

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

February 21, 2024

[Cite as *02/21/2024 Case Announcements #2, 2024-Ohio-642.*]

APPEALS NOT ACCEPTED FOR REVIEW

2023-1454. M.E.D. v. P.K.

Cuyahoga App. No. 112070, **2023-Ohio-3471.**

Brunner, J., dissents, with an opinion joined by Donnelly, J.

BRUNNER, J., dissenting.

{¶ 1} This court routinely considers whether the decision from which an appeal is brought qualifies as a final, appealable order. *See, e.g., Harris v. Hildebrand*, ___ Ohio St.3d ___, 2023-Ohio-3005, ___ N.E.3d ___, ¶ 22; *Mill Creek Metro. Park Dist. Bd. of Comms. v. Less*, 172 Ohio St.3d 24, 2023-Ohio-2332, 221 N.E.3d 813, ¶ 15; *State v. Jordan*, 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 715; *State v. Johnson*, 169 Ohio St.3d 1478, 2023-Ohio-1027, 206 N.E.3d 716. In this pro se appeal, appellant, P.K., asks us to consider whether the dismissal of his motion to modify child support is a final, appealable order.

{¶ 2} It appears from the limited information filed at this juncture that P.K. and appellee, M.E.D., were formerly married and share parenting responsibilities of three children in accordance with an order of the Domestic Relations Division of the Cuyahoga County Court of Common Pleas. In 2019, P.K. filed a motion to reopen the matter concerning the children. Then, in September 2020, M.E.D. filed a motion to modify visitation and an emergency motion for supervised visitation. In November 2020, while the motions were still pending, P.K. filed a motion to modify his child-support and health-insurance obligations. Fifteen months later, in February 2022, M.E.D. filed a motion to dismiss P.K.'s motion to modify, arguing that the

motion had not been properly served. The domestic-relations-court judge denied M.E.D.’s motion in a written decision on February 18, 2022.

{¶ 3} A hearing on P.K.’s motion to modify his support obligations was held before a magistrate. Apparently, M.E.D. orally renewed her motion to dismiss at that hearing, but the magistrate denied the motion to dismiss. The magistrate then issued a decision granting P.K.’s motion to modify his support obligations and set his support at zero. M.E.D. filed objections, including an objection to the magistrate’s denial of the dismissal for improper service.

{¶ 4} In a decision issued on September 23, 2022—nearly two years after P.K. filed his motion to modify—the domestic-relations judge issued an order sustaining M.E.D.’s objections, vacating and setting aside the magistrate’s decision, and dismissing P.K.’s motion to modify. Apparently, the domestic-relations court determined that it lacked personal jurisdiction because P.K. did not perfect service of the motion to modify in accordance with the Rules of Civil Procedure and the local rules of practice. P.K. appealed that decision to the Eighth District Court of Appeals and proceeded pro se.

{¶ 5} The court of appeals dismissed P.K.’s appeal, finding that it lacked appellate jurisdiction because the order P.K. appealed from was not a final, appealable order. The court of appeals summarily concluded that because the dismissal of P.K.’s motion to modify was for lack of personal jurisdiction, the order was not a dismissal on the merits, and therefore P.K. could simply refile his motion. But as the dissenting judge pointed out, an order modifying child support cannot retroactively modify the prior order beyond the initial date of the request. 2023-Ohio-3471, ¶ 18 (Gallagher, J., dissenting), citing *Smith v. Smith*, 5th Dist. Fairfield No. 2008 CA 00030, 2009-Ohio-3978, ¶ 41, and *Zamos v. Zamos*, 11th Dist. Portage No. 2002-P-0085, 2004-Ohio-2310, ¶ 13. Therefore, even if P.K. can refile, the dismissal serves as a final order with respect to his November 2020 motion to modify, and any future modification of his support obligations will not take effect until P.K. is able to file another motion to modify..

{¶ 6} The court of appeals did not address whether the dismissal of P.K.’s motion to modify was an order that “affects a substantial right * * * that in effect determines the action and prevents a judgment” as to that right or denies him a “meaningful or effective remedy [on] appeal.” *See* R.C. 2505.02(B)(1) and (4)(b). While P.K. may still appeal the dismissal following a final determination of all pending motions in this case, over three years have passed since he filed his motion to modify. The basis for P.K.’s request for a modification is unclear from the

limited information available to this court. In some circumstances, a parent may request a modification due to an unexpected financial hardship or an increased expense for the children. And if that is the case here, then while P.K. waits to file an appeal following the resolution of all the claims before the domestic-relations court, the garnishment order may continue and fees and arrearages may continue to accrue and compound. P.K.'s motion to modify apparently had merit because the magistrate initially found grounds to modify P.K.'s support obligations to zero. We should determine whether an appeal following the dismissal of P.K.'s motion to modify affords him with an effective remedy for the child-support claims raised in his November 2020 motion.

{¶ 7} And while this court would generally not consider whether the domestic-relations court was correct in dismissing P.K.'s motion to modify in the first instance, we have been willing to consider the underlying merits of a party's claims when determining whether there was appellate jurisdiction over the claim or case. *See, e.g., Preterm-Cleveland v. Yost*, 169 Ohio St.3d 1457, 2023-Ohio-758, 204 N.E.3d 564 (accepting review of the state's appeal on proposition of law No. I—regarding jurisdiction—and No. II—regarding the merits).

{¶ 8} Therefore, I dissent from the court's decision and would accept P.K.'s appeal.

DONNELLY, J., concurs in the foregoing opinion.
