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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002092-ME

COMMONWEALTH OF KENTUCKY, EX REL., CABINET FOR HEALTH AND FAMILY SERVICES, JEWELL LANE CHRISTIAN — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 05-J-507171

DANIEL CLEMENTE — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND THOMPSON, JUDGES; GRAVES,[1] SENIOR JUDGE.

MOORE, JUDGE: This is an appeal by Jewell Christian from a final order of the Jefferson Family Court, dismissing her demand for child support due to the lack of personal jurisdiction over Daniel Clemente. Upon review of the record, we affirm.

[1] Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1990, Jewell Christian and Daniel Clemente, who were not married, engaged in sexual intercourse in Kentucky. In November of 1990, Daniel left Kentucky and never re-established residency in the Commonwealth. On June 30, 1991, Jewell gave birth to a child out-of-wedlock; Jewell believed the child to be Daniel's.

Fifteen years after Daniel moved from Kentucky, and was then living in Pennsylvania, Jewell filed a paternity action in the Jefferson Family Court, pursuant to Kentucky Revised Statute (KRS) 406.021 of the Uniform Paternity Act. She sought to legally establish Daniel as the biological father of her child and to obtain an order for child support. In accordance with Kentucky's general long-arm statute, KRS 454.210,[2] Daniel was served in Pennsylvania, his state of residency.

On August 24, 2006, the family court entered a Pre-Trial Order instructing Jewell and Daniel to submit to DNA testing after Daniel did not challenge the court's jurisdiction regarding the paternity action. However, Daniel did challenge the court's personal jurisdiction over him regarding child support. First, Daniel asserted a defense pursuant to KRS 454.220 because Jewell failed to file the complaint before the statute of

[2] KRS 454.210 authorizes Kentucky courts to exercise personal jurisdiction over certain nonresidents.

limitations ran.[3] Second, Daniel relied upon this Court's holding in *Davis-Johnson v. Parmelee,* 18 S.W.3d 347 (Ky.App. 1999).

Jewell answered by arguing KRS 454.220 did not apply in this particular case. She maintained KRS 406.021 and KRS 406.031 authorized the court to establish paternity and subsequently order child support.[4] Jewell also contended the facts of this case are distinguishable from the *Parmelee* decision.

As a result, the family court requested both parties submit their respective interpretations of the statutory analysis of KRS 454.220, as held in *Parmelee*. Upon review of both parties' arguments, the family court held this Court's holding in *Parmelee* supported the conclusion that it lacked personal jurisdiction over Daniel to order child support. Therefore, Daniel's Motion to Dismiss Demand for Support was granted because Jewell failed to file her support claim in compliance with KRS 454.220. It is noted that since the family court issued its final order granting the paternity claim and dismissing the demand for support, Daniel has been legally determined to be the biological father of Jewell's child.

II. STANDARD OF REVIEW

The only issues before this Court are whether the trial court correctly interpreted Kentucky statutes. We conduct *de novo* review of the trial court's application

[3] KRS 454.220 sets forth the statute of limitations for certain domestic relations claims over nonresidents of the Commonwealth.

[4] KRS 406.021 and KRS 406.031 of the Uniform Paternity Act detail the requirements of paternity actions and available remedies.

of the law to the facts. *See Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). When we interpret a statute, we will attempt to ascertain and effectuate the General Assembly's intent from the language found in the statute, if possible. KRS 446.080(1); *Commonwealth v. Reynolds*, 136 S.W.3d 442, 445 (Ky. 2004); *Moore v. Alsmiller*, 289 Ky. 682, 160 S.W.2d 10, 12 (1942). Generally, a statute is open to construction only if its language is ambiguous. If the language is clear and the application of its plain meaning would not lead to an absurd result, then further interpretation is unnecessary. *Overnite Transp. Co. v. Gaddis*, 793 S.W.2d 129, 131 (Ky.App. 1990). However, if a statute is ambiguous and its meaning uncertain, then the legislative intent should be determined by considering the whole statute and the purpose to be accomplished. *Dep't of Motor Transp. v. City Bus Co*., 252 S.W.2d 46, 47 (Ky. 1952). Additionally, when there is an apparent inconsistency between two statutes, the general rule of statutory construction instructs that the specific provision take precedence over the general. *Commonwealth v. Phon*, 17 S.W.3d 106, 107 (Ky. 2000). Furthermore, we presume the legislature is familiar with the law on issues on which it legislates and is on notice of previous legislation and judicial construction of statutes. *Manning v. Ky. Bd. of Dentistry*, 657 S.W.2d 584, 587 (Ky.App. 1983).

III. ANALYSIS

On appeal, Jewell insists the family court erred in dismissing her claim for support, arguing KRS 406.031, not KRS 454.220, sets forth the correct statute of limitations governing paternity actions demanding child support. Upon review, we

affirm the family court's statutory interpretation of KRS 454.220, holding the statute of limitations provision in KRS 454.220 applies to child support actions against nonresidents even where there is an underlying paternity action, as previously held in *Parmelee*, 18 S.W.3d 347.

In 1945, the United States Supreme Court set forth the "minimum contacts" standard to determine whether a state court has *in personam* jurisdiction over a nonresident. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). "[I]n order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he [must only] have certain minimum contacts with it such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316, 66 S.Ct. at 158 (citations omitted). Interpreting *International Shoe,* the Sixth Circuit has held this inquiry requires determining whether a state legislature has authorized the courts of its state to exercise jurisdiction over a nonresident, and a verification of whether the authorized jurisdiction complies with Fourteenth Amendment due process rights. *See Davis H. Elliot Co. Inc. v. Caribbean Util. Co. Ltd.,* 513 F.2d 1176 (6th Cir. 1975).

Kentucky's general long-arm statute, KRS 454.210, clearly describes specific situations in which courts may exercise personal jurisdiction over nonresidents. The relevant section pertaining to this case provides that:

> (2) (a) A court may exercise personal jurisdiction over a [non-resident] who acts directly or by an agent, as to a claim arising from the person's:
>
> …
>
> 8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
>
> a. The father or mother or both are domiciled in this state;
>
> b. There is a repeated pattern of intercourse between the father and mother in this state;
>
> or
>
> c. Said intercourse is a tort or a crime in this state[.]

We must, however, read KRS 454.210 in conjunction with KRS 454.220, which authorizes personal jurisdiction over nonresidents in certain domestic relations matters. KRS 454.220 further details specific requirements for family court proceedings involving a demand for child support over nonresidents. Specifically, the statute provides that

> [a] court in any ... family court proceeding involving a demand for support … may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, … if the party seeking support is a resident of or domiciled in this state at the time the demand is made, … . The action *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 (emphasis added). On its face, KRS 454.220 clearly authorizes a court to enforce a demand for support over a nonresident parent, so long as the demand is filed within one year of the nonresident parent's moving out of the state. KRS 454.220, being the more specific statute, controls over KRS 454.210.

In *Parmelee*, this Court answered the same issue now before us. There we held KRS 454.210 (2)(a)(8) authorized personal jurisdiction over a nonresident for a paternity action, but it did not confer personal jurisdiction regarding a demand for support. *Id.* In *Parmelee*, we held

> [u]nquestionably, KRS 454.220 requires a party seeking support from a non-resident to bring the cause of action within one year of the date respondent/defendant departed the state. Failure to comply with this statute of limitations divests the court of authority to exercise personal jurisdiction over the purported obligor.

Id. at 350. Thus, *Parmelee* clearly requires that a demand for child support must proceed within the boundaries of KRS 454.220. It is indisputable that Jewell failed to comply with KRS 454.220 because she filed her paternity claim and resultant claim for child support fifteen years after Daniel left the Commonwealth.

Jewell argues the facts of this case are distinguishable from the facts in *Parmelee* because neither party in *Parmelee* was a resident of the Commonwealth at the time the complaint was filed. In the present case, Jewell was a resident of the Commonwealth when she filed her paternity action against Daniel, a nonresident. As a result, she disputes the application of the *Parmelee* holding to the case presently before us. This argument is without merit and is a stretch at best. It is true that neither party in *Parmelee* was a resident of Kentucky at the time the paternity action was filed. However, KRS 454.220 contains a provision allowing nonresidents to file for child support where

the action originally accrued under the law of Kentucky. Accordingly, the facts in *Parmelee* satisfy a condition precedent under KRS 454.220 making the statute applicable.

Likewise, in the case at hand, one provision under KRS 454.220 is satisfied, namely that the party seeking support is a resident of Kentucky at the time the demand is made against a nonresident. Thus, the differing factual scenarios do not distinguish the *Parmelee* holding from this case: KRS 454.220 governs personal jurisdiction issues where nonresident parents are involved in child support disputes, so long as at least one condition under KRS 454.220 is satisfied.

Jewell also contends the *Parmelee* holding renders KRS Chapter 406 completely useless when jurisdiction is exercised over nonresidents through KRS 454.220. We agree with Jewell that KRS 406.021 and KRS 406.031 were enacted to provide a legal determination of paternity and even orders of support under certain situations. However, as held in *Parmelee*, and under the facts of the case at hand, we interpret KRS 454.220 to control over KRS 406.031.

Furthermore, KRS 406.031 was amended in 1986. Alternatively, KRS 454.220 was enacted in 1992. We are to assume the legislature was aware of KRS 406.031 when it enacted KRS 454.220. *Manning*, 657 S.W.2d at 587. The legislature's failure to include any language indicating an intent that KRS 406.031 control paternity actions and resultant claims for child support, against a nonresident, evidences the legislature's intent that KRS 454.220 applies to actions demanding child support over a nonresident, even where they are accompanied by a claim of paternity.

Further, while we must read separate statutes together to give meaning to the whole, when there is an apparent inconsistency between two statutes, specific statutory provisions control over general ones. *Phon*, 17 S.W.3d at 107. Both KRS 406.031 and KRS 454.220 include language authorizing paternity actions involving a demand for child support. However, KRS 454.220 specifically authorizes a court's jurisdiction over a court proceeding demanding support "notwithstanding the fact that [the parent] no longer is a resident or domiciliary of this state." KRS 406.031 gives no mention of jurisdiction regarding claims against nonresidents. Under general rules of statutory construction, we agree with *Parmelee* that KRS 454.220 applies to a child support action against a nonresident filed pursuant to KRS 406.021. *See Parmelee*, 18 S.W.3d at 352.

Likewise, we find no merit in Jewell's reliance on KRS 407.5201, which was enacted in 1998 and expanded Kentucky's general long-arm statute, KRS 454.210. Jewell argues the fact that KRS 407.5201 was enacted subsequent to KRS 454.220 implies the legislature was attempting to expand KRS 454.210 and that KRS 454.220 should not be applied to actions where jurisdiction is established through KRS 407.5201.

We affirm the family court's interpretation that KRS 407.5201 is inapplicable in this case. Applying the general rules of statutory construction, we recognize KRS 407.5201 was enacted subsequent to KRS 454.220. However, we must presume the legislature was aware of KRS 454.220 when it enacted KRS 407.5201. *Manning*, 657 S.W.2d at 587. The lack of any language inferring intent to amend KRS

454.220 or the applicable statute of limitations evidences that the statute of limitations provision in KRS 454.220 is to be applied in paternity actions demanding child support against nonresidents.

Kentucky Revised Statute 454.220 specifically refers to actions demanding child support against nonresidents. The most basic of statutory construction principles is to give meaning to legislative intent. The legislature had every opportunity to amend jurisdictional restrictions and statute of limitation provisions in paternity and resultant child support actions against nonresidents. The failure to do so obviously implies no such intent.

Lastly, Jewell contends applying the one-year statute of limitations in KRS 454.220 to paternity actions accompanied with a demand for support is unreasonable and against public policy. She insists that it is in the best interests of the Commonwealth that its citizens be afforded the opportunity to use the laws of their own state to determine and enforce child support obligations.

While we may *generally* agree with Jewell's plight, the very reason the legislature enacts any statute of limitations provision is to maintain an effective and efficient court system that will adequately serve the citizens of Kentucky. "The purpose of such a statute [of limitations] is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh." Black's Law Dictionary 1422 (7th ed. 1999). The state legislature enacted the Uniform Paternity Act to give its

citizens legal recourse in family court proceedings. Nevertheless, it is up to citizens themselves to file claims within the stated statute of limitations period. Jewell failed to meet this burden.

Importantly, as well, is the doctrine of separation of powers. Jewell asks this Court to turn a blind eye to a specific statute under public policy considerations. This is not the proper role of the judicial branch. It is the legislative branch's duty to state what the public policy of this Commonwealth is. This Court will not ignore statutory provisions.

Pursuant to *Parmelee*, we agree that the family court was correct in holding that it lacked personal jurisdiction over Daniel regarding the demand for child support. Nonetheless, as Daniel points out in his brief, Jewell still has the option of enforcing her demand for child support in Daniel's home state of Pennsylvania under the Uniform Interstate Family Support Act (UIFSA) contained in KRS 407.5201. The UIFSA was adopted by all fifty states and provides legal recourse in paternity actions where jurisdiction problems exist. Granted, this will require Jewell to travel to Pennsylvania, which may present a more significant time and financial burden. Yet, it has already been legally determined that Daniel is the father of Jewell's child. Therefore, she does not have to initiate a subsequent paternity action in Pennsylvania. Under 28 U.S.C. 1738, Pennsylvania courts must give "full faith and credit" to the family court's determination that Daniel is the biological father. Thus, Jewell can file a demand for support without having to again prove Daniel is the father of her child.

We affirm the family court's conclusion that it had personal jurisdiction over Daniel regarding the paternity action but lacked such jurisdiction to order the demand for support. We also affirm the family court's interpretation of KRS 454.220 and its application to paternity actions filed pursuant to KRS 406.021, as held in *Parmelee*. Accordingly, Jewell's failure to file her paternity action within one year of Daniel's moving out of Kentucky bars her demand for child support in Kentucky courts.

ALL CONCUR.

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