IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED
Sept. 25, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

NOT FOR PUBLICATION

SARAH AVALON MYATT CLINARD (BROWN)	)	**Filed: September 25, 1995**
Appellee,	)	DAVIDSON CIRCUIT
vs.	)	HON. MARIETTA M. SHIPLEY, JUDGE
JAMES EDWARD CLINARD,	)	
Appellant.	)	No. 01-S-01-9502-CV-00021

For Appellant:	**For Appellee:**
John A. Ascione Nashville, Tennessee	Charles Galbreath Nashville, Tennessee

O P I N I O N

AFFIRMED IN PART;
REVERSED IN PART AND
REMANDED.

ANDERSON, C.J.

The original divorce decree in this case set the sum of $60.00 per week for the support of three children. The defendant concedes there is an arrearage, but insists it should be calculated by prorating the support award as each child reached majority on the ground that there is no parental duty of support after majority. The trial court prorated the award, but the Court of Appeals reversed on the ground that proration is a retroactive modification of the child support award. We granted the defendant's application to decide this question. Other issues raised by the plaintiff include whether a trial court has the authority to enforce by contempt a judgment for child support arrearages obtained after the children have attained majority; whether there is an equitable basis for awarding pre-judgment interest; and whether post-judgment interest should be awarded.

Because we conclude that a court's application of the principle of proration in calculating child support arrearages does not amount to a retroactive modification of the award, we reverse that portion of the Court of Appeals' judgment awarding arrearages of $31,951.00, and reinstate the trial court's judgment of $15,235.00. We also conclude that trial courts have no authority to enforce by contempt child support arrearage awards entered prior to July 1, 1994, when contempt is sought after the children have attained majority. Since the award of pre-judgment interest is based on equitable principles, we do not find the trial court abused its discretion in denying an award. Finally, on the issue of post-judgment interest, Tennessee law mandates that interest be awarded from the day of judgment. We award interest at ten-percent (10%) per annum on the unpaid amount from the date of the trial court's judgment.

BACKGROUND

On October 13, 1969, the plaintiff, Sarah Clinard Brown and the defendant, James Edward Clinard were divorced. Brown was awarded custody of the "parties' minor children," who were not otherwise named or described. However, it is undisputed that the parties had three minor children at the time of the divorce. Clinard was ordered to pay Sixty Dollars ($60) per week as child support.

However, beginning in July of 1970, Clinard began paying Twenty-Five Dollars ($25) per week.[1] Clinard paid and Brown accepted $25 per week for a fifteen year period, until the youngest child became 18 years old in 1985. During the entire period of the children's minority, neither Brown nor Clinard returned to court to request modification of the child support award.

On May 7, 1993, eight years after the youngest child reached majority, Brown filed a "Petition to Reduce Child Support Arrearage to Judgment and for Contempt," requesting a judgment of contempt, a judgment for arrearages in the amount of $31,951.00, plus pre-judgment and post-judgment interest, and wage assignment to collect periodic amounts from Clinard's employer.

Clinard admitted that he owed arrearages, but argued that he owed only $15,235.00. He calculated that amount by prorating the $60 support award as each child attained the age of 18 years old. For his authority, Clinard relied upon Tenn. Code Ann. § 36-5-101(a)(1)(1991), which provided as follows, "[u]nless the court specifically orders otherwise, any order which provides for the support of (2) or more persons shall be deemed prorated in equal shares among such

[1] At trial, Clinard claimed that the parties mutually agreed to the reduced amount of support. Brown denied that she ever agreed to reducing the support. Clinard concedes that whether the reduced payment resulted from a mutual agreement is not relevant to the issue in this appeal, and played no role in the decision of the trial court or the Court of Appeals.

persons."[2] And he also relied upon the general legal proposition that the duty of a parent to support a child terminates when the child attains majority.

The trial court concluded that the statute, which was not enacted until after the youngest child attained majority, did not apply in this case. However, the trial court concluded that based on applicable case law holding that child support terminates when a child reaches majority, proration is appropriate when determining the amount of arrearages owed. Accordingly, the trial court awarded a judgment in favor of Brown in the amount of $15,235.00. Finding that a trial court's authority to enforce child support by contempt is statutory and exists only during minority, the trial court dismissed the contempt petition. The trial court also denied Brown's request for pre-judgment interest, finding such an award inequitable in this case because Brown waited seven years after the last child reached majority before attempting to attain an arrearage judgment. The trial court did not explicitly rule on Brown's request for post-judgment interest, nor her request for wage assignment.[3]

Brown appealed, and the Court of Appeals modified the arrearages judgment from $15,235.00 to $31,951.00. In the absence of a prior court order allowing proration, the intermediate court concluded that applying proration when calculating arrearages owed is a retroactive modification of the child support award in violation of Rutledge v. Barrett, 802 S.W.2d 604 (Tenn. 1991) and

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[2] In 1994, the General Assembly amended that statute, and it now provides as follows. "When an order provides for the support of two (2) or more children in a case which is subject to enforcement under Title IV-D, *and at least one (1) child is a public charge* . . . the child support order shall be prorated by the department of human services for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child without the need for modification of the child support order by the court." Tenn. Code Ann. § 36-5-101(a)(1) (1994 Supp.) (emphasis added).

[3] During oral argument, counsel for both Brown and Clinard indicated that Clinard has been voluntarily making monthly payments of Three Hundred Dollars ($300) since entry of the judgment in the trial court.

Tenn. Code Ann. § 36-5-101(a)(5) (1991). The Court of Appeals affirmed both the trial court's dismissal of the contempt petition, concluding that there is no right of appeal from a judgment of acquittal in a contempt case, and the trial court's denial of pre-judgment interest.

We granted the defendant, Clinard's application to appeal the Court of Appeals' decision modifying the arrearages judgment. Brown also challenged, in this Court, the Court of Appeals' decision with respect to contempt and pre-judgment interest as well as moving this Court for a wage assignment against Clinard.

PRORATION

As a threshold matter, we conclude, as did the trial court, that the issue before us does not involve retroactive modification of a child support award. Indeed, as the Court of Appeals held, in Tennessee, retroactive modification of child support awards is prohibited. Rutledge v. Barrett, 802 S.W.2d 604 (Tenn. 1991); Tenn. Code Ann. § 36-5-101(a)(5) (1991). Instead, the issue in this case is whether proration should be applied when calculating child support arrearages. We conclude that the trial court correctly applied the principle of proration.

We agree with the trial court's conclusion that Tenn. Code Ann. § 36-5-101(a)(1) (1991), which provides that any support order for two or more persons shall be prorated equally, does not apply in this case because it was enacted after the parties' youngest child attained majority. However, that does not end the inquiry.

In Tennessee a parent owes no legal duty to support a child once the child has attained the age of majority. Blackburn v. Blackburn, 526 S.W.2d 463 (Tenn. 1975); Penland v. Penland, 521 S.W.2d 222 (Tenn. 1975); Hawkins v. Hawkins, 797 S.W.2d 897 (Tenn. App. 1990). In recognition of that long standing principle, at common law, child support awards were generally prorated as each child attained the age of majority. Churchill v. Churchill, 203 Tenn. 406, 313 S.W.2d 436 (1958); Weinstein v. Heimberg, 490 S.W.2d 692 (Tenn. App. 1972). Thus, Tenn. Code Ann. § 36-5-101(a)(1) (1991), is merely a codification of the common law as it existed at the time of the child support award in this case. Proration, therefore, is not a retroactive modification of the child support award and its application does not require a petition to, or an order from, the court. Instead proration is simply a rule of law which derives from the legal principle that parents generally owe no duty to support children who have attained the age of majority. In this case, the trial court correctly applied proration in calculating the arrearages Clinard owes. Accordingly, that portion of the Court of Appeals' judgment relating to arrearages is reversed, and the trial court's judgment of $15,235.00 in favor of Brown is reinstated.

CONTEMPT AUTHORITY

Brown asks that this Court reverse the trial court's dismissal of her contempt petition. The Court of Appeals affirmed the trial court's dismissal, concluding that "[t]here is no right of appeal from a judgment of acquittal in a contempt case." Arguing that Clinard was not acquitted of contempt, Brown urges this Court to consider the contempt issue. During oral argument, Clinard conceded that he was not acquitted of contempt, and acknowledged that the contempt petition was dismissed because the trial court concluded that its authority to enforce child support by process of contempt is statutory and exists

only during minority. We agree with Brown that we are not precluded from reviewing this issue because Clinard was not "acquitted" of contempt. However, we conclude that dismissal of the contempt petition was appropriate on the grounds cited by the trial court, and therefore affirm the Court of Appeals' judgment on the separate grounds stated.

Recently, in Kuykendall v. Wheeler, 890 S.W.2d 785, 786-87 (Tenn. 1994), we held that when a child attains majority, a parent is not relieved from liability for child support arrearages, but that the unpaid child support payments "take on the form of a debt and become enforceable as money judgments . . . ." As we noted in Kuykendall, money judgments in Tennessee are "enforceable by execution, garnishment, and judgment liens." Id. Thus, in Kuykendall, we concluded that when enforcing payment of a judgment for child support arrearages after the child has attained majority, a trial court may use only those means statutorily prescribed for enforcing payment of other money judgments. Thus, we reversed a trial court's judgment ordering the non-custodial parent to pay installment payments on the arrearages judgment.

In so holding, we considered the applicability of an amendment to Tenn. Code Ann. § 36-5-101(k) (Supp. 1994)[4], effective July 1, 1994, allowing enforcement of arrearages by contempt, and concluded that it should not be retroactively applied. Here, as in Kuykendall, therefore, that statute does not apply. Thus, the question we must consider is whether, prior to July 1, 1994, a

[4] That statute provides "Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exist at the time an order for child support would otherwise terminate, the order of support or any then existing income withholding arrangement and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement until the arrearage and costs due are satisfied and the court may enforce all orders for such arrearages by contempt." (Emphasis added.)

trial court had the power to enforce payment of arrearages by contempt proceedings after the children have attained majority.[5] Id. at 788.

We adhere to our previous holding in Kuykendall, that when a child attains majority, a parent's liability for child support arrearages takes on the form of a debt and becomes enforceable only as a money judgment. Clearly trial courts have no common law power to enforce payment of money judgments by contempt, and no applicable statute authorizes enforcement of money judgments by contempt. Accordingly, dismissal of the contempt petition was appropriate.

Likewise, no common law decision, nor applicable statute, empowers trial courts to enforce money judgments by ordering wage assignments. Therefore, we also deny Brown's motion for wage assignments.[6]

PRE-JUDGMENT AND POST-JUDGMENT INTEREST

Finally, Brown asks this court to reverse the lower court's refusal to award pre-judgment interest. Tenn. Code Ann. § 47-14-123 (1988) provides that pre-judgment interest "may be awarded by courts or juries in accordance with the principles of equity . . . ." The award of pre-judgment interest is within the discretion of the trial court and the decision should not be disturbed unless the record reveals a manifest and palpable abuse of discretion. Spencer v. A-1 Crane Service, Inc., 880 S.W.2d 938, 944 (Tenn. 1994); Otis v. Cambridge Mut. Fire Ins. Co., 850 S.W.2d 439, 446 (Tenn. 1992). Our examination of the record

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[5] As in Kuykendall, we here express no opinion on the validity of the 1994 amendment. We hold only that it should not be retroactively applied and does not apply in this appeal.

[6] Tenn. Code Ann. § 36-5-501 (Supp. 1994), dealing with wage assignments applies only to "any order of child support issued, modified, or enforced on or after July 1, 1994 . . . ," and is not applicable to this proceeding.

in this case does not reveal an abuse of discretion on the part of the trial court in refusing to award pre-judgment interest.

However, pursuant to Tenn. Code Ann. § 47-14-121, § 47-14-122 (1988),[7] and Tenn. R. App. P. 41,[8] Brown is entitled to interest on the unpaid portion of the trial court's judgment of $15,235.00 at the rate of ten percent (10%) per annum from October 22, 1993, until the date of payment. See Long v. Mattingly, 817 S.W.2d 325, 330 (Tenn. App. 1991) ("T.C.A. §§ 47-14-121 and 122 mandate interest on judgments.")

CONCLUSION

The Court of Appeals' judgment calculating arrearages in the amount of $31,950.00 is reversed and the judgment of the trial court calculating arrearages in the amount of $15,235.00 is reinstated. The Court of Appeals' judgment dismissing the contempt petition and denying pre-judgment interest is affirmed on the separate grounds stated. Interest shall accrue on the unpaid portion of the judgment at the rate of ten percent (10%) per annum from October 22, 1993, until the date of payment. The motion for wage assignment in this Court is denied. This cause is remanded to the trial court for such other and further necessary proceedings consistent with this opinion. Costs of this appeal are

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[7] Tenn. Code Ann. § 47-14-121 (1988) provides in pertinent part, "[i]nterest on judgments, including decrees, shall be computed at the effective rate of ten percent (10%), except as may be otherwise provided or permitted by statute . . . ." Tenn. Code Ann. § 47-14-122 (1988) provides that "[i]nterest shall be computed on every judgment from the day on which the jury or the court, sitting without a jury, returned the verdict without regard to a motion for a new trial." (Emphasis added.)

[8] Tenn. R. App. P. 41 provides that "[i]f a judgment for money in a civil case is affirmed or the appeal is dismissed, whatever interest is allowed by law shall be payable computed from the date of the verdict of the jury or the equivalent determined by the court in a non-jury case, which date shall be set forth in the judgment entered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to allowance of interest."

taxed to the appellee, Sarah Avalon Myatt Clinard Brown, for which execution may issue if necessary.

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RILEY ANDERSON, Chief Justice

CONCUR:

Drowota, Reid, Birch, and White, JJ.