STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0156

In re the Marriage of:
Michael Aaron Jugovich, petitioner,
Appellant,

vs.

Terri Lynn Jugovich,
Respondent.

Filed November 4, 2008
Reversed in part and appeal dismissed in part
Harten, Judge[*]

St. Louis County District Court
File No. F5-01-301144

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Harten, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

Appellant, a child support obligor who is eligible for social security benefits for the parties' two children, challenges the provision in orders of the district court and the child support magistrate (CSM) that the social security benefit received by respondent for one child is not offset against appellant's child support obligation. Because Minn. Stat. § 518A.31(c) (2006), mandates such an offset, we reverse that provision of the CSM's order; we dismiss the appeal from the district court's order.

FACTS

Appellant Michael Jugovich and respondent Terri Jugovich were married in 1994; their children were born in 1996 and 1997. In December 2002, the marriage was dissolved. The parties received joint legal and physical custody, and the issue of child support was reserved.

In 2003, the district court, using the *Hortis/Valento* formula, set appellant's child support payment at the guideline $464. Because of a disability, appellant was then receiving a social security benefit of $400.30 for each child. The district court ordered that "in addition to the child support payments," respondent receive the social security benefit for one child. This order violated Minn. Stat. § 518.551, subd. 5(l) (2002), providing that, "[I]f a child receives a child's insurance benefit under United States Code, title 42, section 402, because the obligor is entitled to . . . disability insurance benefits, the amount of support ordered shall be offset by the amount of the child's benefit." Appellant did not challenge the order.

In January 2004, appellant moved the CSM to modify child support because appellant had lost his job; he also made his first challenge to the order giving respondent the social security benefit for one child. By April 2004, appellant was again working at his job. The CSM therefore denied the motion to modify, finding no change in appellant's circumstances. The CSM also found that he lacked authority to modify the district court's order giving respondent the social security benefit for one child and referred that issue to the district court. Because appellant stopped receiving social security benefits for the children, the latter issue became moot.

In May 2004, appellant again moved the CSM to modify child support because the parties' incomes had changed and to offset the social security benefits already paid to respondent against appellant's future child support obligations. The CSM denied this motion because it would be a retroactive modification and because appellant had failed to properly challenge the district court's 2003 order; however, appellant's child support payment was modified to $171.

By December 2006, appellant was retired on disability and began receiving social security benefits of $1,731 for himself and $457 for each child, a total of $2,645. He retained this amount and continued to pay $171 in child support. In July 2007, respondent arranged with the social security office to have the $457 payment for one child made directly to her.

On 24 August 2007, appellant moved that the CSM either offset the $457 against his $181 COLA-adjusted child support payment or have the $457 payment satisfy his entire child support payment. In September 2007, the CSM found that appellant's

income, including the $457 benefit for each child, was $3,539[1] and respondent's income was $1,104; the CSM concluded that, under Minn. Stat. § 518A.36, subd. 3 (2006), appellant's child support obligation was $468.[2] The CSM then applied Minn. Stat. § 518A.31(c) (2006), providing that "If Social Security . . . benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee . . . then the amount of the benefits shall also be subtracted from the obligor's net child support obligation as calculated . . . ." and offset the $457 respondent received as a social security benefit for one child against the $468 obligation, reducing it to $11.

In October 2007, respondent sought district court review of the CSM's order, opposing the offset of the child support payment against the social security benefit and arguing that she was entitled to $3,199 (seven times $457) for social security benefit payments she did not receive from December 2006 through June 2007. The district court remanded the matter to the CSM, concluding that the October 2003 district court order "should probably be viewed as the law of the case" but speculating that "there may be a reason unknown to this court why the [CSM] did not consider the [October 2003] order as controlling."

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[1] *See* Minn. Stat. § 518A.31(a) (2006), providing that "The amount of the monthly Social Security benefits . . . provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based."

[2]Specifically, the parties' total combined income was $4,643, of which 76% was appellant's and 24% respondent's; the guideline basic support amount for two children was $1,200; 75% of $1,200 is $900; appellant's share was $684 and respondent's share $216; appellant's net obligation was therefore $684 - $216, or $468 per month. *See* Minn. Stat. § 518A.36, subd. 3 (2006) (setting out calculation when parenting time is presumed equal).

On remand, the CSM reversed its September 2007 order offsetting the social security payment against the child support benefit, adopted the district court's conclusion that its October 2003 order was controlling on the offset issue, and ordered appellant to pay monthly child support of $468 and $3,199 for the social security benefits he received and did not forward to respondent. Appellant challenges that part of the order.[3]

D E C I S I O N

On appeal from a CSM's ruling, the standard of review is the same as it would be if the decision had been made by a district court. *Perry v. Perry*, 749 N.W.2d 399, 402 (Minn. App. 2008). The application of a statute to the undisputed facts of a case involves a question of law, on which the district court's decision is not binding. *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. 29 May 2001). The function of this court is to identify and correct errors. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The CSM's refusal to offset the social security benefit received by respondent for one child because of appellant's eligibility against appellant's child support obligation clearly violates Minn. Stat. § 518A.31(c) (2006), providing that "If Social Security . . . benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee . . . then the amount of the benefits shall also be subtracted from

[3] Appellant also challenges the district court's order remanding the matter to the CSM. Respondent argues that this order is not appealable. We agree. *See* Minn. R. Civ. App. P. 103.03(h) (permitting appeal from an order that "grants or denies . . . child support provisions in an existing judgment or decree"). We therefore dismiss that portion of the appeal.

the obligor's net child support obligation as calculated . . . ." The statute is clear, and "it is not this court's role to ignore the express language of [a] statute." *Dougherty v. State Farm Mut. Ins. Co.*, 699 N.W.2d 741, 746 (Minn. 2005) (holding that valid public policy concern over intoxicated drivers did not support ignoring language of No-Fault Act). The CSM erred in issuing an order contrary to a statute, and our role is to correct that error. *See Sefkow*, 427 N.W.2d at 210.[4]

Because we conclude that appellant is entitled to offset against his child support obligation the social security benefit received by respondent for one of the children, we reinstate the CSM's order of September 2007 offsetting the $457 benefit against the $468 obligation, retroactive to 24 August 2007. *See* Minn. Stat. § 518A.39, subd. 2(e) (2006) (child support modification may be retroactive only for period during which the motion for modification was pending). The $3,199 judgment that the CSM awarded respondent for social security benefits for the period December 2006 through July 2007, remains in effect in that those benefits accrued before 24 August 2007.

Reversed in part and appeal dismissed in part.

[4] Respondent argues that the offset issue is outside our scope of review because the district court's 2003 order granting her the social security payment for one child is law of the case. But that order violated Minn. Stat. § 518.551, subd. 5(l), and unjustly deprived appellant of a benefit to which the law entitled him. In the interest of justice, this court is free to review any matter. Minn. R. Civ. App. P. 103.04.