STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 12-42

Authority to Award Child Support in the Absence of a Divorce or Separation Decree

QUESTION

Does Tennessee law permit an award of child support payments between separated married parties who have not yet obtained a decree of separation?

OPINION

Yes. Tenn. Code Ann. § 36-5-101(a)(2) provides that courts having subject matter jurisdiction over the parties in a domestic relations case are expressly authorized to provide for the future support of children. In addition, Tenn. Code Ann. § 37-1-104(d)(2) authorizes any court to issue a child support order when requested if that court has exclusive or concurrent jurisdiction to order support. Finally, Tenn. Code Ann. §§ 36-2-310 and -311 authorize courts to order child support in parentage actions.

ANALYSIS

The question whether authority exists to award child support between married but separated parties who have not acquired a decree of separation requires an examination of the various Tennessee statutes which authorize courts to order child support. When construing a statute, the primary goal of the courts is to give effect to the purpose of the Legislature without exceeding the statute's intended scope. Hayes v. Gibson County, 288 S.W.3d 334, 337 (Tenn. 2009). When a statute is unambiguous, a court will construe its meaning from the natural and ordinary meaning of the words chosen. State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." National Gas Distribs. v. State, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter should be read in pari materia. In re C.K.G., 173 S.W.3d 714, 722 (Tenn. 2005). In addition, a statute should be construed so that "no part will be inoperative, superfluous, void or insignificant." State v. Northcutt, 568 S.W.2d 636, 637-38 (Tenn. 1978). At the same time, a statute should not be construed to produce an absurd or incongruous result. Barnett v. Barnett, 27 S.W.3d 904, 908 (Tenn. 2000). When statutes conflict, it is the role of the courts to reconcile the conflict and give effect to both statutory schemes to the extent possible. Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519, 525 (Tenn. Ct. App. 1991).

Applying these principles of statutory construction, this Office concludes that Tennessee courts do have statutory authority to order child support when the parents are separated but have not acquired a decree of separation. Tenn. Code Ann. § 36-5-101(a)(1) authorizes a court to order support when a marriage has been dissolved either "absolutely or by a perpetual or temporary decree of separation." Tenn. Code Ann. § 36-5-101(a)(2) provides more general authority for ordering child support, stating that "[c]ourts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of the children, in proper cases." By the plain language of Tenn. Code Ann. § 36-5-101(a)(2), a court that has jurisdiction over the parties has broad authority to order support, including the authority to issue such an order prior to entry of any separation decree.

A broad interpretation of subsection (a)(2) is consistent with the rule of construction that statutes must be read *in pari materia* so that no part is rendered "inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d at 637-38; *In re C.K.G.*, 173 S.W.3d at 722. In order for subsection (a)(2) to be effective, it must be read as providing authority for courts having subject matter and personal jurisdiction to set child support beyond the authority conferred by subsection (a)(1), such as when the parties have not yet obtained a decree of separation. Construing subsection (a)(1) to stand for the proposition that courts only have the authority to set child support when the parties have obtained a decree of separation would render subsection (a)(2) void or insignificant, as there would be no need to provide any additional authorization than what is already provided in subsection (a)(1). Thus, based upon the above stated principles of statutory interpretation, subsections (a)(1) and (a)(2) should be read as providing courts the authority to order the payment of child support either: (1) upon the dissolution of a marriage, either absolutely or by a perpetual or temporary decree of separation; or (2) when the court finds it proper, provided that the court has subject matter jurisdiction to set child support and personal jurisdiction over the parties in question.

In addition to the express authority to order support set forth at Tenn. Code Ann. § 36-5-101(a)(2), other provisions of Tennessee law authorize courts to order child support in a variety of circumstances, including the circumstances posited in this opinion request. Tennessee Code Annotated § 37-1-104(d)(2) provides that: "[i]n any case in which the court has exclusive or concurrent jurisdiction to order the payment of child support, the court may issue a child support order when requested by a party." Thus, circuit, chancery, and juvenile courts all have jurisdiction to hear and grant petitions for child support when the married parents are separated but have not filed a petition for divorce or legal separation. Op. Tenn. Att'y Gen. No. 08-189 (Dec. 23, 2008); *see also State ex rel. Taylor v. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291, at *2 (Tenn. Ct. App. March 13, 2006). Further, Tenn. Code Ann. § 37-1-151(a) allows a juvenile court to order child support upon finding a child dependent and neglected, unruly or delinquent.[1] Tenn. Code Ann. § 37-1-151(a).

Finally, juvenile courts and courts of general jurisdiction are expressly authorized to hear parentage actions. *See* Tenn. Code Ann. § 36-2-302(2). Tenn. Code Ann. § 36-2-310 requires such courts to enter a temporary order for child support, upon motion of the party, upon a

[1] Juvenile courts have exclusive original jurisdiction over proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected. Tenn. Code Ann. § 37-1-103(a)(1).

showing of clear and convincing evidence of parentage on the basis of genetic tests, while Tenn. Code Ann. § 36-2-311(a)(11)(A) requires any order establishing parentage to include a determination of child support.

As the above cited statutes establish, Tennessee courts are authorized to order the payment of child support in a variety of contexts even though the married parents are separated but have not acquired a decree of separation.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

MARCIE E. GREENE
Assistant Attorney General

Requested by:

Honorable Craig Fitzhugh
State Representative
33 Legislative Plaza
Nashville, TN 37234-0182