

SUPREME COURT OF ARKANSAS

No. 11-948

STATE OF ARKANSAS, OFFICE OF
CHILD SUPPORT ENFORCEMENT
APPELLANT

V.

FRANKLIN PERRY

APPELLEE

Opinion Delivered March 8, 2012

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT,
[NO. E-1994-96-6-4]
HON. LEON N. JAMISON, JUDGE,

REVERSED AND REMANDED.

JIM GUNTER, Associate Justice

The Office of Child Support Enforcement (OCSE) appeals the circuit court's order granting appellee's motion for paternity testing. OCSE argues that the circuit court erred in its interpretation of Ark. Code Ann. § 9-10-115(e)(1)(a) (Repl. 2009). We have assumed this case because it involves an issue of statutory interpretation; therefore, we have jurisdiction pursuant to Ark. Sup. Ct. R. 1-2(b)(6). We reverse the order of the circuit court.

On April 11, 1994, a paternity complaint was filed against appellee, alleging that he was the father of Zenobia Brown, who was born November 30, 1987. A default judgment was entered against appellee on January 26, 1995, and appellee was ordered to pay child support in the amount of \$40.00 per week, \$32.50 of which was for regular support, and \$7.50 of which was for retroactive support. It appears that appellee did not comply with this order, however, because on May 13, 2009, OCSE filed a motion for judgment to collect reimbursement for \$14,195.72 in child-support arrearages from appellee. Appellee filed a

response and denied the arrearage on May 28, 2009, and on June 11, 2009, he filed a motion for paternity testing. In response, OCSE argued that the child turned eighteen on November 30, 2005, which terminated appellee's child-support obligation. Therefore, appellee's motion for paternity testing was clearly outside the time period allowed under Ark. Code Ann. § 9-10-115(e)(1)(A), which allows a paternity test "at any time during the period of time that [a man adjudicated to be the father] is required to pay child support."

A hearing was held on February 10, 2010, and after hearing arguments from counsel, the court ordered that appellee was entitled to testing. An order was entered on April 19, 2010, ordering genetic testing and reserving OCSE's motion for judgment on arrears pending the outcome of the testing. An appeal was taken to the court of appeals, which dismissed the appeal for lack of a final order. *Office of Child Support Enforcement v. Perry*, 2010 Ark. App. 861.

On March 17, 2011, OCSE filed a motion to certify the final judgment, and the court entered an amended order for testing, which included a Rule 54(b) certificate, on June 9, 2011. OCSE then filed a timely notice of appeal on July 11, 2011. OCSE amended its notice of appeal on September 8, 2011, to include the record under the previous case number at the court of appeals.

We review issues of statutory interpretation de novo, as it is for this court to decide what a statute means. *Fewell v. Pickens*, 346 Ark. 246, 57 S.W.3d 144 (2001). In this respect, we are not bound by the trial court's decision; however, in the absence of a showing that the trial court erred, its interpretation will be accepted as correct on appeal. *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001). The first rule in considering the meaning and effect

of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Raley v. Wagner*, 346 Ark. 234, 57 S.W.3d 683 (2001). When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Stephens v. Ark. Sch. for the Blind*, 341 Ark. 939, 20 S.W.3d 397 (2000). When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *Id.* The basic rule of statutory construction is to give effect to the intent of the General Assembly. *Ford v. Keith*, 338 Ark. 487, 996 S.W.2d 20 (1999).

The statutory provision at issue in this case, Ark. Code Ann. § 9-10-115(e)(1)(A), provides:

When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.

On appeal, OCSE argues that the “period of time that he is required to pay child support” only refers to the period of time where a noncustodial parent is required to pay *current* child support and does not refer to arrearages. OCSE asserts that when the obligation for current child support expires, then the time for requesting a paternity test also expires.

OCSE cites Ark. Code Ann. § 9-14-237 for the time frame in which a noncustodial parent is obligated to pay child support:

(a)(1) Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:

(A)(i) When the child reaches eighteen (18) years of age unless the child is still attending high school.

(ii) If the child is still attending high school, upon the child's high school graduation or the end of the school year after the child reaches nineteen (19) years of age, whichever is earlier;

(B) When the child:

(i) Is emancipated by a court of competent jurisdiction;

(ii) Marries; or

(iii) Dies.

Ark. Code Ann. § 9-14-237(a)(1) (Repl. 2009). In this case, OCSE argues, there is no question that the child has reached eighteen years of age and that appellee's duty to pay has ceased. Only an arrearage remains, and OCSE contends that arrearages are not treated the same as a current child support obligation. OCSE argues that if the legislature had intended to allow paternity testing in this type of scenario, it would have added the words "or arrears" after "during the period of time that he is required to pay child support." OCSE asserts that the legislature did not include "or arrears" because its intent was to only include the current child support obligation.

To further illustrate the intent of the statute, OCSE cites to subsection (f) of § 9-10-115, which provides:

(1) 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.

Ark. Code Ann. § 9-10-115(f)(1) (Repl. 2009). OCSE argues that, when considering this subsection, it is clear the legislature intended for this statute to apply only to current child support cases. First, the statute references “the child” and not a person who has reached the age of majority. Second, the statute clearly contemplates all four types of relief will exist if the adjudicated father is excluded as the biological father, including an order that there is no future obligation of support. This would not be a necessary remedy, however, if the statute also allowed for testing in cases of an adjudicated father owing an arrearage, such as the case at bar.

In response, appellee argues that he is entitled to a paternity test under the plain and unambiguous language of the statute. Appellee contends that the statute does not state that entitlement to a paternity test should exist only when a father is paying current child support, nor does the statute dictate that the child must be a minor at the time testing is sought. Appellee also cites to subsection (f) in support of his argument, specifically the legislature’s amendment of that subsection in 2007. Prior to 2007, subsection (f) provided that

(1) 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) (Repl. 2002). In 2007, the legislature amended subsection (f) to include the provision that the court “shall order any unpaid support owed under the previous order is vacated.” Ark. Code Ann. § 9-10-115(f)(1)(C). Appellee claims that the legislature’s addition of this provision indicates its recognition of a father in appellee’s situation

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and allows the court to “undo the past” by vacating any “past or accrued child support.”

Appellee also notes that the legislature set no time limitation on this ability to vacate a past order.

We hold that, under the plain language of the statute, appellee is not entitled to a paternity test. As explained earlier, the statute at issue provides that an adjudicated father is entitled to one paternity test at any time “during the period of time that he is required to pay child support.” Arkansas Code Annotated section 9-14-237 makes clear that the period of time in which a non-custodial parent is obligated to pay child support automatically terminates upon the child’s eighteenth birthday. *See Ark. Code Ann. § 9-14-237(a)(1)(A)(i).* Thus, the period that appellee was “required to pay child support” ended when the child in this case turned eighteen, and likewise, the period of time in which appellee could seek a paternity test also ended when the child turned eighteen. Therefore, we reverse the circuit court’s order for testing and remand for proceedings consistent with this opinion.

Reversed and remanded.