

[Cite as *Wortham v. Wortham*, 2010-Ohio-4524.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

FERN D. WORTHAM	:	
	:	Appellate Case No. 23831
Plaintiff-Appellant	:	
	:	Trial Court Case No. 09-DR-314
v.	:	
	:	
BROOKS WORTHAM JR.	:	(Civil Appeal from Common Pleas
	:	Court, Domestic Relations)
Defendant-Appellee	:	
	:	

.....
OPINION

Rendered on the 24th day of September, 2010.

.....

JAMES R. KIRKLAND, Atty. Reg. #0009731, 130 West Second Street, Suite 840,
Dayton, Ohio 45402
Attorney for Plaintiff-Appellant

BROOKS WORTHAM JR., 1316 McArthur Avenue, Dayton, Ohio 45408
Defendant-Appellee, *pro se*

.....

BROGAN, J.

{¶ 1} Fern Wortham appeals from the trial court’s judgment entry overruling her objections to a magistrate’s decision and sustaining appellee Brooks Wortham’s motion to modify his child support arrearage payment.

{¶ 2} Fern advances two assignments of error on appeal.¹ First, she contends the trial court lacked jurisdiction to modify the arrearage payment because it is a matter within the exclusive jurisdiction of the federal government. Second, she claims the trial court abused its discretion in lowering Brooks' arrearage payment from \$377 per month to \$75 per month. Brooks has not filed an appellate brief.

{¶ 3} The record reflects that the parties divorced in 1990 after having one child together. The child resided with Fern, and Brooks was ordered to pay child support. In July 2006, the trial court filed an order declaring the child emancipated and terminating Brooks' child-support obligation. At that time, Brooks had an unaudited child-support arrearage of \$72,640.56. In its 2006 emancipation order, the trial court directed Brooks to pay the arrearage at a rate of \$377 per month, which had been the amount of his child-support obligation. Thereafter, on August 4, 2009, Brooks moved to modify the arrearage payment. He supported his motion with two affidavits. In the first, he averred that he is disabled, that he receives Social Security disability income of \$727 per month, and that the payment order created a severe economic hardship. The second affidavit was one of financial disclosure. In that affidavit, Brooks indicated that he was unemployed and that his annual income was \$8,699 in disability benefits. He reported no assets of any significance. He reported monthly housing, food, and other living expenses totaling \$633. In addition, he reported various outstanding debts totaling \$20,873. His affidavit did not indicate that he was making any payments on these obligations.

{¶ 4} A magistrate held a hearing on Brooks' motion on September 9, 2009.

¹For purposes of clarity, we will refer to the parties by their first names.

On the day of the hearing, Fern moved to dismiss, arguing that the trial court lacked subject-matter jurisdiction to modify Brooks' arrearage payment. She insisted that the arrearage payment was exclusively a "Federal Government matter" because the Social Security Administration was withholding the arrearage payments from Brooks' disability checks. Based on the evidence presented, the magistrate rejected Fern's argument and made findings consistent with the facts set forth above. After taking into account Brooks' income, his expenses, and the size of the arrearage, the magistrate reduced his arrearage payment to \$75 per month.

{¶ 5} The magistrate's decision was filed on September 25, 2009. Thereafter, on October 5, 2009, Fern filed objections. One day later, she filed amended objections, making minor modifications. The trial court overruled the objections in a December 21, 2009 decision and judgment entry. After noting that a transcript was unavailable due to "technical problems with the recording system," the trial court determined that Fern's objections raised questions of law. It then found that the objections were untimely.² It nevertheless addressed them, rejecting Fern's arguments and ordering Brooks' arrearage payment reduced to \$75 per month. This appeal followed.

{¶ 6} In her first assignment of error, Fern repeats her claim that the trial court lacked jurisdiction to modify the amount of Brooks' monthly arrearage payment because it is a matter within the exclusive jurisdiction of the federal government. Fern

²We question the basis for this finding. The magistrate's decision was not filed until September 25, 2009. Doc. #32. Fern had fourteen days from that date to file her objections. Civ.R. 53(D)(3)(b). Fern filed her objections on October 5, 2009 and October 6, 2009, within the fourteen-day window. Doc. #34-35.

raises the issue in the context of a preemption argument and insists that the arrearage is a matter for the federal government to address because the Social Security Administration has been withholding \$377 per month from Brooks' disability checks to pay the arrearage. Fern contends a state court cannot tell the federal government what amount of money to withhold.

{¶ 7} We disagree. It is axiomatic that an Ohio trial court has jurisdiction to enter orders governing the payment of a child-support arrearage. See, generally, R.C. Chapter 3123. We are aware of no authority supporting the proposition that a trial court loses its jurisdiction when the Social Security Administration is the obligor's payor. In fact, federal law expressly authorizes state courts to issue withholding orders to collect federal funds to satisfy a child-support obligation. See, e.g., 42 U.S.C. 659(a). This includes Social Security benefits. *Neville v. Neville*, 99 Ohio St.3d 275, 277, 2003-Ohio-3624, ¶7 n.3; see, also, *Mizell v. Mizell*, Jefferson App. No. 00 JE 30, 2001-Ohio-3409 ("Further, under 42 U.S.C. § 659, social security disability benefits payable to a parent are subject to legal process to enforce the parent's outstanding child support obligations notwithstanding the exemption otherwise provided by 42 U.S.C. § 407.") . In our view, the trial court plainly had jurisdiction to reduce Brooks' monthly arrearage payment to \$75 and to file its September 2009 withholding notice instructing the Social Security Administration to withhold \$76.50 from his disability benefits.³

{¶ 8} In opposition to the foregoing conclusion, Fern claims the federal

³The \$76.50 consisted of a \$75 payment toward the arrearage and a two-percent fee payable to the Support Enforcement Agency.

government may take it upon itself, in its own discretion, to withhold various sources and amounts of federal dollars from a child-support obligor and apply those funds toward an arrearage. Even assuming, arguendo, that Fern's assertion is true, we see no reason why the federal government's discretionary ability to withhold \$377 from Brooks' benefits would preempt the trial court from requiring the Social Security Administration to withhold at least \$76.50.⁴ Although Fern's preemption argument is cursory, she appears to assert "conflict preemption." This type of preemption exists when it is impossible to comply with both state and federal requirements or when state law acts as an obstacle to the accomplishment and execution of a federal purpose. *Leppla v. Sprintcom, Inc.* 156 Ohio App.3d 498, 505, 2004-Ohio-1309, ¶12. The trial court's withholding notice instructed the Social Security Administration to withhold \$76.50 from Brooks' disability benefits. This state-imposed obligation would not conflict with a discretionary decision by the Social Security Administration to withhold even more money. Nor would the trial court's withholding notice act as an obstacle to any federal purpose. Fern's first assignment of error is overruled.

{¶ 9} In her second assignment of error, Fern claims the trial court abused its discretion in lowering Brooks' arrearage payment from \$377 per month to \$75 per month. She calculates that it will take Brooks, who is now sixty-four years old, another seventy-five years to pay his arrearage at that rate. She also relies on R.C. 3123.21, which provides that when an obligor has a current support obligation and an

⁴Parenthetically, we doubt whether the Social Security Administration independently decided that \$377 was the proper amount of money to withhold from Brooks' disability checks. Rather, this amount likely was withheld because it was the exact amount of his court-imposed monthly support obligation before his child's emancipation.

arrearage, it is rebuttably presumed that the monthly arrearage payment should equal at least twenty percent of the current support payment.

{¶ 10} Upon review, we find no merit in Fern’s assertion that the trial court abused its discretion in lowering Brooks’ arrearage payment to \$75 per month. An abuse of discretion occurs when a trial court “makes a decision that is unreasonable, arbitrary, or unconscionable.” *Huntington Natl. Bank v. Burch*, 157 Ohio App.3d 71, 2004-Ohio-2046, ¶14, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶ 11} The fact that it would take Brooks until age 139 to pay his arrearage at a rate of \$75 per month is certainly a relevant consideration. But it does not demonstrate an abuse of discretion in light of his limited income, living expenses, and other debts. Nor are we persuaded by Fern’s reliance on R.C. 3123.21, which applies when an obligor has both a current child-support payment due and an arrearage. As set forth above, the statute creates a presumption that the arrearage payment should be at least twenty percent of the current support payment. Brooks no longer has a current support payment, however, because his child has been emancipated. In any event, the \$75 per month arrearage payment the trial court ordered *is* almost exactly twenty-percent of Brooks’ previous child support obligation of \$377 per month.

{¶ 12} In light of Brooks’ financial situation, we cannot say the trial court abused its discretion in reducing his arrearage payment as it did. The second assignment of error is overruled, and the trial court’s judgment is affirmed.

.....

DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

James R. Kirkland
Brooks Wortham Jr.
Hon. Denise L. Cross