

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 22, 2012 Session

AMBER D. BREWSTER v. NICHOLAS GALLOWAY

Chancery Court for Anderson County
No. 09CH1098 Hon. William E. Lantrip, Chancellor

No. E2011-01455-COA-R3-CV-FILED-JULY 11, 2012

CHARLES D. SUSANO, JR., concurring.

I concur in (1) the result reached by the majority and, with one caveat, (2) its rationale in reaching that result. While I agree with the majority that “[t]he record before this [C]ourt does not reflect that Father ever raised an issue regarding Mother’s ability to recover attorney fees because she was never his spouse,” I disagree with the majority’s holding, in dicta, that Tenn. Code Ann. § 36-5-103(c)(2010) supports such an award.

The cited statute identifies “the spouse” and “the other spouse” as those against whom an award of attorney’s fees can be assessed in a case¹ involving enforcement of a decree for child support or “the adjudication of the custody or the change of custody” of a child. In my judgment, this statute, by very explicit language, only involves a claim for attorney’s fees against a spouse and has no application to paternity cases. In neither of the reported cases² cited by the majority is there any indication that the issue now under discussion was raised by the party against whom an award of fees was made.

CHARLES D. SUSANO, JR., JUDGE

¹The statute also applies in an action to “enforc[e] any decree for alimony.” Alimony is not involved in the present case.

²See *Miller v. Welch*, 340 S.W.3d 708, 714-15 (Tenn. Ct. App. 2010) and *Massey v. Casals*, 315 S.W.3d 788, 799 (Tenn. Ct. App. 2009).