

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR HERNANDO COUNTY, FLORIDA

ADMINISTRATIVE ORDER H-2009-21

ADMINISTRATIVE ORDER REGARDING DEPARTMENT OF REVENUE  
TITLE IV-D CHILD SUPPORT CASES

WHEREAS, the United States Congress enacted P.L. 93-647 in 1975 to establish Title IV-D ("IV-D") of the Social Security Act, thereby creating the Child Support Enforcement Program; and

WHEREAS, certain laws of Florida establish obligations for timely child support enforcement; and

WHEREAS, the chief justice of the Florida Supreme Court entered an administrative order on February 27, 1998, invoking the provisions of Florida Family Law Rule 12.491 for both IV-D and non IV-D proceedings in this circuit; and

WHEREAS, effective July 1, 1994, the Department of Revenue, Division of Child Support Enforcement, assumed responsibility for the IV-D child support enforcement programs in this circuit; and

WHEREAS, pursuant to the provisions of Florida Statute 409.2564(5), whenever the IV-D agency undertakes an action to determine paternity, establish an obligation of support, or enforce or modify an obligation of support, the IV-D agency shall be a party to the action only for those purposes allowed under Title IV-D of the Social Security Act; and

WHEREAS, disputes involving custody, visitation, and property issues are not included under Title IV-D of the Social Security Act and therefore are not properly included for consideration in any IV-D action filed by the Department of Revenue; and

WHEREAS, there have been numerous occasions in the past where the Department of Revenue has taken a voluntary dismissal of pending IV-D cases, generally because they've been unable to locate or serve the respondent, and have asked that the court reserve jurisdiction to reinstate or reopen the case at any time within one year; and

WHEREAS, the effect of a voluntary dismissal is to remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of

jurisdiction. *Lohman v. Carnahan*, 963 So.2d 985 (4<sup>th</sup> DCA 2007). Once a voluntary dismissal is entered, the court lacks jurisdiction over the action and cannot set aside the voluntary dismissal and reinstate the action. *Rabello v. Alonso*, 927 So.2d 45 (3<sup>rd</sup> DCA 2006). See also: *In the Interest of T.K.M. Jr. V. E.H. and S.H.*, 844 So.2d 669 (3<sup>rd</sup> DCA 2003), where the trial court entered an order dismissing a petition but retaining jurisdiction to enforce mediation, but the appellate court held that the portion of the order which retained jurisdiction would be stricken; and

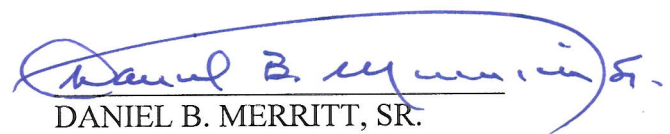
WHEREAS, the effect of a voluntary dismissal is to terminate the litigation instantaneously, without prejudice however to commencement of a wholly new lawsuit against the same defendant. *Randle-Eastern Ambulance Service, Inc. V. Vasta*, 360 So.2d 68 (Fla. 1978). Once a party moves for voluntary dismissal, the trial court loses jurisdiction over the cause and has no authority to reinstate it. *Commerce & Industry Insurance Company v. Wellenreiter*, 475 So.3d 1302 (5<sup>th</sup> DCA 1985). A voluntary dismissal, therefore, immediately divests the trial court of jurisdiction to decide the case at hand; and it is therefore

ORDERED that:

1. No disputes involving custody, visitation and property issues will be filed in any IV-D case brought by the Department of Revenue or heard by the Support Enforcement Hearing Officer. Any disputes involving custody, visitation and property issues shall be filed as a separate action with the Clerk of the Circuit Court, following all procedural requirements, and shall be scheduled for hearing separate and apart from any Support Enforcement hearings; and

2. Effective immediately, in any case in which a voluntary dismissal is taken by the Department of Revenue, that litigation is terminated, and will not be reopened or reinstated. This does not preclude the Department of Revenue from filing a new case when or if they are ready to proceed; but the dismissed case will not be reopened because upon dismissal, the court loses jurisdiction in that case.

DONE AND ORDERED in Chambers in Brooksville, Hernando County, this 25<sup>TH</sup> day of Aug, 2009.

  
DANIEL B. MERRITT, SR.  
Administrative Judge