COURT OF APPEALS
DECISION
DATED AND FILED

January 6, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0687 **Cir. Ct. No. 93FA000228**

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

IN RE THE MARRIAGE OF:

CHRISTINE MAGNUSON STANFIELD N/K/A CHRISTINE M. LOWREY,

JOINT-PETITIONER-RESPONDENT,

V.

PAUL E. MAGNUSON,

JOINT-PETITIONER-APPELLANT.

APPEAL from an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Modified and, as modified, affirmed and remanded with directions*.

Before Deininger, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Paul Magnuson appeals an order denying his objection to the entry of a child support lien against him. We affirm the entry of

the lien, but modify the trial court's order to clarify that enforcement of the lien must be suspended so long as Magnuson complies with an existing child support order which we construe as an alternate payment plan under the lien statute.

BACKGROUND

¶2 Magnuson and Christine Lowery were divorced in 1993 and Magnuson was ordered to pay child support for the couple's two children at that time. He moved to reduce his support obligation in 1996, after he was incarcerated. Pursuant to a stipulation reached by the parties, the trial court entered the following order:

> 1. All existing child support orders between the above captioned parties are suspended effective on September 1, 1995. Any and all payment arrearages are to be purged from the record.
>
> 2. Beginning on September 5, 1995 and continuing through June 5, 2007, Paul Magnuson's child support obligation to [Christine Lowery] shall be $500.00 (five hundred dollars) per month.
>
> 3. Actual monthly payments shall be suspended from September 1, 1995 until the fifth day of the sixth month following the "Release Date" for Paul Magnuson. (The "Release Date" is defined as the date upon which Paul Magnuson is released from institutional incarceration.)
>
> 4. The amount of suspended payments pursuant to item 3 above shall be calculated upon the Release Date and designated as the Permitted Accrued Arrearage.
>
> 5. The Permitted Accrued Arrearage shall be paid without interest charges at $100.00 per month from the eighteenth month following Release Date and increasing to $200.00 per month on the twenty-fourth month following Release Date and continuing at $200.00 per month until such Permitted Accrued Arrearage has been paid in full.
>
> 6. If any support payment is not made within 15 days of [its] due date, the entire remaining Permitted Accrued Arrearage shall become immediately due and payable.

Paul was released from incarceration on November 13, 2001, making his first nonsuspended "actual monthly payment" of $500.00 due on May 5, 2002, his first "Permitted Accrued Arrearage" payment of $100.00 due on May 5, 2003, and his first "Permitted Accrued Arrearage" payment of $200.00 due on November 5, 2003.

¶3 On July 31, 2003, the Department of Workforce Development entered a lien against Magnuson for the amount of the outstanding "Permitted Accrued Arrearage," pursuant to its authority under WIS. STAT. § 49.854 (2003-04).[1] Magnuson requested a hearing as to the applicability of WIS. STAT. § 49.854, arguing that he had not "fail[ed] to pay any court-ordered amount of support" or become "delinquent" in his payments within the meaning of the lien statute because he had made all payments by the dates contemplated in the 1996 support order. The trial court found that Magnuson was in compliance with the 1996 order, and ruled that no interest would accrue on the Permitted Accrued Arrearage so long as he continued to make his payments. However, the court construed the term "delinquent" in the lien statute to encompass Magnuson's accrued arrearage even though his suspended payments on the arrearages were not yet due, largely based on its understanding of the legislative purpose behind the lien act. The court then ruled that the lien would remain in effect.

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

STANDARD OF REVIEW

¶4 This appeal presents an issue of statutory interpretation, which is a question of law that we decide de novo. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997). The supreme court recently explained in ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, that if "'the meaning of the statute is plain, we ordinarily stop the inquiry.'" ***Id***., ¶45 (citation omitted). However, if a statute is "capable of being understood by reasonably well-informed persons in two or more senses," ***id***., ¶47, it is ambiguous, and we will attempt to ascertain its meaning by considering "the scope, history, context, and purpose of the statute." ***Id***., ¶48 (citation omitted).

DISCUSSION

¶5 WISCONSIN STAT. § 49.854, entitled "Liens against property for delinquent support payments," provides in relevant part:

> (2) Creation of lien; satisfaction.
>
> (a) Creation. If a person obligated to pay support *fails to pay any court-ordered amount* of support, that amount becomes a lien in favor of the department upon all property of the person. The lien becomes effective when the information is entered in the statewide support lien docket … and that docket is delivered to the register of deeds in the county where the property is located….
>
> ….
>
> (d) Amount of lien; satisfaction.… Payment of the full *amount that is delinquent* at the time of payment to that county child support agency extinguishes that lien….
>
> ….
>
> (13) Release of levy; suspension of proceedings to enforce lien.

> ….
>
> (b) Settlement. If the obligor enters in to an alternative payment arrangement in accordance with guidelines established under s. 49.858(2)(a), the department shall suspend all actions to enforce a lien under this section as long as the obligor remains in compliance with the alternative payment arrangement.

(Emphasis added.)

¶6 The department has promulgated the following guidelines pursuant to its authority under WIS. STAT. § 49.858(2)(a). First, WIS. ADMIN. CODE § DWD 43.03(4) defines an "alternative payment plan" or "plan" as "a negotiated agreement between a child support agency and a payer, or an order set by the court, which establishes terms for the payment of the arrearage debt. WISCONSIN ADMIN. CODE § DWD 43.11(6)(a) then provides: "When a plan has been negotiated between the payer and the child support agency, or the court has determined that a plan is reasonable or has ordered a plan pursuant to s. 767.30(1), Stats., the child support agency in the county in which the plan is set shall suspend administrative enforcement actions as long as the payer complies with the plan."

¶7 Magnuson contends that he has not "fail[ed] to pay any court-ordered amount" within the plain language of WIS. STAT. § 49.854(2)(a) because the trial court delayed the due dates for his child support payments in its 1996 child support order, and he therefore could not be "delinquent" on amounts that were not yet due. He also argues that the support lien should be "withdrawn" because the 1996 order constitutes an "alternative payment arrangement" within the meaning of WIS. STAT. § 49.854(13)(b). As to his first argument, we conclude that the language Magnuson cites is ambiguous when applied to the circumstances in this case, but that the legislature did not intend that a support lien be avoided on the present facts. Furthermore, although we agree with Magnuson that the 1996

stipulation resulted in a court-approved "alternative payment arrangement," that fact only prevents enforcement of the support lien while Magnuson remains in compliance with the 1996 order; it does not require that the lien be "withdrawn."

¶8 WISCONSIN STAT. § 49.854 does not specify when a "fail[ure] to pay" may be deemed to have occurred. The stipulated suspension of Magnuson's payments during his incarceration resulted in the unusual situation that Magnuson was incurring monthly support obligations over time that were not due to be paid under the terms of the 1996 order until after his release. The designation of those amounts as an "arrearage" suggests that they were past due obligations of Magnuson's, even though the court approved in advance a plan for the future payment of the accumulated amount over time. Thus, a "fail[ure] to pay" could reasonably be considered to occur either (1) when the child support amounts were incurred and should have been paid but for the 1996 order, or (2) at the later due dates for payments against the arrearage specified in the 1996 order, if not paid on those dates. Moreover, we note that the statute also refers to "delinquent" payments. *See* WIS. STAT. § 49.854(2)(d). Black's Law Dictionary defines a "delinquent" obligation as one that is "past due or unperformed." BLACK'S LAW DICTIONARY 460 (8th ed. 2004). Although, the "Permitted Accrued Arrearage" may not have been "past due" by virtue of the 1996 order, we are persuaded that arrearage could fairly be described as an "unperformed" obligation.

¶9 We therefore deem the statute ambiguous as applied to these facts and proceed to consider its purpose, scope, history, context and subject matter. Neither party has provided any legislative history that would show whether the present facts were contemplated by the legislature. It is clear, however, that the lien statute was enacted to secure the payment of unpaid child support obligations, especially where the delinquent payor has significant non-cash assets that might be

levied against. At the same time, the statute provides a way for delinquent payors to avoid enforcement of the lien by complying with an "alternative payment arrangement." In this context, we are persuaded that the most reasonable interpretation of the lien statute is that it applies to all unpaid arrearages that have accrued, even those for which an "alternative," court-ordered payment schedule has previously been established.

¶10 We thus conclude that the existence of the 1996 deferred payment order does not require the support lien to be "withdrawn," as Magnuson argues. The significance of the 1996 court order allowing Magnuson to defer payment of his support obligations until after his release from incarceration, is that, because it is a court-approved alternative payment arrangement, any enforcement of the support lien is suspended under WIS. STAT. § 48.854(13)(b) while Magnuson remains in compliance with the order. We direct that, on remand, the trial court's order of February 2, 2004, be modified to reflect the suspension of any lien enforcement action unless or until Magnuson defaults in payments under the 1996 order.[2]

[2] Magnuson also argues that the support lien must be withdrawn under the doctrine of equitable estoppel. He acknowledges that, in order to benefit from that doctrine, he would have to show that he reasonably relied to his detriment on the deferral of his child support payments to which Christine agreed. We note first that the State, and not Christine, is the entity empowered to file and enforce support liens under WIS. STAT. § 49.854; that it is not clear from the record whether the State agreed to the 1996 order; and that, even if it had done so, it is at least doubtful that the State could be estopped from complying with statutes directing it to file and enforce liens for unpaid support. Moreover, even if the estoppel doctrine could be held to apply to the present facts, Magnuson has simply not shown how he has relied in any way to his detriment on the 1996 order. But for the order, not only could the instant lien be filed, but it could be immediately enforced against any of Magnuson's property, and contempt proceedings might also be brought against him for his nonpayment of support during his incarceration. He would thus fare no better, and in fact, would now be in a worse situation, if he had not entered the agreement.

By the Court.—Order modified and, as modified, affirmed and remanded with directions.

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