

SUPREME COURT OF ARKANSAS

Watt v. Office of Child Support Enforcement

364 Ark. 236 (2005) (Ark. 2005) · No. No. 05-131 · Decided November 17, 2005

SUMMARY

The Arkansas Supreme Court affirmed an order establishing William Watt as the biological father of Lakesha Lemon and requiring him to pay child-support arrearages. The court upheld the authority to order paternity testing, found that the Office of Child Support Enforcement had standing, and concluded that the award of support beginning at the mother's death was not clearly erroneous. The court declined to consider undeveloped constitutional and laches arguments.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Betty C. Dickey
JURISDICTION	Arkansas
DECIDED	November 17, 2005
DOCKET	No. 05-131
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Ashley County Circuit Court, Domestic Relations Division, establishing appellant's paternity and ordering him to pay child-support arrearages.
STANDARD OF REVIEW	Findings of fact, including paternity findings and the amount and period of retroactive support, are reviewed for clear error. Credibility determinations are left to the trial court unless clearly erroneous. Issues not preserved below or inadequately developed on appeal are not considered.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	William D. Watt v. Office of Child Support Enforcement

TOPICS

- paternity
- child support
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court had authority to order Watt and the child to submit to scientific paternity testing when the child's mother was deceased.
2. Whether the corroborating testimony concerning conception, birth, and the child's history was sufficient to establish a prima facie case of paternity under Arkansas law.
3. Whether the Office of Child Support Enforcement had authority to initiate the paternity action.
4. Whether the award of child support arrearages beginning on the date of the mother's death was clearly erroneous.
5. Whether Watt preserved and established laches as an affirmative defense.
6. Whether Watt's constitutional challenge to the paternity testing was preserved and adequately developed for appellate review.

HOLDINGS

1. Arkansas Code Annotated section 9-10-108(a)(2)(A) expressly requires the trial court, upon motion in a paternity action, to order the putative father and child to submit to scientific testing when the mother is deceased or unavailable; the circuit court therefore properly ordered the testing.
2. When the mother is deceased, corroborating testimony concerning the conception, birth, and history of the child, together with paternity-test results establishing at least a ninety-five-percent probability of biological paternity, constitutes a prima facie case and shifts the burden to the putative father to rebut it. The evidence supported the finding that Watt was the father as a matter of law.
3. The Office of Child Support Enforcement had statutory authority to bring the paternity action, and any challenge to Sara Smith's individual standing was irrelevant because OCSE, not Smith, was the plaintiff identified in the pleadings.
4. The circuit court's decision to award support beginning on the date of the mother's death was not clearly erroneous.
5. The Supreme Court would not consider Watt's laches defense because he failed to plead laches in the trial court and raised it for the first time on appeal.
6. The court declined to address the merits of Watt's Fourth Amendment challenge because the argument was not developed at the trial-court level and was unsupported by legal authority in his appellate brief.

KEY QUOTATIONS

“Upon motion of either party in a paternity action when the mother is deceased or unavailable, the trial court shall order that the putative father and child submit to scientific testing for paternity.” (217 S.W.3d at 786)

“If the results of the paternity tests conducted pursuant to subdivision (a)(2) of this section establish a ninety-five percent or more probability that the putative father is the biological father of the child, after corroborating testimony concerning the conception, birth, and history of the child, this shall constitute a

prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut such proof.” (217 S.W.3d at 787)

FACTUAL BACKGROUND

Lakesha Lemon was born in approximately March 1986, and her mother, Lula Lemon, died in June 2002 without having sought child support or established paternity. After Lakesha's sister, Sara Smith, assumed responsibility for her, the Office of Child Support Enforcement filed a paternity action. Two paternity tests placed the probability that Watt was Lakesha's father at 99.95% and 99.88%, and the circuit court ordered support arrearages from June 2002 through June 2004.

PROCEDURAL HISTORY

The Ashley County Circuit Court ordered William Watt to submit to paternity testing, found him to be the father of Lakesha Lemon, and ordered him to pay \$5,280 in support arrearages from the date of the child's mother's death through the child's high-school graduation. Watt appealed, challenging the paternity testing, the authority to bring the action, the retroactive support award, and the failure to apply laches. The Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- *Batiste v. Arkansas Department of Human Services*, 361 Ark. 46, 204 S.W.3d 521 (2005)
- *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004)
- *Matthews v. Jefferson Hospital Association*, 341 Ark. 5, 14 S.W.3d 482 (2000)
- *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000)
- *State v. Nichols*, 364 Ark. 1, 216 S.W.3d 114 (2005)
- *Smith v. State*, 363 Ark. 456, 215 S.W.3d 626 (2005)