

[Cite as *Reda v. Reda*, 2009-Ohio-5248.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SAMUEL C. REDA

Plaintiff-Appellee

-vs-

STEPHANIE Y. REDA

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 08CAF100059

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Domestic Relations Division, Case No.
01DSC08289

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 30, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, P.J.

{¶1} On September 19, 2001, appellant, Stephanie Reda, and appellee, Samuel Reda, received a dissolution of their marriage in the Court of Common Pleas of Delaware County, Ohio. The parties agreed to shared parenting of their minor child.

{¶2} On July 28, 2004, the Court of Common Pleas of Franklin County, Ohio issued a judgment entry declaring the minor child to be abused, neglected, and dependent. The Franklin County court granted appellee temporary custody of the child, and granted appellant supervised visitation.

{¶3} On August 27, 2004, the Delaware County Child Support Enforcement Agency (hereinafter "DCCSEA") filed a motion to modify child support. On May 18, 2005, appellant filed a motion to dismiss the child support motion because Franklin County had continuing and exclusive jurisdiction over custody and support of the minor child. A hearing before a magistrate was held on same date. By decision filed June 30, 2005, the magistrate denied the motion to dismiss, and ordered appellant to pay appellee \$236.12 per month for child support. Appellant filed objections. By judgment entry filed December 13, 2005, the trial court denied the objections and approved and adopted the magistrate's decision. Appellant filed an appeal, but it was dismissed for want of prosecution.

{¶4} On March 18, 2008, the DCCSEA filed a motion to show cause, motion for lump sum judgment, and motion to seek work. On May 2, 2008, appellant filed a motion to modify child support and motion to determine child support arrearage. On May 14, 2008, appellant filed a motion to dismiss for lack of jurisdiction as Franklin County had exclusive jurisdiction over the child. A hearing before a magistrate was held on June

16, 2008. By decision filed August 21, 2008, the magistrate denied the motion to dismiss, and declared continuing jurisdiction over the issue of child support. By judgment entry filed September 10, 2008, the trial court approved and adopted the magistrate's decision.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶6} "THE TRIAL COURT ERRED BY EXCEDING (SIC) ITS JURISDICTION AND REALLOCATTING (SIC) THE PARENTAL RIGHTS AND RESPONSIBILITIES OF THE COUPLE'S CHILD, DANA REDA WHILE THIS CHILD WAS INVOLVED IN A PENDING JUVENILE CASE IN FRANKLIN COUNTY."

I

{¶7} Appellant claims the trial court erred in retaining jurisdiction on the re-allocation of paternal rights and responsibilities when there was a pending juvenile dependency case in Franklin County, Ohio.

{¶8} Pursuant to appellant's notice of appeal, the subject of this appeal is the trial court's September 10, 2008 affirmation of the magistrate's August 21, 2008 decision denying appellant's motion to dismiss for lack of jurisdiction. The trial court agreed that appellant's motion to dismiss should be denied, and asserted its right to continuing jurisdiction over matters related to child support.

{¶9} A review of the docket indicates the issue of the Delaware County court's subject matter jurisdiction was previously litigated on the exact same premise i.e., the

trial court lacked jurisdiction because of a pending dependency action in the Juvenile Court of Franklin County:

{¶10} "The Magistrate correctly dismissed the Petitioner-Wife's Motion to Dismiss for Lack of Jurisdiction. In this case although the Franklin County Juvenile Court exercised jurisdiction as it relates to custody of the minor child, the Court did not issue an Order as it relates to support. Therefore, the Franklin County Juvenile Court did not exercise jurisdiction as it relates to the support of the child, and this Court retains continuing jurisdiction over such matters.

{¶11} "The Petitioner-Wife is hereby Ordered to pay child support in the amount of \$236.12 per month plus 2% administrative processing fees through the Delaware County Child Support Enforcement Agency by wage withholding effective August 27, 2004." See, Judgment Entry filed December 13, 2005.

{¶12} Appellant appealed this judgment entry to this court on January 13, 2006 (Case No. 06CAF010006). However, the appeal was dismissed on May 31, 2006 for want of prosecution pursuant to App.R. 18(C).

{¶13} On March 18, 2008, the DCCSEA filed a motion to show cause, motion for lump sum judgment, and motion to seek work. On May 2, 2008, appellant filed a motion to modify child support and motion to determine child support arrearage. On May 14, 2008, appellant filed a motion to dismiss for lack of jurisdiction as Franklin County had exclusive jurisdiction over the child. Appellant argued all prior orders of child support were void.

{¶14} The arguments raised in appellant's May 14, 2008 motion to dismiss were identical to the arguments raised in appellant's May 18, 2005 motion to dismiss which

the trial court had denied, and the subsequent appeal was dismissed for want of prosecution. We find the issue to be res judicata. Res judicata is defined as "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, syllabus.

{¶15} What is interesting to note is that on May 2, 2008, appellant invoked the jurisdiction of the Delaware County court to modify child support and to make a determination on child support arrearage and then on May 14, 2008, argued the same trial court did not have jurisdiction.

{¶16} Appellant argues the child support order from the Delaware County court is a void judgment because of the retention of jurisdiction by the Franklin County court. We concur that the retention of jurisdiction by the Franklin County court essentially trumps the reallocation of parental rights and responsibilities in the Delaware County court. However, the assignment of child support responsibility is consistent with the Franklin County court's orders and is therefore not in error.

{¶17} We find the jurisdictional issue was waived by appellant's failure to prosecute the appeal of the December 13, 2005 judgment entry. In addition, the order of child support alone is not void as the Delaware County court had retained jurisdiction over the matter and its decision was not inconsistent with the Franklin County court's orders.

{¶18} We distinguish this case from *In re Lamont*, Geauga App. No. 2007-G-2786, 2008-Ohio-1893, because there was no attempt in this case to determine custody contra to the pending dependency action in Franklin County.

{¶19} The sole assignment of error is denied.

{¶20} The judgment of the Court of Common Pleas of Delaware County, Ohio, Domestic Relations Division is hereby affirmed.

By Farmer, P.J.

Wise J. concur and

Edwards J. concurs separately.

s/ Sheila G. Farmer_____

s/ John W. Wise_____

JUDGES

SGF/jp 0724

EDWARDS, J., CONCURRING OPINION

{¶21} I concur with the disposition of this case by the majority.

{¶22} I write separately only in an effort to give additional reasons for my concurrence.

{¶23} The domestic relations court in Delaware County had jurisdiction to issue the original orders of support as part of the parties' dissolution proceedings. These orders do not cease to exist just because the juvenile court may also have jurisdiction to issue support orders as part of an abuse, neglect or dependency action. Pursuant to R.C. 2151.23(A)(1), it is clear that only a juvenile court can adjudicate a child to be abused, neglected or dependant and issue dispositional orders regarding such adjudication. That does not mean that the previously issued child support orders in the domestic relations case cease to exist, unless the domestic relations court has certified its proceedings to the juvenile court and relinquished its jurisdiction.

{¶24} See *McDaniel v. McDaniel*, Warren App. No. CA2006-12-142, 2007-Ohio-4220, ¶19 and *In re Poling*, 64 Ohio St.3d 211, 1992-Ohio-144, 594 N.E.2d 589.

s/ Julie A. Edwards

Judge Julie A. Edwards

JAE/dr/rmn

