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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2014-2015

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Ex parte Gerald Van Jones

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: Gerald Van Jones

v.

Gaynor Jones)

(Montgomery Circuit Court, DR-97-168.03; Court of Civil Appeals, 2121046 and 2130709)

STUART, Justice.

Gerald Van Jones, the father, contends that the Court of Civil Appeals erred in affirming the trial court's order awarding postminority educational support for his son, Garrette Jones. We reverse and remand.

Facts and Procedural History

The Montgomery Circuit Court entered a final judgment divorcing the father and Gaynor Jones, the mother, on January 8, 1998. During their marriage, the father and the mother had two children, Garrette and Gabrielle. In August 2011, the mother petitioned the trial court for postminority educational support for Garrette. After conducting a trial, the trial court entered an order on April 26, 2013, awarding the mother postminority educational support for Garrette. After the postjudgment motions were disposed, the father filed a timely notice of appeal with the Court of Civil Appeals on September 10, 2013.

The Court of Civil Appeals on April 11, 2014, entered an order reinvesting the trial court with jurisdiction for 14 days for the sole purpose of entering an amount or percentage of postminority educational support. Jones v. Jones (2121046). On April 18, 2014, the trial court entered an

order requiring the father to pay 100% of Garrette's postminority educational support. The father, out of "an abundance of caution," then moved the Court of Civil Appeals for permission to appeal the April 18, 2014, order. The Court of Civil Appeals granted the father permission to appeal the April 18, 2014, order (case no. 2130709) and consolidated the father's two appeals. On September 12, 2014, the Court of Civil Appeals affirmed the trial court's judgment in both appeals, without an opinion, but with a dissent from Judge Thomas. Jones v. Jones, [Ms. 2121046 & 2130709, September 12, 2014] ___ So. 3d ___ (Ala. Civ. App. 2014). Judge Thomas, in her dissent, states:

> "I respectfully dissent as to the affirmance of the trial court's award of postminority educational support. On October 4, 2013, our supreme court released Ex parte Christopher, 145 So. 3d 60 (Ala. 2013), in which our supreme court expressly overruled Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989). In overruling Bayliss, our supreme court specifically held that,
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> > "'[a]lthough [this] decision does not affect final orders of postminority educational support already entered, our overruling of Bayliss is applicable to all future cases. Further, this decision also applies to current cases where no final postminority-support order has been entered or where an appeal from a

> postminority-support order is still pending.'
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> "Christopher, 145 So. 3d at 72 (emphasis added).
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> "... [A]t the time Christopher was decided, this case was on appeal in this court and no final judgment awarding postminority educational support had been entered.
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> "As I explained in my special writing in Morgan v. Morgan, [Ms. 2120101, July 11, 2014] ___ So. 3d ___, ___ (Ala. Civ. App. 2014) (Thomas, J., concurring in part and concurring in the result in part), the above-quoted language in Christopher plainly states that the holding in Christopher is applicable to any case in which an appeal of a postminority-educational-support order was pending at the time the supreme court's opinion in Christopher was released. Furthermore, our supreme court clearly stated that the holding in Christopher applied 'to current cases where no final postminority-support order has been entered.' ___ So. 3d at ___ (emphasis added). ... Therefore, based on the supreme court's holding in Christopher that 'the child-custody statute does not authorize a court in a divorce action to require a noncustodial parent to pay educational support for children over the age of 19,' ___ So. 3d at ___, I would reverse the judgment of the trial court ordering the father to pay postminority educational support."

___ So. 3d at ___.

On November 20, 2014, this Court granted the father's petition for a writ of certiorari to determine whether the decisions of the Court of Civil Appeals affirming the trial court's order awarding postminority educational support for

Garrette conflicted with Ex parte Christopher, 145 So. 3d 60 (Ala. 2013).

Standard of Review

> "'"On certiorari review, this Court accords no presumption of correctness to the legal conclusions of the intermediate appellate court. ..." Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996).'
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> "Ex parte Helms, 873 So. 2d 1139, 1143 (Ala. 2003). '"[O]n appeal, the ruling on a question of law carries no presumption of correctness, and this Court's review is de novo."' Rogers Found. Repair, Inc. v. Powell, 748 So. 2d 869, 871 (Ala. 1999)(quoting Ex parte Graham, 702 So. 2d 1215, 1221 (Ala. 1997))."

Ex parte C.L.C., 897 So. 2d 234, 236-37 (Ala. 2004).

Discussion

The father contends that the decision of the Court of Civil Appeals to affirm the trial court's order awarding the mother postminority educational support for Garrette conflicts with the following language in Ex parte Christopher, 145 So. 3d at 72:

> "Although today's decision does not affect final orders of postminority educational support already entered, our overruling of [Ex parte] Bayliss[, 550 So. 2d 986 (Ala. 1989),] is applicable to all future cases. Further, this decision also applies to current cases where no final postminority-support

> order has been entered or where an appeal from a postminority-support order is still pending."

According to the father, the Court of Civil Appeals erred in refusing to apply Ex parte Christopher in this case because, he says, the appeal of the trial court's order awarding postminority educational support for Garrette was pending in the Court of Civil Appeals when Ex parte Christopher was decided and, therefore, in accordance with Ex parte Christopher, the Court of Civil Appeals should have reversed the trial court's judgment.

In Ex parte Christopher, this Court overruled Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), and held that the child-custody statute, § 30-3-1, Ala. Code 1975, did not authorize a trial court in a divorce action to require a noncustodial parent to pay educational support for a child who was over the age of 19. 145 So. 3d at 72. This Court further held that the decision in Ex parte Christopher would not affect final orders of postminority educational support but would apply to cases where an appeal of a postminority-educational-support order was pending at the time Ex parte Christopher was decided.

Because the trial court's order awarding postminority educational support was pending on appeal in the Court of Civil Appeals when Ex parte Christopher was decided, the Court of Civil Appeals erred in not applying Ex parte Christopher in this case. The father filed an appeal from the trial court's postminority-educational-support order on September 10, 2013. This Court decided Ex parte Christopher on October 4, 2013. Because this case was pending on appeal in the Court of Civil Appeals when Ex parte Christopher was decided, the Court of Civil Appeals erred by not applying the holding in Ex parte Christopher that a trial court does not have authority to order postminority educational support in this case and by not reversing the trial court's order. Because the judgment of the Court of Civil Appeals affirming the trial court's order conflicts with Ex parte Christopher, that judgment is reversed.[1]

Conclusion

[1]Because resolution of this issue disposes of this case, we pretermit discussion of the other issues raised by the father.

Based on the foregoing, the judgment of the Court of Civil Appeals is reversed and this case is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Moore, C.J., and Bolin, Parker, Main, Wise, and Bryan, JJ., concur.

Murdock and Shaw, JJ., dissent.

MURDOCK, Justice (dissenting).

I do not read the statement appearing at the end of the opinion in Ex parte Christopher, 145 So. 3d 60 (Ala. 2013), and quoted in the main opinion here, ___ So. 3d at ___, describing the applicability of Christopher to cases then pending on appeal as intending to free postminority-educational-support litigants from the effect of the well established principle regarding preservation of arguments described by the Court of Civil Appeals in Morgan v. Morgan, [Ms. 2120101, July 11, 2014] ___ So. 3d ___ (Ala. Civ. App. 2014). See ___ So. 3d at ___ (Shaw, J., dissenting and quoting Morgan v. Morgan).

SHAW, Justice (dissenting).

I respectfully dissent.

In Morgan v. Morgan, [Ms. 2120101, July 11, 2014] ___ So. 3d ___ (Ala. Civ. App. 2014), the Court of Civil Appeals addressed an argument in that case as to the applicability of Ex parte Christopher, 145 So. 3d 60 (Ala. 2013):

> "[C]hallenges to the interpretation of a statute, or challenges to the constitutionality of a law or decision (however Christopher is viewed), must first be raised in the trial court and cannot be raised for the first time on appeal:
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> > "'It is well settled that an issue cannot be raised for the first time on appeal.
> >
> > > "'"The rule is well settled that a constitutional issue must be raised at the trial level and that the trial court must be given an opportunity to rule on the issue, or some objection must be made to the failure of the court to issue a ruling, in order to properly preserve that issue for appellate review. This Court succinctly stated this rule as follows:
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> > > > "'"'In order for an appellate court to review a constitutional issue, that issue must have been raised by the appellant and presented to and reviewed by the trial court.

> Additionally, in order to challenge the constitutionality of a statute, an appellant must identify and make specific arguments regarding what specific rights it claims have been violated.'
>
> "'"Alabama Power Co. v. Turner, 575 So. 2d 551 (Ala. 1991) (citations omitted)."
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> "'Cooley v. Knapp, 607 So. 2d 146, 148 (Ala. 1992).'

"1568 Montgomery Highway, Inc. v. City of Hoover, 45 So. 3d 319, 344-45 (Ala. 2010).

"In this case, the husband did not place the wife on notice that he was challenging the authority of the trial court to enter a postminority-educational-support award in the trial court. Accordingly, the wife had no opportunity to assert opposing arguments, and the trial court had no opportunity to consider or rule on the issue. Applying Christopher to vacate the postminority-educational-support award in this case would cause an unanticipated, unrequested result, because the husband did not '"'challenge [an] existing rule[] of law ... in need of reform.'"' Christopher, 145 So. 3d at 72. Based on the issues framed within the trial court, parties determine what facts should be discovered, decide what evidence should be presented and the manner of its presentation, and decide whether to resolve all or a portion of the dispute without a trial. Confidence in the judicial system is promoted when issues are required to be fully developed and presented to the tribunal conducting the litigation process and determining the facts and the application of law to those facts. Accordingly, we interpret the

> instruction from the supreme court to apply Christopher in cases still on appeal to those instances in which the issue concerning the trial court's authority to grant such support was properly raised in the trial court. That issue was not raised in this case, and, therefore, we conclude that Christopher does not apply to this action."

Morgan, ___ So. 2d at ___.[2]

The record before this Court indicates that, like the appellant in Morgan, the father in the instant case did not challenge in the trial court the availability of postminority educational support under Alabama law. Therefore, he waived that issue, and it is not properly before us.

Murdock, J., concurs.

[2]The appellant in Morgan sought certiorari review (case no. 1131206). The certiorari petition, among other things, challenged the Court of Civil Appeals' holding that Christopher did not apply. This Court denied certiorari review as to that ground. The petition was granted on other grounds and is currently pending before this Court.