] IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2001 Term

FILED
November 8, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 29101

RELEASED
November 9, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
BUREAU OF CHILD SUPPORT ENFORCEMENT,
ON BEHALF OF DEBRA L. SINCLAIR,
Plaintiff Below, Appellee

v.

FRANKIE L. SINCLAIR, SR.,
Defendant Below, Appellant

Appeal from the Circuit Court of Preston County
Honorable Lawrance S. Miller, Jr., Judge
Civil Action No. 92-C-100, as consolidated with Civil Action No. 98-D-68

REVERSED AND REMANDED, WITH DIRECTIONS

Submitted: September 5, 2001
Filed: November 8, 2001

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Pro Se

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Attorney for the Petitioner

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Morgantown, West Virginia
Attorney for the Bureau of Child
Support Enforcement

JUSTICE ALBRIGHT delivered the Opinion of the Court.

JUSTICE DAVIS and JUSTICE MAYNARD dissent and reserve the right to file dissenting opinions.

SYLLABUS BY THE COURT

1. "The Department of Human Services receives only those rights to recoupment of benefits paid under the Aid to Families with Dependent Children Program (AFDC) that an AFDC recipient could assign: the recipient's right to support and maintenance. That right to support and maintenance is dependent upon the ability of the responsible relative to pay, and the determination of ability to pay must be made through an administrative hearing or court proceeding." Syl. Pt. 2, *State ex rel. Dept. of Human Services by Adkins v. Huffman*, 175 W.Va. 401, 332 S.E.2d 866 (1985).

2. "The formal hearing that this court has required in *State ex rel. Department of Human Services v. Huffman*, 175 W. Va. 401, 332 S.E.2d 866 (1985), is placed by statute in the West Virginia circuit courts and the family law masters, at such time as a Child Advocate seeks a judgment for back support." Syl. Pt. 1, *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990).

3. Where a recipient of Aid to Families with Dependent Children benefits has, in return for such benefits, assigned to the Department of Health and Human Resources support rights owed the recipient by a support obligor, and the Department of Health and Human Resources seeks reimbursement for such benefits from the support obligor, such obligor is entitled, upon request, to a hearing as envisioned by this Court in *State ex rel. Dept.*

of Human Services by Adkins v. Huffman, 175 W.Va. 401, 332 S.E.2d 866 (1985), to determine the obligor's ability to pay reimbursement under federally mandated guidelines, unless the amount of such reimbursement was fixed by a prior court order or by agreement between the Department of Health and Human Resources and the obligor. A default judgment for the entire amount of the Aid to Families with Dependent Children benefits, in which the ability of the obligor to pay the total amount of benefits was not determined, does not operate to fix the amount of reimbursement due to the Department of Health and Human Resources from such obligor.

Albright, Justice:

This is an appeal by Frankie L. Sinclair, Sr., (hereinafter "Appellant" or "obligor") from a July 21, 2000, order of the Circuit Court of Preston County granting a judgment against the Appellant in the amount of $7,624.51 to reimburse the State of West Virginia for Aid to Families with Dependent Children (hereinafter "AFDC")[1] benefits paid to the Appellant's wife, Debra Sinclair, on behalf of the couple's children. The Appellant contends that he was totally disabled and without income during the period in which his wife, from whom he was separated, received AFDC benefits on behalf of their children. The Appellant further contends that the lower court erred in entering an order enforcing a judgment which was obtained in violation of federal regulations and in the absence of a hearing, as contemplated by *State ex rel. Department of Human Services by Adkins v. Huffman*, 175 W. Va. 401, 332 S.E.2d 866 (1985), and required by West Virginia law. Having thoroughly evaluated this matter, we reverse the order of the Circuit Court of Preston County and remand for further proceedings, including a *Huffman* hearing.

I. Facts

[1]AFDC was an entitlement program that provided public assistance to needy families with dependent children. AFDC was financed in part by the federal government and was administered by the states. *See* Social Security Act, 42 U.S.C. §§ 601-617 (1994). State participation in the program is voluntary; however, once a state elects to participate, it is obligated to comply with federal AFDC legislation. *King v. Smith*, 392 U.S. 309 (1968).

The Appellant and Debra Sinclair were married in 1982. The marriage produced two children, Frankie L. Sinclair, Jr., born August 31, 1984, and Ryan Todd Sinclair, born January 8, 1988. The parties were separated in 1989, and Mrs. Sinclair applied for AFDC benefits. Pursuant to West Virginia Code § 9-3-4 (1979) (Repl. Vol. 1998), Mrs. Sinclair assigned her right to bring suit against the Appellant for child support payments to the West Virginia Department of Health and Human Resources (hereinafter "DHHR").

On March 26, 1992, a complaint seeking to establish an amount of child support owed by the Appellant was filed by Mrs. Sinclair, through the DHHR.[2] The complaint requested that the Appellant be required to reimburse the DHHR, as Mrs. Sinclair's assignee, for support paid on behalf of the children. The complaint was served on the Appellant on April 8, 1992, and the Appellant failed to file an answer or otherwise appear. Mrs. Sinclair thereafter filed a Motion for Default Judgment, including a sworn statement by a representative of the DHHR indicating that the DHHR had expended $9,346.00 in AFDC benefits on behalf of the children.

On January 22, 1993, a family law master issued findings of fact and conclusions of law, finding that the Appellant's employment status was unknown and that the State was entitled to reimbursement of $9,346.00 for benefits paid on behalf of the children. The order

[2]The Appellant is the obligor; Mrs. Sinclair is the obligee; and the DHHR is the assignee of the obligee.

did not contain discussion of the applicable federal or state AFDC reimbursement directives. The family law master also set child support at $249.00 per month. By order dated February 5, 1993, the lower court adopted the recommended decision of the family law master, granting the DHHR a judgment against the Appellant in the amount of $9,346.00 for reimbursement of AFDC benefits.

On April 16, 1998, Mrs. Sinclair filed a pro se complaint for divorce. The Appellant and Mrs. Sinclair appeared at a family law master hearing on November 19, 1998, and presented a Joint Parenting Plan. In December 9, 1998, findings of fact and conclusions of law, the family law master recommended that no child support be ordered in light of implementation of a Joint Parenting Plan. The family law master noted the prior judgment for $9,346.00 reimbursement of AFDC benefits and consolidated that 1993 civil action with the 1998 divorce case.

On January 24, 2000, the DHHR filed a motion for decretal judgment requesting enforcement of the 1993 AFDC reimbursement order. The Appellant filed a written response, contending that the 1993 order should not be enforced because a proceeding regarding his ability, as required by *Huffman*, had not been conducted. Moreover, the Appellant asserted that he was completely disabled and without income during the period in which the AFDC benefits were paid. On May 25, 2000, the family law master issued findings of fact and conclusions

of law requiring the Appellant to pay $7,624.51[3] in reimbursement for AFDC benefits, based exclusively upon the 1993 judgment. The lower court adopted those findings and conclusions by order dated July 21, 2000, from which the Appellant now appeals.

II. Established Precedent

Pursuant to West Virginia Code § 9-3-4, a recipient of financial support through AFDC assigns his or her right to support obligations to the DHHR. Through such assignment, the DHHR "stands in the place of, and succeeds to all the legal rights and remedies of, a parent or guardian to maintain an action to enforce these rights." *Huffman,* 175 W.Va. at 404, 332 S.E.2d at 869. In *Huffman*, there had been no original court order establishing a monthly child support payment, and the DHHR had not conducted a hearing to determine the appropriate amount of reimbursement. This Court explained as follows in *Huffman*:

> Obviously the Department of Human Services inherits all the rights of the original obligor, but the Department of Human Services does not obtain *any more* than those rights. Although in some cases those rights may be commensurate with the full amount of AFDC benefits paid out, this is not always the case. The actual amount of AFDC benefits paid to the assignor provides a ceiling and not a floor on state recoupment.

Id. at 404, 332 S.E.2d at 870. In syllabus point two of *Huffman*, this Court explained:

> The Department of Human Services receives only those rights to recoupment of benefits paid under the Aid to Families with Dependent Children Program (AFDC) that an AFDC

[3]The original $9,346.00 was reduced to $7,624.51 after seizure of the Appellant's federal income tax refund.

> recipient could assign: the recipient's right to support and maintenance. That right to support and maintenance is dependent upon the ability of the responsible relative to pay, and the determination of ability to pay must be made through an administrative hearing or court proceeding.

Id. at 402, 332 S.E.2d at 868.

In *Huffman*, this Court recognized that it was bound by federal regulations which establish mandatory procedures for the determination of the amount of reimbursement to which the DHHR would be entitled, and the Court explained that the regulations provide "an extensive list of factors to consider before collecting money from the parent." 175 W. Va. at 405, 332 S.E.2d at 870-71. The applicable federal regulation, 45 C.F.R. 302.50 (1984), provides that if there is no preexisting court order regarding child support, the amount of reimbursement to which the State would be entitled is to be determined through utilization of a formula which meets the criteria set forth in the federal regulations. At the time *Huffman* was decided, those determinative factors were set forth in 45 C.F.R. 302.53. That section has been altered and is located at 45 C.F.R. 302.56.[4]

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[4]The alteration in the regulation does not diminish the *Huffman* decision and does not alter the requirement that earnings and income of the absent parent be taken into consideration. The federal regulation, 45 C.F.R. 302.53, was removed by Congress and replaced with 45 C.F.R. 302.56, providing in pertinent part as follows:

> (a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the state.

(continued...)

In *Huffman*, this Court explained that West Virginia Code § 9-3-4 "anticipates an analogous situation in its provision that limits a parent's debt by the amount established in any court order or final decree of divorce if the amount in such order or decree is less than the amount of assistance paid." 175 W. Va. at 405, 332 S.E.2d at 871. This Court noted that had Mr. and Mrs. Huffman been divorced, Mr. Huffman's liability would have been determined by application of a "statutory laundry list of factors before fixing the amount of support and maintenance." *Id*. at 406, 332 S.E.2d at 871. The Court explicitly stated that "[a]n individual should not be required to pay more than he is able." *Id*. at 406, 332 S.E.2d 871. This Court concluded that prior to the DHHR collection of reimbursement, Mr. Huffman was "entitled to a hearing to determine his ability to repay the AFDC benefits." *Id*. at 406, 332 S.E.2d at 871.

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[4](...continued)

> (b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.
>
> (c) The guidelines established under paragraph (a) of this section must at a minimum
>
> > (1) Take into consideration all earnings and income of the absent parent:
> >
> > (2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
> >
> > (3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.

This Court reiterated the essential nature of a *Huffman* hearing in *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990), and addressed the issue of the appropriate forum for conducting such a hearing. The Court explained as follows in *Fenton*:

> [T]he opportunity for the Child Advocate to take the debtor's ability to pay into account occurs at the informal stage of the proceedings, when the defaulting debtor is invited into the Child Advocate office to explain his circumstances and work out an agreement. If the defaulting parent presents to the Child Advocate credible evidence of inability to pay any of the amount owed, that's where the matter should come to rest. However, if the Child Advocate finds the debtor uncooperative or has reason to believe that the information supplied by the debtor or the debtor's employer is not accurate, then the Child Advocate is entitled to file an action to collect the entire amount of the AFDC payments made. In this event, determination of whether the defaulting parent is able to pay is in the hands of the circuit court or the family law master, after notice and a full hearing.

182 W. Va. at 734, 391 S.E.2d at 747. The *Fenton* Court also cautioned that "[l]ike any other lawyer with settlement authority, the Child Advocate need not go through the motions of attempting to squeeze blood from a stone when the ultimate result is not in doubt." *Id*. at 735, 391 S.E.2d at 748. The Court concluded as follows in syllabus point one of *Fenton*: "The formal hearing that this court has required in *State ex rel. Department of Human Services v. Huffman*, 175 W. Va. 401, 332 S.E.2d 866 (1985), is placed by statute in the West Virginia circuit courts and the family law masters, at such time as a Child Advocate seeks a judgment for back support." 182 W. Va. at 732, 391 S.E.2d at 745.

In *Jackson v. Rapps*, 947 F.2d 332 (8th Cir. 1991), *cert. denied* 503 U.S. 960 (1992), several noncustodial parents brought a class action claiming that 45 C.F.R. § 302.53, now 45 C.F.R. § 302.56, required the State of Missouri, in seeking reimbursement of AFDC benefits, to consider the factors set forth in the federal regulation. 947 F.2d at 337. The parents also alleged that the State's failure to consider those factors constituted a violation of both the Supremacy Clause and the parents' due process rights. *Id*. at 335. The parents had been administratively ordered to pay the entire amount of AFDC support. The Eighth Circuit concluded that a noncustodial parent could not be administratively required to pay the entire amount due unless the calculations were properly founded upon factors set forth in the federal regulations, reasoning that "the supremacy clause prevents the implementation of a reimbursement policy other than one in accordance with existing federal regulations. Our decision makes it unnecessary to reach the due process issue." 947 F.2d at 337.

III. Discussion

In the case *sub judice*, the 1993 default judgment was utilized as the basis for the DHHR's motion for decretal judgment, filed on January 24, 2000. It is undisputed that the 1993 judgment was not properly founded upon facts gleaned from a *Huffman* hearing; nor was a *Huffman* hearing conducted when the more recent judgment was rendered on July 21, 2000. While the State could conceivably contend[5] that it lacked sufficient information concerning

[5]This Court is limited in its ability to assess the DHHR's position since the DHHR (continued...)

the Appellant's ability to pay in 1993 due to the Appellant's failure to respond, no such argument could be advanced with regard to the proceedings in 2000, in which the Appellant was a participant and attempted to make his financial circumstances understood.

This Court concludes that where a recipient of AFDC benefits has, in return for such benefits, assigned to the DHHR support rights owed the recipient by a support obligor, and the DHHR seeks reimbursement for such benefits from the support obligor, such obligor is entitled, upon request, to a *Huffman* hearing to determine the obligor's ability to pay reimbursement under federally mandated guidelines, unless the amount of such reimbursement was fixed by a prior court order or by agreement between the DHHR and the obligor. A default judgment[6] for the entire amount of the AFDC benefits, in which the ability of the obligor to pay the total amount of benefits was not determined, does not operate to fix the amount of reimbursement due the DHHR from such obligor. As this Court in *Huffman* made abundantly clear, the determination of the obligor's ability to pay, i.e., income and income-earning potential, must be made at some point in the proceedings to determine the appropriate level

[5](...continued)
failed to file a brief in this appeal and no oral argument was presented. Our conclusion regarding the necessity for a remand for a *Huffman* hearing, however, would not have been altered by the filing of a DHHR brief since it is undisputed that a *Huffman* hearing was not held.

[6]The Appellant did not challenge, in this appeal or elsewhere, the recovery of child support payments from other sources utilizing the 1993 default judgment. Upon conducting a *Huffman* type hearing, taking into account all sources of income, the Appellant is entitled to credit for the amounts recovered. Given his failure to sooner raise the issue of his inability to pay, the Appellant is not entitled to any refund of those amounts.

of reimbursement of AFDC benefits. To permit enforcement of a reimbursement order for the full amount of AFDC benefits, without a determination as envisioned by the federal regulations and specifically by this Court in *Huffman*, would be manifestly unfair and tantamount to granting the DHHR, as assignee of the custodial parent, more money in reimbursement than that to which the custodial parent would have been entitled. Such result would be patently absurd and would ignore the legal principles underlying the recognition that "[e]quity historically has placed substance above form and insists that the rules of law not become instruments of oppression." *Gerder Services, Inc. v. Johnson*, 439 N.Y.S.2d 794, 796 (N.Y. 1981).

This Court's conclusion is particularly compelled where, as in the present case, there is an allegation that the DHHR had knowledge of the parent's lack of income-earning potential during the time in which the AFDC benefits were paid. Again, based upon the absence of a DHHR brief, this Court cannot confirm that the DHHR presently concedes this point.

We remand this matter to the lower court with directions to conduct a *Huffman* hearing for the purpose of determining the Appellant's ability to pay. As the *Huffman* Court explained, "[b]efore the [DHHR] can collect any amount from [the obligor] it must first determine the limits of [the obligor's] support obligation. [The obligor] is entitled to a hearing to determine his ability to repay the AFDC benefits." 175 W. Va. at 406, 332 S.E.2d at 871.

Reversed and Remanded With Directions.