

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

FELICIDAD A. PILLE, et al.,)	APPEAL NO. 99-009
)	FCD-PA CIVIL ACTION NO. 96-0856
Plaintiffs/Appellants,)	
)	
v.)	
)	
CHARLES W. SANDERS,)	OPINION
)	
Defendant/Appellee.)	
)	
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Argued and Submitted April 4, 2000

Cite as: *Pille v. Sanders*, 2000 MP 10

Counsel for Appellant:	Stephen J. Nutting White, Pierce, Mailman & Nutting Saipan
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Counsel for Appellee:	Joseph A. Arriola Saipan
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BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, ATALIG, Justice *Pro Tem*
CASTRO, Associate Justice:

[1,2] Claiming that the award is inadequate, Felicidad A. Pille (“Felicidad”) appeals the Superior Court Order directing Appellee Charles W. Sanders (“Charles”) to pay child support and to reimburse Felicidad for expenses related to the birth of their son Charles Sanders, Jr. (“C.S.”). We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, as amended¹, and 1 CMC § 3102. We affirm in part and reverse in part.

ISSUES PRESENTED AND STANDARDS OF REVIEW

[3,4] The first issue before us is whether the trial court correctly calculated its child support award. We review a trial court’s order of child support for abuse of discretion. *See Robinson v. Robinson*, 1 N.M.I. 81, 86 (1990). A judgment will not be disturbed when there is reasonable evidence to support it.

¹ N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

Accordingly, we will not reverse unless the record is devoid of competent evidence to support the trial court's decision. *See id.* at 89. The appellant bears the burden of proving an abuse of discretion. *See Thornburgh v. Thornburgh*, App. No. 96-050 (N.M.I. Sup. Ct. Nov. 24, 1997) (Opinion at 2).

[5,6]The second issue is the amount, if any, of retroactive support to which Felicidad is entitled. We review the trial court's factual findings for clear error, and will not reverse such findings unless we are left with a firm and definite conviction that a mistake has been made. *See Santos v. Santos*, App. No. 98-029 (N.M.I. Sup. Ct. May 10, 2000) (Opinion at 2). Whether the trial court correctly applied the law to the facts is a legal question, reviewed *de novo*. *See id.*

[7]The last issue is whether Felicidad is entitled to attorney fees. We review a trial court's award of attorney fees for abuse of discretion. *See Wabol v. Camacho*, 4 N.M.I. 388, 389 (1996).

FACTUAL AND PROCEDURAL BACKGROUND

Felicidad gave birth to her son, C.S., in August 1995. She successfully brought suit against Charles to establish paternity. She then successfully sought custody, support, and reimbursement of medical expenses related to her childbirth. She appeals the latter action, claiming the award was inadequate.

The trial court found the following concerning the parties' respective financial situations: Before her pregnancy, Felicidad earned \$4.75 per hour working for Saipan Sunset Cruise. She finally had to leave her job seven months into the pregnancy. After giving birth to C.S., Felicidad earned some money from sewing and cleaning people's homes on a part-time basis. At the time of trial, she was earning \$300 per month as a domestic helper. She took the job as a domestic helper because her employer allowed her son to be with her at work. Her personal debt at the time of trial was \$1180.

Felicidad paid \$1395, one half of the medical expenses incurred during C.S.'s birth. The balance remains unpaid. Soon after C.S. was born, he developed jaundice for which he was hospitalized. Felicidad has been unable to pay hospital costs of \$736.

From C.S.'s birth to the time of trial, Felicidad was paying \$100 per month to live in a single concrete room measuring five feet by eight feet, with bathroom facilities in a separate area outside the room. Felicidad's monthly expenses for her son and herself were \$647, based on her income and expense

declaration. Thus, Felicidad's monthly expenses exceeded her income by over \$250. Felicidad estimated she could adequately provide for herself and her son on approximately \$900 per month.

Before trial of this matter, Charles had made a single payment of \$300 to Felicidad for child support. Felicidad also turned to her friends for support, both during and after her pregnancy. During the February 1998 trial, Charles testified his gross income for 1997 was over \$80,000. The trial court found no evidence, and the record on appeal contains none, that this income would decrease due to budget cuts or decreased overtime. The trial court found Charles' excess income was approximately \$1470 per month. The court arrived at this figure after taking into consideration Charles' salary, overtime and housing allowance, and deducting taxes, rent, food, household supplies, utilities, child care, transportation, and \$994 paid every month to support a child from a previous marriage. The trial court found Charles has no personal debt, other than an existing child support duty. At the time of trial, Charles lived with his wife, two sons, and his wife's aunt in a two-bedroom duplex.

The trial court ordered Charles to pay child support in the amount of \$325, half of Felicidad's \$647 monthly expenses, beginning March 1998 and continuing until C.S. reaches 18 years of age. The court also ordered that Charles procure health and dental insurance for C.S. until he reaches 18 years of age.

The court awarded retroactive support of \$100 per month, from September 1996, when Charles was adjudicated the father of C.S., to February 1998, when trial began, with credit for the \$300 paid in December 1997. The total amount of retroactive support was \$1500. The court did not explain why it ordered less in retroactive support than in future support.

As for C.S.'s medical expenses, the court awarded Felicidad \$368, which constituted half of the \$736 owing for C.S.'s hospital stay for jaundice. The court also awarded half of Felicidad's reasonable expenses for pregnancy and confinement, amounting to \$1395.

The trial court's order did not mention attorney fees. Felicidad timely appealed.

ANALYSIS

I. The Trial Court Did Not Abuse its Discretion in Calculating the Child Support Award

[8,9]Felicidad contends the trial court abused its discretion by awarding child support in an amount grossly disproportionate to Charles' income and standard of living. The judgment or order determining paternity may address the duty of child support, or any other matter in the best interest of the child. The judgment or order may also direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. *See* 8 CMC § 1715(c). In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

- (1) the needs of the child;
- (2) the standard of living and circumstances of the parents;
- (3) the relative financial means of the parents;
- (4) the earning ability of the parents;
- (5) the need and capacity of the child for education, including higher education;
- (6) the age of the child;
- (7) the financial resources and the earning ability of the child;
- (8) the responsibility of the parents for the support of others; and
- (9) the value of services contributed by the custodial parent.

8 CMC § 1715(e).

[10,11]The amount of child support depends on many factors, including the children's needs and the parents' financial resources. *See In re Marriage of Campbell*,² 589 P.2d 1244, 1249 (Wash. Ct. App. 1979); *see also In re Marriage of Thurmond*, 715 N.E.2d 814, 818 (Ill. App. Ct. 1999); *In re Marriage of Berry*, 660 P.2d 512, 513 (Colo. Ct. App. 1983). If the record establishes that the trial court considered all relevant factors in fashioning the child support award, and that the award was not unreasonable under the circumstances, then the reviewing court will not disturb the child support award. *See Fernau v. Fernau*, 694 P.2d 1092, 1095 (Wash. Ct. App. 1984).

[12]Here, the record reveals the trial court had sufficient information to determine a reasonable child support award for C.S. based on the aforementioned factors. The court had before it evidence of Felicidad's and Charles' respective standards of living, their respective incomes and earning abilities, and their outstanding debts. The trial court's order reflects its reasoning in considering this evidence, and in

² It is well established that the Commonwealth may look to the law of other United States jurisdictions where the Commonwealth's written law, local customary law, and the restatements lack guidance. *See* 7 CMC § 3401; *I.G.I. Gen. Contr. & Dev., Inc. v. P.S.S.*, App. No. 97-031 (N.M.I. Sup. Ct. Apr. 28, 1999) (Opinion at 3); *Thornburgh v. Thornburgh*, App. No. 96-050 (Sup. Ct. Nov. 24, 1997) (Opinion at 3-4); *Ada v. Sablan*, 1 N.M.I. 415, 423 (1990).

arriving at a child support award that it deemed reasonable given C.S.'s needs. We therefore cannot say the trial court abused its discretion in calculating the award, or that the award cannot meet C.S.'s needs. *See Robinson v. Robinson*, 1 N.M.I. at 89; *Fernau v. Fernau*, 694 P.2d at 1095. Accordingly, we affirm the child support award of \$325 per month.

II. Appellant Is Entitled to Retroactive Support from Appellee from the Date of C.S.'s Birth

Felicidad claims she is entitled to retroactive support from the date of C.S.'s birth, not just from the date Charles was adjudicated the father. She explains a finding of paternity does not create a duty of support, but merely establishes a procedural prerequisite to enforcing the pre-existing duty. Charles does not specifically address this argument or cite any law to the contrary; instead, he simply points to the deferential standard of review.

[13]The purpose of the paternity statute is:

[T]o compel the father of an illegitimate child to bear the expenses of childbirth and child support so that the mother will not be solely responsible for that support and so that the child will not be a financial burden on the state.

Seegert v. Zietlow, 642 N.E.2d 697, 703 (Ohio Ct. App. 1994).

[14]The judicial decree of paternity is merely a procedural prerequisite to enforcement of the duty of support owed to the child. The decree does not create, but only defines the pre-existing duty:

Although there was no legal obligation to support one's illegitimate child at common law, the moral obligation has always existed. The purpose of [the Uniform Parentage Act] creating a paternity action is to convert a moral obligation into a legal right. The duty of a natural father to support his child begins when the child is born.

Ellison v. Walter ex. rel. Walter, 834 P.2d 680, 683-84 (Wyo. 1992).

[15]In *Seegert*, the court first noted that the governing child support statute authorized a court to direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. *See Seegert* at 703. The court could also order the father to reimburse any other party who furnished expenses for the mother's pregnancy, confinement, education, support, or funeral. *See id.* Moreover, a child may bring a paternity action up to five years after reaching the age of majority. The court concluded the above statutes "clearly contemplated an award for past expenses." *See id.* The court added:

[I]t would be illogical to extend the statute of limitations beyond the child's majority if the legislature contemplated that only current support be awarded in a paternity action. After

a child has reached the age of majority, the putative parent would generally no longer have any duty to support that child. Thus, by extending the statute of limitations beyond the age of majority, when the parent no longer has any duty of support, it appears the legislature envisioned that back child support would be awarded in a parentage action.

Id.

[16,17]*Seegert* next addressed the issue of whether a mother must prove her expenses before recovering them from the father. The court stated:

[I]n the absence of evidence to the contrary, the court will presume that the child was clothed, fed and generally accorded the necessities of life, the payment for which the weekly support money was intended.

Id. at 705. The court concluded that, although a custodial parent may have been able to support the child, this does not relieve the non-custodial parent of his duty to support the child from the date of birth to majority. *See id.*

[18,19,20]In the Northern Mariana Islands, as in *Seegert*, the judgment or order determining paternity and awarding child support may also direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. *See* 8 CMC § 1715(c). The statute of limitations for bringing a paternity action is three years after the child reaches the age of majority. *See* 8 CMC § 1707. The Commonwealth's statutory scheme, similar to that in *Seegert*, strongly suggests the Commonwealth Legislature intended that a parent's duty should begin at birth, not at the date a court determines paternity. This is consistent with the Commonwealth's interest in protecting children.³ Precluding a retroactive award would create an incentive for a father of a child born out of wedlock to avoid his child support obligations by delaying the process of adjudicating paternity. Such conduct would offend the statutory purpose of providing for the needs of children without regard to the circumstances of birth. *See* 8 CMC § 1702; *State v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997). Additionally, allowing a parent to escape responsibility for supporting his children improperly places the financial burden on the Commonwealth and its taxpayers. *See Seegert* at 703.

³ We have previously recognized the Commonwealth's compelling interest in protecting a child's right to support from his parents. *See Francis v. Welly*, App. No. 98-034 (N.M.I. Sup. Ct. Dec. 28, 1999) (Opinion at 5). We have also recognized that the Commonwealth Constitution affords special protection to juveniles who have been accused of committing crimes. *See In Re the Matter of N.T.M.*, App. No. 98-022 (N.M.I. Sup. Ct. Dec. 27, 1999) (Opinion at 3).

[21]In light of the above, we hold that Charles is liable for retroactive support from the date of C.S.'s birth, not just from the date Charles was adjudicated the father, or from the date of trial. Moreover, we see no reason why Felicidad was entitled to less support before trial of this matter, in the absence of evidence that her child care expenses were lower before trial.⁴ We presume C.S. was fed, clothed, and cared for, and the trial court has already determined that Charles is responsible for a portion of these expenses. We therefore reverse the award of retroactive support, and remand with instructions that Charles be ordered to pay \$325 per month, the same amount of retroactive support as prospective support, beginning with the month of C.S.'s birth.

III. Appellant Is Entitled to Reasonable Attorney Fees

Felicidad claims she is entitled to attorney fees under 8 CMC § 1716. She explains the purpose of the statute is to permit a financially disadvantaged party to obtain competent counsel to enforce the child's right to support from the non-custodial parent. Again, Charles does not respond to this argument, but merely cites the standard of review.

[22,23,24,25]In proceedings under the Uniform Parentage Act, the court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood and genetic tests, to be paid by the parties in proportions and at times determined by the court.⁵ See 8 CMC § 1716. In evaluating the reasonableness of attorney fees, the court considers the time and labor required, the novelty and difficulty of the questions involved, and the skill required to properly perform the legal service. See *Camacho v. J.C. Tenorio Enter., Inc.*, 2 N.M.I. 509, 511 (1992). The primary consideration in an award of attorney fees is the supporting party's ability to pay and the receiving party's financial needs. See *Harris v. Harris*, 714 A.2d 626, 634 (Vt. 1998). Absent

⁴ For purposes of determining child support, it is irrelevant that Felicidad received help from her friends, as she apparently had to because Charles refused to help raise the child. We do not believe it is appropriate for Felicidad's friends to shoulder the burden of raising C.S. Accordingly, we will not discount the award of retroactive child support merely because Felicidad received support from sources other than Charles or herself. See *Fowhand v. Piper*, 611 So. 2d 1308, 1312 (Fla. Dist. Ct. App. 1992) (noting that a contrary holding would unfairly deprive child and force parent to continue to be burden on third persons).

⁵ The applicable attorney fee provision in this case is from the Uniform Parentage Act. Accordingly, our holding on the availability of attorney fees should not be extended to other family proceedings outside the Act.

an award of attorney fees, a child might be deprived of the very protection which the paternity and child support statutes seek to afford him. *See id.*; *see also Francis v. Welly*, App. No. 98-034 (N.M.I. Sup. Ct. Dec. 28, 1999) (Opinion at 5) (finding indigent custodial parent entitled to court-appointed counsel, because “This right to counsel furthers the Commonwealth’s compelling interest in protecting children, by providing a means by which children may enforce their right to child support.”). A court abuses its discretion in refusing to award attorney fees when the asking party clearly has no funds to pay the fees, and the party was successful in her action for child custody and support. *See McLean v. McLean*, 257 S.E.2d 751, 753 (S.C. 1979).

[26]Here, it is clear Felicidad cannot afford to pay for an attorney. It is equally clear that legal action is the only way she will be able to compel C.S.’s father to share in the responsibility of raising him. Awarding attorney fees in cases like this will further the Commonwealth’s compelling interest in protecting children.⁶ We therefore reverse the denial of attorney fees and remand with instructions to the trial court to determine “reasonable” attorney fees.

CONCLUSION

Based on the foregoing reasoning, we **AFFIRM** the trial court’s award of prospective child support because we find no abuse of discretion. We **REVERSE** the trial court’s award of retroactive

⁶ *McLean v. McLean*, 257 S.E.2d 751, 753 (S.C. 1979), adds the requirement that the case was not routine or involved an issue of first impression. Our statute does not contain such a requirement. Charles argues that child support is a routine proceeding involving no novel or unique issues. However, we note that there is evidence that the paternity proceeding was not routine because Charles claimed fraudulent conduct surrounding Felicidad’s pregnancy, after DNA testing established he was the father. Regardless, it cannot be disputed that Felicidad is unable to pay attorney fees, that she was successful in her child support action, and that Charles bears some responsibility in caring for C.S.

child support, and **REMAND** with instructions to enter an order increasing such support to \$325 per month, effective as of the date of the child's birth. Finally, we **REVERSE** the denial of attorney fees for Felicidad and C.S., and **REMAND** with instructions to calculate a reasonable award consistent with this opinion.

Entered this 28 day of June, 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ Pedro M. Atalig
PEDRO M. ATALIG, Justice *Pro Tem*