

**Franklin County Legal Journal**  
Vol. 31, No. 26, pages 126 - 133  
Fulton County Children & Youth Svs v. Fleegle

**Fulton County Children & Youth Services, Plaintiff v.  
William T. Fleegle, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Fulton County Branch, Civil Action No.  
45-2013-DR

HEADNOTES

*Domestic Relations and Adoption - Title IV-E Adoption Subsidies; Calculation of Child Support where Child is in out-of-home Placement*

*Nature of Title IV-E Adoption Subsidies*

1. Title IV-E adoption subsidies are part of a joint federal and state program to promote and stabilize the adoption of children with special needs. The program was passed as a part of the Adoptive Assistance and Child Welfare Act, and provides federal funds to reimburse states that provide benefits to parents who adopt children with special needs. The subsidy promotes the adoption and placement of special needs children who are physically and/or mentally handicapped, emotionally disturbed, or hard to place by virtue of age, sibling relationship, or ethnicity.
2. The child in this case was adopted in Lancaster County, and because she has special needs the parents received an adoption subsidy from Lancaster County Children and Youth. The child was then removed from the home and placed in the care of Fulton County Services. In determining the amount of child support Mr. Fleegle had to pay, Fulton County Domestic Relations included the adoption subsidy as part of his income.

*Child Support Determination and Calculation*

3. The procedure utilized by Domestic Relations for determining child support is found in Pa. R.C.P. 1910.16-2. The amount of support is generally determined based on the parties' monthly income. The rule sets out a non-exhaustive list of the types of income, but does not specifically address Title-IV adoption subsidies.
4. If Title-IV adoption subsidies are treated as income of the parents and not of the child, the parents continue to receive the payments even if the child is in out-of-home placement.
5. In this case, Fulton County Domestic Relations calculated Mr. Fleegle's child support amount based on payments for social security, retirement less insurance, and the Title-IV adoption subsidy.

*Treatment of Title IV-E Adoption Subsidies for purposes of Determining Child Support*

6. Whether Title-IV adoption subsidies constitute income to the parents or that of the child for the purposes of determining child support has never been addressed by the Pennsylvania appellate courts. Several courts in other jurisdictions have found that these subsidies belong to the child, and therefore cannot be counted as income to the parent in a child support determination.
7. Based on a survey of the relevant case law, the current trend is to treat Title-IV adoption subsidies as income attributable to the child, not that of the parents. This is consistent with the purpose underlying Title-IV adoption subsidies: to provide assistance to families who adopt children with special needs.
8. This Court finds that the \$900.00 adoption subsidy is income attributable to the child, Elena Fleegle. Despite the payment to the parents, the money is intended as direct assistance to the adopted child with special needs and is for the benefit of the child. Fulton County Services is the child welfare agency tasked with providing care to Elena, the dependent child, and as such the agency has expended funds to provide for her care.
9. Because the subsidy is not income attributable to Mr. Fleegle, the amount of the subsidy should not be subtracted from the amount of child support Mr. Fleegle owes to Fulton County Services. Rather, the \$900.00 is a subsidy directly payable to Fulton County Services, either from Mr. Fleegle if he continues to be in receipt of those payments, or directly from Lancaster County Children and Youth.

Appearances:

Stanley J. Kerlin, Esq., *Attorney for Plaintiff*

William T. Fleegle, *pro se Defendant*

## OPINION

Before Meyers, J.

### **FACTS**

William and Tina Fleegle adopted Elena Marie Singleton on May 15, 2007 when Elena was ten years old. At that time, Elena had been under the care of Lancaster County Children and Youth Social Service Agency and was considered to be a special needs child. Mr. and Mrs. Fleegle entered into an agreement with Lancaster County Children and Youth, providing for the payment a Title VI-E adoption subsidy. The amount of the payment is \$900.00 per month.

On May 8, 2012, Elena was removed from the Fleegle's home by Fulton County Services for Children. Only July 5, 2013, Elena was adjudicated a dependent child and placed in foster care. Elena's adoptive parents, Mr. and Mrs. Fleegle, continued to receive the adoption subsidy payments during this time.

On July 25, 2013, Fulton County Services filed for a petition for child support. A hearing was held at the Fulton County Domestic Relations Office. Mr. Fleegle's total monthly income was found to be \$2,983.57. This calculation was based on the following:

Social Security of \$1,569

Maryland State Retirement of \$724.49, *less* insurance of \$209.92, for an amount of \$514.57

Title-IV Adoption Subsidy of \$900.00

Fulton County Services was found to have an income of \$0.00. Based on these findings, the guidelines were consulted and the child support amount was calculated at \$836.00 per month.

At that time, Elena had been collecting \$784.00 per month in social security from Mr. Fleegle's disability claim. That payment was directed to Fulton County Services. The amount of social security was subtracted from the guideline amount (\$836.00), leaving a support amount of \$52.00 per month. Fulton County Services requested a total support amount of at least \$900.00 month. Domestic Relations deviated the calculated amount to \$116.00. Thus, in total Fulton County Services was to be paid \$900.00 per month in child support.

In making the support calculation, the hearing officer concluded that the \$900.00 subsidy was income to Mr. Fleegle, and therefore Fulton County Services was not entitled to the payments. Fulton County Services filed an appeal and demand for a hearing. On November 5, 2013, this Court held a hearing and heard argument. The matter is now ready for decision.

### **DISCUSSION**

In its appeal and brief in support, Fulton County Services argues that the adoption subsidy constitutes income to the child and not income to the parents, and therefore the payment should follow the child. In its response, Domestic Relations argues that the subsidy is meant to help maintain a home for Elena, and because the current placement plan is reunification, the adoptive parents should continue to receive the payments. This Opinion will first discuss the nature of the subsidy payments before examining the relevant case law.

#### I. Title IV-E Adoption Subsidies

The adoption subsidy at issue in this case is part of a joint federal and state program to "promote and stabilize the adoption of children with special needs." Hamblen v. Hamblen, 54 P.3d 371, 373 (Ariz. Ct. App. 2002). The governing federal provisions are found in Title IV-E of the Social Security Act. See 42 U.S.C.A. § 673(1)(A) (addressing state adoption assistance agreements with adoptive parents of children with special needs). The plan, passed as a part of the Adoptive Assistance and Child Welfare Act, provides federal funds to reimburse states that provide benefits to parents who adopt children with special needs. Hamblen, 54 P.3d at 373. In Pennsylvania, this plan was codified in the Adoption Opportunities Act, 62 Pa. Stat. Ann. § 771. The purpose of the Act is "to encourage and promote the placement in adoptive homes of children who are physically and/or mentally handicapped, emotionally disturbed, or hard to place by virtue of age, sibling relationship, or ethnicity." § 771.

The role these Title-IV adoption subsidies play in a child support calculation has never before been addressed by this Court. In this case, the Domestic Relations Office followed the procedure for determining child support found in Pa. R.C.P. 1910.16-2. The amount of support is generally determined based on the parties' monthly income. The rule incorporates the definition of income found in 23 Pa. C.S.A. § 4302, which "includes income from any

source.”<sup>1</sup> Rule 1910.16-2 sets out a non-exhaustive list of the types of income, but does not specifically address Title-IV adoption subsidies. Pa. R.C.P. 1910.16-2(b) governs the treatment of “Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent’s Death, Disability or Retirement and Foster Care Payments.” Under this rule, “[n]either public assistance nor Supplemental Security Income (SSI) benefits shall be counted as income for purposes of determining support.” 1910.16-2(b)(1).

Whether these subsidy payments constitute income to the parents or that of the child has never been addressed by the Pennsylvania appellate courts. Several courts in other jurisdictions have dealt with this issue, and therefore this Court will briefly discuss these relevant decisions.

## II. Case Law: Income to the Parent or Child

In Hamblen v. Hamblen, 54 P.3d 371 (Ct. App. 2002), the Court of Appeals of Arizona dealt with this issue in the context of a divorce and child support arrangement. The parties had previously adopted a child with special needs, and upon divorce, the father argued that the subsidy should be offset against any support obligation owed by him. Hamblen, 54 P.3d at 373. The trial court excluded the subsidy from the support calculation, finding it was income belonging to the child and thus not attributable to the father’s payments. Id. at 373.

On appeal, the Arizona Court of Appeals agreed with the trial court and held that a Title IV-E adoption subsidy was not income attributable to the parents, but belonged to the child. Id. at 374. The Court examined the nature of purpose of the statute and outside case law. The Court found that the agreement providing for the Title IV-E subsidy did not “make the funds the parents’ property,” but instead that agreement was “simply the means by which the money [was] funneled to the children to address their special needs.” Id. Specifically, the Court stated:

The subsidy is intended as direct assistance to an adopted child with special needs. Despite the payment of the subsidy to the parents, it is for the benefit of the child. Indeed, it would be inappropriate to adjust a child’s entitlement to financial support because the government has elected to subsidize the increased financial commitment that a special-needs child imposes on the parents. The subsidy is income rightly attributed to the child, not a credit against a parent’s child-support obligation.

Id. at 374 (citation omitted).

As further support, the Court cited the United States Department of Health and Human Services Child Welfare Policy Manual, which stated: “Foster and adoptive parents are not recipients of Federal foster care and adoption assistance payments; rather, foster care and adoption assistance payments are made on the child’s behalf to meet his or her needs.” Id. at 374. Because the funds belonged to the child, the subsidy was not attributable to the father’s support payments, and thus the father could not rely on those funds to offset his own payment obligations.

In County of Ramsey v. Wilson, 526 N.W.2d 384 (Minn. Ct. App. 1995), a man adopted a child with special needs and received the Title-IV adoption subsidy. Wilson, 526 N.W.2d at 385. A few years later, the child was put in voluntary out-of-home placement with the county agency, then in court-ordered out-of-home placement. Id. at 386. After the child was returned to his adoptive father, the county requested reimbursement for the funds expended during the child’s placement. Id. The trial court found in favor of the county, and the father appealed. Id. The Minnesota Court of Appeals found that the adoption subsidy “was a resource attributable to the child.” Id. at 388. Thus, the lower court “properly required [father] to use the adoption subsidies he received during the months that [child] was in out-of-home placement to reimburse the county for the cost of that placement.” Id.

The Court based its finding on two main components. The first was the fact that the subsidy was similar to funds attributed to the child under § 260.251(1)(b) of the Minnesota statute. Under that statute, where the child is put in court-ordered out-of-home placement, the county agency could seek reimbursement from the parents, using the “total income and resources attributable for the child” for the period of care. Id. at 387. The county could also seek reimbursement for voluntary placement, from the “income and resources attributable to the child.” Id. The Court noted that adoption subsidies were similar to these funds “because none of these payments would be made if

<sup>1</sup> 23 Pa. C.S.A. § 4302 “Income.” Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers’ compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source.

there were no child.” *Id.* (“Given this similarity between the adoption subsidy and the resources that § 260.2511(b) deems to be attributable to the child, we conclude that the adoption subsidy also is a resource attributable to the child.”).

The second factor was the fact that under the agreement providing for the adoption subsidy, the parent must submit an annual affidavit showing that the adopted child remains in the care of the parent. *Id.* This establishes the continuing need for subsidy. Because the “payment of the adoption subsidy is contingent on the child remaining in the parent’s care,” the Court found that the subsidy was “a resource attributable to the child.” *Id.* Therefore, the Court found that it was proper to require the father to use the subsidy payments he received during the months the child was in placement to reimburse the county for that placement. *Id.* 387-88

### III. Statutory and Regulatory Authority

The Court in *Hamblen*, 54 P.3d at 374, *supra*, also cited to an IRS Revenue Ruling that spoke to this issue of adoption subsidies. The ruling was issued in response to an inquiry made by the Maryland State Department of Social Services, as to whether adoptive parents must include these subsidies in their gross income for federal income tax purposes. The relevant portion of the ruling was as follows:

The adoption payments made by the Maryland State Department of Social Services under these circumstances are disbursements from a general welfare fund in furtherance of the social welfare objectives of the State and are furnished to assist the adoptive parents in the care of the adopted child.

Accordingly, the adoption payments received by the adoptive parents in the instant case are not includible in their gross income for Federal income tax purposes.

Rev. Rul. 74-153, 1974-1 C.B. 20 (1974); *Hamblen*, 54 P.3d at 374 (“The web-page [for the North American Council on Adoptable Children] also notes that the IRS has stated that Title IV–E adoption subsidies are exempt for purposes of taxation, further evidence that the subsidies are not to be considered income to the parents..”).

The U.S. Department of Health and Human Services, Administration for Children, Youth and Families, also provided guidance on this issue. The Department issued a Policy Interpretation Question in response to inquiries about the administration of Title-IV adoption subsidies.

### IV. Title-IV Adoption Subsidy Payments of Elena Fleegle

In the case currently before this Court, Fulton County Services argues that because Elena is in placement outside her home, the full adoption subsidy should be paid to the agency, as it is currently in charge of Elena’s care. The Domestic Relations Office argues that because the goal is reunification with Mr. and Mrs. Fleegle, then full collection of the subsidy would create a financial hardship for the Fleegles, and “stand in contradiction to the current permanency plan.”

Although there is no appellate case law in Pennsylvania addressing this issue, the current trend amongst other jurisdictions is to treat these adoption subsidies as income attributable to the child, not that of the parents. This trend is consistent with the statutory and regulatory guidance outlined above. The purpose of Title-IV adoption subsidy payments is to provide assistance to families who adopt children with special needs. In this case, the \$900.00 subsidy payments are made to assist Mr. and Mrs. Fleegle in the care and support of their adoptive child with special needs, Elena Fleegle. Elena is currently in foster care, and therefore the subsidy payments are not directly being used to assist the Fleegle’s in her care, as she is no longer in their care. At the hearing it was not made clear what the \$900.00 per month is currently going towards. It is clear that Elena has not been “cared for” in the Fleegle’s home since July of 2013. Fulton County Services has expended funds for the care of Elena, specifically \$28,456.92.

This Court finds that the \$900.00 adoption subsidy is income attributable to the child, Elena Fleegle. Despite the payment to the parents, the money is “intended as direct assistance to [the] adopted child with special needs” and “is for the benefit of the child.” *Hamblen v. Hamblen*, 54 P.3d 371, 374 (Ct. App. 2002). Fulton County Services is the child welfare agency tasked with providing care to Elena, the dependent child, and as such the agency has expended funds to provide for her care, while she is in placement in foster care. *County of Ramsey v. Wilson*, 526 N.W.2d 384 (Minn. Ct. App. 1995). The Subsidized Adoption Agreement between Lancaster County Children and Youth and Mr. and Mrs. Fleegle requires the Fleegles to submit a yearly statement confirming that they continue to provide support for Elena, and thus the “payment of the adoption subsidy is contingent on the child remaining in the parent’s care.” *Wilson*, 526 N.W.2d at 387. Because the adoption subsidy is attributable to the child, the payments

should follow the child.

### **CONCLUSION**

Based on the foregoing, this Court finds that the Title-IV adoption subsidy of \$900.00 per month is income attributable to the child, Elena Fleegle. Therefore, the \$900.00 is not includable in Mr. Fleegle's income, and cannot be subtracted from the amount of child support he owes to Fulton County Services. Rather, the \$900.00 is a subsidy directly payable to Fulton County Services, either from Mr. Fleegle if he continues to be in receipt of those payments, or directly from Lancaster County Children and Youth. Fulton County Domestic Relations should therefore recalculate Mr. Fleegle's income, taking out the \$900.00 adoption subsidy, and establish what his support obligation will be to Fulton County Services going forward.

### **ORDER OF COURT**

**AND NOW THIS** 26th day of November, 2013, the Court having read and considered Plaintiff's *Order for Court Hearing* and *Brief in Support*, along with the *Brief* submitted by Fulton County Domestic Relations, and the Court having held a hearing in the matter;

**IT IS HEREBY ORDERED** that the Title-IV adoption subsidy of \$900.00 per month is income attributable to the child, Elena Fleegle, and therefore not includable in Mr. Fleegle's income for the purpose of calculating child support. The \$900.00 will be directly payable to Fulton County Services for Children either from Mr. Fleegle if he continues to be in receipt of those payments, or directly from Lancaster County Children and Youth.

**IT IS FURTHER ORDERED** that Fulton County Domestic Relations should recalculate Mr. Fleegle's income, taking out the \$900.00 adoption subsidy, to establish what his child support obligation will be to Fulton County Services for Children. The Court's Opinion in support of this Order is attached.

*Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.*