

Court of Appeals of Ohio, Fifth District, Guernsey County.
Andrea SCHOTT, Plaintiff-Appellee
v.
Patrick SCHOTT, Defendant-Appellant.
No. 94 CA 13.
Dec. 5, 1994 .

Civil appeal from the Court of Common Pleas. Case No. 91 DR 393. Affirmed.
Miles D. Fries, Zanesville, for plaintiff-appellee.

Lewis M. Tingle, Cambridge, for defendant-appellant.

Kent D. Biegler, Cambridge, for Guernsey County Dept. of Human Services.

FARMER, Judge.

*1 Appellant, Patrick Schott, and appellee, Andrea Schott, were married on September 1, 1990. A child was born as issue of the marriage on January 24, 1991. On September 19, 1991, appellee filed a complaint for divorce from appellant. In October of 1991, appellee applied for AFDC benefits with the Guernsey County Department of Human Services (hereinafter DHS) to support her child. The parties had a second child born of issue of the marriage on May 22, 1992. Appellee applied for AFDC benefits for her second child from the time of her birth.

The parties were granted a divorce on September 15, 1992, but the issues relating to the allocation of parental rights and responsibilities were deferred for further determination. By order dated November 30, 1992, appellant was ordered to pay \$10 per week as support. This amount was increased to \$45.68 per week per child on June 29, 1993. The final order of parental rights and responsibilities was filed on July 8, 1993. Change of custody was granted to appellant.

On August 13, 1993, DHS filed a motion seeking leave to intervene for reimbursement of AFDC payments made to appellee on behalf of the children. DHS also requested reimbursement for medical expenses paid on behalf of the children. By report dated November 12, 1993, the referee recommended that appellant be obligated to reimburse DHS for payments made. The trial court adopted said report by judgment entry dated March 9, 1994.

Appellant timely filed a notice of appeal and this matter is now before this court for consideration.

Assignment of Error is as follows:

THE DEPARTMENT OF HUMAN SERVICES RECEIVES AN ASSIGNMENT OF THOSE RIGHTS TO SUPPORT HELD BY AN AID RECIPIENT, BUT DOES NOT RECEIVE ANY ENHANCEMENT OF THOSE RIGHTS.

I

Appellant claims that the trial court erred in ordering him to reimburse DHS for all grant funds expenditures and medicaid expenditures made on behalf of his children and in establishing a support arrearage. We disagree.

Appellant challenges this decision because in awarding arrearage, the trial court is now ordering support when it had not done so during the time period of the support. During the pendency of the divorce action, the parties agreed on no child support order. Judgment Entry dated December 6, 1991. Appellant argues that he did not fail to support his children from September 1991 to the final decree of July 1993 because of the pre-divorce decree agreement. However, appellant's own motion to the court for designation of appellant as residential parent or legal guardian (filed June 2, 1993), reinforces DHS's position that appellant was not supporting his children as the non-custodial or non-residential parent.

R.C. 5107.04(C) and 5107.07(A) impowers DHS to recover payments made for minor children where the non-custodial or non-residential parent has failed to support:

§5107.04 Recovery of erroneous payments.

(C) The county department of human services shall take action to recover erroneous payments, which may include instituting a civil action. Whenever aid has been furnished to a recipient for whose support another person is responsible

such other person shall, in addition to the liability otherwise imposed, as a consequence of failure to support such recipient, be liable for all aid furnished to such recipient. The value of the aid so furnished may be recovered in a civil action brought by the county department.

*2§5107.07 Assignment of rights to support; collections fund.

(A) The acceptance of aid under this chapter constitutes an assignment to the department of human services of any rights an individual receiving aid has to support from any other person, excluding medical support assigned pursuant to section 5101.59 of the Revised Code. The rights to support assigned to the department pursuant to this section constitute an obligation of the person who is responsible for providing the support to the state for the amount of aid payments to the recipient or recipients whose needs are included in determining the amount of aid received.

As this court has previously stated in *State ex rel Morgan County Department of Human Services v. Roddy* (1991), 63 Ohio App.3d 575, R.C. 5107.04 specifically mandates that the non-custodial parent be liable for all aid furnished to children, regardless of the support obligations generated by R.C. 3103.03. We find that the trial court did not err in awarding DHS an arrearage on the amount of expenditures awarded to the children.

The sole Assignment of Error is denied.

The judgment of the Court of Common Pleas of Guernsey County, Ohio is hereby affirmed.

JUDGMENT ENTRY

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Guernsey County, Ohio is affirmed.

SMART and READER, JJ., concur.

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Not Reported in N.E.2d, 1994 WL 728292 (Ohio App. 5 Dist.)

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