

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Cynthia Parker
Appellant

Court of Appeals No. S-10-026
Trial Court No. 07 DR 1117

v.

Timothy Parker
Appellee

DECISION AND JUDGMENT

Decided: November 4, 2011

* * * * *

Michael D. Portnoy, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas which ordered appellant to pay appellee child support in an amount of \$274.70 per month for the parties' two minor children. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Cynthia Parker, sets forth the following sole assignment of error:

{¶ 3} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR TO PLAINTIFF BY CONCLUDING THAT PLAINTIFF MUST PAY CHILD SUPPORT

TO DEFENDANT EVEN THOUGH THE PARTIES' MINOR CHILDREN RECEIVE SOCIAL SECURITY BENEFITS IN AN AMOUNT GREATER THAN WHAT THEY RECEIVE FROM CHILD SUPPORT."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. This matter stems from a post-divorce proceeding between the parties. On June 1, 2009, a final divorce hearing was conducted between the parties. On June 5, 2009, a judgment entry was filed in which appellee was named the residential parent of the two minor children. Appellee, who suffers from a loss of vision which rendered him legally disabled, initially waived the receipt of child support payments from appellant, a non-disabled individual.

{¶ 5} On November 17, 2009, based upon new circumstances, appellee filed a motion against appellant requesting that appellant be ordered to pay child support. In support, appellee noted that in the intervening time period appellant repeatedly failed to exercise her visitation time with the children and thus was failing to contribute to the needs of the children.

{¶ 6} On November 18, 2009, the final judgment entry of divorce was filed. Appellee was designated the custodial parent of the two minor children. Appellant was not ordered to pay child support at that time.

{¶ 7} On January 26, 2010, the trial court conducted a hearing on several post-divorce motions, including the request by appellee that appellant be ordered to pay child support. On May 7, 2010, the trial court filed its judgment on the post-divorce motions.

As specifically relevant to the issue of child support calculations which underlies case, the trial court judgment stated, "* * * the social security benefits received by defendant [appellee] on behalf of the children, to wit, \$316.00 per child per month, should be added to his annual income to compute the percentage of contribution for child-support purposes." On June 7, 2010, appellant filed a timely notice of appeal.

{¶ 8} In the sole assignment of error, appellant asserts that the trial court erred and abused its discretion in its child support determination. Specifically, appellant claims it to be an abuse of discretion in ordering appellant to pay child support in a scenario in which the social security benefits that appellee receives for the children exceeds the amount of the court-ordered child support payment.

{¶ 9} This issue was specifically addressed by the Supreme Court of Ohio in *Williams v. Williams* (2000), 88 Ohio St.3d 441. The *Williams* court addressed the question of "[s]hould a disabled parent's child support obligation be directly set off by Social Security payments received on behalf of a minor child, or should the joint child support obligation of both parties be reduced by the amount of the Social Security payments?" Id. at 442. The Supreme Court held that only the disability recipient should receive full credit against that parent's personal child support obligation. Id.

{¶ 10} Ohio appellate courts have since interpreted and applied *Williams* unequivocally to mean that, for purposes of child support calculations, Social Security disability payments are to be included in the recipient's income and then credited back against that parent's child support obligation. See *Epitropoulos v. Epitropoulos*, 10th

Dist. No. 10AP-877, 2011-Ohio-3701; *Alexander v. Alexander*, 10th Dist. No. 09AP-262, 2009-Ohio-5856; *Hirzel v. Ooten*, 4th Dist. Nos. 06CA10, 07CA13, 2008-Ohio -7006; *Slowbe v. Slowbe*, 8th Dist. No 83079, 2004-Ohio-2411; and *Breen v. Kraus*, 12th Dist. No. CA2002-06-143, 2003-Ohio-505. Social Security payments are *not* credited against the total child support amount calculated based on both parents' incomes. *Id.* For example, if the recipient is the custodial parent, or obligee, the Social Security payments are "credited" to that parent and are presumed to be spent in support of the children. The non-custodial, non-recipient parent, or obligor, pays his or her percentage as calculated on the child support worksheet. If the recipient is the non-custodial parent, then the Social Security payments are credited against his or her child support obligation.

{¶ 11} In this case, the trial court properly included the Social Security payments in appellee's income and, based on both parents' incomes, the total child support was then calculated. Since appellee, the Social Security disability recipient, is the custodial parent, his social security payments paid on behalf of the children are credited automatically to his obligation and are presumed to inure to the benefit of the children. Appellant, the non-custodial, non-recipient parent, receives no credit from appellee's Social Security payments and is obligated to pay her percentage of the total child support amount as calculated on the worksheet. This is fair and correct, because if the parents were not divorced, the children would receive the benefit of both appellee's Social Security payments and appellant's income. Therefore, the trial court properly calculated the child support owed by appellant.

{¶ 12} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 13} The judgment of the Sandusky County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
