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SUPREME COURT OF ARKANSAS

No. 09-333

STATE OF ARKANSAS, OFFICE OF CHILD SUPPORT ENFORCEMENT, APPELLANT, VS. KEVIN L. JONES, APPELLEE,	**Opinion Delivered** 12-10-09 APPEAL FROM THE CIRCUIT COURT OF HOT SPRING COUNTY, NO. DR-98-154-2, HON. PHILLIP H. SHIRRON , JUDGE, AFFIRMED.

ROBERT L. BROWN, Associate Justice

Appellant State of Arkansas Office of Child Support Enforcement ("OCSE") appeals from the Hot Spring County Circuit Court's December 10, 2008 order, granting appellee Kevin L. Jones's motion to vacate his child-support arrearage under Arkansas Code Annotated section 9-10-115(f)(1)(C). In its appeal, OCSE asserts that the circuit judge erred by retroactively applying section 9-10-115(f)(1), as amended by Act 60 of 2007, to vacate a judgment for a child-support arrearage, which was granted prior to the effective date of Act 60. We affirm the circuit judge's order to vacate.

On August 20, 1998, a default judgment of paternity was entered against Jones finding that he was the father of Mary Mitchell's minor child, E.M. He was ordered to pay child support of $47.00 a week, plus costs and fees. On January 18, 2006, a hearing was held on a contempt motion filed by OCSE, at which Jones requested and was granted the right to

take a paternity test pursuant to Arkansas Code Annotated section 9-10-115(e)(1)(A). Following the hearing, the circuit judge entered an order on February 14, 2006, finding that Jones owed $14,342.54 in child-support arrearage to OCSE.[1] In addition, the order continued Jones's child-support obligation at $47 a week plus an additional $10 per week to satisfy the judgment. Prior to entry of this order, a paternity test filed with the court excluded Jones as the biological father of E.M.

On May 3, 2006, Jones moved to set aside the default paternity judgment entered against him in 1998 and to terminate his child-support obligations based on the results of the paternity test. In a judgment entered on May 31, 2006, the circuit judge vacated the finding of paternity against Jones and terminated his obligation to pay future child support. The circuit judge also denied Jones's motion to set aside the default judgment and awarded judgment in favor of OCSE for $14,342.54 as the child-support arrearage. Jones appealed the denial of his motion to set aside the default paternity judgment to the Arkansas Court of Appeals, which affirmed in an unpublished opinion. *See Jones v. Office of Child Support Enforcement*, CA 06-965 (Ark. Ct. App. May 2, 2007) (unpublished).

On January 11, 2007, this court decided the case of *Office of Child Support Enforcement v. Parker*, 368 Ark. 393, 246 S.W.3d 851 (2007). At issue in *Parker* was whether Arkansas Code Annotated section 9-10-115(f)(1) (Supp. 2005), allowed a previously

[1]Mary Mitchell assigned her rights to the child-support arrearage to OCSE.

adjudicated father to be relieved of past-due child support upon a finding that he was not the child's biological father. Section 9-10-115(f)(1) provided on January 11, 2007, as follows:

> If the test administered under subdivision (e)(1)(A) of this section excludes the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity as the biological father of the child and the court so finds, the court shall set aside the previous finding or establishment of paternity and relieve him of any *future obligation* of support as of the date of the finding.

Ark. Code Ann. § 9-10-115(f)(1) (Supp. 2005) (emphasis added).

Based on this statute, this court concluded that the General Assembly intended to relieve a previously adjudicated father of his obligation to pay *future* child support upon a finding that he was not actually the child's biological father but did not intend to relieve him of his obligation to pay past-due child support. In a concurring opinion, the General Assembly, which was then in session, was urged "to clarify section 9-10-115(f)(1) once and for all on whether child-support arrearages must be paid by a non-biological father in all instances." *Parker*, 368 Ark. at 400, 246 S.W.3d 851, 856 (Brown, J. concurring)

On February 2, 2007, the General Assembly enacted Act 60 of 2007 entitled "An Act to Clarify the Law on Child Support Arrearages Owed By a Nonbiological Father." This act amended Arkansas Code Annotated section 9-10-115(f)(1) to provide as follows:

> If the test administered under subdivision (e)(1)(A) of this section excludes the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity as the biological father of the child and the court so finds, the court shall:
> (A) Set aside the previous finding or establishment of paternity;
> (B) Find that there is no future obligation of support;
> (C) *Order that any unpaid support owed under the previous order is vacated*; and

(D) Order that any support previously paid is not subject to refund.

See Ark. Code Ann. § 9-10-115(f)(1) (Repl. 2008) (emphasis added). The effective date of Act 60 was July 31, 2007.

On March 7, 2008, Jones moved to vacate the unpaid balance of his child-support arrearage pursuant to section 9-10-115(f)(1), as amended by Act 60. OCSE answered and moved for summary judgment, asserting, among other things, that the amended version of section 9-10-115(f)(1) could not be applied retroactively. At a subsequent hearing on the matter, OCSE argued that section 9-10-115(f)(1), as amended by Act 60, could not be applied retroactively to the May 31, 2006 arrearage judgment entered before Act 60's effective date, because the General Assembly had not expressed an intent that it be applied retroactively. Thus, OCSE contended that it was entitled under Arkansas Code Annotated section 9-14-235 to continue to collect payments from Jones until the arrearage had been completely satisfied.

Jones countered that he was not asking that the amended version of section 9-10-115(f)(1) be applied retroactively but rather that it be applied prospectively to the unpaid balance of the arrearage due OCSE. He conceded that he was not entitled to a refund of the payments made against the arrearage prior to the date of the hearing.[2] Following the hearing,

[2]At the hearing, OCSE told the circuit judge that Jones had paid the judgment down from $14,343 to $6,296.

the circuit judge entered an order on December 10, 2008, which vacated Jones's unpaid child-support arrearage.

OCSE asserts as its sole point on appeal that the circuit judge erred by vacating Jones's unpaid child-support arrearage. Specifically, OCSE contends that the amended version of section 9-10-115(f)(1) could not be retroactively applied to vacate a judgment entered prior to the effective date of Act 60 because (1) the General Assembly neither stated expressly nor implicitly that the amended statute was to have retroactive effect, and (2) to do so would interfere with its vested right to recover the child-support arrearage from Jones.

We first must determine whether the circuit judge applied the amended version of section 9-10-115(f)(1) prospectively or retroactively. In doing so, we must pinpoint the event around which prospective and retroactive application of amended section 9-10-115(f)(1) turns. *See Arkansas Dep't of Human Servs. v. Walters*, 315 Ark. 204, 866 S.W.2d 823 (1993). OCSE asserts that this event was the circuit judge's original order fixing the arrearage amount at $14,342.51, which was entered on May 31, 2006. Jones maintains that the triggering event is the date of the circuit judge's order on his motion to vacate unpaid support owed.

Under the amended version of section 9-10-115(f)(1), if a circuit judge finds that an adjudicated father is not the biological father of the minor child based on genetic testing, the circuit judge *must* vacate any unpaid child support owed under a previous order. *See* Ark. Code Ann. § 9-10-115(f)(1)(C) (Repl. 2008).

In the instant case, the circuit judge correctly applied the amended version of section 9-10-115(f)(1) to determine Jones's obligation to pay the child-support arrearage from the time of the hearing on his motion to vacate his support arrearage because that date was after the effective date of Act 60. The circuit judge ordered that Jones was not obligated to pay the unpaid balance of his support obligation from the date of the order forward pursuant to section 9-10-115(f)(1)(C). We hold that the circuit judge's application of Act 60 to a determination of an adjudicated father's obligation to pay the unpaid balance of the child-support arrearage from the date of the December 10, 2008 order, which was after the effective date of the Act, was a prospective application of the statute and comported with the plain language of the Act. *See Walters*, 315 Ark. at 209, 866 S.W.2d at 825.

Affirmed.

IMBER, J., not participating.