

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio ex rel. Theresa Rangel

Court of Appeals No. L-05-1357

Relator

v.

David Woodbury and  
Lucas County Child Support  
Enforcement Agency

**DECISION AND JUDGMENT ENTRY**

Respondents

Decided: May 3, 2007

\* \* \* \* \*

Clint M. McBee, for relator.

Julia R. Bates, Lucas County Prosecuting Attorney, and John A. Borell, Assistant Prosecuting Attorney, and Douglas G. Marciniak for respondent Lucas County Child Support Enforcement Agency.

\* \* \* \* \*

SKOW, J.

{¶ 1} On November 18, 2005, relator filed a complaint in mandamus, requesting that we order respondent, Lucas County Child Support Enforcement Agency ("LCCSEA") to cease withholding child support from respondent's wages. Relator alleged that no final order for child support was ever issued by the trial court.

Respondent filed an answer to relator's complaint in mandamus, referencing as "Exhibit A," a May 29, 2002 judgment entry by the trial court allegedly adopting the magistrate's decision. That judgment entry, however, was missing from the filing. Although we ordered respondent to file a copy of the referenced decision, it failed to do so. We also ordered the parties to file motions for summary judgment, if desired.

{¶ 2} On July 17, 2006, relator filed a motion for summary judgment and included a copy of the May 29, 2002 judgment entry as an attachment. Respondent did not respond to relator's motion. Although respondent agreed to temporarily stop its current attempt to collect child support from relator during the pendency of this action, the question still remains as to whether the trial court ever issued a final order as to that child support obligation and if arrearages shown by respondent are valid.

{¶ 3} At the time of the trial court decisions in this case, the applicable version of Juv.R. 40(E)(4) provided, in pertinent part, that:

{¶ 4} "(a) *When effective.* The magistrate's decision shall be effective when adopted by the court. The court may adopt the magistrate's decision if no written objections are filed unless it determines that there is an error of law or other defect on the face of the magistrate's decision.

{¶ 5} "(b) *Disposition of objections.* The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter itself. \* \* \*

{¶ 6} "(c) *Permanent and interim orders.* The court may adopt a magistrate's decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered. The court may make an interim order on the basis of the magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. An interim order shall not be subject to the automatic stay caused by the filing of objections. An interim order shall not extend more than twenty-eight days from the date of its entry unless, within that time and for good cause shown, the court extends the interim order for an additional twenty-eight days."

{¶ 7} This court has previously delineated the actions which may be taken by a trial court regarding a magistrate's decision, and when such decisions become final and appealable. See *Loretta R.G. v. Child Support Enforcement Agency* (Mar. 8, 2001), 6th Dist. No. L-00-1333, fn2.<sup>1</sup> To become final, the trial court must "adopt, reject, or modify the magistrate's decision and enter judgment accordingly." *Id.* A trial court may give a magistrate's decision immediate effect by adopting the decision promptly after it is issued. *Hurst v. Liberty-Bel, Inc.* (1997), 117 Ohio App.3d 138, 147 (Civ.R.53(E)(4)(c) specifically permits trial court to adopt a referee's decision and enter judgment without waiting fourteen-day period for filing of timely objections). Nevertheless, until the court specifically adopts, rejects, or modifies the magistrate's decision, no final decision exists.

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<sup>1</sup>Our discussion in *Loretta R.G.* refers to magistrate's rulings under Civ.R. 53(E) which is identical to Juv.R. 40(E). Thus, Civ.R. 53 analysis is applicable.

*Loretta R. G.*, supra. See also, *Brown v. Cummins* (1997), 120 Ohio App.3d 554, 556, 698 N.E.2d 501 (magistrate has no authority to find immediate relief is justified and that his decision is to be an interim order effective immediately; this is the judge's decision to make).

{¶ 8} In this case, the factual issues will be determined by the trial court's judgment entries submitted by the parties, which are undisputed, and our 2002 decision which previously determined pertinent issues in this case. See *State ex rel. Rangel v. Lucas County Child Support Enforcement Agency*, 6th Dist. No. L-02-1252, 2002-Ohio-5497. The procedural history of this case regarding the child support order pertaining to this action is as follows:

{¶ 9} December 19, 2001                      Magistrate orders relator to pay \$183.60/month child support.

{¶ 10} January 2, 2002                      Relator files objections.

{¶ 11} January 28, 2002                      Trial court issues interim order denying relator's motion for stay.

{¶ 12} May 29, 2002                      Trial court denies motion to join parties and references previous denial of stay of magistrate's order.

{¶ 13} October 4, 2002                      Sixth District appellate decision determines that January 28, 2002 order, as a non-renewed interim order, expired after 28 days. LCCSEA ordered to cease withholding child support.

{¶ 14} December 2, 2002                      Trial court denies relator's objections, denies motion to set aside magistrate's order rejecting plaintiff's proposed findings of fact, and denies relator's motions for additional findings of fact and conclusions of law and objections "to the magistrate's decision rejecting the motion."

{¶ 15} After a complete and thorough review of the trial court's judgment entries provided, we conclude that the trial court never adopted the magistrate's decision. Contrary to respondent's suggestion, the May 29, 2002 judgment entry does not adopt the magistrate's decision. It only makes the following reference: "Based upon the hearing of 12/19/01 and the resulting judgment entry dated 1/28/02, the court adopted the magistrate's decision." Nothing in the January decision, however, indicates that the trial court independently reviewed and "adopted, rejected, or modified" the magistrate's decision. Instead, a close inspection of the January 28, 2002 interim order reveals that the trial court denied relator's motion for stay and then ordered that the "Magistrate's decision shall be in full force and affect [sic] December 19, 2001 until further order of the Court." As a result, the interim order for child support was in effect from December 19, 2001 until it expired 28 days later, on February 25, 2002.

{¶ 16} In addition, the subsequent December 2002 judgment entry, which denied relator's objections, did not include language adopting the magistrate's decision.

{¶ 17} Either through inadvertence or a mistaken belief that the magistrate's decision was effective without separate review and adoption by the trial court, no final order for child support was ever issued by the trial court between December 19, 2001 to

December 2, 2002. Consequently, since no entry complied with Civ.R. 40 which requires the trial court to "adopt, reject, or modify" the magistrate's decision, the child support order never became a final judgment of the trial court and ceased to have any effect after the expiration of the interim order. Therefore, we conclude that no material facts remain in dispute and relator is entitled to judgment as a matter of law regarding any child support which has accrued as a result of any of the judgment entries issued after the interim order expired on February 25, 2002.

{¶ 18} Accordingly, relator's motion for summary judgment is well-taken and granted. Relator is entitled to a refund of any child support collected as a result of and LCCSEA is ordered to cease withholding child support from relator's wages and to credit any arrearages based upon any of these judgment entries. Respondents are ordered to pay the costs of this action.

MANDAMUS GRANTED.

Mark L. Pietrykowski, P.J.

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JUDGE

Arlene Singer, J.

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JUDGE

William J. Skow, J.  
CONCUR.

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JUDGE

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