

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GWENDOLYN MURRY	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
vs.	:	
	:	Case Nos. 2004CA00139
WILLIAM WATKINS	:	2004CA00136
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Family Court Division, Case Nos.
JU77703 & JU77704

JUDGMENT: Vacated/Remanded

DATE OF JUDGMENT ENTRY: December 20, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Farmer, J.

{¶1} On December 30, 1991, Gwendolyn Murry filed paternity complaints with appellant, the Stark County Department of Job and Family Services, Child Support Enforcement Agency, on behalf of her children, Tristan, born August 23, 1988, and Bryant, born December 29, 1989.

{¶2} On February 6, 1992, appellee, William Watkins, acknowledged paternity of both children. Appellee was ordered to pay \$120 per month for each child, Tristan in Case No. JU77704 and Bryant in Case No. JU77703.

{¶3} On October 26, 1992, a hearing was held to determine all outstanding financial issues. By judgment entries filed October 28, 1992, the trial court ordered appellee to pay \$2,080 in child support arrears for each child, \$2,475.75 in birthing expenses for Bryant, and \$2,405.75 for birthing expenses for Tristan.

{¶4} On November 27, 2000, appellee filed a complaint for allocation of parental rights with proposed shared parenting plan (Case No. JU114979). The parties agreed to shared parenting plan, and appellee agreed to pay \$263.39 per month per child in child support.

{¶5} On October 8, 2002, appellant filed a financial institution account withdraw directive freezing appellee's bank account. Appellee filed objections on October 10, 2002. A hearing before a magistrate was held on May 21, 2003. By decisions filed August 25, 2003, the magistrate recommended the payment of \$361.92 to Ms. Murry, \$3,005.07 to appellant and the remainder of the account to appellee. Both parties filed objections to the decision. A hearing was held on November 5, 2003. By judgment

entries filed March 24, 2004, the trial court overruled the objections and approved and adopted the magistrate's decisions.

{¶6} Appellant filed an appeal (Case No. 2004CA00139) and assigned the following error:

APPELLANT'S ASSIGNMENT OF ERROR I

{¶7} "THE TRIAL COURT FAILED TO FOLLOW THE STRICT DIRECTIVE OF R.C. 3123.35 WHICH LIMITS A COURT'S REVIEW TO OWNERSHIP OF THE BANK ACCOUNT."

{¶8} Appellee also filed a notice of appeal (Case No. 2004CA00136) and assigned the following error:

APPELLEE'S ASSIGNMENT OF ERROR I

{¶9} "THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING CSEA TO CONFISCATE FUNDS FROM A FINANCIAL INSTITUTION FOR PAST DUE PREGNANCY EXPENSES AND PUBLIC ASSISTANCE FUNDS."

{¶10} The appeals were consolidated on June 23, 2004 under Case No. 2004CA00139, and this matter is now before this court for consideration.

APPELLANT'S ASSIGNMENT OF ERROR I

{¶11} Appellant claims the trial court erred in not limiting its determination "of how much, if any, of the amount contained in the account is the property of the person" pursuant to R.C. 3123.35. The trial court excluded certain support paid by appellant in the form of public assistance for the children. Both parties conceded during the May 21, 2003 hearing and the oral argument, pregnancy and birthing expenses are not included in the monies attachable via R.C. 3123.22(B). May 21, 2003 T. at 5.

{¶12} It is appellee's position that R.C. 3123.22(B) permits the attachment of funds due to mother from a child support order only. The amount of public assistance provided for support of the children is not attachable.

{¶13} Appellant argued appellee owes "taxpayers \$11,719.95" which includes child support, birthing expenses and processing fees. November 5, 2003 T. at 4. Appellee also owes Ms. Murry child support. Id. Appellant's affidavits of arrearages calculated thru April 30, 2003 listed a total of \$12,474.73 due and owing to appellant and Ms. Murry, and stated the following:

{¶14} "*DJFS/OBLIGEE ARREARS ARE MONIES WHICH MAY BE GIVEN TO THE OBLIGEE OR TO DJFS CONDITIONED UPON RECEIPT OF PUBLIC ASSISTANCE AND CHILD SUPPORT/SPOUSAL SUPPORT. THIS FIGURE DOES NOT AFFECT THE OBLIGOR'S MONIES DUE NOR ANY OBLIGEEES WHO HAVE NOT RECEIVED OR CONTINUOUSLY RECEIVED PUBLIC ASSISTANCE AFTER OCTOBER 1, 1997."

{¶15} R.C. 3123.22 authorizes a child support enforcement agent to use the specific means employed sub judice to collect a "support order." R.C. 3123.01 defines a "court support order" as "either a court child support order or an administrative child support order." See, R.C. 3119.01(2). An "administrative child support order" means "any order issued by a child support enforcement agency for the support of a child." R.C. 3119.01(1). A "support order" is "either an administrative child support order or a court support order." R. C. 3119.01(5).

{¶16} The issue of collectability for public assistance as provided in this case comes down to a determination of whether the funds can be identified as included in a court child support order or an administrative child support order.

{¶17} The original orders of the trial court filed October 28, 1992 in each case are "court support orders" and include all child support due to Ms. Murry and monies provided by public assistance for the children:

{¶18} "Commencing 2/6/92, Deft shall pay as child support by wage order plus pdg \$120.00 per month per child plus \$20.00 month on arrearages of \$2,080.00 and preg. exp. of \$2475.75 owed to SCDHS in J77703 plus \$20.00 month on arrearages of \$2080.00 and preg. exp. of \$2405.75 owed to SCDHS in J77704. Health care per Ex. C. Deft is ordered to provide insurance. Plt to pay uninsured ordinary expenses. Parties to split uninsured extraordinary expenses. Plt 24% and Deft 76%. Both children's legal surname shall be Watkins and new birth cert. shall issue. Deft granted income tax dependency exemption in each case. CSEA may intercept lump sums. CSEA to issue wage order."

{¶19} Upon review, we conclude the attachment initiated pursuant to R.C. 3123.22 may reach funds included in this order, and the trial court erred in subtracting monies due to appellant for public assistance paid for each child.

{¶20} Appellant's Assignment of Error I is granted.

APPELLEE'S ASSIGNMENT OF ERROR I

{¶21} Appellee argues the trial court abused its discretion in failing to follow the statutory language pertaining to the attachment of funds under R.C. 3123.22. Given our opinion in appellant's assignment of error, we disagree with appellee's arguments.

{¶22} Appellee also claims the trial court erred in permitting collection under the theory of laches. We disagree.

{¶23} The defense of laches is based on the proposition that equity will not aid those who "slumber on their rights," or who unreasonably delay the assertion of a right. *McPherson v. McPherson* (1950), 153 Ohio St. 82, 91. The doctrine of laches requires "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for such delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *State ex rel. Meyers v. Columbus* (1995), 71 Ohio St.3d 603, 605, quoting *State ex rel. Cater v. N. Olmsted* (1994), 69 Ohio St.3d 315, 325.

{¶24} Appellee argues the initial court order regarding birthing expenses and public assistance was filed on October 28, 1992, and for approximately eleven years, appellant did not take any action to recoup these funds.

{¶25} Consistent with a prior opinion of this court, *Susan Unger nka Showers v. Robert Unger, Jr.*, Stark App. No. 2003CA00356, 2004-Ohio-5883, we find because the order was reduced to judgment on October 28, 1992, and neither child has reached the age of majority, the argument herein not to be well taken.

{¶26} Appellee's Assignment of Error I is denied.

{¶27} The judgment of the Court of Common Pleas of Stark County, Ohio, Family Court Division, is hereby vacated.

By Farmer, J.

Hoffman, P.J. and

Edwards, J. concur.

JUDGES

SGF/jp 1101

[Cite as *Murry v. Watkins*, 2004-Ohio-7053.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GWENDOLYN MURRY
Plaintiff-Appellant

-vs-

WILLIAM WATKINS
Defendant-Appellee

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JUDGMENT ENTRY

CASE NO. 2004CA00139

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Stark County, Ohio, Family Court Division is vacated and the matter is remanded to said court for further proceedings consistent with this opinion.

JUDGES