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March 10, 2008

Opinion No. 08-47

Attorney Fees

QUESTION

Is it lawful for a Tennessee judge to "attach" attorney fees to a parent's child support obligation?

OPINION

A judge may assess attorney fees in divorce and paternity matters. However, attorney fees may not be "attached" to a parent's child support obligation because such fees are not child support.

ANALYSIS

A similar question was presented in Op. Tenn. Att'y Gen. No. 07-154 (Nov. 21, 2007) regarding attachment of guardian *ad litem* fees to a child support obligation. The legal analysis under this opinion is identical and will serve to confirm the earlier opinion.

Under Tennessee law, child support actions are governed solely by statute and by administrative rules. In cases arising upon a dissolution of marriage, Tennessee law requires that the divorce court set child support for the parties' children. Tenn. Code Ann. § 36-5-101(a)(1). Similarly, in parentage cases involving children born out of wedlock, the law also mandates that the juvenile court set child support. Tenn. Code Ann. § 36-2-311(a)(11)(A). In both situations, the court must set child support in accordance with the Child Support Guidelines ("Guidelines"):

> In making the court's determination concerning the amount of support of any minor child or children of the parties, the court shall apply, as a rebuttable presumption, the child support guidelines, as provided in this subsection (e).

Tenn. Code Ann. § 36-5-101(e)(1)(A). The Department of Human Services ("Department"), in turn, has statutory rulemaking authority to promulgate the Guidelines. Tenn. Code Ann. § 71-1-132(a)(1). The Guidelines "have the force and effect of a legislative mandate." *Gallaher v. Elam*, 104 S.W.3d

455, 459 (Tenn. 2003). Neither these statutes nor the Guidelines provide that attorney fees may be "attached" to a parent's child support obligation.

Courts possess discretion and authority to award attorney fees in the context of divorce and paternity from a number of sources.[1] However, in light of the authorities, we conclude that it would be inappropriate to "attach" attorney fees to a person's child support obligation because such fees are not child support. A parent's child support obligation must be established by applying, "as a rebuttable presumption," the Guidelines. Tenn. Code Ann. § 36-5-101(e)(1)(A). Neither the statutes authorizing reliance on the Guidelines to set child support nor the Guidelines themselves provide that attorney fees may be "attached" to a parent's child support obligation.

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[1]These include Tenn. Code Ann. §§ 36-5-103(c) (allowing attorney fee awards in original and subsequent proceedings in the context of divorce, custody, and paternity). *See also* Tenn. Code Ann. §36-2-311(a)(11)(A) (requiring support be awarded in the paternity context pursuant to Title 36, Chapter 5); Tenn. Code Ann. § 36-2-311(a)(14) (requiring paternity orders to include a determination of liability for counsel fees); *A.B.C. v. A.H.*, 2005 WL 74106 *6 (Tenn. Ct. App. Jan. 13, 2005) (holding that the decision to award attorney fees in a paternity matter is within the sound discretion of the trial court).