

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Norman Jones III,
Petitioner Below, Petitioner**

vs) **No. 11-0785** (Kanawha County 10-D-954)

**West Virginia Department of Health and
Human Resources, Bureau for Child
Support Enforcement, Respondent Below,
Respondent**

FILED

October 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Jones's appeal, filed by counsel Christopher Pritt, arises from the Circuit Court of Kanawha County, wherein the circuit court, on appeal from family court, found that petitioner's child support obligation should take into account his monthly veteran's disability benefits. This order was entered by the circuit court on April 6, 2011. Respondent Bureau for Child Support Enforcement filed its response, by counsel Kimberly Bentley, in support of the circuit court's order.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Respondent filed a petition for child support from petitioner after petitioner's child A.E. was born in December of 2009. After a hearing on this petition, the family court entered an order finding that petitioner's monthly veteran's disability benefits should be included in the calculation for determining his child support to A.E. Petitioner appealed this order to circuit court, arguing that monthly veteran's disability benefits are not considered "income" for purposes of determining child support. Upon review, the circuit court found West Virginia Code § 48-1-228 clear and unambiguous and that accordingly, petitioner's monthly veteran's disability benefits are properly included in the child support formula for A.E. Petitioner appeals this order here.¹

¹ The Court notes that the family court order was not included in the record for review and the circuit court order did not specify petitioner's obligation in child support for A.E. Petitioner does not raise any particular amount as error in his appeal, but only that it was error to use his monthly veteran's disability benefits in this calculation.

We review this case under the following standard:

In reviewing a final order entered by a circuit court judge upon a review of, or upon a refusal to review, a final order of a family court judge, we review the findings of fact made by the family court judge under the clearly erroneous standard, and the application of law to the facts under an abuse of discretion standard. We review questions of law *de novo*.

Syllabus, *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004).

On appeal, petitioner argues that the West Virginia Code does not reference veteran's disability as income for purposes of child's support. He restates "income" as defined in West Virginia Code § 48-1-230, subsections (1) through (4). He further argues that although West Virginia Code § 48-1-228(a) contemplates that "the income source [shall be considered] if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed", "income" must still fall within the categories outlined in subsections (1) through (4) of West Virginia Code § 48-1-230, of which veteran's disability is not included. Petitioner further argues that his monthly disability benefits would not be considered as a debt under subsection West Virginia Code § 48-1-230(3) because, similar to a paycheck, it is not owed until the day it is received.

Respondent argues that the family court and the circuit court were correct in applying West Virginia Code § 48-1-228 to petitioner's monthly veteran's disability benefits. In support, it argues that the definition of a debt found in West Virginia Code § 48-1-230(3) would encompass the payments made to petitioner from the Veterans Administration federal agency. Further, West Virginia Code § 48-1-228(a) plainly states that the standard for determining inclusion into child support hinges on whether the amount is one that would be used to support the child if the family lived together. If petitioner, child A.E., and A.E.'s mother lived together, petitioner's monthly benefits would have been used to care for A.E. Moreover, West Virginia Code § 48-1-228(d) outlines income to be specifically excluded in determining child support; of these, veteran's disability was not considered.

The Court finds no error or abuse of discretion. Our review of the record supports the circuit court's order. The circuit court did not abuse its discretion in finding that petitioner's monthly disability benefits should be calculated in determining child support for A.E.

For the foregoing reasons, we affirm the circuit court's decision.

Affirmed.

ISSUED: October 22, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh