

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 23, 2006

**STATE OF TENNESSEE, EX. REL., CINDY BURRIS v.
BILLY MURRAY**

**Appeal from the Juvenile Court for Roane County
No. 4928-JV Jeffrey H. Wicks, Judge**

No. E2006-00947-COA-R3-JV - FILED SEPTEMBER 21, 2006

The State of Tennessee, *ex. rel.*, Cindy J. Burris (“the State”) filed a petition for modification of child support against Billy D. Murray (“Father”) in November of 2005. The case was heard by a Referee and the Referee’s Findings and Recommendations were entered in February of 2006, ordering Father to pay \$173 per month in current support and \$7 per month toward child support arrearages of \$10,659.14. Father appealed the Findings and Recommendations to the Juvenile Court and the Juvenile Court entered an order confirming the Findings and Recommendations. Father appeals to this Court. The record on appeal contains no transcript or statement of the evidence. We vacate that portion of the award that represents State benefits received by Cindy J. Burris (“Mother”) after the entry of the 1992 judgment and affirm as to all remaining issues.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Vacated, in part, and Affirmed, in part; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Billy D. Murray, Harriman, Tennessee, *pro se* Appellant.

Paul G. Summers, Attorney General and Reporter, and Warren Jasper, Assistant Attorney General for the Appellee, the State of Tennessee, *ex. rel.*, Cindy J. Burris.

MEMORANDUM OPINION¹

Background

The State filed a Petition for Paternity against Father in 1992, regarding the minor child S.B.M. The case was heard by a Referee and Findings and Recommendations were entered in October of 1992, finding and recommending, *inter alia*, that Father admitted in open court that he was the father of S.B.M., that Father not be required to pay current child support since his only source of income was a Social Security check, and that Father owed child support arrearages in the amount of \$987, for which a judgment was awarded to the State, but that Father would not be required to make payment on the judgment at that time. The Juvenile Court entered an order confirming the Findings and Recommendations on October 28, 1992.

In November of 2005, the State filed a Petition for Modification of Father's child support. The case was heard by a Referee and Findings and Recommendations were entered in February of 2006, finding and recommending, *inter alia*, that Father's income consists of a \$689 Social Security check and \$284 in dependent benefit checks, that Father had a duty to pay \$173 per month in current child support and \$7 per month in child support arrearages, and that the State was awarded a judgment for child support arrearages in the amount of \$10,659.14. The Findings and Recommendations stated, in pertinent part:

The retroactive child support represents State cash assistance including the prior judgment of \$987.00. At the time the prior judgment was entered, [Father] was receiving SSI. Mother continued to receive State benefits after the judgment was entered in the amount of \$9672.14. Because father was receiving SSI benefits, no current child support or arrearage payment was set at the insistence of the father and his payee, Loretta Murray.

Father appealed the Findings and Recommendations to the Juvenile Court and the Juvenile Court entered an order April 4, 2006, confirming the Findings and Recommendations and finding and holding, *inter alia*: "No proof was presented today to persuade the Court that the Referee, after hearing all the testimony and arguments of all parties, made any mistake of fact or law."

Father appeals to this Court.

Discussion

¹ Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

Father's *pro se* brief on appeal raises no specific issues. Rather, the brief is a recitation of Father's viewpoint detailing why he feels he was wronged by the Juvenile Court. As this Court explained in *Young v. Barrow*:

Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995).

Young v. Barrow, 130 S.W.3d 59, 62-3 (Tenn. Ct. App. 2003).

Our ability to address Father's appeal is hampered by the absence of either a transcript of the proceedings before the Referee or in the Juvenile Court, or a statement of the evidence prepared in accordance with Tenn. R. App. P. 24(c). "This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings." *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992).

The Juvenile Court in its Order noted that it had heard no proof sufficient to persuade the Juvenile Court that the Referee, "after hearing all the testimony and arguments of all parties, made any mistake of fact or law." After considering all the evidence presented to it, the Juvenile Court confirmed the Referee's Findings and Recommendations.

However, the record reveals, and the State points out in its appellate brief that "[t]he referee found the retroactive child support represented state cash assistance in the amount of \$9,672.14 made to Cindy Burris since the 1992 order was entered, together with the 1992 judgment of \$987.00."

As pertinent to this appeal, Tenn. Code Ann. § 36-5-101(f)(1) provides:

Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state, and shall be entitled to full faith and credit in this state and in any other state. Such judgment 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....

Tenn. Code Ann. § 36-5-101(f)(1) (2005).

The October 28, 1992, order of the Juvenile Court confirmed the Findings and Recommendations of the Referee, which recommended, in pertinent part: “that [Father] not be required to pay child support at the present time since his only source of income is an SSI check.” This October 28, 1992, order was a final order and was not appealed. Thus, a judgment existed that was not “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 [Father].” As such, it was error to award the State a judgment for “retroactive child support represent[ing] state cash assistance in the amount of \$9,672.14 made to Cindy Burris since the 1992 order was entered” Given this, we vacate the award of \$9,672.14, representing State benefits that Mother received after the 1992 judgment was entered, and remand this case to the Juvenile Court for a determination of the proper amount of retroactive child support under Tenn. Code Ann. § 36-5-101(f)(1).

As for all remaining issues, including the award of \$987.00 from the 1992 judgment and the award of current child support, we must assume the record, had it been preserved, would have contained sufficient evidence to support the Juvenile Court’s factual findings, and no error of law being shown as to these issues, we affirm the decision of the Juvenile Court as to these issues.

Conclusion

The judgment of the Juvenile Court is vacated as to the award of \$9,672.14, which represents State assistance received by Mother after the 1992 judgment was entered, affirmed as to all other issues, and this cause is remanded to the Juvenile Court for further proceedings consistent with this Opinion and for collection of the costs below. The costs on appeal are assessed one-half against the Appellant, Billy Murray and one-half against the State of Tennessee.

D. MICHAEL SWINEY, JUDGE