IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

FILED

October 20, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

LINDA L. PEPPING, individually and as next friend and guardian of Brianne Pepping and Conner Pepping,	)	HAMILTON CIRCUIT
Plaintiffs/Appellants	)	No. 03A01-9505-CV-00143
v.	)	
MARK DALE PEPPING,	)	AFFIRMED AND REMANDED
Defendant/Appellee	)	

Mitchell Aaron Byrd, Chattanooga, For the Appellant.

Robin L. Miller, Chattanooga, For the Appellee.

O P I N I O N

INMAN, Senior Judge

The trial court dismissed this case for lack of jurisdiction. We affirm.

This action was filed in the Circuit Court of Hamilton County seeking a declaratory judgment that a Marital Dissolution Agreement approved by the Chancellor in a divorce case heard in the Chancery Court was void and of no effect because the judgment deviated from the Child Support Guidelines.

The parties were divorced by decree entered in the Chancery Court on September 14, 1992. A Marital Dissolution Agreement was approved, which required the defendant husband to pay $1,000.00 monthly for the support of two children. About one year later, the plaintiff apparently discovered that her agreement should have provided for $1,413.14 monthly child support as "required" by the Guidelines. The declaratory judgment action seeks, in essence, to have the allegedly deviant judgment nullified, thereby "enabling" the Chancery Court to try the

case *de novo*, presumably as to all issues in light of the language of the agreement that no part of it is severable. Stated differently, the Circuit Court, in this declaratory judgment action, is asked, in effect, to sit in appellate review of the Chancery Court and correct its alleged error.

The defendant responded to the complaint with a Rule 12 motion to dismiss, which the trial court found was well-taken. So do we.

When considering a Rule 12 motion to dismiss, we accept the allegations of the complaint as true. *Greenhill v. Carpenter*, 718 S.W.2d 268 (Tenn. 1986). Our scope of review is *de novo* with no presumption of correctness. *Montgomery v. Mayor of the City of Covington*, 778 S.W.2d 444 (Tenn. App. 1988).

We were baffled about this case since the record revealed no reason why the plaintiff did not seek relief, if she was thus entitled, in the Chancery Court. Our bafflement was merely heightened upon counsel's explanation that if the Chancellor declined to enforce the Guidelines initially, it was likely that his refusal would continue. This attempt at syllogistic reasoning requires no rebuttal. It is far too presumptuous.

Appellant alleges that the Chancellor failed to file a written finding of fact and failed to enquire if the agreement comported with the Guidelines, which allegedly nullifies the agreement and the judgment. As to this bald assertion, we stand mute since no response is necessary. The matter clearly should have been presented to the Chancery Court, which pronounced the judgment and which retained jurisdiction to modify and enforce it. TENN. CODE ANN. § 36-5-101(c) provides that "[j]urisdiction to modify or alter such order or decree shall remain in the *exclusive* control of the court which issued such order or decree." (emphasis added) We can add nothing to the clarity of the language. *See Burkett v. Ashley*, 535 S.W.2d 332 (Tenn. 1976); *Jarvis v. Jarvis*, 664 S.W.2d 559 (Tenn. 1977); *Kane v. Kane*, 547 S.W.2d 694 (Tenn. 1983); *Morrissey v. Morrissey*, , 377 S.W.2d 944 (Tenn. 1944); *Kizer v. Bellar*, 241 S.W.2d 61 (Tenn. 1951).

The judgment is affirmed. We find this appeal is frivolous, TENN. CODE ANN. § 27-1-122, and remand the case to the trial court for the assessment of damages, including attorney's fees. *Norton Creek Comm. Ass'n v. Rodman Corp.*, 560 S.W.2d 914 (Tenn. App. 1977). Costs are assessed to the appellant.

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William H. Inman, Senior Judge

Concur:

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Don T. McMurray, Judge

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Charles D. Susanno Jr., Judge