

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHANIE JEANNE BROWN,

Defendant-Appellant.

UNPUBLISHED

June 25, 2009

No. 283152

Livingston Circuit Court

LC No. 07-016336-FH

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

Defendant Stephanie Brown appeals as of right her jury trial conviction for failure to pay child support.¹ We affirm.

I. Basic Facts And Procedural History

In April 2004, during the course of Brown's divorce proceedings with her husband, she suffered a complete kidney failure. On August 20, 2004, a default judgment of divorce was entered against Brown because she failed to appear for trial in the divorce proceedings. In the default judgment of divorce, the trial court recognized that Brown filed an answer and a countercomplaint for divorce. The judgment ordered Brown to pay child support of \$320.67 a month for her two minor children effective January 19, 2004, based on disability insurance payments. Brown made one child support payment of \$3,100 over the next two years. Brown then filed for disability benefits on November 8, 2006. The Social Security Administration deemed Brown disabled as of the date of her kidney failure on April 25, 2004. However, the Social Security Administration does not provide back benefits for more than one year from the time of filing for benefits, so Brown was not entitled to benefits for the time she was disabled before November 2005.

On November 14, 2006, the Attorney General's Child Support Division authorized a felony nonsupport warrant against Brown for violating MCL 750.165, which makes the nonpayment of child support a felony under certain conditions. Brown was subsequently

¹ MCL 750.165.

arrested, and she waived her right to a preliminary examination while represented by court-appointed counsel. Later, Brown retained counsel, and on April 26, 2007, the state's motion in limine was heard, which requested that the trial court prohibit Brown from offering or introducing any testimony or evidence at trial relating to her alleged inability to pay child support, consistent with *People v Adams*.² The trial court granted the state's motion. On the same date, the trial court granted defense counsel's motion to withdraw as Brown's attorney. Brown subsequently moved for reconsideration of the trial court's grant of the state's motion in limine, but the trial court also denied that motion. On approximately June 3, 2007, Brown received \$27,453 in disability benefits from the Social Security Administration for the time between November 2005 and May 2007.

During trial on June 12, 2007, Brown represented herself. (Brown graduated from law school in 2001. However, her license to practice law was suspended May 15, 2005, until May 2010). The jury convicted Brown, and the trial court sentenced her to 24 months probation and ordered her to pay \$11,186.75 in restitution for child support. On September 27, 2007, Brown paid the restitution in full. Brown subsequently moved for a new trial, which the trial court denied. Brown now appeals.

II. MCL 750.165

A. Standard Of Review

Brown argues that the Michigan Legislature intended the inability to pay to be a defense to MCL 750.165 when the support amount ordered was wrongfully determined and a disabled defendant is physically, mentally, and financially unable to modify the support order. We review de novo issues of statutory interpretation.³

B. *People v Adams*

The Court in *People v Adams* analyzed MCL 750.165 in detail and concluded that it created a strict-liability crime; thus, inability to pay was not a defense. The Court's holding in *Adams* is precedentially binding, and we are bound to follow it.⁴ And we agree that MCL 750.165 creates a strict liability crime and that inability to pay is not an available defense. Moreover, we find the record devoid of evidence that Brown could not modify the support order if, indeed, it was wrongfully determined.

C. Presumption Of Innocence

Brown argues that MCL 750.165 thwarts the presumption of innocence because when a defendant is imprisoned for violating MCL 750.165, a defendant is unable to make support payments. She notes that after a defendant is released from prison, that defendant will

² *People v Adams*, 262 Mich App 89; 683 NW2d 729 (2004).

³ *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

⁴ MCR 7.215(C)(2); *People v Herrick*, 277 Mich App 255, 258; 744 NW2d 370 (2007).

necessarily be behind on the support payments that he or she was unable to pay while he or she was in prison. Thus, according to Brown, a defendant could be charged again, pursuant to MCL 750.165, which would result in that defendant being stuck in a cycle where his or her presumption of innocence is eternally lost.

We decline to address this speculative issue. Brown was not imprisoned for her conviction under MCL 750.165. She was sentenced to 24 months' probation. In addition, two weeks after she was sentenced, she paid the full amount that she owed in restitution for child support. The issue is thus moot.⁵

D. Due Process

Brown argues that not allowing an inability to pay defense is arbitrarily and irrationally related to the objective of MCL 750.165 and thus violates the due process clause. However, Brown's argument actually relates to an equal protection clause violation, not a due process clause violation. A rational basis test is used in determining the validity of a legislative classification being challenged as violative of equal protection.⁶ Defendant's argument is without merit where she does not raise any equal protection issues.

Brown also argues that failing to allow a defense violates a defendant's due process right to present a defense. The right to present a defense is a fundamental element of due process, but it is not an absolute right.⁷ As this Court concluded in *Adams*, MCL 750.165 is a strict liability statute and inability to pay is not a defense. Therefore, Brown's argument is without merit.

E. "Badge Of Infamy"

Brown argues that MCL 750.165 wrongfully condemns a defendant with a "badge of infamy" before a defendant can exercise her due process right to be heard. We disagree. MCL 750.165(2) provides that "[t]his section does not apply unless the individual ordered to pay support appeared in, or received notice by personal service of, the action in which the support order was issued." Brown appeared in the divorce action, which is where the amount she owed for child support was determined. Brown received notice and was given the opportunity to be heard in conjunction with the divorce proceedings, and there was ample opportunity to challenge the support order in the default judgment of divorce, but she chose not to do so.

⁵ *B P 7 v Mich Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) (stating that an issue is moot "when it presents only abstract questions of law that do not rest upon existing facts or rights."). See also *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004).

⁶ See *People v Pitts*, 222 Mich App 260, 273; 564 NW2d 93 (1997).

⁷ *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984).

F. Cruel And Unusual Punishment

Brown argues that punishing a defendant for the inability to perform under MCL 750.165 is unconstitutional under the cruel and unusual punishment clauses of the federal and state constitutions. “In determining whether a punishment is cruel or unusual, one must look to the gravity of the offense and the harshness of the penalty, compare the penalty to those imposed for other crimes in this state as well as the penalty imposed for the instant offense by other states, and consider the goal of rehabilitation.”⁸ The sentence, in this case, was not cruel or unusual as it applies to Brown. The collection of overdue child support is meant to better the lives of the children affected. Brown’s children were not receiving the benefit of support, as she owed child support amounting to \$11,186.75. The trial court sentenced Brown to 24 months’ probation, which was not excessive, cruel, barbaric or inhumane.⁹ In reaching our conclusion, we note that Brown does not argue that the length of *her* sentence renders it cruel or unusual. Nor does she contend that *her* sentence is inappropriate in light of the punishment imposed by other states or that imposed in this state for other serious crimes. Also, Brown does not assert that *her* sentence forecloses all possibility of rehabilitation. Rather, Brown argues that the punishment provided by MCL 750.165, which includes prison, is, in general, cruel and unusual because there is no consideration of inability to pay. Brown cites no relevant authority to support this argument, and in *Adams*,¹⁰ this Court recognized that the maximum sentence for MCL 750.165 was severe but could be justified under certain circumstances.

G. Debtor’s Prison

Brown argues that imprisoning a defendant for the inability to pay support under MCL 750.165 creates a debtor’s prison. The Michigan Supreme Court has held that a party defaulting on child support may be imprisoned because child support is not considered a debt.¹¹ Furthermore, Brown was not imprisoned for failure to pay child support. Rather, she was sentenced to probation. The issue is therefore moot.¹²

Affirmed.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Michael J. Kelly

⁸ *People v Launsbury*, 217 Mich App 358, 363; 551 NW2d 460 (1996).

⁹ See *People v Lorentzen*, 387 Mich 167, 172-174; 194 NW2d 827 (1972).

¹⁰ *Adams*, *supra* at 98-99.

¹¹ *Toth v Toth*, 242 Mich 23, 26; 217 NW 913 (1928).

¹² *B P 7*, *supra* at 359.