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Jones v. Borzager

KIMBERLY A. JONES, Plaintiff, v. DANIEL BORZAGER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2001-507, PACSES 491103551

Domestic Relations; Family Law; Child Support; Social Security Disability Derivative Benefits; Pennsylvania Rules of Civil Procedure 1910.16-2(b)(2)

1. Both father and mother have a legal responsibility for child support in proportion to his and her relative income and ability to pay.
2. For purposes of calculating a parent's proportional support obligation, Social Security disability benefits are included as income.
3. When the child for whom support is being calculated is himself or herself receiving Social Security derivative benefits, credit is to be given for the amount that the child receives when calculating the parties' relative support obligations.
4. Once it is determined that the facts of a case include a child's receiving monthly Social Security disability derivative benefits, then Pa.R.C.P. 1910.16-2(b)(2) is triggered, and the calculation of the parents' relative support obligations proceed according to the Rule.
5. Child support is a priority obligation that a party must meet, even if it means adjusting other expenditures in order to do so.

Appearances:

John Lisko, Esq., *Counsel for Plaintiff*

Anne Shepard, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., March 20, 2003

Background

The parties in the above-captioned case first attended a Support Conference before a conference officer of the Domestic Relations Section of the Franklin County Court of Common Pleas on March 8, 2002, and a Court Order dated March 18, 2002, ordered that Defendant pay \$192.80 per month in support. The March 18, 2002, Support Order was later amended by Order of Court dated August 22, 2002, which ordered Defendant to pay \$236.12 per month in support. Defendant subsequently fell into arrears for non-payment of support, and Plaintiff initiated a Contempt Proceeding against Defendant. An Order of Court dated August 29, 2002, ordered that the Contempt Hearing proceedings be stayed and a Support Conference addressing Defendant's ability to work be held on October 11, 2002, at the Domestic Relations Section. Defendant filed an appeal to the Court's Order of October 11, 2002, and requested a hearing before the Court.

A hearing was scheduled for February 5, 2003, for the purpose of establishing Defendant's support

obligation, considering the Social Security benefits that Defendant and Child receive, and applying the relevant Pennsylvania Rules of Civil Procedure section relating to support guidelines and calculation of net income in conformity with Pa. R.C.P. 1910.16-2. The parties stipulated to the following facts without the presentation of evidence:

1. Plaintiff has a monthly net income of \$1,379.86.
2. Defendant has a monthly net income of \$748.52 from Social Security disability benefits.
3. Child receives \$206.00 per month in Social Security derivative benefits.
4. The parties' combined monthly income including Child's Social Security derivative benefits is \$2,334.38.

Attorneys for both parties submitted to the Court Memoranda of Law including case citations in support of their respective positions. This matter is now ripe for disposition.

Discussion

The question presented in the above-captioned case is whether Pa.R.C.P. 1910.16-2(b)(2) or Pa.R.C.P. 1910.16-2(e)(1)(A) takes precedence in calculating the amount of Defendant's support obligation where Defendant's sole source of income is Social Security disability benefits in the amount of \$748.52 per month. Plaintiff argues that Pa.R.C.P. 1910.16-2(b)(2) is the proper section to be applied because this section of the Rule deals specifically with Social Security benefits as income and provides for a logical amount of support to be paid by Defendant. Plaintiff's Memorandum of Law ¶ 3. Defendant, on the other hand, argues that Pa.R.C.P. 1910.16-2(e)(1)(A) should apply in this case because Defendant's total amount of Social Security disability benefit income places him in a low income status, and pursuant to Pa.R.C.P. 1910.16-2(e)(1)(A), his support obligation is met through his child's receipt of Social Security disability derivative benefits which are actually in excess of the Computed Allowance Minimum provision, Pa.R.C.P. 1910.16-3 of the Support Guidelines for low income families. Defendant's Memorandum of Law ¶ 1. For the reasons that follow, this Court holds that Pa.R.C.P. 1910.16-2(b)(2) is the applicable Rule for support calculations in this case.

It is well settled in Pennsylvania law that both father and mother have a legal responsibility for child support in proportion to his and her relative income and ability to pay. Mooney v. Doutt, 766 A.2d 1271, 1273 (Super. 2001). For purposes of calculating a parent's proportional support obligation, Social Security disability benefits are included as income pursuant to Pennsylvania Rules of Civil Procedure 1910.16-2(a)(6). Additionally, when the child for whom support is being calculated is himself or herself receiving Social Security derivative benefits, credit is to be given for the amount that the child receives when calculating the parties' relative support obligations. Pa.R.C.P. 1910.16-2(b)(2). The problem that arises in support cases, however, is exactly how and when to give the Social Security derivative benefits credit under new Rule Pa.R.C.P. 1910.16-2(b)(2). On this how-and-when issue, Pennsylvania law is not well settled, and earlier case law is not consistent in its holdings, presumably because of varying interpretations of the prior Rules coupled with the varied specific facts on which each case turns. See Children and Youth Services of Allegheny County v. Chorgo, 341 Pa. Super. 512, 491 A.2d 1374 (1984) (holding that a father is presumptively entitled to receive credit on an ongoing monthly basis by reducing amount of child support directly payable by father by the amount of the Social Security payments made directly to his minor children); Preston v. Preston, 435 Pa. Super. 459, 646 A.2d 1186 (1994) (where Social Security benefits paid directly to children as result of father's retired status raised rebuttable presumption that father was entitled to credit against his child support obligation).

On October 27, 2000, the Supreme Court revised Pa.R.C.P. 1910.16-2(b) so that it now includes paragraph (2) which states:

(b) Treatment of Public Assistance, SSI Benefits and Social Security Payments to a Child Due to a Parent's Disability or Retirement.

(2) If a child for whom support is sought is receiving social security retirement or disability derivative benefits as a result of a parent's age or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of obligee, obligor and child's benefits shall then be reduced by the amount of the child's social security or disability derivative benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4.

Pa.R.C.P. 1910.16-2(b)(2).

As recently as January 2003, the Superior Court of Pennsylvania commented on this conundrum of crediting pursuant to new Rule 1910.16-2(b)(2).

"Pa.R.C.P. 1910.16-2(b)(2) is a new rule, adopted on October 27, 2000. Unfortunately, there is no Official Comment explaining the rationale behind the adoption of the rule, and there is no case law from this Commonwealth interpreting the rule. Our research into the law of other jurisdictions did not produce any helpful authority. Where there are cases from other jurisdictions that discuss how to treat the social security disability benefits paid directly to a child, these cases do not seem to rely upon a rule as we have here. Thus, we have found no authority, either of this Commonwealth or of another jurisdiction, which applies a rule exactly like Pa.R.C.P. 1910.16-2(b)(2)."

Maddas v. DeHaas, 2003 WL 133239, ¶ 19 (Pa. Super.).

The case at bar, though, is a good example of a case that fits squarely within the parameters of Pa.R.C.P. 1910.16-2(b)(2) as the Defendant's child receives Social Security disability derivative benefits, and as such, we need not go further into the Rules except to make the final calculations using the Support Guidelines and Child Support Schedule set forth in Rule 1910.16-3. The fact that Defendant's sole source of income is from his receipt of Social Security disability benefits is of no consequence in making this determination. Once it is determined that the facts of a case include a child's receiving monthly Social Security disability derivative benefits, then Pa.R.C.P. 1910.16-2(b)(2) is triggered, and the calculation of the parents' relative support obligations proceed according to the Rule. Accordingly, in the instant case, the calculation of the parties' monthly support obligation is as follows:

Plaintiff's Net Income	\$1,379.86
Defendant's Net Income	748.52
Child's Monthly Derivative Benefits	<u>206.00</u>
Combined Net Monthly Income	2,334.38
Presumptive amount of support	540.00
Reduced by Child's Derivative Benefits	<u>-206.00</u>
Remaining Monthly Support	334.00

Net Income Expressed as a Percentage Share of Income:

Plaintiff	64.83%
Defendant	35.17%

Each Parent's Monthly Share of the Basic Child Support Obligation:

Plaintiff	\$216.54
Defendant	\$117.46

Calculations based on the support guidelines contained in Pa.R.C.P. 1910.16-3 et seq. incorporate several presumptions including the following:

- (1) that similarly situated persons will be treated similarly;
- (2) that the distribution of the financial obligation for raising children based on parents' relative incomes is equitable;
- (3) that the settlement of support matters without court involvement is more likely;
- (4) that where hearings are necessary, the hearings will be more efficient;

(5) that the amount set forth in the schedule represents the presumptive minimum amounts spent on children in intact families.

See Pa.R.C.P. 1910.16-1 Explanatory Comment - Introduction.

Therefore, according to the support guidelines in Pa.R.C.P. 1910.16-3, it is contemplated and presumed that the Child in the instant case needs \$540.00 from both parents. Child support is a priority obligation that a party must meet, even if it means adjusting other expenditures in order to do so. Pa.R.C.P. 1910.16-1(a).

Defendant argues that the proper way to calculate his child support amount is to first look at his net income of \$748.52 and use that amount to trigger the use of Pa.R.C.P. 1910.16-2(e)(1)(A) which provides:

(e) Net Income Affecting Application of the Child Support Guidelines.

(1) Low Income Cases.

(A) When the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Rule 1910.16-3, the basic child support obligation shall be calculated using the obligor's income only. For example, where obligor has monthly net income of \$750, the presumptively correct amount of support for three children is \$184 per month. The amount is determined directly from the schedule in Rule 1910.16-3.

Pa.R.C.P. 1910.16-2(e)(1)(A).

Under 1910.16-2(e)(1)(A), Defendant argues that his low income with one child sets his support obligation in the amount of \$180.00 when using the support guidelines of Rule 1910.16-3 which place him in the low-income shaded area of the chart. Defendant then argues that credit for the child's Social Security disability derivative benefit (\$206.00) should be given to him individually on a monthly basis, which in this case, would be more than Defendant's proportionate support obligation, and Defendant would not be required to pay any child support at all. This is flawed statutory interpretation that produces a result that is counter to well-settled Pennsylvania law that each parent has a non-delegable responsibility to support his or her child(ren) and from which this Court will not detract. Mooney v. Doutt, 766 A.2d 1271, 1273 (Super. 2001).

It is noteworthy that even where Rule 1910.16-2(e)(1)(A) applies and the level of income is at \$750.00, the Pennsylvania legislature contemplates that an obligor at that level of income can still live on \$570.00 after paying \$180.00 in child support. The Defendant in the instant case is not prejudiced by this Court's holding that Pa.R.C.P. 1910.16-2(b)(2) applies because Defendant, after paying his ordered proportional share of \$117.46 in child support, is still left with \$603.88 with which to meet his personal living expenses, an amount greater than that contemplated by the State Legislature through the Support Guidelines.

Notwithstanding the above calculated proportional share to be Defendant's obligated child support amount, the Domestic Relations Section determined that a deviation was appropriate under the circumstances. This Court is in agreement with the deviation and affirms the Domestic Relations Order of October 11, 2002, and dismisses Defendant's appeal.

Conclusion

This Court recognizes that the amount of child support a parent must pay is largely within the discretion of the Court. Id. However, it is the purpose and intent of this case's holding to apply and interpret new Rule 1910.16-2(b)(2) in an effort to ensure consistency of treatment for future persons in similar situations.

ORDER OF COURT

NOW THIS 23rd day of March, 2003, upon presentation and consideration of the within Petition, Memoranda of Law, and facts stipulated to at hearing on February 5, 2003, IT IS HEREBY ORDERED that Defendant's appeal is DISMISSED and the Order of Court dated October 11, 2002, remains in full force and effect.