

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2021 CA 0663

IN RE: NAME CHANGE OF SADIE LEIGH GERRINGER

mt.
PMC by JEW
JEW

Judgment Rendered: DEC 22 2021

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2020-12658, Division K

The Honorable Patrice W. Oppenheim, Judge Presiding

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BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

THERIOT, J.

A mother appeals the trial court's dismissal of her petition to change the name of her minor child. For the reasons set forth herein, we reverse.

FACTS AND PROCEDURAL HISTORY

Danielle Leigh Lorance (formerly Danielle Gerringer) and Daniel Gerringer are the parents of Sadie Leigh Gerringer, who was born in 2014. On October 10, 2017, Daniel was ordered to pay child support to Danielle in the amount of \$900.00 per month, payable in two equal monthly installments, effective September 1, 2017. Daniel was also ordered to pay an additional \$50.00 per month toward an accrual owed totaling \$3,493.00, and to pay Danielle 100% of his 2017 tax refund, up to \$3,493.00, to be applied to the accrual amount.

On March 19, 2018, after Daniel continually failed to make child support payments or paid with a check that was returned for insufficient funds, Danielle petitioned the Louisiana Department of Children and Family Services Child Support Enforcement program to collect child support from Daniel. Child Support Enforcement was able to collect mostly partial child support payments through an income assignment order for some time, but all payments stopped in May 2019 when Daniel lost his job.¹ In June 2020, Daniel's monthly child support obligation was reduced to \$358.00 per month. At that time, Daniel owed \$19,190.71 in arrearages.

On June 25, 2020, Danielle filed a petition to change the name of the minor child from Sadie Leigh Gerringer to Sadie Leigh Lorance. Danielle served Daniel with a copy of the petition, in which she alleged that Daniel's consent to the name change was not necessary under La. R.S. 13:4751(C)(2)(b)(i) because Danielle had sole custody of Sadie and Daniel had refused or failed to comply with the October

¹ Although Daniel claimed that he did not make his monthly child support payments from June of 2019 to June of 2020 because he was not receiving a paycheck during that time period, he admitted that he did some "side work" after losing his job in May 2019, "to basically keep a roof over my head and electricity and food." He testified that he was not attempting to evade the income assignment order by working for cash; rather, his employment during that period was not stable and he did not earn more than the amount needed for his living expenses.

10, 2017 order of support for over one year.² Daniel filed exceptions raising the objections of no cause of action and vagueness and answered the petition, denying the allegation that he refused or failed to comply with a court order of support. He alleged that “[t]here is an income assignment order in place in which the child support obligation is automatically withdrawn from [his] paycheck[,] with the latest payment, as of the date of this instant filing, being on September 2, 2020, and prior to that on August 10, 2020, May 12, 2020, and March 19, 2020.” He further alleged that “there has never been a period of non-payment for one year since the date the child support judgment was rendered.” Daniel later withdrew the exception of no cause of action and, after a hearing, the trial court overruled the exception of vagueness and set the matter for hearing on the merits.

A hearing on the petition for name change was held on March 3, 2021. At the hearing, Danielle filed a copy of the judgment awarding her sole custody of Sadie and Child Support Enforcement Services’ Financial Summary of child support payments from February 2018 through September 2020. The Financial Summary showed that prior to the filing of the petition for name change on June 25, 2020, Daniel had not made a single monthly child support payment in over a year.³ As of September 18, 2020, the date the Financial Summary was printed, Daniel owed \$19,419.19 in arrearages. As a result of the arrearages owed, Daniel’s income tax refund of \$1,398.00 and his CARES Act Economic Impact Payment of \$1,200.00 were withheld in 2020 to satisfy the delinquent child support

² Danielle also alleged that Daniel’s consent was not required pursuant to La. R.S. 13:4751(C)(2)(b)(iii), because Daniel “has not paid support to the minor child for a period of over two years and has failed or refused to visit, communicate, or attempt to communicate with the minor child for a period of over two years.” However, this ground for changing the child’s name without Daniel’s consent was withdrawn at trial.

³ Daniel did make several payments after the petition for name change was filed, consisting of a partial payment of \$211.38 in August of 2020 and a payment of \$634.14 in September of 2020. He also testified that he made a payment of \$4,000.00 two days before the hearing, although Danielle testified that she had no knowledge of the payment and had not yet received any payment.

debt.⁴ These intercepted funds were received in March and May of 2020 and applied to the arrearages.

At the conclusion of the hearing, the trial court found that the \$1,398.00 income tax refund offset and the \$1,200.00 CARES Act offset constituted payments of child support attributable to Daniel, despite the involuntary nature of the payments. As a result, the trial court denied Danielle's Petition for Name Change. A judgment was signed in accordance with this ruling on March 15, 2021, and Danielle appealed, arguing that the trial court erred in failing to find that Daniel had refused or failed to comply with a court order of support for a period of one year.

DISCUSSION

Louisiana Revised Statutes 13:4751 governs petitions for name change. It provides, in pertinent part:

C. If the person desiring such change is a minor or if the parents or parent or the tutor of the minor desire to change the name of the minor:

- (1) The petition shall be signed by the father and mother of the minor or by the survivor in case one of them be dead.
- (2) If one parent has been granted custody of the minor by a court of competent jurisdiction, the consent of the other parent is not necessary under either of the following circumstances:
 - (a) The parental rights of the other parent have been terminated.
 - (b) The other parent has been served with a copy of the petition and any of the following exists:
 - (i) The other parent has refused or failed to comply with a court order of support for a period of one year.
 - (ii) The other parent has failed to support the child for a period of three years after judgment awarding custody to the parent signing the petition.

⁴ The United States Government Treasury Offset Program (TOP) intercepts federal payments and participating state payments to help pay off past-due debts, such as child support arrearages. www.fiscal.treasury.gov/top Additionally, the Louisiana Department of Revenue withholds any amounts refundable to an individual who has failed to provide child support pursuant to an order and against whom a judgment has been rendered making such arrearages executory. La. R.S. 47:299.31.

- (iii) The other parent is not paying support and has refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of two years.

At issue in this appeal is Subsection (b)(i), under which the consent of the non-custodial parent is not necessary where that parent has refused or failed to comply with a court order of support for a period of one year. The Financial Summary filed into evidence at the hearing shows that only two payments were received by Child Support Enforcement Services during the twelve-month period at issue: the \$1,398.00 payment withheld from Daniel's income tax refund in March 2020 and the \$1,200.00 payment withheld from Daniel's CARES Act payment in May 2020. Although the trial court concluded that these two payments precluded a finding under Subsection (b)(i) that Daniel refused or failed to comply with an order of support, the payments were in fact withheld from Daniel *because* he refused or failed to comply with the order of support. These offsets occur only when there is a delinquent debt. Under La. R.S. 47:299.31, the Secretary of the Louisiana Department of Revenue may intercept any amounts refundable to an individual "who has failed to provide child support . . . pursuant to an order and against whom a judgment has been rendered making such arrearages executory." Similarly, the federal TOP program intercepts payments to help pay off past-due debts, such as child support arrearages. Neither payment would have been withheld to satisfy Daniel's court-ordered monthly child support obligation; it is only because he failed or refused to comply with the court order of support that the funds were withheld from him and used to help pay off the arrearages. The Financial Summary in evidence shows that both payments were allocated to arrearages and not the monthly child support obligation. The trial court erred in concluding that these two involuntary payments to arrearages preclude a finding that Daniel failed or refused to comply with a child support order. It is clear from

the evidence presented that Daniel failed or refused to comply with the order of support for a period of one year. Danielle met her burden of proving that she was entitled to change the name of the minor child without Daniel's consent under La. R.S. 13:4751(C)(2)(b)(i). Consequently, the judgment denying the petition for name change is reversed and this matter is remanded for further proceedings in accordance herewith.

DECREE

For the reasons set forth herein, the March 15, 2021 trial court judgment denying Danielle Lorance's petition for name change of the minor child is reversed and this matter is remanded for further proceedings. Costs of this appeal are assessed to Daniel Gerringer.

REVERSED AND REMANDED.