IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 11, 2003

IN RE: ESTATE OF HARRY SANDERS

Appeal from the Chancery Court for Bedford County
No. 24,032 James B. Cox, Chancellor

No. M2003-00280-COA-R3-CV - Filed March 25, 2004

A fifty-two year old man brought a claim against his father's estate for twenty-seven semesters of post-secondary educational expenses, contending that the father had agreed to pay those expenses as part of a Michigan divorce settlement thirty-five years earlier, but had failed to make more than a nominal payment. The trial court dismissed the claim. The son argues on appeal that a correct interpretation of the relevant choice of law statutes would have compelled the trial court to approve his claim. We do not agree, and we affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Ted W. Daniel, Shelbyville, Tennessee, for the appellant, Marshall Sanders.

Anthony W. Harris, Shelbyville, Tennessee, for the appellee, Estate of Harry Sanders, Rosalyn Vine, Executrix.

OPINION

I. THE FACTS

In 1967, a Michigan court granted Harry Sanders a Default Decree of Divorce from his wife, I. Dee Sanders. The Decree divided the marital property, ordered Mr. Sanders to pay alimony, and gave the wife custody of Marshall Sanders, the parties' then sixteen year old son, who is the appellant in this case. One clause of the Decree, titled "Support of Minor Child" ordered Harry Sanders to pay child support of $35 per week until his son reached 18 years of age.

A separate clause, titled "Higher Education of Minor Child" ordered that "the payment of expenses for the higher education of the minor child shall be in accordance with the terms of a Property Settlement Agreement entered into between the parties on the 2d day of August 1967, which Property Settlement Agreement is attached hereto and made a part hereof."

The Property Settlement Agreement (PSA) stated that "The husband agrees to pay for the college education of the minor son of the parties, Marshall Sanders, so long as said Marshall Sanders wishes to attend an accredited college or university and is accepted as a student by said institution." A 1970 modification of the PSA did not change the college education provision.

Harry Sanders died in Bedford County, Tennessee, on January 7, 2002, at the age of 82. The beneficiaries named in his Last Will and Testament and its Codicil were Marshall Sanders, another son of the testator, the testator's granddaughter, and a woman named Rosalyn Vine. The will bequeathed 5% of the net estate to Marshall Sanders, while Ms. Vine was awarded 60%. The testator named Rosalyn Vine as the personal representative of his estate, with the requirement of bond.

On February 13, 2002, Rosalyn Vine filed a Petition in the Chancery Court of Bedford County to Probate Harry Sanders' will. The court issued Letters Testamentary to Ms. Vine, and she posted bond for $352,410, which was the gross value of the estate. All beneficiaries were furnished with copies of the will, and creditors were notified to file their claims.

In March of 2002, Dee Sanders and Marshall Sanders both filed claims against the estate. Dee Sanders' claim was for past due alimony and other obligations under the 1970 PSA that the testator allegedly failed to satisfy during his lifetime. The trial court eventually dismissed her claim, and it plays no part in this appeal.

Marshall Sanders submitted a $495,000 claim for educational expenses that he had allegedly incurred between 1968 and 2002, contending that he was entitled to reimbursement under the higher education provision of his parents' PSA. Accompanying his claim was a list of eleven institutions of higher education, with the years of his alleged attendance and costs of between $5,000 and $35,000 per semester listed for each one. The list included three different law schools. He also claimed that he was entitled to "near term anticipated college expenses" of $350,000, resulting from ten future semesters at $35,000 per semester, as well as an unascertainable amount for long term educational expenses leading to advanced degrees in law.

The personal representative filed exceptions to the claims of Dee Sanders and Marshall Sanders. Among other things, the exceptions stated that the claims in question were barred by the ten year statutes of limitations for contracts and for judgments. *See* Tenn. Code Ann. §§ 28-3-109 and 28-3-110. The exception also declared that "[s]aid claims are not filed in good faith but represent a retaliation against the decedent's estate and heirs ..."

The trial court conducted a hearing on the claims on November 8, 2002. Argument focused on both Michigan and Tennessee law relating to child support, to agreements for educational support of children who have passed the age of minority, and to the statutes of limitation applicable to such agreements. At the conclusion of the hearing, the chancellor announced that he would dismiss the claim because he found that the language in the divorce decree and the PSA regarding "the education of the minor child" did not indicate an intention to furnish educational support to the claimant past the age of 21. He also stated that a contrary holding would lead to an unconscionable result. This appeal followed.

II. ARGUMENT ON APPEAL

Marshall Sanders argues on appeal that he is entitled to prevail by virtue of the choice of law provisions of Tennessee law and the child support provisions of Michigan law. He relies on two choice of law provisions as governing the Tennessee courts' treatment of the 1967 support order and settlement agreement. He asserts that under Tennessee Code Annotated § 36-5-2604(a), the law of Michigan must be applied to determine "the nature, extent, amount and duration" of a support obligation and that, under Michigan law, his father's agreement to pay his college expenses would be considered a support order, not a contractual obligation. He also argues that by virtue of Tenn. Code Ann. § 36-5-2604(b), Tennessee's statute of limitations would apply rather than Michigan's, because it is longer. His position that Tennessee's statute of limitations is longer rests upon his assertion that Tenn. Code Ann. § 36-5-103(g), a statute which became effective on July 1, 1997, providing that a child support order may be enforced without any limitation as to time, applies in this case.

Before considering these arguments in specific, it is necessary to understand the nature of the obligation undertaken by the father herein and the authority of the courts to enforce such obligations.

III. TENNESSEE LAW ON AGREEMENTS TO PROVIDE POST-MAJORITY EDUCATIONAL SUPPORT

Biological parents have both a common law and a statutory duty to support their children until they reach the age of majority. *Smith v. Gore*, 728 S.W.2d 738, 750 (Tenn.1987)*;Witt v. Witt*, 929 S.W.2d 360, 362 (Tenn. Ct. App. 1996), Tenn. Code Ann. § 34-1-102(a). Since the legal obligation of support ends when the child reaches the age of majority, except under limited circumstances not alleged herein, such as disability of the child, the courts of Tennessee do not have the legal authority to order an unwilling parent to pay support for a child who has reached majority.

While a parent generally has no legal duty to support a child past the child's majority, *Blackburn v. Blackburn*, 526 S.W.2d 463, 465 (Tenn. 1975), a parent may voluntarily extend his or her support obligation beyond that imposed by law. *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975); *Hawkins v. Hawkins*, 797 S.W.2d 897, 898 (Tenn. Ct. App. 1990). A party to a divorce may assume by agreement an obligation of support that extends beyond his or her legal duty. *See Bryan v. Leach*, 85 S.W.3d 136, 151 (Tenn. Ct. App. 2001). Frequently, such agreements focus

on post-secondary education, and, in fact, the Tennessee Supreme Court has held that payment of college expenses is an appropriate subject for an agreement between a husband and wife going through a divorce. *Penland*, 521 S.W.2d at 224; *see also Hathaway v. Hathaway*, 98 S.W.3d 675, 678 (Tenn. Ct. App. 2002).

Where divorcing parents have entered into such an agreement, it is binding on the parties and constitutes "a contractual obligation outside the scope of the legal duty of support during minority and retains its contractual nature . . . " *Penland*, 521 S.W.2d at 224; *Hathaway*, 98 S.W.3d at 678. In Tennessee, such an agreement retains its contractual nature and must be enforced as a contract, even though incorporated into a divorce decree. *Penland*, 521 S.W.2d at 224; *Bryan*, 85 S.W.3d at 151; *Hawkins*, 797 S.W.2d at 898.

A property settlement or marital dissolution agreement is essentially a contract between a husband and wife in contemplation of divorce proceedings. *Towner v. Towner*, 858 S.W.2d 888, 890 (Tenn. 1993); *Gray v. Estate of Gray*, 993 S.W.2d 59, 63 (Tenn. Ct. App. 1998). Such an agreement is enforceable, *Holt v. Holt*, 995 S.W.2d 68, 72 (Tenn. 1999), and "is to be construed as other contracts as respects its interpretation, its meaning and effect." *Bruce v. Bruce*, 801 S.W.2d 102, 105 (Tenn. Ct. App. 1990) (quoting *Matthews v. Matthews*, 24 Tenn. App. 580, 593, 148 S.W.2d 3, 11-12 (1940)). As with property settlement agreements generally, one that includes a provision on college expenses is subject to the same rules of contract interpretation as any other contract. *Hathaway*, 98 S.W.3d at 678.

The fact that the father's agreement to pay for his son's college education at issue herein would be enforced in Tennessee, if at all, as a contractual obligation has two consequences applicable to Mr. Sanders' position. First, the agreement must be construed using the rules that govern interpretation of contracts. Second, it is subject to the statute of limitations applicable to contract disputes. We begin with the contract interpretation issue.

A. Interpretation of the Agreement

"The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern." *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The purpose of interpreting a written contract is to ascertain and give effect to the contracting parties' intentions, and where the parties have reduced their agreement to writing, their intentions are reflected in the contract itself. *Id.*; *Frizzell Constr. Co. v. Gatlinburg, L.L.C.*, 9 S.W.3d 79, 85 (Tenn. 1999). Therefore, the court's role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999); *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975).

Where the language of the contract is clear and unambiguous, its literal meaning controls the outcome of contract disputes; but, where a contractual provision is ambiguous, *i.e.*, susceptible to more than one reasonable interpretation, the parties' intent cannot be determined by a literal interpretation of the language. *Planters Gin Co.*, 78 S.W.3d at 890. Where contracts are unambiguous, courts defer to the contracting process by enforcing written contracts according to their plain terms without favoring either contracting party. *Cocke County Bd. of Highway Comm'rs v. Newport Utils. Bd.*, 690 S.W.2d 231, 237 (Tenn. 1985); *Hardeman County Bank v. Stallings*, 917 S.W.2d 695, 699 (Tenn. Ct. App. 1995).

However, where the parties have omitted a material term, courts may incorporate a reasonable one into the contract. *Minor v. Minor*, 863 S.W.2d 51, 54 (Tenn. Ct. App. 1993). Thus, when a contract does not include a material term, courts will imply a reasonable one. *McClain v. Kimbrough Constr. Co.*, 806 S.W.2d 194, 198 (Tenn. Ct. App. 1991) (holding where parties omit material provisions from their contract, the courts will impose obligations on the parties "that are reasonably necessary for the orderly performance of the contract."); *see also Floyd v. Floyd*, No. M2000-02344-COA-R3-CV, 2001 WL 997380, at *5 (Tenn. Ct. App. Aug. 31, 2001) (no Tenn. R. App. P. 11 application filed) (holding that where an MDA failed to establish a specific visitation schedule, the implied reasonable standard would be applied).

Further, in construing contracts, courts must look at the language and the parties' intent and impose a construction that is fair and reasonable. *ACG, Inc. v. Southeast Elevator, Inc.*, 912 S.W.2d 163 (Tenn. Ct. App. 1995). In *Wallace v. National Bank of Commerce*, 938 S.W.2d 684 (Tenn. 1997), the Tennessee Supreme Court, in examining the duty of good faith in performance that is implied in every contract, discussed with apparent approval a Court of Appeals holding that "a court must judge the performance against the intent of the parties as determined by a reasonable and fair construction of the language of the instrument." *Id*. at 686.

This court has had the opportunity to apply these rules of contract interpretation in the context of an agreement to provide college expenses. In *Pylant v. Spivey*, No. M2002-00602-COA-R3-CV, 2003 WL 23099680 (Tenn. Ct. App. December 31, 2003) (Tenn. R. App. P. 11 application filed Feb. 26, 2004), we surveyed prior holdings on this issue and concluded that this court had consistently held that such a contractual obligation to pay college expenses is subject to an implied condition of reasonableness, at least where no specific college or amount of expenses is set forth. *See, e.g., Hathaway*, 98 S.W.3d at 679; *Vick v. Vick*, No. 02A01-9802-CH-00051, 1999 WL 398115, at*7 (Tenn. Ct. App. June 16, 1999) (no Tenn. R. App. P. 11 application filed).

The court in *Hathaway, supra*, discussed with approval prior decisions holding that just "because the agreement contained no limitation on the defendant's obligation, that did not mean the child 'could attend any college, regardless of the cost.'" 98 S.W.3d at 680, quoting *In re Marriage of Schmidt*, 684 N.E.2d 1355, 1362 (Ill. App. 1997). "The fact that an agreement does not set a specific amount or otherwise identify a measurable limit does not mean that the obligation is unlimited or that the child can unilaterally obligate the parent to pay an unreasonable amount." *Pylant*, 2003 WL 23099680, at *10. We think this reasoning applies to Mr. Sanders' claim that his

father's obligation was unlimited as to duration or amount.

Whether the term "reasonable" is written into the contract by the parties or is implied into it by the courts, "reasonable" does not mean unlimited. *Hathaway*, 98 S.W.3d at 679, citing *Moscheo v. Moscheo*, 838 S.W.2d 226, 228 (Tenn. Ct. App. 1992). The answer to the question of what is reasonable will vary according to the circumstances. *Moscheo*, 838 S.W.2d at 227. Herein, the parties did not specify the cost of the education or describe it in a quantifiable way. We will not presume, however, that the parties intended an unlimited obligation. Instead, we presume they intended to establish a reasonable obligation, including one of reasonable duration.

Reasonableness must be viewed in light of the parties' situation at the time of the making of the agreement as well as at the time performance becomes due. *Hathaway*, 98 S.W.3d at 680-81; *see also Vick*, 1999 WL 398115, at * 8. When a court is called upon to supply a missing term with a reasonable one, it must consider the subject matter of the contract, the situation of the parties, their intention in what they contemplated at the time the contract was made, and the circumstances attending the performance. *Minor*, 863 S.W.2d at 54.

The father herein agreed to pay for the college education of his son. Although the agreement did not establish an outside limit on the number of semesters or years for which the father would pay expenses, we cannot interpret the language to obligate the father to pay for a lifetime of taking courses. We will supply the missing durational term with a reasonable one, at least for purposes of determining the effect of the applicable statute of limitations.

The common, generally accepted meaning of "college education" is a four year course of study leading to a baccalaureate degree. It does not include post graduate studies. The property settlement herein referred to "accredited college or university." Mr. Sanders claims educational expenses for undergraduate and law school studies from 1968 through 2002 and into the future. It appears from the claim that Mr. Sanders attended college on a regular basis from the fall of 1968 through the fall of 1970. His next claimed expense is for the fall of 1977; there is another break and then a claim for the spring of 1981. The claim reflects that his next educational experience was entry into law school in the spring of 1983. Assuming he was required to have a college degree before entering law school, it appears he finished his "college education" in the spring of 1981.

We are reluctant to categorically state that an otherwise nonspecific obligation to pay for a college education is always limited to four years of expenses, because reasonableness is specific to the circumstances presented. However, there is nothing in the record before us to justify any other term as more reasonable. Even giving Mr. Sanders the benefit of the most liberal interpretation of the language of the agreement, the father's obligation could not be construed as including post graduate studies.

B. Applicable Statute of Limitations

In Tennessee an action on a contract must be brought within six years of when the cause of action accrues. Tenn. Code Ann. § 28-3-109(a)(3) (regarding actions on contracts not otherwise expressly provided for). A cause of action for breach of contract or to enforce a contract accrues when a party repudiates a contract or clearly indicates that he or she refuses to perform. *Ferguson Harbour Inc. v. Flash Market, Inc*., 124 S.W.3d 541, 548 (Tenn. Ct. App. 2003). Under one reasonable interpretation of the father's obligation to provide a college education in the case before us, that obligation first arose in 1968, and ended four years later in 1972. Under the most liberal interpretation of the obligation, and if there were facts to support that interpretation, the obligation certainly ended when the son attained a college degree in 1981. The claim herein was made well beyond the statute of limitations under either interpretation.

IV. Mr. Sanders' Arguments

Mr. Sanders seeks to use the 1997 Tennessee statute that removed time limitations on the enforcement of child support judgments, found at Tenn. Code Ann. § 36-5-103(g), to avoid dismissal of his claim on statute of limitations grounds. His argument in this regard rests on two premises: (1) that under Michigan law, his father's agreement to pay for his college education would be enforced as a child support order, not as a contract, and (2) the 1997 removal of statute of limitations defenses to enforcement of child support orders can be applied retroactively to his claim. While the first of these premises may not be inaccurate, it does not compel the result asserted. Additionally, the second is simply unsupported by the law.

A. Michigan Law on Post-Majority Educational Support

In *Penland, supra*, the Tennessee Supreme Court was presented with the questions of the enforceability and method of enforcement of a divorce-related agreement to provide post-majority educational support that was incorporated into the divorce decree. The Michigan Court of Appeals considered the same questions in *Ovaitt v. Ovaitt*, 204 N.W.2d 753 (Mich. App. 1971) and reached a slightly different result. Relying on a Michigan statute that gave courts the authority to order support to a child after he or she reached the age of majority "in case of exceptional circumstances," the court held that the trial court had jurisdiction to order support and college expenses for the children who were minors at the time of the order. Because the trial court had the power to make provision for college expenses when the children were minors, even though the obligation would extend beyond the children's minority, the parties' agreement regarding such expenses, incorporated into the decree, was enforceable as an order of the court by contempt proceedings. *Id*. at 759.[1]

The Michigan Supreme Court has since interpreted amended statutory provisions to preclude

[1]The court specifically found that allowing the mother to enforce the obligation as a court order "would have the salutary effect of permitting the defendant in this case to recover directly without resorting to a separate action in contract or quantum meruit, thus obviating circuity of action." *Id*. at 758.

an award of post-majority support. *Smith v. Smith*, 447 N.W.2d 715, (Mich. 1989). However, the *Smith* decision has been interpreted as not precluding the enforcement of a contract to provide college expenses where that agreement was of record or part of the judgment in the case. *Aussie v. Aussie*, 452 N.W.2d 859, 863 (Mich. Ct. App. 1990). In *Aussie,* the parents had entered into an agreement years after the divorce in which the father agreed to pay a specified amount toward the college education of the oldest of their three children, in return for the mother's agreement not to seek an increase in child support. The father subsequently stopped paying the amount he had agreed to. Although the court remanded the case to the trial court for entry of a judgment "for that portion of the contract to pay $6,000 a year toward Andrew's college expenses which defendant refused to perform," it is not clear whether that judgment was based upon the trial court's authority to enforce child support orders or was, instead, a breach of contract remedy.

While the cases subsequent to *Ovaitt* are not entirely clear on the issue, we will not disagree with Mr. Sanders' characterization of Michigan law as allowing an agreement to provide post-majority support to be enforced as a court order or judgment. Our agreement on that point, however, does not result in the conclusion Mr. Sanders would have us reach for at least two reasons. The first is that his argument requires us to believe that Michigan courts would interpret the settlement agreement herein as obligating his father to pay for essentially a lifetime of forays into higher education. Mr. Sanders has provided no authority, and we have found none, that persuades us to this belief.

The divorcing parents in *Ovaitt, supra*, entered into a property settlement agreement that included an obligation by the father to pay $100 per month for his two children while they were attending college, for no more than four years for each child. The father stipulated that at the time of the agreement, he knew that the children would reach the age of majority before completing four academic years. The *Ovaitt* court concluded that it would be inequitable not to enforce the father's agreement, because he clearly knew when he entered into the agreement that the obligation would continue beyond the minority of his children, and that enforcement of the agreement was a valid exercise of the court's discretion. 204 N.W.2d at 758-759.

Neither the *Ovaitt* decision nor others relied upon by Mr. Sanders support his argument that Michigan courts are obligated to enforce such an agreement regardless of the circumstances. The cases uniformly refer to a trial court's decision to enforce post-majority child support as an exercise of the court's discretion. *See, e.g., Gibson v. Gibson,* 313 N.W.2d 179, 181 (Mich. App. 1981) and *Wagner v. Wagner* 306 N.W.2d 523 (Mich. App. 1981). We interpret Michigan law as including equitable considerations in a decision on whether and to what extent to enforce an agreement to provide post-majority educational support. Suffice it to say that *Ovaitt, Gibson* and *Wagner* involved individuals who had reached the ages of either 18 or 21 years, and who were seeking through the institution of timely proceedings to compel an obligor parent to furnish the support he had unambiguously agreed to. There was no indication that any of the recipients were seeking lifetime educational support, but rather an implication that they needed short-term help to complete their formal education. Significantly, Mr. Sanders has provided us with no authority to suggest that a Michigan court would interpret the contractual obligation to pay for a "college education" to include

over thirty years of sporadic study and graduate school attendance.

The second reason that we cannot reach the result argued by Mr. Sanders is that his claim is barred by the applicable statute of limitations. Even if we interpret the obligation to pay for his college education as incorporated into the divorce decree and enforceable as a court order, his claim would be subject to a ten year statute of limitations, as explained below.

B. TIME FOR BRINGING ACTION TO ENFORCE

The Tennessee amendment removing limitations on child support judgments became effective July 1, 1997, thirty years after entry of the order and settlement agreement sought to be enforced in this case. We have addressed a similar argument regarding enforcement of a child support order during minority.

> Because a defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the limitations period has expired, *Wyatt v. A-Best Prods. Co., Inc.*, 924 S.W.2d 98, 104 (Tenn. Ct. App. 1995), and because the Tennessee Constitution prohibits retroactive application of a statute where such application would impair vested rights, *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999), this court has previously held that Tenn. Code Ann. § 36-5-103(g) cannot be applied retroactively to resuscitate a child support judgment that was otherwise no longer enforceable due to expiration of an applicable statute of limitations. *Frye v. Frye*, No. M2000-02123-COA-R3-CV, 2001 WL 839039, at *2-*3 (Tenn. Ct. App. Jul. 24, 2001) (no Tenn. R. App. P. 11 application filed); *County of San Mateo, Cal. v. Green*, No. M1999-00112-COA-R3-CV, 2001 WL 120729, at *2 (Tenn. Ct. App. Feb. 14, 2001) (no Tenn. R. App. P. 11 application filed).

Mitchell v. Johnson, No. M2002-002310-COA-R3-CV, 2003 WL 22251335 at *3 (Tenn. Ct. App. Oct. 2, 2003) (no Tenn. R. App. P. 11 application filed).

Consequently, the question is whether Mr. Sanders' father had a vested right in the protection of a statute of limitation prior to July 1, 1997. The general statute of limitations is set out in Tenn. Code Ann. § 28-3-110 and provides:

> The following actions shall be commenced within ten (10) years after the cause of action accrued; . . . (2) Actions on judgments and decrees of courts of record of this or any other state or government; and (3) All other cases not expressly provided for.

The divorce decree and related property settlement agreement at issue herein were entered in 1967. Prior to the claim that is the subject of this appeal, Mr. Sanders apparently never pursued

enforcement of the agreement and there was consequently no prior judgment for arrearages.[2] Child support orders that remained within the jurisdiction of the court and were subject to modification during their pendency were traditionally exempt from statute of limitations challenges, because they were not considered final. *Mitchell*, 2003 WL 22251335, at *4-5; *State ex rel. Woody*, No. 44, 1990 WL 2867 (Tenn. Ct. App. Jan. 19, 1990) (no Tenn. R. App. P. 11 application filed). However, such orders remained within the authority of the court only through minority of the child. In 1987, the General Assembly amended Tenn. Code Ann. § 36-5-101 to provide, in pertinent part, "Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state."[3] Consequently, support orders became judgments enforceable as any other judgment and were "subject to the defenses applicable to judgments generally." *Bloom v. Bloom*, 769 S.W.2d 49, 492 (Tenn. Ct. App. 1988).

Child support orders, prior to the 1997 amendment eliminating limitations on such judgments, were subject to the ten year general statute of limitations as are other judgments not covered by more specific limitations statutes. *Mitchell*, 2003 WL 22251335, at *6; *see also Anderson*, 1999 WL 5057, at *3 (stating "Recent decisions by this court have demonstrated a growing acceptance of the premise that the ten-year statute of limitations applies to child support orders just as it applies to any other judgment or decree"). Because there was no clear legislative mandate exempting child support judgments, they were "subject to the defense of the statute of limitations as is 'any other judgment.'" *In re Estate of Meader*, No. 03A01-9707-CH-00252, 1997 WL 672205, at *2 (Tenn. Ct. App. Oct. 30, 1997) (no Tenn. R. App. P. 11 application filed); *see also Rodakis v. Byrd*, No. 03A01-9206-GS-00202, 1992 WL 301312, at *4 (Tenn. Ct. App. Oct. 23, 1992) (no Tenn. R. App. P. 11 application filed).

The statute of limitations for enforcement of a support order begins to run on the date that the last payment was due by the terms of the judgment under scrutiny. *Mitchell*, 2003 WL 22251335, at *7; *Rodakis*, 1992 WL 301312, at *3; *Frye*, 2001 WL 839039, at *2. As explained above, the most liberal interpretation of the obligation herein would have made the last payment due in the spring of 1981. Thus, the time for bringing an action to enforce the agreement if it were considered a judgment of the court expired in the spring of 1991. The claims filed herein by Mr. Sanders were clearly time barred.

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[2]A judgment for arrearages has consistently been considered final. Consequently, such a judgment is subject to the ten year statute of limitations. "In those cases where the arrearages for child support have been reduced to a judgment for a sum certain, the custodial parent is required to bring the action for enforcement within ten years of obtaining the judgment." *Frye*, 2001 WL 839039, at *2; *see also San Mateo*, 2001 WL 120729, at *2; *Anderson v. Harrison*, No. 02A01-9805-GS-00132, 1999 WL 5057 at *3 (Tenn. Ct. App. Jan. 7, 1999) (no Tenn. R. App. P. 11 application filed); *Vaughn v. Vaughn*, No. 88-26-11, 1988 WL 68062 at *4 (Tenn. Ct. App. July 1, 1988) (no Tenn. R. App. P. 11 Application filed).

[3]One clear result of this enactment was to remove from the courts the discretion to forgive or reduce past arrearages. *Rutledge v. Barrett*, 802 S.W.2d 604, 606 (Tenn. 1991). It also had the effect of removing the availability of traditional equitable defenses to enforcement actions, including laches. *Id*. at 607.

V. CONCLUSION

The order of the trial court is affirmed. The cause is remanded to the Chancery Court of Bedford County for further proceedings that may be necessary, consistent with this opinion. Tax the costs on appeal to the appellant, Marshall Sanders.

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PATRICIA J. COTTRELL, JUDGE