

**IN THE SOUTHWEST INTERTRIBAL COURT OF APPEALS  
FOR THE SOUTHERN UTE INDIAN TRIBE**

**In the INTEREST of  
A.A.M.B.,  
Petitioner-Appellant,**

**v.**

**John Chadd WILLIAMS,  
Respondent-Appellee.**

No. 92-005-SUTC  
(Filed Jan. 7, 1993)

Appeal from the Southern Ute Tribal Court, Maylinn Smith, Judge.  
Linda Boulder, for Appellant.  
Jeffrey Wilson, for Appellee.

**SUMMARY**

The State of Colorado filed suit under an assignment of rights executed by the child's guardian who receives Aid to Families with Dependent Children (AFDC). The state sought to establish paternity of the child in order to obtain contribution and reimbursement for the financial assistance paid to the child's guardian for the benefit of the child. The trial court established the paternity of the child based upon the father's admission and awarded child support, but denied past child support. The trial court ruled that past decisions of the court established that child support cannot be imposed retroactively after determination of paternity in the absence of legislative authority. The Appellate Court reversed the decision of the trial court and held that nothing in the Southern Ute Indian Tribal Code prevents the suit by any party supporting the child to obtain retroactive child support from a parent.

**OPINION**

LUI-FRANK, Judge

This case has been appealed on the question of whether a father whose relationship to a child is established by court order can be held liable for past support of the child. The appellant and real party in interest is the State of Colorado, La Plata County Child Support Enforcement Unit, hereinafter referred to as the state. The appellee is John Chadd Williams, the father of the child. The state has filed suit under an assignment of rights executed by the child's guardian, who receives Aid to Families with Dependent Children (AFDC). The state sought to establish paternity of the child in order to obtain contribution and reimbursement for the financial assistance paid to the child's guardian for the benefit of the child.

The trial court's order and memorandum established the paternity of the child, based upon the father's admission. The trial court also decided the question of first impression in this jurisdiction whether appointment of a legal guardian relieves a parent of the duty of support of a child.

We hold that the trial court correctly stated the law on that issue and parents remain responsible for support of their children under §§6-1-126(1) and 6-1-102(4) of the Southern Ute Indian Tribal Code, even when they no longer have custody of the children, and the legal custodian/guardian also has a duty of support.

The trial court ruled that past decisions of the court established that child support cannot be imposed retroactively after determination of paternity in the absence of legislative authority. *L.K. v. M.E.T.*, 17 ILR 6005, 6007 (S. Ute Tr. Ct. 1989); *R.L.W. v. G.N.B.*, 18 ILR 6048, 6049 (S. Ute Tr. Ct. 1991). The state contends that the court's reasoning was based on the putative father's lack of rights to a child prior to a paternity determination, and distinguishes this case based upon the father's exercise of certain rights to the child, including visitation.

*L.K. v. M.E.T.*, 17 ILR 6005, 6006-7 (S. Ute Tr. Ct. 1989), was a paternity action brought by the La Plata County Child Support Enforcement Unit in a Uniform Reciprocal Enforcement of Support Act case for the State of California. The father in that case was a member of a federally recognized Indian tribe, residing on the Southern Ute Indian Reservation. He stipulated to paternity of the child, who resided in California. The trial court established paternity and awarded child support, but denied past child support. The court interpreted the relevant code provisions as establishing that because a father whose paternity has not been established has no rights to a child, he has no duty of support. The court also cited a Florida case in support of its holding. *Florida ex rel. Luke v. Wright*, 14 F.L.R. 1319 (Fl. 1988).

*R.L.W. v. G.N.B.*, 18 ILR 6048 (S. Ute Tr. Ct. 1991), involved contested paternity claims on two children and admissions to paternity on two other children. The question of past child support was decided in the same way as *L.K. v. M.E.T.*, *supra*. The facts of the case were illustrative of instances where "...an individual may in fact not know with any degree of certainty that he is the parent of a child, up until the point paternity is medically established..." *Id.*, 6049. Therefore, the court held, requiring a father in that instance to reimburse AFDC payments would be unjust.

In reviewing the law on the issue of retroactive child support in adjudicated paternity actions, there is case law upholding the award of child support dating from the birth of a child. *Weaver v. Chandler*, 31 Ohio App. 2d 243, 287 N.E.2d 917, 921-922 (Ohio Ct. App. 1972). See, also, *Aguilar v. Barker*, 699 S.W.2d 915, 917 (Tex. App. 1 Dist. 1985). In the *Aguilar* case, the court noted that an alleged father cannot be required to pay child support until paternity is established, but once accomplished, costs for support can be awarded from the date of the child's birth. *Id.*

*Dept. of Health and Rehab. Services ex rel. Luke v. Wright*, 522 So.2d 838 (Fla. 1988), the same case as *State ex rel. Luke v. Wright*, 14 F.L.R. 1319 (Fl. 1988), does not hold that retroactive support cannot be awarded for any period prior to the date of adjudication of paternity. That case involved the question of whether Florida could assert personal jurisdiction over an alleged father living in Idaho under Florida's long-arm statute. The Department of Health and Rehabilitative Services claimed that personal jurisdiction was justified because he allegedly committed a tortious act when he had relations with the mother of the child in Florida, and eight months later the child was born. The Florida Supreme Court rejected the argument. "[C]onsensual sex also does not amount to tortious activity." 522 So.2d at 840. That court's major holding was that the long-arm statute could not be used against Wright on the ground that he committed a tort within Florida by failing to support the child who lived in Florida. Because paternity had not yet been established, he had no duty of support. That is the context for the statement quoted by the trial court, "To saddle a defendant with the burden of child support before paternity has been established would be both illogical and unjust." *Id.* The Florida Supreme Court held that the state cannot bootstrap a nonsupport claim to support jurisdiction over an out-of-state defendant for purposes of establishing paternity.

The case relied on by the trial court is not on point. The law in Florida in the most recent case on the specific issue of retroactive child support in paternity adjudications is stated in *Williams v. Johnson*, 584 So.2d (Fla. App., 5 Dist. 1991). After affirming the award of current child support of \$1,000 per month retroactive to the filing of the complaint, the court states:

We also affirm the trial court's determination to award Johnson child support from the date that the child was born until the date these proceedings were instituted. This was a matter within the trial court's discretion. However, the retroactive recovery of child support must be based on the theory of reimbursing Johnson for the monies that she expended to support the child during this period of time. [Emphasis added.] *Id.* at 91.

The court also went on to say that the issue is the right of the third party to be reimbursed for the support provided. *Id.*, at 91-92. The court cited a Florida Supreme Court Decision, *Issacs v. Deutsch*, 80 So.2d 657, 658 (Fla. 1955), for the premise that "...the obligation of a father to support his minor child is a continuing one during minority..." *Williams v. Johnson*, supra, at 92.

We hold that nothing in the Southern Ute Indian Tribal Code prevents the suit by any party supporting a child to obtain retroactive child support from a parent. Indeed, the code allows suits for child support. Sec. 6-1-126(2)(b).

We reverse the order regarding retroactive child support and remand to the trial court to determine the amount of money expended by the state and what Mr. Williams must pay, in addition to current support. The trial court may determine that a portion of the \$25.00 he now pays should be applied to the retroactive child support, if his means do not allow more.

IT IS SO ORDERED.