MISSISSIPPI BAND OF CHOCTAW INDIANS
CHOCTAW TRIBAL SUPREME COURT

No. CS 2001-9

Linda Rose Farve Taylor,
Appellee,

v.

Anthony Martin Jr.,
Appellant.

OPINION AND ORDER

Appearances: Donald L. Kilgore for the Appellant;
Scott A. Johnson for the Appellee

Before Rae Nell Vaughan, C.J., Frank R. Pommersheim, A.J. and Carey N. Vicenti, A.J.

C.N. Vicenti for a unanimous Court.

This matter came before this Supreme Court of the Mississippi Band of Choctaw Indians on an appeal from a judgment entered by the trial court on February 18, 2000. That judgment set the level of child support to be paid by the Appellant, Anthony Martin, Jr., (Appellant) to the Appellee, Linda Rose Farve Taylor (Appellee). The appeal asks whether the trial court properly construed Tribal and Mississippi law in setting such levels of support.

The Supreme Court received briefs and held oral arguments on this matter and hereby concludes that the trial court was in error.

I. Jurisdiction

The matter arises out of an Order of the Choctaw Tribal Court entered on February 18, 2000. The Appellant submitted a Notice of Appeal pursuant to Title VII, Section 7-1-3 of the Choctaw Tribal Code on March 15, 2000. Such submission was within the time limits prescribed by the Code. This Court, therefore, has jurisdiction over this case.

II. Statement of the Facts

Since December of 1983 the Appellant, Anthony Martin, Jr., has fathered five children by three separate women. Over the years, the mothers have each approached the tribal court seeking some sort of monetary support from the Appellant. None of the children live with the Appellant. As each mother has gone into the tribal court, they have not done so in a sequence commensurate with the order of birth of the children.

On December 15, 1998, the tribal court entered an Order Establishing Child Support in favor of the Appellee, setting the level of support at $344. per month for the

support of the two children, Lauren Blaine Martin[1] and Jordan Heath Taylor[2]. The court applied Mississippi Code Annotated Section 43-19-101 (1972, as amended), which sets forth the guidelines employed by the State of Mississippi in setting levels of child support. In its calculation the Tribal Court reduced the monthly adjusted gross income of the Appellee from $2,019.25 to $1,719.25 to account for $300. the Appellee was voluntarily paying for the support of three of the children. This left the court to apply the 20% figure prescribed by the statute for the support of two children resulting in the final figure of $344.

That case was followed shortly by a case filed by Lavada Ann Jim. The court there entered a Judgment Establishing Paternity, Child Support and Amending Birth Certificate on September 16, 1999. This judgment set the level of support at $105. per month for the support of Latricia Ann Jim[3].

The tribal court went further in its ruling of September 16, 1999, though, to enter a Judgment Establishing Paternity and Child Support. In that judgment, the court set a level of monthly child support of $210. to be paid to Amanda Frazier. This judgment was for the support of Jackson Bryce Martin[4] and Anthony Blake Martin[5].

A little over month following the latter judgment, the Appellant filed a Motion to Modify Prior Order (October 21, 1999), asking the tribal court to lower the judgment in the first case arguably "to be consistent on a proportional basis with his child support obligations to Lavada Ann Jim and Amanda Frazier". Appellant and Appellee's Joint Statement of Case at 2. After a hearing and over the objections of the Appellee, the tribal court lowered the monthly level of support to $300. for the support of two children.

The method used by the court is as follows:

(1) It recognized that tribal law, specifically Section 9-5-1 and Section 1-1-4 of the Choctaw Tribal Code together require reference to Mississippi law (Section 42-19-101) in calculating the level of child support;

(2) It reduced the stipulated monthly adjusted gross income of the Appellee by an amount equal to previously ordered levels of support;

(3) It applied the statutory percentage for "the number of children *before the Court at that time*". Order of February 11, 2000, at 3 (Emphasis added); and

(4) It made an 'equitable adjustment' lowering the level of support payable to the Appellee, as allowed by Subsection 43-19-103(h) of the Mississippi Code.

It should be noted that the court found itself somewhat challenged by the outcome of its own rationale in stating that the "implementation of this statute where different children are born to different mothers by the same father is somewhat cumbersome and will not result in the same amount of support for each child". Order of February 11, 2000, at 3.

The legal representatives for both parties have been impeccably forthright in bringing the question of the level of support before this Supreme Court for direction in determining the most appropriate and equitable manner of calculating support.

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[1] D.O.B. 12/16/1983. This is the second child fathered by the Appellant.
[2] D.O.B. 7/15/1986. This is the third child fathered by the Appellant.
[3] D.O.B. 12/7/1983. This is the first child fathered by the Appellant.
[4] D.O.B. 11/18/1998. This is the fifth child fathered by the Appellant.
[5] D.O.B. 5/3/1991. This is the fourth child fathered by the Appellant.

The Appellant has appealed the ruling of the Tribal Court and argues that the court erred in its calculation of support. He further argues that because the calculation results in an unequal distribution to the five children, it is violative of Article X, Section 1 (h) of the Constitution and By-laws of the Mississippi Band of Choctaw Indians and its guarantees of equal protection of the laws.

III. Discussion

The fundamental question before this Court is whether the tribal court erred in construing Mississippi state law in setting levels of child support payable to the Appellee. If it did not err, and if the calculation results in different levels of support for the children, we must then determine whether such an outcome violates the Constitutional guarantee of equal protection of the laws. Furthermore, if it did not err in the calculation, did it possess and properly exercise its discretion in making an 'equitable adjustment' to the level of support payable to the Appellee. Finally, if it did err, we would have to determine the appropriate calculation of levels of child support.

This case is exemplary of the very unique nature of Native American jurisprudence. Unlike any other 'national' law, the Mississippi Band of Choctaw Indians has chosen to defer to the law of the State of Mississippi in setting levels of child support. In so doing, it has forced upon the courts of the tribe the unusual task of construing the law of a separate sovereign in order to solve a practical legal problem faced by members of the Tribe.

Calculations for child support are not calculated simply based on the number of children fathered by a particular individual, but rather based on the number of *households* in which those children live. This is eminently fair because there are no economics of scale or equality of need or consumption for children in different households. This is also culturally appropriate.

To begin our analysis, we agree with the tribal court that tribal law, specifically Section 9-5-1 and Section 1-1-4 of the Choctaw Tribal Code together require reference to Mississippi law in calculating the level of child support. Section 43-19-101 provides the standard for calculating child support through a sliding percentage scale based upon the number of children.[6] The Appellant argues that the 26% level prescribed by that

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[6] Section 43-19-101, Miss. Code. Ann. (1972, as amended) provides:

(1) The following child support guidelines shall be a rebuttable presumption in all Judicial or Administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number of children Due Support	Percentage of Adjusted Gross Income that Should Be Awarded for Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

(2) The guidelines provided in Section (1) of this section apply unless the judicial or administrative body

provision for the support of five children should be considered applicable to this case. Mississippi law also contains language that applies in the calculation of the monthly adjusted gross income stating that "[i]f the absent parent is subject to an existing order for another child or children, subtract the amount of that court-ordered support" Section 43-19-101 (3)(c), Miss. Code Ann. (1972, as amended). This language clearly contemplates that an absent parent may be subject to more than one court order for the support of children. If we were to accept the Appellant's argument, the language of Section 43-19-101 (3)(c) would be rendered meaningless. We must, summarily agree with the tribal court upon its construction of the applicable law: the original monthly adjusted gross income must be diminished by any pre-existing court orders for support----the court must then apply the statutory percentage applicable to the number of children *before the court at that time*.

The very existence of Section 43-19-101 (3)(c) also dispels an argument that the Appellant is advancing that somehow the obligor of child support payments was intended to be protected against excessive demands upon his income. He argues that the ceiling for all deduction would be at the statutory maximum of 26% for 5 or more children. In essence, after a fifth child, he would owe no additional level of monetary support. Such an argument may comport with a distorted notion of Equal Protection of the Laws only to the extent that each child would be equally distressed by inadequate levels of support. The law should be read to comport with the legislative intent to set levels of child support that would, in fact, provide a meaningful level of support. A ceiling, as argued by the Appellant, is logically inconsistent with such legislative intent. Moreover, we should point out that married couples regularly calculate their financial situations in order to make the fundamental decision of whether or not to have children. If they choose to have more children in spite of the strain upon the finances, they nonetheless provide all the support they can without the protection from any form of governmental ceiling.

But we do recognize that the proper calculation of levels of support does indeed yield unequal results. Using the stipulated monthly adjusted gross income of $2,019., the Appellee, as first litigant seeking support, could be awarded $404. (20%) for the support of her two children. Adjusting the $2,019. downward to reflect the Appellee's judgment, would result in a monthly adjusted gross income of $1,615. As Ms. Jim came forward to make a claim for one child, she would be entitled to 14% of that amount, or, the amount of $226. Adjusting the monthly adjusted gross income downward once again to reflect the Jim judgment would leave $1,389. of which Ms. Frazier could rightfully claim 20%, or, the amount of $278., for the support of two children. Ms. Frazier's children would be entitled to $139. apiece while the Appellee's would be entitled to $202. apiece. And, depending upon the order in which each litigant petitioned the court, we would see yet other figures for the support of the children unrelated altogether to their actual physical, psychological, emotional, medical or educational needs.[7]

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awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

[7] This scenario which essentially replicates the order of cases relevant here would result in the Appellant committing almost 45% of his adjusted gross income to the support of his children. This, however, does not sway us away from the analysis we employ here. *See* supra.

The analysis does not end here, however. Section 43-19-101 only creates rebuttable presumptions of the correct levels of support. The analysis described in the preceding paragraph demonstrates persuasively that the guidelines are merely a starting point for calculating the proper level of support. Subsection 2 of Section 43-19-101 specifically allows for a departure from that framework but limited by the requirement to make "a written finding on the record that the application of the guidelines would be unjust or inappropriate". Section 43-19-103 further clarifies the criteria for such 'written finding' that it should cite to:

> (a) Extraordinary medical, psychological, educational or dental expenses.
>
> (b) Independent income of the child.
>
> (c) The payment of both child support and spousal support to the obligee.
>
> (d) Seasonal variations in one or both parents' incomes or expenses.
>
> (e) The age of the child, taking into account the greater needs of older children.
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> (f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.
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> (g) The particular shared parental agreement, such as where the non-custodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the non-custodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.
>
> (h) Total available assets of the obligee, obligor and the child.
>
> (i) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.

The essential tenor of Section 43-19-103 is that the court must engage in a particularized explanation as to why it will depart from the statutory percentages set forth in Section 43-19-101 in a given case. In light of the manifest inequalities created by a sequence of child support cases, the court should consider itself obliged to depart from and to engage in the explication of its departure from the percentages set forth in Section 43-19-101. In the present case, the court merely recited provisions (h) and (i) and rendered a conclusory statement that "[t]he Court finds that an equitable adjustment is necessary in this case". Order of February 11, 2000, at 4. If a departure takes place, the parties are entitled to a reasoned disclosure of the facts giving rise to the departure. It did not occur in this case, and, therefore, is the basis for our conclusion that the tribal court abused its discretion in applying Section 43-19-103 to effectuate a departure from the terms of Section 42-19-101.

An equal protection argument in this context is not without force. Children similarly situated as children of the same father may be subjected to different levels of support based on which mother gets to the courthouse first. This is patently unfair yet

such a problem is readily solved. Under Sec. 43-19-103(i) levels of support may be adjusted "to achieve an equitable result." Adjustments for children in multiple household situations are clearly appropriate in such situations.

IV. Conclusion.

We uphold the manner of calculation employed by the tribal court in this case. However, we find that the tribal court abused its discretion in making an 'equitable adjustment' to the amount awarded to the Appellee, pursuant to Section 43-19-103, but without the necessary recitation of facts and reasoning that led the court to its final figure for support. We remand this matter to the tribal court for further consideration consistent with the reasoning in this opinion.

IT IS SO ORDERED, this 31st day of May, 2002.

Carey N. Vicenti, Associate Justice