IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

July 19, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

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| STATE OF TENNESSEE, on behalf of LINDA PEREGORY ARNETT | ) | WASHINGTON COUNTY |
| | ) | 03A01-9510-JV-00376 |
| Respondent-Appellee | ) | |
| v. | ) | HON. JOHN L. KIENER, |
| | ) | JUDGE |
| HASKELL ARNETT | ) | |
| Petitioner-Appellant | ) | |
| IN THE MATTER OF: TRAVIS CHRISTOPHER SHANE PEREGORY, A child under 18 years of age | ) | AFFIRMED AS MODIFIED and REMANDED |

IVAN M. LILLY OF JOHNSON CITY FOR APPELLANT

CHARLES W. BURSON, Attorney General & Reporter, and MICHAEL K. HOHNKE, Assistant Attorney General, NASHVILLE, FOR APPELLEE

OPINION

Goddard, P.J.

The dispositive issue of this appeal is whether that portion of an order of legitimation entered in the Juvenile Court

for Washington County on April 1, 1986, setting child support for Travis Peregory in the amount of "$00" is void.

Several other petitions were filed during the ensuing years seeking child support. These, however, were filed in the Juvenile Court for Johnson City and were ultimately dismissed upon a finding by the Judge of that Court that the Juvenile Court of Washington County retained exclusive jurisdiction of such proceedings.

The petition, which is the subject of this appeal, was filed on May 25, 1994. Curiously, when Mr. Arnett raised a question as to his paternity, notwithstanding the recital in the order entered on April 1, 1986, some eight years earlier, that he acknowledged that he was the father of the child, the Trial Court allowed DNA testing which disclosed that he could not be excluded as the father and the probability of his being the father was 99.91 percent. Thereupon, the Trial Judge applied the conclusive presumption mandated by T.C.A. 24-7-112(b)(2)(B)[1] and set child support based upon the guidelines at $31 per week. He also directed that Mr. Arnett should pay an additional $10 per week on arrearage, which he found to be $8974.25.

[1] (B) An individual is conclusively presumed to be the father of a child if blood, genetic, or DNA tests show that the statistical probability of paternity is ninety-nine percent (99%) or greater. A rebuttable presumption of the paternity of an individual is established by blood, genetic, or DNA testing showing a statistical probability of paternity of that individual at ninety-five percent (95%) or greater.

Mr. Arnett does not contest either the $31 per week for current support or the $10 per week for arrearage, but does insist (1) that arrearage should be calculated from May 25, 1994, the date the current petition was filed, and (2) that he should not be required to pay the $8974.25 the mother received on behalf of the child, representing AFDC payments authorized under Chapter 7, Sub-chapter IV, Part D of the Social Security Act, 42 U.S.C. 651-669.

No testimony was heard as to the order entered awarding retrospective child support, the Trial Court finding that the "$00" ordered by the then Juvenile Judge was through inadvertence. While this may be true, there is not a shred of evidence in the record to support such a supposition.

The State justifies the Juvenile Judge's action by arguing that he found the order void and in effect sua sponte granted relief under Rule 60 of the Tennessee Rules of Civil Procedure.

We recognize that notwithstanding certain language contained in Rule 60, as a general rule, a void judgment is subject to attack "from any angle" at any time. Pittman v. Pittman, an unpublished opinion of this Court filed in Nashville on August 24, 1994. The State's problem, however, is that there is nothing to show the judgment is void. The Court certainly had both subject matter and personal jurisdiction. It may very well

be that the judgment of the Court is erroneous, but this is not grounds to hold a judgment void. It also may very well be that Mr. Arnett was disabled and had no income the date the judgment was entered. Because there is no reason shown in the record which would render the judgment void and it is not void on its face, we find the State's Rule 60 argument unpersuasive.

It follows that upon our finding that the first judgment was not void, Mr. Arnett had no monetary obligation thereunder and at the most would be liable only for the $31 per week child support accruing subsequent to the filing of the present petition on May 25, 1994.

For the foregoing reasons the judgment of the Juvenile Court is modified and, as modified, is affirmed. The cause is remanded for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged against the State.

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Houston M. Goddard, P.J.

CONCUR:

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Don T. McMurray, J.

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Charles D. Susano, Jr., J.