STATE OF MICHIGAN

COURT OF APPEALS

AMY JO WALLIN, a/k/a AMY JO EVANS,

Plaintiff-Appellant,

v

GREG MICHAEL WALLIN,

Defendant-Appellee

UNPUBLISHED
April 24 2001

No. 222036
Montcalm Circuit Court
LC No. 96-000868-DM

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by leave granted by this Court on December 27, 1999, from an order of the Montcalm Circuit Court reducing defendant's child support obligations to the parties' children by $25 per week until a debt owed by plaintiff to defendant is satisfied. This debt was discharged in bankruptcy court.

We review a trial court's findings of fact in a child support case for clear error, with the ultimate decision subject to de novo review. *Good v Armstrong*, 218 Mich App 1, 4; 554 NW2d 14 (1996). "This Court will reverse a trial court's decision only when it is convinced it would have reached a different result." *Id*. at 5.

We reverse the trial court's decision for three reasons, any one of which mandates reversal. First, the discharge of a debt by a United States Bankruptcy Court, pursuant to 11 USC 727, absolutely prohibits any legal proceeding or other action "to collect, recover or offset any such debt as a personal liability of the debtor. . . ." 11 USC 524(a)(2). Because the debt was discharged and collection proceedings on it were prohibited under federal law, it was error for the trial court to order offset of obligations to further its collection. The offset would be permitted by federal bankruptcy law, 11 USC 553(a), if there were mutuality of obligation. *In re Wiegand*, 199 BR 639, 641-642 (Bankr WD Mich, 1996). However, there is no mutuality of obligation in this case. The debt is owed by plaintiff to defendant, whereas the child support obligations are owed by defendant to his children. *Copeland v Copeland*, 109 Mich App 683, 685; 311 NW2d 452 (1981). Defendant cannot offset his former wife's obligations to him against what he owes to his children, because there is no mutuality of obligation. Plaintiff receives the child support payments in trust for her children, but she does not own them. *Id*.

Secondly, the trial court did not follow the Michigan Child Support Formula required by MCL 552.15(2); MSA 25.95(15)(2), in reducing the amount of the child support obligation. Nor did the court make the findings required on the record by that statute when a court deviates from the formula. This was error and reversal is required on this ground as well.

Finally, since the action does not consider the immediate needs of the children, it violates Michigan public policy regarding child support and mandates reversal. MCL 722.3; MSA 25.244(3); *Milligan v Milligan*, 197 Mich App 665, 667; 496 NW2d 394 (1992). The paramount factors to consider in determining child support obligations are the best interests of the children and their need for continuing support. *Pellar v Pellar*, 178 Mich App 29, 35-36; 443 NW2d 427 (1989); *Milligan*, *supra* at 667. Even equitable factors, that in a different context might reduce an obligation to pay a debt, do not reduce parents' obligations to support their children. *Pellar*, *supra* at 35. The Montcalm County Friend of the Court testified that this action would not be in the best interest of the children. We agree. Given that plaintiff has no other financial means to support her children, and that the payments from their father, defendant, are the sole means for their support, we do not see how reducing the amount they have to live on by $25 per week could do anything but adversely affect their welfare.

We find that defendant cannot reduce his child care payments to offset plaintiff's debt to him and therefore the trial court's order of August 19, 1999, is hereby vacated.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Jessica R. Cooper