

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 10, 2015

**STATE OF TENNESSEE EX REL. LISA HOLT v. JEREMY B. HOLT**

**Appeal from the Chancery Court for Wayne County**  
**No. 2003-CV-3227     Jim T. Hamilton, Judge**

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**No. M2014-01750-COA-R3-CV – Filed September 30, 2015**

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The matters in dispute pertain to a retroactive child support judgment for a period of time prior to the filing of the child support petition. The trial court assessed a retroactive judgment that included a period of time prior to the filing of the petition, holding that the petition filed by the State on behalf of Mother was to “set” child support not to “modify” support. Father contends a prior support order was in effect when the petition was filed; thus, the trial court violated Tenn. Code Ann. § 36-5-101(f)(1) by awarding a judgment based on an increase in child support for several months prior to the filing of the petition. In the trial court the State insisted that the petition was to set support; however, on appeal, it concedes that a child support order was in effect when this petition was filed. Tenn. Code Ann. § 36-5-101(f)(1) directs that a judgment for child support shall not be subject to modification as to any time period or amounts prior to the date a petition for modification is filed. Therefore, we vacate the retroactive child support judgment and remand for the trial court to calculate the judgment from the date the petition to modify support was filed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Vacated and Remanded**

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Ronald G. Freemon, Columbia, Tennessee, for the appellant, Jeremy B. Holt.

Herbert H. Slatery III, Attorney General and Reporter; Andrée S. Blumstein, Solicitor General; Ryan McGehee, Assistant Attorney General; and Rebekah Ann Baker, Assistant Attorney General, for the appellees, Child Support Services of Tennessee and Lisa Holt.

## OPINION

Lisa Holt (“Mother”) and Jeremy Holt (“Father”) married in 1997. They had two children. They divorced in 2005 when both children were minors. The final divorce decree included a parenting plan which provided that the children would spend an equal amount of time with each parent and no child support would be due from either party. In 2008, Father filed a petition to modify the parenting plan because the parties’ eldest child was living primarily with him at the time and the daughter was spending an equal amount of parenting time with each parent. The trial court granted his petition in July 2008, and ordered Mother to pay child support of \$328 per month.

As time passed, the parties’ eldest child reached the age of majority and the remaining minor child, a daughter, was living with Mother the majority of the time. On October 29, 2013, the State of Tennessee filed a petition on behalf of Mother to set child support for the benefit of the parties’ minor daughter. In June 2014, the trial court set Father’s child support obligation in the amount of \$548 per month, made it retroactive to December 1, 2011, and calculated an retroactive judgment from December 1, 2011, which was twenty-three months prior to the filing of the October 2013 petition. The court also ordered Father to pay an additional \$100 per month to satisfy the retroactive judgment.

Father filed a Motion to Alter or Amend the Judgment, arguing that the petition to set support should have been treated as a petition to modify support, and that the retroactive support judgment was limited by Tenn. Code Ann. § 36-5-101(f)(1) to the date the petition to modify support was filed. The trial court denied the motion, and this appeal followed.

## ANALYSIS

Although the State took a different position in the trial court, on appeal both parties acknowledge that the petition filed by the State on behalf of Mother in October 2013 was, as a matter of law, a petition to modify support, not a petition to set.

Child support orders are subject to modification throughout the time a child is a minor. *See* Tenn. Code Ann. § 36-5-101 et. seq. However, there are limits to retroactive modification. *Rutledge v. Barrett*, 802 S.W.2d 604, 606 (Tenn. 1991). Specifically, Tenn. Code Ann. § 36-5-101(f)(1) provides: “[A] judgment [for child support] shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties.” The Tennessee Supreme Court has stated that, under this provision, “[r]etroactive modifications [of child support orders] are plainly unauthorized.” *Rutledge*, 802 S.W.2d at 606. We have also noted that “a court has no power to alter a child support award as to any period of time occurring prior to the date

on which an obligee spouse files his or her petition.” *Alexander v. Alexander*, 34 S.W.3d 456, 460 (Tenn. Ct. App. 2000).

A parenting plan was established in 2005 when the parties divorced. An order setting child support was entered in July 2008, and that order was in effect when the State filed its petition in 2013. Therefore, the State erroneously asserted in the trial court that its petition was a “petition to set child support” instead of a petition to modify support.

It is now undisputed that the State’s 2013 petition was a petition to modify support; therefore, retroactive support may only be ordered as far back as October 29, 2013, when the petition to modify was filed. Because Father does not challenge the amount of child support he was ordered to pay on a monthly basis, Mother is entitled to a judgment for retroactive child support calculated at \$548 per month from October 29, 2013, the date the petition to modify was filed.

#### **IN CONCLUSION**

The retroactive child support judgment of the trial court is vacated, and this matter is remanded for the trial court to calculate the judgment from the date the petition to modify support was filed. Costs of appeal are assessed against Child Support Services of Tennessee.

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FRANK G. CLEMENT, JR., JUDGE