The termination of a court support order or administrative child support order does not abate the power of any court or child support enforcement agency to collect any overdue and unpaid support or arrearage owed under the terminated support order or the power of the court to punish any person for a failure to comply with, or to pay any support as ordered in, the terminated support order. The termination does not abate the authority of the court or agency to issue any notice described in section 3121.03 of the Revised Code or to issue any applicable order as described in division (C) or (D) of section 3121.03 of the Revised Code to collect any overdue and unpaid support or arrearage owed under the terminated support order. If a notice is issued pursuant to section 3121.03 of the Revised Code to collect the overdue and unpaid support or arrearage, 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.

See also R.C. 3123.22 (setting forth additional authority of the child support enforcement agency to collect arrearages owed under a child support order). Given that the trial

court's order extinguishes the CJFS-OCSS's authority to collect child support arrearages that would otherwise be owed, it has clearly been adversely affected by the order from which it appealed.

{¶20} This is not a case, such as *Beair*, in which the role of the child support enforcement agency was "limited to a mere conduit of the support" between the obligor and obligee. *Id.* at *9. In this case, CJFS-OCSS has been a party to the proceedings and actively involved in the proceedings to enforce Sweeney's child support obligations since 1992. In 1992, when CJFS-OCSS's motion to intervene in the case was granted, the trial court made a determination that CJFS-OCSS had a sufficient interest in the proceedings to warrant its intervention and joinder as a party in the case. The trial court's decision granting CJFS-OCSS leave to intervene was never appealed, objected to or otherwise challenged. Although the *Beair* court noted that intervention was not "envisioned" in the particular situation at issue in that case, it recognized that "a proper intervention would have given the [child support enforcement agency] standing to initiate [an] appeal." *Beair* at *6; *see also Benzinger v. Benzinger*, 1st Dist. Hamilton Nos. C-940794, C-940990, 1996 Ohio App. LEXIS 358, *6-9 (Feb. 7, 1996) (child support enforcement agency had standing to challenge trial court order granting obligor a credit of $4000 against the arrearage on his child support account, noting agency's "independent interest on behalf of the state in regulating child-support orders"); *see also In re Westendorf*, 1st Dist. Hamilton No. C-020804, 2003-Ohio-5955, ¶ 7 (denying motion to strike appellate brief filed by child support enforcement agency in obligor's appeal of his request to

modify his child support obligation based on the agency's "legitimate and independent interest on behalf of the state in regulating child-support orders"); *Zamos v. Zamos*, 11th Dist. Portage No. 2008-P-0021, 2009-Ohio-1321, ¶ 34-38 (rejecting argument that child support enforcement agency lacked standing to move the court for a determination of the amount of arrearages owed and an order of payment after child support order had terminated because "the issue is strictly a private, not a public, matter").

{¶21} Accordingly, we find that CJFS-OCSS has standing to bring this appeal.

Failure to Properly Serve Motion

{¶22} In its first assignment of error, CJFS-OCSS contends that the trial court's decision should be reversed because it was never properly served with a copy of Sweeney's motion for relief from debt in accordance with Civ.R. 75(J) and Civ.R. 4 to 4.6. Civ.R. 75(J) provides, in relevant part: "The continuing jurisdiction of the court shall be invoked by motion filed in the original action, notice of which shall be served in the manner provided for the service of process under Civ.R. 4 to 4.6."

{¶23} Sweeney does not dispute that he failed to properly serve CJFS-OCSS with a copy of his motion in accordance with Civ.R. 75(J) and Civ.R. 4 to 4.6. Rather, he argues that CJFS-OCSS lacked a sufficient interest to intervene in the proceedings under Civ.R. 75 and waived any objection to the improper service and the court's exercise of continuing jurisdiction when it received notice of, and timely filed objections to, the magistrate's decision. We disagree.

{¶24} First, as indicated above, CJFS-OCSS has been a party to this case and has been actively involved in the enforcement of Sweeney's child support obligation since CJFS-OCSS was granted leave to intervene in 1992. Because CJFS-OCSS was already a party to the proceedings, CJFS-OCSS did not need to establish (or re-establish) its right to intervene in the proceedings in order to be entitled to notice of Sweeney's motion for relief from his child support arrearages. When a party fails to invoke the continuing jurisdiction of the trial court by not meeting the requirements for service of process, the court lacks personal jurisdiction to enter judgment upon the motion. *See, e.g., Bedi-Hetlin v. Hetlin*, 3d Dist. Seneca No. 13-14-08, 2014-Ohio-4997, ¶ 25, citing *Stuber v. Stuber*, 3d Dist. Allen No. 1-06-101, 2007-Ohio-3981, ¶ 5; *Grundey v. Grundey*, 10th Dist. Franklin No. 14AP-420, 2015-Ohio-1469, ¶ 11.[6] "Thus, when continuing jurisdiction is not properly invoked, any action taken by the court is 'erroneous, and for that reason alone, the remaining assignments of error are well-taken.'" *Bedi-Hetlin* at ¶ 25, quoting *Hansen v. Hansen*, 21 Ohio App.3d 216, 219, 486 N.E.2d 1252 (3d Dist.1985).

{¶25} Lack of proper service under Civ.R. 75(J) can, however, be waived. Where a party appears in court, fails to object to improper service pursuant to Civ.R. 75(J) and defends on the merits of the case, that party will be deemed to have waived the issue of improper service. *See, e.g., Bedi-Hetlin* at ¶ 26; *Huston v. Huston*, 5th Dist. Coshocton

[6]Although the CJFS-OCSS characterizes the service issue as one involving lack of subject matter jurisdiction, it is actually an issue of personal jurisdiction. Unlike lack of subject matter jurisdiction, lack of personal jurisdiction based on insufficiency of service of process can be waived.

No. 2013CA0030, 2014-Ohio-5654, ¶ 37. *But see Szymczak v. Szymczak*, 136 Ohio App.3d 706, 711, 737 N.E.2d 980 (8th Dist.2000) (applying former Civ.R. 75(I), now Civ.R. 75(J), where defendant served plaintiff's attorney but not plaintiff with motion to modify support and plaintiff timely objected to lack of personal jurisdiction, trial court's continuing jurisdiction was not properly invoked and trial court did not err in dismissing motion). The cases Sweeney cites in support of his waiver argument involve parties who failed to timely object to the trial court's jurisdiction based on lack of proper service. *See, e.g., Chauncey v. Chauncey*, 8th Dist. Cuyahoga No. 66197, 1994 Ohio App. LEXIS 5369, *6-7 (Dec. 1, 1994) (where plaintiff served defendant's former attorney rather than defendant with motions to relinquish jurisdiction and to set child support or modify visitation, but defendant did not object to improper service, filed a brief in opposition and appeared at hearing on the motions with counsel "as if the trial court's continuing jurisdiction had been properly invoked," defendant waived any objection to the trial court's exercise of continuing jurisdiction); *Longshore v. White*, 8th Dist. Cuyahoga No. 66363, 1994 Ohio App. LEXIS 2185, *3-6 (May 19, 1994) (although plaintiff improperly served defendant with motion by ordinary mail, defendant waived any objection to the trial court's exercise of continuing jurisdiction where he submitted numerous pleadings and attended the hearing on the motion without contesting jurisdiction). Here, by contrast, CJFS-OCSS timely objected to the lack of proper service of the motion, raising the issue in its objections to the magistrate's decision. Accordingly, CJFS-OCSS's service issue has merit and is sustained in part. However, even if CJFS-OCSS had been

properly served with Sweeney's motion or had waived improper service of the motion, we would still find that the trial court erred in reducing Sweeney's child support arrearages to zero.

Whether Decedent Obligee's Adult Children Could Properly Waive Child Support Arrearages

{¶26} CJFS-OCSS's second and fourth assignments of error are interrelated. We, therefore, address them together. In its second assignment of error, CJFS-OCSS contends that the trial court erred (1) in failing to find that child support arrearages were an asset of the decedent's estate and (2) by finding that the decedent's adult children, who were not representatives of her estate, had the authority to waive child support arrearages owed to the estate. In its fourth assignment of error, CJFS-OCSS contends that the trial court violated R.C. 3119.83 by modifying the child support arrearages retroactively without the obligee's consent.

{¶27} Child-support issues are generally reviewed under an abuse of discretion standard. *See, e.g., Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). A trial court abuses its discretion when it acts unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶28} As a general rule, as long as public assistance is not involved, the parties to a child support order may agree to compromise child support arrearages. *Byrd v. Knuckles*, 120 Ohio St.3d 428, 2008-Ohio-6318, 900 N.E.2d 164, ¶ 6 (where the child-support arrearage was a judgment and the obligee did not receive public assistance,

"the judgment, like any other judgment in Ohio, can be compromised and settled"); *see also Salyer v. Newman*, 4th Dist. Highland No. 11CA4, 2011-Ohio-6676, ¶ 11-13 (the parties to a child support order may agree to modify a child support arrearages unless the agreement is "'unreasonable, made under duress, or otherwise flawed'"), quoting *Byrd* at ¶ 7. Such an agreement does not violate R.C. 3119.83's prohibition of the "retroactive[] modif[ication] [of] an obligor's duty to pay a delinquent support payment" by a court or child support enforcement agency. *See Byrd* at ¶ 5 ("[N]othing in R.C. 3119.83 or any other part of the statutory scheme indicates that it is intended to nullify reasonable agreements reached by the parties to a child-support order. R.C. 3119.83 prohibits judges from retroactively modifying child-support orders; it does not prohibit parties from agreeing to modify child-support orders."). However, such agreements are enforceable only to the extent the proper party agrees to waive the arrearages. *See, e.g., Utt v. Utt*, 4th Dist. Washington No. 03CAA38, 2003-Ohio-7043 (trial court erred in determining that child support enforcement agency could not collect on child support arrearages mother had previously assigned to the agency; although mother agreed to waive all child support arrearages if the father consented to the adoption of their children by the mother's new husband, the agreement did not affect any arrearages the mother had previously assigned to the agency; only the child support enforcement agency had the legal right to waive any arrearages previously assigned to the agency).

{¶29} In this case, however, the issue is not whether child support arrearages can be compromised, but rather, who has the authority to compromise child support

arrearages owed to a child support obligee following her death. Sweeney contends that since the child support was to have been paid for their benefit and the decedent's adult children were her sole heirs,[7] they had the authority to waive the $28,488.01 in child support arrearages their father owed the decedent for their support. CJFS-OCSS, on the other hand, maintains that the right to receive child support arrearages following the death of a child support obligee is an asset of the deceased obligees's estate and that a legal representative of the estate — and not the adult children who were the subject of the child support order — was the only party with authority to compromise the child support arrearages.

{¶30} In support of his position, Sweeney cites *In re Estate of Antkowiak*, 95 Ohio App.3d 546, 642 N.E.2d 1154 (6th Dist.1994). The issue in *Antkowiak* was whether child support arrearages that had accumulated during appellant's minority were an asset of his deceased mother's estate or passed to appellant outside the estate following her death. *Id.* at 550-551. The decedent obligee's adult son filed a declaratory judgment action in probate court against the child support enforcement agency, seeking to have the child support arrearages accumulated during his minority (which his father had owed to his mother as the custodial parent) declared his separate property rather than part of his deceased mother's estate. *Id.* at 548. The stepfather, to whom the mother had bequeathed her entire estate, was granted leave to intervene. *Id.* In concluding that

[7]Although Sweeney asserts that Alana and Alexis are the decedent's sole heirs, there is nothing in the record that confirms that this is, in fact, the case.

there was a "presumption" that accumulated support arrearages passed to the appellant outside his deceased mother's estate, the Sixth District reasoned:

> Upon the death of a custodial parent, the question is not whether a support obligation should be avoided, but whether the child-beneficiary has been provided all that is due. As with the proposition that a living custodial parent's claims for arrearages are founded in the parent's advancement of funds, proof that a child has been denied the standard of living to which he or she was entitled is impractical, if not impossible. Even so, it takes no advanced application of economics to conclude that, in all but the most affluent families, a custodial parent does not have the financial capacity to fully compensate for the absence of child support payments. * * * Therefore, we hold that the existence of a child support arrearage upon the beneficiary's emancipation and the death of a custodial parent establishes a prima facie case that the emancipated child has been denied the standard of living to which he or she was entitled. When the statutory beneficiary of child support is found to have been so denied the benefits of a child support award, he or she has a superior claim to the arrearages. * * * [T]he right to collect support arrearages passes directly to the emancipated beneficiary upon the death of the custodial parent.

Id. at 553-554.

{¶31} The Sixth District also recognized, however, that this rule applied only where the child support arrearages had not been reduced to judgment. Where the arrearages were reduced to judgment, the judgment became part of the estate and the right to collect arrearages did not pass to the emancipated child outside the decedent obligee's estate:

> It should be noted that our holding creating this corollary presumption applies only in those cases where the custodial parent has died and only when there is an emancipated beneficiary. A custodial parent who during his or her lifetime wishes to claim arrearages may do so by having the arrearages reduced to judgment. Such judgment would then become part of a deceased custodial parent's estate.

Id. at 554.

{¶32} Sweeney also claims that it would be "inequitable" to require the children to open an estate simply to waive the arrearage when they have already "clearly and unequivocally * * * expressed their desire to do so" and that "the facts" in *Peters v. Kozina*, 6th Dist. Ottawa No. OT-81-7, 1981 Ohio App. LEXIS 10361 (Dec. 18, 1981), "appl[y] here." Once again, we disagree. In *Peters*, following her divorce from the obligor, the obligee remarried and died, leaving all her property to her new husband in her will. *Id.* at *1. The obligor's child support arrearages had not been reduced to judgment before the obligee's death and the obligor assumed custody of the children following her death. *Id.* at *2. The Sixth District found that under such circumstances, it would be "inequitable" to require the obligor to pay the child support arrearages to the obligee's estate because the children for whose benefits the child support payments were to have been made would receive no benefit by the obligor's payment of the arrearages to the estate. *Id.* at *1-4. Accordingly, the appellate court reversed the trial court's ruling granting judgment in the amount of the child support arrearages to the obligee's estate. *Id.* at *4. This is not a concern here given Sweeney's claim that Alana and Alexis are the decedent's sole heirs. Furthermore, in this case — unlike in *Peters* and *Antkowiak* — arrearages were reduced to judgment before the death of the decedent obligee.

{¶33} It is not clear from the record over exactly what period of time the $28,488.01 in child support arrearages that remained when Sweeney filed his motion for relief from debt accumulated. There is no information in the record as to what child support payments Sweeney made, or when he made them. However, it is clear that in the

agreed judgment entry filed on July 3, 2000, $25,000 in arrearages were reduced to judgment. In October 2004, the trial court entered an agreed judgment entry indicating that, as of July 30, 2004, Sweeney's child support arrearages totaled $26,539.74. R.C. 3123.18 provides:

> If a court or child support enforcement agency made a final and enforceable determination under sections 3123.02 to 3123.071 of the Revised Code as those sections existed prior to the effective date of this section or makes a final and enforceable determination under sections 3123.01 to 3123.07 of the Revised Code that an obligor is in default under a support order, each payment or installment that was due and unpaid under the support order that is the basis for the default determination plus any arrearage amounts that accrue after the default determination and during the period of default shall be a final judgment which has the full force, effects, and attributes of a judgment entered by a court of this state for which execution may issue under Title XXIII of the Revised Code.

See also Byrd, 120 Ohio St.3d 428, 2008-Ohio-6318, 900 N.E.2d 164, at ¶ 6 ("[P]ursuant to R.C. 3123.18, when a court has determined that a child-support obligor is in default under a support order, the arrearage becomes a 'final judgment which has the full force, effects, and attributes of a judgment.'").

{¶34} Even if the decedent's adult children would have had the right to waive child support arrearages that had not been reduced to judgment, they had no authority to compromise the arrearages in this case that had already been reduced to judgment. Those arrearages could be compromised only by a representative of the decedent's estate on behalf of the estate. *See In re Estate of Antkowiak* at 554.

{¶35} In the absence of an agreement by parties with authority to compromise the arrearages, the trial court could not itself "retroactively modify" Sweeney's duty to pay

his child support arrearages by reducing those arrearages to zero. *See* R.C. 3119.83; *see also Morgan v. Williams*, 10th Dist. Franklin No. 12AP-694, 2013 Ohio App. LEXIS 3146, *5-7 (July 16, 2013) (where appellee was subject to court order establishing his child support arrearages, trial court's termination of his duty to make his delinquent child support payments was "contrary to the express terms of R.C. 3119.83"). Nor could the trial court, by reducing Sweeney's child support arrearages to zero, be deemed to have properly vacated its prior judgment. No motion to vacate the judgment was filed by any party, and a trial court does not have authority to sua sponte vacate a judgment. *See, e.g., Schmahl v. Powers*, 8th Dist. Cuyahoga No. 99115, 2013-Ohio-3241, ¶ 13; *see also In re R.T.A.*, 8th Dist. Cuyahoga No. 98498, 2012-Ohio-5080, ¶ 5 ("A trial court has no authority to sua sponte vacate its own final orders. * * * Since the adoption of the Civil Rules, Civ.R. 60(B) provides the exclusive means for a trial court to vacate a final judgment.").

{¶36} Accordingly, we find that the trial court abused its discretion in granting Sweeney's motion to eliminate his child support arrearages and in reducing to zero Sweeney's child support arrearages as owed to the decedent obligee.

{¶37} CJFS-OCSS's second and fourth assignments of error are sustained. Based upon our resolution of CJFS-OCSS's first, second and fourth assignments of error, its third and fifth assignments of error are moot.

{¶38} Judgment reversed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court, domestic relations division, 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.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR