

SHANNON K. KIRCHNER, )  
 )  
 Plaintiff/Appellant, )  
 )  
 VS. )  
 )  
 JOHN H. PRITCHETT, )  
 )  
 Defendant/Appellee. )

Rutherford Juvenile Court  
No. 19458

Appeal No.  
01A01-9705-JV-00234

**FILED**  
November 25, 1997  
Cecil W. Crowson  
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE JUVENILE COURT FOR RUTHERFORD COUNTY  
AT MURFREESBORO, TENNESSEE

HONORABLE DAVID LOUGHRY, JUDGE

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**MODIFIED, AFFIRMED AND REMANDED.**

HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

BEN H. CANTRELL., JUDGE  
WALTER W. BUSSART, JUDGE

<b>SHANNON K. KIRCHNER,</b>	)	
	)	
<b>Plaintiff/Appellant,</b>	)	
	)	<b>Rutherford Juvenile Court</b>
	)	<b>No. 19458</b>
<b>VS.</b>	)	
	)	<b>Appeal No.</b>
	)	<b>01A01-9705-JV-00234</b>
<b>JOHN H. PRITCHETT,</b>	)	
	)	
<b>Defendant/Appellee.</b>	)	

**OPINION**

The captioned petitioner has appealed from a judgment of the Juvenile Court relating to child support. The cause has been before this Court previously, but the record of that appeal has not been consolidated with the record of this appeal. The opinion of this Court disposing of said appeal will be considered in disposing of the present appeal.

It appears from said former opinion that the former appeal was from an adjudication of paternity out of wedlock and support of a child born in 1993; that the petition was not filed until July 1992; that defendant agreed to pay \$220.00 per month but did not do so; and that, in October 1994, the Juvenile Court rendered a judgment for \$17,000.00 arrearage consisting of \$10,460.00 child support, medical and legal expenses and ordered future payment of \$110.00 per month and \$50.00 per month on the arrearage. The former opinion of this Court states:

In this case, Ms. Kirchner diligently attempted to discover evidence of Mr. Pritchett's income and business expenses. Mr. Pritchett did not respond adequately to these discovery requests. Thus, at the hearing, the only evidence of Mr. Pritchett's income and expenses was his self serving, unsubstantiated testimony. Mr. Pritchett had the burden of producing this information, and thus the risk of non-production should fall on him, not on Ms. Kirchner or the parties' son. Like the juvenile court, we are unimpressed with his evidence.

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We vacate the portion of the juvenile court's order setting Mr. Pritchett's prospective child support at \$110 per month because of the inadequacy of the proof concerning his income and expenses, and we remand the case for another hearing to determine Mr. Pritchett's child support obligation. Since we have vacated the portion of the order setting Mr. Pritchett's child support at \$110 per month, we reinstate the

April 1993 pendente lite agreed order requiring Mr. Pritchett to pay \$220 per month in child support. This obligation shall begin from the date of the issuance of the mandate and shall continue until the juvenile court recalculates Mr. Pritchett's child support obligation.

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1. Mr. Pritchett has the burden of proving his income and expenses. If the juvenile court finds that his proof is unreliable, it shall presume that his gross income is \$25,761 in accordance with Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3)(e).

2. The guidelines presume that the noncustodial parent is paying the required federal, state, and local taxes. *See* Tenn. Comp. R. & Regs. r. 1240-2-4-.03(4). Thus, the amount of Mr. Pritchett's child support should be based on the presumption that he has or will pay the appropriate taxes, and the fact that he has not paid federal income taxes should not affect the amount of his child support obligation.

3. Mr. Pritchett may not deduct payments for the support of his other children unless these payments are being made pursuant to a court order. *See* Tenn. Comp. R. & Regs. r. 1240-2-4-.03(4). (FN5)

4. Mr. Pritchett cannot request the juvenile court to deviate from the guidelines solely because he is supporting other children unless he can demonstrate an extreme economic hardship. *See* Tenn. Comp. R. & Reg. r. 1240-2-4-.03(4).

5. The amount of Mr. Pritchett's child support should be increased if he is not providing medical insurance for his son. *See* Tenn. Comp. R. & Regs. r. 1240-2-4-.04(1)(a).

6. The amount of Mr. Pritchett's child support should be increased if he is not exercising the visitation contemplated by the guidelines. *See* Tenn. Comp. R. & Regs. r. 1240-2-4-.04(1)(b).

Unlike awards for prospective child support, awards for expenses arising between the child's birth and the filing of a paternity petition are discretionary decisions based on the facts of the particular case. *State ex rel. Coleman v. Clay*, 805 S.W.2d at 755; *Barabas v. Rogers*, 868 S.W.2d 283, 288 (Tenn.Ct.App.1993). Trial courts may not, however, limit a parent's liability for child support in an arbitrary fashion inconsistent with Tenn.Code Ann. §§ 36-2-102-108; *State ex rel. Coleman v. Clay*, 805 S.W.2d at 755.

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The costs of providing a child medical insurance is a properly recoverable expense in a paternity proceeding.

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Accordingly, on remand, the juvenile court should require Mr. Pritchett to reimburse Ms. Kirchner for any medical insurance premiums for her son's coverage that she

can substantiate either through testimony or documentary proof or both.

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Once the juvenile court has determined the amount of Mr. Pritchett's child support obligation between 1983 and 1992, it should set a payment schedule that will require Mr. Pritchett to eliminate the arrearage within ten years. However, the juvenile court should retain jurisdiction to alter this schedule if the circumstances require.

Following the remand to Juvenile Court, that court held a hearing on December 12, 1996, and, on January 24, 1997, entered judgment as follows:

1. Plaintiff is hereby granted a judgment against defendant in the amount of \$6,928.00 for medical insurance premiums paid on behalf of the minor child, \$3,500.00 for medical expenses incurred on behalf of the minor child, attorney's fees incurred in the original trial of this cause in the amount of \$3,049.00, child support arrearage occurring before December 12, 1996, in the amount of \$15,878.00, \$295.00 for clerk's fees not previous paid by defendant, \$220.00 for a child support payment not made by defendant and attorney's fees incurred after the original trial of this cause in the amount of \$2,745.00 for a total judgment of \$32,615.00.

2. Defendant shall be permitted to pay on the arrearage at the rate of \$271.79 per month.

3. The prospective child support will be in the amount of \$241.65 consisting of \$220.00 current child support and \$21.65 reimbursement for medical insurance premiums, said insurance being provided for the minor child by plaintiff.

4. The total monthly payment due from defendant to plaintiff is \$513.44 plus the 5% clerk's fee of \$25.67 for a total payment of \$539.11 per month, said amount to be paid to the clerk of the Court.

On appeal to this Court, the petitioner-mother presents three issues of which the first two are:

1. Whether the Court erred in determining the Appellee's income for child support purposes.

2. Whether the Court erred in reducing Appellee's child support by giving him credit for two (2) children from a previous marriage when he was under no court order to support said children and there was no showing of an extreme economic hardship.

The prior opinion of this Court, quoted above, mandates a finding that defendant's 1992 income of \$25,761.00 continues in subsequent years unless he satisfactorily proves otherwise. \$25,761.00 per year is \$2,146.75 per month, for which the guidelines provide 21%, or \$451.00.

The Trial Judge stated orally that defendant's evidence of his income since 1992 was unreliable and that the \$25,761.00 earned in 1992 would be considered to be the earnings during subsequent years. The oral statement further indicated that defendant would be credited with supporting two other children as to whom there was no court order for support. This is not in conformity with the above quoted opinion of this Court, which is "the law of the case." *Clark v. Keith*, 15 Ct. 568, 106 U.S. 464, 27 L. Ed. 302; *Carpenter v. Durell*, 90 F.2d 57, Cert. Den. 58 S.Ct. 42, 302 U.S. 721, 82 L.Ed 557; *Pierce v. Tharp*, 224 Tenn. 328, 457 S.W.2d 529 (1970); *City of Chattanooga v. Rogers*, 201 Tenn. 403, 299 S.W.2d 660 (1957). Therefore, the amount of child support ordered to be paid to petitioner must be modified to \$451.00.

Petitioner's third issue is:

3. Whether the Court erred in not ordering an increase in child support due to Appellee's failure to visit with the child.

Petitioner argues that the previous opinion of this Court required the Trial Court to order child support greater than the guidelines because the defendant did not exercise the visitation allowed. It is true that the guidelines contemplate certain visitation by the non custodial parent which, under ordinary circumstances, might mitigate his support liability. However, the record contains no evidentiary basis for fixing the amount of modification required.

The defendant presents the following issue:

IV. The juvenile court erred in not utilizing the appellee's current income in determining his current child support.

As heretofore pointed out, the Trial Court was unimpressed by the credibility of the appellee. Where a decision rests upon the credibility of a witness, the Trial Court is the best

judge of that credibility, and the finding of the Trial Court in this regard of the Trial Court in this regard is entitled to great weight on appeal. *Royal Ins. Co. v. Alliance Ins. Co.*, Tenn. App. 1985, 690 S.W.2d 541. Nothing is found in this record to justify a reversal of the decision of the Trial court as to credibility.

The judgment of the Trial Court is modified by increasing the amount of child support to \$451.00 per month. As modified, said judgment is affirmed. Costs of this appeal are taxed against the defendant-appellee. The cause is remanded to the Trial Court for further necessary proceedings.

**MODIFIED, AFFIRMED AND REMANDED**

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HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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BEN H. CANTRELL, JUDGE

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WALTER W. BUSSART, JUDGE