

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2009-2010

2080920

Stephen Christopher Baker

v.

Shawn Michael Kennedy

Appeal from Fayette Circuit Court
(DR-08-70)

THOMAS, Judge.

In October 1999, following a two-year relationship, Shawn Michael Kennedy ("Kennedy") and Anna Kennedy ("the mother") married. When the couple married, the mother already had a son, R.K. ("the child"), who was born during a previous

2080920

relationship with Stephen Christopher Baker ("Baker"). In November 1999, Kennedy and the mother filed a declaration of legitimation in the Fayette County Probate Court, pursuant to § 26-11-2, Ala. Code 1975, alleging that Kennedy was the child's father; the probate court subsequently issued an order of legitimation. Throughout the course of the marriage, Kennedy maintained a father-son relationship with the child. According to the mother's testimony, Kennedy maintained a consistent presence in the child's life by participating in numerous father-son activities such as taking him to Boy Scout functions and taking him to school and extracurricular functions. The mother testified that Kennedy also financially supported the child. In March 2003, Kennedy and the mother had a child together, A.K.

On June 10, 2008, the mother filed for a divorce ("the divorce action"). In the couple's settlement agreement, Kennedy and the mother stated that A.K. was the only child born during the marriage; the settlement agreement does not mention the child. The trial court entered a divorce judgment incorporating the terms of the couple's settlement agreement. Kennedy filed a motion to set aside the final divorce judgment

because the judgment failed to mention the child or to set a visitation schedule. In Kennedy's postjudgment motion, he requested that the court grant him visitation rights with both the child and A.K. On July 11, 2008, the trial court entered an order dissolving the marriage but setting aside all other aspects of the divorce judgment. The trial court set a final hearing to determine the remaining issues on August 14, 2008.

Following the couple's divorce, the mother and Baker, the child's purported biological father, entered into a new relationship and eventually married. On November 21, 2008, Baker filed a motion to intervene in the divorce action, arguing that because he was the child's biological father he had an interest in the child's custody.¹ The trial court denied Baker's motion to intervene on May 26, 2009, stating

¹Rule 24(a), Ala. R. Civ. P., provides:

"Upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

that Baker "only recently acknowledged and began holding the child out as his child." Baker filed a timely notice of appeal to this court. See Thrasher v. Bartlett, 424 So. 2d 605, 607 (Ala. 1982) (holding that an order denying a motion to intervene is an appealable judgment).

"The standard of review applicable in cases involving a denial of a motion to intervene as of right is whether the trial court has acted outside its discretion. See City of Dora v. Beavers, 692 So. 2d 808, 810 (Ala. 1997). Typically, persons desiring to intervene in a civil action as of right will claim entitlement to intervention under Rule 24(a)(2), Ala. R. Civ. P., which mandates intervention upon timely application if 'the applicant claims an interest relating to the property or transaction which is the subject of the action' and is 'so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.' Thus, the Alabama Supreme Court has held that under Rule 24(a)(2), the trial court has discretion to determine 'whether the potential intervenor has demonstrated: (1) that its motion is timely; (2) that it has a sufficient interest relating to the property or transaction; (3) that its ability to protect its interest may, as a practical matter, be impaired or impeded; and (4) that its interest is not adequately represented.' City of Dora, 692 So. 2d at 810."

Black Warrior Riverkeeper, Inc. v. East Walker County Sewer Auth., 979 So. 2d 69, 72 (Ala. Civ. App. 2007).

Kennedy alleges that he is the child's presumed father under the former Alabama Uniform Parentage Act, § 26-17-1 et seq., Ala. Code 1975 ("the former act"); section 26-17-5(a), a part of the former act, provided:

"(a) A man is presumed to be the natural father of a child if any of the following apply:

"....

"(4) While the child is under the age of majority, he receives the child into his home or otherwise openly holds out the child as his natural child.

"(5) He acknowledges his paternity of the child in a writing filed in accordance with the provisions of this chapter."²

Kennedy argues that he satisfied the presumption of paternity under subsection (4) by providing financial support to the child, by allowing the child to live in his home, and by openly holding the child out as his natural child. Kennedy also argues that he satisfied the presumption of paternity

²The former act was repealed effective January 1, 2009; the Alabama Uniform Parentage Act (2008), § 26-17-101 et seq., Ala. Code 1975, became effective the same day. See Act No. 2008-376, Ala. Acts 2008. The presumptions of paternity listed in subsections (4) and (5) of former § 26-17-5, are substantively similar to the presumptions of paternity listed in § 26-17-204(5) and (6), which is part of the Alabama Uniform Parentage Act (2008).

2080920

under subsection (5) because he filed a declaration of legitimation alleging to be the child's father.

On appeal, Baker argues that he has the right to intervene in the divorce action pursuant to the former act in order to attempt to establish his paternity of the child. Former § 26-17-6(b), Ala. Code 1975, provided that "[a]ny interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under subdivision (4) or (5)... of Section 26-17-5(a)." By Act No. 2008-376, Ala. Acts 2008, the legislature enacted the Alabama Uniform Parentage Act (2008) ("the amended act"), codified at § 26-17-101, et seq., Ala. Code 1975, and repealed the provisions of the former act. The effective date of the amended act is January 1, 2009. The amended act provides that "[i]f the presumed father persists in his status as the legal father of a child, neither the mother nor any other individual may maintain an action to disprove paternity." § 26-17-607(a), Ala. Code 1975. Under the former act, Baker, provided that he is an interested party, may bring an action to challenge Kennedy's status as the child's presumed father, whereas,

2080920

under the amended act, he is potentially prevented from intervening if Kennedy persists in his status as the child's presumed father. Thus, we must first determine whether the former act or the amended act controls.

Baker argues that the former act applies to this case because the former act was in effect on November 21, 2008, the date Baker filed his motion to intervene. Kennedy argues that the amended statute controls because it was in effect on the date of the hearing on Baker's motion, January 8, 2009, and that the amended act should have retrospective application.

"It is a fundamental precept of our jurisprudence that substantive legal interests spring from the law in effect at the time such interests are alleged to have arisen or to have been violated.'" State Home Builders Licensure Bd. v. Grzelak, 705 So. 2d 406, 408 (Ala. Civ. App. 1997) (quoting Alabama Power Co. v. Director of Indus. Relations, 36 Ala. App. 218, 221, 54 So. 2d 786, 788 (1951)). The Alabama Supreme Court has stated:

"In Jones v. Casey, 445 So. 2d 873, 875 (Ala. 1983), we opined:

"In Alabama, retrospective application of a statute is generally not

avored, absent an express statutory provision or clear legislative intent that the enactment apply retroactively as well as prospectively. See Kittrell v. Benjamin, 396 So. 2d 93, 94 (Ala. 1981) (citing City of Brewton v. White's Auto Store, Inc., 362 So. 2d 226 (Ala. 1978)). Remedial statutes, however, are not within the domain of retrospective laws, and do operate retroactively, absent clear language to the contrary. Street v. City of Anniston, 381 So. 2d 26 (Ala. 1980).'

"See also, Sills v. Sills, 246 Ala. 165, 19 So. 2d 521 (1944). As far back as Barrington v. Barrington, 200 Ala. 315, 316, 76 So. 81, 82 (1917), this Court has held that:

"'Remedial statutes--those which do not create, enlarge, diminish, or destroy vested rights--are favored by the courts, and their retrospective operation is not obnoxious to the spirit and policy of the law.'"

Ex parte Burks, 487 So. 2d 905, 907 (Ala. 1985). Generally, if a statute is remedial in nature, then it is applied retrospectively; however, if a statute is substantive in nature, then it is applied only prospectively. State Home Builders Licensure Bd., 705 So. 2d at 409.

"Whether the new statute applies or not, turns on the determination of whether the statute affects a substantive right or merely is procedural in nature. Generally, statutes dealing with procedural or remedial matters apply retrospectively. Harlan v. State, 31 Ala. App. 478, 18 So.

2d 744 (1944); South v. State, 86 Ala. 617, 6 So. 52 (1889). Conversely, those statutes affecting vested rights or altering legal status, being substantive, are denied retrospective application. Harlan, supra; Barrington v. Barrington, 200 Ala. 315, 76 So. 81 (1917).'"

Id. (quoting Barnes v. State, 429 So. 2d 1114, 1120 (Ala. Crim. App. 1982)).

In Ex parte State Department of Revenue, 792 So. 2d 380, 383 (Ala. 1999), the Alabama Supreme Court held that the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act ("the TBOR") included provisions that were both procedural and substantive in nature. The supreme court therefore held that the TBOR should not be applied retrospectively. In that case, a taxpayer challenged two tax assessments issued by the Department of Revenue ("the Department"). Ex parte State Dep't of Revenue, 792 So. 2d at 381-82. The administrative law judge ("ALJ") assigned to hear the case notified the taxpayer that it would provide notice of the place and time of the hearing. Id. at 381. The ALJ also requested that the Department file an answer providing support for its position; however, the Department failed to satisfy the ALJ's request. While the parties were waiting for a final

ruling by the ALJ, the legislature enacted the TBOR, which mandates that the Department file an answer within 30 days of a taxpayer's appeal. Id. at 381-82. The taxpayer filed a motion to dismiss the action because the Department had failed to file an answer within 30 days of the taxpayer's filing a notice of appeal. The ALJ denied the taxpayer's motion to dismiss because the action was filed before the TBOR had been enacted. Id. at 382. The taxpayer appealed to the circuit court, seeking judicial review of the ALJ's decision. Id.

On appeal, the circuit court entered a summary judgment in favor of the taxpayer and held that the TBOR should have been applied retrospectively. Id. The Department appealed the circuit court's summary judgment to this court, and this court affirmed the circuit court's summary judgment, holding that because the TBOR was procedural in nature the TBOR should be applied retrospectively. Id. However, the supreme court reversed this court's decision. Our supreme court recognized that the TBOR was both procedural and substantive in nature and held that if an act is procedural in nature only, then it should be applied retrospectively. However, the court held that if an act is both procedural and substantive in nature,

then the act should not be applied retrospectively. Id. at 383.

"[W]e conclude that the Legislature, in the body of the [TBOR], also addressed substantive issues that cannot be classified as 'procedural only.' Consequently, we hold that the [TBOR] is not a remedial act, and we apply the general rule that 'retrospective application of a statute is generally not favored, absent an express statutory provision or clear legislative intent.' Jones v. Casey, 445 So. 2d 873, 875 (Ala. 1983) (quoted in Ex parte Bonner, 676 So. 2d [925,] 926 [(Ala. 1995)])."

Id.

In this case, under the former act, any "interested party" possessed the right to challenge the existence or non-existence of the presumption of paternity under subsections (4) and (5) of § 26-17-5(a). However, under the amended act--specifically, § 26-17-607, Ala. Code 1975--as long as the presumed father continues asserting his status as the presumed father, no party can challenge the presumption of paternity. Although some of the differences between the former act and the amended act are procedural, the changes are not only procedural in nature. The legislature, in adopting the amended act, also made substantive changes to the former act, including limiting the right to challenge the presumption of paternity. In addition, the amended act does not contain an

express provision providing for the retrospective application of the amended act. Ex parte State Dep't of Revenue, 792 So. 2d at 383 ("Had the Legislature intended for the [TBOR] to apply to proceedings pending when the [TBOR] became effective, it could have specifically stated that intent."). Therefore, the amended act should not be applied retrospectively.

Baker argues that, under the former act, he has standing to challenge Kennedy's presumption of paternity. Former § 26-17-6(b) provides that "[a]ny interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under subdivision (4) or (5)... of Section 26-17-5(a)."

"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

University of South Alabama Hosps. v. Blackmon, 987 So. 2d 1138, 1142 (Ala. Civ. App. 2007) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)). Baker,

2080920

as the child's alleged biological father, qualifies under the former act as an interested party to the action. See R.D.B. v. A.C., [Ms. 2080221, July 31, 2009] ___ So. 3d ___, ___ (Ala. Civ. App. 2009) (holding that a biological father has the right to intervene in a child-custody matter); and W.D.R. v. H.M., 897 So. 2d 327, 330-31 (Ala. Civ. App. 2004) (holding that a biological father has a right to intervene in an action challenging the presumption of paternity).

Because we hold that the former act applies to Baker's motion to intervene and because Baker is an interested party under the former act, Baker has standing to intervene in the divorce action to assert his claim of paternity. Therefore, we reverse the trial court's order denying Baker's motion to intervene, and we remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Pittman and Moore, JJ., concur.

Thompson, P.J., and Bryan, J., concur in the result, without writings.