RENDERED: May 14, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000848-MR

CYNTHIA DAVIS-JOHNSON,
ON BEHALF OF SON,
RYAN B. DAVIS — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 02-CI-006089

CHARLES W. PARMELEE III
AND
HONORABLE JOSEPH W. O'REILLY,
JUDGE, JEFFERSON FAMILY COURT — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM, AND VANMETER, JUDGES.

BUCKINGHAM, JUDGE: Cynthia Davis-Johnson appeals from an opinion and order of the Jefferson Circuit Court entered on April 2, 2003. The order granted Charles W. Parmelee III, the father of Cynthia's son Ryan, a writ of prohibition and set aside an order of the Jefferson Family Court that had granted Cynthia the right to proceed with a motion to establish child support. The question on appeal is whether the circuit court erred in deciding that Cynthia's motion to establish child

support pursuant to KRS[1] 407.5201 is barred under the "law of the case" doctrine. We conclude that Cynthia's motion is so barred and thus affirm.

In 1983, Cynthia and Charles, who were never married, were domiciled in Kentucky where they had a child together. Charles left Kentucky before the birth of the child and went to Texas. He subsequently moved to Florida. Cynthia and the child also left Kentucky and now reside in Michigan.

In 1995, Cynthia filed a civil complaint in Jefferson Family Court, seeking to adjudicate Ryan's paternity and to obtain support. A conflict developed over whether the family court had long-arm jurisdiction over Charles. The family court dismissed Cynthia's action on the grounds that, under KRS 454.220, an action for support against a nonresident such as Charles had to be filed within one year of his moving his domicile from the state of Kentucky.

Cynthia appealed unsuccessfully to the Jefferson Circuit Court, arguing that the family court had jurisdiction over Charles pursuant to KRS 454.210, the general long-arm statute. This court accepted discretionary review, and on October 1, 1999, entered an opinion concluding that the family court did have jurisdiction over Charles solely for the purpose of establishing paternity, but not for adjudicating support.

[1] Kentucky Revised Statutes.

See Davis-Johnson v. Parmelee, Ky. App., 18 S.W.3d 347 (1999). On June 7, 2000, the Kentucky Supreme Court denied Charles's request for discretionary review.

On December 11, 2001, the family court entered a judgment of paternity, finding Charles to be the father of Ryan. Then, on January 28, 2002, Cynthia moved the family court to set a hearing to determine support, asserting that the court had jurisdiction pursuant to KRS 407.5201.

Charles appeared and objected to Cynthia's motion, arguing that under the "law of the case" doctrine the family court was bound by this court's holding in our 1999 opinion regarding the unavailability of that court as a forum to adjudicate support. The family court disagreed, deciding that the 1999 opinion did not preclude the exercise of its jurisdiction to determine support pursuant to KRS 407.5201.

Charles thereafter filed a Petition for Writ of Prohibition as well as motions for injunctive relief in the Jefferson Circuit Court. The circuit court granted an injunction to stay the proceedings and, in an Opinion and Order dated April 2, 2003, it granted the writ of prohibition on the grounds that "the law of the case doctrine must control and preclude any support award by the Jefferson Family Court." This appeal by Cynthia followed.

The "law of the case" doctrine stands for the principle "that a final decision, whether right or wrong, is the law of the case and is conclusive of the questions therein resolved and is binding upon the parties, the trial court, and the Court of Appeals." Hogan v. Long, Ky., 922 S.W.2d 368, 370 (1995) citing Martin v. Frasure, Ky., 352 S.W.2d 817 (1961). Hence, "it is the duty of the lower court, on the remand of the cause, to comply with the mandate of the appellate court and to obey the directions therein." Preece v. Woolford, 200 Ky. 604, 255 S.W. 285, 286 (1923)(citations omitted). "No new defense may be entertained or heard in opposition to rendering a judgment in accordance with the mandate." City of Lexington v. Garner, Ky., 329 S.W.2d 54, 55 (1959)(citations omitted). Furthermore, "the Court of Appeals has no power on a second appeal to correct an error in the original judgment which either was, or might have been relied upon in the first appeal." Commonwealth v. Schaefer, Ky., 639 S.W.2d 776, 777 (1982).

The "law of the case" in the 1999 opinion was generated by this court's interpretation of three statutes (KRS 406.031, KRS 454.210, and KRS 454.220) to determine whether the family court could exercise jurisdiction over Charles for the purposes of adjudicating paternity and child support. KRS 406.031 provides for an 18-year statute of limitations for the determination of paternity. KRS 454.210(2)(a)(8), the general

long-arm statute, provides that a nonresident may be subject to a paternity action in Kentucky if the child was conceived in Kentucky under certain conditions. Finally, KRS 454.220 requires a party seeking support from a nonresident to bring the cause of action within one year of the date the respondent departed the state. Charles had argued that Cynthia's action for paternity and support was completely barred by KRS 454.220 because she had brought the action later than one year after he had left Kentucky.

The 1999 opinion held that the general long-arm statute provided for an adjudication of paternity under the 18-year limitation set in KRS 406.031, whereas the one-year limitation in 454.220 barred the support action. The 1999 opinion stated in pertinent part:

> Although we believe KRS 454.210(2)(a)(8) amply confers personal jurisdiction regarding a filiation action, it is our opinion, under the specific facts of this case, that paternity, absent support, is all the statute permits to be adjudicated. Should paternity be affirmatively established, then Cynthia is entitled to move the court for an award of support. However, this action would be governed by KRS 454.220 as it is undeniably a "family court proceeding involving a demand for support . . . [and] shall be filed within one (1) year of the date the respondent or defendant became a nonresident of, or moved his domicile from, this state." KRS 454.220. As Cynthia failed to meet the requisite statute of limitations, she is foreclosed from pursuing a claim for support

> in Kentucky's courts. In this vein, should Cynthia prevail in the filiation matter, we believe she can readily pursue a support action in another forum vis a vis the Uniform Interstate Family Support Act.
>
> In accordance with the foregoing, the decision of the Jefferson Circuit Court is reversed and remanded with instructions to enter an order permitting the exercise of personal jurisdiction over appellee for the sole purpose of conducting a paternity determination. Personal jurisdiction is authorized pursuant to KRS 454.210(2)(a)(8)(a) or (b).

Davis-Johnson, 18 S.W.3d at 352-53.

Cynthia is now claiming that, notwithstanding the 1999 opinion, the family court has jurisdiction to entertain her motion for child support under KRS 407.5201. That statute was enacted in 1998 under Congressional direction as part of the Uniform Interstate Family Support Act(UIFSA). It states in pertinent part:

> In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
>
> (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; . . .[.]"

KRS 407.5201.

The family court agreed with Cynthia that the law of the case established in the 1999 opinion did not bar her action for child support. It reasoned that the 1999 opinion did not apply or make any reference to KRS 407.5201 apart from the reference to the UIFSA and that, in fact, KRS 407.5201 did not exist when the initial decision was rendered and when the original appellate issues were framed. On these grounds, the family court held that it could exercise jurisdiction over Cynthia's support action because it presented a question of law and fact that had not been considered by this court in the 1999 opinion.

The Jefferson Circuit Court, in its opinion granting the writ to prohibit the family court from proceeding with the child support action, maintained that the 1999 opinion had clearly decided that paternity was the only issue that could be adjudicated and that the lower courts were bound by this ruling. The circuit court also noted that this court was well aware of UIFSA at the time it rendered its decision since KRS 407.5201 became effective in March 1998 and the 1999 opinion was rendered on August 27, 1999.

We agree with the circuit court. Although the 1999 opinion does not explicitly mention KRS 407.5201, the directive from this court is unequivocal: the family court may only adjudicate paternity, whereas a support action is barred. The

issue of support raised in this action is the same issue that was resolved in the 1999 opinion. Furthermore, there is no indication that the panel of this court that rendered the 1999 opinion was unaware of the implications of the UIFSA. Therefore, issue of support is precluded from further consideration under the law of the case doctrine.

The last issued raised by Cynthia is that Charles was not entitled to a writ of prohibition based upon a dispute over jurisdiction. She notes that the primary requirement for granting a writ of prohibition is that the petitioner has no adequate remedy upon appeal. See Ignatow v. Ryan, Ky., 40 S.W.3d 861, 865 (2001). The circuit court rejected Cynthia's argument, citing Chamblee v. Rose, Ky., 249 S.W.2d 775 (1952).

In the Chamblee case the court distinguished between cases where the lower court lacks jurisdiction and cases where the lower court has jurisdiction but is proceeding erroneously. Id. at 776-77. The court therein noted that "the remedy by way of appeal is not the controlling consideration where the inferior court is without jurisdiction." Id. at 777. Further, the court in that case concluded that if the lower court lacked jurisdiction, then "it would be a most inept ruling to deny the writ, require a trial on the merits, and then on appeal be forced to reverse the case on the very question which is now before us." Id. The court then stated that if the lower court

lacked jurisdiction of the subject matter of the action, then the petitioner would be entitled to the writ of prohibition. Id.

In the prior Davis-Johnson case, a panel of this court reversed the circuit court and remanded the case with instructions to permit "the exercise of personal jurisdiction over appellee for the sole purpose of conducting a paternity determination." As we have previously determined herein, the law of the case doctrine precludes jurisdiction over Charles for the purpose of setting child support. Therefore, were the family court to proceed to exercise jurisdiction over Charles and render a support order, it would be acting without jurisdiction. In short, pursuant to the principles in the Chamblee case, the circuit court did not err in granting a writ of prohibition in Charles's favor.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Rocco J. Celebrezze Louisville, Kentucky	Mike Kelly Louisville, Kentucky