

FILED

November 14, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

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Davis, J., dissenting:

Mr. Frankie L. Sinclair, Sr., appealed an order of the Circuit Court of Preston County which granted a decretal judgment for child support arrearages owed by him. The judgment was entered in favor of the Bureau for Child Support Enforcement (hereinafter referred to as “BCSE”) on behalf of Debra L. Sinclair. Here, Mr. Sinclair attacks the validity of the underlying default judgment that gave rise to the arrearages. Mr. Sinclair argues that he did not have a hearing pursuant to *State ex rel. Department of Human Services by Adkins v. Huffman*, 175 W. Va. 401, 332 S.E.2d 866 (1985). The majority opinion agrees that Mr. Sinclair was entitled to a *Huffman* hearing prior to the underlying default judgment. Unfortunately, the position taken by the majority opinion has made it virtually impossible for BCSE to ever recover monies spent under the Aid to Families with Dependent Children (hereinafter referred to as “AFDC”) program. For reasons more fully set forth below, I dissent from the majority’s decision in this case.

I.

FACTUAL AND PROCEDURAL HISTORY

Although the majority opinion has established some of the relevant facts in this case, I feel it necessary to restate those facts, in addition to other relevant facts that were selectively excluded from the majority opinion.

Mr. Sinclair and Mrs. Sinclair were married on October 9, 1982. On July 25, 1989, Mrs. Sinclair separated from Mr. Sinclair. At that time, the couple had two children. After the separation, Mrs. Sinclair applied for and was given AFDC benefits under W. Va. Code § 9-4-1, *et seq.*

In 1992, a complaint was filed by Mrs. Sinclair and BCSE against Mr. Sinclair, in order to establish child support and to recover AFDC benefits paid on behalf of the children by BCSE. *Mr. Sinclair was served a copy of the complaint on April 8, 1992, by the Sheriff of Preston County, but he failed to file an answer to the complaint.* Mrs. Sinclair filed a motion for default judgment seeking \$9,346.00 in AFDC benefits that were expended by BCSE on behalf of the parties' children. The family law master issued a recommended decision on January 22, 1993, that required Mr. Sinclair to reimburse BCSE \$9,346.00 and to pay child support in the amount of \$249.00 per month. *Notice of the recommended decision was given to Mr. Sinclair on the date it was issued. However, Mr. Sinclair did not file a petition for review of the recommended decision.* On February 5, 1993, the circuit court entered an order adopting the family law master's recommended decision.¹ *Mr. Sinclair did not appeal the final order.*

Thereafter, Mrs. Sinclair filed a complaint for divorce on April 16, 1998, based upon irreconcilable differences. *Mr. Sinclair filed an answer to the complaint admitting irreconcilable differences.* On December 9, 1998, the circuit court, adopting the family law master's

¹On May 17, 1993, wage withholding was initiated against Mr. Sinclair for payment of current child support and reimbursement of prior AFDC benefits.

recommended decision, entered an order granting the couple a divorce.

BCSE filed a motion on January 24, 2000, seeking a decretal judgment for arrearages based upon the default judgment entered against Mr. Sinclair on February 5, 1993. Mr. Sinclair filed a response to the motion, which challenged the validity of the default judgment. The family law master then issued a recommended decision finding that Mr. Sinclair was in arrears in the amount of \$7,624.51. Mr. Sinclair filed a petition for review of the recommended decision, and, on July 21, 2000, the circuit court issued an opinion letter adopting the recommendation of the family law master. It is from the opinion letter that Mr. Sinclair now appeals.

II.

DISCUSSION

A. Mr. Sinclair waived his right to a Huffman hearing. Mr. Sinclair sought to challenge the validity of the default judgment order entered on February 5, 1993, obligating him to pay child support and reimburse BCSE for AFDC benefits.² The circuit court, however, determined that Mr. Sinclair provided no basis for mounting such a challenge:

The defendant's Petition for Review does not allege any mistake,

²This Court recognized in the single Syllabus of *State ex rel. State Department of Welfare v. Smith*, 166 W. Va. 495, 275 S.E.2d 918 (1981), that “[t]he [Bureau of Child Support Enforcement] has standing to enforce support obligations assigned to the State pursuant to W. Va. Code § 9-3-4 [1979].”

inadvertence, surprise, excusable neglect or unavoidable cause, fraud, misrepresentation or other misconduct. Rather the defendant alleges that in 1993 “the defendant did not care what happened to him.” The principles set forth in [*State ex rel. Department of Human Services by Adkins v. Huffman*, 175 W. Va. 401, 332 S.E.2d 866 (1985),] and [*Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990),] were applicable in 1993 and the defendant was entitled to an opportunity to a full hearing on his ability to repay the AFDC benefits. He was given that opportunity but chose not to appear or otherwise contest the issue of AFDC repayment. Further, he was given notice of the hearing and Recommended Order ordering him to repay \$9,346.00 in AFDC benefits but chose not to appear or contest wage withholding. When withholding was initiated against his employer Devione Industries he again chose not to appear. Nearly seven years have gone by.

In spite of this ruling, the majority opinion completely ignored the circuit court’s finding that Mr. Sinclair was given an opportunity to have a *Huffman* hearing in 1993, and that he failed to answer and appear for such hearing. In addition to failing to file a petition for review prior to the entry of the February 5, 1993, order, Mr. Sinclair also did not appeal that order to this Court. Thus, the arguments raised by Mr. Sinclair in the instant appeal contending that the circuit court failed to comply with *Huffman* should have been raised in an appeal from the February 5, 1993 order.³ Having failed to do so earlier, Mr. Sinclair is now procedurally barred from asserting these grounds in his present appeal.

Under the majority opinion in this case, though, Mr. Sinclair has been allowed to arrogantly refuse to answer a complaint that would have given him a *Huffman* hearing. The majority opinion

³This statement should not be construed to suggest that such an appeal necessarily would have been favorable to Mr. Sinclair.

additionally has permitted Mr. Sinclair to blatantly refuse to file a timely appeal regarding the purported denial of a *Huffman* hearing. Lastly, the majority opinion has enabled Mr. Sinclair to pompously decide when he would prefer to raise the issue of a *Huffman* hearing, rather than requiring him to comply with the established law on this point. Then, in this case, Mr. Sinclair chose and the majority opinion approved, a procedural delay of nearly seven years.

B. Mr. Sinclair did not assert grounds for relief pursuant to Rule 60(b) of the West Virginia Rules of Civil Procedure. The circuit court determined that Mr. Sinclair did not assert any conditions under Rule 60(b) of the West Virginia Rules of Civil Procedure⁴ which might have permitted him to challenge the court's final order of February 5, 1993.⁵ Ruling on Mr. Sinclair's request

⁴Rule 60(b), provides in relevant part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

⁵In fact, Mr. Sinclair could not have properly sought relief under Rule 60(b)(1), (2) or (3) because those provisions must be invoked within one year of a final judgment.

Moreover, the record in this case did not indicate whether Mr. Sinclair sought to invoke W. Va.
(continued...)

for relief, the circuit court found that the only reason given by him for not answering the complaint, which resulted in the default judgment, was that he “*did not care what happened to him.*” This excuse does not satisfy even the liberal provision of Rule 60(b)(6), which allows a judgment to be set aside for “any other reason justifying relief from the operation of the judgment.” We have previously recognized that “in general, the law ministers to the vigilant, not to those who sleep on their rights.” *State v. LaRock*, 196 W. Va. 294, 316, 470 S.E.2d 613, 635 (1996). Mr. Sinclair chose to sleep on his rights for nearly seven years. To grant the type of relief Mr. Sinclair seeks places our child support enforcement laws in utter chaos. The majority decision in this case has set a precedent whereby a child support obligor may simply refuse to take part in AFDC-type reimbursement proceedings. Then, years later, the child support obligor may, pursuant to the majority’s opinion herein, seek to set aside a default judgment by claiming a right to a *Huffman* hearing. By acquiescing to Mr. Sinclair’s demands, the majority opinion has disregarded every legal principle of fairness and due process. “In my opinion this liberality in granting relief from default judgments renders it an act of futility to obtain a default judgment[.]” *McDaniel v. Romano*, 155 W. Va. 875, 882, 190 S.E.2d 8, 13 (1972) (Carrigan, J., dissenting). I simply cannot accept such a legal concept.

For the foregoing reasons, I respectfully dissent. I am authorized to state that Justice

⁵(...continued)

R. Civ. P. 55(c), which provides that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set aside in accordance with Rule 60(b).” However, because Rule 55(c) references Rule 60(b), Mr. Sinclair would still have been foreclosed in his attack on the February 5, 1993, order.

Maynard joins in this dissenting opinion.