

**IN THE COURT OF APPEALS OF IOWA**

No. 1-580 / 10-1963  
Filed September 8, 2011

**IN RE THE MARRIAGE OF KELLY JO MORRICAL  
AND JEFFERY LYNN MORRICAL**

**Upon the Petition of  
KELLY JO MORRICAL,**  
Petitioner-Appellee,

**And Concerning  
JEFFERY LYNN MORRICAL,**  
Respondent-Appellant.

---

Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge.

Jeffery Morrival appeals from an order awarding restitution for child support and terminating child support. **AFFIRMED AS MODIFIED.**

Jon H. Johnson of Johnson Law, P.L.C., Sidney, for appellant.

DeShawne L. Bird-Sell of Sell Law, P.L.C., Glenwood, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

**DOYLE, J.**

Jeffery Morrical appeals from an order awarding restitution for child support and terminating child support. We affirm.

***I. Background Facts and Proceedings.***

The marriage of Kelly Jo and Jeffery Morrical was dissolved in November 2003. The dissolution decree was modified in August 2008. In pertinent part, the modified decree awarded Jeffery custody of the parties' son and ordered Kelly to pay child support in the amount of \$300 per month. Kelly has paid the child support since that time.<sup>1</sup>

In November 2008, Kelly began receiving social security disability benefits (SSD). Sometime in late summer of 2010, Kelly became aware social security disability dependent benefits were available for the benefit of the parties' minor son. She told Jeffery to go down to the social security office to apply for this benefit, and he did. Kelly also became aware that Jeffery, as the child's physical custodian, would receive a lump sum check from social security for the benefits awarded retroactive to November 2008.

On August 24, 2010, Kelly filed a petition to modify the decree. She asked that the anticipated social security disability dependent payments, including the lump sum payment, be credited to her child support obligation. Subsequently, Jeffery received a check in the amount of \$12,860, representing social security

---

<sup>1</sup> The modified decree awarded Jeffery a livestock trailer and provided he indemnify and hold Kelly harmless with respect to the outstanding loan balance on the trailer that was in her name. Shortly after the modified decree was entered, the parties, on their own, agreed Kelly would continue to make the trailer payments in lieu of making the child support payments, despite the fact the decree ordered the child support payments be paid through the office of the clerk of court. There is no dispute that Kelly made the trailer payments as agreed between the parties.

disability dependent benefits retroactive to November 2008, for the benefit of the parties' son, and he also began receiving monthly \$614 social security disability dependent payments.

Hearing on Kelly's petition was held on November 1, 2010. During the hearing, Kelly requested reimbursement for the \$300-a-month payments she had made since November 2008. Jeffery testified he paid Kelly back for her \$300 September payment. Jeffery testified he received the \$12,860 lump sum payment roughly two months before the hearing and he had spent almost the entire amount. Asked what he used the money for, he replied: "We've used it for living expenses, we've used it to fix up his automobiles and for huntin', whatever he's needed, clothes, recreational. He's been wantin' to go out." It was "[f]or our living expenses" and to pay off debt.

At the completion of the testimony, an off-the-record discussion was held. The court then provided from the bench that: "Jeff is to reimburse Kelly \$7050 plus \$300 attorney fees. Let's just round it out to [\$]340 a month until such time as [Jeffery] had paid it off; that Jeff is responsible for the payment of the trailer." The \$7050 was calculated by multiplying \$300 time 23.5 months.<sup>2</sup> Further off-the-record discussion was held.

The court later entered a written order. It found that

the payments of \$300 in child support and the payments of \$631 per month of SSD constitute unjust enrichment on behalf of [Jeffery]. The court ordered [Kelly] to make payments of \$300 per month for the benefit of the minor child. [Kelly] became eligible for SSD benefits during this time. [Jeffery] is not entitled to both payments.

---

<sup>2</sup> Our record is devoid of any explanation as to how the 23.5 month figure was derived.

The court awarded Kelly \$7500 “representing the \$300 per month she paid in addition to the SSD benefits.” Jeffery was ordered to pay Kelly \$331 per month commencing December 1, 2010, and continuing each month until the amount owed was paid in full. The court also terminated Kelly’s child support obligation effective the date of the receipt of SSD benefits for the minor child. Further, the court made Jeffery fully responsible for the trailer payments and stated “[t]he prior agreement was made null and void by the cancellation of the child support nullification.” Additionally, the court ordered Jeffery to pay Kelly \$500 for attorney fees. Jeffery appeals.<sup>3</sup>

## ***II. Discussion.***

### ***A. Iowa Code Section 598.22C.***

Jeffery first argues the district court erred in ordering restitution for the child support previously paid by Kelly during the period covered by the payment of social security disability dependent benefits. His argument is founded upon the holding in *Newman v. Newman*, 451 N.W.2d 843 (Iowa 1990). *Newman* noted that “[t]he rule in Iowa is that a child support award may be offset by social security benefits during the period in which the benefits are received . . . .” 451 N.W.2d at 844. The *Newman* court went on to hold that “a lump-sum payment may satisfy the noncustodial parent’s obligation only for the month in which it is received, even though the lump-sum payment represents benefits for a prior period.” *Id.* If applicable to the case at hand, *Newman* would limit restitution to the child support Kelly paid in the month in which Jeffery received the lump sum payment, and not for child support she paid in any prior month.

---

<sup>3</sup> Kelly has not filed a responsive brief.

After *Newman* was handed down, the legislature enacted a statute, codified at Iowa Code section 598.22C, governing the credit to be given social security disability dependent benefit payments against a child support obligation. See 2002 Acts ch. 1018, § 19. Section 598.22C (2009) provides, in pertinent part:

If dependent benefits are paid for a child as a result of disability benefits awarded to the child's parent under the federal Social Security Act, all of the following shall apply:

1. Unless the court otherwise provides, dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor fully satisfy and substitute for the support obligations for the same period of time for which the benefits are awarded.

The language used by the legislature differs markedly from the rule announced in *Newman*. See *Newman*, 451 N.W.2d at 844. *Newman* allows an offset only for the month in which benefits are *received*, whereas section 598.22C provides an offset for the same *period of time for which the benefits are awarded*. *Id.*; see also Iowa Code § 598.22C.

We review questions of statutory construction for the correction of errors at law. *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 728 (Iowa 2008). It is presumed the legislature was familiar with the holding in *Newman* when it enacted section 598.22C. See, e.g., *State ex rel. Iowa Dep't of Health v. Van Wyk*, 320 N.W.2d 599, 604 (Iowa 1982). In ascertaining the true intent of the legislature, we look at the statute's language. *Estate of Ryan*, 745 N.W.2d at 729. When the statute's language is plain and unambiguous, we will look no further. *Id.* at 730. We determine the legislature's intent by the words

the legislature chose, not by what it might have said. *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006) (citation omitted).

The plain language of the statute mandates, unless a court orders otherwise, that the dependent benefits awarded here, going back to November 2008, must fully satisfy and substitute for Kelly's support obligation for period of time covered by the award. It follows that she is therefore entitled to reimbursement for the child support she paid for that period of time covered by the benefits award, not for just the month in which the award was received. We therefore affirm the district court's restitution order.

***B. Termination of Kelly's Child Support Obligation.***

Jeffery next argues the court erred in terminating Kelly's child support obligation effective the date of the receipt of the social security disability dependent benefits. Section 598.22C provides that payment of benefits fully satisfy and substitute for the support obligations for the same period of time for which the benefits are awarded. Termination of Kelly's child support obligation shifts the burden to the child support obligee, Jeffery, to seek modification to reinstate the child support obligation in the event Kelly's future SSD benefits eligibility ceases and payments stop. We believe better public policy is to leave the child support obligation in place and provide that SSD benefits paid satisfy and substitute for the support obligation. We therefore modify the district court's order to provide that "the SSD benefits paid to Respondent for the benefit of the minor child fully satisfy and substitute for the support obligations for the same period of time for which the benefits are awarded."

**C. Attorney Fees.**

Lastly, Jeffery argues the court erred in its award of attorney fees to Kelly. We review the award of attorney fees for an abuse of discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). We find no abuse in the district court's attorney fee award of \$500.

Further, Jeffery argues the \$500 award does not comport with "the findings of fact by the trier of fact and should be reduced to \$300." At the conclusion of the hearing the trial court said Jeffery was to pay Kelly \$300 for her attorney fees. The figure of \$300 was bandied about frequently during the hearing as it was the amount of Kelly's monthly child support payments. One suspects the court had the \$300 figure on its mind and merely misspoke at the end of the hearing when stating Jeffery was to reimburse Kelly \$300 in attorney fees, particularly since Kelly testified she had paid \$500 for attorney fees. Other figures differed between the court's statements at the end of the hearing and its written order. At the hearing, the court said Jeffery was to reimburse Kelly \$7050, but the order provided reimbursement in the amount of \$7500. Also, the court said the reimbursement payments were to be \$340 a month, but the written order provides payment in the amount of \$331. The court's statements at the end of the hearing were preliminary thoughts. Its written order was the final and last word. We find the \$500 attorney fee award to be appropriate, and we therefore affirm the district court's order.

Costs are taxed to Jeffery.

**AFFIRMED AS MODIFIED.**