

IN THE SUPREME COURT OF OHIO

In re:

:

Charles A. McKinney
Attorney Reg. No. 0039214

:

:

:

07-0022

ENTRY OF DEFAULT OF CHILD SUPPORT ORDER

Jonathan W. Marshall (0015498)
Ruth Bope Dangel (0037999)
Board of Commissioners on Grievances and Discipline
65 South Front Street
Fifth Floor
Columbus, Ohio 43215
(614) 387-9370

Charles A. McKinney (0039214)
20 West Monument Avenue
Dayton, OH 45402
(927) 461-9000

FILED

JAN 05 2007

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

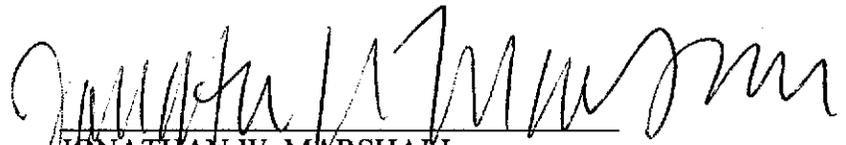
**BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In re: :

Charles A. McKinney : **ENTRY**
Attorney Registration No. 0039214 :

: Gov. Bar R. V(5)
Child Support

Pursuant to Rule V(5)(A)(2) of the Supreme Court Rules for the Government of the Bar of Ohio, the Court is hereby notified of a determination of default of a child support order for Charles A. McKinney, entered by the Montgomery County Child Support Enforcement Agency based upon the child support order in Case No. 1994DR00045/SETS No. 7003413494.



JONATHAN W. MARSHALL
Secretary, Board of Commissioners
On Grievances and Discipline of
The Supreme Court of Ohio



FILED
DOMESTIC RELATIONS COURT

2005 DEC 15 PM 3:38
BB DAN FOLEY
CLERK OF COURTS
MONTGOMERY CO., OHIO

(MDPO)

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

FAYRE MCKINNEY
2441 SYON DR
MEMPHIS, TN 38119

Case No. 1994 DR 00045

SETS No. 7003413494

PLAINTIFF,

DENISE L. CROSS, Judge

vs.

NICHOLAS SYLVAIN, Magistrate

CHARLES ANTHONY MCKINNEY
20 W. MONUMENT AVE.
DAYTON, OH 45402

ROSE, C.R.

MAGISTRATE DECISION
AND PERMANENT ORDER
[Civ. R. 53]

DEFENDANT.

This matter came on for hearing on December 12, 2005 before the undersigned magistrate pursuant to Plaintiff's motion filed October 5, 2005. Present in court were both parties and SEA attorney Steven Walker. Plaintiff's motion requests dismissal of an outstanding motion filed by defendant, removal of a Supreme Court disciplinary referral prohibition, and a finding of default.

The following findings of fact and conclusions of law were reached based on the evidence presented. Court's Exhibit I and Defendant's Exhibit A were admitted.

As stated in plaintiff's motion, on December 17, 2001, defendant filed a motion to modify support. This motion was apparently never served on plaintiff and defendant never attempted new service. Given the age of this motion, this magistrate finds that it

must be dismissed without prejudice, although of course defendant may refile it if he wishes.

Furthermore, as stated in plaintiff's motion, an agreed order filed on August 16, 2002 includes a provision as follows: "The SEA is ordered to refrain from referring this case to the Ohio Supreme Court Board of Discipline and Grievances until and only if this limitation is removed by the court."

It appears clear that this prohibition was put into place pursuant to an agreement between the Montgomery County Prosecutor's Office and Defendant's counsel. This magistrate is not convinced that this court has the authority to prohibit the SEA (or any person) from making a disciplinary referral to the Ohio Supreme Court in this matter. In the range of various enforcement measures, a disciplinary referral to the Ohio Supreme Court is different in that the SEA is not taking direct enforcement action but rather is bringing a potential disciplinary matter to the Supreme Court's attention for disposition as it sees fit. The Supreme Court of Ohio has original jurisdiction over all matters related to the practice of law¹ which could be frustrated if other parties are broadly prohibited from reporting potential disciplinary matters to it. Furthermore, as the Plaintiff made clear at the hearing, even if she at one point agreed with the prohibition, which may be permissible under R.C. 3123.22, she no longer agrees with that prohibition.

Accordingly, this magistrate finds that this reporting prohibition should be removed.

Finally, plaintiff requests that this court make a finding that Defendant is in default as defined by R.C. 3121.01 (B). That statute defines default as "any failure to pay under a support order that is an amount greater than or equal to the amount of support payable under the support order for one month." In reviewing the SEA audit of Defendant's SETS account, this magistrate notes that in 2005 alone Defendant failed to make any part of his required payments in January, February, April, May, July and

¹ Section 2(B)(1)(g), Article IV of the Ohio Constitution.

September. Defendant believes that Exhibit A explains his failure to pay his September payment. However, even if this is true, Defendant has failed to make any support payments for five out of the past twelve months (assuming he in fact makes his December 2005 payment).

While this magistrate does note that Defendant appears to be now making his support payments by electronic withdrawal from a bank account, he has so far not made any payment to redress his 2005 pay history as stated above. Accordingly, I find that Defendant is in default as defined by R.C. 3121.01 (B) at this time, although this determination is subject to further review by this court depending on Defendant's future efforts.

IT IS THEREFORE ORDERED and the Support Enforcement Agency shall correct its records as follows:

1. Defendant's motion to modify support filed December 17, 2001 is dismissed without prejudice for failure to prosecute.
2. The SEA is no longer prohibited from referring this case to the Ohio Supreme Court Board of Discipline and Grievances.
3. Defendant is in default of his child support obligation, as defined by R.C. 3121.01 (B), at this time.

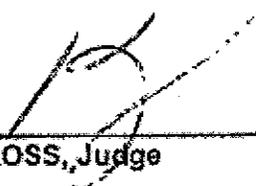
IT IS FURTHER ORDERED BY THE COURT THAT DEFENDANT SHALL PAY
~~THE CLERK ADMINISTRATIVE FEES FOR THIS ACTION. SAID AMOUNT SHALL~~
~~BE REMITTED FORTHWITH UPON RECEIVING AN INVOICE FROM MONTGOMERY~~
~~COUNTY CLERK OF COURTS.~~



NICHOLAS SYLVAIN, Magistrate

This Magistrate Decision contains findings of fact and conclusions of law referenced in Civ. R. 53. No additional request for findings of fact and conclusions of law will be granted. Upon review of the findings of fact and conclusions of law, the Magistrate Decision herein is adopted as a Permanent Order of this Court pursuant to Civ. R. 53. Any objection to the Magistrate Decision shall be filed within 14 days and supported by a transcript of all evidence submitted to the Magistrate relevant to that fact or an affidavit of such evidence if a transcript is not available. **A party may not assign as an error on appeal the Court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this Rule.** Responding objections may be filed no later than 10 days after the first objections are filed. If no objections are filed, the Magistrate Decision is the Permanent Order of the Court.

IT IS SO ORDERED:



DENISE L. CROSS, Judge

NOTICE OF FINAL APPEALABLE ORDER

Copies of foregoing order, which may be a final appealable order, were mailed to counsel of record and/or the parties, on the date indicated below by ordinary mail.

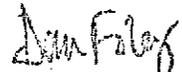
DAN FOLEY, Clerk of the Common Pleas Court

Chris Hickey, Deputy

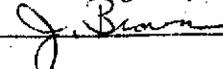
Date: _____

I hereby certify this to be a true and correct copy.

Witness my hand and seal this 13th
day of December 2006.

 Clerk

Clerk of Common Pleas
Court of Montgomery County, Ohio

By  Deputy

FAYRE MCKINNEY
PLAINTIFF

STEVEN H WALKER
SEA STAFF ATTORNEY
14 WEST FOURTH STREET
3RD FLOOR
DAYTON, OH 45401

CHARLES ANTHONY MCKINNEY
DEFENDANT

Support Enforcement Agency

Assignment Office

NS/KSG/LSD 12/13/05
