IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 17, 2006 Session

JOHN MICHAEL SHEALY, ET AL. v. POLICY STUDIES, INC. d/b/a CHILD SUPPORT SERVICES OF TENNESSEE, ET AL.

Appeal from the Chancery Court for Bradley County
No. 01-389 Jerri S. Bryant, Chancellor

No. E2005-01124-COA-R3-CV - FILED AUGUST 29, 2006

In two separate and unrelated divorce cases, the plaintiffs in the instant case – John Michael Shealy and David Lebron Reagan – were each paying child support to their respective former spouses as required by court orders. Pursuant to the provisions of Tenn. Code Ann. § 36-5-103(f), certain child support orders in Tennessee are subject to review by the Department of Human Services ("DHS") at least once every three years. When the plaintiffs' child support orders were reviewed in accordance with the statute, DHS issued administrative orders in each case summarily increasing the amount of the plaintiffs' child support obligations and implementing wage assignments. The plaintiffs then "joined forces" and filed this action challenging the constitutionality of Tenn. Code Ann. §§ 36-5-103(f) and 36-5-501 on the basis that these statutes violate both due process and the separation of powers doctrine. The plaintiffs successfully obtained a restraining order enjoining enforcement of the administrative orders. Thereafter, the plaintiffs' former wives filed petitions in their respective divorce proceedings seeking an increase in child support. The petitions were eventually resolved by the entry of agreed orders which increased the amount of each of the plaintiffs' child support payment and decreed payment of same by way of wage assignment. After entry of the agreed court orders, DHS entered administrative orders dismissing all of its previous administrative orders and decreeing that the latter orders were held "for naught." Tenn. Code Ann. § 36-5-103(f) was substantially amended effective January 1, 2005. On April 21, 2005, the trial court entered an order holding that Tenn. Code Ann. § 36-5-501 and the pre-January 1, 2005, version of § 36-5-103(f) were unconstitutional. DHS appeals. We conclude that all of the plaintiffs' claims are moot, vacate the judgment of the trial court, and remand with instructions to dismiss this case.

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

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Paul G. Summers, Attorney General and Reporter, Stuart F. Wilson-Patton, Senior Counsel, and Warren A. Jasper, Assistant Attorney General, Nashville, Tennessee, for the appellants Tennessee Department of Human Services and Gina Lodge, Commissioner.

Bridget J. Willhite, Athens, Tennessee, for the appellants Policy Studies, Inc., and Connie Bell.

William J. Brown, Cleveland, Tennessee, for the appellees John Michael Shealy and David Lebron Reagan.

OPINION

I.

A.

The primary issues on this appeal address constitutional challenges by John Michael Shealy and David Lebron Reagan (1) with respect to Tenn. Code Ann. § 36-5-501 and (2) regarding Tenn. Code Ann. § 36-5-103(f) as it existed prior to being amended on January 1, 2005.

The Child Support Guidelines ("the Guidelines") in effect when this litigation began provided that child support could be increased, or decreased, upon a showing of a "significant variance" between the amount of child support dictated by the application of the Guidelines and the amount of support that was currently being paid. Tenn. Comp. R. & Regs. 1240-2-4-.02(3)(2003) defined a "significant variance" as "at least 15% if the current support is one hundred dollars ($100.00) or greater per month and at least fifteen dollars ($15.00) if the current support is less than $100.00 per month."[1] In general terms, if there is an existing court order setting child support and an obligee parent files a petition to increase his/her child support entitlement and establishes in that proceeding that there is a significant variance as defined in the Guidelines, then the obligee parent would be entitled to the entry of an order increasing the amount of child support.

In addition to the aforesaid method of obtaining an increase in child support through the court system, an administrative route has been established in accordance with 42 U.S.C. § 666 (Supp. 2006). The alternative route is applicable to child support cases subject to enforcement under Title IV-D of the Social Security Act. The federal statute requires states to have certain administrative procedures in place addressing the modification of child support in IV-D cases. Among other things, the federal statute requires states to have procedures which give a state agency the authority to take certain actions relating to the "establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal," and to recognize and enforce the authority of state agencies

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1 The new Guidelines which became effective in 2005 implemented an income shares model. It replaced the previous flat percentage model. The new Guidelines' definition of what constitutes a significant variance is broader but includes the previous definition. *See* Tenn. Comp. R. & Regs. 1240-2-4-.05 (2005).

of other states to take such actions. *See* 42 U.S.C. § 666(c)(1) (Supp. 2006). The federal statute generally requires the review of child support orders in IV-D cases at least once every three years. *See* 42 U.S.C. § 666(a)(10) (Supp. 2006). If states do not pass legislation required by the federal statute, they may lose federal financial participation in child support programs as well as welfare programs.

Tenn. Code Ann. § 36-5-103(f)(2005) is Tennessee's response to 42 U.S.C. § 666. The state statute establishes an administrative mechanism for reviewing IV-D child support orders. DHS is responsible for implementing the administrative requirements set forth in § 36-5-103(f). The current version of § 36-5-103(f)(1)(A) provides that the administrative procedure for modifying current child support obligations applies as follows:

> Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to title 71, chapter 3, part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If at the time of the review, there is a "significant variance", as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

Tenn. Code Ann. § 36-5-103(f)(1)(A)(2005).

DHS entered into a contract with the defendant Policy Studies, Inc. ("PSI"), to provide child support enforcement services. PSI is compensated by the state based upon a percentage of the child support it collects, subject to annual caps set forth in the contract. Employees of PSI do not have a specific dollar amount of child support that they are required to collect, but they do have individual performance goals and receive a bonus for meeting those goals. PSI is also obligated to assist non-custodial parents in obtaining reductions in child support if such reductions are warranted under the Guidelines.

Connie Bell is employed by PSI. Ms. Bell is the office manager for the district office which includes Bradley County. As office manager, Ms. Bell, who is not an attorney, signs administrative orders. She receives a performance bonus based upon the amount of child support the district office collects.

B.

Shealy and Reagan were making child support payments pursuant to court orders. The child support payments for Shealy and Reagan were later increased by way of DHS administrative orders. The procedural history as to how the plaintiffs' respective child support obligations were increased are similar. Because of this similarity, we will only discuss the events surrounding DHS's attempt to increase Shealy's child support payment. Any difference in the procedure utilized in the two cases is slight and not material to the issues on this appeal.

Shealy was paying child support in the amount of $170 per week pursuant to a 1997 court order entered by the Bradley County Circuit Court. In August, 2001, Shealy received in the mail an administrative order requiring him to send his child support payments, along with a 5% statutory fee, to the Central Child Support Receipting Unit in Nashville. Shealy was informed that he could appeal the administrative order by filing a written request within 15 days. The following month, DHS sent Shealy an "Administrative Order for Modification of Current Support." This order, which was signed by Ms. Bell, notified Shealy that his child support obligation was being increased to $216.90 per week effective November 1, 2001. The order also stated:

> You have the right to appeal this Administrative Order by filing a written request for an administrative hearing with the child support office at the address shown above within fifteen (15) calendar days of the mailing date of this Administrative Order. The only grounds for appealing this order are: a mistake in identity, a mistake of fact, a determination of the appropriate application of the methods of adjustment of the order of support pursuant to T.C.A. § 36-5-103 which have been utilized by the Department based on the income of the parties and based upon any circumstances which should permit deviation from the amount and which is justified by the application of those methods.
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> Failure to obey this Administrative Order may result in the imposition of penalties, including fines, imprisonment or suspension of your driver's or other licenses.…

On October 14, 2001, Shealy received a Notice of Right to Review from the local child support office which explained how to request an administrative hearing. Shealy never requested such a hearing from DHS or the local child support office.

The present lawsuit is a complaint for declaratory judgment and injunctive relief filed by Shealy and Reagan on December 10, 2001. The complaint raises several constitutional challenges to the administrative scheme established in Tenn. Code Ann. § 36-5-103(f). Shealy and Reagan claim that the procedures set forth in Tenn. Code Ann. § 36-5-103(f) fail to accord them due process as required by both the United States Constitution and the Tennessee Constitution. The second constitutional challenge is a claim that Tenn. Code Ann. § 36-5-103(f) violates the separation of powers doctrine found in Article II, § 2 of the Tennessee Constitution.

The plaintiffs' complaint was amended to include constitutional challenges to Tenn. Code Ann. § 36-5-501, the statutory provision pertaining to wage assignments for child support payments. The plaintiffs maintain that DHS's ability to summarily issue wage assignments without a hearing violates due process and the separation of powers doctrine.

On the same day the complaint in the instant case was filed, the trial court immediately issued a temporary restraining order which restrained DHS from acting on or issuing any administrative orders and from otherwise collecting any child support payments in excess of the amount Shealy and Reagan had previously been ordered to pay in their respective court orders. The trial court also restrained DHS from "collecting any child support in any way including wage assignments." Following a hearing in February, 2002, the trial court determined that the injunction should stay in effect pending the further order of the court.

The net effect of the restraining order as to Shealy was that he was permitted to continue paying support per the terms of the existing court order. On January 9, 2002, Shealy's former wife filed a petition for modification of child support in the Bradley County Circuit Court. On June 16, 2003, the circuit court entered an order modifying Shealy's child support payment. According to this order:

> Whereupon, this matter was brought before the court on the issue of modification of the previous order dated November 5, 1997 for child support. The parties announced that they had reached an agreement as to that petition, which the court finds fair and appropriate and approves.… The previous order for child support is modified … to be $475.38 biweekly.… There is an arrearage for the retroactive amount of $1,980.66 for which judgment is rendered. Said amount shall be paid lump sum … no later than Monday July 28, 2003.… Any and all issues associated with child support or arrearage pursuant to any other orders from any sources other than orders of this court shall be determined based on the viability of those orders.

Following entry of the circuit court order, DHS entered a final administrative order which provides as follows:

> It is hereby ORDERED that the Administrative Order of Modification issued in this case on 9-24-01, and administrative orders issued subsequently thereto to initiate income assignments, are dismissed and held for naught due to subsequent judicial action on this case which rendered these orders moot.[2]

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[2] Again, we note that Reagan's case had a very similar procedural history. Reagan's child support payment also was increased via an administrative order and, thereafter, Reagan's former wife filed a petition in the Bradley County Chancery Court seeking an increase in child support. The petition was granted by the chancery court and DHS then entered an order nullifying all of its previous orders.

The defendants filed several motions to dismiss, including a motion to dismiss the constitutional claims on the basis that they were rendered moot once DHS dismissed the administrative proceedings and held its own orders "for naught." The trial court determined that the constitutional claims were not moot because there was "a reasonable expectation that administrative orders could be issued in … the future." The trial court did, however, conclude that any claims for monetary damages against PSI and Ms. Bell were moot; hence, those claims were dismissed. Notwithstanding the dismissal of the claims for damages, the trial court concluded that PSI and Ms. Bell should remain in the case with respect to the plaintiffs' request for declaratory and injunctive relief.

All of the parties to this litigation filed motions for summary judgment claiming entitlement to judgment as a matter of law. Following a hearing on February 18, 2004, the trial court granted the motion for summary judgment filed by the plaintiffs, and denied the motions filed by the defendants. On April 21, 2005, the trial court entered a detailed order discussing the undisputed material facts and the reasons why the statutory scheme at issue was unconstitutional. The trial court concluded: (1) that PSI was granted "judicial power" to make and enforce child support orders with no automatic or mandatory judicial review, which, according to the court, violated the doctrine of separation of powers in the Tennessee Constitution; (2) that Tenn. Code Ann. § 36-5-103(f) violated due process because PSI drafted pleadings, decided whether child support should be increased, and entered orders by non-attorneys who had a financial stake in the outcome; (3) that Tenn. Code Ann. § 36-5-103(f) violated due process because it did not provide for a hearing prior to the issuance of an administrative order increasing child support; (4) that Tenn. Code Ann. § 36-5-103(f) violated due process because it provided for a different standard of proof in an administrative hearing as opposed to a judicial hearing; and (5) that Tenn. Code Ann. § 36-5-501 violated due process and the separation of powers doctrine because PSI has the power to summarily issue wage assignments. The trial court summarized its conclusions as follows:

> In conclusion, this Court finds the current statutory scheme for the collection of child support in this state fails to provide a pre-deprivation hearing, operates under a different standard of proof, and violates the Doctrine of Due Process as well as the Doctrine of Separation of Powers, all in violation of the Constitution of the State of Tennessee. Therefore, the Plaintiffs are granted summary judgment. The issuance of the injunction prayed for by the Plaintiffs shall be stayed for thirty (30) days pending the finality of this decision.

II.

DHS appeals raising several issues. DHS claims the trial court erred when it refused to grant its motion to dismiss because, so the argument goes, the plaintiffs' claims are rendered moot. DHS also claims the trial court erred in granting the plaintiffs' motion for summary judgment, and further erred in not granting DHS's motion seeking the same relief. DHS's final

issue is its claim that the trial court erred when it "declar[ed] the state's entire child support collections scheme to be unconstitutional."[3]

III.

We find that the dispositive issue on appeal is whether the plaintiffs' constitutional challenges are moot. A determination of whether a case is moot involves a question of law. ***Alliance for Native American Indian Rights in Tennessee, Inc. v. Nicely***, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005). Our review of questions of law is *de novo* with no presumption of correctness attaching to the trial court's legal conclusions. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996).

IV.

A.

We will first address whether the constitutional challenges to Tenn. Code Ann. § 36-5-103(f) have been rendered moot. With respect to all of the plaintiffs' constitutional challenges, DHS argues that these challenges were rendered moot when agreed orders increasing the plaintiffs' respective child support obligations were entered in the divorce proceedings and, thereafter, DHS entered administrative orders dismissing all of its previous orders. In ***Alliance for Native American Indian Rights in Tennessee, Inc. v. Nicely***, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005), this Court discussed the concepts of justiciability and mootness as follows:

> The requirements for litigation to continue are essentially the same as the requirements for litigation to begin. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, No. M1998-00985-COA-R3-CV, 2001 WL 72342, at *5 (Tenn. Ct. App. Jan. 30, 2001) (No Tenn. R. App. P. 11 application filed). A case must remain justiciable through the entire course of litigation, including any appeal. *State v. Ely*, 48 S.W.3d 710, 716 n.3 (Tenn. 2001); *Cashion v. Robertson*, 955 S.W.2d 60, 62-63 (Tenn. Ct. App. 1997). A case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).
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> A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). A case will be considered moot if it no longer serves as a means to

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[3] Defendants PSI and Bell filed a brief which adopted all of the arguments advanced by DHS and its Commissioner.

> provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 616. Determining whether a case is moot is a question of law. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, 2001 WL 72342, at *5; *Orlando Residence, Ltd. v. Nashville Lodging Co.*, No. M1999-00943-COA-R3-CV, 1999 WL 1040544, at *3 (Tenn. Ct. App. Nov.17, 1999) (No Tenn. R. App. P. 11 application filed). Where a case on appeal is determined to be moot and does not fit into one of the recognized exceptions to the mootness doctrine, the appellate court will ordinarily vacate the judgment below and remand the case to the trial court with directions that it be dismissed. *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 617; *McIntyre v. Traughber*, 884 S.W.2d 134, 138 (Tenn. Ct. App. 1994). However, if the case falls within one of the recognized exceptions to the mootness doctrine, the appellate court has the discretion to reach the merits of the appeal in spite of the fact that the case has become moot.

Nicely, 182 S.W.3d at 338-39.[4]

Well after the hearing on the competing motions for summary judgment in the present case, and several months before the trial court issued its opinion declaring Tenn. Code Ann. § 36-5-103(f) unconstitutional, substantial and important changes to Tenn. Code Ann. § 36-5-103(f) became effective. Among other things, the statute, as amended, clearly provides for notice and a hearing *prior* to the issuance of an administrative order increasing or decreasing an obligor parent's child support obligation. *See* Tenn. Code Ann. §§ 36-5-103(f)(4) and (f)(5). DHS claims that these amendments render the plaintiffs' constitutional challenge to the *previous* version of the statute moot.

In ***Ashley v. Jones***, No. M2003-02411-COA-R3-CV, 2005 WL 2043647 (Tenn. Ct. App. M.S., August 24, 2005), *no appl. perm. appeal filed*, this Court was confronted with very similar constitutional challenges to Tenn. Code Ann. § 36-5-103(f) as it existed prior to the January 1, 2005, amendments. ***Ashley*** involved a situation where DHS summarily issued an administrative order decreasing a father's child support payments by one-half without prior notification to the mother. The mother filed a complaint claiming DHS had taken away her property right without due process of law and in reliance on a statute which violated the separation of powers doctrine under the Tennessee Constitution. ***Id.***, at *1. Because this Court in ***Ashley*** was confronted with issues which are virtually identical to several of the issues in the present case, we will quote liberally from that opinion:

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4 The two most commonly recognized exceptions to the mootness doctrine include "issues of great public interest and importance to the administration of justice" and "issues capable of repetition yet evading review." ***McIntyre v. Traughber***, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994)(citing ***Walker v. Dunn***, 498 S.W.2d 102, 104 (Tenn. 1972) and ***LaRouche v. Crowell***, 709 S.W.2d 585, 587 (Tenn. Ct. App. 1985). Given that Tenn. Code Ann. § 36-5-103(f) has been substantially amended and the administrative orders at issue have been "held for naught," we find neither of these exceptions to be applicable in this case.

[S]ince the administrative modification [of the father's child support payment] at issue in this case, Tenn. Code Ann. § 36-5-103(f) has been amended in significant ways. The version in effect at the time of the administrative order modifying support that is the basis of this appeal authorized either parent to request a modification or adjustment of support from the Department. The Department was required to review such request and, if the requesting party demonstrated a "significant variance," to "adjust the support order." Tenn. Code Ann. § 36-5-103(f)(1)(B) (repealed effective January 1, 2005). The statute then provided, as it does now, that the review and adjustment could be conducted by the court or the Department. Tenn. Code Ann. § 36-5-103(f)(1)(C).

The statute also provided that a copy of an administrative order adjusting or modifying a child support order was to be sent to the obligor and obligee. It also provided that "if an order of support is adjusted by administrative order pursuant to this section, the obligor and obligee shall have a right to administratively appeal the adjustment by requesting an appeal as provided in part 10 of this chapter." Tenn. Code Ann. § 36-5-103(f)(5). (repealed effective January 1, 2005). A party seeking administrative review of an administrative order modifying support must file a request for such review within fifteen days of the notice of the administrative action. Tenn. Code Ann. § 36-5-1001(c)(1).

Missing from this version of the statute was any requirement of notice of a request for modification to the affected party, notice of a proposed adjustment, or the opportunity to object and be heard before any modification became effective. The statute clearly did not prohibit such notice and opportunity to be heard, but did not on its face require it.… [T]he procedure resulted in the mother being deprived of court-ordered support without effective notice or the opportunity to be heard.…

The mother herein was deprived of property or a property interest, i.e., the monthly payment of a court-ordered amount, by the action of the Department. The question is whether such deprivation was effected with the process that was due.

Notice and an opportunity to be heard are the minimal requirements of due process. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949). *See also In re Riggs*, 612 S.W.2d 461, 465 (Tenn. Ct. App. 1980). The most fundamental element of due process is "the opportunity to be heard 'at a

meaningful time and in a meaningful manner.'["] *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, (1965). The Department argues the mother herein received notice and could have sought an administrative review which would have provided the opportunity for a hearing. The question is whether post-deprivation notice and hearing are sufficient.

* * *

[W]e do not doubt that the government has an important fiscal and organizational interest in meeting the requirements of Title IV-D by substituting a streamlined administrative procedure for more lengthy and expensive judicial proceedings. The Department has not argued that its interest outweighs that of a recipient facing a reduction in support. It also does not argue that a procedure requiring pre-decision and pre-deprivation notice would burden it to the detriment of any interest it might have. Such an argument would be difficult to sustain in view of recent statutory amendments that require such notice before an administrative modification order becomes effective. Tenn. Code Ann. § 36-5-103(f)(4) and (5) (effective January 1, 2005).

No one could seriously doubt that a petition for modification of child support could not be granted by a court without notice to the other party, the opportunity to contest the modification, and a hearing. We conclude an administrative agency cannot unilaterally reduce a child support recipient's support without, at least, pre-deprivation notice and the opportunity to be heard without violating the due process provisions of both the United States and the Tennessee Constitutions.

* * *

The statute at issue has been amended, effective January 1, 2005. 2004 Tenn. Pub. Acts, ch. 728. Under the amended statutory procedure, where a parent seeks a modification of an existing support order:

1. The Department will review the request and, if cause for modification is shown, "shall seek an adjustment to the support order." Tenn. Code Ann. § 36-5-103(f)(1)(B).

2. The review and adjustment may be conducted by the court or by the Department by issuance of an administrative order. Tenn. Code Ann. § 36-5-103(f)(1)(C).

3. The Department must give written notice to the obligor and the obligee that a review has been initiated and also of the review findings. Tenn. Code Ann. § 36-5-103(f)(4) and (5).

4. If the Department elects to seek adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative order modifying support shall be sent to the obligor and the obligee thirty days prior to the issuance of the administrative order. Tenn. Code Ann. § 36-5-103(f)(5).

5. The proposed administrative modification is subject to objection by the obligor or the obligee within thirty days of its mailing. An objecting parent may file a motion for a hearing on the proposed modification with the court having jurisdiction. If such a motion is filed, no further administrative appeal to the Department is available. Tenn. Code Ann. § 36-5-103(f)(6).

6. If neither the obligor nor the obligee objects to the proposed administrative modification within the thirty days of the notice of proposed modification, the Department will issue the administrative order modifying the support. Tenn. Code Ann. § 36-5-103(f)(7). In that situation, the obligor and obligee have the right to administratively appeal the modification and may request a stay of the administrative order pending that appeal. A party dissatisfied with the result of the administrative appeal may seek judicial review under specific statutory procedures. Tenn. Code Ann. § 36-5-103(f)(9).

As these procedural provisions make clear, no modification of a child support order, increasing or decreasing it, can become effective until there is notice to the affected parent of the proposed modification and an opportunity to contest the proposed modification. Additionally, a party objecting to a proposed modification can proceed directly to court, so that any modification is the result of court order, after hearing, rather than administrative action. Alternatively, a party may choose to first pursue an administrative appeal, and judicial review under a limited scope of review is still available.

The changes ensure pre-deprivation due process. They also address issues raised by administrative agency modification of court orders by ensuring affected parties may choose court review, instead of administrative review, before any modification becomes effective.…

Ashley, 2005 WL 2043647, at *4-*8 (footnotes omitted).

After determining that the version of Tenn. Code Ann. § 36-5-103(f) as it existed prior to the January 1, 2005, amendment failed to accord the mother due process in that case, the next issue was whether § 36-5-103(f) violated the separation of powers doctrine found in Article II of the Tennessee Constitution. We declined to address that constitutional challenge for the following reasons:

> Because we have found that the mother suffered a deprivation of property without due process, it is not necessary that we decide the constitutional challenge.
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> It has long been the rule in Tennessee that our courts should not decide constitutional issues unless absolutely necessary to determine the rights of the parties. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *Haynes v. Pigeon Forge*, 883 S.W.2d 619, 620 (Tenn. Ct. App. 1994); *Bah v. Bah*, 668 S.W.2d 663, 668 (Tenn. Ct . App. 1983).
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> We have decided this case solely on the ground that this mother suffered denial of procedural due process. Regardless of what position we might take with regard to the question of separation of powers, it will not affect the outcome of this appeal. In any case, since Tenn. Code Ann. § 36-5-103(f) has been amended in a way that amplifies and clarifies the role of the judiciary in administrative proceedings for the modification of child support, any pronouncements we might be inclined to make about the previous version of the statute would have little practical value.

Ashley, 2005 WL 2043647, at *8 (footnote omitted).

Returning to the present case, neither Shealy nor Reagan ended up paying any increased child support pursuant to the administrative orders.[5] The administrative orders requiring wage assignments also were put on hold by the restraining order. All of the administrative orders were subsequently nullified by the voluntary action of DHS and the plaintiffs' child support payments were increased pursuant to agreed court orders. To the extent the plaintiffs suffered any damages, those damages were rectified when: (1) the trial court restrained enforcement of the administrative orders; (2) the plaintiffs' child support payments were increased by agreed court orders and plaintiffs were given credit for any increased child support they might have paid pursuant to the administrative orders; and (3) the administrative orders were nullified and "held

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5 It is not entirely clear how much, if any, increased child support was paid by Shealy or Reagan after the administrative order became effective but prior to the issuance of the trial court's restraining order. To the extent any increased child support was paid, Shealy and Reagan were given a credit for that amount when the court orders were entered increasing their child support payments and determining the amount of arrearages. We presume it is for this reason that the trial court dismissed the plaintiffs' claim for damages.

for naught." It necessarily follows that the only relief available to plaintiffs would be a declaration that Tenn. Code Ann. § 36-5-103(f) *as it existed in its pre-January 1, 2005, form* was unconstitutional. Such a declaration, however, would serve no useful purpose. We agree with the conclusion in ***Ashley*** that the amendments to Tenn. Code Ann. § 36-5-103(f) amplify and clarify the role of the judiciary with respect to administrative proceedings for the modification of child support, and "any pronouncements we might be inclined to make about the previous version of the statute would have little practical value." ***Ashley***, 2005 WL 2043647, at *8. We conclude that there no longer is a "genuine, continuing controversy requiring the adjudication of presently existing rights" between the plaintiffs and the defendants in this case. ***Nicely***, 182 S.W.3d at 338. We deem the plaintiffs' constitutional challenges to Tenn. Code Ann. § 36-5-103(f) to be moot.

B.

The next issue is whether the plaintiffs' constitutional challenge to Tenn. Code Ann. § 36-5-501 has been rendered moot. Again, we emphasize that DHS was restrained from implementing the wage assignments and the administrative orders requiring a wage assignment were voluntarily nullified by DHS. Both Shealy and Reagan joined in agreed orders with their former wives which increased their child support payments. The agreed orders contain identical language regarding the establishment of a wage assignment. The agreed orders state:

> **[The increased amount of child support] shall be mailed to Central Child Support Receipting Unit, P.O. Box 305200, Nashville, TN, 37229. Each payment must be identified with the names of the parties, the docket number and TCSES number.** The respondent's employer shall begin to deduct the increased amount of child support for the first pay period after June 13, 2003.

(Bold print in original).

The case of ***Rodgers v. Rodgers***, No. M2004-02046-COA-R3-CV, 2006 WL 1358394 (Tenn. Ct. App. M.S., May 17, 2006), *no appl. perm. appeal filed*, involved a factually similar procedural situation. In ***Rodgers***, the father told the mother that he would not pay any child support. The mother informed DHS of father's refusal to pay child support, and DHS summarily issued an order to the father's employer requiring that child support payments be deducted from the father's wages. ***Id***. at *1, *2.[6] The father later filed a petition with the trial court requesting that the court "declare Tenn. Code Ann. § 36-5-101(b)(1) unconstitutional because it violated the Separation of Powers doctrine and the Due Process Clause of the state and federal constitutions." ***Id***. at *2. The trial court issued a temporary restraining order prohibiting the department from enforcing the administrative order, and later entered an order declaring the DHS order "null and void *ab initio*." ***Id***. DHS timely appealed, but, in the meantime, mother and father resolved their dispute and an agreed order memorializing their agreement was entered by the trial court. On appeal, the father abandoned his constitutional challenge to Tenn. Code Ann. § 36-5-101(b)(1).

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6 DHS served two of the father's former employers and was notified each time that father was no longer employed. It does not appear that DHS ever was able to serve the father's current employer. ***Id***. at *2.

The father asserted his constitutional claims were rendered moot by entry of the agreed order resolving his dispute with the mother. We stated, *inter alia*:

> The doctrine of justiciability prompts the courts to stay their hand in cases that do not involve a genuine, existing controversy. *State ex rel. Lewis v. State*, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); *McIntyre v. Traughber,* 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). Thus, Tennessee's courts will not render advisory opinions, *City of Memphis v. Shelby County Election Comm'n*, 146 S.W.3d 531, 539 (Tenn. 2004); *Parks v. Alexander*, 608 S.W.2d 881, 892 (Tenn. Ct. App. 1980), or decide abstract legal questions. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 192 (Tenn. 2000); *Miller v. Miller*, 149 Tenn. 463, 474, 261 S.W. 965, 968 (1924).
>
> To be justiciable, an issue must arise from a real controversy between persons with real and adverse interests. *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 512 (Tenn. 1974); *Cummings v. Beeler*, 189 Tenn. 151, 156, 223 S.W.2d 913, 915 (1949). A justiciable dispute involves present rights that have accrued under presently existing facts. *Oldham v. Am. Civil Liberties Union Found. of Tenn., Inc*., 910 S.W.2d 431, 434 (Tenn. Ct. App. 1995); *Third Nat'l Bank v. Carver*, 31 Tenn. App. 520, 527, 218 S.W.2d 66, 69 (1948). Thus, especially with regard to constitutional issues, the courts will refrain from deciding cases in the absence of an actual controversy requiring them to address the issue. *West v. Carr*, 212 Tenn. 367, 382, 370 S.W.2d 469, 475 (1963); *Miller v. Miller*, 149 Tenn. at 476-77, 261 S.W. at 969.
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> * * *
>
> In addition to Mr. Rodgers's disinclination to pursue his constitutional challenge to Tenn. Code Ann. § 36-5-501(b)(1), other factual circumstances call into question whether this case provides an appropriate vehicle for addressing the constitutionality of Tenn. Code Ann. § 36-5-501(b)(1). The courts should refrain from addressing constitutional issues when a case can be decided on non-constitutional grounds. *State v. Thompson*, 151 S.W.3d 434, 442 (Tenn. 2004); *Wilson v. Wilson*, 984 S.W.2d 898, 902 (Tenn. 1998). The record indicates that the Department never succeeded in serving Mr. Rodgers's employer with an "Order/Notice" that would have obligated the employer to begin withholding child support from his paycheck. Without effective service of an "Order/Notice" on an employer, the Department had no basis for requiring Mr. Rodgers's employer to remit his child support to the Department. Thus, were we to address the substance

> of this dispute, we would have decided it in Mr. Rodgers's favor based on the facts without addressing the constitutional issues.
>
> The Department is concerned that the actions of the trial judge in this case will be duplicated by other judges in other cases. Thus, it views this case as a vehicle for obtaining an appellate court's holding that Tenn. Code Ann. § 36-5-501(b)(1) does not violate the Separation of Powers doctrine or the Due Process Clause. However, a party's desire for an opinion to be used in future cases is not, by itself, sufficient to render a case justiciable. Tennessee's courts do not render advisory opinions. *State v. Brown & Williamson*, 18 S.W.3d at 192; *Combustion Eng'g Co. v. Thompson*, 191 Tenn. 98, 105, 231 S.W.2d 580, 583 (1950). Accordingly, we find that this case is moot.

Rodgers, 2006 WL 1358394, at *4, *5.

In the present case, the administrative orders directing a wage assignment to Shealy's and Reagan's employers were effectively stopped when the trial court entered its restraining order. Thereafter, agreed orders were entered in court specifically directing wage assignments on the income of both plaintiffs to begin effective June 13, 2003. The administrative orders directing a wage assignment were then "held for naught" via order of DHS. While the plaintiffs herein have not abandoned their constitutional challenge, as was the case in ***Rodgers***, the present case involves no more of a justiciable case or controversy than was present in ***Rodgers***. Were we to decide the constitutionality of Tenn. Code Ann. § 36-5-501, we would be doing nothing more than rendering an advisory opinion. This is even more apparent given the amendments to Tenn. Code Ann. § 36-5-103(f) referenced above which amplify and clarify the role of the judiciary in administrative proceedings. We conclude that the plaintiffs' constitutional challenges to Tenn. Code Ann. § 36-5-501 are also moot.

In light of out holdings above, any remaining issues are pretermitted.

V.

The judgment of the trial court is vacated, and this cause is remanded to the trial court with directions to enter an order dismissing this case. Exercising our discretion, costs on appeal are taxed to the appellant, State of Tennessee, Department of Human Services.

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CHARLES D. SUSANO, JR., JUDGE