

A Father's Liability for Retroactive Child Support Upon Delayed Determination of Paternity

by Allison Schrader Dunn

Under what circumstances may a party determined to be a child's father in paternity proceedings be held liable for retroactive child support? Like most family law matters, the particular facts of each case will dictate whether an award of retroactive child support, child support for the period before the adjudication of paternity, is warranted.

The New Jersey Parentage Act permits a child, the biological mother, a legal representative of the child, or any person with an interest recognized as justiciable by the court, to bring or defend an action for the purpose of determining the existence or nonexistence of the parent and child relationship.¹ The act further establishes a 23-year statute of limitations for actions to determine the existence or nonexistence of a parent-child relationship, commencing from the date of the child's birth.² Once paternity is established or acknowledged:

- a. [t]he obligation of the father may be enforced in the same or other proceedings by the mother, and child, the public agency that has furnished or may furnish the reasonable expenses of pregnancy, postpartum disability, education, support, medical expenses, or burial, or by any other person, including a private agency, to the extent that the mother, child, person or agency has furnished or is furnishing these expenses.
- b. [t]he court may order support payments to be made to the mother, the clerk of the court, the appropriate probation department, or a person, corporation, or agency designated to administer them for the benefit of the child, under the supervision of the court.³

The language of the act leaves open the possibility that a father could be liable for child support for the period before the adjudication of paternity. The financial impact of such an assessment on a putative father could be significant, especially in a case where the adjudication of paternity occurs many years after the birth of the child.

The case law in New Jersey addressing this specific issue is somewhat limited. The Appellate Division addressed the issue of retroactive child support in the event of a delayed paternity adjudication in *L.V. v. R.S.*⁴

In *L.V. v. R.S.*, the plaintiff, a custodial mother, filed an action against the putative father 16 years after the birth of their child seeking an adjudication of paternity as well as child support.⁵

The parties conceived a child in 1981, and the plaintiff contacted the defendant four months later to advise him she was pregnant. She requested financial assistance for medical expenses and the defendant sent her money as requested. The child, Michelle, was born on Jan. 5, 1982 and was given her mother's surname. The birth certificate did not name the defendant as her father. The plaintiff testified during a plenary hearing that she wanted no contact with the defendant and did not want him to play any role in Michelle's life.⁶ Subsequent contact between the parties was minimal. The plaintiff testified she was aware of how to proceed to secure child support for Michelle through the court, but she consciously chose not to pursue any formal action against the defendant.⁷

Michelle sought out her father when she was 16 years old, and they began communicating. She requested his address, and shortly thereafter the plaintiff served him with a complaint seeking retroactive and prospective child support.⁸ After a plenary hearing, the trial court barred the plaintiff's claim for retroactive and prospective child support on behalf of Michelle on grounds of laches.⁹ The trial court based its decision upon its findings that the 16-year hiatus of any contact between Michelle and her father was intentional and purposeful by the plaintiff mother, and that there was no real bond between the defendant and the child.¹⁰

On appeal, the Appellate Division reversed and remanded the matter to the trial court to determine an appropriate amount of child support that should be paid by the defendant to the plaintiff retroactive to the date of the plaintiff's complaint.¹¹ The Appellate Division affirmed the trial court's decision denying the plaintiff's request for reimbursement of child support prior to the date of the complaint based upon the equitable doctrine of laches.¹² In doing so, the Appellate Division noted:

Laches is an equitable doctrine which penalizes knowing inaction by a party with a legal right from enforcing that right after passage of such a period of time that prejudice has resulted to the other parents so that it would be inequitable to enforce the right. The key ingredients are knowledge and delay by one party and change of position by the other.¹³

The Appellate Division further explained:

The length of delay, reasons for delay, and changing conditions of either or both parties during the delay are the most important factors that a court considers and weighs...It is because the central issue is whether it is inequitable to permit the claim to be enforced that generally the change in condition or relationship of the parties coupled with the passage of time becomes the primary determinant...Inequity more often than not, will turn on whether a party has been misled to his harm by the delay.¹⁴

In denying the plaintiff's claim for reimbursement, the Appellate Division noted "[w]hile laches does not arise from delay alone, the actions and non-actions of the plaintiff are sufficient to justify the bar of laches to deny her any claim for reimbursement."¹⁵ The decision also took into consideration that the record showed the plaintiff was aware of the procedures to obtain child support and to locate the defendant but she chose not to do so in order to inhibit the father-daughter relationship.¹⁶ However, the Appellate Division held that there was no basis to deny Michelle's claim for ongoing support from her father, as there was "no basis to impute to a child the custodial parent's negligence, purposeful delay or obstinacy so as to vitiate the child's independent right of support from a natural parent."¹⁷ The Appellate Division was careful to note: "the application of laches to matters of parent-child relationships have been carefully circumscribed."¹⁸ As such, each case will rest upon a careful factual analysis, and retroactive reimbursement of child support may not be barred in every instance.

For example, in *C.L. v. W.S.*, the plaintiff mother filed a complaint against the putative father that sought a declaration of paternity and child support for the child, who was born with cerebral palsy.¹⁹ The child was born in 1986, and the father gave the plaintiff some money

before the child's birth and \$15,000 shortly thereafter for child-care expenses. However, he did not make any further payments to the plaintiff and he disappeared less than two years later.²⁰ The plaintiff filed an action in 1994 against the defendant for a declaration of his paternity and support; however, the action was dismissed due to defective service of process.²¹ The plaintiff then waited until 2005 to file another complaint when the child was 19 years old, again seeking a declaration of the defendant's paternity and child support.²² The complaint did not specifically seek retroactive child support, which became an issue on appeal.²³

The plaintiff subsequently filed a motion seeking both retroactive and prospective child support. The trial court granted the plaintiff's requests and entered an order establishing paternity and ordering the defendant to pay \$222 per week for the child's support plus 66% of her medical expenses. In addition, the court ordered the defendant to pay the plaintiff \$3,500 for her counsel fees and \$126,984 in retroactive child support at the rate of \$222 per week, beginning from 1994 when the plaintiff first petitioned the court.²⁴

On appeal, the Appellate Division affirmed the trial court's decision regarding ongoing child support, but it remanded the case for reconsideration of the award of retroactive child support in line with *L.V. v. R.S.*, supra.²⁵ The Appellate Division noted that the plaintiff did not seek a claim for retroactive child support in her complaint, and therefore questioned whether the defendant was given adequate notice of the "magnitude" of the relief sought.²⁶

The court in *In re Rogiers* addressed this issue in the context of estate litigation.²⁷ In *In re Rogiers*, the child's biological mother sought reimbursement from the father for medical expenses she incurred and services she provided on the child's behalf before the child died. The mother also sought retroactive child support from the father, though she made no claim for child support while the child was alive.²⁸ The trial court granted the mother's request for reimbursement of some medical expenses, but she denied her claim for retroactive child support from the father.

On appeal, the Appellate Division affirmed the trial court's denial of the mother's request for retroactive child support. The court noted that the trial judge's decision rested in large part upon its conclusion that a child support obligation does not survive the death of a child. The Appellate Division further noted, however, "there may be circumstances when child support may be awarded retroactively based upon equitable principles, even where, as here, no

claim for child support had previously been made.”²⁹ The Appellate Division based its decision upon the fact that the father had contact with the child’s mother on multiple occasions during the child’s lifetime. This presented Rogiers with opportunities to request child support from the father, but she did not do so. While that was not, by itself, a reason to deny retroactive child support, other factors supported that conclusion. A significant factor was that Rogiers was able to care for the child’s needs with trust funds during the child’s lifetime to satisfy her financial needs. Based upon these facts, the Appellate Division found no basis to disturb the trial court’s decision.³⁰

As the applicable statutory and case law make clear, a father could be found liable for child support for the period before paternity is established if the facts of the case warrant such an award. The potential financial impact on a putative father is obvious. A father who may have been excluded from the child’s life, either deliberately or by agreement, may suddenly have a significant child support and arrearage obligation.

Furthermore, the plain language of New Jersey’s child support statute, N.J.S.A. 2A:17-56.21, mandates that information regarding arrearages be provided to credit reporting agencies.³¹ The question of whether arrearages assessed in the first instance against a non-custodial parent should be reported to the credit bureaus was addressed in a reported trial court case, *Cameron v.*

Cameron.³² In *Cameron*, the parties modified their parenting time arrangement post-judgment such that the defendant father went from being the parent of alternate residence to the parent of primary residence.³³ The defendant father filed an application with the court seeking child support from the plaintiff retroactive to the date of filing. Because the motion took several months to be heard, the plaintiff was assessed arrearages in the amount of \$1,499 by the time the motion was heard.³⁴

Recognizing the injustice that would occur in the event that arrearages were reported against a parent who had not previously violated a court order, the trial court held that the statute does not “require the reporting of technical arrears against a noncustodial parent who has never violated a support order or missed any legally specified payments in the same manner as against an obligor who has failed to make payments or otherwise violated an existing order.”³⁵ While the case law is clear on this issue, in the event that an arrearage is assessed against a client under these circumstances, counsel should ensure that any court order entered specifically provides that the arrears shall not be reported to the credit agencies. Otherwise, the Probation Division may unwittingly do so. ■

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Endnotes

1. N.J.S.A. 9:17-45(a).
2. N.J.S.A. 9:17-45(b).
3. N.J.S.A. 9:17-55(a) and (b).
4. *L.V. v. R.S.*, 347 N.J. Super. 33 (App. Div. 2002).
5. *Id.* at 35.
6. *Id.* at 36.
7. *Id.* at 37.
8. *Id.* at 38.
9. *Id.* at 38-39.
10. *Id.* at 39.
11. *Id.* at 44.
12. *Id.* at 40-41.
13. *Id.* at 39.
14. *Id.*
15. *Id.* at 40.
16. *Id.*
17. *Id.*
18. *Id.* at 41.
19. *C.L. v. W.S.*, 406 N.J. Super. 484 (App. Div. 2009).
20. *Id.* at 487.
21. *Id.* at 489, n. 2.
22. *Id.* at 487-88.
23. *Id.* at 495-96.
24. *Id.* at 489.
25. *Id.* at 496.
26. *Id.*
27. *In re Rogiers*, 396 N.J. Super. 317 (App. Div. 2007).
28. *Id.* at 320.
29. *Id.* at 327.
30. *Id.*
31. N.J.S.A. 2A:17-56.21.
32. *Cameron v. Cameron*, 440 N.J. Super. 158, 163 (Ch. Div. 2014).
33. *Id.* at 161.
34. *Id.* at 162.
35. *Id.* at 163.