

IN THE SUPREME COURT OF OHIO

CHRISTINA LYNN BYRD nka REEDER

CASE NO. 2007-1913

PLAINTIFF-APPELLEE,

ON APPEAL FROM THE CLERMONT
COUNTY COURT OF APPEALS,
TWELFTH APPELLATE DISTRICT

VS.

BRIAN KELLY KNUCKLES,

COURT OF APPEALS CASE NO.
CA2006-11-095

DEFENDANT-APPELLANT.

**AMICUS CURIAE BRIEF OF THE
OHIO CHILD SUPPORT DIRECTORS' ASSOCIATION (OCDA)
IN SUPPORT OF DEFENDANT-APPELLANT, BRIAN KELLY KNUCKLES**

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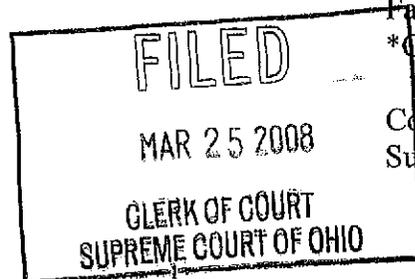


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I. INTRODUCTION AND INTEREST OF AMICUS CURIAE

The Ohio Child Support Directors' Association ("OCDA") is a statewide professional organization representing county child support enforcement agencies. OCDA serves as a vehicle to promote and strengthen the child support enforcement system within the State of Ohio. OCDA provides information and technical assistance to those involved in shaping new legislation and regulatory initiatives. Further, OCDA coordinates the efforts of Child Support Enforcement Agencies ("CSEAs") throughout the State by assisting counties with program implementation and staff training in order to ensure that program goals and objectives are reached.

OCDA actively participates in the ongoing process of program administration and policy development by presenting the views of the Association as they relate to the functions and operations of county child support enforcement agencies.

In Ohio, the child support program is a state-supervised, county-administered program under Title IV-D of the Social Security Act. The Office of Child Support, within the Ohio Department of Job and Family Services, is responsible for designating policies and monitoring implementation of policies in coordination with federal and state laws.

Ohio's program plays a key role in the lives of over one million families. Local CSEAs provide services to parents and caretakers, and collaborate with partners such as the courts, law enforcement, and other agencies. Local CSEAs have the authority under Ohio law to administer child support cases, both those filed with the Courts and those that have been determined by administrative process, and CSEAs are the record-keepers for those orders.

By law child support is, on and after the date it is due, a judgment, with the full force, effect and attributes of a judgment of the State. As such, Obligees in child support cases should have the option to waive or compromise amounts that are owed to them under the judgment, just as any other person holding a judgment in the State of Ohio may do.

In addition, parties should be afforded the right to work together concerning money that is owed and paid for child support. The ability for parents to communicate about their child support order and agree to waive or compromise arrears is a necessary and beneficial tool for the child support program. The appellate court's reliance on R.C. 3119.83 to deny any such agreements will have a negative impact on families in situations wherein agreements are best.

The appellate court's decision could have far-reaching effects on our child support program. The desire of the child support program to reach out and re-engage delinquent Obligor, who could be behind in their child support for many different reasons, could be hampered by the decision, which appears to forbid the compromise of arrears. As a result, child support arrearages will continue to increase, as there would no longer be a mechanism for reducing them by agreement and the opportunity to make the decisions by the parties after taking all factors into consideration are removed. In addition, the rapport that previously existed between parties, CSEAs and the Court could also be damaged.

OCDA believes that R.C. 3119.83 does not apply to the waiver or compromise of child support arrears. OCDA further believes that this case is of great significance to courts and local CSEAs who regularly allow parties to waive or compromise child support arrears.

II. STATEMENT OF CASE AND FACTS

Amicus Curiae adopts the statement of case and facts presented by the Defendant-Appellant, Brian Knuckles.

III. ARGUMENT

PROPOSITION OF LAW NO. 1

AN AGREEMENT TO WAIVE OR COMPROMISE CHILD SUPPORT ARREARS IS NOT A RETROACTIVE MODIFICATION OF ARREARS, BUT, RATHER, AN ACCORD AND SATISFACTION OF A JUDGMENT BY SPECIFIC AGREEMENT OF THE PARTIES

History: The child support program was established under Title IV-D of the Social Security Act, passed by Congress in 1975. The responsibility for implementation of the IV-D program is shared by federal, state and local agencies. The federal agency is the Office of Child Support Enforcement (“OCSE”), located within the Department of Health and Human Services. OCSE establishes standards for state programs, including Ohio’s IV-D program, which is state-supervised, county-administered. Each county in Ohio is required to have a child support enforcement agency (“CSEA”), which is overseen by the state Office of Child Support, located within Ohio’s Department of Job and Family Services.

Ohio must be in compliance with federal regulations to draw down funding for the IV-D program. When the Omnibus Budget Reconciliation Act of 1986 was passed, it amended section 466 (a) of the Social Security Act (42 USC 666), and required, among other things, that, as a condition of State IV-D plan approval, states have laws in effect requiring the use of procedures to prohibit retroactive modifications of child support arrearages. In addition, state IV-D agencies

were also required to have in effect and use procedures whereby any payment or installment of support under any child support order is, on and after the date it is due, a judgment by operation of law, with the full force and attributes of a judgment of the State and is entitled to full faith and credit. See 45 CFR. 302.70 and 42 USC 666 (a)(9).

Ohio responded to this mandate by passing R.C. 3123.18 and 3119.83 (formerly 3113.21 (M)(3)). R.C. 3123.18 states:

If a court or child support enforcement agency made a final and enforceable determination under sections 3123.02 to 3123.071 of the Revised Code as those sections existed prior to the effective date of this section or makes a final and enforceable determination under sections 3123.01 to 3123.07 of the Revised Code that an obligor is in default under a support order, each payment or installment that was due and unpaid under the support order that is the basis for the default determination plus any arrearage amounts that accrue after the default determination and during the period of default shall be a final judgment which has the full force, effects, and attributes of a judgment entered by a court of this state for which execution may issue under Title XXIII [23] of the Revised Code.

This statute brought Ohio into compliance with the federal requirement to have procedures in effect and use to make child support a judgment by operation of law. Said judgment has the full force, effects and attributes of a judgment and this judgment may be executed under Title XXIII of the Revised Code. Judgments under Title XXIII may also be released by the person or entity holding the judgment. It follows that an obligee under a child support order may use the same or similar remedies to dispose of the child support arrears. Such judgments should be open to compromise or satisfaction by specific agreement of the parties on the same grounds that exist for any other judgment in the State of Ohio.

In contrast, R.C. 3119.83 and its predecessor, 3113.21 (M)(3), were also passed to satisfy the federal requirement to have laws in effect to prohibit the retroactive modification of child support arrearages. Section 3119.83 states:

Except as provided in section 3119.84 of the Revised Code, a court or child support enforcement agency may not retroactively modify an obligor's duty to pay a delinquent support payment.

This section was intended to prohibit child support obligors from continually attempting to re-litigate the amount of child support that they were previously ordered to pay. It stands to prevent any retroactive modification of the monthly ordered amount of child support by the *court* or *CSEA*. A retroactive modification of support occurs when a court or CSEA takes actions to modify support that has accrued under a court or administrative order, which then alters the obligor's obligation without the approval of the obligee. This section does not apply to situations where the adjustment of the arrears is by agreement of the parties.

Federal guidance: Beginning in 1989, the federal government provided guidance to states on the difference between retroactive modifications and compromise or waiver of child support arrearages. The federal Office of Child Support Enforcement (OCSE) issues Action Transmittals (AT), Policy Interpretation Questions (PIQ) and Dear Colleague Letters (DCL) to provide guidance to states on policy. OCSE-AT-89-06 (1989) included the final regulations that implemented the amendments required by the Omnibus Budget Reconciliation Act of 1986. This transmittal included the public comments and responses from OCSE concerning the new regulations. Specifically, in response to comment 14, OCSE advised:

Federal law and regulations provide that child support is a judgment on and after the date due with the full force, effect and attributes of a judgment on the State. Such support judgments may, however, be compromised or satisfied by specific agreement of the

parties on the same grounds as exist for any other judgment in the State. Judgments involving child support arrearages assigned to the State under titles IV-A, IV-E and XIX of the Social Security Act, of course, may not be compromised by an agreement between the obligee and obligor unless the State, as assignee, also approves such an agreement. State law may require that any agreement affecting child support orders must be endorsed by the court or administrative authority to ensure that the best interests of the child are protected.

This view was reiterated in later OCSE Policy Interpretation 99-03 and 00-03. In PIQ-99-03 (1999), OCSE was asked if states could accept less than the full payment of assigned child support arrears. OCSE advised that states could accept less than the full payment of assigned arrears in the same manner that exists to compromise and settle any other judgment in the state. OCSE further advised “we encourage caution not to confuse compromising arrearages with the statutory prohibition against retroactive modification of arrearages” and goes on to note that “retroactive modification of arrearages alters the obligor’s obligation without the concurrence of the obligee (or state assignee) and is expressly prohibited...”. PIQ 00-03 (2000) reinforces the point that “Compromising arrearages...involves the satisfaction of arrearages by specific agreement of the relevant parties in accordance with State law or on the same grounds as exist for any other judgment in the State”.

States are now being encouraged to focus on efforts that address the root causes of non-payment of support under OCSE’s PAID (Project to Avoid Increasing Delinquencies) Initiative (see OCSE-DCL-07-06, (2007)). This initiative specifically lists the compromise of child support arrearages as an activity that should have special emphasis, as it may result in increasing collections of current support and reducing arrearages. It is clear from the federal government that an agreement to waive child support arrearages is permissible and not a retroactive modification of support as described in state law.

Waiver or Compromise of Child Support Arrears by agreement is an accord and satisfaction of a judgment: Since child support arrearages are treated as a judgment in the State of Ohio, then waiver or compromise of those arrears should be considered an accord and satisfaction of the judgment by agreement of the parties. In practice, the issue generally arises with an acknowledgment by both parties of the amounts owed in back child support, followed by an agreement wherein the obligee agrees to waive or compromise a specified amount of the judgment and a statement of the reason is given for the waiver or compromise. Many reasons exist for parties to make an agreement to waive or compromise child support arrearages, including but not limited to, the reconciliation of the parties, a step-parent adoption, in-kind contributions of an obligor and lump sum payments.

To deny obligees the ability to waive or compromise child support arrearages denies them the rights afforded to other judgment holders in Ohio. And, since child support obligees have discretion under the law to determine how the child support may be spent for their child/children, it should follow that they would also have broad discretion to negotiate the waiver or compromise of back child support. If a judgment can be released through an accord and satisfaction by agreement of the parties, this would include child support arrearages.

PROPOSITION OF LAW NO. 2

PLAINTIFF-APPELLEE'S AGREEMENT WITH DEFENDANT-APPELLANT TO WAIVE ½ OF THE CHILD SUPPORT ARREARS WAS A VOLUNTARY WAIVER OF A JUDGMENT

When Plaintiff-Appellee Christina (Byrd) Reeder agreed to waive ½ of the child support arrears owed to her by Defendant-Appellant Brian Knuckles, she was exercising her ability to waive a judgment under the laws of Ohio. The past due child support in this case, which totaled

\$7,420.16, was a judgment by operation of law, as described in R.C. 3123.18. As the judgment holder, Plaintiff-Appellee could negotiate the waiver of ½ of this amount.

Child support arrears have been recognized as an asset owned by the Obligee in *Miller v. Miller*, 73 Ohio App.3d 721 (4th Dist., 1991). This Court found that child support arrears represent money advanced by the custodial parent to replace money owed, but not paid by the non-custodial parent, in *Connin v. Bailey*, 15 Ohio St.3d 34 (1984).

Several courts have allowed the waiver or compromise of child support arrearages: see *Eckliff v. Walters*, 168 Ohio App.3d 727 (11th dist., 2006), which found that “it is legal to waive back child support” and *Nelson v. Nelson*, 65 Ohio App.3d 800 (11th dist., 1989), where the court said:

...it would be unreasonable in all circumstances to permit the parties, either individually or jointly, to absolve themselves of [their] duty of support by entering into an agreement between themselves to that effect subsequent to a court order. However, the father can “relieve himself from liability to the mother for support of their minor children” by agreement...In other words, the mother can “forgive” the father for past arrearages by agreement. *Id.* at 804.

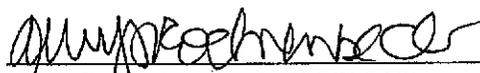
The Nelson court went further to indicate “any subsequent adjustment in support, such as alteration, modification or curtailment, should only be ‘legally effective’ when undertaken by a similar court action”. *Id.* at 805. This reasoning is consistent with recognizing child support arrearages as a judgment. Any modification to a judgment must be filed with the court to be legally binding. In this matter, the parties brought their agreement to waive ½ of the child support arrears to the court for ratification. The agreement was voluntarily entered into by both parties and stated their intention to dispose of ½ of the judgment amount. Their agreement should have been recognized as such and approved by the Court.

IV. CONCLUSION

Child support is, on and after the date it is due, a judgment by operation of law, with the full force, effects and attributes of any other judgment in the State of Ohio. Parties to this judgment should be afforded the opportunity to negotiate its settlement, by accord and satisfaction, waiver or compromise. To deny child support obligees the ability to waive or compromise child support arrears denies them the rights afforded to other judgment holders in Ohio.

An agreement between parties concerning the compromise or waiver of child support arrearages should not be construed as a retroactive modification, but rather, an accord and satisfaction of arrearages by specific agreement of the parties. As such, R.C. 3119.83 does not apply.

Respectfully submitted,



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CERTIFICATE OF SERVICE

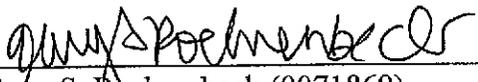
The undersigned hereby certified that a true copy of the foregoing was served on the following persons by regular U.S. mail, first class postage prepaid, on this 25th day of March, 2008:

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