No. SC83455

IN THE MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel. ROBIN HILBURN,

Respondent,

v.

SHERRY STAEDEN (LADLEE),

Respondent,

JEREMIAH W. (JAY) NIXON,
Attorney General,

Intervenor–Appellant.

Appeal from the Circuit Court of Greene County, Missouri,
The Honorable Don E. Burrell, Circuit Judge

INTERVENOR–APPELLANT NIXON'S REPLY BRIEF

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POINT RELIED ON

This Court has jurisdiction over this appeal, because the February 27 Order is a final and appealable judgment in that 1) Staeden abandoned all the reasons alleged in the judicial review claim for setting aside the administrative order for child support except the Article V reason since she moved for summary judgment for the Article V reason alone, and 2) the claim for related injunctive relief was only for a stay of the income withholding order pending disposition of the judicial review claim, which the trial court granted, and once the trial court set aside the administrative order for chid support, there was nothing for the withholding order to collect upon.

D.E. Properties Corp. v. Food For Less, Inc.,

859 S.W.2d 197 (Mo.App., E.D. 1993)

§ 454.475, RSMo 2000

ARGUMENT

This Court has jurisdiction over this appeal, because the February 27 Order is a final and appealable judgment in that 1) Staeden abandoned all the reasons alleged in the judicial review claim for setting aside the administrative order for child support except the Article V reason since she moved for summary judgment for the Article V reason alone, and 2) the claim for related injunctive relief was only for a stay of the income withholding order pending disposition of the judicial review claim, which the trial court granted, and once the trial court set aside the administrative order for chid support, there was nothing for the withholding order to collect upon.

Sherry Staeden argues in her brief that the February 27 Order is not a final and appealable judgment because it resolves only one of the 14 claims set forth in the petition for judicial review. (Resp't Br. at 9–10.) Staeden raised on summary judgment only one of 14 reasons alleged in her petition to set aside the administrative order — a reason the trial court believed to be dispositive — and she received all the relief she could possibly receive. The trial court vacated the administrative order. The rule for determining finality of judgments Staeden urges this Court to adopt is foolish, unnecessarily burdening the trial courts.

In her petition for judicial review, Staeden alleged 14 reasons, not claims, for setting aside the administrative order of $343.00 per month child support. (L.F. 5–7,

¶ 4.a.–n; 12.) She has only one claim — a claim for judicial review created by a provision of the child support enforcement statutes. *See* § 454.475.5, RSMo 2000.

Staeden moved for summary judgment, not for partial summary judgment, on her claim for judicial review, and she asked for "the relief prayed for in her petition." (L.F. 5–6, ¶ 4.a.; 43–44.) She argued that she should be granted summary judgment for only one reason — the administrative order of child support "was not signed by an Article V judge." (L.F. 43.) Consequently, Staeden abandoned the 13 other reasons for setting aside the administrative order that she alleged in her petition for judicial review. *See, e.g., D.E. Properties Corp. v. Food For Less, Inc.*, 859 S.W.2d 197, 201 (Mo.App., E.D. 1993) (party not raising issue in trial court on motion for summary judgment precluded from raising same issue on appeal).

Otherwise, any judgment in this case is final only at Staeden's option. Staeden's reasoning would allow judicial review petitioners to file a series of motions for summary judgment equal to the number of reasons supporting their claim (in this case, up to 14 motions) until a reason for which a trial court would grant, and an appellate court affirm, summary judgment was hit upon. And if a grant of summary judgment failed to address each and every reason supporting a claim, whether summary judgment was sought for those reasons or not, any appeal could be challenged as premature (in this case, up to 14 appeals, 13 of which could be challenged as premature). This would be a wildly extravagant waste of judicial resources. Likewise, to ensure that serial motions and

appeals do not ensue, for trial courts to address sua sponte each reason alleged in a petition for judicial review, even those they believe to be *not* dispositive, would be a waste of judicial resources.

Moreover, Staeden's reasoning would not provide judicial review petitioners with any incentive to prosecute their claims. Her reasoning would overturn the usual burden of production and persuasion that is on petitioners to prosecute their claims, and require respondents, in order to avoid a premature challenge to any appeal, to move for summary judgment themselves in each and every judicial review proceeding, and hope the trial court addressed each reason. And without the necessity of plaintiffs' raising on motion, lest they abandon them, all the reasons they allege for setting aside administrative orders, judicial review petitioners would have no incentive to thoroughly analyze their claims.

Finally, Staeden got the relief she prayed for in her petition, which was to "reverse the decision ordering her to pay child support and hold same for naught." (L.F. 7.) The trial court set aside the administrative order of child support, vacated it as void *ab initio*, and declared it had no legal effect. (L.F. 121–122.) Staeden cannot possibly get any more relief from the administrative order than she has already gotten.

Staeden also argues that this appeal is not final because the trial court did not rule on her "prayer for a permanent injunction." (Resp't Br. at 9–10.) In her petition for related injunctive relief, Staeden *prayed* for a temporary restraining order without notice and preliminary and permanent injunctions. (L.F. 8.) But she *pleaded* only for an order

staying the Income Withholding Order pending disposition of the judicial review claim. (L.F. 8, ¶ 4.) As authority for granting a stay order, she specifically pleaded the provision of the child support enforcement statues that authorizes staying administrative orders pending their judicial review. (L.F. ¶ 5.) *See* § 454.475.1, RSMo 2000. The withholding order she sought to stay collected the $343.00 per month child support the administrative order directed her to pay and some arrearage. (L.F. 28.)

Moreover, Staeden got a temporary restraining order without notice that enjoined the Division of Child Support Enforcement from enforcing its Income Withholding Order until further order of the court and set a date for hearing the application for preliminary injunction. (L.F. 34–35.) Then, Staeden got the stay order pending judicial review that she pleaded for — in effect, the preliminary injunction she prayed for. Staeden and the Division stipulated that the trial court should enter a Stay of Enforcement of the Income Withholding Order and any temporary restraining order or injunction should be set aside, and the trial court entered the Stay Order requested. (L.F. 40–42.)

Finally, Staeden got, in effect, the permanent injunction she prayed for. Once the trial court set aside, vacated, and declared that the administrative child support order had no legal effect, there was nothing for the Income Withholding Order to collect upon. In short, the withholding order stands or falls with the administrative order. Staeden cannot

possibly get any more relief from the Income Withholding Order than she has already gotten.[1]

[1]Staeden's arguments concerning the validity of the administrative order and the constitutionality of § 454.490 RSMo are adequately addressed in the Attorney General's opening brief.

CONCLUSION

For the reasons stated above, the judgment of the trial court should be reversed and judgment entered under Rule 84.14 affirming the Director of the Division of Child Support Enforcement's Judgment and Order and setting aside the December 18, 2000, Stay Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that 1 copy and 1 computer diskette of the foregoing were served by first–class mail, postage prepaid, this ____ day of July 2001 upon:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief includes the information required by Rule 55.03, complies with the limitations of Rule 84.06(b) and Special Rule No. 1(b), and contains 1504 words and that the diskettes provided this Court and counsel have been scanned for viruses and are virus–free.

_____
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