

IN RE THE MARRIAGE OF REGINALD J. SCISCO AND NANCY L. SCISCO

Upon the Petition of)

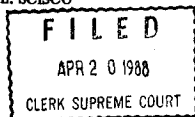
REGINALD J. SCISCO,)

Petitioner-Appellant,)

And Concerning)

NANCY L. SCISCO,)

Respondent-Appellee.)



153

Filed April 20, 1988

**STATE OF IOWA, EX REL. IOWA
DEPARTMENT OF HUMAN SERVICES,
et al.,**)

7-526
87-807

Petitioner-Appellee,)

vs.)

REGINALD J. SCISCO,)

Respondent-Appellant.)

Appeal from the Iowa District Court for Humboldt County (Nos. D-646 and CD 15194), Mark S. Cady, Judge.

Appellant appeals the district court order denying his motion to quash an administrative order for reimbursement and order for mandatory withholding of child support. **AFFIRMED.**

Dan T. McGrevey of McGrevey & Sherman, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General; Robert R. Huibregtse, Assistant Attorney General; and Rhonda Fitchett, Child Support Recovery Unit, for appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

170

Reginald Scisco is appealing the district court order denying his motion to quash an administrative order for reimbursement and order for mandatory withholding of child support. He argues the motion should have been granted because the order setting the amount of support is void and the parties' dissolution decree prevails over the administrative order issued in this case. We affirm.

Reginald Scisco is the petitioner in a dissolution of marriage action and the respondent in an action by the Child Support Recovery Unit to recover child support payments. On September 3, 1985, an administrative order for reimbursement and future support was issued in the child support action requiring Reginald to repay the Department of Human Services (DHS) a lump sum of \$264 and \$66 per month in support for his daughter, Nancy.

A stipulation in the dissolution action was entered into on September 23, 1985, stating the parties would have joint custody of the children, with each party having physical custody of one child. The stipulation did not provide for any child support. The stipulation was incorporated into the dissolution decree. The Child Support Recovery Unit was not given notice of this stipulation, in violation of a local rule of the Second Judicial District.

In an apparent attempt to comply with this rule, Reginald's attorney and the support recovery attorney applied to the district court for an order nunc pro tunc modifying the decree to provide for child support. This application appears to have taken place ex parte, as there is no formal application on file. The district court then entered an order nunc pro tunc on November 4, 1985, modifying the decree to require Reginald to pay \$66 per month in child support.

An order for mandatory income withholding was entered by the Child Support Recovery Unit on March 13, 1987. Reginald filed a motion to quash the order for mandatory withholding and the underlying administrative order

J. F. J.

for reimbursement and future support. The district court denied the motion, and Reginald has appealed.

Reginald's argument is that the district court erred in denying his motion to quash because the November 4, 1985 order nunc pro tunc was void because the district court did not have jurisdiction over him since he did not receive notice prior to the entry of the order. He also argues the administrative order of September 3, 1985, was superseded by the parties' dissolution decree. Hence, the order for mandatory withholding must be quashed because there is no valid underlying order requiring him to pay child support.

Reginald's argument fails because we find the November 4, 1985 order nunc pro tunc valid. There is therefore a valid child support order undergirding the order for mandatory withholding.

The order nunc pro tunc is valid because Reginald did have notice prior to the entry of the order. According to the order, Reginald's dissolution attorney, Robert Lee, applied for the order. Although this should not have been done on an ex parte basis, there is nothing in the record to suggest Lee did not apply for the order. Reginald had notice of the action because the knowledge of the attorney is chargeable to the client. Moser v. Thorp Sales Corp., 312 N.W.2d 881, 888 (Iowa 1981) (quoting Link v. Wabash Railroad Co., 370 U.S. 626, 633-34, 82 S. Ct. 1386, 1390, 8 L. Ed. 2d 734, 740 (1962)); see also Perpetual Sav. & Loan Assoc. v. Van Atten, 211 Iowa 435, 4358, 233 N.W. 746, 747 (1930); Stevens v. Peoples Sav. Bank, 185 Iowa 619, 624, 171 N.W. 130, 132 (1919); Petersen v. Farmers Cas. Co., 226 N.W.2d 226, 230 (Iowa 1975); Farnsworth v. Hazelett, 197 Iowa 1367, 1370, 199 N.W. 410, 411 (1924). Reginald chose his attorney and cannot now avoid the consequences of his acts. See Link, 370 U.S. at 633-34, 82 S. Ct. at 1390, 8 L. Ed. 2d at 740.

Since Reginald had notice of the application, the district court had jurisdiction over Reginald when it entered the order nunc pro tunc. Furthermore, since the order nunc pro tunc was valid, there was an order requiring Reginald to pay support, and the order for mandatory withholding was properly supported. We hold the district court properly denied Reginald's motion to quash.

The judgment of the district court is affirmed.

AFFIRMED.