

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001750-MR

VADA ENDICOTT MARTIN

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JULIE PAXTON, JUDGE
ACTION NO. 92-CI-00929

COMMONWEALTH OF KENTUCKY
CABINET FOR FAMILIES AND CHILDREN;
AND JAMES D. ENDICOTT

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

McANULTY, JUDGE: This is a child support case in which Vada Endicott Martin (Vada) appeals from the Floyd Circuit Court's order denying her motion to alter, amend or vacate the court's previous order determining her monthly child support obligation and arrearage payments for her three minor children. On appeal, Martin argues that Kentucky's inclusion of Supplemental Security Income (SSI) in determining her child support obligation is

contrary to federal law and is unconstitutional. Because we find this case indistinguishable from Commonwealth of Kentucky, ex rel. Morris v. Morris, Ky., 984 S.W.2d 840 (1998), in which the Kentucky Supreme Court held that the inclusion of SSI benefits in the income computation for calculation of child support payments is not in conflict with a federal anti-attachment statute relating to SSI benefits, we affirm.

Vada and her former husband, James Endicott (James), have three minor children. The children reside with James. On January 10, 2000, the circuit court ordered Vada to pay monthly child support according to the Kentucky child support guidelines. On February 8, 2000, Vada filed a motion to reconsider child support on the grounds that she was disabled and currently had a claim for SSI disability benefits pending with the Social Security Administration. After hearing the motion to reconsider, the circuit court lowered Vada's monthly child support payment from \$278.46 to \$200; however, it also granted judgment to James in the amount of \$988.21 for child support arrearages accrued through January 31, 2000. Prior to the entry of the court's order reducing child support, Vada was arrested for flagrant non-support for persistently failing to provide support.

On March 31, 2000, the Social Security Administration (Administration) found that Vada had mild mental retardation, a

dysthymic disorder and a hearing deficit in the left ear. The Administration ultimately decided that Vada was disabled under the applicable sections of the Social Security Act. Based on Vada's disability, limited income and impending receipt of SSI payments, Vada filed a motion to alter, amend or vacate or grant her relief from her monthly child support obligation of \$200. Vada asked the court to set her child support obligation at \$60 per month, the minimum payment under KRS 403.212(d). In an order entered April 24, 2000, the court granted Vada's motion in part; however, it set her monthly child support obligation at \$166.46 per month, retroactive to October 15, 1999. This amount was based on Vada's SSI payments of \$500 per month.

On March 19, 2002, the Commonwealth of Kentucky, Cabinet for Families and Children (Cabinet), filed a motion for an arrearage judgment in the amount of \$1,103.94. On April 12, 2002, the domestic relations commissioner recommended judgment in the amount of \$1,170.40, representing child support arrearages owed by Vada through March 30, 2002. The commissioner further recommended that Vada pay \$40 a month in addition to her regular child support amount of \$166.46. At this point, Vada's monthly SSI payments totaled \$545. Vada filed exceptions to the commissioner's recommendations, which the circuit court later overruled. The court adopted the

commissioner's recommendation as to monthly child support and arrearage payments.

Vada filed a motion to alter, amend or vacate the court's order establishing her child support obligations. The circuit court denied Vada's motion in an order entered August 14, 2002, precipitating this appeal.

On appeal, Vada's fundamental argument is that federal preemption bars enforcement of orders requiring payment of child support from SSI benefits. In other words, Vada argues that Kentucky's inclusion of SSI as income for determining child support obligations is unconstitutional under existing federal statutes. In addition, Vada argues that the exclusion of SSI as a means-tested public assistance program under Kentucky law, thereby including SSI payments in the calculation of gross income for child support purposes, is contrary to federal law and basic logic.

Whether federal law preempts enforcement of child support orders requiring payment of child support from SSI benefits is a question of law. Accordingly, our review is *de novo*. See GTE Mobilnet of Ohio v. Johnson, 111 F.3d 469, 475 (6th Cir. 1997).

We begin by setting out the federal and Kentucky statutes that Vada claims are at issue. The first is 42 U.S.C. § 407(a):

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Vada claims that KRS 403.212(2)(b), the Kentucky statute that lists the sources of income to be included in the child support calculation, is in conflict with 42 U.S.C. § 407(a). KRS 403.212(2)(b) is as follows:

"Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, **Supplemental Security Income (SSI)**, gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps.

(emphasis added).

In Morris, 984 S.W.2d at 840, the Kentucky Supreme Court granted discretionary review to decide whether KRS 403.212(2)(b) was in conflict with 42 U.S.C. § 407(a). In setting out the issue, the Morris court noted that "[i]f KRS 403.212(2)(b) indeed conflicts with the federal statute, then

the SSI provision of the state statute must yield by virtue of the Supremacy Clause of the United States Constitution." Id. (citing U.S. CONST. Art. VI, § 2).

After considering the statutory provisions and goals of the SSI program, the Kentucky Supreme Court held that "the 'legal process' referred to in 42 U.S.C. § 407(a) is of the nature of a garnishment order directed towards a governmental entity." Id. at 841 (citing 42 U.S.C. § 659 for definition of "legal process"); see also Whitmore v. Kenney, Pa. Super., 626 A.2d 1180, 1184 (1993) (emphasizing that 42 U.S.C. § 659 does not refer to any legal process, but "any writ, order, summons, or other similar process in the nature of garnishment . . ."). Moreover, the Morris court considered the fact that "nothing in KRS 403.212(2)(b) subjects SSI benefits to execution, levy, attachment, garnishment, or any similar involuntary transfer." Because the Kentucky statute merely allowed the court to include SSI benefits in the calculation, the court concluded that there is no direct conflict between the state and the federal statutes. See id. at 841-42.

In this appeal, Vada argues that her case is distinguishable from Morris because Morris was a narrow decision primarily based on the fact that the father had never been subjected to any type of enforcement action such as contempt or garnishment. Id. at 842. In this case, prior to her receipt of

SSI payments, Vada was arrested for flagrant non-support. Moreover, Vada alleges that the Cabinet continuously argues that contempt and criminal actions against Vada are appropriate remedies in the event she fails to make child support payments in the future. Vada asserts that such measures effectuated through the legal system are exactly the types of involuntary transfers that 42 U.S.C. § 407(a) prohibits. In partial support, Vada cites Justice Stephens' dissent in Morris, in which Justices Cooper and Stumbo joined. See id. at 842-47.

In addition to the dissenting opinion in Morris, Vada cites cases from other jurisdictions that have considered the issues raised in this appeal. See Davis v. Office of Child Support Enforcement, Ark., 20 S.W.3d 273 (2000) (Arnold, C.J., dissenting) (holding that "federal law does prohibit state court ordered child-support payments exclusively from SSI benefits"); Becker County Human Services v. Peppel, Minn. App., 493 N.W.2d 573 (1992) (interpreting "legal process" broadly to include contempt proceedings and "holding that federal law precludes requiring SSI recipients to use their benefits for child support"); Tennessee Dept. Of Human Services, ex rel. Young v. Young, Tenn., 802 S.W.2d 594 (1990) (holding Tennessee state court's garnishment of SSI check through the Social Security Administration was preempted by applicable federal statutes prohibiting SSI payments from being subject to legal process).

While there may be support for Vada's arguments in other jurisdictions, a majority of the Kentucky Supreme Court has held that KRS 403.212(2)(b) and 42 U.S.C. § 407(a) are not in conflict. In so concluding, the court reasoned that "[t]he patent intent of this statute [42 U.S.C. § 407(a)] is to prohibit creditors from asserting claims upon SSI funds that take precedence over the SSI recipient's rights to such funds." Morris at 841.

More importantly for the purposes of this appeal, the Morris majority held that "the 'legal process' referred to in 42 U.S.C. § 407(a) is of the nature of a garnishment order directed towards a governmental entity." Id. at 841. In other words, contempt is not legal process under the statute. Moreover, the court has issued no garnishment orders toward a government entity in this case. In short, this case cannot be distinguished from Morris.

We move to Vada's second argument that the exclusion of SSI as a means tested public assistance program under KRS 403.212(2)(b), thereby including SSI payments in the calculation of gross income for child support purposes, is contrary to federal law and basic logic. As discussed above, our Supreme Court has concluded that no preemption by the federal SSI program prevents a trial court from directing a parent, whose sole source of income is SSI benefits, to pay child support.

Vada believes it is illogical to include SSI payments in the calculation of gross income when it is a means-tested public assistance program, and KRS 403.212(2)(b) specifically excludes benefits received from means-tested public assistance programs as gross income. However, Vada may spend her SSI payments anyway she chooses, even if they are federal funds designed solely for her benefit. That she does not believe these funds should be considered as her income for support of her three children is illogical to us.

While the equities of Vada's circumstances may have allowed for an adjustment of the guideline award under KRS 403.211, we are simply unable to distinguish this case from Morris. As an intermediate appellate court, we are duty-bound to defer to principles well established in Kentucky case law. See Fisher v. Kentucky Unemployment Ins. Com'n, Ky. App., 880 S.W.2d 891, 892 (1994). "Whatever our view of the advisability of the policy set out in that precedent, we are precluded from simply choosing not to follow the law." Id.

The judgment of the Floyd Circuit Court is affirmed.

ALL CONCUR.

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