IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LATRICE WILSON,	:	APPEAL NO. C-250474 TRIAL NO. P/08/3770 Z
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
TERRY CANNON II,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/11/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hensley
Administrative Judge

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Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
TERRY CANNON II,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 11, 2026

Donald D. Clancy, III, for Appellee Hamilton County Child Support Enforcement Agency,

Terry Emmett Cannon, pro se.

CROUSE, Judge.

{¶1} After a 2008 administrative hearing, appellant Terry Cannon, II, ("father") was ordered to pay child support. In enforcement proceedings 16 years later, father asserted that he was never properly served with notice of his original hearing, so the order requiring him to pay was void. A magistrate and juvenile court, however, ruled that father waited too long to raise his challenge to the child-support order. We now hold that this was plain error. To enter a child-support order, an agency must serve a defendant with process. If father was not served, the order was void, and no amount of actual notice or delay can change that. We therefore reverse the juvenile court's judgment and remand for a determination of whether father was properly served—and whether he was entitled to equitable restitution.

I. Background

{¶2} In 2003, father signed an acknowledgment of his paternity of a child born to Latrice Wilson ("mother").

A. Initial Service & Child-Support Proceedings

{¶3} In October 2008, the Hamilton County Child Support Enforcement Agency ("the agency") attempted to serve father with notice of a pending administrative child-support hearing. It sent that notice via United States Postal Service ("USPS") certified mail to an address on Joey Terrace in Cincinnati, Ohio. USPS failed to effect service, however, and returned the agency's mailing as "unclaimed." The next month, the agency attempted to serve father with the same notice via ordinary mail sent to the same address.

{¶4} On December 16, 2008, the agency entered an administrative order for father to pay $0 per month in child support and healthcare costs to mother. On December 29, it registered this order with the Hamilton County Juvenile Court. The

magistrate accepted the registration entry on January 2, 2009, in a journal entry that included copies of (1) the agency's registration filing, (2) the administrative order, (3) the Ohio child-support guidelines calculation sheet, (4) the envelope from the agency's attempted service of process, (5) the agency's "Service of Process Log," and (6) a copy of the "Centralized Paternity Registry" entry for father generated in October 2008. The paternity-registry report showed father's address as in Lima, Ohio, not Cincinnati.

{¶5} In November 2009 and June 2014, the agency sought and the juvenile court entered orders modifying father's child-support obligation. The November 2009 entry raised his monthly obligation to $275.77. The June 2014 entry lowered that to between $209.88 and $218.80. The former entry listed father's address as Joey Terrace, the latter as "North Central Correctional" in Marion, Ohio.

{¶6} In June 2022, the agency filed, the magistrate accepted, and the juvenile court approved an entry finding that mother and father's child had turned 18 and completed high school. The order terminated father's monthly support payments, but imposed monthly arrearage payments of $262.56.

B. Contempt Proceedings & Motion to Dismiss

{¶7} In April 2024, a contempt charge was filed against father in the juvenile court alleging failure to pay. Father appeared for a hearing on the charge and asserted that he wished to challenge the court's jurisdiction. The magistrate found father in contempt, and father objected.

{¶8} Father then filed a "Motion to Dismiss Child Support Order for Lack of Jurisdiction, Service of Process, Violation of Due Process Rights and Counterclaim." In it, he alleged that the agency had never properly served him, that he had never lived at the Joey Terrace address, and that a *different* Terrence/Terrance Cannon had resided at that address. He sought dismissal of the underlying administrative support

order, along with "reimbursement of all child support payments made under the void order."

{¶9} On December 13, 2024, following a Zoom hearing, a magistrate entered an order (1) rejecting father's counterclaim for failing to "state a legal claim upon which the court can rule," and (2) continuing the matter for a further hearing on father's "motion to dismiss." In addition, the magistrate ordered father to submit either documentary proof of his address during October and November 2008, or "written proof of ownership of the address in question from the Auditor's Office showing the home was owned by a different Terrance Cannon." The order stated that father could submit these documents by faxing, mailing, or hand-delivering them to "Kim Riley" at 800 Broadway, Cincinnati, OH, 45202.

{¶10} On April 11, 2025, another hearing was held before a second magistrate. In an order entered after that hearing, the magistrate stated that father had "submitted evidence which CSEA received on the date of this hearing." The agency requested and received a continuance to review it.

{¶11} Another hearing was held on July 25, 2025, with the first magistrate (who had presided at the December 2024 hearing) again presiding. The magistrate's subsequent decision stated that "[f]ather submitted affidavits regarding where he lived when the order was established in 2009," and that "[m]other provided testimony." The magistrate concluded that it was "unclear if father received legal notice of the original order," but that this was irrelevant because father had been "given verbal notice through mother and the agency sent service to his last known address." The magistrate further wrote, "More importantly, child support began coming out of his check in 2012 so he was on notice at that time that there was a child support order. It is disingenuous to file more than a decade later arguing insufficient service." She therefore denied

father's motion to dismiss for lack of jurisdiction and lack of service.

{¶12} Father did not file objections, and the juvenile court adopted the magistrate's findings verbatim.

II. Analysis

{¶13} Father now appeals, raising five assignments of error that challenge (1) the denial of father's motion to dismiss the underlying child-support order for lack of personal jurisdiction, (2) the denial of his request for restitution, (3) the magistrate's and juvenile court's acceptance of mother's testimony and counsel's unsworn statements, (4) the magistrate's and juvenile court's reliance on "verbal notice" to uphold the original child-support order, and (5) the magistrate's and trial court's decisions in mother's favor despite mother's and the agency's alleged failure to produce responsive evidence.[1]

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[1] Father's assignments of error appeared in his briefs as follows:

> **ASSIGNMENT OF ERROR NO. 1:** The trial court erred by denying appellant's motion to dismiss where the underlying child support judgment is **void ab initio** for lack of personal jurisdiction due to improper service of process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Article I, Sections 1 and 16 of the Ohio Constitution, Ohio Civil Rule 4.1, and R.C. 3123.03.
>
> **ASSIGNMENT OF ERROR NO. 2:** The trial court erred by denying appellant's counterclaim for reimbursement of payments made under a void judgment, where arrears cannot attache [sic] to a void judgment and payments made under a void order are recoverable under Ohio law.
>
> **ASSIGNMENT OF ERROR NO. 3:** The trial court abused its discretion and committed plain error by accepting unsworn oral statements from counsel and perjured testimony from the opposing party as evidence, while disregarding appellant's unrebutted affidavits and documentary evidence in violation of Civ.R. 56(E) and fundamental principles of due process.
>
> **ASSIGNMENT OF ERROR NO. 4:** The trial court abused its discretion by relying on "verbal notice" and the doctrine of laches to uphold a void judgment, where Ohio law provides that void judgments may be challenged at any time and "verbal notice" is not a recognized substitute for proer [sic] service of process under Ohio law.
>
> **ASSIGNMENT OF ERROR NO. 5:** The trial court abused its discretion and violated appellant's due process rights by denying his motion to dismiss without requiring the opposing parties to file any written response, affidavits, or evidence as requiered [sic] by Civ.R. 6(c), Civ.R. 12(a)(1)(b), and Civ.R. 55(a), and by preventing appellant from preserving a complete record for appeal.

(Emphasis in original.)

{¶14} We begin by reviewing the statutory framework governing child-support-enforcement proceedings. We then turn to father's arguments that the underlying child-support order in this case was void (assignments of error nos. 1 and 4) and that father was entitled to restitution for payments collected under the allegedly void order (no. 2), before addressing his other procedural objections to the proceedings below (nos. 3 and 5).

A. Statutory Framework for Child-Support Orders

{¶15} Enforcement of child-support obligations by a child-support-enforcement agency ("CSEA") involves a complex hybrid of administrative and judicial proceedings. We begin by reviewing the basic structures of the proceedings relevant to this case.

{¶16} A parent or caretaker who has obtained an acknowledgment of paternity may seek child support either (A) by filing a complaint for support in a court with jurisdiction, or (B) by contacting the relevant CSEA to seek a child-support order. R.C. 3111.29. If they file their request with a CSEA, then an "administrative officer shall schedule an administrative hearing to determine . . . the amount of child support any parent is required to pay." R.C. 3111.80(A);[2] *see also* Adm.Code 5101:12-45-05(E)(2)(b). The officer must then "send each of the child's parents notice of the date, time, place, and purpose" of the hearing. R.C. 3111.80(B); *see also* Adm.Code 5101:12-45-05.1(A). Service of that notice must comport with the rules governing service of process in the Ohio Rules of Civil Procedure. R.C. 3111.80(B); Adm.Code 5101:12-30-10(B). Lack of service "preclude[s] the establishment of a child support order." Adm.Code 5101:12-45-05(F).

[2] Although several of these statutes have been amended since the agency originally tried to serve father, none of the changes make a substantive difference here.

{¶17} After the hearing is complete, the officer "may issue an administrative order for the payment of support," which "shall take effect fourteen days after the order is issued." R.C 3111.81; *see also* Adm.Code 5101:12-45-05.2(F)(2). At the close of the 14-day period, the administrative order becomes "final and enforceable." R.C. 3111.81(C); *see also* Adm.Code 5101:12-45-05.3(C). The officer must then "register the order" in an internal registry or "with the clerk of the court of appropriate jurisdiction." R.C. 3111.83; *see also* Adm.Code 5101:12-45-05.3(B). Either parent subject to the administrative support order may then object to the order "by bringing an action for the payment of support and provision for the child's health care" in the proper court "not later than fourteen days after" the order was entered. R.C. 3111.84; *see also* Adm.Code 5101:12-45-05.3(D). But once an order is final (i.e., once the 14 days have passed), it "may be modified only" under certain circumstances. R.C. 3111.84; *see also* Adm.Code 5101:12-45-05.3(C).

{¶18} "In any action in which a support order is issued or modified," the CSEA or the court must ensure that payment is withheld or deducted from the obligor's income or assets. *See* R.C. 3121.02. If a child-support order is terminated, and if the obligor under the order has defaulted and owes arrearages, then the obligee can apply to have the CSEA collect the arrearage. R.C. 3123.14. In addition, a party with a legal claim to child support—or, in appropriate cases, a prosecuting attorney or attorney for a CSEA—may initiate a "contempt action for failure to pay the support." R.C. 2705.031(B)(1); *see also* R.C. 3119.44; Adm.Code 5101:12-50-50(C)(1).

B. Assignments of Error Nos. 1 & 4: Vacatur of Child-Support Order

{¶19} Father's first and fourth assignments of error challenge the trial court's denial of his motion to dismiss his underlying child-support order as void due to lack

of service and personal jurisdiction.

1. Standard of Review

{¶20} Although labeled a "motion to dismiss," father's motion was in substance an application for the trial court to set aside the child-support order pursuant to its inherent authority to vacate a void judgment. *See Lundeen v. Turner*, 2022-Ohio-1709, ¶ 17; *Paton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph four of the syllabus. When reviewing an order denying such a motion, we would ordinarily defer to the trial court's factfinding, while considering any legal questions—including the meaning of the rules governing service of process or the sufficiency of certain facts to justify an exercise of personal jurisdiction—de novo. *Johnson v. Hisle*, 2018-Ohio-3693, ¶ 9 (1st Dist.); *Altman v. Parker*, 2018-Ohio-4583, ¶ 6 (1st Dist.) ("*Altman I*"); *Altman v. Parker*, 2022-Ohio-142, ¶ 21 (1st Dist.) ("*Altman II*"); *CUC Properties VI, L.L.C. v. Smartlink Ventures, Inc.*, 2021-Ohio-3428, ¶ 7 (1st Dist.).

{¶21} But here, father failed to file objections to the magistrate's decision below. We therefore review only for plain error. Juv.R. 40(D)(3)(b)(iv); *In re S/F Children*, 2025-Ohio-822, ¶ 88 (1st Dist.). Because "plain error is generally disfavored," we will reverse only if the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process." (Cleaned up.) *In re J.W.*, 2019-Ohio-2730, ¶ 7 (1st Dist.). Father also failed to provide the juvenile court with transcripts from the July 25, 2025 hearing before the magistrate, so we cannot consider such transcripts on appeal. *See In re I.W.*, 2019-Ohio-1515, ¶ 9 (1st Dist.).

2. Jurisdiction & Child-Support Orders

{¶22} Father's motions below and briefs in this court contend that the juvenile court lacked "personal jurisdiction" over him, and that he had not received "service of

process" with respect to the underlying child-support proceedings.[3]

{¶23} Although they are administrative agencies, CSEAs must comply with strict rules governing service and jurisdiction. Regulations and statutes provide that "[a]dministrative actions to establish . . . a support order *require service of process* in accordance with the Ohio Rules of Civil Procedure." (Emphasis added.) Adm.Code 5101:12-30-10(B); *see also* R.C. 3111.80(B). This service of process is treated as jurisdictional. The regulations explain that service of process is what permits the agency "to proceed with the intended action and to impose obligations" on a party who fails "to appear or object," and that a lack of service "would preclude the establishment of a child support order." Adm.Code 5101:12-30-10(A) and 5101:12-45-05(F).

{¶24} These jurisdictional rules are necessitated by the unique character of modern child-support orders. Like all her sister states, Ohio has adopted the Uniform Interstate Family Support Act ("UIFSA").[4] *See* R.C. 3115.101; *see generally* R.C. Ch. 3115. Under the UIFSA, parties may register and seek enforcement of Ohio child-support orders in sister states' tribunals. *See* R.C. 3115.603(A) [UIFSA, § 603(a) (2008)]. The UIFSA treats support orders issued by state courts and administrative agencies alike. *See* R.C. 3115.102(BB) [UIFSA, § 102(27)] (defining "[s]upport order"

[3] The parties and the trial court also referred to service of the child-support order, but nothing in the Revised Code or Administrative Code requires the agency to serve administrative orders in a manner consistent with the Ohio Rules of Civil Procedure. *See* R.C. 3111.81; *see generally* Adm.Code Ch. 5101:12-45. Both father and the agency rely on Adm.Code 5101:12-30-10, which sets rules for serving notice at the initiation of child-support proceedings—including "notice of the administrative hearing to determine child support." *See* Adm.Code 5101:12-30-10(B)(3). Consistent with this, we understand the issue to be whether the agency made service sufficient to the issuance of a child-support order.

[4] In 1998, the General Assembly codified the 1996 version of the UIFSA in R.C. Ch. 3115 (though the section numbers differed from what they are now). *See* Am.Sub.H.B. No. 352, 147 Ohio Laws, Part II, 2606, 2824-2851. In 2015, the General Assembly repealed and replaced the prior version of R.C. Ch. 3115 with the 2008 version of the UIFSA. *See* 2015 Am.Sub.H.B. No. 64, § 105.01, at 2433 (repealing former R.C. Ch. 3115); *id.*, § 101.01, at 897 (enacting current R.C. Ch. 3115). The substantive requirements relevant to this appeal are consistent across both UIFSA versions, though their numbering changed.

without reference to whether the order was issued by an agency or a court). In fact, the official comment to the 2008 amendments to § 102 of the UIFSA acknowledges that the "vast bulk of child support establishment, enforcement, and modification in the United States is performed by the state Title IV-D agencies," like CSEAs. *See* R.C. 3125.01 (identifying CSEAs as agencies that enforce child-support orders under Title IV-D).

{¶25} Once registered, a sister state's tribunal will "recognize and enforce" an Ohio support order—but only "if the issuing tribunal *had jurisdiction*." (Emphasis added.) R.C. 3115.603(C) [UIFSA, § 603(c)]; *see also* R.C. 3115.102(CC) [UIFSA, § 102(29)] (defining "Tribunal" to include any "administrative agency . . . authorized to establish, enforce, or modify support orders"). A nonregistering party can challenge the registration of a sister state's support order by arguing that the "issuing tribunal *lacked personal jurisdiction* over the contesting party." (Emphasis added.) R.C. 3115.607(A)(1) [UIFSA, § 607(a)(1)]; *see also* R.C. 3115.605 and 3115.606 [UIFSA, § 605 and 606] (providing for notice and procedure to contest registered support orders).[5]

{¶26} So, if Ohio wanted CSEA orders to be enforceable in sister states, Ohio needed to ensure those CSEAs would obtain jurisdiction over the parties. It therefore enacted R.C. 3111.80 and promulgated Adm.Code 5101:12-30-10(C) and 5101:12-45-05(F).

{¶27} Domestic context further supports treating CSEAs' administrative orders as, in effect, judgments enforceable only if the CSEAs obtained personal

[5] The prior version of UIFSA likewise permitted a party to challenge a support order on the ground that "the issuing tribunal lacked personal jurisdiction over the contesting party." *See* Am.Sub.H.B. No. 352, 147 Ohio Laws, Part II, at 2845, enacting former R.C. 3115.44(A)(1).

jurisdiction. Fourteen days after a CSEA enters an administrative order, it becomes final, enforceable, and binding on the parties—just as a judgment becomes res judicata after time to appeal has passed. *See* R.C. 3111.84; Adm.Code 5101:12-45-05.3(C). From that point on, a party must generally show some change in circumstances to justify modification, much like a party seeking to modify a permanent injunction. *See* R.C. 3111.83, 3111.84, 3121.02, and 3121.03; Adm.Code 5101:12-45-05.3(B)(1) and (C).

{¶28} Thus, governing regulations, statutory language, and surrounding context all demonstrate that, before a CSEA can hold a hearing pursuant to R.C. 3111.80, it must obtain jurisdiction over the parties by issuing service of process (or by waiver). A child-support order entered by a CSEA "'without proper service or entry of appearance is a nullity and void.'" *See Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 2000-Ohio-452, ¶ 14, quoting *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64 (1956).

{¶29} By default, the Ohio Rules of Civil Procedure require that the clerk serve process by sending the complaint and summons by certified mail to the address provided by the plaintiff. Civ.R. 4.1(A). If the summons and complaint are returned "unclaimed," then service may be effected by sending the same documents by ordinary mail. *See* Civ.R. 4.6(D). CSEAs are therefore required to employ the same default procedures, except that "the agency or the administrative officer" must effect service, in lieu of the clerk. *See* R.C. 3111.80(B); Adm.Code 5101:12-30-10(B)(3). Further, CSEA proceedings are inquisitorial rather than adversarial, so the CSEA itself acts as both judge and litigant. Thus, the CSEA must determine at what address service should be made. *Compare* Civ.R. 4.1(A)(1)(a) and 4.6(D). Regulations specify that CSEAs should mail service "to the current addresses of the parents of the child," and, "[i]f a caretaker exists, . . . to the caretaker." Adm.Code 5101:12-45-05.1(A).

3. The Agency's Jurisdiction over Father

{¶30} Applying these principles to the case before us, we hold that the juvenile court plainly erred when it denied father's request to vacate the original administrative child-support order.

{¶31} As the magistrates' orders made clear, father was arguing that process had been served at an address where he had never resided. Due process required that service be made at an address "'*reasonably calculated,* under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (Emphasis in original.) *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 406 (1980), quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This court has thus held that "a plaintiff attempting service under Civ.R. 4.6 'must use an address for the defendant at which it could be reasonably expected he would receive mail addressed to him.'" *Altman II*, 2022-Ohio-142, at ¶ 26 (1st Dist.), quoting *Grant v. Ivy*, 69 Ohio App.2d 40, 42 (10th Dist. 1980). And we have found service inadequate where the complaint and summons "were not even sent to [defendant's] former address, but to a completely incorrect address." *Bank One Cincinnati, N.A. v. Wells*, 1996 Ohio App. LEXIS 4008, *7 (1st Dist. Sep. 18, 1996).

{¶32} Thus, if father was correct that process was never served at an address where he had resided, then the agency failed to provide effective service. Service sent to a "completely incorrect address" is constitutionally infirm. *Id.*

{¶33} The magistrate initially denied father's request to vacate the child-support order, writing,

> All of father's other motions have been addressed. The only issue before the court today was the issue of whether or not father was

> properly served regarding the original child support order. Father submitted affidavits regarding where he lived when the order was established in 2009. Mother provided testimony. While it is unclear if father received legal notice of the original order, he was given verbal notice through mother and CSEA sent service to his last known address. More importantly, child support began coming out of his check in 2012 so he was on notice at that time that there was a child support order. It is disingenuous to file more than a decade later arguing insufficient service. Therefore, the last issue in father's motion is denied.

{¶34} The juvenile court's decision to adopt this decision, even in the absence of an objection, was plain error, because the magistrate's decision was flawed on its face. It declined to determine whether father had "received legal notice" and did not consider whether father had been served at an address reasonably calculated to apprise him of the proceedings. Instead, the trial court's ruling that the order was not void rested on two obviously improper bases: (1) that father had *actual notice* of the child-support order at least by 2012, when child-support payments were withdrawn from his paychecks, and (2) that it was "disingenuous for [father] to file more than a decade later arguing insufficient service."

{¶35} The first basis was incorrect because actual notice could not create personal jurisdiction in the absence of proper service, appearance, or waiver. "Inaction upon the part of a defendant who is not served with process, even though he might be aware of the filing of the action, does not dispense with the necessity of service." *Maryhew v. Yova*, 11 Ohio St.3d 154, 157 (1984); *accord Wells*, 1996 Ohio App. LEXIS 4008, at *8. Thus, in determining whether father was properly served, it "does not matter that [father had] actual knowledge of the lawsuit and has not in fact been

prejudiced by the method of service." *See Bell v. Midwestern Educational Servs.*, 89 Ohio App.3d 193, 203 (2d Dist. 1993); *see also Altman II*, 2022-Ohio-142, at ¶ 40 (1st Dist.) (Zayas, P.J., dissenting). If father was not properly served and never submitted to the agency's jurisdiction, the agency's order was void.

{¶36} The magistrate's second basis fails, because father's delay in challenging the order could not solve the voidness problem. The magistrate's comments regarding father's delay in challenging the order sound in laches. *See Connin v. Bailey*, 15 Ohio St.3d 34, 35 (1984), quoting *State v. Smith*, 107 Ohio App. 440, 443-444 (8th Dist. 1957). But, as we held in *Altman I* (another case about defective service), "[l]aches . . . does not bar a movant from seeking relief from a void judgment." *Altman I*, 2018-Ohio-4583, at ¶ 8 (1st Dist.).

{¶37} Both of the magistrate's core rationales were thus facially incorrect. No amount of actual notice, disingenuous delay, or laches can transmute a nullity into something enforceable. It was therefore plain error for the juvenile court to adopt the magistrate's decision. And those erroneous justifications obviously prejudiced father, because they prevented the magistrate and juvenile court from making necessary factual findings regarding whether he was served. Further, an attempt to bind a party to a judgment when he was not properly made a party to that judgment is a rare example of the sort of mistake that undermines the "integrity" and "public reputation of the judicial process," so that reversal is warranted, even in the absence of an objection below. (Cleaned up.) *J.W.*, 2019-Ohio-2730, at ¶ 7 (1st Dist.); s*ee generally One Main Fin. Group, LLC v. Knight*, 2026-Ohio-1660, ¶ 26 (8th Dist.) (recognizing plain error based on insufficient evidence of proper service and lack of personal jurisdiction).

{¶38} Father's first and fourth assignments of error are sustained.

C. Assignment of Error No. 2: Restitution for Prior Withholding

{¶39} In his second assignment of error, father asserts that the trial court erred by denying his "counterclaim for reimbursement of payments made under a void judgment." Although "counterclaims" are not expressly permitted by the Ohio Rules of Juvenile Procedure, *see* Juv.R. 22, the gravamen of father's request was that he was entitled to restitution for money he paid (or that was withheld) pursuant to the allegedly void order. The magistrate dismissed this "counterclaim" because, she said, it did "not state a legal claim upon which the court [could] rule."

{¶40} It is well established that, where a court vacates, reverses, or sets aside an order, the prevailing party is generally "entitled to a judgment of restitution for all that he lost by reason of the judgment." *Bickett v. Garner*, 31 Ohio St. 28 (1876), paragraph one of the syllabus; *accord Portis v. Summit Cty. Bd. of Elections*, 1993-Ohio-164, ¶ 8; *Keybank Natl. Assn. v. Mazer Corp.*, 2010-Ohio-1508, ¶ 55 (2d Dist.). Thus, if the juvenile court ultimately finds that father was not properly served and vacates the support order, then it may order the restitution father seeks. *Compare Marinakis v. Marinakis*, 2025-Ohio-2554, ¶ 15 (12th Dist.) (holding that, if payments ordered to a GAL were improper, "the remedy of restitution from the GAL would remain available"); *compare also E.A.K.M. v. M.A.M.*, 2025-Ohio-2946, ¶ 19.

{¶41} We therefore hold that the magistrate plainly erred by rejecting father's plea for restitution. Father's second assignment of error is sustained.

{¶42} But we express no opinion on whether father would ultimately be *entitled* to such restitution. Restitution following vacatur is fundamentally equitable because it serves "'not to impose personal liability . . . , but to restore to [one party] particular funds or property in the [other's] possession.'" *Santos v. Ohio Bur. of*

Workers' Comp., 2004-Ohio-28, ¶ 13, quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 214 (2002). To obtain equitable restitution, a claimant must generally show that the equities tilt in favor of disgorgement. *See San Allen v. Buehrer*, 2014-Ohio-2071, ¶ 120 (8th Dist.); *see also Cincinnati v. Fox*, 71 Ohio App. 233, 239 (1st Dist. 1943) (party can seek restitution for unjust enrichment if it can "show that under the circumstances it has a superior equity so that, as against it, it would be unconscionable for the defendant to retain the benefit"). Actual notice, laches, and other fairness concerns—while irrelevant in assessing whether the support order was void—can be considered in determining whether to award restitution. *See id.* at 239; Restatement of the Law 3d, Restitution and Unjust Enrichment, § 63, 65, 70 (2011); Restatement of the Law, Restitution, § 64, 69, 142, 148 (1937).

D. Assignments of Error Nos. 3 & 5: Other Procedural & Evidentiary Issues

{¶43} Father raises two further assignments of error. Neither are meritorious.

{¶44} In his third assignment of error, he protests that the trial court reached its decision by relying upon "unsworn oral statements from counsel and perjured testimony from" mother. In part of his fifth assignment of error, father contends that he was "prevent[ed] . . . from preserving a complete record for appeal" by being removed from the hearing before the magistrate. Because father failed to provide a transcript of the magistrate proceedings to the juvenile court, we cannot pass upon the propriety of the rulings made during that proceeding. *See I.W.*, 2019-Ohio-1515, at ¶ 9 (1st Dist.).

{¶45} In the remainder of his fifth assignment of error, father contends that the magistrate and juvenile court should not have denied his motion without first "requiring the opposing parties to file any written response, affidavits, or evidence as

required by Civ.R. 6(C), Civ.R. 12(A)(1)(b), and Civ.R. 55(A)." This argument fails for three reasons. *First*, to the extent father argues that Civ.R. 12(A) required mother or the agency to file an answer to his counterclaim, he is mistaken. Juv.R. 22—the closest equivalent to Civ.R. 12 in juvenile court—does not allow for counterclaims or require responses to such counterclaims. *Second*, to the extent father is arguing that mother produced no evidence below, the magistrate's order undermines his claim. The magistrate said mother testified. Reliable or not, testimony is evidence. *Third*, to the extent that any of the rules father cites apply in juvenile court, *see* Juv.R. 1 and 45(B), none require the juvenile court to rule against mother based solely on her failure to file an opposition memorandum.

{¶46} Father's third and fifth assignments of error are overruled.

III. Conclusion

{¶47} For the foregoing reasons, father's first, second, and fourth assignments of error are sustained, and his third and fifth are overruled. We reverse the juvenile court's judgment, which adopted the magistrate's decisions denying father's motion to vacate the child-support order (dubbed a "motion to dismiss") and made final the magistrate's prior interlocutory ruling denying his request for restitution (dubbed a "counterclaim"). We remand the cause to the juvenile court with the following instructions:

{¶48} *First*, the juvenile court should make findings as to whether the agency ever properly served father with administrative process at the address where he resided or an address at which he could be reasonably expected to receive mail addressed to him.

{¶49} *Second*, if the court determines that father *was not served* and that the child-support order is void, it should determine whether father is entitled to

restitution for any amounts withheld from him pursuant to that void order.

{¶50} *Third*, in making the above determinations, the juvenile court should clarify on what evidence it relies—including whether any evidentiary materials submitted in advance of any hearing are deemed admitted or merely proffered.

Judgment reversed and cause remanded.

ZAYAS, P.J., and **MOORE, J.,** concur.