

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Family Court

Judge C. David Sawyer, Jr.

Opinion No. 3716 (S.C. Ct. App. Filed Dec. 15, 2003)

Jane Smith Respondent,

v.

John Doe Petitioner.

BRIEF OF PETITIONER

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the Court err when it ruled that a paternity suit on behalf of a thirty-four (34) year-old child was not barred by the statute of limitations?

2. Did the Court err when it awarded child support according to the South Carolina Child Support Guidelines even though the child received significant income and benefits on her own behalf?

STATEMENT OF THE CASE

This is an action to establish paternity and award child support for a thirty-four (34) year-old adult child.

This action was commenced with the filing of a summons, complaint and rule to show cause for temporary relief by the respondent on March 12, 1999. Respondent brought the action on behalf of her daughter, Starla Nicholson. (R. pp. 29-31)

Appellant filed an answer denying paternity and moved to dismiss the action as being untimely and barred by the statute of limitations. (R. p. 27; pp. 32-34)

A temporary hearing was held before the Honorable Jaime Lee Murdock, Jr. on May 19, 2000 at which time the Court denied the Appellants motion to dismiss and required the parties to undergo paternity testing. (R. pp. 10-12)

The paternity test established that Appellant was the father of Starla. (R. pp. 128-129). The matter then came before the Honorable C. David Sawyer, Jr. for final hearing on June 27, 2001 at which time the Court again denied Appellants motion to dismiss the action as untimely, declared Appellant to be the father of Starla and ordered Appellant to pay ninety-one and no/100 (\$91.00) per week child support retroactive to the filing of the action by Order dated August 27, 2001, filed August 28, 2001. (R. pp. 4-8)

Appellant filed a motion to reconsider the order on September 5, 2001.

Appellant's motion was denied by Order executed October 5, 2001, filed October 23, 2001 and served on Appellant November 7, 2001. (R. pp. 2-3)

Appellant filed a Notice of Appeal on November 29, 2001. (R. p. 36)

The Court of Appeals affirmed the lower Courts ruling by opinion dated December 15, 2003. Petition for Rehearing was filed on December 30, 2003 and denied on February 2, 2004.

Petition for Certiorari was filed on March 3, 2004 and the Order granting Certiorari was entered December 16, 2004.

STATEMENT OF THE FACTS

Starla Nicholson was born on July 22, 1965. (R. p. 70, ll. 3-6). She was thirty-four (34) years of age when this action was begun. Although she cannot read or perform math, she can take care of her basic hygiene needs (R. p. 73, l. 23 to p. 74, l. 15) and she has never been declared incompetent (R. p 86, ll. 17 to 19).

Starla receives supplemental Social Security benefits of approximately two hundred seventy-five (\$275.00) per month (R. p. 79, ll. 1-3) and she works at Babcock Center making approximately five hundred and no/100 (\$500.00) dollars per month. (R. p. 77, l. 12 to p. 78, l. 2; p.127)

Appellant Bannister, who is sixty-two (years) of age was married to someone else at the time Starla was born (R. p108, l. 19 to p. 109, l. 3).

ARGUMENTS

FIRST ARGUMENT

THE COURT OF APPEALS ERRED WHEN IT RULED THAT A PATERNITY ACTION BY A THIRTY FOUR YEAR OLD CHILD WAS NOT BARRED BY THE STATUTE OF LIMITATIONS.

Our statute governing paternity actions has no specific limitation period. However, importantly it does not exempt such actions from the application of the statute of limitations. §20-7-952, S.C. Code of Laws, 1976 as amended.

Although the question of whether the statute of limitations would bar an untimely filed paternity action in South Carolina is a novel question, it seems clear from a close reading of our statutes that our limitations statutes without question apply to a paternity action.

Since there was no common law duty for a father to support an illegitimate child, paternity obligations for such a child are purely a creation of statute. See South Carolina Department of Social Services v. Lowman 269 S.C. 41, 236 S.E. 2nd 194 (S.C. 1977).

Accordingly, it is axiomatic that the timeliness of a paternity action is governed by §15-3-530 (2) covering “an action upon a liability created by statute...”. § 15-3-530 (2), S.C Code of Laws, 1976, as amended.

Arguably, paternity actions would also be covered by § 15-3-530 (1), “An action upon a contract, obligation or liability, express or complied...”. § 15-3-530 (1), S.C. Code of Laws, 1976, as amended.

If neither of these provisions apply then it would certainly be covered by the catchall provisions of § 15-3-600, “An action for relief not provided for in this chapter must be commenced within ten years...”. § 15-3-600, S.C. Code of Laws, 1976, as amended.

At the time of Respondent's birth the age of majority was twenty-one years and the limitations period of § 15-3-530 was six years. In 1988 the age of majority was lowered to eighteen years of and the limitations period was lowered to three years § 15-3-530 S.C. Code of Laws, 1976, as amended.

Under the statute pre-1988 and post-1988 the period to bring an action was extended through infancy , but in no event longer than one year after the age of majority was attained. § 15-3-40, S.C. Code of Laws, 1976, as amended.

Even if we apply these statutes in the very most favorable light to the Respondent, she would have been barred from bringing this action on 1987 when she was twenty-two years of age. Even if we gave the Respondent the full six years statute, or even the full ten year statute to begin upon her majority this action would be untimely.

Time limitations on paternity actions are not uncommon nor are they considered unreasonable. In North Carolina a paternity action must be brought prior to the child's eighteenth birthday. § 49-14, N.C. G.S. In Tennessee a paternity action must be brought within three years beyond the child's age of majority § 36-2-306, T.C.A. Also, our United States Supreme Court has held that Pennsylvania's former six year statute of limitations was constitutional. Clark v Jeter, 486 U.S. 456 (1988).

SECOND ARGUMENT

THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE TRIAL COURT'S AWARD OF CHILD SUPPORT ACCORDING TO THE CHILD SUPPORT GUIDELINES EVEN THOUGH THE CHILD RECEIVED SIGNIFICANT INCOME AND BENEFITS ON HER OWN BEHALF.

Petitioner was ordered to pay Ninety-one Dollars per week for child support, the figure contained in the guidelines according to the parent's income (R. p. 8)

However, the respondent child receives approximately seven hundred and seventy-five dollars in wages and benefits, and the combined income of the Petitioner and Respondent's mother produced an obligation to the child of only six hundred and seventy-one dollars a month, over one hundred dollars a month less than the child already receives.

Significant income of a child is a factor justifying derivation from the guidelines GUIDELINE, II b (9); § 20-7-852 (10), S.C. Code of Laws, 1976, as amended.

The only extraordinary expense of the child is thirty-five dollars a week for childcare. (R. p. 77, II.1-11).

The Court abused its discretion when it awarded support that far exceeds that which is necessary or required by law.

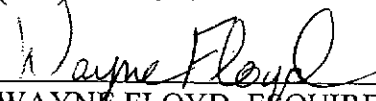
CONCLUSION

This paternity action is untimely and should be barred by the Statute of Limitations and the order establishing paternity and requiring Petitioner to pay support should be reversed.

If this action is not barred by time the amount of support should be reduced considering the income of the "child".

Respectfully Submitted,

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