STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

January 18, 2017

Opinion No. 17-04

Court Cost Charges Required by Tenn. Code Ann. § 8-21-401(b)(1)(E)

Question

Does the $75.00 filing fee required by Tenn. Code Ann. § 8-21-401(b)(1)(E) apply to motions to modify parenting plans or to enforce or modify child support orders while the original divorce proceeding is still pending?

Opinion

No, the $75 fee provided in Tenn. Code Ann. § 8-21-401(b)(1)(E) is a standard court cost charge and does not apply to the filing of motions in pending divorce actions.

ANALYSIS

Tennessee Code Annotated § 8-21-401 sets a schedule of fees to be charged by court clerks in various types of cases. Clerks' fees for civil cases in circuit and chancery court are scheduled in Tenn. Code Ann. § 8-21-401(b). "Unless otherwise provided," chancery and circuit court clerks are required to charge a "standard court cost" of $225 "at the institution" of all "civil actions." Id. 401(b)(1)(A).

Subsections (b)(1)(B) through (E) do in fact provide otherwise by lowering the amount of the court cost to be charged in some civil actions. Clerks are required to charge "a standard court cost" of $200 "at the institution" of a divorce case involving minor children (id. at (b)(1)(B)) and "a standard court cost" of $125 if the case does not involve minor children (id.). A "standard court cost" charge of $150 applies "at the institution" of cases such as workers' compensation actions and appeals to circuit or chancery court from other trial courts and administrative bodies. (Id. at (b)(1)(C)). Clerks must charge a "standard court cost" of $100 "at the institution" of yet other "actions," including adoptions, legitimations, paternity, termination of parental rights, enforcement of foreign judgments, and orders of protection. Id. at (b)(1)(D)). And

> [i]n the following specific actions, the clerk shall charge a standard court cost of seventy-five dollars ($75.00): child support enforcement and modification, including interstate support cases and civil contempt actions, and requests for modification of a parenting plan.

Tenn. Code Ann. § 8-21-401(b)(1)(E) (emphasis added).

By its terms, Tenn. Code Ann. § 8-21-401(b)(1)(E) applies to "actions." An "action" is a lawsuit, which is initiated by filing a complaint with the clerk of the court. See Tenn. R. Civ. P.

1, 2, and 3. A "motion" is not an action. Rather, a motion is an application in a pending action requesting a court to make a particular ruling. *See* Tenn. R. Civ. P. 7.02.

By its terms, Tenn. Code Ann. § 8-21-401(b)(1)(E) addresses only "standard court costs." Court costs are not coextensive with all litigation costs. *See, e.g.,* Tenn. Code Ann. § 20-12-119(c)(2) (indicating that "court costs" are just one of many components of "litigation costs"). Litigation costs are all costs actually incurred due to the proceedings that result from bringing an action. *Id.* Court costs are one such litigation cost. Filing fees for motions, when such fees are authorized, are another, separate component of litigation costs. Moreover, in the context of Tenn. Code Ann. § 8-21-401(b) taken as a whole, the term "standard court cost" refers to the court costs normally associated with the initiation of an action in chancery or circuit court, and does not include filing fees for motions.

Thus, according to the plain language of Tenn. Code Ann. § 8-21-401(b)(1)(E), the $75 charge is just the "standard court cost," like all the other court costs specified in Tenn. Code Ann. § 8-21-401(b), associated with bringing an "action." It is not a fee for filing a motion in an action that is already pending.

In sum, when the statutory scheme is taken as a whole and the language of 401(b)(1)(E) is given its plain and normal meaning, the $75 court-cost charge in Tenn. Code Ann. § 8-21-401(b)(1)(E) applies only to the specified "actions." It does not apply to the filing of motions in pending divorce cases.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

KATHERINE DIX
Special Counsel

Requested by:

The Honorable Jimmy Eldridge
State Representative
208 War Memorial Building
Nashville, TN 37243