

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2140

STATE OF LOUISIANA

VERSUS

RUSSELL JOSEPH BERGERON, JR.



Judgment Rendered: May 7, 2010

APPEALED FROM THE SIXTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. MARY
STATE OF LOUISIANA
DOCKET NUMBER 2009-NS-705, DIVISION "C"

THE HONORABLE JOHN E. CONERY, JUDGE

J. Phil Haney
District Attorney
Walter J. Senette, Jr.
Assistant District Attorney
Franklin, Louisiana

Attorneys for Plaintiff/Appellant
State of Louisiana

C.E. Bourg, II
Morgan City, Louisiana

Attorney for Defendant/Appellee
Russell J. Bergeron, Jr.

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Parro, J., concurs.

McDONALD, J.

This is a suit for child support enforcement.¹ The defendant, Russell J. Bergeron, Jr., is the father of two minor children by Chastity M. Aucoin.

On February 13, 2006, Mr. Bergeron was ordered to pay Ms. Aucoin \$489.00 per month child support for one child. On May 11, 2009, the State, through the Department of Social Services, Office of Support Enforcement Services, filed a motion to modify the previous child support order, seeking to add the second child to Mr. Bergeron's support obligation and recalculate the amount of child support due. On July 21, 2009, the hearing officer followed the child support guidelines set forth in La. R.S. 9:315.19, and fixed the child support obligation at \$1,078.00.² See La. R.S. 46:236.5(C)(3)(a).

On July 23, 2009, Mr. Bergeron filed an objection to the findings of the hearing officer. At the hearing, Mr. Bergeron testified that he had remarried and fathered a third child with his second wife. He objected to paying the full amount set out in the guidelines for two children, because he was legally obligated to support his third child. The State argued that Mr. Bergeron was obligated to pay the full amount set out in the guidelines for two children, despite his obligation to his third child.

The district court, determining that the third child should be reflected in the child support obligation, reduced the support payment to \$981.00 (two-thirds of the amount for three children). The district court reasoned that the law did not envision that a father could not remarry and have a second family.

The State appealed that judgment, asserting that the district court's deviation from the child support guidelines was an abuse of discretion, because it was solely

¹ See La. R.S. 46:236.1.1, et seq.

² Apparently this was a miscalculation and the amount should have been \$1,061.00.

based upon the fact that Mr. Bergeron had fathered another child by a different woman.

After a thorough review of the law and the specific facts underlying this matter, we find no abuse of discretion or error by the district court. Therefore, the judgment is affirmed, and this opinion is issued in compliance with Louisiana Uniform Rules, Courts of Appeal, Rule 2-16.2A(2),(4),(6),(7), and (8). Costs of the appeal in the amount of \$213.50 are assessed against the State.

AFFIRMED.