

ONYIUKE v. ONYIUKE

DAVID C. ONYIUKE, Plaintiff-Appellant,

v.

CHINELO N. ONYIUKE, Defendant-Respondent.

No. A-3937-09T2.

Superior Court of New Jersey, Appellate Division.

Submitted March 2, 2011.

Decided June 15, 2011.

David C. Onyiuke, appellant pro se.

Love & Randall, attorneys for respondent (Melvin C. Randall, on the brief).

Before Judges Fuentes and Ashrafi.

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THE APPELLATE DIVISION**

PER CURIAM.

Plaintiff David Onyiuke appeals from an order of the Family Part dated March 30, 2010, denying his motion to enforce litigant's rights. Plaintiff sought an order sanctioning his ex-wife, defendant Chinelo Onyiuke, for allegedly violating their judgment of divorce and compelling her to provide to him all documentary information relating to the daycare expenses for the parties' daughter for 2007 through 2009. We affirm denial of plaintiff's motion essentially for the reasons stated in the oral decision of Judge Kenneth J. Grispin.

Plaintiff is employed by the Essex County Probation Division and also moonlights performing per diem legal work in New York State. At all times in this litigation, he has represented himself.

The parties were divorced in May 2007. They have two children, a girl born in July 2002 and a boy born in October 2003. Defendant ex-wife has primary residential custody of the children and plaintiff has parenting time rights at specific times as provided by a custody and parenting time order entered with the consent of the parties on June 29, 2006, and later incorporated into the judgment of divorce following trial.

In June 2009, defendant filed a motion for permission to relocate to Maryland with the children. She stated that plaintiff had moved to New York State without intervention of the court to facilitate his opportunities for legal work. She stated she had recently become engaged to a man who resides and operates a business in Maryland. She is a registered nurse licensed in Washington, D.C., and has a temporary nursing license in Maryland. Defendant had an interview for a job at a hospital in that state and hoped to obtain employment, get married, and move her family to Maryland.

In addition, defendant stated that the parties' daughter had been attending the first grade at Sacred Heart School in Newark, but that school was now closing and the children would have to be enrolled at a different school in the coming years. She had located a school system in Maryland that she considered better for the children than the urban public school in New Jersey where she lived, and she wished to provide that opportunity

for the children. She listed the few occasions since the parties' separation that plaintiff had exercised his rights of parenting time with the children: none in 2006, four in 2007, six in 2008, and three through May 2009.

Plaintiff filed opposition to defendant's motion to relocate to Maryland and also filed a cross-motion for physical custody of the children. After discovery was conducted, the Family Part held a plenary hearing in accordance with Baures v. Lewis, [167 N.J. 91](#) (2001). Based on its findings from evidence presented at the hearing, the court denied defendant's motion to move the children to Maryland. We are not aware of any appeal taken from that decision.

During the course of discovery and at the hearing on the motion to relocate, counsel for defendant and the court learned that plaintiff had falsely taken a credit on his 2007 through 2009 federal income tax returns for daycare expenses of the parties' daughter. Plaintiff's tax returns showed specific false amounts of fees, rising from \$3,155 in 2007 to \$3,800 in 2009, allegedly paid to the ABZ Day Care Center in Orange, New Jersey. Neither child had ever attended that facility. In fact, an ABZ Day Care Center in Orange had closed its doors and gone out of business sometime in 2008-2009. Furthermore, defendant ex-wife had made all private school tuition payments and paid all babysitting expenses of the children, and the child support order and accompanying worksheet in force during the relevant years did not include any amount that plaintiff was required to pay for private school tuition or child care expenses.

In February 2010, Judge Grispin stated during the plenary hearing that he would report plaintiff's false income tax filings to the Internal Revenue Service in accordance with Sheridan v. Sheridan, [247 N.J. Super. 552](#), 566 (Ch. Div. 1990). See also State v. V.D., [401 N.J. Super. 527](#), 537 (App. Div. 2008) (court was compelled to act upon information regarding illegal activity by notifying appropriate authorities). Within days of the judge's statement, plaintiff wrote to counsel for defendant demanding disclosure of documentation for the expenses of the daughter's private school tuition and child care expenses.

On March 2, 2010, plaintiff filed a motion to enforce litigant's rights and to compel defendant to provide to him the documentation he demanded. He alleged that defendant had violated a clause of the final judgment of divorce providing that each party would declare one of the children as an exemption on post-divorce individual income tax returns. He asserted he had the right to declare the parties' daughter for income tax purposes and defendant had improperly taken a credit for tuition payments to the private school on her tax returns. He sought to compel defendant to provide to him all documents pertinent to child care expenses for 2007 through 2009 so that he could amend his income tax returns.

Defendant filed opposition stating that she had paid the entire amount of private school tuition and other child care expenses for both children during the relevant years, totaling about \$8,800 per year. The court heard argument and denied plaintiff's motion on March 30, 2010. This appeal followed.

With respect to the parties' income tax filings, the judgment of divorce states in relevant part: "The parties will each take one child as a deduction each year for tax purposes. Plaintiff shall take [the daughter] and Defendant shall take [the son]." In a lengthy rambling brief before us, plaintiff argues that this provision of the divorce judgment entitles him and not defendant to take a credit on his tax return for payment of the daughter's child care expenses, including private school tuition that defendant paid. He seeks to file amended income tax returns using documents showing defendant's payments to support his declaration of a credit on his income tax returns. He rationalizes his intention by asserting that his child support payments include the costs of private school tuition and other child care expenses.

We do not address Internal Revenue Service regulations regarding credits for child care expenses. We merely state our agreement with the Family Part judge that defendant has not violated the provisions of the judgment of divorce and should not be compelled to produce documents pertaining to expenses that she has solely borne without any direct contribution from plaintiff. Despite the use of the word "deduction" rather than "exemption," the quoted provision of the judgment of divorce only permits each parent to declare one of the children as a dependent and an exemption on his or her individual income tax return. It says nothing about deduction of private school or other child care expenses.

Furthermore, neither the judgment of divorce nor any other order requires that defendant provide documentation to plaintiff pertaining to the private school or child care expenses she has paid for the children. Because plaintiff has not been ordered to contribute to those expenses, there is no reason for such an order requiring that defendant document her expenditures.

Plaintiff's child support obligation is a matter of record. He cannot claim that expenses paid by his ex-wife are his own expenses. The court will not facilitate his apparent intention to provide additional false information to the IRS.

Affirmed.