

Summary of SC94230, *Meagan Garland v. Jeffrey Ruhl, State of Missouri, Department of Social Services, Family Support Division*

Appeal from the St. Charles County circuit court, Judge John P. Banas

Argued and submitted October 14, 2014; opinion issued February 3, 2015

Attorneys: Garland was represented by Thomas J. Henderson of Anderson Henderson LLC in St. Louis, (314) 266-4401; and the state was represented by Solicitor General James R. Layton and Deborah J. Weider-Hatfield of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A mother appeals the trial court's dismissal of her request for attorney fees after it found she was not entitled to have the family support division pay her attorney fees because she did not "prevail" on her petition for judicial review of a division order. In a 6-1 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the trial court's judgment. The mother failed to establish a valid claim for attorney fees because she failed to establish that she and the division were adversarial parties in an agency proceeding, the agency "position" she challenges is not a position at all but rather an agency decision, and she fails to show she prevailed against the division. The division merely adjudicated the rights and obligations of the parents; it had no interest of its own to advance or protect.

Judge Richard B. Teitelman dissents. He would reverse the trial court's dismissal of the mother's claim for attorney fees. He would find her petition was necessitated by the division's award of insufficient child support; the division was a party to the civil proceeding reviewing its decision, which it took the position was justified; and the mother prevailed by obtaining a settlement for more child support than what the division had ordered.

Facts: A mother applied for child support enforcement services pursuant to state law, which then required the state's family support division to collect relevant information from both parents and to issue a notice and finding of financial responsibility. This notice is of a proposed order to establish the amount of future support a parent must pay as well as the amount of any state debt already accrued and the payment to be made toward that debt. There was no state debt owed in this case because the state had not been asked to provide public assistance to help support the child. Under the proposed terms in the notice, the father would be obligated to enroll the child in his employer's health insurance plan and to pay the mother \$558 per month for the child's support. The father disagreed with the amount proposed and requested a hearing. Before the hearing, the father offered to pay the mother \$500 per month in child support. The mother refused the offer, and a division hearing officer held an administrative hearing. Based on the evidence submitted, the division ordered the father to enroll the child in his employer's health insurance plan and to pay the mother \$357 per month in child support. The mother disagreed with the calculation of the monthly support obligation and sought judicial review of the division's order. The parents then reached an agreement stipulating that the mother would enroll the child in her employer's health insurance plan, that the father would pay the mother \$500 per

month in child support, and that the parents would pay their own court costs and attorney fees. The trial court granted the parents' request, entering judgment on the basis of their stipulation, and dismissed the mother's petition for judicial review. The mother then sought attorney fees, claiming the division owed her attorney fees because she "prevailed" when the trial court superseded the division's order with a more favorable judgment. The trial court dismissed her request, finding she did not prevail on her petition for judicial review. The mother appeals.

AFFIRMED.

Court en banc holds: The mother's application fails to establish a valid claim for attorney fees. State law permits a court to order a state agency to pay a non-governmental party's attorney fees only if the applicant shows, at the outset, that: the applicant and agency were adversarial parties in an agency proceeding brought by or against the state; the agency asserted an erroneous position in that agency proceeding; and the applicant prevailed against the agency's position, either in the agency proceeding or in a civil action arising from it.

(1) The mother's application fails to establish that she and the division were adversarial parties in an agency proceeding. The agency proceeding was not brought by or against the family support division. The proceeding was between the parents; the division was the adjudicator, not a party. The state was not a party to the proceeding, nor was it represented by counsel, nor did it lose the agency proceeding. Further, the division took no "position;" rather, it issued a decision. That the division's decision was subject to judicial review does not make the division an adversarial party in the agency proceeding.

(2) The agency "position" the mother challenges is not a "position" at all – rather, it is an agency decision. An administrative decision rendered in the role of adjudicator does not constitute a "position" as that term is used in the statute governing applications for attorney fees against an agency. The purpose of the statute is to ensure that, during an agency proceeding, the state's position was substantially justified. A decision by an administrative official acting as an adjudicator cannot constitute a "position" asserted during an agency proceeding by an attorney representing the agency.

(3) The mother's application fails to show that she "prevailed" against the division. To "prevail" means to obtain a favorable decision or a dismissal in an agency proceeding or civil action. For a dismissal to be favorable, the private party must succeed in having all or part of the state's claim dismissed. But what was dismissed was not a state claim but mother's claim – her petition for judicial review. Further, although she obtained a favorable settlement in the case, her settlement was against the father, not the division. Both the agreement between the parents and the court's judgment accepting that agreement addressed only the mother's and father's respective rights and obligations, not any right or obligation of the division. The only reason the division was involved was because the mother sought its assistance in obtaining child support from the father. The division did not initiate the proceeding, it was not a party and it did not represent the mother. Not only did the division have no interest in the outcome of the mother's claim, it was required by law to decide that claim. When the mother sought judicial review of that decision, the division had nothing to gain or lose – it had no more interest in her petition for judicial review than a trial court does when a party appeals a final judgment. The mother's unilateral decision to name not

only the father but also the division as a respondent to her petition did not give the division an interest to advance or protect in that action.

Dissenting opinion by Judge Teitelman: The author would reverse the trial court's dismissal of the mother's claim for attorney fees and would send the case back for further proceedings. He would find that, although the division was not a party to the underlying agency proceeding, it was a party to the mother's petition for judicial review of the division's child support order. The mother's petition was necessitated by the division's award of insufficient child support, and she prevailed. In the civil proceeding, the division took the position that its child support order was justified, and the court approved a settlement requiring the father to pay more child support to the mother than he had been ordered by the division, such that she "prevailed."