IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSUE TERRONES VALDEZ,

Appellant,

vs.

PATRICIA SOTO AGUILAR,

Respondent.

Supreme Court No. 66854

APPELLANT'S REPLY BRIEF

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15-14480

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Jurisdictional Statement

Appellant's Jurisdictional Statement remains as set forth in the Opening Brief filed March 12, 2015.

Statement of Issues

1. Is NRS 425.360(4) unconstitutional on its face?
2. Is NRS 425.360(4) unconstitutional as applied to the facts and circumstances in this case?
3. Is the Order filed August 20, 2014 arbitrary, capricious and/or in violation of state and federal law?
4. Is NRS 425.360(4) ambiguous?

Summary of the Case

Page 2 of Appellant's Opening Brief filed March 12, 2015 was

inadvertently omitted. Appellant has attempted to correct this by the filing of a separate Errata. However, for purposes of context, a complete repeat of the Summary of the Case is included in this Reply Brief.

JOSUE TERRONES VALDEZ (hereinafter "JOSUE") requested the assistance of the Washoe County District Attorney's Office Child Support Division to assist him in the collection of the child support obligation owed by Respondent PATRICIA SOTO-AGUILAR (hereinafter "PATRICIA"). Pursuant to hearing conducted January 6, 2011, a child support obligation was established payable by PATRICIA to JOSUE effective September 1, 2010; AA pgs. 1 - 8. The amount of the child support was established as $531.00 per month. PATRICIA attended the hearing on January 6, 2011. Notice of Entry of Order was filed February 14, 2011; AA pgs. 9 - 10.

JOSUE filed on August 12, 2013 his Motions for Enforcement and for Order to Show Cause; AA pgs. 11 - 15. Said Motions are supported by Exhibit/schedule of child support arrearages filed November 13, 2013; AA pgs. 16 - 21. A hearing was conducted on January 2, 2014 but no decision was reached on the merits as to JOSUE's Motions; see Master's Findings and Recommendations, filed January 1, 2014 AA pgs. 22 - 24. Pursuant to said Master's Findings and Recommendations, JOSUE was allowed to file a Motion challenging the

constitutionality of NRS 425.360(4). The Master's Findings and Recommendations filed January 2, 2014 were affirmed by Judgment and Order filed January 27, 2014; AA pgs. 25 - 26.

JOSUE filed his Motions for Declaratory and Injunctive Relief on January 24, 2014; AA pgs. 27 - 32. PATRICIA did not respond to the Motion. The Washoe County District Attorney's Office, Family Support Division filed its Response on February 18, 2014; AA pgs. 33 - 54. The matter was then taken under submission. The Court Master issued Findings and Recommendations filed May 9, 2014 upholding the constitutionality of the statute; AA pgs. 55 - 60.

JOSUE timely filed his Objection on May 19, 2014; AA pgs. 61 - 63. A hearing was conducted on July 16, 2014 before the District Court. The matter was taken under submission, thereafter resulting in an Order filed August 20, 2014; AA pgs. 64 - 71. Although said Order is described as affirming in part and denying in part the May 9, 2014 Findings and Recommendations, said Order really affirms said Finding and Recommendations in its entirety.

PATRICIA was found to owe ***ZERO*** child support during all of the twenty-seven (27) months of when she was receiving public benefits not related to the child in issue, contrary to the Judgment and Order filed January 28, 2011, and the fact that JOSUE had primary and actual custody during all of those months. The

District Court refused to allow the obligation to accrue, or alternatively, for the obligation to at least accrue at the statutory minimum under the formula in NRS 125 B.080(4) of $100.00 per month.

PATRICIA attended all of the hearings. The hearings conducted January 2, 2014 and July 16, 2014 were limited to oral argument only, and the only persons speaking at said hearings were JOSUE's attorney, and the representative from the Washoe County District Attorney, Family Support Division.

STATEMENT OF THE FACTS

Appellant's Statement of the Facts remains as set forth in the Opening Brief filed March 12, 2015.

Argument

The constitutionality of the statute actually is a sub issue of whether NRS 425.360(4) is ambiguous. Respondent did not file any Answering Brief. The Answering Brief filed by the Washoe County District Attorney's Office claims that the statute is unambiguous and clear on its face. Appellant disagrees.

Questions of statutory construction are reviewed by the Appellate Court de novo; see Firestone vs. State, 120 Nev. 13, 83 P.3d 279 (2004). Unless a statute is ambiguous, the Appellate Court shall attribute the plain language to the statute's language.

An ambiguity arises where the statutory language lends itself to two or more reasonable interpretations; see Moore vs. State, 122 Nev. 27, 126 P.3d 508 (2006). Where a statute is deemed ambiguous, the legislature's intent controls. The Appellate Court looks to reason and public policy to discern legislative intent. The operative language in NRS 425.360(4) provides as follows:

> "Debts for support may not be incurred by a parent or any other person who is the recipient of public assistance for the benefit of a dependent child for the period when the parent or other person is a recipient".

Does this language mean that the recipient cannot receive public assistance if she fails to pay support, or does it mean that child support is a debt that cannot accrue while the recipient is receiving public assistance? The statutory language lends itself to two or more reasonable interpretations. Fortunately, NRS 425.360(1) resolves the issue as it states as follows:

> "Any payment of public assistance pursuant to this chapter creates a debt for support to the Division by the responsible parent..."

Basic rules of statutory construction require that multiple legislative provisions be construed as a whole, and where possible, a statute should be read to give plain meaning to all its parts; see Andersen Family Associates vs. Hugh Ricci, P.E., 124 Nev. 182, 179 P.3d 1201 (2008). NRS 425.360(1) creates the debt and NRS 425.360(4) limits the debt. For example, the debt, incurring public assistance, may

not be incurred by a parent if she fails to pay child support. To prevent debts for child support to accrue against a noncustodial parent who is the recipient of public assistance is an illogical conclusion and therefore absurd.

The Courts must construe statutory language to avoid absurd or unreasonable results; see 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction section 46:2, at page 162 (7th ed. 2007), cited with favor in Einhorn vs. Bac Home Loans Servicing, LP, 128 Nev. Adv. Op. 61, 290 P.3d 249 (2012). In light of Appellant demonstrating that there is ambiguity, the Court is invited to consider the various arguments contained in the Answering Brief.

Respondent argues that there is no attempted retroactive modification of child support. However, it is undisputed that Respondent never even took the position that child support was suspended until January 2014. The decisions of the Court Master and District Judge suspended child support from February 2011 through November 2011 and from August 2012 through January 2014. Respondent most certainly sought and obtained prohibited retroactive modification of child support. Respondent has not demonstrated the intent of the legislature to compel such a result.

The Respondent discusses definitions in NRS 425.360(4) but not in NRS 425.360(1). It is unclear as to what debt is intended to apply in NRS 425.360(1),

whether it is the debt owing by the noncustodial parent PATRICIA to JOSUE or is it the debt owing by PATRICIA or the father of her other children to the Division as a result of her receiving public benefits. The statute is most certainly ambiguous. Thus, even if the statute were held to not be unconstitutional, it should be stricken because of its ambiguity.

Respondent concedes that both federal and state law prohibit retroactive modification. It is unclear how Respondent can claim that the decision of the District Court did not constitute retroactive modification. No notice nor opportunity was ever provided to Appellant to dispute the obligation of child support owing at least prior to January 2014.

Similarly, Respondent concedes that child support payments once accrued become vested rights and cannot thereafter be modified or voided. This cannot possibly justify what has occurred. For example, Respondent owes child support for February 2011. The month of February 2011 came and went without any action taken to seek a ruling that the child support for that month was suspended. Using Respondent's own argument that child support payments once accrued become vested rights and cannot thereafter be modified or voided directly contradicts exactly what occurred in this case. The same analysis would apply to the months of March 2011 through November 2011 and from August 2012 through December

2013. Even if the argument of Respondent could apply, it is conceded that no such position was taken until the hearing in January 2014 and this would be the only month Respondent could claim did not involve an attempt by her to seek retroactive modification.

Respondent argues that NRS 425.360(4) does not modify the underlying Child Support Order. On the contrary, it reduces the ongoing child support from $531.00 per month to zero per month. Clearly there is modification.

Respondent argues that the suspension of a child support obligation has been upheld in other states. As shown in Appellant's Opening Brief, state law decisions outside Nevada have resulted in the opposite conclusion. Appellant urges the Court to further review the California and Maine case law authority and to reject the cases cited by Respondent from Iowa, Colorado and Oregon.

Respondent again and again argues that the statute does not retroactively modify child support but merely suspends the accrual. This argument constitutes sheer utter nonsense. If the Respondent were to argue that the money is still owed but it is suspended pending the parent receiving public assistance getting off receiving such benefits, Appellant would take a different position. It is not whether the noncustodial parent owed now or later but whether the noncustodial parent completely gets out of paying support for the months in which she is receiving

public assistance for children other than the one at issue. The statute does not "merely" suspend child support.

Respondent concedes that the custodial parent's legal right to receive child support is a property right interest protected by the Nevada and United States Constitutions. With that in mind, the position taken by Respondent simply makes no sense. The case of Mathews vs. Eldridge, 429 U.S. 319 (1976), 96 S. Ct. 893, 47 L. Ed. 2d 18 is controlling. There is no "public purpose" for taking child support away from Appellant as a result of Respondent receiving public benefits. Clearly no hearing was conducted before Appellant was deprived of child support during the months in 2011, 2012 and 2013 for which now no child support is deemed to be owed.

The Washoe County District Attorney's Office, not Respondent, argues that the burden as to what justifies a constitutional taking for public purpose is substantially low and easily satisfied. No such showing has been made and no such burden has been satisfied. Respondent's argument that Nevada is "merely" regulating the use of property simply makes no sense. It is depriving the child support property interest of Appellant for reasons that have nothing to do with that child support obligation. Just because Respondent receives public benefits for other children does not mean that Respondent is entitled to regulate and deny child

support owing to Appellant. The Answering Brief continually refers to suspension of an "unvested interest" in ongoing child support. Factually the argument advanced is directly contradicted in that Respondent has sought and obtained retroactive modification of child support for twenty-seven (27) months prior to the hearing in January 2014 and then for an additional nine (9) months in 2014.

Respondent argues that the federal legislature's purpose is to "increase the flexibility" of states in operating a program designed to provide assistance to needy families. Appellant is a needy recipient of the assistance which constitutes a child support obligation payable by the noncustodial parent and her seeking and obtaining public assistance is irrelevant and immaterial to such statutory obligation. There is no legitimate governmental purpose in denying child support to Appellant payable by Respondent. The provisions of NRS 425.360(4) does not benefit the minor dependent child in the custody of Appellant. The interpretation offered by Respondent operates as a punitive and penalizing provision as applied to the facts of this case.

Respondent argues that because Nevada child support formula is not determined from the financial need of a custodial parent that somehow this justifies the retroactive modification of child support. Every parent is in financial need of child support payable by the noncustodial parent. The statutory minimum applies

to everyone, even persons not able to pay the statutory minimum. Actually the statute does allow as a deviating factor the relative income of the parents so it not completely accurate to argue that child support obligations are not determined from the financial need of a custodial parent. A parent not on public assistance cannot seek retroactive modification of child support even applicable to a period of time where under the statutory formula that parent would not owe the amount subject to an ongoing Order. In this case, however, Respondent has obtained the benefit as if she had filed a Motion. The Court should invalidate the actions taken in this case.

Conclusion

Reversal is warranted for three reasons. First, the statute is unconstitutional on its face, or alternatively, as applied to the facts and circumstances of this case. Second, the Court erred and/or abused its discretion in retroactively modifying and eliminating child support already vested and accrued owing by PATRICIA to JOSUE. Third, the statute is ambiguous as to what debt to which NRS 425.360.(4) applies. For those reasons, the District Court's Order of August 20, 2014 should be reversed.

Certification

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5), and the type requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using WordPerfect format in typeface of 14, New Times Roman.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 12 points or more.

[X] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this Appellate Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the even that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 11th day of May, 2015.

JONATHAN H. KING, ESQ.
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CERTIFICATE OF SERVICE

I certify that on the 11th day of May, 2015, I deposited for mailing, in the U.S. Mail in Reno, Nevada, with postage thereon fully prepaid, a true and correct copy of the within document, addressed as follows:

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