

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

C.W.

Court of Appeals No. L-12-1282

Appellant

Trial Court No. 10202666

v.

S.R.

DECISION AND JUDGMENT

Appellee

Decided: October 11, 2013

* * * * *

Patrick J. Desmond, for appellant.

Steven B. Winters, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal of a September 6, 2012 judgment of the Lucas County Court of Common Pleas, Juvenile Division, denying a retroactive award of child support to an adult emancipated child. C.W. (appellant) filed the paternity action against S.R.

(appellee) on March 5, 2010, the day before C.W. turned 23 years of age. S.R. is C.W.'s biological father.

{¶ 2} The case proceeded to an evidentiary hearing on August 5, 2011, before a court magistrate. The magistrate filed her decision on September 1, 2011 and denied retroactive child support on equitable grounds. In a September 6, 2012 judgment, the trial court overruled objections to the magistrate's decision, approved the denial of an award of child support, and adopted the decision of the magistrate. C.W. appeals the trial court judgment to this court.

{¶ 3} C.W. asserts three assignments of error on appeal:

Assignment of Error No. 1. The trial court erred in denying plaintiff's motion for a directed verdict for retroactive child support by construing the Supreme Court of Ohio's decision in *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, 821 N.E.2d 180 so narrowly (to the announced holding in the syllabus only, and no more), it effectively overruled what the court said.

Assignment of Error No. 2. The trial court erred as a matter of law in barring plaintiff's claim for back child support when granting defendant relief on equitable principles.

Assignment of Error No. 3. The trial court abused its discretion in finding defendant completely free from liability to plaintiff for retroactive

child support even though by the trial court's own decision equitable relief was only partially applicable.

Carnes v. Kemp

{¶ 4} Under Assignment of Error No. 1, appellant argues that under *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, 821 N.E.2d 180, an adult emancipated child is entitled to retroactive child support as a matter of law as long as he files his paternity action before his twenty-third birthday. We disagree.

{¶ 5} In *Carnes*, the Ohio Supreme Court answered a question certified to the court on the basis of conflict: “Does a court have subject-matter jurisdiction to award retroactive child support payments in a paternity action initiated after the child has reached the age of majority?” *Carnes* at ¶ 5. The court answered the question in the affirmative. *Id.* The court syllabus to the decision is also limited to the issue of subject matter jurisdiction.

{¶ 6} In reaching its judgment, the Ohio Supreme Court considered R.C. 3111.06 and 3111.05. “R.C. 311.06 provides a juvenile court with jurisdiction to hear parentage actions. The pertinent statute of limitations for parentage actions is set forth in R.C. 3111.05.” *Carnes* at ¶ 6.

{¶ 7} “Subject matter jurisdiction is defined as a court’s power to hear and decide cases.” *Heisler v. Heisler*, 4th Dist. Hocking No. 09CA12, 2010-Ohio-98, ¶ 15, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998). While a court under *Carnes* has authority to hear and decide cases for retroactive child support

payments in paternity actions brought after the child has reached the age of majority, in our view the decision did not address the merits of such claims. Specifically, the decision did not consider whether a defendant parent may assert equitable defenses to claims of an adult emancipated child for a retroactive award of child support in paternity actions.

{¶ 8} Ohio has long recognized that the equitable defenses may apply in paternity actions even where the action is brought before the running of the statute of limitations. *Wright v. Oliver*, 35 Ohio St.3d 10, 517 N.E.2d 883 (1988), syllabus (laches and waiver). Ohio appellate courts have treated laches as a defense in claims for retroactive child support in paternity actions brought both before and after *Carnes*. See *Fisk v. Paris*, 5th Dist. Stark No. 2007-CA-00202, 2008-Ohio-884, ¶ 18-19; *Barker v. Jarrell*, 9th Dist. Lorain No. 07CA009126, 2007-Ohio-7024, ¶ 7-16; *Walk v. Bryant*, 4th Dist. Lawrence No. 03CA7, 2004-Ohio-1295, ¶ 11; *Park v. Ambrose*, 85 Ohio App.3d 179, 183-185, 619 N.E.2d 469 (4th Dist.1993).

{¶ 9} We agree with the trial court that under *Carnes* juvenile courts have subject matter jurisdiction to award retroactive child support payments to adult emancipated children in actions filed before the child turns 23 years of age, but they are not required to do so. We find Assignment of Error No. 1 not well-taken.

{¶ 10} Under Assignment of Error No. 2, appellant argues that the trial court erred in denying an award of retroactive child support on equitable grounds.

{¶ 11} The magistrate issued detailed findings of fact in the September 1, 2011 decision. These included findings that appellee's testimony was credible and undisputed

in that (1) mother had requested that appellee not be named as appellant's father in the birth certificate and (2) that appellee have no contact or responsibilities for the child. The magistrate also found appellee's testimony credible and undisputed that (3) appellee and "mother had no difficulty contacting one another during the Plaintiff's [C.W.'s] formative years" and that (4) mother never sought a finding of paternity or an award of child support.

{¶ 12} The magistrate also concluded "that Defendant [appellee] did not conceal his whereabouts or identity from mother or anyone else. Defendant was easily contacted by mother whenever she found it necessary to have contact with him and vice versa." The magistrate concluded that the agreement between mother and appellee precluded appellee from having any kind of meaningful relationship with appellant.

{¶ 13} Appellant testified that his mother married his stepfather when he was six or seven years of age and that he considers his stepfather as his dad and his stepfather's relatives as his family, including grandparents, aunts, uncles, and cousins. He testified that his stepfather and his relatives also considered him as kin.

{¶ 14} The magistrate found that appellant "enjoyed a reportedly stable and enjoyable family situation where he was loved and cared for by both maternal and (albeit step) paternal relatives where he was provided with all necessities and more." The magistrate also concluded "[b]ased upon Plaintiff's own testimony, he was not harmed, neglected or otherwise penalized by Defendant not paying child support, nor has he undergone any other privation." Further, the magistrate found that "[p]laintiff's

testimony does not persuade the Court that during his formative years he wanted for anything – his own testimony paints a picture of a fairly privileged upbringing including private schools, automobiles, sports, vacations, and other regular family outings.”

{¶ 15} Appellant has not pursued any relationship with appellee. Appellant testified that he never inquired as to the identity of his biological father until he was 18 or 19 years old. At that time, appellant asked his mother for his father’s name, address and social security number in order to acquire an Air Force security clearance. The magistrate found that “[e]ven when Plaintiff was informed of Defendant’s identity and information at age 18-19, Plaintiff failed to act, instead waiting an additional four (4) years before filing this case and putting Defendant on notice of his intent.”

Laches

{¶ 16} “Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party. It signifies delay independent of limitations in statutes. It is lodged principally in equity jurisprudence.” *Smith v. Smith* (1957), 107 Ohio App. 440, 443-444, 146 N.E.2d 454 [8 O.O.2d 424]. *Connin v. Bailey*, 15 Ohio St.3d 34, 35, 472 N.E.2d 328 (1984).

{¶ 17} Delay in asserting the right alone is insufficient to establish laches. *Id.* at 35-36. While the Ohio Supreme Court recognized in *Wright v. Oliver*, 35 Ohio St.3d 10, 517 N.E.2d 883 (1988), that laches may be an available defense in parentage actions filed

prior to the expiration of the statute of limitations, the court held that the defense is available “only if the defendant can show material prejudice.” *Wright* at syllabus.

{¶ 18} Material prejudice to the non-custodial parent has been recognized to exist where the delay in the filing of the paternity action seeking retroactive child support effectively denies the non-custodial parent any parental relationship by denying them any input into the raising of the child and in having visitation and other contact with the child during the child’s minority. *See Fisk*, 5th Dist. Stark No. 2007-CA-00202, 2008-Ohio-884 at ¶ 18; *Barker*, 9th Dist. Lorain No. 07CA009126, 2007-Ohio-7024 at ¶ 15; *Park*, 85 Ohio App.3d at 184-185, 619 N.E.2d 469. By agreement with mother, appellee relinquished any opportunity to a parental relationship with appellant in his formative years. In our view, the undisputed facts demonstrate that any claim by mother for child support would be barred by laches.

{¶ 19} Appellant contends that he caused no prejudicial delay under the doctrine of laches because the earliest time he could have brought the paternity action and sought an award of retroactive child support in his own right was upon reaching majority. Under Assignment of Error No. 2, appellant contends that mother’s actions are not imputed to him and that the trial court erred in denying his claim for retroactive child support on equitable grounds. Appellee argues that the trial court properly applied equitable doctrines of laches and unjust enrichment in denying appellant’s claim for retroactive child support.

{¶ 20} The Fourth District Court of Appeals has considered whether laches against retroactive child support claims in parentage actions bar the claims of adult emancipated children for such support. The Court of Appeals has held that the laches defense to the custodial parent's claim is not imputed to bar the child's own claim for child support. *State ex rel. Jackson Cty. Child Support Agency*, 4th Dist. Jackson No. 03CA1, 2004-Ohio-2184, ¶ 21-22; *Park*, 85 Ohio App.3d at 185, 619 N.E.2d 469. The court reasoned that it would be unjust to bar the child's claim due to conduct by the mother during the child's minority. We agree with that analysis. Accordingly, we hold that although the doctrine of laches would bar a claim by mother, the defense does not extend to bar appellant's claim.

{¶ 21} Appellant delayed filing suit from age 18 until immediately before he turned 23. Even if that delay were deemed unreasonable, evidence is lacking in the record of any material prejudice caused appellee by the delay. Furthermore, the Ohio Supreme Court decision in *Carnes*, 104 Ohio St.3d 629, 2004-Ohio-7107, 821 N.E.2d 180, stated:

Not only does the statutory language dictate this result, but we also believe that since the law specifically allows a child age 18 to 23 to file a paternity action, *noncustodial parents* should be accountable to their children up until the child's 23d birthday and *should not be able to shirk their responsibility as parents simply because the child may not have*

contacted or found the parent during the child's younger years. Id. at ¶ 18.

(Emphasis added.)

{¶ 22} Accordingly, we find Assignment of Error No. 2 well-taken with respect to the defense of laches. In view of our determination that appellant's child support claim is barred on other equitable grounds, however, we hold the error harmless.

Unjust Enrichment

{¶ 23} Where a court considers a request for a retroactive award of child support in paternity proceedings, the decision of what relief, if any, is appropriate comes within the court's discretionary and equitable powers. *Tod W. v. Erika P.*, 6th Dist. Wood No. WD-99-013, 1999 WL 728087, *3 (Sept. 17, 1999). "[E]quity requires that the trial court be granted flexibility to achieve a just result." *Barker*, 9th Dist. Lorain No. 07CA009126, 2007-Ohio-7024 at ¶ 16. Such determinations are reviewed on appeal under the abuse of discretion standard. *Id.*; *Michael F. v. Sharon R.*, 6th Dist. Ottawa No. OT-00-034, 2001 WL 227068, *2 (Mar. 9, 2001). An abuse of discretion connotes that the trial court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 24} Considering the totality of the circumstances, the trial court concluded that appellant would be unjustly enriched by an award of child support in this case. The court held that a retroactive award of child support under the facts would create a "monumental windfall" to appellant and a "devastating financial hit" to appellee.

{¶ 25} In reaching judgment the trial court considered that appellant “was not harmed, neglected or otherwise penalized by * * * [appellee] * * * not paying child support, nor has he undergone any other privation.” The court also found appellant “enjoyed a reportedly stable and enjoyable family situation where he was loved and cared for.”

{¶ 26} The court also considered the agreement between mother and appellee with respect to no contact with the child, financial responsibility, and lack of any request to appellee by anyone that he provide any financial or child support at any time.

{¶ 27} We cannot say that the trial court’s decision denying appellant a retroactive award of child support was unreasonable, arbitrary or unconscionable under the facts of this case. Accordingly, we conclude that the trial court did not abuse its discretion in denying an award of retroactive child support on equitable grounds.

{¶ 28} We find Assignment of Error No. 2 not well-taken with respect to the equitable defense of unjust enrichment.

{¶ 29} Under appellant’s Assignment of Error No.3, appellant objects to a statement in the magistrate’s decision: “Defendant’s defense of laches, undue enrichment, and material prejudice appear to have some application here.” Appellant asserts that a conclusion that equitable defenses have “some application” is an insufficient basis to deny him any award of child support.

{¶ 30} The body of the magistrate’s decision and the trial court’s judgment approving and adopting the decision are clear and unequivocal in concluding that a grant

of a retroactive award of child support in this case would create a monumental windfall for appellant, a devastating financial hit to appellee, and that such an award would unjustly enrich appellant under the circumstances. We find no uncertainty in the trial court's judgment on that ground. Any uncertainty as to the application of laches to appellant's personal claim is harmless error for the reasons discussed under Assignment of Error No. 2.

{¶ 31} We find Assignment of Error No. 3 not well-taken.

{¶ 32} Justice having been afforded the party complaining, we affirm the judgment of the Lucas County Court of Common Pleas, Juvenile Division, and order appellant to pay costs pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

James D. Jensen, J.

JUDGE

CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
