

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

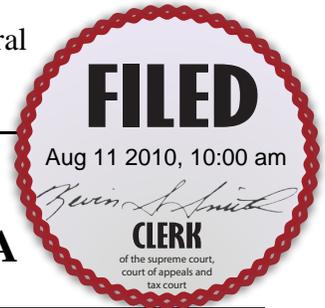
ATTORNEY FOR APPELLANT:

LOREN J. COMSTOCK
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHY BRADLEY
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: PATERNITY OF I.H.,)

R.P.,)

Appellant-Respondent,)

vs.)

C.H.,)

Appellee-Petitioner.)

No. 84A04-1004-JP-237

APPEAL FROM THE VIGO CIRCUIT COURT

The Honorable David R. Bolt, Judge

The Honorable R. Paulette Stagg, Magistrate

Cause No. 84C01-0704-JP-292

August 11, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent R.P. (Father) appeals the trial court's order finding Father to be the father of I.H. and requiring Father to pay \$47 per week in child support plus an arrearage of \$7238. Father argues that the trial court erred by denying his motion for a continuance made on the morning of the paternity hearing and by calculating the amount of child support arrearage he owes to appellee-petitioner C.H. (Mother).¹ Finding no error, we affirm.

FACTS

I.H. was born on March 22, 2006. On April 5, 2007, the Vigo County Prosecutor filed a petition to establish paternity of I.H. The prosecutor was unable to obtain service on Father, so the trial court dismissed the petition without prejudice on June 27, 2007. On March 7, 2008, the prosecutor reinstated the petition but was again unable to obtain service on Father, so the trial court dismissed the petition without prejudice on April 30, 2008. On June 4, 2009, the prosecutor filed a motion for reinstatement, which the trial court granted on June 8, 2009. The prosecutor was finally able to serve Father with the petition on June 22, 2009, so paternity proceedings commenced.

On August 18, 2009, Father moved for a continuance, which the trial court granted. At a November 4, 2009, hearing, Father requested DNA testing, which was granted, and a hearing was set for January 6, 2010. On January 6, Father requested

¹ The State is not directly representing Mother in this matter but is representing its own interests because she is a Title IV-D recipient. Appellee's Br. p. 2 (citing Collier v. Collier, 702 N.E.2d 351 (Ind. 1998); Ind. Code § 31-25-4-13.1).

another continuance, which the trial court granted, resetting the hearing for March 10, 2010. On February 11, 2010, the trial court issued a notice that it had received the DNA results, which indicated that Father was I.H.'s biological father. On March 3, 2010, Father filed a motion for a continuance and a request for additional DNA testing, and the trial court denied both requests.

At the March 10, 2010, hearing, Father's attorney told the trial court that shortly before the hearing, Father had asked his attorney to seek to withdraw as counsel. The State did not object to the withdrawal so long as Father did not request another continuance. The trial court granted the motion to withdraw, whereupon Father requested a continuance so that he could seek new legal counsel. The State objected and the trial court denied Father's request.

The trial court proceeded with the hearing, during which the State introduced the DNA test results into evidence, showing that the probability of Father being I.H.'s biological father is 99.99%. Mother testified that she had unprotected sexual relations with Father approximately nine months before I.H.'s birth and that there were no other possible fathers of the boy. The trial court found that Father is I.H.'s biological father and ordered that he pay \$47 per week in child support plus an arrearage of \$7238, to be paid over time as an additional \$5 per week. Father now appeals.

DISCUSSION AND DECISION

Motion for Continuance

Father first argues that the trial court erred by denying his request for a continuance made at the start of the paternity hearing. We review a trial court's decision

to grant or deny a motion for continuance for an abuse of discretion. Gunasekar v. Grose, 915 N.E.2d 953, 955 (Ind. 2009). A denial of a motion for continuance is an abuse of discretion only if the movant demonstrates good cause for granting it. Id.

Father argues that the trial court should have granted a continuance because his attorney withdrew the morning of the paternity hearing. Contrary to Father's argument, however, it is well established that "[t]he withdrawal of counsel does not entitle a party to an automatic continuance." Hamilton v. State, 864 N.E.2d 1104, 1109 (Ind. Ct. App. 2007). Here, Father had already received two continuances, and it was his own decision to wait until the morning of the hearing to ask his attorney to withdraw. See Washington v. State, 902 N.E.2d 280, 286 (Ind. Ct. App. 2009) (holding that motions for a continuance made on the morning of trial are disfavored because granting them causes a substantial loss of time for witnesses, lawyers, and the trial court), trans. denied. Under these circumstances, any prejudice that inured to Father was caused by his own delay in asking his attorney to withdraw. Therefore, we cannot say that the trial court erred by finding that Father failed to establish good cause and denying his motion for a continuance.

Arrearage

Father also argues that the trial court erroneously calculated the amount of his child support arrearage. A trial court's findings and calculations regarding child support are clearly erroneous only when the record contains no facts or inferences to support them. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

A child support order must include the period dating from the filing of the paternity action, and may include the period dating from the birth of the child. Ind. Code § 31-14-11-5. Here, there were 152 weeks and 6 days between the date on which the original paternity petition was filed on April 5, 2007, and the date on which paternity was established, March 10, 2010, meaning that the least possible arrearage owed by Father was \$7189.08. On the other hand, there were 207 weeks between I.H.'s birth on March 22, 2006, and the date on which paternity was established, meaning that the most possible arrearage owed by Father is \$9729. The trial court found an arrearage of \$7238. Although this amount does not precisely correspond with the date on which the original petition was filed, we find no error, inasmuch as the trial court could have ordered Father to pay far more—nearly \$2500 more—in arrears.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.