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LAUREN M. WILLIS, APPELLEE, V. BRANDON L. ROSENCRANTZ BRAMMER, APPELLANT.

826 N.W.2d 908

Filed February 19, 2013. No. A-12-132.

1. **Judgments.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court by an order nunc pro tunc at any time on the court's initiative or on the motion of any party.
2. ____. Nunc pro tunc orders are generally limited only to situations of remedying clerical or scrivener's errors committed by the court.
3. ____. An order nunc pro tunc cannot be used when the mistake or error at issue is a party's oversight.
4. ____. A nunc pro tunc order operates to correct a clerical error or a scrivener's error, not to change or revise a judgment or order, or to set aside a judgment actually rendered, or to render an order different from the one actually rendered, even if such order was not the order intended.

Appeal from the District Court for Saunders County: MARY C. GILBRIDE, Judge. Reversed.

Randall Wertz and Susan L. Kirchmann, of Recknor, Wertz & Associates, for appellant.

Thomas J. Klein, of Haessler, Sullivan & Klein, Ltd., for appellee.

IRWIN, MOORE, and PIRTLE, Judges.

IRWIN, Judge.

I. INTRODUCTION

In this action to clarify child support obligations, Brandon L. Rosencrantz Brammer appeals a nunc pro tunc order entered by the district court for Saunders County, Nebraska, on its own motion. Because the record does not reflect that any clerical or scrivener's error had been committed by the court, it was error for the court to enter a nunc pro tunc order. We reverse.

II. BACKGROUND

The parties initially appeared in district court in July 2008 with a joint stipulation and parenting plan. Pursuant to that joint stipulation and parenting plan, Brammer agreed to pay child support in the amount of $325 per month, to be retroactively assessed commencing September 1, 2005. Brammer

was in the military at the time, so the $325 was to be paid in part by himself ($100 per month) and in part by his military housing allowance ($225 per month). In July 2008, the court entered an order that included the wording of the parties' joint stipulation word for word.

Over the next couple of years, the $325 per month was received by the Nebraska Department of Health and Human Services child support enforcement division (DHHS), but DHHS indicated in its records that Brammer's obligation was only $100 per month. As a result, DHHS' records showed Brammer's having a substantial surplus in payments by July 2011.

On July 21, 2011, Willis filed an application to "correct" the court's order to direct DHHS that the proper support amount was, in fact, $325 per month and to direct DHHS to correct its records. In October 2011, the parties entered a joint stipulation. That stipulation included language indicating that Brammer's child support obligation was supposed to be $325 per month "retroactive to date of Order of July 14, 2008." In October 2011, the court entered an order that reproduced the parties' language word for word.

There is no bill of exceptions and no filing in the transcript by any party subsequent to the October 2011 court order. Willis indicates in her brief that she was contacted by the clerk of the district court about the need for an order nunc pro tunc, but this communication does not appear to be in our record.

Nonetheless, in January 2012, the district court entered an order nunc pro tunc, apparently on its own motion, reflecting that the $325 per month child support obligation was "retroactive to date of Order of September 1, 2005." On the record presented to this court, there does not appear to have ever been any such order of September 1, 2005.

Brammer now brings this appeal.

III. ASSIGNMENT OF ERROR

Brammer assigns that the district court erred in entering a nunc pro tunc order to modify the language of a stipulated order entered during the court's prior term and without authority.

IV. ANALYSIS

Brammer brought this appeal, asserting that the nunc pro tunc order was improper because the record does not reflect any clerical error by the district court in the October 2011 order, because the nunc pro tunc order was used to correct a stipulated order entered during the prior term, and because there was no authority for entering a nunc pro tunc order in this case. He points to the language of the parties' stipulation and argues that the court used the parties' identical language in its October 2011 order. He also argues that there was no other basis for modifying the order on the court's own motion and outside of term.

Willis argues that it is clear from all of the materials in the record that the parties stipulated for Brammer to pay $325 per month child support retroactive to September 1, 2005; that there was a clerical error by DHHS; and that all of the 2011 filings were intended to make it clear to DHHS what everyone had stipulated to. She argues that the October 2011 order (and by implication the October 2011 stipulation) contained a clerical error by providing for the support to be retroactive to the date of the July 14, 2008, order, instead of September 1, 2005.

[1,2] Neb. Rev. Stat. § 25-2001(3) (Reissue 2008) provides that "[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court by an order nunc pro tunc at any time on the court's initiative or on the motion of any party . . . ." Nunc pro tunc orders are generally limited only to situations of remedying clerical or scrivener's errors committed by the court. See, *State v. Sims*, 277 Neb. 192, 761 N.W.2d 527 (2009); *Bevard v. Kelly*, 15 Neb. App. 960, 739 N.W.2d 243 (2007).

[3,4] In *Bevard v. Kelly, supra*, this court specifically recognized that an order nunc pro tunc cannot be used when the mistake or error at issue is a party's oversight and that the reference in § 25-2001(3) to "[c]lerical mistakes" and "errors therein arising from oversight or omission" refer only to mistakes or errors made by the court, and not those made by a party or the party's attorney. A nunc pro tunc order operates to correct a clerical error or a scrivener's error, not to change or

revise a judgment or order, or to set aside a judgment actually rendered, or to render an order different from the one actually rendered, even if such order was not the order intended. *Bevard v. Kelly, supra*; *In re Interest of Antone C. et al.*, 12 Neb. App. 466, 677 N.W.2d 190 (2004).

In the present case, there was no clerical or scrivener's error committed by the court. Rather, the court entered an order in October 2011 that accurately reflected the stipulation of the parties. Indeed, the court reproduced the language of the parties' stipulation word for word. There was no clerical error committed by the court, and it does not appear that anyone moved the court to enter any order altering the language of the court's order from what the parties specifically stipulated to. There does not appear to be any other authority for the court to enter a nunc pro tunc order in this case.

Although it seems a logical conclusion from the entire record presented that the parties were attempting to once again have the court enter an order providing for Brammer to be obligated to pay child support in the amount of $325 per month, to be retroactively assessed commencing September 1, 2005, as the original order in July 2008 clearly provided, an order nunc pro tunc was not proper. The district court, in its October 2011 order, reproduced the language of the parties' stipulation word for word. If that language did not accurately reflect the intent of the parties, any such defect could not be remedied by an order nunc pro tunc. As noted, a nunc pro tunc order is not proper to remedy an alleged clerical or scrivener's error committed by the parties (or, as urged by Willis, DHHS). Moreover, the record presented on appeal does not allow us to conclude that the parties' October 2011 stipulation contained a scrivener's error committed by the parties. While it seems a logical conclusion that everyone intended the support to start September 1, 2005, we do not have any record to indicate what might have led to the October 2011 stipulation or what the parties really might have intended. It is not inconceivable that the parties might have agreed to stipulate to a different starting date for whatever reason and that is why they chose to say "retroactive to date of Order of July 14, 2008," instead of September 1, 2005.

We also note that this nunc pro tunc order did not do anything to correct any potential clerical error committed by DHHS in carrying out the July 14, 2008, order, which was clear and unambiguous. If DHHS made an error in carrying out the July 2008 order, then these proceedings simply resulted in an entirely new order in October 2011, and the nunc pro tunc order impacted only that October 2011 order, and did not directly correct DHHS' potential clerical error related to the July 2008 order.

Finally, the nunc pro tunc order itself would have been problematic because it specifically indicates that the support is supposed to be "retroactive to date of Order of September 1, 2005"—but there is, as far as we can tell, no such order. Assuming the court was trying to say (again) that support should be retroactive to September 1, 2005 (which is what the original order in July 2008 already clearly said), it did not say that in the nunc pro tunc order.

In summary, the July 14, 2008, order was clear and unambiguous. It clearly and specifically indicated that the parties had stipulated to $325 child support per month, retroactive to September 1, 2005, and it very clearly indicated exactly how that $325 per month was to be paid. DHHS apparently simply erred in its means of recordkeeping. It is unclear why the parties chose to file an action to alter or "correct" what was already a clear order, instead of pursuing other means of directing DHHS to correct its record. Nonetheless, the October 2011 order effectuated the language of the parties' most recent stipulation, which provides that Brammer's child support obligation is $325 per month "retroactive to date of Order of July 14, 2008." Regardless of whether that effectuates the parties' intent, there was no clerical or scrivener's error committed by the court, and a nunc pro tunc order was improper.

V. CONCLUSION

There was no clerical or scrivener's error committed by the court. As such, a nunc pro tunc order, on the court's own motion, was erroneous. We reverse.

REVERSED.