2015 IL App (1st) 140399-U

FIRST DIVISION
February 23, 2015

No. 1-14-0399

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAVERT JONES, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES; FELICIA NORWOOD, Director, Illinois Department of Healthcare and Family Services; LISA CASTILLO, Administrative Law Judge, Illinois Department of Healthcare and Family Services; RICHARD FALEN, Division of Child Support Services; DIVISION OF CHILD SUPPORT SERVICES MANAGER OF APPEALS; DIVISION OF CHILD SUPPORT SERVICES ADMINISTRATIVE APPEALS COORDINATOR; DIVISON OF CHILD SUPPORT SERVICES, APPEALS/OFFSET UNIT; PAMELA PETERSON, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13 CH 13968 Honorable Sophia H. Hall, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The Department of Healthcare and Family Services did not err in affirming the suspension of plaintiff's driver's license for non-payment of his child support obligations, even though it reduced his monthly support payment because he was unemployed. Plaintiff fails to raise any valid challenge to his child support obligations generally or to the earlier department order assessing that obligation.

¶ 2 Plaintiff Lavert Jones appeals *pro se* from an order of the circuit court affirming a decision by the Director[1] of the Department of Healthcare and Family Services (Department or IDHFS). The Director's decision tracked the decision of a Department administrative law judge (ALJ) which reduced plaintiff's payment on his child support obligation to $10 per month, but upheld the suspension of his driver's license and imposed interest on his support arrearage. On appeal, plaintiff contends that the Board's decision was erroneous.

¶ 3 In May 2013, plaintiff filed a complaint in the circuit court seeking administrative review of the Director's decision of May 10, 2013, alleging that the decision was "not in accordance with the law." A copy of the Director's decision is in the record.[2]

¶ 4 The Director's decision of May 10, 2013, adopted the ALJ's findings of fact from an evidentiary hearing held in April 2013. The ALJ found it undisputed that an April 2007 default support order directed plaintiff to pay (from May 2007 onward) $313.04 monthly in current support and found a retroactive support obligation of $7,512.96 from April 2005 through April 2007. Plaintiff filed an appeal in December 2012 seeking modification of the default support order. The issues before the ALJ were whether plaintiff's support obligation should be redetermined and whether the suspension of his driver's license should be upheld.

¶ 5 Plaintiff testified before the ALJ that he was challenging the support order, interest, and driver's license suspension, that he was imprisoned from 1984 to 2003 and "is currently not working and has no means of paying support" as he has been receiving public assistance since

[1] Pursuant to section 2-1008(d) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1008(d) (West 2010)), we hereby substitute IDHFS Director Felicia Norwood as a party in place of her predecessor, Julie Hamos, and amend the caption as shown above.

[2] The page numbering in the appellate record runs from page 10 directly to page 17; pages 11 to 16 are missing. However, the three-page decision in the record appears to be complete by virtue of its consistent internal page numbering and content.

2003 but "can pay $10 per month." Plaintiff also testified that he informed the Department that he had received no documentation of a 2008 hearing, that he was told to file an appeal from the default support order "but nothing was done," and that he made no support payments. The Department entered into evidence (1) the default support order directing plaintiff to pay, from May 2007 onward, $313.04 monthly in current support and $62.60 monthly towards the $7,512.96 retroactive support, and Department records that plaintiff (2) timely filed an appeal that was dismissed in January 2008 for failure to appear, (3) made a modification request that was "closed" in August 2008 due to his failure to provide financial information, and (4) made two support payments in 2007.

¶ 6 The Director found that plaintiff "does not contend that service was improper but rather was not notified," that he submitted to the Department's jurisdiction, and that the time for appealing the default support order and denial of modification in 2008 was long past. The Director noted plaintiff's obligation was "for past due support only" and his testimony that his monthly obligation of $450.77 (the aforementioned sums plus "$75.13 towards delinquency") was "too high" as he was unemployed and receiving public aid, and the Director noted the ALJ's finding that plaintiff was unable to pay $450.77 but able to pay $10 monthly until employed. The Director noted that, pursuant to statute and regulation, a child support obligation unpaid for 30 days incurs 9% simple interest and she noted the ALJ's finding that plaintiff's obligation was more than 30 days' overdue and thus subject to interest. Lastly, the Director recited the ALJ's finding that the license suspension was proper, on Department records that plaintiff last made payment in 2007 and his own testimony that he never made a payment. The Director upheld plaintiff's license suspension and ordered that "the monthly arrears payment shall be modified to $10 per month until [the Department] has evidence that [plaintiff] is unemployed."

¶ 7 In the circuit court, plaintiff contended that the underlying support order was erroneous because the mother of the children testified with intent to defraud the Department "by not disclosing the entire truth about the circumstances surrounding the children's birth" in that they were conceived during allegedly illegal conjugal visits during his imprisonment. He argued that "it is now questionable" that the Department established his prior support obligation when "the mother or public agency [did] not file the action earlier." He sought a paternity test and an order holding the mother "equally responsible for the delinquent child support obligation."

¶ 8 The Director and Department contended that the decision was proper and should be affirmed. They recited factual allegations consistent with the decision, adding that (1) plaintiff testified to being the biological father of the children in question, (2) the children were born in 1989 and 1993, and (3) the child support claim was brought by the children's mother in 2007 and was retroactive to 2005, when plaintiff had been out of prison for two years. They argued that plaintiff's earlier challenge to the support order was properly dismissed due to failure to appear, that the assessment of interest and the driver's license suspension were authorized by law, that plaintiff submitted to Department jurisdiction by successfully seeking modification of his monthly payment, and that his arguments as to the circumstances of the children's conception or the filing of the support claim did not affect his support obligation.

¶ 9 On February 3, 2014, following arguments by the parties, the court affirmed the Director's decision. This appeal followed.

¶ 10 Before proceeding to the merits of this appeal, we note the state of the record: in addition to the aforementioned missing page problem, the record before us contains nothing purporting to be an IDHFS administrative record. When someone appeals an administrative agency's decision to the circuit court, the agency must file the administrative record as its answer. 735 ILCS

5/3-106 (West 2012). The circuit court clerk's online docket similarly lists no filing of an answer by IDHFS, which raises the question as to whether the Attorney General's office ever filed the full administrative record. Perhaps it did, because its brief contains page references to an answer allegedly filed on June 23, 2013. The on-line docket reveals only that an appearance, affidavit, proof of service, and exhibits were filed that day. The court below entered a briefing schedule order which required the parties to file briefs but which stated nothing about filing the record. The defendant's reply brief includes what purports to be a copy of the transcript of the hearing before the ALJ and various exhibits, thus demonstrating that the hearing was transcribed and exhibits preserved. If, in fact, a proper administrative record was prepared and filed with the circuit court, its omission from the appellate record is so crucial that we would have expected that the Attorney General's office to have taken steps to rectify the problem on its own volition, even though it represented the appellee. Regarding the materials the defendant included in his reply brief, we cannot consider exhibits included as attachments to briefs. *Denny v. Haas*, 197 Ill. App. 3d 427, 430 (1990) ("attachments to briefs which are not otherwise of record are not properly before a reviewing court and cannot be used to supplement the record.") Nonetheless, the scant record before us does contain a copy of the administrative decision which sufficiently summarizes the evidence and issues.

¶ 11 One other problem with the record deserves mention. In its brief, the State defendants argued that we should summarily affirm the decision because the circuit court record did not contain a copy of the chancery judge's order from which the appeal is being taken. This was true enough, but a *pro se* defendant might not be aware of the procedures necessary to obtain a correction of the record to correct this omission. Unwilling to resolve this case on a technicality, we issued an order requiring the circuit court clerk to provide a supplemental record containing

the circuit court's dispositional order. The supplemental record reveals that the trial court entered that order on February 3, 2014. The order in the supplemental record is not the signed original, but rather is a scanned facsimile of the original from the clerk's imaging system. The defendant filed his notice of appeal and request for preparation of the record immediately after losing the case, but there is no reason why the February 3 order should not have been included. We note this particularly because this problem is not unique to this case. The clerk of the circuit court of Cook County's appellate records are constantly missing documents, contain documents from cases other than the one being appealed, have mis-numbered pages, or exhibit other major deficiencies that manifestly affect our ability to promptly and correctly adjudicate appeals and create expense and time for attorneys and litigants.

¶ 12 With these comments in mind, we recognize that authority such as *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009), reminds us that an appellant is obligated to provide a sufficiently complete record of proceedings below to support claims of error, so we presume, on an inadequate record, that the judgment or order being appealed conformed to the law and had a sufficient factual basis. However, the State itself was responsible for furnishing a complete administrative record to the circuit court in the first instance, and the appellate record in a case like this is necessarily based on the circuit court record. In sum, we find that the record before us and the matters uncontested by the parties give us a sufficient basis to rule upon plaintiff's contentions. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007) (review not precluded by incomplete record if it contains all that is necessary to dispose of the issues raised under applicable standard of review).

¶ 13 On appeal, plaintiff contends that the Director's decision was erroneous and imposes severe hardship on him. He contends that his support obligation "should be income based" and

his modification request was "not reviewed," that the default support order "did not show proof of hearing notice claimed to be mailed to plaintiff" because something so important "should" have been sent by certified mail, and that the suspension of his driver's license causes him severe hardship. While he states in his initial brief that "[b]y no means does plaintiff *** feel he should not take ownership for his responsibility [*sic*], the children," he argues in his reply brief that he has no child support obligation because one "is not the legal father of a child if the mother was unmarried at the time of birth" and the Department is precluded from seeking child support by the mother's inferred intent "for the children to be raised by one parent and have the burden of financial responsibility fall on the State."

¶ 14 By law, the "parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents." 750 ILCS 45/3 (West 2012). Similarly,

> "Unless the child is otherwise emancipated, the parents are severally liable for the support of any child under age 18, and for any child aged 18 who is attending high school, until that child graduates from high school, or attains the age of 19, whichever is earlier. The term 'child' includes a child born out of wedlock, or legally adopted child." 305 ILCS 5/10-2 (West 2012).

¶ 15 The Department may bring an action "to determine the existence of the father and child relationship *** if it is providing or has provided financial support to the child or if it is assisting with child support collection services" until "2 years after the child reaches the age of majority." 750 ILCS 45/7(a), 8(a)(1) (West 2012). A mother's decision to bring or not bring such an action does not bind the Department; "[j]ust as the interests of children are different from those of their

mothers, the interests of public agencies providing aid are separate from the caretakers of the children." *Department of Public Aid ex rel. Stark v. Wheeler*, 248 Ill. App. 3d 749, 751 (1993).

¶ 16 "In lieu of actions for court enforcement of support [the Department] may issue an administrative order requiring the responsible relative to comply with the terms of the determination and notice of support due." 305 ILCS 5/10-11 (West 2012). A person subject to such a Department order "who has been duly notified of such order or determination may, within 30 days from the date of mailing of such order or determination, petition the *** Department for a release from or modification of the order or determination," but absent such a timely petition "the order shall become final and there shall be no further administrative or judicial remedy." 305 ILCS 5/10-11, 10-12(a) (West 2012). However, a person subject to such an order "who did not petition within the 30-day appeal period may petition the *** Department for relief from the administrative order or determination on the same grounds as are provided for relief from judgments under Section 2-1401 of the Code of Civil Procedure," within two years of the order or determination. 305 ILCS 5/10-14.1 (West 2012) (citing 735 ILCS 5/2-1401 (West 2012)).

¶ 17 A Department support order "shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order," and "[e]ach such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced." 305 ILCS 5/10-11 (West 2012). Section 12-109 of the Code of Civil Procedure (735 ILCS 5/12-109 (West 2012)) governs interest on civil judgments and requires the levying of interest on child support arrearages. See also 305 ILCS 5/10-16.5 (West 2012) ("A support obligation, or any portion of a support obligation,

which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure.")

> "Every judgment arising by operation of law from a child support order shall bear interest as provided in this subsection. The interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month. The unpaid child support balance at the end of the month is the total amount of child support ordered, excluding the child support that was due for that month to the extent that it was not paid in that month and including judgments for retroactive child support, less all payments received and applied as set forth in this subsection. *** Interest on child support obligations may be collected by any means available under State law for the collection of child support judgments." 735 ILCS 5/12-109(b) (West 2012).

The cited section sets 9% per year as the relevant interest rate. 735 ILCS 5/2-1303 (West 2012).

¶ 18 The Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2012)) provides that the "Secretary of State shall suspend a driver's license upon certification by the [Department], in a manner and form prescribed by the Illinois Secretary of State, that the person licensed is 90 days or more delinquent in payment of support under an order of support issued by a court or administrative body of this or any other State." 625 ILCS 5/7-702(c) (West 2012). Such a "suspension shall remain in effect until the Secretary of State receives notification from the

Department that the person whose license was suspended has paid the support delinquency in full or has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department" while a subsequent suspension on the Department's certification "shall not be removed unless the obligor is in full compliance with the order of support and has made full payment on all arrearages." 625 ILCS 5/7-704.1 (West 2012). "The Department shall issue a Notice of Intent to Request Suspension of an Illinois Driver's License [when] the amount of past-due support is at least $2500, and the responsible relative has not made a voluntary payment of support in the last 90 days." 89 Ill. Admin. Code § 160.70(m)(1)(A). The factors for a payment plan satisfactory to the Department "will include, but are not limited to: (A) the amount of past due support and interest owed; (B) the amount of current child support ordered to be paid; and (C) the responsible relative's ability to pay." 89 Ill. Admin. Code § 160.70(m)(3).

¶ 19 The decisions of the Department and its Director are reviewable under the Administrative Review Law. 305 ILCS 5/10-14 (West 2012) (citing 735 ILCS 5/3-101 *et seq.* (West 2012)). An "action to review a final administrative decision shall be commenced by the filing of a complaint [in the circuit court] and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103 (West 2012). We review the decision of the Department, not the circuit court, and the Department's findings of fact are considered *prima facie* true and correct. 735 ILCS 5/3-110 (West 2012).

¶ 20 Here, the law does not support plaintiff's contention that he has no child support obligation generally because of the alleged circumstances of the children's conception or purported lateness of the child support claim. Similarly, the law does not support any claim – made by plaintiff below but not here – that the assessment of interest was improper; it is

statutorily mandatory. The fact that the Director's decision modifies plaintiff's monthly payment from $450.77 to $10 so long as he is unemployed belies his contention that the Department did not consider his modification request.

¶ 21 We find that suspension of plaintiff's driver's license was not erroneous under the circumstances documented in the decision. Arguably, the Director could declare to the Secretary of State that plaintiff "has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department." 625 ILCS 5/7-704.1(a) (West 2012). However, that determination is clearly a matter of the Department's discretion, and we find that plaintiff has failed to show that the Director abused her discretion when he owed such a large sum for so long and paid so little upon it, even considering his reduced ability to pay. Notably, while plaintiff testified that he made no support payments, the Director's decision finds, based on Department records, that he made two payments in 2007. Had plaintiff paid even the now-modified $10 per month regularly since 2007, he would have demonstrated some commitment to paying his arrearage. We note in regard to plaintiff's claim of hardship from his suspension that the law provides a means for alleviating such hardship affecting employment: a family financial responsibility driving permit. 625 ILCS 5/7-702.1(b) (West 2012). He may wish to investigate whether those procedures might assist him.

¶ 22 As to plaintiff's administrative appeal of the default child support order, the law does not support his claim that the appeal was improperly dismissed in 2008 because he "should" have received notice of an appeal hearing by certified mail. The Department is required to serve certain documents by certified mail, but may send others by "ordinary mail" or "regular mail." *Cf.* 89 Ill. Admin. Code § 160.60(a)(2)(A), (d)(7)(B). Moreover, the time for plaintiff to seek judicial review of the 2008 dismissal has long passed. Lastly, the time for him to challenge the

underlying 2007 child support order within the Department, even in the manner of a section 2-1401 petition, is also long expired. Thus, we see no error in the Director's decision effectively treating plaintiff's obligations in the 2007 support order as a "given" and modifying only his payment against that arrearage.

¶ 23 We additionally note that the result would be the same even if we were able to consider the transcript and exhibits provided in the defendant's reply brief. The issues are primarily legal in nature and thus do not depend on the testimony at the hearing. In sum, we find no error in the Director's decision and accordingly affirm the judgment of the circuit court confirming that decision.

¶ 24 Affirmed.