FILED
AUG 27 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-30 / 90-877

IN RE THE MARRIAGE OF PEGGY J. CASWELL AND TIMOTHY J. CASWELL

Upon the Petition of

PEGGY J. CASWELL,

Petitioner-Appellant,

And Concerning

TIMOTHY J. CASWELL,

Respondent-Appellee.

114

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge.

Appellant challenges an order quashing an income withholding order. **AFFIRMED.**

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, J. Livingston Dunkle, Assistant Attorney General, and Kay Delafield, Assistant County Attorney, for appellant.

Gary J. Boveia, Waverly, for appellee.

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

SACKETT, J.

Appellant Peggy J. Caswell appeals the trial court ruling quashing an involuntary wage assignment sought under Iowa Code section 252D.2 for child support. We affirm.

Peggy is not on public assistance but is represented by the State of Iowa Child Support Recovery Unit. She seeks to enforce the child support ordered in her dissolution decree. Peggy was married to respondent-appellee Timothy J. Caswell. They were the parents of three minor children currently in Peggy's care. Peggy filed a petition for dissolution of the marriage in November 1987. In December 1987 the trial court approved a stipulation Peggy and Timothy entered. The stipulation provided Peggy and Timothy would both live in the marital home. Timothy would pay the house payments, utility payments, real estate taxes and insurance. Additionally, he was to pay temporary support of $155.81 weekly through the Collection Services Center.

On April 20, 1989, a final dissolution decree was entered. Under the decree, Timothy was ordered to pay $124 per week for support of the three children. The decree provided for a decrease in child support as the children became emancipated.

On April 3, 1990, the Child Support Recovery Unit filed with the District Court what they refer to as an Order for Mandatory Income Withholding. The order directed Timothy's

employer to deduct from Timothy's wages $124 per week for current support and $30 per week for delinquent support. The claimed delinquency was $1,376.05. The money deducted was to be paid to the Collection Services Center. The order was filed under Iowa Code section 252D.1(2) and (3), which provides in relevant part:

> 2. If support payments ordered under section * * * are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, upon application of a person entitled to receive the support payments, the child support recovery unit or the district court may enter an ex parte order notifying the person whose income is to be assigned, of the delinquent amount, of the amount of income or wages to be withheld, and of the procedure to file a motion to quash the order of assignment, and shall order an assignment of income and notify an employer, trustee, or other payor by certified mail of the order of the assignment of income requiring the withholding of specified sums to be deducted from the delinquent person's periodic earnings, trust income, or other income sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. The assignment of income is binding on an existing or future employer, trustee, or other payor ten days after the receipt of the order by certified mail. * * *
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> 3. The person entitled by court order to receive support payments or a person responsible for enforcing such a court order may petition the clerk of the district court for an assignment of income. If the petition is verified and establishes that support payments are delinquent in an amount equal to the payment for one month and if the clerk of the district court determines, after providing an opportunity for a hearing, that notice of the mandatory assignment of income as provided in section 252D.3 has been given, the clerk of the district court shall order an assignment of income under subsection 2.

On April 27, 1990, Timothy filed a motion to quash pursuant to Iowa Code section 252D.2, which provides in relevant part:

> A person whose income has been assigned under section 252D.1 may move to quash the order of assignment by filing the motion to quash and notice of the motion to quash with the court within ten days after the entering of the court order of assignment under section 252D.1 subsection 3, or at any time upon a showing of a mistake of fact relating to the delinquency. The clerk of the district court shall schedule a hearing on the motion to quash for a time not later than seven days after the filing of the motion to quash and the notice of the motion to quash. The clerk shall mail to the parties copies of the motion to quash, the notice of the motion to quash, and the order scheduling the hearing.

A hearing was held on the motion to quash. Timothy was present, filed an affidavit, and testified. Peggy was not present. Susan Burch, who identified herself as a child support recovery assistant with the child support recovery unit, testified to her calculations of the amount of child support due. The trial court quashed the wage assignment and found Timothy current in his child support obligation. This appeal followed.

I.

Peggy on appeal contends the trial court erred in considering payment not paid through the clerk of court or the Collection Service Center, and the trial court's order was in violation of due process. The trial court found:

> The Code of Iowa now provides that support in the form of money and/or material items furnished to a spouse, former spouse or minor children may not be considered in computing whether or not the person obligated to pay support is current under

> the ordinary support order. In other words, the only support payments that "count" are those paid through the Clerk of Court and/or the Collection Center in Des Moines.
>
> Calculated on that basis the respondent is somewhat delinquent in his support obligations going back to the inception of those obligations in 1987.
>
> This delinquency is not serious when the total amount is considered.
>
> It is also clear that, in fact, he has made very substantial payments toward the support of his former wife and the children outside of money paid through the Clerk of Court and/or Collection Center. In the ordinary case these payments could not be considered.
>
> This case does present a special issue, however, in that the original temporary Support Order which is used in calculating the total claimed delinquency also required payments other than through the Clerk of Court and Collection Center. Not only were these payments made, but the pattern of the parties commencing at that time and continuing after the entry of the Decree has been such that they were considered by the parties to be support.

Peggy argues the trial court erred in considering the factors it did in arriving at its order. She contends the trial court could only consider payment made to the clerk of court or the Collection Service Center. We disagree. In State ex rel. Keasling v. Keasling, 442 N.W.2d 118, 123 (Iowa 1989), the supreme court addressed an absent father's contention that the procedure to quash under section 252D did not provide adequate safeguards because it provided a motion to quash can only raise the identity and the amount owed. The court, in rejecting his contention, said:

> We believe the provision in section 252D.2 which allows an absent parent to challenge the amount owed necessarily encompasses virtually any challenge to the wage withholding because, if for any reason the proceeding is improper, no amount is owed.

Keasling, 442 N.W.2d at 123.

Following the dictates of Keasling, we determine the trial court did not err in considering the evidence as to payment. We affirm on this issue.

II.

Peggy next claims the trial court erred in not fixing Timothy's obligation by what she refers to as "any reasoned method." The trial court found Timothy's payments exceeded his obligation to date. Timothy was not given credit toward future obligations. There is no basis to Peggy's argument.

Peggy also contends she was prejudiced because she did not attend the hearing, apparently because she did not think Timothy would be able to show payments made. Peggy put the procedure in motion. No continuance was requested to present additional evidence at the hearing. Error was not preserved on this issue. We affirm.

AFFIRMED.