

Survey of Family Law Cases 2004-2013

2009 Family Law Survey

Child Support Determination/Modification

In *In re Marriage of Anthony-Guillar & Guillar*, 207 P.3d 934 (Colo. App. 2009), the mother appealed from the magistrate's order crediting the father with overpayment of child support, reducing child support arrearages, and sanctioning the mother for failure to disclose income. The mother alleged that the father was in contempt for failure to pay child support. The mother presented evidence that she was disabled; the father presented evidence that the mother received Social Security checks for her disability, which included a benefit on behalf of the child because of the mother's disability. The magistrate found that the Social Security Disability payment received for the child should be included in the mother's income for child support purposes. After review of the magistrate's order pursuant to C.R.M. 7(a), and on remand, the magistrate found that the disability payments were the child's income, and as such reduced the child's need for support. The magistrate also found that the mother had failed to disclose the disability payments, and awarded attorney fees to the father.

The court went through an extensive review of the legislative history of the child support statute to determine whether disability benefits received by the parent, and disability benefits for a child as a result of parent's disability but actually received by a parent as a representative payee for the child, are includable in the parent's income or the child's income, and what effect the benefits may have on child support. C.R.S. § 14-10-115(5)(a)(I)(P) provides that gross income includes Social Security benefits received by a parent as a result of a disability. Social Security benefits received by a minor child as a result of disability or death of a stepparent are not included as income of the child. See C.R.S. § 14-10-115(5)(a)(II)(D). The statute does not provide explanation regarding treatment of Social Security benefits received by a child as a result of a parent's disability. But if a custodial parent receives disability payments on behalf of dependent children due to a disability of the noncustodial parent, the noncustodial parent's child support obligation should be reduced in an amount equal to the benefits.

In this case, the mother received Social Security disability benefits. She also was a representative payee and received Social Security benefits on behalf of the child because of the mother's disability. The court determined that benefits "actually received" refers to a parent's disability benefits, not to benefits that a disabled parent receives on behalf of a child. Thus, the child's disability payments should not have been included in the mother's gross income but were income to the child. The trial court was not bound to deduct the entire amount of the child's disability benefits income from the child support obligation.

The court did err when it determined that the mother's failure to disclose receipt of disability benefits justified a reduction in the child support arrearages. If a court reduces arrearages because of a parent's misconduct, the court must first determine whether the reduction will damage the child's interests. The court here did not consider the best interests of the child before it reduced the arrearages. Also, the court erred when it awarded attorney fees under C.R.S. §14-10-119 for the "mother's deceit," rather than adhering to C.R.S. §14-10-119's purpose of awarding fees to equalize the parties' financial positions.

In *People in the Interest of S.E.G., Upon the Petition of the Denver Dept. of Human Services and Concerning S.R.S.G.*, 213 P.3d 1033 (Colo. App. 2009), the Department of Human Services appealed the juvenile court's order denying its C.R.C.P. 60(b) motion to set aside the dismissal of a child support case based upon the court's finding that since the parties were married and paternity was not contested, the district court, rather than the juvenile court, had subject matter jurisdiction over the child support case.

Child Support Enforcement initiated this action in juvenile court to establish child support and medical insurance for S.E.G. (the child). The mother filed a subsequent motion for emergency custody, but after a hearing, the juvenile court dismissed the action based upon a lack of subject matter jurisdiction. The Department filed a C.R.C.P. 60(b) motion contending that, among other things, neither party had pursued a dissolution of marriage, and the juvenile court had concurrent jurisdiction to enter a child support order and allocations of parental responsibilities.

The court of appeals agreed with the Department that the juvenile court has exclusive original jurisdiction over the issuance of orders of support under Article 6 of the Children's Code. See C.R.S. § 19-6-101(1)(a). Further, Article 6 provides that the court has authority to enter orders allocating parental responsibilities in connection with a child support proceeding. Finally, the court reiterated that marital status is irrelevant and not a restriction on jurisdiction. Thus, the juvenile court erred as a matter of law when it dismissed the child support case for a lack of subject matter jurisdiction. The case is remanded to the juvenile court, if no subsequent dissolution of marriage has been filed.