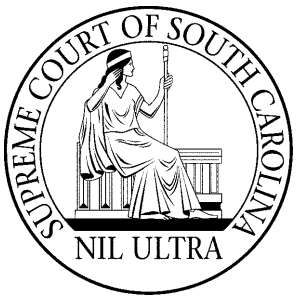

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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 32
September 7, 2022
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Elizabeth Anne Holland, Appellant,

v.

Richard Alan Holland, Respondent.

Appellate Case No. 2018-000485

Appeal From Newberry County
Joseph W. McGowan, III, Family Court Judge

Opinion No. 5944
Heard November 10, 2020 – Filed August 4, 2021
Withdrawn and Substituted September 7, 2022
Formerly Unpublished Opinion No. 2021-UP-293

REVERSED AND REMANDED

James S. Eakes, of Allen & Eakes, and David James Brousseau, of McIntosh, Sherard, Sullivan & Brousseau, both of Anderson, for Appellant.

James Thomas McLaren and Joshua McNeil Calder, of McLaren & Lee, of Columbia, for Respondent.

GEATHERS, J: Appellant Elizabeth Holland (Mother) appeals the family court's dismissal of a contempt action brought against Respondent Richard Holland (Father) for failing to pay child support. Mother argues the family court erred by finding that because the youngest child had reached the age of majority more than ten years before the commencement of the action, enforcement of the child support order was

barred under section 15-39-30 of the South Carolina Code (2005).[1] Additionally, Mother contends the family court erred by not holding a hearing to establish a record and determine whether equitable estoppel applied and whether Mother was entitled to interest and attorney's fees and costs. We reverse and remand.

FACTS

After thirteen years of marriage, Mother and Father parted ways on September 23, 1994. The parties reached a full and complete agreement and a Decree of Divorce was entered by the Family Court in Newberry County. Under the terms of the divorce decree, Father was required to pay Mother $725 per month (plus collection cost) in child support for the parties' three children—who were fourteen, eleven, and eight at the time of the divorce. The decree provided that the child support payments were to be automatically withheld from Father's work paycheck and paid to the Newberry County Clerk of Court's Office (the clerk's office). Additionally, Father agreed to maintain health insurance on the children through his employer at the time, Family Dollar of Charlotte, N.C., and subsequent employers. Mother retained sole care, custody, and control of the children. At the time of the divorce, Father resided in Charlotte, North Carolina, while Mother resided in Newberry County.

Father moved to Winchester, Virginia sometime in the latter portion of 1998 or early 1999. Subsequently, he was fired from Family Dollar in August of 1999. Family Dollar informed the clerk's office of Father's termination in September of 1999. In October of 2000, Father moved to his current residence in Stephens City, Virginia. Father has worked for multiple companies since the year 1999, but he claims to have resided at the same residence in Stephens City since the year 2000. Because Father's child support payments were automatically withheld pursuant to his employment with Family Dollar, the payments ceased when Father lost his job in 1999. He subsequently failed to set up the same payment arrangement with his new employers. He has not made a child support payment since 1999.

[1] Section 15-39-30 states: "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions."

On August 28, 2017, the clerk's office issued an Affidavit and Rule to Show Cause[2] against Father for his failure to pay child support. Father filed an answer, claiming his failure to set up automatic wage withholding with his new jobs was an oversight but not a willful or intentional failure to pay his support. Further, he argued in his answer that Mother "did not say anything to [him] regarding the missing" payments, "otherwise, [he] would have implemented the wage withholding once again." Father averred that Mother failed to state actionable claims and asserted three affirmative defenses: (1) statute of limitations; (2) res judicata, collateral estoppel, and estoppel by judgment; and, (3) laches.

A hearing was held on September 12, 2017. At the hearing, Father moved to dismiss the case, arguing the statute of limitations applied to bar the matter. Mother argued the statute of limitations did not apply but because she did not receive actual notice of the hearing, she believed she was entitled to a continuance to adequately prepare. The family court provided each party ten days to prepare a memorandum setting forth their position on the matter.

In his memorandum in support of dismissal, Father argued the statute of limitations barred the action because the parties' youngest child turned eighteen years old in May 2004—thirteen years before the current action commenced. In her memorandum, Mother claimed Father moved out of state and never informed her of his whereabouts or updated address. She further claimed that Father never visited his children, had practically no contact with them, and returned to South Carolina once—in 2005 to attend their youngest child's graduation from technical college. Mother attested that Father fled the state shortly thereafter when he discovered she was attempting to have the clerk's office serve process on him for the unpaid child support. She asserted that as of December 1, 2004, Father's total child support account balance, together with fees, was $56,332.50. Furthermore, she stated that she contacted the clerk's office numerous times over the years in an attempt to get the office to enforce the child support order, but she was always told that nothing could be done because Father lived out-of-state, beyond the jurisdiction of the family court. Moreover, she claimed to not have had funds to hire an attorney and struggled to raise her three children without the child support.

On December 4, 2017, the family court issued its ruling on the motion to dismiss. The court found that because Father's obligation to pay child support terminated when his youngest child turned eighteen—more than thirteen years before the commencement of the contempt action to enforce the child support

[2] Pursuant to Rule 24, SCRFC.

order—the action was barred pursuant to section 15-39-30. Mother filed a motion for reconsideration on December 19, 2017. She argued section 15-39-30 deals with executions upon final judgment and was not applicable to actions to enforce child support orders. Mother requested that the court schedule the case for a contested evidentiary hearing to determine liability for contempt, child support arrearages, equitable estoppel, and all related issues. On February 28, 2018, the family court issued an order denying Mother's motion for reconsideration. This appeal followed.

ISSUES ON APPEAL

1. Did the family court err by finding section 15-39-30 barred the enforcement of the child support order?

2. Is Mother entitled to a hearing on the merits of her child support claim?

STANDARD OF REVIEW

"The family court is a court of equity." *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). "Our standard of review, therefore, is [de novo]." *Id*. Accordingly, "[o]n appeal from the family court, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *S.C. Dep't of Soc. Servs. v. Polite*, 391 S.C. 275, 279, 705 S.E.2d 78, 80 (Ct. App. 2011). However, "this broad scope of review does not alter the fact that a family court is better able to make credibility determinations because it has the opportunity to observe the witnesses." *Wilburn v. Wilburn*, 403 S.C. 372, 380, 743 S.E.2d 734, 738 (2013). "Additionally, the de novo standard does not relieve the appellant of the burden of identifying error in the family court's findings." *Id.* "Accordingly, we will affirm the decision of the family court in an equity case unless its decision is controlled by some error of law or the appellant satisfies the burden of showing the preponderance of the evidence actually supports contrary factual findings by th[e appellate] court." *Holmes v. Holmes*, 399 S.C. 499, 504, 732 S.E.2d 213, 216 (Ct. App. 2012).

LAW/ANALYSIS

I. Applicability of Section 15-39-30

Mother argues the family court erred by applying section 15-39-30 to the action to enforce the child support order. We agree.

Although it has been codified in some variation in our Code of Laws since the 1800s, there is no case law in South Carolina applying section 15-39-30 to a family law matter. Further, Father did not cite, nor were we able to find, any cases barring an action to enforce a preexisting court order imposing a child support obligation due to statutory time constraints. *See, e.g.*, *Appeal of Brown*, 288 S.C. 530, 535, 343 S.E.2d 649, 652 (Ct. App. 1986) (finding a mother's twenty-year delay in seeking to enforce a divorce decree imposing child support obligation not unreasonable).

In creating Title 63, the General Assembly sought to add to the existing Children's Code found in Title 20, Chapter 7 of the South Carolina Code. *See* Act No. 361, § 1, 2008 S.C. Acts 3624 ("[T]he Children's Code has outgrown its original location as one chapter in Title 20."). Title 63 was meant to account for the growth and active expansion of South Carolina's family law jurisprudence. *See id.* ("Over the past twenty-six years[,] this has been an active and evolving area of law with hundreds of amendments and additions to the Children's Code."). However, "the transfer and reorganization of the code provisions in th[e] act [were] technical for the purposes stated . . . and [were] not intended to be substantive." *See id.* Nowhere in this robust statutory scheme is there an explicit time limit for the enforcement of child support arrearages. *See* §§ 63-17-2710 to -2780 (2010) (stating that an unpaid child support obligation of one thousand dollars or more becomes a lien in favor of the obligee as of the date the unpaid child support is due, and the expiration of a *perfected* lien does not terminate the underlying order or judgment of child support). Had the General Assembly meant to create a ten-year mechanism to allow parents to escape their obligation to pay child support, it would have specifically done so. *Cf. Smith v. Doe*, 366 S.C. 469, 473–74, 623 S.E.2d 370, 372 (2005) ("The South Carolina legislature has passed statutes addressing both a parent's support obligation and a procedure outlining paternity testing. Nowhere in this state's statutory law is there a time limit for when an action for paternity may be commenced. The statutory authority read in conjunction with this [c]ourt's common law makes it clear that the legislature did not intend to impose a statute of limitations on paternity actions because the [l]egislature did not specifically include one in the statutory scheme."); *Appeal of Brown*, 288 S.C. at 535, 343 S.E.2d at 652 (finding a mother's twenty-year delay in seeking to enforce divorce decree imposing child support obligation not unreasonable).

As mentioned by Mother, because section 15-39-30 is a statute of repose, it applies almost without exception. *See Gordon v. Lancaster*, 425 S.C. 386, 392–93, 823 S.E.2d 173, 176 (2018) (stating section 15-39-30 is a statute of repose); *Rogers v. Lee*, 414 S.C. 225, 230, 777 S.E.2d 402, 405 (Ct. App. 2015) ("A statute of repose 'creates a *substantive right* in those protected to be free from liability after a

legislatively-determined period of time,' and it 'constitutes a substantive definition of rights rather than a procedural limitation provided by a statute of limitation.'" (quoting *Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007))). Therefore, were we to conclude that section 15-39-30 applies to child support orders, a defaulting parent could presumably avoid detection for ten years[3] and his child support liability would extinguish as a matter of law.

Furthermore, South Carolina case law states that orders awarding support and maintenance do not have an expiration date. *See Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007) (finding laches is not a defense in actions to enforce claims for past due alimony in a case where the wife initiated an action to enforce the alimony obligation almost seven years after the husband's last payment); *id.* at 83–84, 650 S.E.2d at 470 ("Because *court orders awarding support and maintenance do not have an expiration date*, allowing a party to avoid compliance based solely on the oblique notion of delay only serves to undermine the authority of the court." (emphasis added)); *S.C. Dep't of Soc. Serv. on Behalf of State of Tex. v. Holden*, 319 S.C. 72, 76, 459 S.E.2d 846, 848 (1995) (finding mother's nine-year delay in bringing an action to recover child support arrearages not unreasonable); *Ables v. Gladden*, 378 S.C. 558, 566, 664 S.E.2d 442, 446 (2008) (finding laches is not a viable defense in cases involving the enforcement of child support orders). Accordingly, we find the family court erred by applying section 15-39-30 to this action to enforce a child support order. *Cf. Strickland*, 375 S.C. at 84, 650 S.E.2d at 470 ("[W]e believe that a court's focus in deciding an issue related to the enforcement of an alimony obligation *should be on the equity of enforcing the court order* . . . ." (emphasis added)).

II. Hearing on the Merits

Mother argues the family court erred by not holding a live testimony hearing to establish a record and determine whether equitable estoppel applied and whether Wife is entitled to interest on the principal amount owed as well as attorney's fees and costs.

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[3] Much of the enforcement of child support orders depends on serving the defaulting parent with notice. *See* Rule 14(e), SCRFC ("The rule to show cause *shall* be served . . . by *personal delivery* . . . ." (emphasis added)). Without an address for the defaulting parent, options for the service of process on the parent are limited. Consequently, the defaulting parent may be able to avoid enforcement for ten years with relative ease.

Rule 14(g), SCRFC, provides: "The contempt hearing shall be an evidentiary hearing with testimony pursuant to the Rules of Evidence, except as modified by the Family Court Rules." Nevertheless, "[c]onduct of trial, including the admission and rejection of testimony, is largely within [the] trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant." *Baber v. Greenville Cty.,* 327 S.C. 31, 41, 488 S.E.2d 314, 319 (1997). Because we find it was error to rule as a matter of law that section 15-39-30 barred the action to enforce child support, we find Mother suffered prejudice. Therefore, the matter should be remanded for an evidentiary hearing with testimony pursuant to the Rules of Evidence.

CONCLUSION

Based on the foregoing, the family court's order is

REVERSED AND REMANDED.

HUFF and WILLIAMS JJ., concur.