

[Cite as *In re A.S.*, 2009-Ohio-6246.]

STATE OF OHIO, JEFFERSON COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

IN THE MATTER OF:

A.S.,  
MINOR CHILD.

)  
)  
)  
)  
)  
)

CASE NO. 09 JE 17

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Common Pleas  
Court, Juvenile Division,  
Case No. 93CU1.

JUDGMENT:

Reversed and Judgment of  
January 13, 2009 Reinstated.

APPEARANCES:

For Appellant:

Attorney Mary Catherine Dylewski  
Jefferson County Prosecutor's Office  
Jefferson County Justice Center  
16001 State Route 7  
Steubenville, OH 43952

For Appellee:

Royal Mayo, Pro-se  
P.O. Box 4786  
544 Highland Avenue  
Steubenville, OH 43952  
No Brief Filed

JUDGES:

Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite

Dated: November 19, 2009

[Cite as *In re A.S.*, 2009-Ohio-6246.]  
DeGenaro, J.

{¶1} Appellant, Jefferson County Child Support Enforcement Agency (CSEA) appeals the April 7, 2009 decision of the Jefferson County Common Pleas Court, Juvenile Division, that sua sponte vacated its January 13, 2009 judgment entry ordering Appellee, Royal Mayo to pay assigned child support arrears to the State.

{¶2} The trial court's judgment entry indicates that it sua sponte vacated its original order for the sole purpose of providing Mayo with additional time to file objections to the underlying magistrate's decision. The trial court abused its discretion by vacating its January 13, 2009 order because no Civ.R. 60(B) motion had been filed, the dismissal was not for the purpose of correcting a clerical error in the original order, and there is nothing to indicate that the original order was void. Accordingly, the trial court's April 7, 2009 decision is reversed and the trial court's judgment entry of January 13, 2009 is reinstated.

#### Facts and Procedural History

{¶3} This case originated from a Complaint for Custody of A.S. by Keith Smith, A.S.'s grandfather, which was granted by the trial court on January 14, 1993. On December 21, 2005 the trial court granted a change of custody to A.S.'s parents, Tamekia Smith and Royal Mayo.

{¶4} On December 20, 2006, the CSEA moved the trial court to order Mayo to pay child support, as A.S. was residing with Tamekia and receiving public assistance. Mayo failed to supply the CSEA with any information and failed to appear before the magistrate. On November 19, 2007, the trial court ordered that Mayo pay an interim amount of child support, effective December 20, 2006, and ordered that Mayo cooperate with further CSEA financial investigation. On March 25, 2008, the CSEA moved the trial court to find Mayo in contempt for failing to comply with all prior orders, and moved the trial court for judgment against Mayo on accumulated arrears. After some difficulty in perfecting service, Mayo appeared before the magistrate on May 19, 2008 to request a continuance, but failed to appear before the magistrate on subsequent hearing dates. After the magistrate filed an order to show cause, Mayo appeared before the magistrate on October 6, 2008 to request a continuance in light of a pending agreement by the

parties.

{¶5} The magistrate held a hearing on October 20, 2008, at which both Mayo and Tamekia were present. The magistrate subsequently filed a decision on November 20, 2008, amended on November 21, 2008, noting that the CSEA had dismissed its motion for contempt and the parties agreed that Mayo did not owe Tamekia any child support or arrearage, but reserving jurisdiction for a later ruling on any arrearage owed by Mayo to the CSEA. Once the magistrate received a report of the cash assistance that the CSEA had given to Tamekia for the care of A.S., the magistrate submitted a decision on December 15, 2008, finding that Mayo owed \$837.18 in arrears to the CSEA. The docket indicates that copies of the magistrate's decision were mailed to all parties and no objections were filed. On January 13, 2009, the trial court adopted the magistrate's decision. None of the parties filed a notice of appeal from the trial court's decision.

{¶6} On April 7, 2009, the trial court vacated its January 13, 2009 judgment entry without providing any legal justification for the ruling, and granted Mayo fourteen days to file objections to the magistrate's December 15, 2008 decision. On April 28, 2009, the CSEA filed a notice of appeal, stating that it had been denied due process by the trial court's sua sponte vacating its order. Mayo did not file a brief in this appeal. Thus, this court "may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action." App.R. 18(C).

#### Authority to Vacate a Final Judgment

{¶7} In its sole assignment of error, the CSEA contends:

{¶8} "The trial court erred in vacating its January 13, 2009 judgment entry sua sponte."

{¶9} The CSEA asserts that the trial court's sua sponte decision to vacate a prior final order was an abuse of discretion because no Civ.R. 60(B) motion had been filed, there was no evidence of a clerical mistake pursuant to Civ.R. 60(A), and there was no evidence that the prior order was void.

{¶10} Civil Rule 60 governs the ability of a court to revisit a final order, though the

applicability of the rule is limited by the prescribed procedure. Pursuant to Civ.R. 60(B), a trial court may relieve a party from final judgment, but only upon motion by a party. *Deutsche Bank Trust Co. v. Pearlman*, 162 Ohio App.3d 164, 2005-Ohio-3545, 832 N.E.2d 1253, at ¶15. Pursuant to Civ.R. 60(A), a trial court may sua sponte change a prior final order, but only for corrections of clerical errors that do not make substantive changes in a judgment. As the CSEA points out, the trial court's April 7, 2009 judgment was sua sponte, and made the substantive change of vacating the award of child support arrears to the CSEA. Thus the trial court did not have the ability to vacate the January 13, 2009 judgment under Civ.R. 60(A) or Civ.R. 60(B).

{¶11} As a general rule, a trial court has no authority outside the Civil Rules to vacate a final judgment. *Soc. Natl. Bank v. Repasky*, 7th Dist. No. 99 CA 193, 2000-Ohio-2646, citing *Rice v. Bethel Assoc., Inc.* (1987), 35 Ohio App.3d 133, 134, 520 N.E.2d 26. However a trial court still has the inherent authority to vacate a judgment which was void ab initio. *Northland Ins. Co. v. Poulos*, 7th Dist. No. 06 MA 160, 2007-Ohio-7208, at ¶29-33; *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, at paragraph four of the syllabus. A judgment is considered to be void, and not merely voidable, "only where the court lacks jurisdiction of the subject matter or of the parties or where the court acts in a manner contrary to due process." *Rondy v. Rondy* (1983), 13 Ohio App.3d 19, 22, 13 OBR 20, 468 N.E.2d 81.

{¶12} The trial court in this case offered no explanation as to why it had the authority to vacate its prior judgment. The record below indicates that the trial court had jurisdiction over Mayo, and that Mayo otherwise submitted himself to the jurisdiction of the court and evinced his receipt of notice by appearing before the magistrate on May 19, October 6, and October 20, 2008. Because the trial court's reason for vacating the January 13, 2009 judgment was to afford Mayo more time to file objections, it could be inferred that the trial court believed that Mayo had not received proper notice of the magistrate's order. However the docket reflects that a copy of the December 15, 2008 magistrate's decision was mailed to Mayo on the same date. Thus the January 13, 2009 decision was not void for lack of personal or subject matter jurisdiction or violation of due

process. The trial court did not have the inherent authority to vacate the January 13, 2009 decision.

**{¶13}** In the absence of a clerical error, a Civ.R. 60(B) motion or a void order, and with the failure to provide the CSEA with notice or the opportunity to be heard prior to vacating the January 13, 2009 decision, the trial court's decision to vacate was procedurally deficient. The trial court's April 7, 2009 decision was therefore an abuse of discretion. The CSEA's sole assignment of error is meritorious.

**{¶14}** Accordingly, the April 7, 2009 judgment of the trial court is reversed and the trial court's judgment of January 13, 2009 is reinstated.

Donofrio, J., concurs.

Waite, J., concurs.