

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

M.D. (fka) M.C.

Court of Appeals No. WD-09-023

Appellee

Trial Court No. 2005JH0202

v.

C.W.

Defendant

[Wood County Child Support
Enforcement Agency -

DECISION AND JUDGMENT

Appellant]

Decided: December 18, 2009

* * * * *

Alan Penamon, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal by appellant, Wood County Child Support Enforcement Agency ("CSEA"), of a February 25, 2009 judgment of the Wood County Court of Common Pleas, Juvenile Division, that ruled on CSEA's motion for child support credit

and for arrearage payment in this cause. The motion concerned the child support obligation of father to support his minor child, and what credits were due father on that obligation due to payment of benefits by Social Security directly to the child due to father's disability.

{¶ 2} CSEA asserts one assignment of error on appeal:

{¶ 3} "The trial court erred in granting * * * [father] * * * judgment for \$1854.03 when the evidence shows that a judgment for \$11,011.80 should have been granted. [Judgment Entry and Memorandum Decision 2/24/09 (2).]"

{¶ 4} The trial court conducted an evidentiary hearing on the motion on February 23, 2009. Three witnesses testified at the hearing: father, mother, and Jennifer Applehans. Applehans is a case maintenance specialist at CSEA with duties that include responsibility to conduct case audits of CSEA child support accounts.

{¶ 5} Documentary evidence included Exhibit A, a report from the Social Security Administration detailing payments to the child by the Social Security Administration. According to the document, the Social Security Administration issued a check on September 17, 2008 in the sum of \$14,886.00, which represented payment of child benefits owing due to the disability of father. The document broke down the \$14,886 payment to the child as follows:

TYPE OF BENEFIT	DATE OF ENTITLEMENT	AMOUNT OF BENEFIT	EFFECTIVE DATES
Child	12/04	\$230	12/04 - 11/05
		\$240	12/05 - 6/06
		\$360	7/06 - 11/06
		\$372	12/06 - 11/07
		\$380	12/07 - 6/08
		\$761	7/08 on

{¶ 6} It was undisputed at the hearing that the \$14,886 Social Security benefits payment was paid by the Social Security Administration directly to mother of the minor child.

{¶ 7} Under the Ohio Supreme Court's decision in *Williams v. Williams*, 88 Ohio St.3d 441, 2000-Ohio-375, "[a] disabled parent is entitled to a full credit in his or her child support obligation for Social Security payments received by a minor child due to the parent's disability." *Id.* at syllabus. The motion of CSEA was filed, in part, to permit such credit. The motion was also filed to provide for recoupment of overpayments of child support by father.

{¶ 8} The record reflects that father was ordered to make child support payments beginning on December 1, 2004 for his child. The required monthly payment was \$243.40 plus administrative fees. Accordingly, the child's social security benefits were \$13.40 less than the court ordered child support for the period from December 2004 though November 2005, plus administrative fees and \$3.40, plus administrative fees less a month from December 2005 through June 2006.

{¶ 9} Applehans testified that the child benefits Social Security paid for the child though June of 2006, left a balance owing for child support as of that time of \$188.33.

Monthly child benefit payments after that date exceeded court ordered child support obligations. In its judgment, the trial court agreed with the conclusion of Applehans that all but \$188.33 of the child support obligation owed by father was paid by child benefits from Social Security to the child in the lump sum payment of \$14,886.

{¶ 10} Therefore, affording father the credit required by *Williams v. Williams*, father owed only \$188.33 from the date child support obligations began to the date of the hearing beyond that amount paid by Social Security in child benefits. To the extent that other child support payments had been made and exceeded \$188.33, they represent overpayments of father's child support obligation.

{¶ 11} The trial court's judgment acknowledges one such payment, payment of \$1,854.03. Applehans and father testified at the hearing that the \$1,854.03 payment was paid through CSEA and was derived from a payment of that amount from sums owed by Ohio Workers' Compensation to father.

{¶ 12} Each of the foregoing payments were detailed in Exhibit B that was entered into evidence at the hearing. The exhibit was prepared by Applehans. The exhibit also provides that there was one additional payment of child support after consideration of payments of child benefits from social security and the \$1,854.03 payment derived from Workers' Compensation. According to CSEA, this was a payment of \$9,342.37 through CSEA in the second half of 2008. Applehans testified that this sum was paid to mother on behalf of father less an administrative fee of \$246.76.

{¶ 13} Father testified that he recalls that the payment was \$9,066. He testified that the money was paid through CSEA and taken from his personal Social Security Disability benefits. Father repeatedly testified at the hearing that the payment was not from Social Security child benefits.

{¶ 14} Mother testified at the hearing. She admitted to receiving the \$14,886 Social Security child benefit payment in 2008. She admitted to receiving another payment from CSEA of "approximately" \$8,500.

{¶ 15} In its February 25, 2009 judgment, the trial court held that the \$1,854.03 payment derived from a Workers' Compensation payment to father constituted an overpayment and ordered repayment of that sum in installments of \$100 each month. The trial court concluded that there had been an additional payment of \$8,500, but that it represented additional child benefit payments from Social Security and that no overpayment was created where child benefits from social security exceed the amount of court ordered child support.

{¶ 16} CSEA contends that its records and the evidence at trial demonstrate that a total of \$11,196.40 of child support payments were made by father through the Wood County Child Enforcement Agency, but the trial court erred in ruling that there was an overpayment of \$1,854.03, rather than \$11,011.80. CSEA asserts that the trial court abused its discretion in requiring appellee to repay some but not all of the overpayments made through the CSEA.

{¶ 17} A trial court's judgment on child support is subject to review on appeal under an abuse of discretion standard. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157 (Citations omitted.).

{¶ 18} A trial court's findings of fact will not be reversed on appeal as against the manifest weight of the evidence if they are supported by some competent and credible evidence. *C.E. Morris Co. v. Foley Construction* (1978), 54 Ohio St.2d 279 at syllabus.

{¶ 19} We understand the trial court's frustration that the CSEA was not prepared at the hearing to provide testimony in anything but conclusory form concerning child support payments issued by it in this case based upon funds deposited by father or by others on his behalf with the agency. However, there is no competent, credible evidence in the record supporting the trial court's conclusion that father's only payment of child support was the \$1,854.03 sum secured by CSEA from sums owed father by Ohio Workers' Compensation. Father, mother, and a representative from CSEA each testified as to a substantial additional payment of either \$8,500, \$9,066, or \$9,342.37. The testimony at the hearing was also that the source of the funds was from father's personal Social Security Disability Benefits and not the child benefits. We conclude that any final calculation of the child support overpayment in this case must reflect consideration of the

payment of child support through CSEA derived from father's personal social security disability benefits.

{¶ 20} We find appellant's assignment of error well-taken. We do not determine in this appeal the specific amount of the total child support overpayment but leave the issue to the trial court on remand. We reverse the trial court's judgment with respect to the total amount of father's overpayment of child support. We remand this action for further proceedings consistent with this decision and judgment. Mother is ordered to pay costs pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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