

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

May 23, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE, DHS, and Assignee of:)	ANDERSON COUNTY
)	03A01-9611-JV-00351
)	
STACY PETTUS)	
)	
Petitioners - Appellees)	HON. JENNINGS B. MEREDITH,
)	JUDGE
v.)	
)	
ROBERT LEE SMITH)	
)	
Respondent - Appellant)	AFFIRMED AND REMANDED

ROBERT LEE SMITH, Pro Se

CHARLES W BURSON, Attorney General & Reporter, and KIMBERLY M FRAYN, Assistant Attorney General, NASHVILLE, FOR DEPARTMENT OF HUMAN SERVICES

O P I N I O N

Goddard, P. J.

Robert Lee Smith appeals judgment of the Anderson County Juvenile Court which ordered him to pay arrearage of child support payments, which were originally due Stacy Pettus, to the State of Tennessee in the amount of \$38,354, payable at an amount of \$40.00 per month. The issues that Mr. Smith, a pro se Appellant, raises on appeal are not entirely clear from his

brief. However, the State suggests that Mr. Smith has raised the following issues on appeal:

1. The Trial Court erred in not accepting Mr. Smith's equitable estoppel defense for his liability of the arrearage.
2. The Trial Court erred by failing to appoint Mr. Smith counsel, allowing time for him to obtain private counsel, and by denying his request for a jury trial.

Stacy Pettus gave birth to Hasha Juan A. Pettus on November 30, 1979. Prior to the filing of this case, Ms. Pettus assigned her rights to child support to the State of Tennessee Department of Human Services for the arrearage assessed during the time which she was receiving Tennessee AFDC. On April 28, 1995, the State of Tennessee and Ms. Pettus filed a petition to establish paternity and set child support for Hasha Pettus against Mr. Smith. The State also filed an Order of Paternity, which had been executed by the parties on April 4, 1995, and in which Mr. Smith acknowledged that Hasha was his natural child, and he would pay past child support. This order was adopted and entered on May 8, 1995, by the Juvenile Court of Anderson County.

On June 3, 1995, Mr. Smith filed a petition to vacate the May 8 order. On July 20, the State of Tennessee filed an answer to his motion and misstated the amount that he owed to be \$444, instead of the amount that it intended to allege that he

owed, \$44,000. The Court amended the May 8 award and held Mr. Smith liable for only \$444 in arrearage. The State subsequently filed a motion, on July 24, 1995, to vacate the July 20 order due to the alleged clerical error. Mr. Smith filed subsequent motions to vacate the two previous orders. On October 12, 1995, Judge Patricia Hess recused herself from the proceedings, giving Judge Jennings B. Meredith all the future responsibility of the case. On July 12, 1996, a bench trial was held without a jury, and Judge Meredith held that Mr. Smith is liable to the State for past support in the amount of \$38,354, payable at a rate of \$40.00 per month.

The record before this Court is void of an accurate and complete transcript of the proceedings or a statement of the evidence as required in Rule 24 of the Tennessee Rules of Appellate Procedure. Rule 24(c) states that, "if no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection." Mr. Smith has filed an exhibit titled "Transcript," but this handwritten memo clearly does not satisfy the requirements of Rule 24. This Court has held that "In the absence of a transcript or statement of the evidence, we must conclusively presume that every fact admissible under the pleadings was found or should have been found favorably to the appellee." Lyon v.

Lyon, 765 S.W.2d 759 (Tenn. App. 1988), citing Wilson v. Hafley, 189 Tenn. 598, 226 S.W.2d 308 (1949).

Mr. Smith has raised an issue of fact with the Trial Court's ruling, alleging that the Trial Court improperly rejected his estoppel defense to his liability of child support.¹ However, due to the absence of an accurate transcript of the proceedings below, we conclude that there is no evidence available in the record to rebut the presumption that the Trial Court correctly rejected Mr. Smith's argument.

Mr. Smith next argues that his due process rights were infringed upon since the Trial Court failed to appoint an attorney or to give him a continuance, allowing him time to obtain a private attorney. As to the first point, there has never been a recognized constitutional right to an attorney in civil matters in Tennessee. Barish v. Metropolitan Government of Nashville and Davidson County, 627 S.W.2d 953 (Tenn. App. 1981); Winters v. Ooten, an unreported opinion of this Court filed in Knoxville on July 6, 1984. The Trial Court acted in accordance with Tennessee Jurisprudence in denying Mr. Smith a jury trial.

The Trial Court did not violate Mr. Smith's due process rights by denying him a continuance for time to obtain private counsel, since the record reflects that the Trial Court afforded

¹ Mr. Smith alleges that he is not liable to the State for the child support arrearage since he offered to give Ms. Pettus clothes for the child and offered to help pay for the child on a number of occasions and Ms. Pettus repeatedly refused his help.

him ample time to obtain private legal counsel. Mr. Smith had nearly a year to obtain counsel since the State filed its motion to vacate the July 20, 1995, order on July 24, 1995, nearly a year before the final trial in this matter on July 12, 1996. Additionally, Mr. Smith admits in his brief that on October 12, 1995, when Judge Hess recused herself from the case, that she advised him that he could obtain private counsel for little or no expense. We conclude that the Trial Court did not abuse its discretion on July 12, 1996, by denying Mr. Smith a continuance.

Finally, Mr. Smith argues that the Trial Court erred in not granting him a trial by jury. The right to a trial by jury given in the Tennessee Constitution guarantees a right to trial by jury only in instances where a trial by jury was available at common law. State v. Hartley, 790 S.W2d 276 (Tenn.1990). At common law, there was no right to a trial by jury in paternity matters. Rooker v. Rimer, 776 S.W2d 124 (Tenn.App.1989). Additionally, there is no such right granted by any Tennessee statute. We conclude that the Trial Court did not err in denying Mr. Smith a trial by jury in this matter.

For the foregoing reasons, we affirm the judgment of the Trial Court and remand the case for such further proceedings as may be necessary and collection of costs below. Costs of appeal are adjudged against Mr. Smith.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. McMurray, J.