COURT OF APPEALS
DECISION
DATED AND FILED

May 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1011 **Cir. Ct. No. 1980FA385J**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MARY A. SWIECA N/K/A MARY A. SMITH AND STATE OF WISCONSIN,

PETITIONERS-RESPONDENTS,

V.

LEE B. SWIECA,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County: RICHARD T. WERNER, Judge. *Affirmed.*

Before Higginbotham, Blanchard and Kloppenburg, JJ.

¶1 PER CURIAM. Lee Swieca, pro se, appeals a child support order requiring Swieca to pay $240 per month toward arrearage interest in the amount of $20,585.58. Swieca contends that: (1) a Florida circuit court order modified the amount of child support previously ordered in Wisconsin; (2) Wisconsin

erroneously calculated the amount Swieca owes in arrearages and interest; and (3) equitable estoppel bars the current order for payment towards arrearage interest. We conclude that the Florida support order did not modify the Wisconsin support order, that the record supports the circuit court's finding as to the amount Swieca owes under the Wisconsin support order, and that the elements of equitable estoppel are not met by the facts in this case. Accordingly, we affirm.

Background

¶2 In 1981, the Wisconsin Circuit Court for Rock County issued a judgment of divorce ordering Swieca to pay child support in the amount of $50 per week to Mary Smith. In June 1982, Smith filed a petition in the Rock County Circuit Court asserting that Swieca had moved to Florida and had not met his child support obligations. The Rock County Circuit Court dismissed the non-support proceedings and transmitted the petition for support to the Indian River County Circuit Court in Florida. The petition sought "an order for support directed to [Swieca] as shall be deemed to be fair and reasonable and for such other and further relief as the law provides."

¶3 In August 1982, the Indian River County Circuit Court entered an order for Swieca to pay $25 per week in child support. The order states that the Florida court "shall retain jurisdiction of this cause for the purpose of enforcing this Order and entering such further orders as may be deemed equitable." In 1989, when Smith and Swieca's child reached the age of majority, Florida determined that Swieca had paid his arrearages in full and voluntarily dismissed its support action against Swieca.

¶4 In 1999, the Rock County Circuit Court issued an order for Swieca to show cause why he should not be held in contempt for failing to pay child

support. The order set a hearing date in Rock County Circuit Court on October 25, 1999. Swieca was personally served the order to show cause in Florida. Swieca wrote to the Wisconsin court that he was neither physically nor financially able to attend the hearing. Swieca requested that the court dismiss the case, stating that Florida had already determined that he had paid in full and dismissed the case against him, and asserting that Wisconsin had miscalculated his payments. When Swieca failed to appear at the October 25, 1999 hearing, the circuit court set another hearing on the order to show cause for January 3, 2000. The distribution list for the notice of hearing includes Swieca, at his Florida address.

¶5 On January 3, 2000, the Rock County Circuit Court held a hearing on the order to show cause. Swieca did not appear. The court found Swieca in contempt for failing to pay child support as set in Wisconsin, and ordered Swieca to serve six months in jail and to pay $240 per month to purge the contempt. In 2006, the Rock County Child Support Agency notified the Social Security Administration that it was to withhold $240 per month from Swieca's social security checks, and forward that amount to Wisconsin.

¶6 In June 2011, Swieca moved to expunge the arrearages and interest in his records and for a return of $15,380, asserting that he had overpaid that amount based on his claim that his support obligations were satisfied as of August 1989. A court commissioner denied Swieca's motion, and Swieca moved for a de novo hearing in the circuit court. The circuit court held a hearing, and denied Swieca's motion. Swieca appeals.

Standard of Review

¶7 We uphold the circuit court's factual findings unless those findings are clearly erroneous. *See* ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d

481 (Ct. App. 1996). A finding is clearly erroneous if it is unsupported by evidence in the record. *See* ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶11, 290 Wis. 2d 264, 714 N.W.2d 530. We independently interpret statutes and apply them to the facts of a case. *See* ***State v. Williams***, 2002 WI 58, ¶8, 253 Wis. 2d 99, 644 N.W.2d 919.

Discussion

¶8 Swieca contends that the Florida court order setting child support at $25 per week modified the Wisconsin court order that set child support at $50 per week. He contends that, under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), the Wisconsin support order was "registered" in Florida, and thus, Florida had authority to modify Wisconsin's order.[1] *See* WIS. STAT. §§ 52.10(39) and (40). We disagree.

¶9 Under the "registration" provisions of RURESA, a party entitled to child support under an order of one state may "register" the order in another state. *See* WIS. STAT. § 52.10(39). RURESA provides that "[u]pon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court" of the state in which the order was registered. WIS. STAT. § 52.10(40). Thus, the registered order "has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order" of the state in which the order is registered. ***Id.***

[1] RURESA was in effect in 1982. *See* WIS. STAT. § 52.10 (1979-80). It has since been replaced by the Uniform Interstate Family Support Act (UIFSA). 1993 Wis. Act 326, §§ 13-14. We rely on the law in effect at the relevant times in this case. Accordingly, we do not address Swieca's arguments under UIFSA. All references to the Wisconsin Statutes are to the 1979-80 version unless otherwise noted.

¶10 Swieca's registration argument fails at the outset because Smith did not "register" the Wisconsin child support order in Florida under §§ 52.10(39) and (40). Rather, Smith filed a petition in Rock County Circuit Court for a child support order, and Rock County transmitted the petition to the Indian River County Circuit Court in Florida. Florida then entered its own support order. *See* WIS. STAT. §§ 52.10(14) and (24). This procedure is distinct from RURESA's "registration" procedure. *See* WIS. STAT. §§ 52.10(39) and (40). Accordingly, Swieca's registration argument is unavailing.

¶11 We turn, then, to the effect of the Wisconsin court transmitting the petition for support to Florida and Florida entering its own support order. As we explained in ***Kranz v. Kranz***, 189 Wis. 2d 370, 377-81, 525 N.W.2d 777 (Ct. App. 1994), under RURESA, a child support order issued by a responding state upon certification of a petition by the initiating state does not take the place of the initiating state's child support order. Rather, the two orders run concurrently. ***Id.*** We explained that "a responding court's order that does not explicitly nullify the support ordered in the prior judgment does not modify the prior judgment or affect its enforceability." ***Id.*** at 379; *see also* WIS. STAT. § 52.10(3) ("The remedies provided [under RURESA] are in addition to and not in substitution for any other remedies.").

¶12 We note that under ***Kranz***, 189 Wis. 2d at 378, payments made under concurrent orders are credited toward the amounts owed under each order, and that there is no dispute that this occurred here. *See also* WIS. STAT. § 52.10(31).

¶13 Here, the Florida support order did not explicitly nullify the Wisconsin support order, and therefore it did not modify the order or affect its

enforceability. Swieca argues that the Florida order explicitly nullified the Wisconsin order by stating: "[T]his court shall retain jurisdiction of this cause for the purpose of enforcing the Order and entering such further orders as may be deemed equitable." We do not read that language as explicitly nullifying the Wisconsin support order. Rather, the Florida order provided for the Florida court's continuing jurisdiction over its own support order. Accordingly, the Florida order did not modify the Wisconsin order.

¶14 Swieca also claims error under WIS. STAT. ch. 767 (2011-12). As far as we can tell, Swieca argues that Wisconsin violated its own statutory provisions as to child support modifications in failing to challenge the Florida support order. However, as we have explained, Wisconsin and Florida proceeded under RURESA, which allowed Wisconsin to certify Smith's petition to Florida and Florida to enter its own order of support. *See* WIS. STAT. §§ 52.10(14) and (24). Swieca's arguments under WIS. STAT. ch. 767 (2011-12) are inapplicable to this case.

¶15 Next, Swieca contends that the proceedings in this case violated due process. He argues that he was not served with notice of the January 3, 2000 hearing, and that personal service rather than mail service of the January 3, 2000 hearing was required. He also points out that the six-year delay between the January 3, 2000 order and its enforcement allowed interest to accrue against him. We are not persuaded that a violation of due process occurred in this case.

¶16 The circuit court found that the notice of hearing for the January 3, 2000 hearing was sent to Swieca and the notice was not returned to the court. The

record supports this finding, and thus it is not clearly erroneous.[2] Further, personal service is not required for a notice of contempt hearing. *See* ***Joint Sch. Dist. No. 1 v. Wisconsin Rapids Educ. Ass'n***, 70 Wis. 2d 292, 317, 234 N.W.2d 289 (1975). As to the six-year delay in enforcement of the court's order, we note that Swieca does not dispute that he received the order following the January 3, 2000 hearing, and he does not argue that he took any action in the six years between the order and its enforcement. We are not persuaded that the lack of action by any party for the six years between entry of the order and enforcement amounted to a violation of Swieca's due process rights.

¶17 Swieca also argues that Wisconsin erroneously calculated the amount of child support he owes under the Wisconsin order. He contends that he was not credited for payments he made directly to Smith, and cites his own accounting of the amount he believes he paid. However, the circuit court found that there was no documentation supporting Swieca's claims as to the amount of payments he made, and found that Wisconsin's accounting of the amount owed was credible. Swieca has not provided us any basis to disturb the court's findings.

¶18 Finally, Swieca contends that equitable estoppel demands the elimination of the arrearages and interest in this case, citing ***Harms v. Harms***, 174 Wis. 2d 780, 498 N.W.2d 229 (1993). However, Swieca does not develop an argument as to how the elements of equitable estoppel are met by the facts of this

[2] Swieca points out that the distribution list for the notice of the January 3, 2000 hearing lists Swieca's name and address, but that neither "personal service" nor "mail service" is checked. Swieca argues this indicates he was not served. However, none of the names are followed by a check for personal service or mail service, and Swieca does not develop an argument as to why failure to check those boxes means the individuals on the distribution list were not provided the document.

case—namely, how any party's action or inaction induced Swieca's reliance to his detriment. *See* ***Mercado v. Mitchell***, 83 Wis. 2d 17, 26-27, 264 N.W.2d 532 (1978). Swieca contends that it was to his detriment to have paid nearly $20,000 towards his arrearages between 2006 and 2011 but to still owe another nearly $20,000 in interest. However, Swieca does not explain how his payments were in reliance on the action or inaction of any party. Rather, it appears the payments were made based on an order to the social security administration to begin withholding money from Swieca's social security checks.

¶19 We conclude that, under RURESA and ***Kranz***, Swieca was subject to concurrent support orders issued by Wisconsin and Florida. Swieca has not provided any basis for us to disturb the circuit court order denying Swieca's motion to expunge the arrearages and interest that accumulated under the Wisconsin order. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).