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STATE OF MICHIGAN

COURT OF APPEALS

SARAH JAMES,

Plaintiff-Appellant,

v

GUSTAV A. JAMES,

Defendant-Appellee.

UNPUBLISHED
August 28, 2026
11:34 AM

No. 372552
Eaton Circuit Court
LC No. 1988-000624-DM

Before: GADOLA, C.J., and RIORDAN and SWARTZLE, JJ.

PER CURIAM.

In this case concerning child support arrearages, plaintiff appeals the circuit court's order calculating that defendant owed plaintiff $8,774. We granted plaintiff's delayed application for leave to appeal. *James v James*, unpublished order of the Court of Appeals, entered April 7, 2025 (Docket No. 372552). We now reverse and remand.

I. FACTS

The parties were married and had three children. On July 19, 1988, plaintiff obtained an ex parte interim child-support order from Eaton County. On August 22, 1988, the Eaton County Friend of the Court issued a Notice of Arrearage stating that defendant had arrearages of $2,100 in child support due to plaintiff. On September 16, 1988, the circuit court ordered a Friend of the Court investigation regarding child support, and on September 26, 1988, a temporary support order was entered.

The parties were divorced in Eaton Circuit Court on August 31, 1989. The three children were then still minors, and primary physical custody was awarded to plaintiff until "each child attains the age of eighteen (18) years or graduates from high school, whichever occurs later, or until further order of this court." The judgment provided that "all support arrearage accrued before the Judgment of Divorce for the minor children, whether the arrearage arose under a Temporary Child Support Order or under a separate Judgment entered under the Family Support Act, is preserved." The judgment further provided that, going forward, defendant would pay $420 a week for child support to plaintiff, and that "each support payment . . . is not, on and after the date it is

due, subject to retroactive modification." On November 14, 1989, the Friend of the Court signed an affidavit stating that defendant's arrearage was $28,980.

On May 31, 1990, the Virgin Islands Department of Justice Division of Paternity and Child Support found that the older two children were living with defendant in the Virgin Islands. The Agency ordered defendant to pay plaintiff $350 per month in child support for the youngest child.

On December 10, 1990, the parties agreed to a modified judgment of divorce. The judgment set a sum defendant would pay plaintiff "in full and complete settlement of all claims for support of Plaintiff but do not include all claims for support of the children of the parties." The judgment further stated that the parties "agree that each of the children shall be allowed to decide the parent with whom they want to reside and in such event the amount payable to the Plaintiff shall be $350.00 per child times the number of children choosing to reside with the Plaintiff."

Before 1999, defendant paid plaintiff a total of $8,011 in child support, then made no other such payments until 2023. In 2023, an income withholding for child support arrearage was sent to defendant and to the Social Security Administration. The Eaton County Friend of the Court received a payment of $753.50 from the Social Security Administration, and the Michigan State Disbursement Unit (MiSDU) mailed the check to plaintiff. A Michigan Child Support Enforcement System (MCSES) report prepared in April 2023 credited this payment, and listed a remaining "Payee Balance" of $70,935.64 and a "State Balance" of $2,642.50. Defendant called the Enforcement Case Worker, stating that the minor children had lived with him and asking for a full accounting.

An Eaton County Family Court Referee filed a recommended order. The referee concluded that defendant still owed $2,642.50 to the state, and a total of $9,527.50 to plaintiff (before the $753.50 payment). The referee found that the youngest child was the only child who lived with plaintiff following the divorce, specifying that the youngest child lived with plaintiff from September 1, 1989, to December 31, 1992, and then again from August 1, 1993, to June 30, 1994. The referee found that before 1999 defendant had paid $8,011. The referee stated, "Since this is a 1988 case, I was unable to locate any orders prior to the Judgment of Divorce."

Plaintiff filed an objection to this recommended order, and a hearing was held before another referee. The youngest child appeared as a witness. He testified that following the divorce, he lived with plaintiff in Michigan for his second- through sixth-grade years, and his eighth-grade year. He further testified that he lived with defendant in the Virgin Islands for nine months for his seventh-grade year, and from ninth grade onward. He testified that he started second grade in 1988, and completed eighth grade in 1995. The referee mistakenly described the youngest child as having testified that he last lived with plaintiff in 1994. The referee filed a recommended order that provided the same calculation as did the previous referee.

Plaintiff again objected. The trial court issued an order expressing agreement with the referees' orders. The court found that "a substantial portion of the previous arrearage occurred during a time in which the minor children resided full time with the Defendant-father."

This appeal followed.

II. ANALYSIS

"Generally, this Court reviews child support orders and orders modifying support for an abuse of discretion." *Fisher v Fisher*, 276 Mich App 424, 427; 741 NW2d 68 (2007). "An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes." *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). This Court reviews "the trial court's factual findings for clear error." *Diez v Davey*, 307 Mich App 366, 375-376; 861 NW2d 323 (2014). We review "de novo the proper interpretation of the . . . applicable statutes." *Borowsky*, 273 Mich App at 672.

Plaintiff argues that the circuit court erroneously calculated defendant's arrearage. We agree.

MCL 552.603 provides, in pertinent part, as follows:

> (1) A support order issued by a court of this state shall be enforced as provided in this act.
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> (2) Except as otherwise provided in this section, a support order that is part of a judgment or is an order in a domestic relations matter is a judgment on and after the date the support amount is due as prescribed in section 5c, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification. No additional action is necessary to reduce support to a final judgment. Retroactive modification of a support payment due under a support order is permissible with respect to a period during which there is pending a petition for modification, but only from the date that notice of the petition was given to the payer or recipient of support.
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> (3) This section does not apply to an ex parte interim support order or a temporary support order entered under supreme court rule.

"MCL 552.603(2) prohibits both retroactive increases and decreases in child support payments." *Clarke v Clarke*, 297 Mich App 172, 187; 823 NW2d 318 (2012). "[E]quitable circumstances are not appropriate considerations when applying MCL 552.603(2) and a flexible interpretation of the statute is precluded." *Clarke*, 297 Mich App at 187. "MCL 552.603(2) was drafted to reflect the public policy of ensuring the enforceability of support orders for the protection of children." *Malone v Malone*, 279 Mich App 280, 288-289; 761 NW2d 102 (2008).

In *Malone*, 279 Mich App at 282, the child had lived with the defendant for two years while the defendant still paid child support before finally filing a motion to modify it. The defendant sought a retroactive adjustment that would credit him for the payments made during those two years. *Id*. The trial court did retroactively modify support, citing MCR 2.612(C) (grounds for relief from judgment). *Malone*, 279 Mich App at 287. We reversed. *Id*. at 290. We held that the court rule and statute were in conflict, and that MCL 552.603(2) controlled. *Malone*, 279 Mich App at 288-289. We further held that there was "no basis for allowing equity to intervene in this case," because "[the defendant] should have promptly filed a motion in the . . . Circuit Court to change custody and abate child support as soon as the child was placed with him." *Id*. at 289.

We expressed "no opinion on whether [the defendant] can pursue a civil remedy from [the plaintiff] for her wrongful acceptance of support when she did not have physical custody of her minor child," and added that "there may be very rare circumstances in which constitutional due-process protections require a retroactive modification of child support," such as "where a support order was entered against a person not legally obligated to pay support and that party was denied notice of the issuance of the support order." *Id*. at 290.

However, "retroactive modification of *temporary* child support orders . . . is permissible." *Proudfit v O'Neal*, 193 Mich App 608, 611; 484 NW2d 746 (1992) (emphasis added).

MCL 552.605c provides, in pertinent part, as follows:

> (1) All support orders shall be stated in monthly amounts payable on the first of each month in advance. A support obligation not paid by the last day of the month in which it accrues is past due. If a support order does not state the amount of support as a monthly amount, the support amount stated in the order shall be converted to a monthly amount using the formula established by the state court administrative office.
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> (3) If a support order takes effect on other than the first day of a month, the monthly amount is prorated based on the daily amount for that month. A monthly support order amount shall not be prorated for the last month in which the order is in effect.

The Michigan Child Support Formula Manual provides that weekly amounts are multiplied by 4.35 to convert to the monthly amounts, 2025 MCSF 4.06(A), and that daily amounts are found by dividing the monthly amount by 0.033, 2025 MCSF 4.06(B).

MCL 400.236(1) provides as follows: "The state disbursement unit is established as the direct responsibility of the office. The SDU shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical to receive and disburse support and fees." Under MCL 400.236(2), "The SDU is the single location to which a payer or source of income subject to this section shall send a support or fee payment."

The trial court adopted the calculations of the first referee, which purported to follow a timeline covering when the youngest child lived with plaintiff, awarding support for only those periods. The actual support orders were only referenced for their support amounts, without examination of the other pertinent provisions. The referee recommendations and trial court order did not mention the ex parte support order, the notices of arrears, the divorce judgment's preservation of arrears or provisions for custody and support for all three children, or the amounts of total arrears calculated by MCSES or MiSDU.

As noted, MCL 552.603(3) does allow for retroactive changes of support for those periods where support was assessed under "an ex parte interim support order or a temporary support order entered under supreme court rule." However, in this case the first divorce judgment explicitly

preserved "all support arrearage accrued before the Judgment of Divorce for the minor children, whether the arrearage arose under a Temporary Child Support Order or under a separate Judgment entered under the Family Support Act." Having agreed to that judgment in the first instance, which the trial court formally entered, defendant agreed to preserve such support obligations. Therefore, the arrearage amount due before the first divorce judgment was fixed by the judgment, and subsequently could not properly be retroactively modified.

As noted, MCL 552.603(2) provides that once "a support order that is part of a judgment or is an order in a domestic relations matter" is formally agreed to, it may not be retroactively changed. The only event that can establish the date from which a new amount will apply is when a party files "a petition for modification." MCL 552.603(2). Here, defendant did not petition for modification while the support payments were being assessed. Therefore, the provisions of the support agreements control. MCL 552.603(2) requires a party to promptly move the court for a change in the support order if the child moves, instead of asserting such a defense after the fact, as defendant did here.

From July 19, 1988, to August 30, 1989, the ex parte and temporary support orders controlled. The notices of arrearage show that on August 22, 1988, $2,100 in support had accumulated, and on November 14, 1989, $28,980 had accumulated. These amounts reveal that the rate before the judgment of divorce was the same as the one later set forth in the judgment: $420 a week. From August 31, 1989, to May 31, 1990, the original divorce judgment controlled. For that period, defendant owed $420 per week to plaintiff.

From June 1, 1990, to December 9, 1990, the order from the agency in the Virgin Islands was in effect. That order assessed $350 per month. On December 10, 1990, the modified divorce judgment took effect. Going forward, the payments were still $350 per month per child residing with plaintiff. In her addendum to her objection to the second referee order, plaintiff agreed with the trial court that only the youngest child lived with her from December 1990 onward.

Apart from its incorrect method of calculating the arrearage, the trial court made other errors. The youngest child testified that he lived with plaintiff from the divorce through the end of eighth grade, minus nine months. The trial court calculated the end of the youngest child's time with plaintiff as June 30, 1994. But this was a year off, as the youngest child finished eighth grade in 1995, not 1994.

The trial court also subtracted $2,642.50 due to the state from the amount due to plaintiff. The trial court did not explain why an amount due to the state would be subtracted from the amount defendant owed plaintiff instead of being assessed separately. It does not appear that this was correct given that the base sum was the amount specifically owed to plaintiff, not an amount charged to defendant overall. The MCSES report indicated that the "State Balance" was an amount separate from the "Payee Balance," not an amount included in it.

The trial court further erred to the extent that it adjusted defendant's obligation to account for where the children were living at the time. Defendant was required to intervene while the payments were being assessed if he wished to change the support order on the basis of where the children were living.

We therefore reverse and remand for a calculation focused on what the support orders provided. The trial court must also correct the end-date for when the youngest child moved from Michigan, and not subtract any amount due to the state from the amount due to plaintiff.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Michael J. Riordan
/s/ Brock A. Swartzle