FILED
OCT 29 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-320 / 90-1911

STATE OF IOWA ex rel., IOWA DEPARTMENT OF HUMAN SERVICES, MARY M. SPRAGG on behalf of MARQUERITE SPRAGG, JENIFER SPRAGG and ROBERT SPRAGG,

Petitioners-Appellees,

vs.

201

DONALD SPRAGG,

Respondent-Appellant.

Appeal from the Iowa District Court for Clayton County, Robert E. Mahan, Judge.

Spragg challenges the district court's ruling which allows the child support recovery unit to garnish his wages to collect back child support. **WRIT SUSTAINED.**

Charles R. Kelly of Kelly & Mueller Law Office, P.C., Postville, for appellant.

Bonnie Campbell, Attorney General, John Parmeter, and Kay Delafield, Assistant Attorneys General, and Stephen J. Belay, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

In this appeal, respondent-appellant Donald Spragg challenges the trial court's refusal to quash an execution directing his wages be garnished under filings made by Child Support Recovery Unit ordering appellant to make specified payments to the Iowa Department of Human Services as reimbursement for public assistance furnished to his dependents. Appellant contends the issue was resolved in an earlier proceeding. We find the execution should have been quashed.

This matter came into the district court when on April 18, 1988, the Child Support Recovery Unit filed with the clerk of the district court an undated paper captioned "Administrative Order for Reimbursement and Future Support." The order found the matter came before the Director of Bureau of Collections, for the creation of a support debt and appellant had not appeared. The order made no finding the appellant was served in any manner or that the bureau had jurisdiction to enter an order. The order then recited appellant's wife had received $886 in Aid to Dependent Children from the State, and appellant should be required to pay the Iowa Department of Human Services that amount. The order went on to recite in discharge of appellant's duty to provide current and future support for the children, appellant should pay $350 per month commencing May 1, 1988, to continue on the first day

of each month until the children reach eighteen or become emancipated.

Also filed on April 18, 1988, was a second paper captioned "Return of Service of Original Notice." It was signed by a deputy sheriff of an undesignated county and showed that on March 15, 1988, the deputy received a "Notice of Child Support" that was served on Donald Spragg at Elkader, Iowa, on March 16, 1988. No copy of any notice was attached to the return of service.

On June 27, 1988, an Order for Mandatory Income Withholding was signed by Phyllis Grainger, Support Recovery Officer, Child Support Recovery Unit. The order found the appellant had a legal obligation to pay child support as previously ordered and his delinquency was greater than the amount owed for one month. The appellant's employer was directed to deduct from his wages as provided in the order.

The appellant filed a motion to quash the order for mandatory income withholding. He contended the order was unconstitutional, and that he was supporting his wife and family. The appellant further alleged the State was proceeding even though no judgment or order of court had been entered obligating him to pay child support. On December 8, 1988, the trial court determined the action of the Department of Human Services in executing the Mandatory Income Withholding under the provisions of section

252D.1(3) was unconstitutional and sustained the motion to quash.

On August 15, 1990, the State filed another Order of Mandatory Income Withholding, contending the appellant had an obligation for child support previously ordered. It ordered an assignment of income against the appellant and ordered $350 for current support and the sum of $80 for delinquent support. It apparently found the delinquency totaled $6,486. In February 1990 appellant and his wife applied to terminate the support obligation, and appellant's wife waived all monies due her after August 1, 1990. The court approved the joint application on February 12, 1990. The State filed a "Reduction of section 252D order for Mandatory Income Withholding" modifying the Order of Mandatory Income Withholding of August 14, 1989. On February 24, 1989, the appellant was served with a notice of garnishment indicating an administrative order for reimbursement and future support was filed with the Clayton County Clerk of Court on April 18, 1988, and an execution had issued for $4,386. Appellant filed a motion to quash this execution and garnishment. The motion was denied. The appellant filed a motion to enlarge the findings. The trial court enlarged the findings to show the prior withholding was unconstitutional but the current withholding is not unconstitutional. This appeal follows.

The focal question is did the administrative order filed on April 18, 1988, create a judgment from which an execution could issue, and, if it did, did the trial court's order of December 9, 1988, quash it? The State contends its garnishment is proper because its April 18, 1988 administrative order created the obligation, and in requesting termination of the obligation of February 1990, the appellant acknowledged the support obligation and cannot now challenge it.

Iowa Code section 252D.3 provides, among other things, the administrator may issue a notice and demand payment of accrued or accruing support debt due and owed to the department or an individual. The section goes on to specify in considerable detail the procedure and notification necessary. See Iowa Code § 252C.3 (1988). The statute then provides if the person from whom support is being sought does not respond to the notice:

> . . . the administrator may enter an order in accordance with the notice. . . .

Iowa Code § 252C.3(1)(k)(4)(a-d) (1988).

At the time these papers were originally filed, section 252C.5 provided:

> A true copy of any order entered by the director pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the dependent child resides. Upon filing, the clerk shall enter the order in the judgment docket, and the order shall have the force, effect, and attributes of a docketed order or decree of the district court.

Iowa Code § 252C.5 (1989).[1]

The question of the constitutionality of section 252C.5 has never been addressed. However, the power to render enforceable judgments is the essence of judicial power. See State ex rel. Keasling v. Keasling, 442 N.W.2d 118, 121 (Iowa 1989), citing Cedar Rapids Human Rights Comm'n v. Cedar Rapids Community School Dist., 222 N.W.2d 391, 398 (Iowa 1974); see e.g., Chauffeurs Local Union 238 v. Civil Rights Comm'n, 394 N.W.2d 375, 382 (Iowa 1986); City of Iowa City v. Westinghouse Learning Corp., 264 N.W.2d 771, 772 (Iowa 1978).

We interpret the trial court's order of December 9, 1988, as quashing the entire procedure, including the April 18 order. The April 18 order was not entered in conformity with statutory procedure at the time it was entered. The order was not dated. The return of service only shows the appellant was served at Elkader, Iowa, on March 16, 1988,

---

1. The section has subsequently been amended as follows: A true copy of any order entered by the director pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the dependent child resides or, where the dependent child resides in another state, in the office of the district court in the county in which the absent parent resides. Upon filing, the clerk shall enter the order in the judgment docket, and the administrator's order shall be presented, ex parte, to the district court for review and approval, and unless defects appear on the face of the order or on the attachments, the district court shall approve the order, and the order shall have the force, effect, and attributes of a docketed order or decree of the district court. Iowa Code section 252C.5 (1991).

with Notice of Child Support. There was nothing filed showing the Notice of Child Support comported with the requirements of the statute. The order made no finding of service on the respondent, or that the service was in accordance with the provisions of the statute or the notice met the statutory requirements. The order found only that the appellant did not appear. The order was entered by Liz Calvert who designated himself or herself as a Support Recovery Officer (the section requires entry by the director--defined as the director or the director's designee).

Clearly, in entering the April order, the department failed to comply with statutory procedure and exceeded its jurisdiction in entering the order. We must insist on total and complete compliance with all statutory requirements. The trial court should have quashed the order. See Danner v. Klosterbuer, 434 N.W.2d 921, 923 (Iowa App. 1988). We quash the execution. We do so without prejudice to the State to bring an action and obtain a judgment against appellant for reimbursement if the facts support the State's claim. Execution quashed.

WRIT SUSTAINED.