

A father who failed to notify the FOC of changes in circumstances cannot recover excess child support payments

Michigan Court of Appeals

By Melissa P. Stewart, Esq.

When Grant and Joanne Fisher divorced in 1992, Grant agreed to pay \$80 per week in child support. Six years later, the court increased his weekly payment to \$117.

Then, in 1999, the court determined that Grant's sole source of income derived from his Social Security disability benefits, so the Friend of the Court began to withhold \$510.80 per month from his check to cover his obligation to Joanne.

Nevertheless, he managed to accumulate more than \$18,000 in arrearages.

How, then, was it possible that Joanne ended up collecting nearly \$20,000 in excess child support payments — money the Michigan Court of Appeals recently determined was hers to keep?

Well, it appears that in addition to receiving the funds withheld from Grant's disability checks, Joanne also began receiving Social Security benefits directly on behalf of their child.

With double payments rolling in, Grant eventually squared up his arrearages, and then some.

When he realized just how much he had actually paid Joanne, Grant took her to court, looking for reimbursement.

But the Michigan Court of Appeals stopped him in his tracks.

In a unanimous opinion authored by Judge Alton T. Davis, and signed by Judges Bill Schuette and Stephen L. Borrello, the Court held, "the relief plaintiff seeks is precluded by MCL 552.603, which, among other things, establishes that 'each support payment [is] the equivalent of a final judgment and prohibit[s] retroactive modification' thereof."

Meaning, the Friend of the Court doesn't give refunds.

According to Davis, "The gravamen of plaintiff's argument is that he should not have had to make all of the child support payments he was ordered to pay ... [even though] those payments were properly paid pursuant to valid court orders at the time."

As such, he continued, "The only way

to 'undo' those payments is by retroactively determining that plaintiff was not, in fact, under an obligation to pay them and retroactively rescinding those court orders."

Communication is key

For Davis, Grant's predicament brought light to an ongoing problem facing the Friend of the Court: communication barriers.

"This case ... graphically illustrates the need for payors and payees of child support to keep the Friend of the Court and each other apprised in a timely manner of significant changes in economic circumstances," he explained, especially because "the statute explicitly permits retroactive modification of child support obligations" in certain particularized situations. [Emphasis in the original.]

Clinton Township family law practitioner Jeffrey M. Salassa agreed.

"This decision makes it imperative for those responsible for support payments to keep the Friend of the Court apprised of their financial situations, while also

encouraging an ongoing dialogue between parties who might not otherwise be open to communicating with each other," he said.

What's more, said Bloomfield Hills lawyer Daniel R. Victor, who also specializes in family law, the decision serves as a reminder that the "Friend of the Court is not the litigant's 'friend.'"

Rather, "It's the court's friend, and parents need to remember that the burden is on them to account for and modify their obligations when they believe the circumstances support a modification," Victor noted.

Undue burden?

Meanwhile, Trenton lawyer Willette J. Oleh, who represents Grant, had a different take on the Court of Appeals' decision altogether.

In her estimation, the opinion "will allow a recipient of child support to receive no repercussion for failing to report the receipt of disability benefits based upon the payor's disability, even though there is a court over specifically imposing an affirmative duty on the recipient to report all sources of income to the Friend of the Court."

As a result, she warned, "[it] will encourage child support recipients to double collect the amount of court ordered child support, first from benefits re-

ceived upon the payor's disability and second from the payor directly."

Oleh also took issue with Davis' interpretation of Michigan's child support formula.

"The refund would not have resulted in an impermissible retroactive modification," she charged, because "the Michigan Child Support Formula Manual does not modify the amount of the child support obligation when a person receives disability benefits."

Instead, Oleh suggested, "it takes the originally ordered child support and subtracts the amount of the benefit received on behalf of the minor children."

But, at what cost?

"The court system should not be used to provide audit and accounting services for the parents," Victor said.

"Parents subject to a support obligation are expected to account for their own payments and receipts," he noted. "If there is a factual dispute as to how much was paid, or is owed, that is for the court to decide — but the court cannot be responsible for going back in time to try to modify support obligations if the parents did not raise the issue of changes to income or circumstances when the changes occurred."

The 4-page decision is *Fisher v. Fisher*, Lawyers Weekly No. 07-63792.

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Decision in a nutshell

The Issue: Is a payor of child support entitled to a refund of payments made in excess of his child support obligations?

The Ruling: No. The Court of Appeals said, "[t]he relief plaintiff seeks is precluded by MCL 552.603, which, among other things, establishes that 'each support payment [is] the equivalent of a final judgment and prohibit[s] retroactive modification' thereof."

The Impact: When a payor's circumstances have changed — thus impacting his child support obligation — he must bring a modification request to the Friend of the Court when the change occurs, rather than seek a refund after payments have been made.

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