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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY E. STROWMATT,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 17A03-1105-DR-218
	)	
KIM RODRIGUEZ,	)	
	)	
Appellee.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-8806-DR-92

December 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Timothy E. Strowmatt, *pro se*, appeals the denial of his motion for relief from judgment.[1] Strowmatt raises one issue, which we revise and restate as whether the trial court abused its discretion in denying the motion. We affirm.

The relevant facts follow. S.S. was born to Strowmatt and his former wife, Kim Rodriguez, on December 10, 1983. See Strowmatt v. Rodriguez, 897 N.E.2d 500, 501 (Ind. Ct. App. 2008). The trial court dissolved Strowmatt's marriage to Rodriguez on August 30, 1988, and ordered Strowmatt to pay child support in the amount of forty-six dollars per week. Id.

The chronological case summary ("CCS") shows that on July 13, 1993, Rodriguez by a deputy prosecuting attorney filed a Verified Petition for Rule to Show Cause and that on November 9, 1993, the court found Strowmatt's arrearage to be in the amount of $7,452.65, to be paid at the rate of fourteen dollars per week in addition to the regular support payment of forty-six dollars per week. The CCS further shows that on June 14, 1994, Rodriguez filed a Verified Motion for Proceedings Supplemental.

In April 2004, Rodriguez filed a petition to establish Strowmatt's child support arrearage, and following a hearing on June 30, 2005, the trial court found Strowmatt to be $27,658.72 in arrears and entered judgment against him accordingly. Id. at 502.

On March 25, 2008, Strowmatt filed a petition to recalculate arrearage, which the trial court denied. Id. On appeal, Strowmatt argued that the amounts accrued during his periods of incarceration should not have been included in the calculation. Id. This court

[1] The State filed an appellee's brief and states: "The State is not directly representing the mother in this matter but is representing the interests of the State because she is a Title IV-D recipient." Appellee's Brief at 2 n.2.

disagreed and held that the trial court did not err in finding Strowmatt in arrears in the amount of $27,658.72.[2] Id. at 502-503.

On March 23 2011, Strowmatt, *pro se*, filed a "RELIEF FROM JUDGMENT AND ORDER" in which he "pursuant to Ind. Trial Rule 60(B)(2)(8)[3] moves this Honorable Court for relief from its order of June 30, 2005." Appellant's Appendix at 9. In his request, Strowmatt argued that the court "lacked jurisdiction to include arrearages from August 30, 1988 to May 8, 1995 without the State/Petitioner filing the required action within the ten (10) year statute of limitations under I.C. § 34-11-1-2." Id. at 10. Strowmatt also argued that application of certain annual support and maintenance docket fees does not apply to his case. The court denied Strowmatt's request.

The issue is whether the trial court abused its discretion in denying Strowmatt's Trial Rule 60(B) motion. Motions for relief from judgment are governed by Ind. Trial Rule 60(B), which provides in part:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment . . . for the following reasons:
>
> * * * * *
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

[2] The State points to a record of Strowmatt's payment history which appears to indicate that Strowmatt made a payment on February 20, 2010, which paid his arrearage in full.

[3] Trial Rule 60(B)(2) does not contain a sub-part (8), and further any request for relief under subsection (2) must be made "not more than one year after the judgment, order or proceeding was entered . . . ." Ind. Trial Rule 60(B). We will treat Strowmatt's request as a motion under Trial Rule 60(B)(8).

> The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

The burden is on the movant to establish grounds for Trial Rule 60(B) relief. In re Paternity of P.S.S., 934 N.E.2d 737, 740 (Ind. 2010). A motion made under Rule 60(B) is addressed to the equitable discretion of the trial court; the grant or denial of the Rule 60(B) motion will be disturbed only when that discretion has been abused. Id. at 740-741 (citation and quotation marks omitted). An abuse of discretion will be found only when the trial court's action is clearly erroneous, that is, against the logic and effect of the facts before it and the inferences which may be drawn therefrom. Id. at 741 (citation and quotation marks omitted). A motion for relief from judgment under Rule 60(B) is not a substitute for a direct appeal. Id. at 740. Rule 60(B) motions address only the procedural, equitable grounds justifying relief from the legal finality of a final judgment, not the legal merits of the judgment. Id.

Strowmatt argues that the trial court lacked jurisdiction to enforce a child support obligation from August 30, 1988 to May 8, 1995 "without the state's fulfillment to seek enforcement on or before August 30, 1998." Appellant's Brief at 3. Strowmatt "does not challenge the child support arrearages from May 8, 1995 to December 10, 2004 (Date of emancipation)." Id. at 3-4. Strowmatt argues that "[t]he statute of limitations under IC 34-11-1-2 bars the state or Appellee's action to collect child support arrearages nine (9) years after the statute of limitations went into effect, nineteen (19) years after the date of the dissolution of marriage." Id. at 4. Strowmatt also argues that the court "abused its

discretion by denying to issue and [sic] Order to correct by termination the Annual Support and Maintenance Docket Fee (ASFE) in this case." Id. at 5.

The State argues that "[t]his Court has already reviewed facts similar to this case and found that the statute of limitations did not apply" and cites to Dore v. Dore, 782 N.E.2d 1015 (Ind. Ct. App. 2003). Appellee's Brief at 4-5. The State argues that "[o]n July 13, 1993, Rodriguez attempted to collect child support payments" and that "[t]his effort to enforce the child support payments was filed 'within ten years of the earliest child support installment'[;] therefore, the trial court was correct to include this time when calculating child support arrearages." Id. at 5 (citing Dore, 782 N.E.2d at 1021).

In Dore, the former husband Michael claimed that the trial court "improperly included in its arrearage calculation payments which had become due and unpaid more than ten years ago." Dore, 782 N.E.2d at 1020. This court addressed the former husband's argument as follows:

> The confusion here seems to stem from a change in the statute of limitations for child support actions after Michael and [the former wife] Donna's dissolution but before Donna brought her Petition to Establish Child Support Arrearage. Previously, child support actions did not have a separate statute of limitations and were governed by Indiana Code section 34-1-2-3 which provided:
>
> > All actions not limited by any other statute shall be brought within fifteen (15) years.
>
> See, e.g., Kuhn[v. Kuhn, 273 Ind. 67], 402 N.E.2d [989,] 991 [(1980)]. Prior to 1983, the Indiana legislature amended section 34-1-2-3 to state:
>
> > All actions not limited by any other statute shall be brought within ten (10) years unless the cause of that action arose before September 1, 1982, in which case the action must be brought within fifteen (15) years. In special cases, where a

> different limitation is prescribed by statute, the provisions of this section shall not apply.[4]

See, e.g., Haton[v. Haton], 672 N.E.2d [962,] 963 [(Ind. Ct. App. 1996), trans. denied]. This appears to be the statute of limitations which Michael is relying upon for his contention that several of his past child support installments are no longer available to Donna because they are more than ten years old. However, . . . each of the Orders issued by the trial court consisted of a renewal of the previous amount and an addition of less than ten years' worth of child support installments. Therefore, even under the previous statute, Michael's child support installments are not barred by the statute of limitations.

We note that on May 8, 1995, Indiana Code section 34-1-2-1.6 was enacted and given emergency effect. See Thurman [v. Thurman], 777 N.E.2d [41,] 44 [(Ind. Ct. App. 2002)]. This section has since been recodified at Indiana Code section 34-11-2-10 and states:

> An action to enforce a child support obligation must be commenced not later than ten (10) years after:
>
> (1) the eighteenth birthday of the child; or
>
> (2) the emancipation of the child.
>
> whichever occurs first.

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[4] Ind. Code § 34-11-1-2, formerly Ind. Code § 34-1-2-3, provides:

(a) A cause of action that:

(1) arises on or after September 1, 1982; and
(2) is not limited by any other statute;

must be brought within ten (10) years.

(b) A cause of action that:

(1) arises before September 1, 1982; and
(2) is not limited by any other statute;

must be brought within fifteen (15) years.

(c) This section does not apply whenever a different limitation is prescribed by statute.

> Ind. Code § 34-11-2-10. Thus, a more specific statute of limitations has been enacted to cover actions to enforce child support obligations. See Thurman, 777 N.E.2d at 44.
>
> Two general rules apply with respect to the enactment of a new statute of limitations: (1) the period of limitation in effect at the time the suit is brought governs in an action even though it may lengthen or shorten an earlier period of limitation; (2) however, a new statute of limitations cannot revive a claim which was foregone under the prior statute of limitations before passage of the new one. Connell v. Welty, 725 N.E.2d 502, 506 (Ind. Ct. App. 2000).
>
> In the present case, Donna's earliest attempts to collect Michael's unpaid child support obligations began in May 1985. At that point, the prior statute of limitations had not foreclosed her action because she brought it within ten years of the earliest child support installment. In May 1995, our General Assembly enacted what is now Indiana Code section 34-11-2-10, which specifically governs actions to recover delinquent child support obligations. See also Thurman, 777 N.E.2d at 45. Therefore, according to the rule set forth above, section 34-11-2-10 applies to the Petition to Establish Child Support Arrearage whether it lengthens or shortens the earlier applicable period.
>
> Pursuant to section 34-11-2-10, any action to enforce a child support obligation must be commenced not later than ten years after the eighteenth birthday or the emancipation of the child who is the object of the support order, whichever occurs first. Here, Danielle turned eighteen on April 1, 1999 and was married on October 31, 2000. Therefore, her eighteenth birthday occurred first. Thus, the ten-year period set forth in section 34-11-2-10 began running on April 1, 1999 and had not expired when Donna filed the Petition to Establish Child Support Arrearage on January 29, 2002. Therefore, the trial court did not err in calculating Michael's child support arrearage.

Id. at 1020-1021.

In this case, the record reveals that the trial court entered an order on August 30, 1988, dissolving Strowmatt's marriage and ordering Strowmatt to pay child support in the amount of $46.00 per week. Rodriguez attempted to collect child support payments

on July 13, 1993, which was within ten years of the court's August 30, 1988 dissolution order and the earliest child support installment.[5] Therefore, the statute of limitations which governed the enforcement of child support obligations prior to May 8, 1995, had not foreclosed Rodriguez's action. The court did not err in including Strowmatt's support obligation from August 30, 1988 to May 8, 1995, in its calculation of his child support arrearage on the basis of the prior statute of limitation. See Dore, 782 N.E.2d at 1021. As a result, Strowmatt has not shown that he has a meritorious claim under Trial Rule 60(B)(8). Based upon the record, we cannot say that the trial court abused its discretion in denying Strowmatt's Trial Rule 60(B) motion for relief.

Further, with respect to Strowmatt's challenge to certain annual support and maintenance fees, we note that he argues that his "responsibility to pay child support ended on December 10, 2004, [the] date of [S.S.'s] emancipation" and that "[a]ny application of annual docket fees must cease to accumulate after the 2004 calendar year." Appellee's Brief at 6. To the extent Strowmatt challenges any docket fees assessed after 2004, he does not cite to any judgment or order requiring him to pay such fees or to the record to show that he has paid such fees. As Strowmatt does not point to a prior judgment on this issue, Trial Rule 60(B) was not the appropriate vehicle to raise the matter. See Ind. Trial Rule 60(B) (providing that on motion a court may relieve a party from a judgment).

[5] In addition, the CCS shows that Rodriguez filed a Verified Motion for Proceedings Supplemental on June 14, 1994, and a petition to establish Strowmatt's child support arrearage in April 2004.

For the foregoing reasons, we affirm the trial court's denial of Strowmatt's motion pursuant to Trial Rule 60(B).

Affirmed.

MAY, J., and CRONE, J., concur.