

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION

**FILED**

March 24, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

WILLIAM FINCHUM, JR., ) C/A NO. 03A01-9609-CV-00293  
)  
Plaintiff-Appellee, ) COCKE CIRCUIT  
)  
v. ) HON. BEN W. HOOPER, II  
) JUDGE  
LAVONDA H. FINCHUM )  
)  
Defendant-Appellant. ) REMANDED

WILLIAM M. LEIBROCK, Newport, for Plaintiff-Appellee.

DAVID B. HILL, Newport, for Defendant-Appellant.

O P I N I O N

Franks. J.

In this divorce action, the mother appealed, insisting the Trial Court erred in not awarding expenses for support for the parties' child before the marriage.

The parties' child was born in October 1991. She was legitimized by the parties' marriage in December, 1994. The husband filed for divorce in April of 1995, and the wife answered the complaint and alleged in her counter-complaint that the father had not supported the child and sought recovery for the support of the parties' minor child from birth based on expenses incurred by counter-plaintiff and counter-defendant's ability to pay.

The Trial Court granted the Appellant wife custody and ordered Appellee husband to pay child support in the form of the \$344.00 monthly house payment from the date of the decree. The decree made no mention of the pre-marital medical and child support expenses incurred by Appellant.

A motion to reconsider was overruled. On appeal, the father argues that in a divorce action the Court cannot in effect award a parent reimbursement for child support incurred prior to the parties' marriage, and insists the statutory scheme placing liability for such expenditures on the father must be strictly followed. The statutory procedures placing liability on the father are codified at T.C.A. §36-2-101, *et seq.* The statute setting out the procedure for formal legitimation and for support of the child prior to legitimation is T.C.A. §36-6-203.<sup>1</sup> The statute providing for legitimation through marriage states that "[a]ll illegitimate children whose parents have heretofore intermarried or who shall intermarry shall thereby become legitimized and shall

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<sup>1</sup>The statute dealing with legitimation reads as follows, with the provisions referring to retroactive support emphasized:

Order of legitimacy - Child support orders. - (a) The court, if satisfied with the reasons, may, by order embodying the petition in full and entered upon the minutes of the court, declare such child legitimate.

(b)(1) When an order of legitimation has been so issued, upon application of an appropriate party, the court shall issue a child support order.

(2) All provisions of chapter 5 of this title that relate to child support or child support orders that include an order of spousal support and § 50-2-105 shall apply to support orders issued in these proceedings.

(3) In addition, the order may also provide:

(A) For the payment of the necessary expenses incurred by or for the mother in connection with the mother's confinement and recovery; (B) For the funeral expenses if the child has died; © For the support of the child prior to the making of the order of legitimation and support; and (D) For such expenses in connection with the pregnancy of the mother as the court may deem proper.

become legitimate for all purposes and entitled to all the rights and privileges of legitimate children, without the necessity of any proceedings under this part, but an estate or interest vested or trust created before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimized. . . .? T. C. A. §36-2-207.

Under either circumstance, the father has come forward to acknowledge his obligations to the child. While the latter provision indicates that the estate and trusts of a deceased are not to be affected, nothing in the provision provides that a living father whose child is legitimized through marriage should be less liable for support than a father whose child is legitimized by a court proceeding. Indeed, it would be bad public policy to create an incentive whereby a mother was entitled to reimbursement only by remaining single.

In considering these statutes, the Supreme Court has observed that the legislature did not intend to make these provisions the exclusive procedural remedy for enforcing the father's liability, since the father of an illegitimate child is obligated for her support. *Brown v. Thomas*, 426 S.W2d 496 (1968), *citing Kelly v. Central Woodwork, Inc.*, 340 S.W2d 896 (Tenn. 1960).

The Supreme Court has stated that while a Trial Court has discretion to determine the amount and the manner in which support is to be paid, retroactive support for illegitimate children must be assessed from the time of the child's birth. *State ex rel. Coleman v. Clay*, 805 S.W2d 752,

755 (Tenn. 1991); *also see Barbabas v. Rogers*, 868 S.W2d 283, 288 (Tenn. App. 1993). The Trial Court apparently pretermitted this issue, as there is no statement by the Trial Court in the record.<sup>2</sup>

The mother also argues that the Court should award her medical expenses for the birth of the child. The meager statement of evidence indicates that the birthing expenses were paid by Medicaid. The husband objects to recovery of medical expenses on the grounds that they were covered by Medicaid. Under the Collateral Source Rule, plaintiffs are permitted to recover medical expenses whether paid by insurance or not. *Donnell v. Donnell*, 220 Tenn. 169, 415 S.W2d 127, 134; *Steele v. Fort Sanders Anesthesia Group, P. C.*, 897 S.W2d 270 (Tenn. App. 1994). The State of Tennessee has a right of subrogation from the mother upon any recovery. T.C.A. §71-5-117(a).<sup>3</sup> *Also See Tennessee Department of Human Services v. Hinton*, 660 S.W2d 506, 509 (Tenn. App. 1983), (holding that where child support is furnished by the Tennessee Department of Human Services, any such support obligation which is owed for the child up to the

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<sup>2</sup>The mother filed a statement of evidence to which the father objected. Although unclear, we conclude that the Trial Judge accepted the mother's statement of the evidence and overruled the objections filed by the father.

<sup>3</sup>**71-5-117(a)** Medical assistance paid to, or on behalf of, any recipient cannot be recovered from a beneficiary unless such assistance has been incorrectly paid, or, unless the recipient or beneficiary recovers or is entitled to recover from a third party reimbursement for all or part of the costs of care or treatment for the injury or illness for which the medical assistance is paid. To the extent of payments of medical assistance, the state shall be subrogated to all rights of recovery, for the costs of care or treatment for the injury or illness for which medical assistance is provided, contractual or otherwise, of the recipients against any person. . . ?.

amount of the public assistance money paid on behalf of the child is assigned to the Tennessee Department of Human Services.)

The case is remanded to the Trial Court for specific findings regarding the expenses incurred and the portion which was paid and should be borne by the father.

The cost of the appeal is assessed to appellee.

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Herschel P. Franks, J.

CONCUR:

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Houston M Goddard, P. J.

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William H Inman, Sr. J.