

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHELE Y. DOTTS

Plaintiff - Appellee

-VS-

TIMOTHY J. SCHAEFER

Defendant - Appellant

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Craig R. Baldwin, J.

Case No. 2014 AP 03 0012

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Tuscarawas County
Court of Common Pleas, Case No.
2010 TC 02 0070

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

March 3, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

SCOTT J. MASTIN
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JOSEPH I. TRIPODI
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Baldwin, J.

{¶1} Appellant Timothy J. Schaefer appeals a judgment of the Tuscarawas County Common Pleas Court overruling his Civ. R. 60(B) motion for relief from judgment. Appellee is Michele Y. Dotts.

STATEMENT OF FACTS AND CASE

{¶2} The parties were divorced in August of 2010, and agreed that appellee would be the residential parent of their minor son, Tyler. Appellant began receiving Social Security disability benefits in October of 2010. Tyler was entitled to derivative benefits; however, appellant named his own mother as the representative payee for Tyler's benefits. Tyler began receiving the derivative benefits himself in May of 2012.

{¶3} Appellee filed a motion seeking to recover derivative benefits received by appellant's mother from October of 2010 through April of 2012. A hearing was held before a magistrate, at which both appellant and his mother testified that appellant used the derivative benefits himself. Although some of the money was used to improve an apartment so it would be nicer when Tyler visited, there was no evidence that the funds were used for Tyler. The magistrate recommended that appellant reimburse Tyler the sum of \$17,037.00, plus interest of \$306.13, for a total payment of \$18,367.95.

{¶4} Appellant filed objections to the magistrate's report which were overruled by the trial court, and the court entered judgment ordering appellant to pay \$18,367.95 on December 20, 2013. No appeal was taken from this order.

{¶5} Appellant filed a Civ. R. 60(B) motion for relief from judgment on February 26, 2014. The trial court overruled the motion. Appellant assigns two errors:

{¶6} “I. THE COMMON PLEAS COURT COMMITTED PREJUDICIAL ERROR AND ABUSED ITS DISCRETION IN ASSUMING SUBJECT MATTER JURISDICTION OVER APPELLANT’S SOCIAL SECURITY BENEFITS WHEN SAID JURISDICTION IS PREEMPTED BY FEDERAL STATUTE AND DECISIONS.

{¶7} “II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN OVERRULING APPELLANT’S 60(B) MOTION FOR RELIEF IN THAT THE COURT’S JUDGMENT ON ISSUES OF SOCIAL SECURITY, SOCIAL SECURITY PAYEE, AND ORDERING FUNDS ALREADY PAID BE DIRECTED TO APPELLEE, ARE SUBJECT TO THE DOCTRINE OF FEDERAL PREEMPTION AND NO JURISDICTION THEREON EXISTS IN STATE COURTS.”

I., II.

{¶8} We address both assignments of error together, as appellant argues in both assignments of error that the court erred in overruling his Civ. R. 60(B) motion because the trial court lacked subject matter jurisdiction over his Social Security benefits. He argues that jurisdiction lies solely in the federal courts.

{¶9} Appellant filed a Civ. R. 60(B) motion to vacate the judgment on the basis that the court lacked subject matter jurisdiction. However, “[t]he power to vacate a void judgment does not arise from Civ. R. 60(B), but rather, from an inherent power possessed by the courts in this state.” *Thomas v. Fick*, 9th Dist. Summit No. 19595, 2000 WL 727531 (June 7, 2000), quoting *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph four of the syllabus. A trial court’s decision to deny a motion to vacate judgment is reviewed on appeal for an abuse of discretion whether that motion is made pursuant to Civ.R. 60(B) or to the court’s inherent power at common law

to vacate a void judgment. *Spotsylvania Mall Co. v. Nobahar*, 7th Dist. Mahoning No. 11 MA 82, 2013–Ohio–1280, citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150, 351 N.E.2d 113 (1976). Determining whether a trial court has subject matter jurisdiction is reviewed de novo. *Wells Fargo Bank, N.A. v. Elliot*, 5th Dist. Delaware No. 13 CAE 03 0012, 2013–Ohio–3690.

{¶10} Appellant argues that the doctrine of federal preemption prohibited the trial court from ordering repayment of the benefits received by appellant's mother. He argues that federal law permits him to designate the recipient of the derivative benefits, and the state court is prohibited from interfering with this right, or from attaching such benefits.

{¶11} Appellant relies on 42 USCA 407(a), which provides:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

{¶12} While appellant relies on this statute to support his argument that he has a federal right to assign his benefits to anyone he chooses without interference from a state court, this Court has previously held that under 42 USCA 407(a), derivative benefits inure directly to the children of a disabled claimant and the claimant has no

ownership interest in these funds. *Rigel v. Rigel*, 5th Dist. Muskingum No. CT98-0021, 1999 WL 436824 (June 23, 1999).

{¶13} Regardless of whom appellant designated as the payee of Tyler's derivative benefits, federal law provides that the funds belong to the child and not to the disabled claimant. The court found that both appellant and his mother testified that appellant kept the derivative benefits for himself, and that appellant presented no evidence that any of the funds were used for Tyler. The trial court's judgment ordering appellant to repay these wrongfully diverted funds to Tyler is not in contravention of statute, as appellant was not entitled to these payments pursuant to federal law.¹

¹ Although not raised by assignment of error, we note that appellant is entitled to credit in his child support obligation for disability payments received by the minor child due to his disability. *Williams v. Williams*, 88 Ohio St.3d 441, 727 N.E.2d 895, 2000-Ohio-375, syllabus.

{¶14} The first and second assignments of error are overruled. The judgment of the Tuscarawas County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Hoffman, P.J. and

Farmer, J. concur.