IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 19, 2002 Session

# STATE OF TENNESSEE, EX REL TIFFAYNE N. RAYBON, ET AL. v. ANTHONY McELRATH

**Appeal from the Juvenile Court for Davidson County**
**Nos. 9619-26935, 9619-26937 & 9919-51570 Betty Adams Green, Judge**

---

**No. M2001-01295-COA-R3-JV - Filed October 22, 2003**

---

This appeal involves an unemployed and disabled father's obligation to support three of his non-marital children. The mothers of the three children filed separate petitions in the Davidson County Juvenile Court seeking to compel the father to pay child support. The father responded that his only source of income – the benefits he receives as a disabled adult child of a deceased worker under 42 U.S.C.A. § 402(d) (West 2003) – should not be treated as income for the purpose of the Child Support Guidelines. Both the referee and the juvenile court judge disagreed and directed the father to pay child support. The father appealed. We have determined that the juvenile court erred by treating the father's Section 402(d) benefits as income for the purpose of calculating child support.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed**

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and BUDDY D. PERRY, SP. J., joined.

Clark Lee Shaw, Nashville, Tennessee, and Laura Tek, Madison, Tennessee, for the appellant, Anthony McElrath.

Paul G. Summers, Attorney General and Reporter, and Stuart F. Wilson-Patton, Senior Counsel, for the appellee, State of Tennessee, on behalf of Tiffayne N. Raybon and Leah Cheatham.

## OPINION

### I.

Anthony McElrath is thirty years old. He has been legally blind since birth and is borderline mentally retarded. These disabilities render him unemployable and, as far as this record shows, he has never held a paying job. His only source of income is the $630 per month in Social Security Benefits he receives under 42 U.S.C.A. § 402(d) (West 2003) as a disabled adult child of a disabled,

and now deceased, parent. He resides with his mother in an apartment in a subsidized housing project in Nashville.

Mr. McElrath is the father of five non-marital children by three women. Two of these women – Leah R. Cheatham and Tiffayne N. Raybon – are seeking child support from Mr. McElrath in this case. In February of 1993 Ms. Cheatham gave birth to Mr. McElrath's first child. In February of 1996, Ms. Raybon gave birth to Mr. McElrath's second and third children, who are twins. Mr. McElrath's fourth and fifth children were born to Mr. McElrath's current girlfriend. He has never supported any of his children on a regular basis, although he claims that he provides his current girlfriend money when he is able.

In November 1996, after Mr. McElrath acknowledged that he was the father of Ms. Raybon's twins, Child Support Services of Davidson County ("Child Support Services")[1] filed a child support petition on behalf of Ms. Raybon in the Davidson County Juvenile Court. A referee ordered Mr. McElrath to pay Ms. Raybon $185 per month in child support and awarded Ms. Raybon a $3,587 judgment for the arrearage. Mr. McElrath has never made any of the child support payments pursuant to this order. Eventually, he petitioned the juvenile court to discontinue his child support obligation because his disability rendered him unable to support his children.

In November 1999, Child Support Services filed a petition on behalf of Ms. Cheatham to have the parentage of her child established and to have Mr. McElrath ordered to pay child support. Court-ordered genetic testing confirmed that Mr. McElrath is the biological father of Ms. Cheatham's child. Mr. McElrath moved to dismiss the petition, again asserting that his disability prevented him from paying child support.

The juvenile court consolidated the petitions filed on behalf of Ms. Raybon and Ms. Cheatham. Following a hearing, a referee determined that Mr. McElrath's benefits under § 402(d) should be treated as gross income under the Child Support Guidelines and ordered him to pay child support to Ms. Raybon of $180.90 per month for the twins and to Ms. Cheatham of $80.00 per month. The juvenile court affirmed the referee's decision, and Mr. McElrath has appealed to this court.

## II.
## THE STANDARD OF REVIEW

This appeal presents a single issue – whether the benefits Mr. McElrath receives under Section 402(d) as the disabled adult child of a deceased parent may be considered gross income for the purpose of calculating his child support obligations. The issue presents a pure question of law,

[1]Child Support Services of Davidson County is a private entity that contracted with the Tennessee Department of Human Services to provide Title IV-D child support collection services in Davidson County. Prior to 1992, the District Attorney General for the Twentieth Judicial District had performed these services. *State ex rel. Buchanan v. Buchanan*, No. M1998-00962-COA-R3-CV, 2002 WL 75932, at *2 n.3 (Tenn. Ct. App. Jan. 22, 2002) (No Tenn. R. App. P. 11 application filed).

and, accordingly, we will review the juvenile court's decision without applying Tenn. R. App. P. 13(d)'s presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002); *Willis v. Willis*, 62 S.W.3d 735, 737-38 (Tenn. Ct. App. 2001).

## III.
## MR. MCELRATH'S 42 U.S.C.A. § 402(d) BENEFITS

From their inception, the Child Support Guidelines promulgated by the Tennessee Department of Human Services have contained an expansive definition of gross income. Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3)(a) (1997) defines "[g]ross income" as "all income from any source . . . whether earned or unearned, and includes but is not limited to, the following: . . . benefits received from the Social Security Administration, i.e. Title II Social Security benefits." However, in 1990, the Tennessee Supreme Court held that Supplemental Security Income ("SSI") benefits should not be treated as "gross income" under the guidelines, notwithstanding the explicit inclusion of "benefits received from the Social Security Administration" in the definition of "[g]ross income." The Court reasoned that SSI benefits should not be included, because they are not a form of remuneration for prior employment but rather are part of a "safety net program" designed to protect people with very low incomes who are unemployed and unemployable. *Tennessee Dep't of Human Servs. ex rel. Young v. Young*, 802 S.W.2d 594, 597 (Tenn. 1990).

Following the Tennessee Supreme Court's decision in *Young*, the Department of Human Services amended the guidelines to explicitly exclude from the definition of "[g]ross income" any "benefits received from means-tested public assistance programs otherwise exempt by federal law or regulations." Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3)(c) (1997). While the amended guideline did not define what a "means-tested public assistance program" was, it identified food stamps, aid to families with dependent children, and SSI benefits as examples. Accordingly, it falls to us to determine whether benefits under Section 402(d) – disabled adult children of a deceased parent – are the sort of public assistance that should be excluded when determining a parent's "gross income."

### A.
### APPLICATION OF TENN. COMP. R. & REGS. R. 1240-2-4-.03(3)

A public assistance program is "means-tested" if eligibility for the benefit or its amount is determined on the basis of the income or resources of the recipient. *Riggs v. Riggs*, 622 N.W.2d 861, 866-67 (Neb. 2001); *Forbes v. Forbes*, 610 N.E.2d 885, 887-88 (Ind. Ct. App. 1993). We have determined that the benefits paid to disabled adult children of deceased disabled workers under Section 402(d) are means-tested public assistance benefits for the purpose of Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3). Accordingly, they should not be included in the calculation of "gross income" under the Child Support Guidelines.

Persons who are older than eighteen years of age are entitled to receive Section 402(d) benefits in only two circumstances. Assuming that they meet the other applicable requirements, an individual who is over the age of eighteen may receive Social Security benefits: (1) until their nineteenth birthday if they are full-time elementary or secondary school students, or (2) if they are disabled.[2] It is the latter provision that is at issue here.

In Section 402(d), the term "disability" means the "inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment . . . which has lasted or can be expected to last for a continuous period of not less than 12 months."[3] A person shall be deemed to be disabled only if

> his [or her] physical or mental impairment or impairments are of such severity that he [or she] is not only unable to do his [or her] previous work but cannot, considering his [or her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.[4]

Otherwise qualified persons who are "statutorily blind" are entitled to receive benefits under Section 402(d) if they are not engaged in "substantial gainful activity."[5] Whether a person is engaged in "substantial gainful activity" depends upon his or her average monthly earnings.[6]

The provision of disabled adult child benefits under Section 402(d) qualifies as a means-tested public assistance program for the purpose of Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3)(c) because the eligibility to receive these benefits is based on the amount of the recipient's earnings. Mr. McElrath is eligible to receive these benefits as long as he meets all the eligibility requirements, including the requirement that his average monthly income not exceed $1,170. It is undisputed that Mr. McElrath currently qualifies for benefits under Section 402(d). It is equally undisputed that his disabilities render him both unemployed and unemployable and that throughout his life he has never been able to obtain a paying job. Accordingly, the $630 monthly benefit Mr. McElrath receives under Section 402(d) is exempt under Tenn. Comp. R. & Regs. r. 1240-2-4-.03(3)(c) and should not have been included in calculating his "gross income" for the purpose of determining the existence and extent of his monetary child support obligation.

---

[2] 1 BARBARA SAMUELS, SOCIAL SECURITY DISABILITY CLAIMS pt. II, ch. 5, § 5:15 (2d ed. 1994) (summarizing eligibility requirements for disabled adult child benefits); 42 U.S.C.A. § 402(d)(1)(B); 20 C.F.R. §§ 404.350(a)(5), 404.367 (2003).

[3] 42 U.S.C.A. § 423(d)(1)(A) (West 2003); *see* 20 C.F.R. § 404.1505(a) (2003).

[4] 42 U.S.C.A. § 423(d)(2)(A).

[5] 20 C.F.R. §§ 404.1581, 404.1584(b) (2003).

[6] 20 C.F.R. § 404.1574 (2003).

## B.
## FEDERAL EXEMPTION FROM GARNISHMENT

The Tennessee Supreme Court's decision to exclude Social Security benefits in calculating a parent's gross income for purposes of child support rested, in part, on its interpretation and understanding of purposes behind 42 U.S.C.A. § 407(a) (West 2003). Under Section 407(a), SSI benefits are not subject to garnishment. The Court noted that while the federal anti-garnishment statute contains exemptions for certain types of benefits, these are limited to "moneys . . . the entitlement to which is based on remuneration for employment." 42 U.S.C.A. § 659(a) (West 2003). The Court held that SSI benefits were based entirely on need and were, therefore, not considered to be benefits based on remuneration for employment under federal law. *Tennessee Dep't of Human Servs. ex rel. Young v. Young*, 802 S.W.2d at 597.[7]

The limitation of the Section 659(a) exemption to benefits based on "remuneration for employment" applies only to benefits based on the recipient's employment. It cannot be extended to benefits based on employment of the recipient's parents or other family members. Thus, the fact that Mr. McElrath's father was employed before his death is not relevant. It is undisputed that Mr. McElrath has never been employed and, therefore, that no employer has contributed to the Federal Disability Insurance Trust Fund on his behalf. Accordingly, his Section 402(b) benefits are not based on "remuneration for employment" under federal law.

The SSI benefits and Section 402(d) benefits at issue here are somewhat similar in purpose. SSI benefits are intended to provide a guaranteed minimum income to persons who cannot work because of age, blindness, or disability. *Schweiker v. Wilson*, 450 U.S. 221, 223, 110 S. Ct. 1074, 1077 (1981). They are, in the Tennessee Supreme Court's words, part of a "safety net program" intended for the recipient alone. *Tennessee Dep't of Human Servs. ex rel. Young v. Young*, 802 S.W.2d at 597, 599.

Similarly, Section 402(d) assistance is intended to provide a minimum level of support to disabled adults who cannot work and whose parents are unable to provide for them as a result of age, disability, or death. In 1956, when benefits were first extended to disabled adult children, the Senate Finance Committee explained that the purpose of the legislation was to provide coverage to children who had become "permanently and totally disabled" before reaching age eighteen because "[s]uch children are as dependent on their parents after attaining age 18 as before and therefore the committee believes it is important to fill this gap in the program by providing benefits for disabled children." S. Rep. No. 84-2133 (1956), *reprinted in* 1956 U.S.C.C.A.N. 3877, 3878. In 1972, Congress raised the age limit for eligibility to include individuals who became disabled before their 22nd birthday. The House Ways and Means Committee observed that:

> People under age 22 who become so seriously disabled that they are prevented from working generally depend on their parents for

[7] 42 U.S.C.A. § 401(b) (West 2003).

> their future support. . . . [I]t is appropriate and desirable to provide social security benefits for these disabled people after the insured parent dies, becomes disabled, or retires.

H. Rep. No. 92-231 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4989, 5037.

**IV.**

Parents have a "deeply rooted moral responsibility" to support their children. *Boggs v. Boggs*, 520 U.S. 833, 847, 117 S. Ct. 1754, 1764 (1997) (quoting *Rose v. Rose*, 481 U.S. 619, 632, 107 S. Ct. 2029, 2037 (1987)); *Baker v. Baker*, 169 Tenn. 589, 592, 89 S.W.2d 763, 764 (1935). In Tennessee, this moral responsibility is also a legally enforceable obligation,[8] but only when the parent from whom support is being sought has income from which this support can be paid. Thus, based on the current federal law and the Child Support Guidelines now in effect, Mr. McElrath is not receiving any "income" from which he can be ordered to pay child support. Accordingly, the juvenile court erred by ordering him to pay child support to Ms. Raybon and Ms. Cheatham. The judgment is reversed and the case remanded to the juvenile court with directions to dismiss the petitions for child support. We tax the costs of these appeals to Child Support Services of Davidson County for which execution, if necessary, may issue.

_____

WILLIAM C. KOCH, JR., J.

[8] Tenn. Code Ann. § 34-1-102(a) (2001); Tenn. Code Ann. § 36-5-101(a)(1) (Supp. 2002).