

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

M.F. Court of Appeals No. L-13-1047

Appellant Trial Court No. AD 99066315

v.

A.K. **DECISION AND JUDGMENT**

Appellee Decided: November 22, 2013

\* \* \* \* \*

Laurel A. Kendall, for appellant.

\* \* \* \* \*

**JENSEN, J.**

**I. Introduction**

{¶ 1} Appellant-mother, M.F., appeals the decision of the Lucas County Court of Common Pleas, Juvenile Division. The court granted appellee-father's motion to release funds being held by the Lucas County Child Support Enforcement Agency to appellee

and to adjust his arrears to zero. Appellant alleges that the funds were held as an arrearage for unpaid child support. She claims the funds are owed to her as custodial parent of the parties' daughter. We affirm the decision of the trial court.

## **II. Statement of Facts and Procedural History**

{¶ 2} The record reveals the following facts relevant to this appeal. The parties have a son and daughter together; the parties were never married to one another. Only the daughter's child support is at issue in this case.

{¶ 3} Appellant M.F. is the mother and custodial parent. Appellee A.K. is the father and obligor to a series of longstanding child support orders. The amount of support has fluctuated over the years, due to various changes in circumstances, including periods of appellee's unemployment and medical disability. This issue in this case is limited to which party is entitled to \$8,875.19 "on hold" by the Lucas County Child Support Enforcement Agency ("LCCSEA").

{¶ 4} On August 25, 2008, appellee filed for Social Security Disability benefits. His child support obligation at the time required him to pay appellant \$116.37 per month in support of his daughter, and he was current on his obligation. That is, he had an arrearage of zero. Beginning in February of 2009, appellee stopped paying, and child support arrears began to accrue. On August 24, 2012, the Social Security Administration approved appellee's request for disability benefits, retroactive to his application date, August 25, 2008.

{¶ 5} The retroactive award of benefits resulted in lump sum payments to appellee and derivative lump sum payments to his daughter. The record includes a computer printout from PNC Bank indicating that two “direct deposits” were made by the Social Security Administration into the daughter’s account: \$9,080.00 on October 1, 2012 and \$16,205.00 on October 5, 2012. The deposit of \$9080.00 represented back pay for the year 2012. In addition to the lump sum payments, the Social Security Administration began paying the daughter \$908.00 per month in derivative benefits.

{¶ 6} Meanwhile, the trial court, also on October 1, 2012, ordered the Social Security Administration to withhold \$8,875.19 from any lump sum distribution paid to appellee and to forward that amount to LCCSEA. An LCCSEA document dated October 21, 2012 indicates that \$8,875.19 had been collected and was “on hold.”

{¶ 7} On October 17, 2012, appellee filed a motion to modify child support as to his daughter. Appellee requested that (1) the existing child support order be terminated because his daughter’s monthly derivative benefit of \$908.00 exceeded his monthly support obligation; (2) the arrearage amount be changed to zero based upon the \$9,080.00 direct deposit by the Social Security Administration; and (3) the intercepted amount of \$8,875.19 withheld from his lump sum payment be released to him.

{¶ 8} A hearing was held on December 5, 2012. Appellee attended the hearing; appellant did not. The magistrate’s decision, journalized on December 17, 2012 reads, in part, “Child receives \$908 [per month] in SSD derivative from father’s SSD claim. This SSD exceeds the amount father would be ordered to pay of \$386.43 \* \* \*. LCCSEA is to

amend its records to reflect Obligor's assigned arrears to \$0 as of 10/17/12. *The SS monies of \$9080 on hold is to be paid to the [appellant]; and balance in excess of this returned to [appellee].*" (Emphasis added.)

{¶ 9} Appellee objected to that part of the decision that released the lump sum to appellant. The trial court found appellee's objection well taken. The court clarified that the daughter had, in fact, already received \$9,080.00 directly from the Social Security Administration. Given that fact, the trial court then released the lump sum on hold (i.e. \$8,875.19) to appellee. By order journalized on February 21, 2013, the court found,

The record further reflects that the minor child, through [appellant] received a lump sum SSD payment of \$9,080.00 on September 3, 2012 [sic]. The Court finds that since the minor child has already received a lump sum SSD payment in an amount that covers [appellee's] child support arrearage, LCCSEA is hereby ordered to release any funds held in escrow to Defendant/Father/Obligor. \* \* \* The Court hereby orders LCCSEA to immediately release any funds held in escrow to Defendant/Father/Obligor and amend its records to reflect a \$0 balance of unassigned arrears. The December 17, 2012 Magistrate's Decision \* \* \* is hereby corrected with the following replacement language: "LCCSEA is to amend its records to adjust Obligor's unassigned arrears to \$0. Any Social Security funds held in escrow with LCCSEA are to be immediately released, refunded, and paid to the Obligor."

{¶ 10} Acting pro so, appellant filed a notice of appeal with the Lucas County Court of Common Pleas, Juvenile Division on March 21, 2013. Appellant was then appointed appellate counsel. Appellant's counsel filed an amended notice of appeal on April 11, 2013, and added LCCSEA as a party to the appeal. Neither appellee nor LCCSEA filed a brief in this matter.

{¶ 11} Appellant asserts one assignment of error for the court's review:

Assignment of Error No. 1: The trial court abused its discretion by directing the LCCSEA to release funds they were holding from the Social Security Administration for the benefit of the minor child at issue here to the Obligor, when the funds represented past due payment for several months of derivative benefits which were owing as a result of the obligor's SSD benefits, as and for child support. (Emphasis in original.)

### **III. Law and Analysis**

{¶ 12} A trial court has broad discretion in matters affecting child support, and its decision on a motion to modify child support will not be reversed absent an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). An abuse of discretion is more than an error of law or judgment; rather, it implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 13} Appellant agrees that the trial court correctly reduced appellee's monthly support order to zero because their daughter's monthly derivative payment exceeds

appellee's monthly support obligation. See *Williams v. Williams*, 88 Ohio St. 3d 441, 727 N.E.2d 895 (2000) (The amount of Social Security Disability derivative benefits received by a minor child should be credited toward an obligor's support obligation.)

{¶ 14} Appellant's argument is that the trial court abused its discretion when it ordered the LCCSEA to release the funds on hold to appellee. Appellant claims that an arrearage existed from "before" the time appellee applied for Social Security Disability benefits and that the arrearage "represented a valid debt of the [appellee]-Obligor." Appellant argues, "[T]his court should find that the unassigned arrears which were still owed to appellant after her receipt of the lump sum payment on October 3, 2012 represented unpaid child support that had accrued *prior* to the SSD application process." (Emphasis in original.) Appellant claims that the trial court violated R.C. 3119.83 which prohibits courts from retroactively modifying an obligor's duty to pay delinquent support payments.

{¶ 15} We have thoroughly reviewed the record. We find no evidence of any such preexisting debt or arrearage. That is, at the time appellee filed for Social Security Disability on August 25, 2008, he was not in arrears. An LCCSEA "Payment History Report" dated August 7, 2008 indicates: "total arrearage due as of 7/31/2008: \$.00." Likewise, the trial court noted that "[appellee's] child support arrears began to accrue in February of 2009" during the pendency of his Social Security application. In other words, while appellant claims that the lump sum at issue would compensate her for arrears that predate appellee's application, we see no evidence of any such arrearage.

Therefore, we see no abuse of discretion in the trial court’s decision to release the intercepted funds to appellee once the daughter had received her lump sum derivative award. *See, e.g., Rice v. Rice*, 177 Ohio App.3d 476, 2008-Ohio-3518, 895 N.E.2d 198, ¶ 15 (5th Dist.) (“It may be that the intercepted funds exceed the corrected arrearage. If so, [father] must be credited with an overpayment, because [those funds are] not a derivative benefit but [father’s] own funds, and he should receive a credit for the entire amount.”) Likewise, we see no error in the trial court’s conclusion to adjust appellee’s arrearage amount to zero. Appellant’s sole assignment of error is not well-taken.

{¶ 16} Based on the foregoing, we find that the trial court did not abuse its discretion granting appellee’s motion to modify child support. Appellant’s assignment of error is found not well-taken and is overruled. The judgment of the Lucas County Court of Common Pleas, Juvenile Division 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.

Arlene Singer, P.J.

Stephen A. Yarbrough, J.

James D. Jensen, J.  
CONCUR.

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JUDGE

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