No. 30411 - Rebecca Lynn C. v. Michael Joseph B.

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

Davis, J., dissenting:

This Court has often said that hard cases make bad law. Truer words could not be spoken of the case *sub judice*. In its opinion, the majority has determined that a child support obligation, once satisfied, can nevertheless be revived at an indeterminate future date. Although the Court claimed such reinstatement to be necessitated by the child's best interests in this case, I do not agree with this conclusion because the record indicates that the child's needs were fully satisfied by her father's prior fulfillment of his support obligation.

A. Parental Obligation to Support Child

It goes without saying that a parent has a fundamental responsibility to support his or her child. "The duty of a parent to support a child is a basic duty owed by the parent to the child[.]" Syl. pt. 3, in part, *Wyatt v. Wyatt*, 185 W. Va. 472, 408 S.E.2d 51 (1991). *See also In re Jamie Nicole H.*, 205 W. Va. 176, 183, 517 S.E.2d 41, 48 (1999) ("Provision of shelter and financial support for children is one of the most basic components of parental responsibility."); *Supcoe v. Shearer*, 204 W. Va. 326, 330, 512 S.E.2d 583, 587 (1998) (per

curiam) ("The obligation of child support is grounded in the moral and legal duty of support of one's children from the time of birth."). As such, the obligation of support is imposed solely for the benefit of the child who is the subject thereof rather than for the parent retaining custody. "[C]hild support payments are exclusively for the benefit and economic best interest of the child." *Carter v. Carter*, 198 W. Va. 171, 176, 479 S.E.2d 681, 686 (1996) (citations omitted). *Accord Supcoe*, 204 W. Va. at 330, 512 S.E.2d at 587 ("[C]hild support is for the benefit of the child[.]"); *Lang v. Iams*, 201 W. Va. 24, 28, 491 S.E.2d 24, 28 (1997) (per curiam) ("An initial child support order is entered for the benefit of the child or children involved."). *See also Kimble v. Kimble*, 176 W. Va. 45, 50, 341 S.E.2d 420, 425 (1986) (observing that, with respect to child support payments, "custodial parent's role [i]s trustee for the child beneficiary" (citation omitted)). This is so because "[t]he duty owed is from the parent to the child, rather than between the two parents." *Lang*, 201 W. Va. at 28, 491 S.E.2d at 28.

B. Fulfillment of Support Obligation

In the case *sub judice*, the majority found that Mr. B. had not fully satisfied his parental duty to support his child and, *sua sponte*, reinstated his support obligation insofar as the amount he previously paid therefor, in the majority's estimation, was not sufficient. While I do not condone the manner in which Mr. B. fulfilled his obligation to support his

child,[1] the record in this case is clear that he fully satisfied his duty of support. In 1990, the Circuit Court of Ohio County entered a decretal judgment finding Mr. B. to be responsible for the parties' child's birth expenses; past due child support from her date of birth until the entry of the court's order; and future child support in the amount of $300 per month until she reached the age of majority. Adding these amounts together results in a total obligation of support of approximately $66,341.00. Instead of paying child support in accordance with the terms of the decretal judgment, however, the parties privately agreed that Mr. B. could fulfill this obligation by making a lump-sum payment of $35,000.00. Converting this amount into

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[1]In the case *sub judice*, the parties entered into a private agreement, albeit ultimately approved of by the Circuit Court of Ohio County, whereby Mr. B. could fully satisfy his child support obligation by making a lump-sum payment to Ms. C. This Court has stated that "a parent cannot waive or contract away [his/her] child's right to support." Syl. pt. 3, in part, *Wyatt v. Wyatt*, 185 W. Va. 472, 408 S.E.2d 51 (1991). Although Ms. C. did not technically contract away her child's right to support from Mr. B., the parties' agreement did have the undesirable effect of bastardizing the parties' child as her adoption was not imminent at the time of the agreement and has yet to occur. Inasmuch as we previously have found that unmarried parents cannot enter an agreement whereby a child support obligation is relieved in exchange for the obligor's execution of a consent to adoption, the agreement at issue in the instant proceeding similarly is at odds with this Court's role as *parens patriae* to safeguard the best interests of the children of this State. *See* Syl. pt. 1, *Kimble v. Kimble*, 176 W. Va. 45, 341 S.E.2d 420 (1986) ("The execution of consent to the adoption of a child by its custodial parent and the custodial parent's current spouse is alone insufficient to terminate a noncustodial parent's decretal obligation to make child support payments."). *See also State of Florida, Dep't of Health & Rehab. Servs. ex rel. State of West Virginia, Dep't of Human Servs., Div. of Soc. Servs. v. Thornton*, 183 W. Va. 513, 519, 396 S.E.2d 475, 481 (1990) (per curiam) ("This Court cannot . . . ignore its *parens patriae* duty to protect the best interests of [the child]." (citation omitted)). Absent contrary evidence, however, I am bound to defer to the circuit court's assessment that such an arrangement was, in fact, in the best interests of the parties' child. *See, e.g.*, Syl., in part, *Nichols v. Nichols*, 160 W. Va. 514, 236 S.E.2d 36 (1977) ("Questions relating . . . to the maintenance . . . of the children are within the sound discretion of the trial court and its action with respect to such matters will not be disturbed on appeal unless it clearly appears that such discretion has been abused.").

present day dollars yields a payment of a sum comparable to the original support obligation derived by the family law master and approved by the circuit court.

Because Mr. B.'s payment approximates his obligation as it was calculated in the decretal judgment and, most importantly, because the circuit court, which tribunal had the opportunity to ascertain the child's needs, twice[2] approved and ratified this agreement as being in her best interests, it is clear to me that Mr. B. has fully satisfied his obligation to support the parties' child. To now hold him responsible for additional payments when he has foregone his opportunity to develop a relationship with his child, and when Ms. C. readily and willingly agreed to this arrangement, imposes upon Mr. B. a further obligation of support that is neither required nor authorized by any law of this State. *See* Syl. pt. 2, in part, *Goff v. Goff*, 177 W. Va. 742, 356 S.E.2d 496 (1987) ("The authority of the circuit courts to modify . . . child support awards is *prospective only*[.]" (emphasis added)). Most

[2]During the proceedings below, the Ohio County Circuit Court entered two orders memorializing and enforcing the parties' agreement. The first order, entered November 14, 1990, initially adopted the agreement of the parties. Thereafter, in response to Ms. C.'s petition to set aside said agreement, the circuit court entered an order, on July 2, 2001, enforcing the same and from which Ms. C. now appeals to this Court.

importantly, such a revival of Mr. B.'s satisfied support obligation is patently unfair, and I disagree that it is warranted by the applicable law or the facts presently before this Court.

For the foregoing reasons, I respectfully dissent.