COURT OF APPEALS
DECISION
DATED AND FILED

October 31, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2200 **Cir. Ct. No. 1993FA939924**

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

IN RE THE MARRIAGE OF:

KATHLENE A. JENS AND STATE OF WISCONSIN,

PETITIONERS-RESPONDENTS,

V.

GREGORY D. JENS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DOMINIC S. AMATO, Judge. *Affirmed*.

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Gregory D. Jens appeals, *pro se*, from a court order setting the effective date of his child support reduction as August 1, 2004. Gregory argues that the court should have set the effective date as December 11,

2002, which was the date he sent a letter to the State requesting a child support hearing. Gregory argues that this should constitute "notice" under WIS. STAT. 767.32(1m) (2003-04).[1] Because the trial court did not erroneously exercise its discretion in setting the effective date of the modification, we affirm.

BACKGROUND

¶2 There is a great deal of background information contained in the briefs of this case that is incidental to this appeal. It appears from the record that on December 2, 2002, Gregory received a notice of a pending paternity action. In his response to this notice, he drafted a letter to the court requesting that a child support hearing regarding his children from his prior marriage to Kathlene Jens accompany the paternity action. This letter was sent on December 11, 2002. Gregory was expecting to address all his paternity and child support related issues in this one hearing on April 22, 2003. However, before this date came, Gregory was found not to be the father of the child in question via DNA testing, and thus the hearing was cancelled.

¶3 Gregory, having lost his forum to address his child support modification, subsequently petitioned the court for a new hearing based solely on this issue. To this end, he began filing the requisite forms from his *pro se* child support packet on July 28, 2004. On August 9, 2004, Gregory received notice that the Office of the Family Court Commissioner had received his first formal motion for child support modification. This document stated:

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

> Your motion has been received and filed.
>
> 1. It is your responsibility to notify the other party of the hearing. This can be done by using a process server or by mailing a copy to the other party … [p]roof that the other party has been notified must be provided to the commissioner at or in advance of the hearing. **YOUR STATEMENT THAT THIS HAS BEEN DONE IS NOT ENOUGH.**

(Emphasis in original.)

¶4 On November 3, 2004, Gregory attended this child support hearing via telephone. The court commissioner agreed to modify Gregory's child support payments to a more manageable rate, and set the effective date of this modification as August 1, 2004. Gregory now appeals the commissioner's decision to this court.

DISCUSSION

¶5 Gregory contends that the court should have set December 11, 2002, as the effective date for the modification of child support. We reject this contention for two reasons: (1) the court commissioner did not erroneously exercise his discretion in setting the effective date of the child support reduction, as Gregory failed to file the proper forms; and (2) even if we were to accept Gregory's original letter as a properly filed motion, the procedural notice requirements were not fulfilled until the date set by the court commissioner.[2]

¶6 Gregory claims that the trial court should have set the effective date of the child support reduction as December 11, 2002, when he first started

[2] Gregory also raises issues regarding his most recent *de novo* review hearing. Because we affirm the order of the court commissioner, however, this issue is moot and we need not address it further.

pursuing the modification. He argues that this would not be a violation of WIS. STAT. 767.32(1m), which provides:

> In an action under sub. (1) to revise a judgment or order with respect to child support, maintenance payments or family support payments, the court may not revise the amount of child support, maintenance payments or family support payments due, or an amount of arrearages in child support, maintenance payments or family support payments that has accrued, prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.

The basis for his argument is that his original letter, which was sent on December 11, 2002, should be construed as both a motion for reduction of child support and notice of that action to Kathlene and the court. We reject Gregory's argument.

¶7 There is nothing in the record demonstrating that Kathlene received a copy of Gregory's letter or that the letter, even if received, contained sufficient information to notify Kathlene that Gregory was making a motion to reduce his child support. Gregory sent this first letter to the Milwaukee county family court on that date merely requesting that he be allowed to discuss other child support issues when he would be before the court for his paternity determination. It also does not seek a reduction in child support, per se, but rather seeks a modification of a percentage rate. The letter in question was not a motion for reduction of child support; therefore, there could be no notice of such an action at that time.

¶8 We conclude, therefore, that the trial court properly exercised its discretion by making the child support modification effective as of August 1, 2004. The record clearly shows that Gregory did not file a proper motion for reduction of child support until July 28, 2004. On this date, Gregory began filing the appropriate forms from his *pro se* packet. The court commissioner

subsequently set the effective date of the child support modification as August 1, 2004, despite not actually ruling on the matter until November 3, 2004. Thus, the court acted generously in applying this earlier date to save Gregory two months of higher child support. This was a wholly appropriate exercise of discretion by the court commissioner.

¶9 In the alternative, even if the trial court had viewed Gregory's original letter of December 11, 2002, as a proper motion for a reduction of child support, it is undisputed that Gregory failed to provide proper notice of the motion to Kathlene. As the record makes clear, there are certain procedural requirements that must be used in order to effectively put a party on notice for the purpose of a child support reduction hearing. Gregory's claims that he talked to Kathlene does not satisfy the notice requirement. Gregory was required to officially notify Kathlene—either by using a process server or mailing a copy of the filed motion to her and her lawyer. Also, Gregory was required to produce an affidavit or receipt to the court commissioner proving that notice had been given to Kathlene. Gregory did none of these things; accordingly, Kathlene was not provided proper notice of the original letter.

¶10 Gregory argues that we should use the leniency that courts afford to *pro se* litigants to get around these procedural barriers. We decline his suggestion. This court recognizes that the "policy of liberally construing *pro se* prisoner petitions is consistent with this state's policy of construing civil pleadings liberally." ***Amek bin-Rilla v. Israel***, 113 Wis. 2d 514, 520-521, 335 N.W.2d 384 (1983). Here, the trial court afforded Gregory repeated leniency during the proceedings when it granted several filing extensions and accepted several letters which were not correctly submitted. The leniency policy, however, does not require the court to excuse Gregory's failure to file the correct papers in December

2002, had he actually intended the child support modification to take effect at that time. As the child support legal counsel has pointed out: "*Pro se* appellants must satisfy all procedural requirements, unless those requirements are waived by the court. They are bound by the same rules that apply to attorneys on appeal. The right to self-representation is '[not] a license not to comply with relevant rules of procedural and substantive law.'" ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (citations omitted). Construing Gregory's filings liberally, we are still unable to find any support for altering the date of the child support order. The court commissioner acted appropriately in taking into account Gregory's *pro se* status, going so far as to allow Gregory to conduct his court business via telephone, and accepting a variety of awkward submissions to the court. However, the commissioner could not have been expected to guess that Gregory's original letter was intended to be a motion for reduction of child support when Gregory failed to follow the proper procedure, or even make his intent clear.

¶11 In sum, we hold that the court commissioner properly exercised his discretion setting the effective date of the child support order. Gregory's original letter was not a motion for reduction of child support, and no notice of such an action could be given to Kathlene until such a motion was actually filed. The actual notice of motion and motion were filed on July 28, 2004. Therefore, the date set by the court of August 1, 2004, was appropriate.

By the Court.—Order affirmed.

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