

[Cite as *White v. Ohio Dept. of Aging*, 2003-Ohio-966.]

IN THE COURT OF CLAIMS OF OHIO

AURELIA M. WHITE	:	
Plaintiff	:	CASE NO. 2001-01027
v.	:	<u>MAGISTRATE DECISION</u>
DEPT. OF AGING	:	Anderson M. Renick, Magistrate
and	:	
DEPARTMENT OF ADMINISTRATIVE SERVICES	:	
Defendants/Third-Party Plaintiffs	:	
v.	:	
KWANZ MWANA OBU	:	
Third-Party Defendant	:	
	:	: : : : : : : : : : : : : : : :

{¶1} Plaintiff filed this action against defendants/third-party plaintiffs, The Ohio Department of Aging (ODA) and the Ohio Department of Administrative Services (DAS) to recover part of a lump-sum payment made by the Public Employees Retirement System (PERS) to third-party defendant Kwanz Obu, the father of plaintiff's child, Edgar. The amount sought by plaintiff represents an arrearage for child support that Obu owed to plaintiff on the date on which PERS made the lump-sum payment. Plaintiff alleges that DAS violated a statutory duty by failing to

timely notify the Franklin County Child Support Enforcement Agency (FCCSEA) that Obu had been terminated from his employment at ODA and that the violation delayed the issuance of an order requiring PERS to deduct Obu's child-support arrearage from a lump-sum payment to FCCSEA.

{¶2} On March 9, 1994, The Franklin County Court of Common Pleas, Domestic Relations Division, ordered Obu to pay monthly child support. On the same date, pursuant to the court order and former R.C. 3113.21,<sup>1</sup> FCCSEA issued a notice to DAS regarding the requirement that Obu's monthly child support payment be withheld from his pay. The notice directed DAS to continue withholding payments until FCCSEA notified it in writing to terminate or reduce the withholding. The notice also advised DAS that it was required to notify FCCSEA in writing within ten days of Obu's termination of employment. See former R.C. 3113.21(D)(1)(b)(viii).

{¶3} Obu was terminated from his position at ODA effective July 26, 1999. Pursuant to former R.C. 3113.21(H)(3)(d), "if an employer knowingly fails to notify the child support enforcement agency in accordance with division (D) of this section of any lump-sum payment to be made to an obligor, the employer is liable for any support payment not made to the obligee as a result of its knowing failure to give the notice as required by that division." DAS concedes that it inadvertently failed to send notification to FCCSEA as required by former R.C. 3113.21.

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At all times relevant hereto, the enforcement of child support orders, including the withholding or deduction of income of an obligor to pay child support obligations, was governed by former R.C. 3113.21.

{¶4} After his termination, Obu applied for a refund of his accumulated contributions to PERS. Although he owed an arrearage in child support payments, Obu received a full lump-sum payment from PERS on October 26, 1999, without any deduction for the child-support arrearage. The lump sum payment exceeded the amount of child support that was due. On November 3, 1999, FCCSEA filed a notice pursuant to former R.C. 3113.21 with the common pleas court that Obu was due a payment from PERS and recommended that the court issue a transmittal order. The common pleas court issued a "lump sum payment transmittal order" that directed PERS to deduct \$1,130.07 from the payment to Obu and transmit that amount to FCCSEA. However, because Obu had already received the lump-sum payment, the transmittal was not processed.

{¶5} On April 8, 2002, this court issued an entry approving a settlement agreement that included dismissal of the claims between plaintiff and defendants/third-party plaintiffs and ordered payment in the amount of \$1,130.91 be made by DAS to plaintiff.<sup>2</sup> DAS now seeks indemnification from Obu for the amount it paid plaintiff that represents the child-support arrearage which Obu owed on the date that he received his lump-sum payment from PERS.

{¶6} Generally, implied indemnification is appropriate in certain limited circumstances where a party owes only secondary legal responsibilities. *Mahathiraj v. Columbia Gas of Ohio, Inc.* (1992), 84 Ohio App.3d 554, 564. Implied indemnity refers to the

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According to the trial testimony and evidence, the difference between the original arrearage owed by Obu and the amount paid by DAS to plaintiff was due to a processing charge that was imposed by FCCSEA.

right of a person, who has been compelled to pay what another should have paid, to require complete reimbursement. *Hopkins v. Babcock & Wilcox Co.* (1985), 19 Ohio App.3d 291. In order for the rule of implied indemnity to apply, one party must be "chargeable" for the wrongful act of another. *Convention Center Inn. Ltd. v. Dow Chemical Co.* (1990), 70 Ohio App.3d 243.

{¶7} At trial, Obu acknowledged that the amount paid by DAS to plaintiff represented the child-support arrearage that he owed at the time he received the lump-sum payment from PERS. Nevertheless, Obu expressed concern that any payment he would make to DAS might not be credited against the child-support arrearage he owed.

{¶8} Upon review, the magistrate finds that the payment made by DAS to plaintiff represented an obligation for which Obu was originally responsible. Consequently, defendants/third-party plaintiffs are entitled to indemnification from Obu for the amount that was paid by DAS to plaintiff.

{¶9} Accordingly, judgment is recommended in favor of defendants/third-party plaintiffs in the amount of \$1,130.91.

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ANDERSON M. RENICK  
Magistrate

Entry cc:

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Case No. 2001-01027

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MAGISTRATE DECISION

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AMR/cmd  
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