IN THE SUPREME COURT OF MISSOURI

MEAGAN GARLAND, Appellant, v. STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICES, FAMILY SUPPORT DIVISION, and JEFFREY RUHL, Respondents.	)	No. SC 94230

Transferred from the Missouri Court of Appeals, Eastern District, Division Four
Hon. Lisa S. Van Amberg, Hon. Patria L. Cohen, concurring
Hon. Gary M. Gaertner, dissenting
Case No. ED99773

On Appeal from the Circuit Court of St. Charles, County Missouri, Division Three
Honorable John P. Banas
Case No. 1111-CV08982

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

This issues in this case encompass the interpretation of statutes that provided for an award of attorney fees, specifically §§ 536.085 and 536.087, RSMo. (2012). The case does not involve the validity of a treaty or statute of the United States, a statute or provision of the constitution of this state, or the construction of the revenue laws of this state, the title to any state office, or imposition of death penalty. Therefore, this case is not within the exclusive jurisdiction of the Missouri Supreme Court under Article V., Section 3 of the Missouri Constitution of 1945. The County of St. Charles is within the territorial jurisdiction of the Missouri Court of Appeals, Eastern District, § 477.050, RSMo., and consequently, this appeal was within the jurisdiction of that Court.

On June 24, 2014, this Court granted transfer of this case from the Eastern District after opinion, pursuant to Rule 83.04.

STATEMENT OF FACTS

On September 6, 2011, Respondent entered an administrative order providing that Respondent Jeffrey Ruhl (Father) was to pay $357 per month in child support to Appellant (Mother). (LF 9; A-21). Additionally, Father was ordered to provide health insurance for the parties' minor child "on any policy *available* on a group basis or through Father's employer or union…" (emphasis added). *Id*. It also ordered the Bureau of Vital Records to enter the father's name as the "mother" on the child's birth certificate. *Id*.

On October 3, 2011, Mother filed a timely petition for review of the administrative child support order, on the basis that Respondent Family Support Division's (FSD) order was arbitrary, capricious, and unreasonable because FSD failed to follow Supreme Court Rule 88.01 (and the Form 14 guidelines) and that Father should not have been named as the mother of the minor child on the birth certificate (LF 1, 5).

After several court settings, Mother and Father agreed that $500 per month for child support was appropriate and the circuit court entered a judgment on February 27, 2012 ordering Father to pay Mother $500 per month. (LF 100-1; A16). Under the new order, Father would be responsible to insure the minor on any policy available to him through his employment, if mother's current policy became unavailable. (LF 101; A17). The court also ordered the correction of the child's birth certificate. (*Id.*). Respondent FSD did not consent to the entry of the court's judgment, (LF 101; A17), however, it also did not place any objection on the record or seek any relief from this judgment. (LF *generally*).

On March 23, 2012, Mother filed a timely request for an award of attorney fees and costs against Respondent FSD pursuant to § 536.087, RSMo (2012). (LF 103; A12). Respondent filed a motion to dismiss on April 12, 2012 contending that Mother was not a prevailing party (LF 107). The court heard FSD's motion on April 27, 2012 and requested legal memoranda from counsel. (LF 2-3). On May 15, 2012, the Honorable Richard Zerr denied FSD's motion to dismiss, finding that Mother was entitled to a hearing on the merits as to her application for fees. (LF 130-2). Mother's application for fees was then set for a hearing on the merits that was to take place on January 2, 2013. (LF 3). On December 31, 2012, the circuit court's presiding judge transferred the case to the Honorable John P. Banas pursuant to the court's case docketing plan. (LF 3). At the January 2, 2013 hearing, Judge Banas asked the parties to brief the issues. (LF 134). On February 8, 2013, the court allowed Respondent to "renew" its motion to dismiss. (LF 167). Ultimately, the trial court granted FSD's motion to dismiss Mother's application for attorney fees, concluding that, as a matter of law, Mother was not a "prevailing party" as contemplated by Chapter 536, RSMo. (LF 174-180; A1-A7). The trial court made it very clear that it was ruling on FSD's **motion to dismiss** Mother's Application For Fees when it entered its order of March 1, 2013: The Court's Order specifically states "FSD's Amended Motion To Dismiss + Motion To Dismiss +/or Strike Request for Attorney Fees called, heard, and sustained this day." (App. Br. A1; LF 174). Further, the trial court stated on the record before the March 1, 2013 hearing that it had already "ruled on the motion to dismiss." (Tr. 2:7).

The Eastern District Court of Appeals issued its opinion on April 15, 2014 that it would reverse the trial court's dismissal of Mother's Application for Fees and remand the case to the trial court for a determination of whether FSD's administrative order was "substantially justified." (Op. E.D. April 15, 2014). On June 24, 2014, this Court granted transfer of this case.

POINT RELIED ON

I. THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S APPLICATION FOR ATTORNEY FEES BECAUSE IT MISAPPLIED THE LAW WHEN IT CONCLUDED THAT APPELLANT WAS NOT A PREVAILING PARTY IN THAT APPELLANT'S APPLICATION STATED FACTS SUFFICIENT TO DEMONSTRATE THAT SHE HAD OBTAINED A FAVORABLE ORDER AND IS ENTITLED TO RELIEF UNDER SECTION 536.087, RSMO. (2012).

Statutory Authority:

Section 536.085, RSMo. (2012)

Section 536.087, RSMo. (2012)

Cases:

In re T.Q.L., 386 S.W.3d 135, 139 (Mo. banc 2012)

Greenbriar Hills Country Club v. Dir. of Revenue, 47 S.W.3d 346 (Mo. banc 2001)

Washington v. Jones, 154 S.W.3d 346, 349 (Mo. App. E.D. 2004)

ARGUMENT

I. THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S APPLICATION FOR ATTORNEY FEES BECAUSE IT MISAPPLIED THE LAW WHEN IT CONCLUDED THAT APPELLANT WAS NOT A PREVAILING PARTY IN THAT APPELLANT'S APPLICATION STATED FACTS SUFFICIENT TO DEMONSTRATE THAT SHE HAD OBTAINED A FAVORABLE ORDER AND IS ENTITLED TO RELIEF UNDER SECTION 536.087, RSMO. (2012).

A. Standard of Review

A trial court's decision to grant a motion to dismiss is reviewed *de novo. In re T.Q.L.*, 386 S.W.3d 135, 139 (Mo. banc 2012). Further:

> "A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case."

State ex rel. Henley v. Bickel, 285 S.W.3d 327, 329 (Mo. banc 2009). Finally, "[s]tatutory interpretation is a question of law and is subject to de novo review. *Lindquist v. Mid Am. Orthopaedic Surgery, Inc.*, 224 S.W.3d 593, 594-95 (Mo. banc 2007).

B. Mother alleged facts sufficient to demonstrate she was a prevailing party

Section § 536.087 states: "A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding…." After the resolution of the case, the party seeking an award of attorney fees submits "an application which shows that the party is a prevailing party and is eligible to receive an award under [§ 536.087.]" *Id.* The intent of the statute is "to require agencies to carefully scrutinize agency and court proceedings and to increase accountability of the administrative agencies." *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 358 (Mo. banc 2001).

A party "prevails" when it "obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding." § 536.085 (3), RSMo. (2012). "To 'prevail,' however, is not limited to a favorable judgment following a trial on the merits; it may also include obtaining a settlement, obtaining a voluntary dismissal of a groundless complaint, or obtaining a favorable decision on a single issue if the issue is one of significance to the underlying case." G*reenbriar Hills Country Club*, 47 S.W.3d at 353 (emphasis added).

In *Washington v. Jones*, 154 S.W.3d 346, 349 (Mo.App. E.D. 2004), the obligor father filed a petition for review of an administrative order that increased his child support payments in the circuit court. The Family Support Division opted not to defend its administrative ruling in the trial court, so the court dismissed the father's petition for review as moot. *Id*. The trial court also granted father's application for attorney fees under § 536.087. *Id*. On appeal, even though the father's petition for review was dismissed as moot, the Eastern District held that the father was a "prevailing party" and upheld the award of attorney fees under § 536.087. *Id*. at 350-1. In holding that the father was a prevailing party, the Eastern District reasoned that he had obtained a "favorable result under the definition of Section 536.085(3)." *Id.*

In this case, Mother filed a petition for review of the administrative decision and reached an agreement with Father to accept child support payments of $500 per month. (LF 100-101; A16). The administrative order under review only provided for $357 per month. (LF 7; A21). The trial court also reversed the administrative order provision naming the father as the child's mother on the birth certificate. (LF 101; A16). These facts were alleged in Appellant's application for attorney fees (LF 103; A12-A13) and clearly would establish that a "favorable order" was obtained by Mother. Under the Eastern District's holding in *Washington*, it is irrelevant whether or not the petition for review was dismissed or considered moot.[1] Further, none of these facts are in dispute.

[1] To the extent that the trial court's March 18, 2013 Findings of Fact and Conclusions of Law purports to "deem denied" Appellant's Petition For Review (LF 179; A6), the court

(*See* LF at 177 ¶¶ 7 and 12, LF 100; A16-A21). Simply put, Mother obtained a favorable order through settlement, a method explicitly endorsed by this Court in *Greenbriar Hills Country Club*, 47 S.W.3d at 353.

In his dissenting opinion for the Eastern District, the Honorable Gary Gaertner argues that the financial benefit to Mother was not significant because of the shift of responsibility for health insurance. (Op. E.D., Gaertner, J., dissenting). However, Judge Gaertner's analysis does not touch upon whether there was actually any insurance available to Father and whether Mother was already being forced to bear the cost of said insurance. Regardless, Mother sought the change with respect to health insurance in her Petition for Review, (LF 6, ¶ 6(c)), and ultimately obtained it. Mother also obtained an increase in monthly support and correction of the clearly erroneous order that Father be designated as the mother on the child's birth certificate. Mother submits that the test of whether she has prevailed is not whether a third party would consider the benefit negligible, but whether Mother ultimately obtained the relief she sought in her petition for review. In this case, that question has to be answered in the affirmative. Finally, Respondent plainly admitted in its January 14, 2013 memorandum of law that Appellant prevailed on some issues: "On the issue of the child support order, Petitioner did prevail…." (LF 149 ¶ B.).

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was without jurisdiction to modify the February 27, 2012 Judgment 30 days after its entry under Rule 75.01. *See also* § 536.087(4) ("The filing of an application [for attorney fees] shall not stay the time for appealing the merits of a case.").

FSD will argue that it is unfair for FSD to pay Mother's attorney fees because she only prevailed as a result of her agreement with father, and that finding Mother to be a prevailing party under these circumstances will increase litigation because FSD will not be able to allow parties to settle amongst themselves without risking an award for fees. FSD's argument is a red herring for this reason: If this case is remanded to the trial court, FSD still has the opportunity to argue that its administrative order was substantially justified. § 536.087.1, RSMo. There is no possibility for collusion between parties because of this provision. If FSD is ordered to pay fees, it will only be because the administrative order was not substantially justified in the first place.

C. Conclusion

Mother pleaded sufficient facts to establish her status as a prevailing party entitled to relief under §§ 536.085 and 536.087. Therefore, the trial court's dismissal on the basis that Mother did not prevail was a misapplication of the law to the facts, and this Court has *de novo* review on that issue. *In re T.Q.L.*, 386 S.W.3d at 139. For the foregoing reasons, Appellant requests this Court to affirm the Eastern District's reversal of the trial court, and remand the case to the trial court for a determination on the merits.

Respectfully submitted,

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CERTIFICATION OF SERVICE

AND OF

COMPLIANCE WITH RULE 84.06

The undersigned certifies that on this 29th day of July, 2014, one true and correct copy of the foregoing brief was served via the Court's electronic filing system, upon:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains approximately 2,366 words.

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