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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

	:	Docket No.: OSAH-CSS-GLS-
Petitioner,	:	Schroer
	:	
v.	:	
	:	
DHS, DIVISION OF CHILD SUPPORT SERVICES,	:	
	:	
Respondent.	:	

FINAL DECISION

I. Introduction

Respondent Department of Human Services (“Department”) seeks to suspend Petitioner’s Georgia licenses for the non-payment of child support. Under O.C.G.A. § 19-11-9.3(f)(2), Petitioner requested a hearing to contest the suspension. The administrative hearing was held on January 10, 2013 before the undersigned Administrative Law Judge of the Office of State Administrative Hearings (“OSAH”). Petitioner and the Department’s Division of Child Support Services (“CSS”) Agent Donny Stinchcomb testified at the hearing. For the reasons indicated, the Department’s action is **AFFIRMED**.

II. Findings of Fact

1.

Petitioner has ? or whom he is ordered to pay child support. On May 8, 2011, the Superior Court of Pike County issued an Order that modified Petitioner’s monthly child support obligation to \$600.00, effective June 1, 2011. The court also found Petitioner in willful contempt due to his failure to pay \$16,157.60 in past due child support. The Superior Court allowed Petitioner to purge himself of the contempt by making payments of \$300.00 per month toward the arrearage. (Testimony of Stinchcomb; Exhibit R-1)

2.

Petitioner did not make the required payments under the May 8, 2011 order. On September 28, 2012, the Superior Court of Pike County found that Petitioner was in arrears of \$19,838.84, excluding interest, for not paying child support as previously ordered. Petitioner was found in contempt and ordered confined for thirty days as a sanction unless he made a purge payment of \$2,000.00. Upon release from confinement, Petitioner was ordered to obtain employment or perform forty hours of community service each week. The Contempt Order also found that because Petitioner's arrears were greater than the current support due for sixty days, Respondent was authorized to present the Contempt Order to a licensing entity under O.C.G.A. § 19-6-28.1 for suspension of his license. Finally, the Contempt Order continued Petitioner's child support obligation at the previous rate of \$600.00 per month for current support and \$300.00 per month towards the arrearage. (Testimony of Stinchcomb; Exhibit R-2)

3.

Petitioner did not make a purge payment and was incarcerated under the September 2012 Contempt Order. As of approximately January 9, 2013, Petitioner was in arrears of \$21,417.08. Specifically, since the issuance of the Contempt Order, Petitioner has made small sporadic payments, ranging from \$17.84 to \$45.00 per payment, but has not met his monthly obligation, either for current support or arrears. (Testimony of Petitioner, Stinchcomb; Exhibits R-3, R-4)

4.

Petitioner testified at the administrative hearing. He does not dispute that he has significant arrearages. However, he argues that he has been unable to make his child support payments because of lack of employment. Specifically, Petitioner was a self-employed real estate agent prior to the collapse of the real estate market in or around 2007. Although he has

had part-time work since that time, he has not been fully employed. Upon review of Petitioner's payment history, it does appear that he has made small payments every month since 2007, with the exception of October 2012. (Testimony of Petitioner; Exhibit R-3)

4.

Although Petitioner had a number of explanations for why he could not obtain full-time employment or maintain his part-time employment, the Court did not find his testimony to be wholly credible or consistent. In fact, Petitioner testified that he voluntarily quit a recent job because he could not work for such a "penny-ante" salary. Moreover, although Petitioner testified regarding his myriad financial problems, including personal bankruptcy, home foreclosure, and car repossession, he did not have any corroborating evidence about the extent of his current outstanding obligations or his current resources, such as financial support from third parties.¹ Finally, Petitioner testified that he is attending college courses online and hopes to obtain a degree in psychology. Petitioner provided no evidence, however, on how he pays for these courses or why he has chosen to spend time and money on online education, rather than obtaining employment and paying his child support obligations. (Testimony of Petitioner).

5.

Petitioner has a current job prospect at Walmart, but as of the time of the hearing, was not working. (Testimony of Petitioner).

¹ Notwithstanding Petitioner's testimony that his father refuses to help him financially, Petitioner testified that he had recently moved into a small house purchased by his father. In addition, Petitioner testified that he drives a car provided by a friend. (Testimony of Petitioner)

III. Conclusions of Law

1.

The Department has the burdens of persuasion and going forward with the evidence. OSAH Rule 616-1-2-.07(1). The standard of proof is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

One of the purposes of Georgia's Child Support Recovery Act ("CSRA"), O.C.G.A. § 19-11-1 *et seq.*, is to "provide for the enforcement of an able parent's obligation to furnish support." O.C.G.A. § 19-11-2(a)(3). See generally Cox v. Dept. of Human Resources, 255 Ga. 6, 7 (1985). In addition, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), the United States Congress has required that states receiving certain federal funds establish specific child support enforcement mechanisms. See 42 U.S.C. § 1305.² Under the PRWORA, a state must establish "[p]rocedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support..." 42 U.S.C. § 666(a)(16).

² Although states are not required to participate in the Child Support Enforcement Program under the PRWORA, in order for a state to receive federal block grant funds under the Temporary Assistance to Needy Families Program ("TANF"), the state "shall have in effect all of the laws to improve child support enforcement effectiveness" that are referred to in the Section 666 of the PRWORA.

3.

The Georgia legislature established such procedures in *Code Section 19-11-9.3*.³ First, for cases being enforced under Section 19-11-9.3, the Department must maintain a state-wide list of persons who are not in compliance with their orders for child support. O.C.G.A. § 19-11-9.3(b). Upon notice from a Georgia licensing agency that a person on the list holds a Georgia license, the Department is required to immediately notify the person that the Department intends to request that all the person's Georgia licenses be suspended. O.C.G.A. § 19-11-9.3(e). The person, whom the statute identifies as the "delinquent obligor," may request an administrative hearing, and all actions by the Department will be stayed pending the hearing. O.C.G.A. § 19-11-9.3(f)(2) & (3).

4.

If the delinquent obligor requests a hearing regarding a proposed suspension, the hearing is conducted by OSAH and is limited to the following issues:

³ Georgia licenses are also subject to suspension for failure to pay child support under *Code Section 19-6-28.1(b)*, which allows a court in any child support enforcement proceeding to order a licensing entity to suspend the license of a respondent who has accumulated support arrears equal to 60 days of current support. For a brief history and background of Georgia's laws relating to suspension of licenses due to failure to pay child support, see JOANNA B. BOZMAN, DOMESTIC RELATIONS: Alimony and Child Support: Limit Issuance or Renewal of License for Failure to Comply with Child Support Law, 13 Ga. St. U. L. Rev. 127 (Nov. 1996) ("While some believe the Act will keep licensed professionals and business people from making money to pay child support, thus aggravating the problem of unpaid child support, 'the idea, however, is not to punish parents, but to give states greater leverage in forcing them to pay.'"). Under *Code Section 19-6-28.1*, as in *Code Section 19-11-9.3*, "evidence relating to the ability and willingness of the respondent to comply with an order of child support" must be considered. O.C.G.A. § 19-6-28.1(b). "The obligor's inability to pay, however, is a valid excuse to avoid revocation of a license. The legislators recognized the inherent tension in wanting a parent to meet his or her obligation to pay child support and making sure that person continues to have a right to earn a living. This provision is designed to alleviate that tension; a person should not lose his job because he cannot meet the court-ordered obligation." 13 Ga. St. U. L. Rev. at 134.

- 1) Whether there is an order for child support being enforced pursuant to this article;
- (2) Whether the licensee or applicant is the obligor covered by that order;
- (3) Whether the support obligor is or is not in compliance with the order for child support;
- (4) Whether the support obligor shall be entitled to pay past due child support in periodic payments; and
- (5) Whether the support obligor has been able and willing to comply with such order for support.

O.C.G.A. § 19-11-9.3(h).

5.

In addition to these five enumerated issues, the statute reiterates that this Court shall consider “evidence relating to the ability and willingness of an obligor to comply with such order for support ... in making the decision to either suspend a license or deny the issuance or renewal of a license under this Code section.” Id. Finally, the Court may approve an agreement or enter an order requiring periodic payments and issue a release for the obligor to obtain the license or licenses. Id. However, such an agreement will not act to modify an existing child support order, but rather only affects the payment of arrears that have accrued subsequent to any prior order. Id.

6.

In Georgia, there is little case law addressing the license suspension provisions of the CSRA. See generally In re: Carlson, 268 Ga. 335 (1997) (Georgia Supreme Court suspends license to practice law of attorney who was convicted of flagrant non-payment of child support in Kentucky, holding that the suspension comports with provisions of O.C.G.A. § 19-6-28.1). However, it is clear that a delinquent obligor who wishes to avoid suspension of his license

because he is unable to pay has the burden of proving his inability to pay. See generally Cross v. Ivester, 315 Ga. App. 760 (2012) (where party was incarcerated for willful contempt for failure to pay back child support, the court must release the party where the person affirmatively proves that he is unable to pay); GEORGE L. BLUM, *Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support*, 30 A.L.R.6th 483 (“Typically, an obligor who seek relief on the basis of inability to pay, under a statute permitting a Child Support Enforcement Division to take adverse action against the driver's license of a delinquent child support-obligor, bears the burden of proving his or her inability to pay by a preponderance of the evidence”).

Indeed, “[i]nability to pay is a defense only where the contemnor demonstrates that he has exhausted all resources and assets available and is still unable to secure the funds necessary to enable compliance with the court's order. He must show clearly that he has in good faith exhausted all the resources at his command and has made a diligent and bona fide effort to comply with the order of the court, and that he cannot borrow sufficient funds to comply with the obligation.”

Cross v. Ivester, 315 Ga. App. at 764, *quoting Darroch v. Willis*, 286 Ga. 566, 569 (2010) (citations and punctuation omitted.).

7.

The Court finds the civil contempt cases to be instructive in applying the CSRA license suspension provisions.⁴ Like civil contempt, the CSRA license suspension provisions are a tool

⁴ The Louisiana courts have recognized that civil contempt actions and license suspensions for failure to pay child support share a common purpose. See Richey v. Richey, 704 So.2d 343, 345 (La. App. 1997). “There is no doubt that the loss of a person's professional and driver's licenses has an impact on that person's ability to generate income. So does imprisonment for contempt of a court's order to pay child support. But such loss occurs only where the person, despite the ability to generate income, chooses not to support his or her children. Imprisonment for contempt has traditionally been a last resort effort employed by courts to compel compliance with support orders. The legislature has added another last resort measure—the suspension of certain licenses of individuals who are not in compliance. This is not unreasonable. What is unreasonable is for a parent who can pay child support to avoid paying it.” Id.

to obtain compliance with a child support order. See Hughes v. Dept. of Human Resources, 269 Ga. 587 (1998) (upon a showing that a party incarcerated for civil contempt of child support order had no money or property and lacked the ability purge himself, the judge must discharge the party because the justification for imprisonment is lost when compliance is impossible). Applying these principles, the Court concludes that Petitioner has failed to prove by a preponderance of the evidence that he is unable to pay his child support as ordered. Specifically, there is insufficient evidence to show the amount of Petitioner's earnings, to prove that Petitioner was incapable of finding productive employment, or to demonstrate that he had in good faith exhausted all the resources and assets at his command. While Petitioner's testimony suggests that he has struggled financially, the evidence is not sufficient to prove that he is unable to pay his child support obligations as ordered.

8.

Accordingly, the Court concludes that Respondent proved by a preponderance of the evidence that Petitioner's licenses should be suspended under O.C.G.A. § 19-11-9.3.

IV. Decision

Based on the foregoing, Respondent's action is **AFFIRMED**. Respondent is authorized to suspend Petitioner's license or licenses in the State of Georgia.

SO ORDERED, this 8th day of February, 2013.

KIMBERLY W. SCHROER
Administrative Law Judge