

Third District Court of Appeal

State of Florida, July Term, A.D. 2010

Opinion filed August 11, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-3327
Lower Tribunal No. 93-3711

Rosemary Spano,
Appellant,

vs.

Dennis E. Bruce,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Scott M. Bernstein, Judge.

Rosemary Spano, in proper person; Diane H. Tutt, for appellant.

Dennis E. Bruce, in proper person; John G. Crabtree, for appellee.

Bill McCollum, Attorney General, and William H. Branch, (Tallahassee) Assistant Attorney General for the Department of Revenue, as amicus curiae.

Before RAMIREZ, C.J., and CORTIÑAS, and LAGOA, JJ.

PER CURIAM.

Rosemary Spano appeals the trial court's Order on Exceptions to Report of General Magistrate.¹ We affirm the trial court's child support modification retroactive to the date on which Spano filed her amended petition for modification, rather than the date on which she first moved for modification; and affirm the court's denial of the mother's request for attorney's fees and costs because this was a Title IV-D case.

The underlying action involves a paternity action in which the parties entered into a Mediation Settlement Agreement which the trial court ratified and approved in its Agreed Final Judgment Modifying Parental Responsibility and Other Matters of April 2001. Since the parties entered into the 2001 mediation agreement, the case has been before this Court on several occasions.²

1. Factual Background

Under the Mediation Agreement, child support was abated for a period of two years, and either party could apply for a modification of child support after the

¹ She also appealed the trial court's order on attorney's fees and costs entered on November 26, 2007. Appellee Dennis E. Bruce confessed error to the extent that the trial court failed to make specific findings of fact when it awarded \$6000 in attorney's fees in Spano's favor. Accordingly, this Court remanded the cause to the trial court on February 23, 2009, so that it could make specific findings in support of the \$6000 award. The trial court has since entered its attorney's fees order upon remand, but that order does not constitute part of the case before us.

² See *In re BB*, 820 So. 2d 409 (Fla. 3d DCA 2002); *Spano v. Bruce*, 816 So. 2d 714 (Fla. 3d DCA 2002).

two-year period. On May 1, 2003, two years after the court approved the Mediation Agreement, the mother moved for modification of child support. The trial court entered an order which, in pertinent part, stated that if the court granted the mother's petition for modification of child support, the court could make changes retroactive to the date of the filing of the petition.

The mother moved to amend her petition for modification, and the father moved to dismiss. The court granted the father's motion, without prejudice, on the ground that service on the father had not been perfected within 120 days, and it granted the motion on the grounds that the mother had not obtained court permission to file her amended petition. The mother thereafter filed proof that the father had in fact been served with the original petition for modification.

On August 31, 2006, the mother filed her second amended petition. She sought a reduction in child support, retroactive to the date of filing the original petition. The State Attorney's Office represented the father during this time in connection with this proceeding.

In the General Magistrate's subsequent Interim Report, the magistrate granted the mother's request for downward modification of child support. The basis for the mother's argument was that the reduction should be made retroactive to the date on which she first sought to modify, to which the father argued that the

reduction should be made retroactive to the date when the mother filed her amended petition for modification.

The court based its child support modification ruling on the fact that the mother's petition and amended petition were dismissed in December 2005 and, although the dismissal was without prejudice, it occurred within months prior to the time during which the mother filed her second amended petition for modification. The court held that the second amended petition for modification was a new case for which the mother paid a filing fee.

The General Magistrate also considered the wife's claim for attorney's fees and costs incurred in connection with the modification proceeding. The father argued that this was a Title IV-D case, under which the mother would not be entitled to recover attorney's fees. In response, the mother argued that this was not a Title IV-D case because the Department of Revenue was never named a party. Additionally, the Department of Revenue never intervened, and thus under controlling law, this was not a Title IV-D case, despite the fact that the State Attorney's Office provided representation to the father.

The General Magistrate rejected the father's argument that this was a Title IV-D case. The magistrate ruled that due to the much greater income and assets of the father as compared with the mother's lesser income and minimal assets, the father should be required to pay for part of the mother's attorney's fees and costs.

The General Magistrate found \$30,644.16 to be a reasonable amount for the mother's attorney's fees and costs and recommended that the father be required to pay \$24,515.32, plus eighty per cent of the mother's post-hearing fees.

The court disagreed with the General Magistrate and denied the mother's request for attorney's fees and costs on the grounds that this was a Title IV-D case and the law only authorized fees against the non-prevailing obligor, and the father was the prevailing obligee. The court rejected the mother's argument that in order for this to have been a Title IV-D case, the Department of Revenue had to have been named as a party or intervened in the case.

Both parties filed exceptions to the magistrate's conclusions. On December 14, 2007, the trial court entered its Order on Exceptions to Report of General Magistrate. The court ruled in favor of the father.

2. Child Support Modification Issue

We first turn to the issue of whether the trial court committed error in its child support modification, and we disagree with the mother that the trial court's failure to make her modification of child support retroactive to the date on which she first filed her petition for modification on May 1, 2003, constituted error.

The abuse of discretion standard governs the review of trial court orders that modify child support modifications. See Alois v. Alois, 937 So. 2d 171 (Fla. 4th DCA 2006). The trial court's authority to order a reduction in a child support

obligation retroactive to the date on which a petition for modification is filed is clear. See Miles v. Champlin, 805 So. 2d 1085, 1086 (Fla. 1st DCA 2002) (stating that “a trial court may ‘modify an order of support ... by increasing or decreasing the support ... retroactively to the date of the filing of the action or supplemental action for modification as equity requires’ ”).

Here, there is no abuse of discretion in the trial court’s child support modification. Child support modifications should be made retroactive to the time when the petition for modification was filed. See Batts v. Batts, 600 So. 2d 1301 (Fla. 5th DCA 1992). This is precisely what the trial court did.

When the trial court dismissed the mother’s initial petition for modification, the second amended petition for modification in essence constituted the mother’s initial pleading which did not relate back to any other pleading. The mother, in her second amended petition for modification, concedes that the trial court order effectively dismissed her petition because she failed to serve the petition upon the father. Thus, the retroactive date for the purpose of child support modification is the date on which the mother filed her second amended petition on August 31, 2006.

3. Attorney’s Fees and Costs Issue

The abuse of discretion standard governs the review of an award of attorney’s fees. See Bateman v. Serv. Ins. Co., 836 So. 2d 1109 (Fla. 3d DCA

2003). However, where entitlement to attorney's fees depends upon the interpretation of a statute, the standard of review is de novo. See Iannuzzelli v. Lovett, 981 So. 2d 557, 559 (Fla. 3d DCA 2008). Here, a review of the attorney's fee award in the mother's favor appears inadequate, and the attorney's fee order lacks the requisite findings to justify the award. An inadequate award of attorney's fees is subject to reversal. See Urbieta v. Urbieta, 446 So. 2d 230 (Fla. 3d DCA 1984); Marchion Terrazzo, Inc. v. Altman, 372 So. 2d 512 (Fla. 3d DCA 1979).

Section 61.16, Florida Statutes (2009), provides for Title IV-D cases and non-IV-D family law cases. In Title IV-D cases, section 61.16 states that attorney's fees may only be assessed against the non-prevailing obligor. In this case, the father is the prevailing obligee.

The issue here is whether the presence of the Department of Revenue, as the state agency enforcing the child support payment of the mother, and the State Attorney's office as the legal services provider, automatically converts this case into a Title IV-D case. We find that all child support cases that are eligible for Title IV-D services and administered by the Department of Revenue are considered Title IV-D cases, despite the fact that the Department of Revenue has not been named a party to the case.

While sections 61.16 and 409.2564(5), Florida Statutes (2009), discuss Title IV-D cases, neither requires that the Department of Revenue be a party to the case

for it to be a Title IV-D case. Furthermore, Spano's reliance on Satchell v. Satchell, 949 So. 2d 1116 (Fla. 1st DCA 2007), is misplaced. That case is not on point with the issue here. The Satchell court merely determined that the Department of Revenue was already a party to a case, therefore making it a Title IV-D proceeding. Id. While the Department of Revenue, as a party to a case, does convert the case into a Title IV-D case, the issue here is whether a case can still be considered a Title IV-D case even if the Department of Revenue is not a party.

Persons eligible for Title IV-D aid include all those who apply for enforcement or support of child support collection services. See § 409.2557(2), Fla. Stat. (2009). The State Attorney's Office represented the father in his defense of the mother's child support proceeding, a right available to any parent, irrespective of whether the parent is indigent. This representation automatically converted this case into a Title IV-D case. The legislative intent behind the State's enforcement of support for financially dependent children by persons responsible for their support is to augment additional remedies directed to the resources of the responsible parents. See § 409.2551, Fla. Stat. (2009). That intent supports the conclusion that the state legislature meant for the Department of Revenue to use its Title IV-D power to enforce child support collection against those parents who have not fulfilled their financial obligations.

Thus, the trial court was correct when it concluded that this was a Title IV-D case and that section 61.16 precluded the mother's claim for attorney's fees against the father.

4. Conclusion

In conclusion, the trial court correctly denied the mother's request that her petition for modification be retroactive to the date on which she filed her first modification proceeding in 2006. We therefore affirm the trial court's order in which it denied retroactive modification of child support to the date on which the second modification proceeding commenced. We also affirm the trial court's denial of attorney's fees in the mother's favor.

Affirmed.