

[Cite as *Jefferson Cty. Child Support Agency v. Harris*, 2003-Ohio-496.]

STATE OF OHIO, JEFFERSON COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

JEFFERSON COUNTY CHILD)
SUPPORT ENFORCEMENT AGENCY,)
ON BEHALF OF ANGELA TOMA,)
et al.,)
)
PLAINTIFFS-APPELLANTS,)
)
- VS -)
)
JAMES HARRIS,)
)
DEFENDANT-APPELLEE.)

CASE NO. 02 JE 22

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Jefferson
County Common Pleas Court,
Juvenile Division,
Case No. 2001 PA 64.

JUDGMENT:

Reversed and Remanded
with Instructions.

APPEARANCES:

For Plaintiffs-Appellants:

Atty. M. Catherine Savage Dylewski
Attorney Byron K. Shaw
Jefferson County CSEA
Jefferson County Prosecutor's Office
16001 State Route 7
Steubenville, OH 43952

For Defendant-Appellee:

James Harris, Pro se
6711 County Highway 55
Salineville, OH 43945

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: January 29, 2003

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court and the Appellant's brief. Appellee did not file a brief. Plaintiff-Appellant, the Jefferson County Child Support Enforcement Agency, appeals from the decision of the Jefferson County Court of Common Pleas, Juvenile Division, which adopted a magistrate's decision denying the registration of an administrative order which previously established the child support obligation of Defendant-Appellee, James Harris, and issued its own support order. The trial court denied the CSEA's request to register the order due to the improper notice of the hearing it sent to Harris and the fact that the hearing was not held before a detached magistrate. We are asked to determine whether Harris waived any objection to the form of notice and whether the trial court's conclusion that the hearing was not held before a detached magistrate was error. We conclude Harris' actions prior to the hearing demonstrate he received actual notice of the hearing and, therefore, his failure to object to the form of notice waives any objection to the defect in that notice. We further conclude there is no basis in the record for the trial court's conclusion that the hearing was not held before a detached magistrate. Thus, we reverse the trial court's judgment and remand this matter with instructions for the trial court to register the administrative support order dated April 14, 2000.

{¶2} A child was born to Harris and Angela Toma on October 20, 1998, and Harris' paternity was established at the hospital. On January 4, 2000, the CSEA sent notice of an administrative support hearing to Harris via regular mail. The hearing notice was not returned to the CSEA by the postal service. Harris called the CSEA to inform it he would be unable to attend the hearing and that he was currently unemployed. The CSEA explained the minimum amount of support was fifty dollars per month and that it would probably issue a seek work order. Subsequently, an administrative order dated April 14, 2000 set Harris' obligation at fifty dollars per month plus a two percent processing charge effective May 14, 2000. A copy of that order was forwarded to Harris

via regular mail. The postal service did not return that order. No objections were filed to that order. No payments were made to the CSEA pursuant to that order.

{¶3} On July 20, 2001, the CSEA filed a complaint with the court of common pleas which requested the trial court adopt the administrative order, find Harris in contempt for failing to comply with the order, and reduce the outstanding arrearage to judgment. The case was assigned to a magistrate who heard the matter. Harris did not appear at the hearing. The magistrate denied registering the administrative order “for the reason that it lacks procedural due process and the administrative hearing was not conducted by a detached Magistrate.” Subsequently, the CSEA objected to the magistrate’s decision denying the request to register the administrative order. Once again, Harris did not appear. The trial court overruled that objection and entered judgment in the matter wherein it denied registration of the administrative order for the reasons stated by the magistrate.

{¶4} We reverse the trial court’s decision because we conclude the trial court should not have denied the CSEA’s request to register the administrative order for the reasons stated in its judgment entry. Although improper notice of an administrative proceeding can render the resulting administrative order invalid, a defendant can, by his actions, waive any objection to the form of notice. In this case, Harris’ actions demonstrated he had actual notice of the proceedings against him. Accordingly, his failure to object to the form of notice waives any objection he might have to that form of notice. In addition, there is no basis in the record for the trial court’s conclusion that the hearing was not held before a detached magistrate. Because both of the trial court’s reasons for denying the CSEA’s request to register the administrative order are invalid,

it's decision is reversed and this cause is remanded.

{¶15} The CSEA argues two assignments of error on appeal as follows:

{¶16} “The magistrate erred by invalidating the administrative support order for lack of procedural due process.”

{¶17} “The magistrate erred by invalidating the administrative support order because it was issued by the administrative officer and not a detached magistrate.”

{¶18} Each of these assignments of error deals with the same subject matter, the trial court's refusal to register the administrative order. Furthermore, the CSEA does not argue the two assignments of error separately in its brief. However, as each assignment of error deals with different issues of law, we will address them separately.

{¶19} Harris has failed to file a responsive brief. Pursuant to App.R. 18(C), if the appellee does not file a responsive brief, “the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.” *State ex rel. Montgomery v. R & D Chem. Co.* (1995), 72 Ohio St.3d 202, 204, 648 N.E.2d 821.

{¶10} In its first assignment of error, the CSEA argues the trial court erred when it refused to adopt the administrative order because of a violation of procedural due process. Neither the magistrate nor the trial court indicated the basis for this decision. However, it appears this decision was due to the fact that the CSEA sent Harris notice of the hearing via regular mail instead of registered mail.

{¶11} Pursuant to R.C. 119.07, the CSEA should have sent notice of the hearing via registered mail, return receipt requested. “The failure of an agency to give the notices for any hearing * * * in the manner provided in this section shall invalidate any order

entered pursuant to the hearing.” R.C. 119.07. The purpose of this notice is to give the parties involved adequate notice to enable them to prepare for the hearing. *Sohi v. Ohio State Dental Bd.* (1998), 130 Ohio App.3d 414, 422, 720 N.E.2d 187. However, Ohio courts have consistently held that administrative orders following a hearing may be valid even though notice of the hearing did not comply with R.C. 119.07. See *Fogt v. Ohio State Racing Commission* (1965), 3 Ohio App.2d 423, 32 O.O.2d 546, 210 N.E.2d 730; *Shearer v. State Medical Bd.* (1950), 91 Ohio App. 277, 280, 44 O.O. 480, 97 N.E.2d 688; *Prinz v. State Counselor and Social Worker Bd.* (Jan. 21, 2000), 1st Dist. No. C-990200; *Kenney v. South Range Local School District* (Mar. 23, 1983), 7th Dist. No. 82 CA 35.

{¶12} In order for an administrative order to be valid without proper notice under R.C. 119.07, the record must demonstrate that the defendant had actual notice of the proceedings against him. *Prinz* at 5. Once a defendant has received actual notice of the proceedings, he may waive asserting the lack of notice as a defense, as any objection to jurisdiction over the person may be waived. *Fogt* at 425, citing 1 Ohio Jurisprudence 2d 489, Section 89.

{¶13} We recognize that in *Prinz*, *Fogt*, and *Fenney*, the defendant appeared at the hearing and that appearance demonstrated he received actual notice of the proceedings against him while in this case Harris did not appear at the hearing. However, this case does not hinge on whether Harris did or did not appear at the hearing. The testimony at the hearing demonstrates that he actually received notice of the hearing. Before the hearing, Harris contacted the CSEA by telephone to inform it of his inability to attend and talked to the CSEA about the possible consequences of the hearing. Furthermore, Harris never objected to the form of service at any stage in the proceedings.

Given these facts, we conclude Harris has waived any objection to the form of notice and, therefore, that the form of notice does not provide a basis for invalidating the administrative order. The CSEA's first assignment of error is meritorious.

{¶14} In its second assignment of error, the CSEA argues the trial court erred when it failed to register the administrative order by finding it invalid because it was not conducted before a detached magistrate. Once again, neither the trial court nor the magistrate indicated the basis for this decision.

{¶15} There is no basis for the trial court's conclusion. Pursuant to statute, a local child support enforcement agency has the authority to determine the amount and method of payment of child support. R.C. 3111.78. R.C. 3111.53(A) requires a CSEA to employ, in some manner, "an individual to serve as an administrative officer to issue administrative orders determining the existence or nonexistence of a parent and child relationship, requiring the payment of child support, or both." *Id.* If no one files an objection or appeal to an administrative child support order within thirty days of the issuance of the order, then that order is final and enforceable under R.C. 3111.84.

{¶16} In this case, no one objected or appealed the administrative order. It was signed by "Donna Anderson", who is designated an administrative officer on that order. The testimony in the transcript indicates she was an administrative officer. There is no indication in the record or the transcript that Anderson was either biased, prejudiced, or unqualified for the position under the relevant portions of the Administrative Code. Thus, there is no legal justification for the conclusion that the administrative order is invalid because the hearing was not conducted by a detached magistrate. Accordingly, the CSEA's second assignment of error is meritorious.

{¶17} As we conclude each of the CSEA's assignments of error are meritorious, the decision of the trial court is reversed. Further, this cause is remanded and the trial court is instructed to register the administrative support order dated April 14, 2000.

Donofrio and Waite, JJ., concur.