STATE OF MICHIGAN

COURT OF APPEALS

ANDREA CHRISTY MCLAREN,

Plaintiff-Appellee,

v

BUD DAVID MILLER,

Defendant-Appellant.

UNPUBLISHED
October 13, 2005

No. 260868
Dickinson Circuit Court
LC No. 04-013426-DS

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order concerning the payment of child support with respect to the parties' two minor children. The thrust of the issue on appeal regards a controversy over the dates on which the support obligations first arose, with defendant arguing that he should be responsible for child support only from the dates the complaints were filed and plaintiff arguing for pre-complaint accrual. The trial court found in favor of plaintiff's position. Resolving this dispute requires us to determine whether a 2004 amendment of MCL 722.717(2) had only prospective application or whether it was also retroactive. We affirm, holding that the amendment of MCL 722.717(2) was prospective only and that the trial court did not err in its analysis and conclusion.

On May 25, 2004, plaintiff filed a complaint against defendant seeking child support for her daughter Kaeley, who was born on April 29, 2002. Plaintiff alleged that defendant is Kaeley's biological father, and defendant admitted being Kaeley's father in his answer. On July 8, 2004, defendant filed a petition to establish custodial rights and a parenting time schedule with respect to Kaeley. On August 24, 2004, plaintiff gave birth to a boy named Trent. On September 20, 2004, plaintiff filed a paternity complaint against defendant regarding Trent, which was assigned a separate case number. On September 21, 2004, an order of filiation was entered establishing defendant as Kaeley's father. On November 1, 2004, an order of filiation was entered establishing defendant as Trent's father.

In a consolidated hearing regarding both actions commencing on November 17, 2004, the trial court discussed the issue regarding child support and whether the amendment of MCL 722.717(2) was retroactive to the time the actions were filed. MCL 722.717 is part of the Michigan Paternity Act, MCL 722.711 *et seq.*, and specifically addresses orders of filiation declaring paternity and accompanying orders for child support. The amended language of § 717(2) was enacted pursuant to 2004 PA 2009 and became effective October 1, 2004.

Accordingly, where plaintiff's complaints were filed prior to October 1, 2004, and were pending in regard to child support on said date, the amended language has no bearing on the case if we are to find that the amendment worked prospectively only. Before it was amended in 2004, MCL 722.717(2) provided that if a party did not commence a paternity action, with the concomitant request for child support, within six years of a child's birth, "an amount shall not be awarded for expenses or support that accrued before the date on which the complaint was filed" unless one of three circumstances existed. 2001 PA 109; see also Historical and Statutory Notes to MCL 722.717. The exceptions covered situations where the father acknowledged paternity in writing in accordance with the statutory provisions, or where at least one support payment was made during the six-year period and the proceedings were commenced within six years of the most recent payment, or where the father was out of state, was avoiding service of process, or threatened or coerced the complainant not to file an action during the six-year period. *Id.* Here, plaintiff commenced actions within six years of Kaeley's and Trent's births.

As amended, § 717(2) now provides, in pertinent part, as follows:

> A child support obligation is only retroactive to the date that the paternity complaint was filed unless any of the following circumstances exist:
>
> (a) The defendant was avoiding service of process.
>
> (b) The defendant threatened or coerced through domestic violence or other means the complainant not to file a proceeding under this act.
>
> (c) The defendant otherwise delayed the imposition of a support obligation.[1]

The trial court believed that a child's biological father should support his child after the father leaves the home. The court also noted that it did not agree with the supposed intent of the amendment, which was, as the court understood it, not to impose a huge financial burden on fathers once paternity was established. Finally, the trial court stated to defendant's counsel that unless defendant provided support to the contrary, he would impose a child support award based on the time defendant left the home, not the dates on which the complaints were filed.

The hearing resumed on November 23, 2004. No oral arguments were heard regarding the 2004 amendment, and plaintiff's counsel was given two weeks from the hearing to file a responsive brief. Plaintiff never filed a responsive brief. On February 3, 2004, the trial court entered an order awarding child support for Kaeley, effective August 1, 2003, which was the month following the parties' separation, and child support for Trent, effective August 24, 2004, which is his date of birth. The trial court noted that the 2004 amendment required support to begin from the date the paternity complaint was filed and also that none of the three enumerated exceptions existed in the instant case. The trial court reasoned, however, that if the Legislature

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[1] Assuming application of the amended language, there does not appear to be any dispute that the exceptions are not applicable.

intended to give the amendment retroactive effect, it would have explicitly done so in the language itself. The trial court did not believe that the amendment was remedial in nature.

Whether a statute's amended provisions should be applied retroactively or prospectively only is a question of law, i.e., statutory construction, that this Court reviews de novo. *Frank W Lynch & Co v Flex Technologies, Inc,* 463 Mich 578, 583; 624 NW2d 180 (2001). If the amended statute is applied retroactively in the case at bar, plaintiff would only be entitled to child support payments for the children from the dates the respective complaints were filed.

Generally, a new or amended statute applies prospectively only unless the Legislature indicated an intent to give it retroactive effect. *Seaton v Wayne Co Prosecutor* (*On Second Remand*), 233 Mich App 313, 316; 590 NW2d 598 (1998). Statutes are presumed to operate prospectively only unless a contrary legislative intent is clearly manifested. *Lynch, supra* at 583. "[A]n exception to the general rule is recognized where a statute is remedial or procedural in nature." *Seaton, supra* at 317, citing *People v Russo*, 439 Mich 584, 594; 487 NW2d 698 (1992). The *Lynch* Court explained this exception in more detail:

> Plaintiff relies on the so-called "exception" to the general rule of prospective application providing that "statutes which operate in furtherance of a remedy or mode of procedure and which neither create new rights nor destroy, enlarge, or diminish existing rights are generally held to operate retrospectively unless a contrary legislative intent is manifested." *Franks* [*v White Pine Copper Div*, 422 Mich 636, 672; 375 NW2d 715 (1985)]; *Selk v Detroit Plastic Products*, 419 Mich 1, 10; 345 NW2d 184 (1984). . . . [W]e have rejected the notion that a statute significantly affecting a party's substantive rights should be applied retroactively merely because it can also be characterized in a sense as "remedial." *Franks, supra* at 673-674. . . . [T]he term "remedial" in this context should only be employed to describe legislation that does not affect substantive rights. Otherwise, "[t]he mere fact that a statute is characterized as 'remedial' . . . is of little value in statutory construction." . . . Again, the question is one of legislative intent. [*Lynch, supra* at 584-585.]

In determining whether a statute should be applied retroactively or prospectively only, "'[t]he primary and overriding rule is that legislative intent governs. All other rules of construction and operation are subservient to this principle.'" *Lynch, supra* at 583, quoting *Franks, supra* at 670.

In *In re Certified Questions*, 416 Mich 558, 570; 331 NW2d 456 (1982), the Michigan Supreme Court addressed the question posed to us today, stating that a court "must consider four rules in determining whether a new act applies to a pre-enactment cause of action." First, a court must determine whether there is specific statutory language in the amendment regarding its retroactive or prospective application. *Id.* Second, a court should not determine that an amendment operates retroactively solely because it relates to an antecedent event. *Id.* at 570-571. Third, a retroactive law "'is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past.'" *Id.* at 571, quoting *Hughes v Judges' Retirement Bd*, 407 Mich 75, 85; 282 NW2d 160 (1979); and also citing *Ballog v Knight Newspapers, Inc*, 381 Mich 527, 533-534; 164 NW2d 19 (1969). "Fourth, a remedial or

procedural act which does not destroy a vested right will be given effect where the injury or claim is antecedent to the enactment of the statute." *Certified Questions*, *supra* at 571.

Regarding the first factor, the amendment is silent as to whether it is to be applied retroactively or prospectively only. See MCL 722.717(2). The *Lynch* Court noted that the Legislature had on several occasions expressed a clear intent to make legislation apply retroactively as evidenced by the words of the statutes. *Lynch, supra* at 584, citing MCL 141.1157 ("This act shall be applied retroactively . . ."); MCL 324.21301a ("The changes in liability that are provided for in the amendatory act that added this subsection shall be given retroactive application"). Accordingly, the lack of specific language expressing an intent that § 717(2) be applied retroactively strongly supports applying the general rule that statutory enactments are to be applied prospectively only.

Defendant concedes that the second factor, i.e., a court should not determine that an amendment operates retroactively solely because it relates to an antecedent event, is inapplicable. *Certified Questions, supra* at 570-571. "Second [factor] cases relate to measuring the amount of entitlement provided by a subsequent statute in part by services rendered pursuant to a prior statute[.] *Id.* at 571. Our Supreme Court distinguished its case, stating that "the instant case relates to what if any changes may be made with respect to a cause of action begun under one rule of law by a subsequent statute." *Id.* Here, the amendatory language has the effect of modifying a paternity cause of action relative to child support by limiting the support available as compared to the prior legislation. Considering defendant's concession and the nature of the second factor, the factor does not lend any support to a finding that the amendment was intended to be retroactive.

"The third rule states that retrospective application of a law is improper where the law 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past.'" *Certified Questions, supra* at 572 (citation omitted). Specifically, the presumption of prospective only application applies especially where retroactive application of a statute would impair vested rights, create a new obligation and impose a new duty, or attach a disability with respect to past transactions. *Lynch, supra* at 583. Defendant contends that the third factor is inapplicable. However, contrary to defendant's assertion, the statute now directly imposes a duty on a party to file a paternity complaint as soon as possible to maximize the support award. Before the 2004 amendment, § 717(2) allowed, in general, a party to request child support within six years after the birth of the child without negative financial consequences. We also note that the purpose of child support is to provide for the needs of children; it is not imposed for the benefit of the custodial parent. *LME v ARS*, 261 Mich App 273, 288; 680 NW2d 902 (2004)(citations omitted). To apply § 717(2) retroactively would impair any rights the child may have had to support and maintenance dating from the age of six back to his or her birth, or for a longer period of time under certain circumstances. See 2001 PA 109; see also Historical and Statutory Notes to MCL 722.717. Thus, the third factor or consideration supports a finding of prospective only application.

The final factor involves consideration of whether the amendment is remedial or procedural in nature. *Certified Questions, supra* at 571. As noted above, a remedial or procedural act that does not destroy a vested right will be given effect where the claim is antecedent to the enactment of the statute. *Id.* "A statute is remedial or procedural if it is

designed to correct an existing oversight in the law or redress an existing grievance, or is intended to reform or extend existing rights." *Stanton v Battle Creek*, 237 Mich App 366, 373; 603 NW2d 685 (1999), aff'd 466 Mich 611; 647 NW2d 508 (2002). Defendant asserts that the amendment is remedial in nature because it "addresses an existing injustice." Specifically, defendant contends that the amended legislation was enacted to limit the child support obligation initially imposed on a parent, which under the previous statute could have been substantial, i.e., backdated up to six years from the filing date. In support of this assertion, defendant cites, without analysis, *Ballog, supra*; *Rookledge v Garwood*, 340 Mich 444; 65 NW2d 785 (1954); *Flynn v Flint Coatings, Inc*, 230 Mich App 633; 584 NW2d 627 (1998), overruled in *Lynch, supra* at 588.

We disagree with defendant's position as it is inconsistent with our Supreme Court's ruling in *Lynch.* The *Lynch* Court made clear that the term "remedial" can only be employed to describe legislation that does not destroy, enlarge, diminish, or otherwise affect substantive rights. *Lynch, supra* at 584-585. Again, the purpose of child support is to provide for the needs of a child, and a biological parent has an inherent obligation to support his child. *LME, supra* at 288; *Macomb Co Dep't of Social Services v Westerman*, 250 Mich App 372, 377; 645 NW2d 710 (2002). Statutorily speaking, there is a right to child support. MCL 722.717(1) and (2). We find that the change in the law diminished, or minimally it affected, the substantive right to child support by altering, in general, the period of time during which there may exist an obligation to pay such support, thereby lowering the amount of an award. Where substantive rights are affected, the characterization of a statute or amendatory language as "remedial" is of little value for purposes of statutory construction. *Lynch, supra* at 585.

In sum, we conclude that because both complaints were filed prior to the effective date of the 2004 amendment, and because the amended statutory scheme significantly impacts both children's substantive right to support by altering the extent of any potential award, and given that there is no express indication in the statutory language that the 2004 amendment should apply retroactively,[2] the amended scheme does not apply to either child. In other words, because the 2004 amendment can significantly alter the right to support by limiting the effective date for support to the filing of the complaint, these claims, which arose under the prior statutory scheme, are subject to the pre-amendment timing rules.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy

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[2] In its analysis, the *Lynch* Court indicated that, as to the retroactivity factors or considerations, the most instructive is the Legislature's express language, or lack thereof, regarding retroactivity. *Lynch, supra* at 584.