

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COLLEEN M. STROM,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	No. 1947 WDA 2012
	:	
MICHAEL C. STROM	:	

Appeal from the Order Dated September 11, 2012,
in the Court of Common Pleas of Allegheny County
Civil Division at No. FD-09-007088-009

BEFORE: FORD ELLIOTT, P.J.E., ALLEN AND COLVILLE,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: FILED: December 5, 2013

This is an appeal from an order entered in the Court of Common Pleas of Allegheny County brought by appellant, Colleen M. Strom, acting *pro se*, regarding child support. We affirm.

We adopt the procedural history of this matter as set out by the trial court:

Appellee Husband, Michael C. Strom, filed a Complaint in Divorce in the Court of Common Pleas of Allegheny County, Pennsylvania, on January 15, 2009. Appellant Wife responded to the Complaint by filing an Answer and Petition to Raise Economic Claims on or about May 14, 2009. By Order of Court dated October 7, 2009, Appellee Husband was ordered to pay the sum of \$1,336.00 per month to Appellant Wife as unallocated alimony *pendent lite* and support for the parties' three (3) children. A Master's Hearing regarding the parties' claims for equitable distribution and related economic claims was held before Master Peggy Ferber on March 2,

* Retired Senior Judge assigned to the Superior Court.

2011. On or about September 12, 2011, Master Ferber recommended, in relevant part, that:

“current APL/Child support Order remain in effect until the divorce is granted and the equitable distribution has been settled. Once that is finalized, the Master recommends that Wife receive alimony in the amount of \$500/mo. ***This amount will need to be factored into Wife’s net income calculation of the revised child support obligation in accord with the entry of the divorce and the reduction in Husband’s net income*** (emphasis added). The Master finds that \$500 is reasonable given Wife’s medical and prescription expenses. If it is discovered that Wife’s medications are covered by Medicaid after all, Husband may petition the Court for a modification of the alimony award. In addition, any alimony will terminate in the event of Wife’s remarriage or cohabitation, or Husband’s death, disability or retirement (assumed to be at age 66). The Master also recommends that Husband be awarded the three children for the federal dependency exemption each year as the child support she will receive is non-taxable to her but is still taxable to Husband.”

Neither party filed Exceptions to the Master’s Report and Recommendation.

A Decree in Divorce was granted on October 4, 2011. On or about October 13, 2011, Appellee Husband filed a Petition for Modification of the Existing Support Order in accordance with the Master’s prior directive. A conference/hearing regarding the petition for modification was subsequently heard on January 4, 2012. After the conclusion of the January 4, 2012 hearing, Hearing

Officer Joseph Kulik recommended that Appellee be ordered to pay the sum of seven hundred, sixty two dollars (\$762.00) a month for the support of the parties' three children; in addition to the five hundred dollars (\$500.00) per month alimony award to Appellant. Appellant filed Exceptions to the Hearing Officer's findings and recommendations on or about January 24, 2012. By Order of Court dated September 11, 2012, the undersigned denied three of the Appellant's four exceptions (regarding Appellant's medical costs, the affect of the medical costs as a basis to deviate from the guideline figures for child support, and the alleged unfairness of the application of Pa.R.C.P. 1910.16-2 regarding derivative social security benefits); granted the Appellant's final exception regarding her claim that the hearing officer had erred by not properly addressing the Federal Dependency Tax exemptions that had been awarded to Appellee Husband for the year 2011 and remanded the matter back to Hearing Officer Kulik for additional proceedings to determine if the Child Tax Credit had been properly considered in the calculation of Appellee Husband's net income. By Order of Court dated September 20, 2012, the remand hearing was scheduled to be heard before Hearing Officer Kulik on October 17, 2012.

Prior to the scheduled date of the remand hearing, Appellant filed [on October 11, 2012] a Notice of Appeal to the Superior Court of Pennsylvania [docketed at No. 1605 WDA 2012] from the order of court that I issued on September 11, 2012. At the conclusion of the remand hearing on October 17, 2012,^[1] Hearing

¹ The order that scheduled the October 17, 2012 hearing specifically stated:

Pursuant to the Order entered 9/11/12 by the Hon. Alexander Bicket, matter is scheduled for direct hearing before HO Kulik to allow the parties to submit evidence of their respective incomes, for the 2011 year, including specifically providing copies of their 2011 tax returns. Due to the delay from entry of the original Rec, to the entry of the Order

Officer Kulik recommended that no change be made to the amount of support (\$762/m) that he previously recommended be paid to Appellant on January 4, 2012. Court records indicate that neither party filed exceptions to the Hearing Officer's Recommendation. However, Appellant subsequently filed a Petition for Modification of the Existing Support Order wherein she avers that Appellee Husband has had an increase in his income.

Trial court opinion, 12/10/12 at 1-3 (emphasis in original) at discontinued Superior Court docket No. 1605 WDA 2012.

On October 25, 2012, Judge Bicket entered an order directing appellant to file a concise statement of errors complained of on appeal within 21 days. (Document #65.) On November 1, 2012, appellant responded by filing a 5-page statement containing 19 issues. (Document #66.) In an opinion filed on December 10, 2012, Judge Bicket addressed the issues contained in appellant's statement, but opined that the appeal should be dismissed as interlocutory because the September 11, 2012 order was not a final order. (**See** trial court opinion, 12/10/12 at 3.) That same day, appellant filed a praecipe for discontinuance, and the Superior Court discontinued the case on December 12, 2012. (Document #71.)

addressing exceptions, the financial information relied upon at the 1/4/12 hearing is not available to the Court. ***The hearing is specifically limited to the introduction of the 2011 income and related financial information.*** Direct hearing shall be held on October 17, 2012, at 9:00 a.m.

Document #94 (emphasis added).

Meanwhile, the following order dated November 7, 2012, and filed on November 13, 2012, was entered by the Honorable Katheryn Hens Greco:

AND NOW to wit, this 11-7-12 it is hereby Ordered that:

HEARING HEARD ON 10/17/12, BOTH PARTIES APPEARED ***Matter before HO on Deft's petition for mod of current support obligation, for Pltf and 3children [sic], pet filed 10/13/11.*** After hearing, and review of file and record, in that initial calculation, done in January 2012 resulted in GL calc of \$760, and current calc results in GL calc of \$781, this being based on Deft's income of \$3382 today, as opposed to \$3256 in January of 2012, current APA to remain. While current financial obligation is confirmed, this does not preclude filing of modification petition since Pltf alleges a change in circumstances. Recommendation mailed to both parties on 10/17/12.

Document #98 (emphasis added).

On December 10, 2012, appellant, acting ***pro se***, filed the following:

NOTICE OF APPEAL

Notice is hereby given that Colleen M. Strom, plaintiff above named, hereby appeals to the Superior Court of Pennsylvania from the order dated September 11, 2012 and entered in this matter on the day of September 17[sic], 2012. ***This order has been entered in the docket as final on November 9, 2012, as evidenced by the attached copies of the docket entries.*** Transcript ordered.

Docket #70 (emphasis added).

The above notice of appeal was docketed at No. 1947 WDA 2012 on December 13, 2012. The “docket entries” attached by appellant consisted of two pages obtained from the PA Child Support Program website and seven pages from the Allegheny Court of Common Pleas Docket website. The PA Child Support Program website contains a docket entry entitled “Interim order now final - Hearing” with a date of 11/9/12. The Allegheny County website contains no such entry.

On December 20, 2012, Judge Bicket entered an order directing appellant to file a concise statement of errors complained of on appeal within 21 days. (Document #73.) On December 28, 2012, appellant responded by filing the same 5-page statement containing 19 issues that she previously filed. On January 25, 2013, Judge Bicket filed an opinion in which he opined that appellant’s current appeal should be dismissed for numerous reasons; such as, it was not timely filed.

A notice of appeal must be filed within 30 days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903; *In re Greist*, 636 A.2d 193, 195 (Pa.Super. 1994) (“This Court has no jurisdiction to excuse a failure to file a timely notice.”). Since a question of timeliness implicates the jurisdiction of our court, we may raise it *sua sponte*.” *See Commonwealth v. Dreves*, 839 A.2d 1122, 1126 n.4 (Pa.Super. 2003) (*en banc*), citing *Commonwealth v. Borrero*, 692 A.2d 158, 159 (Pa.Super. 2003) (stating that the question of appealability implicates the

jurisdiction of this court and so may be raised by this court *sua sponte*). It appears that appellant's notice of appeal following the November 7, 2012 order is timely as the order was not filed until November 13, 2012; appellant subsequently filed her notice of appeal on December 10, 2012.

Appellant raises the following issues:

1. Whether Appellant should have been allowed to submit evidence pursuant to Pa. R.C.P. 1910.12(d) as it pertains to her high medical cost and its added hardship to her being able to support her children financially.
2. Whether the court should have considered Appellant's award of alimony, with its intended purpose being to help pay her medical costs, being counted in her income to be used toward the support of her children as placing an undue hardship on Mother to either go without medical care or use the funds as intended and deprive her children of support, thereby warranting a deviation according to Pa. R.C.P. 1910.16.5.
3. Whether the honorable court erred in finding that Appellant was attempting to re-litigate the issue of her high medical costs and its relationship to child support when child support was never litigated at the parties Equitable Distribution trial.
4. Whether the honorable court erred in finding that Appellant was attempting to re-litigate the unfairness of Pa. R.C.P. 1910.16-2(b)(2) and its new Amendment when the Amendment was not announced until September 10, 2011, taking effect on September 30, 2011, well after the parties Equitable Distribution trial in August of 2011.

5. Whether a deviation should have been ordered according to Rule 1910.16-5 in light of Father's low child support order due to Pa. R.C.P. 1910.16-2(b)(2) and its treatment of social security derivative payments, in combination with Appellant's high medical costs.
6. Whether the new Amendment to Pa. R.C.P. 1910.16-2(b)(2) from September 30, 2011 is unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 26 of the Pennsylvania Constitution as it treats disabled custodial parents and their children differently than all other parents and children, including non-custodial disabled parents, depriving custodial disabled parents and their children of the same rights and financial support considerations as in any other case.
7. Whether the Amendment to Pa. R.C.P. 1910.16-2(b)(2) violates 23 Pa. C.S.A. § 4322 by failing to treat similarly situated parents and children in the same manner when it counts a disabled and other social security recipient parent's income differently than all other parents in the Commonwealth depending on if they are custodial or not.
8. Whether Pa. R.C.P. 1910.16-2(b)(2) violates Social Security regulations §404.360 and 42 U.S.C. § 402 by directing the children's derivative payments, defined as payments made to children of disabled parents when the child(ren) depend on the disabled parent for support, to be largely credited to the non-disabled non-custodial parent to satisfy part of their child support obligation.
9. Whether Pa. R.C.P. 1910.16-2(b)(2) violates Social Security regulations Sec. 459. [42 U.S.C. 659](a), and (i)(2) which only allows for social security benefits to be subject

to legal process in the case of the obligor and does not authorize benefits paid to the payee to be subject to legal process and applied to the obligor's child support obligation.

10. Whether the court should have ordered that the social security derivative payments to the children which are made to Appellant as the children's Representative Payee who are in her primary care, based on her past work history and current disability, be fully credited to her instead of giving Father the overwhelming majority of this credit thereby reducing his child support obligation.
11. Whether, while granting Appellant's exception that the hearing officer did not address the federal dependency tax exemptions being used by Father retroactively for the year 2011 despite paying unallocated alimony/child support for the entire year, the court should have ordered a recalculation of Father's income and award child support under Pa. R.C.P. 1910.16-2(b)(2) due to the huge lump sum windfall Father gained by removing \$16,032.00 from his income that year, plus using all 3 dependency tax exemptions and the Child Tax Credit instead of only ordering that the hearing officer determine if he had included the Child Tax Credit in Father's child support order for future years.
12. Whether the court should have further ordered that Mother be reimbursed for the tax she had to pay for the year 2011 for an entire year of unallocated support that was fully taxable to her, particularly in light of Father's tremendous financial windfall he enjoyed by claiming the exemptions.

Appellant's brief at 3-5.

Our standard of review is well settled:

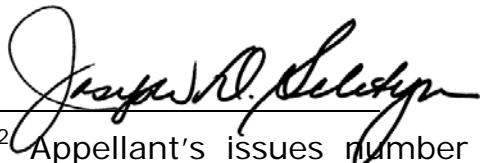
In our appellate review of child support matters, we use an abuse of discretion standard. A support order will not be disturbed on appeal unless the trial court failed to consider properly the requirements of the Rules of Civil Procedure Governing Actions for Support, Pa.R.C.P. 1910.1 *et seq.*, or abused its discretion in applying these Rules. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will . . . discretion is abused. This is a limited role and, absent a clear abuse of discretion, the appellate court will defer to the order of the trial court. A finding of abuse is not lightly made but only upon a showing of clear and convincing evidence.

Christianson v. Ely, 575 Pa. 647, 654-655, 838 A.2d 630, 634 (2003)
(citations and quotation marks omitted).

Our review of this matter indicates Judge Bicket addressed Mother's issues in his opinion filed on December 10, 2012 at Superior Court docket number 1605 WDA 2012, and we adopt it as our own.² As we discern no abuse of discretion, we affirm. **Christianson, supra.**

Affirmed.

Judgment Entered.



² Appellant's issues number 11 and 12 are waived. Appellant's *pro se* status does not excuse her failure to comply with the rules of appellate procedure; specifically, Pa.R.A.P. 302(a). As such, appellant's failure to raise the federal dependency tax exemptions award for 2011 before the trial court following the November 7, 2012 order is waived. **See Jahanshahi v. Centura Development Co., Inc.**, 816 A.2d 1179, 1189 (Pa.Super. 2003) (stating it is axiomatic that claims that were not raised in the trial court may not be raised for the first time on appeal).

J. A25014/13

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/5/2013

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

COLLEEN M. STROM,

Plaintiff,

v.

MICHAEL C. STROM,

Defendant.

Opinion of the Trial Court

Docket: FD-09-007088-009
No.: 1605 WDA 2012

BY:

Honorable Alexander P. Bicket
440 Ross Street
Suite 5069
Pittsburgh, PA 15219

COPIES TO:

Pro Se Plaintiff:
Colleen M. Strom
2361 Tilbury Avenue
Pittsburgh, PA 15217

Pro Se Defendant:
Michael C. Strom
3753 Evergreen Drive
Monroeville, PA 15146

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DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

69

STROM v. STROM

1605 WDA 2012

Opinion of the Trial Court

Appellant, Colleen M. Strom, has filed a Notice of Appeal from the Order of Court that was entered on September 11, 2012 wherein I dismissed three of her four exceptions to the findings and recommendations issued by Hearing Officer Joseph Kulik on January 4, 2012 and remanded the matter to the hearing officer for additional proceedings regarding her fourth exception: that Hearing Officer Kulik erred in not properly addressing the Federal Dependency Tax exemptions that had been previously awarded to Appellee Husband for the 2011 tax year.

The relevant procedural history of the case is as follows:

Appellee Husband, Michael C. Strom, filed a Complaint in Divorce in the Court of Common Pleas of Allegheny County, Pennsylvania, on January 15, 2009. Appellant Wife responded to the Complaint by filing an Answer and Petition to Raise Economic Claims on or about May 14, 2009. By Order of Court dated October 7, 2009, Appellee Husband was ordered to pay the sum of \$1,336.00 per month to Appellant Wife as unallocated alimony *pendente lite* and support for the parties' three (3) children. A Master's Hearing regarding the parties' claims for equitable distribution and related economic claims was held before Master Peggy Ferber on March 2, 2011. On or about September 12, 2011, Master Ferber recommended, in relevant part, that:

“current APL/Child support Order remain in effect until the divorce is granted and the equitable distribution has been settled. Once that is finalized, the Master recommends that Wife receive alimony in the amount of \$500/mo. *This amount will need to be factored into Wife's net income calculation of a revised child support obligation in accord with the entry of the divorce and the reduction in Husband's net income* (emphasis added). The Master finds that

\$500 is reasonable given Wife's medical and prescription expenses. If it is discovered that Wife's medications are covered by Medicaid after all, Husband may petition the Court for a modification of the alimony award. In addition, any alimony will terminate in the event of Wife's remarriage or cohabitation, or Husband's death, disability or retirement (assumed to be at age 66). The Master also recommends that Husband be awarded the three children for the federal dependency exemption each year as the child support she will receive is non-taxable to her but is still taxable to Husband."

Neither party filed Exceptions to the Master's Report and Recommendation.

A Decree in Divorce was granted on October 4, 2011. On or about October 13, 2011, Appellee Husband filed a Petition for Modification of the Existing Support Order in accordance with the Master's prior directive. A conference/hearing regarding the petition for modification was subsequently heard on January 4, 2012. After the conclusion of the January 4, 2012 hearing, Hearing Officer Joseph Kulik recommended that Appellee be ordered to pay the sum of seven hundred, sixty two dollars (\$762.00) a month for the support of the parties' three children; in addition to the five hundred dollars (\$500.00) per month alimony award to Appellant. Appellant filed Exceptions to the Hearing Officer's findings and recommendations on or about January 24, 2012. By Order of Court dated September 11, 2012, the undersigned denied three of the Appellant's four exceptions (regarding Appellant's medical costs, the affect of the medical costs as a basis to deviate from the guideline figures for child support, and the alleged unfairness of the application of Pa. R.C.P. 1910.16-2 regarding derivative social security benefits); granted the Appellant's final exception regarding her claim that the hearing officer had erred by not properly addressing the Federal Dependency Tax exemptions that had been awarded to Appellee Husband for the year 2011 and remanded the matter back to Hearing Officer Kulik for additional proceedings to determine if the Child Tax Credit had been properly considered in the calculation

of Appellee Husband's net income. By Order of Court dated September 20, 2012, the remand hearing was scheduled to be heard before Hearing Officer Kulik on October 17, 2012.

Prior to the scheduled date of the remand hearing, Appellant filed a Notice of Appeal to the Superior Court of Pennsylvania from the order of court that I issued on September 11, 2012. At the conclusion of the remand hearing on October 17, 2012, Hearing Officer Kulik recommended that no change be made to the amount of support (\$762/m) that he previously recommended be paid to Appellant on January 4, 2012. Court records indicate that neither party filed exceptions to the Hearing Officer's Recommendation. However, Appellant subsequently filed a Petition for Modification of the Existing Support Order wherein she avers that Appellee Husband has had an increase in his income. A conference/hearing regarding the petition for modification is presently scheduled to be heard on January 18, 2013.

The undersigned's initial response to the filing of the underlying Notice of Appeal is to opine that said appeal should be quashed/dismissed by this Honorable Court as having been filed as an Interlocutory Appeal with neither right nor permission, in clear violation of Pennsylvania Rules of Appellate Procedure 311, 312 and 341. More specifically, the undersigned asserts that the order of court that was entered on September 11, 2012 was not a "final order" for appellate purposes as it did not "dispose of all claims and of all parties" nor was it ever expressly determined that "an immediate appeal would facilitate resolution of the entire case." Pa. R.A.P. 341. Quite the contrary, the order of court that was entered distinctly provided that a remand hearing would be scheduled before Hearing Officer Kulik to determine if the hearing officer had properly applied the Federal Child Tax Credit in the calculation of Appellee's net income for child support purposes. As such, said order must be deemed "interlocutory". Moreover,

Appellant did not file a petition to file an interlocutory appeal with the Prothonotary of the Superior Court within the requisite thirty (30) days after the entry of the order in question [Pa. R.A.P. 1311] and the Statement of Errors Complained of on Appeal that was filed by Appellant on November 1, 2012 does not reference any of the factors listed in Pa. R.A.P. 311 as serving as a proper basis to file an interlocutory appeal as of right. Still, while the undersigned is thoroughly convinced that the within appeal is interlocutory and should be dismissed as such, I will endeavor to address the fundamental issues that were raised by the Appellant in her voluminous Statement of Errors Complained of on Appeal as it would appear from the record of the instant case that Appellant will otherwise be “out of court” on the issues that she initially raised in her appeal due to her failure to file Exceptions to the Recommendations issued by Hearing Officer Kulik on October 17, 2012.

A. Deviation from the Support Guidelines based on Appellant’s Medical Costs

In sub-paragraphs A), C), and D) of her Statement of Errors Complained of on Appeal, Appellant asserts that the trial court erred and abused its discretion by both failing to permit her to submit evidence as to her high medical costs and by failing to deviate upward from the guideline figure of support for the parties’ three (3) children based upon these medical costs.

The record in the instant case reflects that after the conclusion of the March 2, 2011 Master’s Hearing, Appellant Wife was awarded permanent alimony in the sum of five hundred dollars (\$500.00) per month “given Wife’s medical and prescription expenses.” Master’s Report and Recommendation, pages 9-10.¹ At the underlying child support hearing on January 4, 2012,

¹ The record additionally indicates that: a) Appellant Wife receives \$932.00 per month in Social Security Disability (SSDI) benefits; b) Appellant Wife receives a derivative benefit of

Appellant initially testified that her medical expenses were going to increase to \$650.00 a month (H.T., p. 12). When Hearing Officer Kulik requested evidence of the medical expenses, Appellant responded, "I can give this [evidence of medical expenses] to you. I actually gave this to them at trial. It is the same identical things." (H.T., p. 14, emphasis added.) Appellant supplemented this evidence with testimony regarding her prescriptions and co-pays but ultimately conceded that she had both presented the evidence of her increased medical costs at the prior Master's hearing and "didn't have a problem" with the Master's decision regarding the amount of the award of alimony to her in light of these medical and prescription expenses (H.T., pp. 15-19). Despite the latter concession, Appellant requested an upward deviation from the guideline figure of support based on her medical expenses at the underlying support proceeding (H.T., p. 19). In his Hearing Summary and Recommendation, dated January 4, 2012, Hearing Officer Kulik recommended that Appellant's request for an upward deviation be denied as "neither side has provided any basis to deviate from guideline calculation." As the undersigned agreed with the hearing officer, the first two of Appellant's exceptions were denied by order of court dated September 11, 2012.

Pennsylvania Rule of Civil Procedure 1910.16-5 (b) sets forth that, "In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider:

- (1) unusual needs and unusual fixed obligations;

\$465.00 a month for the parties' three minor children from the Social Security Administration; and c) Appellant Wife became eligible for Medicaid coverage once the Decree in Divorce was granted.

- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) the relative assets and liabilities of the parties;
- (6) medical expenses not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony pendente lite case, the duration of the marriage from the date of marriage to the date of final separation; and
- (9) other relevant and appropriate factors, including the best interests of the child or children.”

On its face, monthly medical expenses totaling \$650.00 per month would appear to be an “unusual” need or fixed obligation that would reasonably serve as a justifiable basis for deviating from the support guidelines. However, in the instant case, it must be remembered that Appellee Husband has already been ordered to contribute five hundred dollars (\$500.00) per month toward Wife’s medical and prescription expenses in the form of alimony to Appellant Wife. Thus, the undersigned concluded that Appellant Wife’s remaining medical expenses, in and of themselves, do not serve as a proper basis for deviating upward from the guideline figure of support for the parties’ three children after these limited expenses are viewed against all of the parties’ other circumstances and obligations. Accordingly, the undersigned denied the Appellant’s exceptions regarding medical costs.

B. Treatment of Social Security Derivative Payments

The vast majority of the Appellant’s remaining Errors Complained of on Appeal concern

the constitutionality and application of Pennsylvania Rule of Civil Procedure 1910.16-2 (b) in so far as the rule pertains to the treatment of social security derivative payments granted to a child due to a parent's death, disability or retirement.

First and foremost, the undersigned does not believe that the trial court is vested with the authority to deem that a rule of civil procedure that has been promulgated by the Supreme Court of Pennsylvania is unconstitutional. Moreover, even if the undersigned were vested with the authority to deem that application of Pa. R.C.P. 1910.16-2 was either unjust or unconstitutional, I would not so conclude.

Pennsylvania Rule of Civil Procedure 1910.16-2(b)(2) was originally enacted subsequent to the Superior Court of Pennsylvania's decision in Children and Youth Services of Allegheny County v. Chorgo, 341 Pa. Super. 486, 481 A.2d 892 (1985), that "the amount of child support directly payable by appellant should be reduced by the amount of the social security benefits [made to appellant's children]." Id., at 1378. As the Court noted in Chorgo, this issue was one of first impression in the Commonwealth of Pennsylvania but several cases from other jurisdictions had arrived at the same conclusion (citations omitted). See Footnotes 1 and 3, Id. at 1376. As the Court further opined:

"The Vermont Supreme Court noted that: 'These payments are in sense, a substitute for the wages the obligor would have received but for the disability, and from which, the court ordered payments would otherwise have been made ... In theory, at least, the actual source of payments is of no concern to the party having custody as long as they are in fact made.' Davis v. Davis, 141 Vt. 398, 401, 449 A.2d 947, 948 (1982).

The same practical approach was taken in Binns v. Maddox, 327 So.2d 726, 728 (Ala.Ct.App. 1976).

An order of support is for the benefit of the children, even though directed to be paid to the mother or other custodian. *If the sum directed to be paid by the father is paid by the government through social security benefits derived from the account of the father, the purpose of the order has been accomplished.*" The father is entitled to be credited with such payments against his liability under the decree.

In a similar vein, the Missouri Court of Appeals wrote the following: 'The use of social security payments to satisfy a child support obligation is merely a change in the manner of payment; the nature of the funds is the same.' *McClaskey v. McClaskey*, 543 S.W.2d 832 (Mo.Ct.App.1976)."

The rule was most recently modified on August 26, 2011 and, at present, Pa. R.C.P. 1910.16-2

(b)(2) provides that:

"If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement, death or disability, the benefits the child receives shall be added to the combined monthly net incomes of the obligor and obligee to calculate the income available for support on the vertical axis of the basic child support schedule set forth in Rule 1910.16-3. The presumptive amount of support as set forth on the schedule at the combined income of the obligee, obligor and child's benefits shall then be reduced by the amount of the child's benefits before apportioning the remaining support obligation between the parties pursuant to Rule 1910.16-4. This calculation presumes that the primary custodial parent, or the shared custodial parent who is the obligee, is receiving the child's benefits. In cases in which the obligor is receiving the child's benefits, the amount of the child's benefits shall be added to the obligor's income and support shall be calculated as in any other case without deduction of the amount of the benefit from the presumptive amount of support set forth in the basic support schedule. For purposes of determining the support obligation of a surviving parent when the child is receiving benefits as the result of the other parent's death, the income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child."²

² The undersigned notes that the most significant modifications to former Rule 1910.16-2

In her Statement of Errors Complained of on Appeal, Appellate argues, in relevant part, that:

“F) The new amendment to Rule 1910.16.2 from Septemeber 10, 2011 is unconstitutional and in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 26 of the Pennsylvania Constitution as it treats disabled custodial parents and their children differently than all other parents, including disabled non-custodial parents in the way the Rule orders income to be counted and deprives disabled custodial parents and their children of the same rights and financial support considerations as in any other case.

G) The new amendment to Rule 1910.16.2 from Septemeber 10, 2011 violates Pa Statute 23 Pa. C.S. §4322(a)(3) by treating disabled parents and their children differently by counting their disabled parent’s income differently depending on if the disabled parent is custodial or non-custodial.

(H) PA Rule 1910.16-2 violates Social Security Code of Regulations §404.360 and 42 U.S.C. §402 by directing the children’s social security payments, defined as payments made to the children of disabled parents when the child depends on the disabled person for support, to be credited to the non-diabled non-custodial parent.

(I) PA Rule 1910.16.2 violates Social Security Code of Regulations Sec. 459. [42 U.S.C. 659] (a), and (i)(2) which directs Social Security benefits to be garnished and applied to child support payments owed by the payor and specifically defines child support as money owed by an individual for the support and maintenance of a child, or a child and the parent with whom the child is living.”

For the reasons set forth above, the undersigned will add no further opinion regarding the constitutionality and fairness of Pennsylvania Rule of Civil Procedure 1910.16-2 (b)(2) except to note that:

1) Pa. R.C.P. 1910.16.2 (b)(2) neither treats disabled custodial parents and their children differently than all other parents nor deprives disabled custodial parents and their children of the

(b)(2) concern “cases in which the obligor is receiving the child’s benefits” which is not the circumstance in the instant case.

same rights and financial support considerations as in any other case as Appellant argues in her Statement of Errors Complained of on Appeal;

2) while Appellant is correct that the new amendments to Pa. R.C.P. 1910.16-2 (b)(2) treat a disabled parent's income differently depending on whether he or she is the custodial or non-custodial parent, the most recent variation of the rule specifically provides that "this calculation presumes that the primary custodial parent or the shard custodial parent who is the obligee, is receiving the child's benefits," as is the circumstance in the instant case, and does not provide for a reduction from presumptive amount of support where the non-custodial parent is receiving the child's derivative benefits;

3) 42 U.S.C.S. §402, sub-section (d) merely sets forth the factors and requirements for the receipt of Social Security benefits by a child of an individual that is entitled to receive retirement, death or disability insurance benefits and does not contain a single reference to the treatment of Social Security derivative benefits in the calculation of a parent's child support obligation; and,

4) there is no logical connection between the provisions set forth in Pa. R.C.P. 1910.16-2 (b)(2) regarding the treatment of Social Security derivative benefits in the calculation of a parent's child support obligation and 42 U.S.C.S. §659 which sets forth the basis and requirements necessary for the United States of America to withhold and garnish income in a child support matter.

The latter is not only true in the instant case. It is similarly true in all cases involving a parent's obligation to provide support for his or her children as in no circumstance can this or any court of competent jurisdiction legally order the garnishment of Social Security derivative

benefits. See 42 U.S.C.S. §659.

C. Remaining Issues


In sub-paragraphs B) and M) of her Statement of Errors Complained of on Appeal, Appellant argues that the trial court both erred and abused its discretion by adding her alimony award to the calculation of her overall income for child support purposes and by failing to deviate upward from the guideline figure of support for the parties three children after adding the alimony award to her overall income for child support purposes.

Pennsylvania Rule of Civil Procedure 1910.16-2 (a) provides, in relevant part, that “The term ‘income’ is defined by the support law, 23 Pa. C.S.A. §4302, and includes income from any source. The statute lists many types of income including, but not limited to: ... (7) alimony if, in the discretion of the trier of fact, inclusion of part or all of it is appropriate;” Moreover, as the Note to Pa. R.C.P. 1910.16-2 (a)(7) adds, “Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient’s gross income must also vary ... if alimony is intended to finance the obligee’s general living expenses, inclusion of the alimony as income is appropriate.” As the award of alimony to Appellant was based solely on her medical and prescription expenses, there can be little or no doubt that the award of alimony to Appellant was intended to finance the Appellant’s general living expenses. As such, there can be little or no doubt that Hearing Officer Kulik neither erred nor abused his discretion by including the award of alimony in the calculation of the Appellant’s net income for child support purposes. Conversely, Pennsylvania Rule of Civil Procedure 1910.16-5 does not list “awards of alimony” as an enumerated factor to deviate from the amount of support determined by the guidelines. As such, there can be little or no doubt that the undersigned

neither erred nor abused his discretion by failing to consider the impact of the award of alimony on the calculation of Appellant's income for support purposes as a factor for deviation from the guideline figure of support for the parties' three children.

All of the remaining allegations of error that are listed in the Appellant's Statement of Errors Complained of on Appeal concern the court's treatment of dependency tax exemptions, the federal child tax credit, and the federal earned income credit. As the Order of Court that was issued by the undersigned on September 11, 2012 remanded the case to Hearing Officer Kulik for additional proceedings regarding these issues, I, the undersigned trial judge, will simply reiterate my earlier opinion that the underlying appeal should be quashed/dismissed by this Honorable Court.

BY THE COURT:


_____, J
Alexander P. Bicket