

Affirmed and Opinion filed May 24, 2001.



In The
Fourteenth Court of Appeals

NO. 14-99-00286-CV

IN THE INTEREST OF D.L.M.

**On Appeal from the 308th District Court
Harris County, Texas
Trial Court Cause No. 90-55465**

OPINION

Lisa L. Rumsey appeals an order modifying child support entered in favor of Michael R. Meador on the grounds that the trial court erred in: (1) finding that Rumsey paid zero for child support; (2) requiring her to pay forty-eight percent of her monthly net resources as child support; and (3) divesting her of \$3,500 of prior child support received from the Social Security Administration. We affirm.

Background

Rumsey and Meador were divorced in 1991 and have one child, D.L.M.¹ In

¹ See TEX. FAM. CODE ANN. § 109.002(d) (Vernon 1996) (“On the motion of the parties or on the court’s own motion, the appellate court in its opinion may identify the parties by . . . their initials only.”).

February of 1998, Meador filed a motion to modify conservatorship² requesting that Rumsey and Meador be named joint managing conservators, with Meador having the exclusive right to determine the child's primary residence. A temporary modification order was signed in April of 1998 granting that relief and abating Meador's duty to pay child support to Rumsey until further order of the trial court. An additional temporary order, signed in June of 1998, ordered Rumsey to retain the funds remaining from a lump sum payment she previously received for the benefit of the child from the Social Security Administration until the parties entered a written agreement or the matter was resolved by the trial court.³

Agreed temporary orders were entered in October of 1998, incorporating the provisions of a mediated settlement agreement the parties entered into the month before. However, because that agreement did not resolve payment of the child's health insurance premiums or the disposition of the residual social security funds, those issues were tried to the court. The trial court entered a final order in December of 1998, which, among other things, stated that Rumsey would not pay child support as long as the child's social security benefits attributable to Rumsey's disability continued to be paid to Meador for the use and benefit of the child.⁴ The order also found that Rumsey was in possession of \$3,500, which remained from the lump sum social security payment for the benefit of the child, and required Rumsey to surrender that amount to Meador for the use and benefit of the child. The order further required Rumsey to reimburse Meador for one hundred percent of the child's health insurance premiums, equal to \$308 per month. The trial court filed findings of fact and conclusions of law in support of the order.

² Because the 1991 divorce decree is not included in our record, we do not know the parties' prior rights and obligations regarding conservatorship, child support, or health insurance.

³ Prior to the entry of this temporary order, Rumsey had begun receiving \$740 per month in social security payments for the benefit of the child, and had received a check in the amount of \$23,875 for the child's unpaid social security benefits from prior years.

⁴ During the modification action, the Social Security Administration began sending Meador the \$740 per month benefits for the child.

Standard of Review

A trial court's child support order and best interests findings are reviewed for abuse of discretion. *In re Doe 2*, 19 S.W.3d 278, 281 (Tex. 2000); *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). If there is some probative evidence that supports the trial court's decision, we must affirm the judgment. *See Evans v. Evans*, 14 S.W.3d 343, 346 (Tex. App.—Houston [14th Dist.] 2000, no pet.)

Monthly Social Security Benefits

Rumsey's first issue contends that the trial court erred in finding that she is paying zero for child support because the social security benefits the child receives due to Rumsey's disability are, as a matter of law, to be credited to Rumsey as a child support payment.⁵ According to Rumsey's second issue, the trial court awarded excessive support because, counting the monthly social security payments as Rumsey's child support obligation and adding the \$308 per month in health insurance premiums which the court ordered Rumsey to pay for the child, the sum of Rumsey's child support obligations consumes forty-eight percent of her net monthly resources.⁶ Rumsey complains that this greatly exceeds the twenty percent of net resources that she would be required to pay under the child support guidelines.⁷ *See* TEX. FAM. CODE ANN. § 154.125(b) (Vernon

⁵ *See In re Rich*, 993 S.W.2d 272, 275 (Tex. App.—San Antonio 1999, no pet.) (holding that the obligor parent is entitled to a credit against her child support obligation for social security disability payments paid to the child as a result of the obligor parent's disability). *See also* TEX. FAM. CODE ANN. § 154.132 (Vernon Supp. 1999) (effective September 1, 1999 (*i.e.*, after the orders were entered in this case), when applying the statutory child support guidelines to a disabled obligor for whose disability a child receives benefits, the court shall determine the amount of child support that would be ordered under the guidelines and subtract from that total the amount or value of the benefits paid to or for the child as a result of the obligor's disability).

⁶ Forty-eight percent is reached by dividing \$1,048, which Rumsey contends is her monthly child support obligation, (\$740 for the child's social security benefits plus \$308 for his health insurance coverage) by \$2,177, her alleged total income (\$1,437 in disability benefits for herself plus \$740 in disability support payments for the child).

⁷ Rumsey calculates \$373.80 as being the twenty percent under the child support guidelines by adding her own disability benefits of \$1,437 and the child's social security benefits of \$740,

1996). Therefore, she claims that she should not be required to pay the additional \$308 in health insurance.

When the amount of child support ordered varies from the amount computed by applying the statutory percentage guidelines, the trial court is required to make the following findings:

- (1) the monthly net resources of the obligor per month are \$_____;
- (2) the monthly net resources of the obligee per month are \$_____;
- (3) the percentage applied to the obligor's net resources for child support by the actual order rendered by the court is _____%;
- (4) the amount of child support if the percentage guidelines are applied to the first \$6,000 of the obligor's net resources is \$_____;
- (5) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount stated in Subdivision (4) are: _____.

TEX. FAM. CODE ANN. § 154.130(b)(1)-(5) (Vernon 1996). Accordingly, in this case, the trial court made the following findings:

12. The monthly net resources of the Obligor/Respondent [Rumsey] are approximately \$1,500.00.
13. The monthly net resources of the Obligee/Movant [Meador], are \$1,140.00.
14. The percentage applied to the Obligor/Respondent's net resources for child support by the actual order rendered by the court is 0% as no child support was ordered to be paid by the Obligor/Respondent.
15. The amount of child support if the percentage guidelines are applied to the first \$6,000.00 of the Obligor/Respondent's net resources is \$300.00.
16. The specific reason that the amount of child support per month ordered by the Court varies from the amount stated in item 15 hereinabove is that the child is receiving benefits from the Social Security Administration by virtue of the Obligor/Respondent's receipt of Social Security disability benefits.

Thus, contrary to Rumsey's contention, the trial court did not find that Rumsey is *paying zero* for child support, but only that the percentage applied to her net resources for child support is zero percent because no child support was *ordered* to be paid by the obligor based on her net resources. Because the trial court had not ordered the social security benefits to be paid to Meador, the guideline percentages

subtracting the child's health insurance premium of \$308, and then multiplying the difference by twenty percent.

did not apply, either to calculate or limit the amount of child support being paid in the form of social security benefits. Further, the trial court's finding of fact number fourteen merely reflected this fact, as required by section 154.130(b).⁸

Similarly, percentage calculations are irrelevant in determining the amount of health insurance to be paid each month because health insurance for the child is to be paid *in addition to* the amount of child support calculated under the guidelines.⁹ Accordingly, the trial court did not abuse its discretion in entering finding of fact number fourteen or in requiring Rumsey to pay \$308 in health insurance premiums, and issues one and two are overruled.

Remaining Lump-Sum Benefit

Rumsey's third issue contends that the trial court erred in divesting her of the \$3,500 she had remaining from the lump-sum Social Security Administration payment she received in 1997, when she was the child's custodial parent and the only parent entitled to child support. Rumsey contends that by requiring her to turn this money over to Meador, the trial court improperly seized statutorily exempt property, *i.e.*, previously paid child support.¹⁰ In the alternative, Rumsey claims that even if the trial court had authority to seize the \$3,500, it was an abuse of discretion to order her to pay Meador such additional support in light of Rumsey's already excessive monthly support obligation.

The Social Security Act, provides that if a beneficiary is under age eighteen, the beneficiary's benefits will be paid to a representative payee. 42 U.S.C.A. § 402(d)(1)

⁸ Moreover, although finding of fact number 14 was accurate, it was not material to any relief awarded in the modification orders.

⁹ TEX. FAM. CODE ANN. § 154.064 (Vernon 1996) ("The guidelines for support of a child are based on the assumption that the court will order the obligor to provide health insurance coverage for the child in addition to the amount of child support calculated in accordance with those guidelines."); *Id.* at § 154.183(a)(1) (Vernon 1996) ("An amount an obligor is required to pay for health insurance for the child is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support . . .").

¹⁰ *See* TEX. PROP. CODE ANN. § 42.001(b)(3) (Vernon 2000) (support received by the debtor for support of the debtor's dependent is exempt from seizure).

(West Supp. 2000); 20 C.F.R. §404.2010(b) (2000). The representative payee has responsibility to use the payments he or she receives only for the use and benefit of the beneficiary. 20 C.F.R. §404.2035 (2000). Further, if a representative payee has conserved or invested benefit payments, those funds shall be transferred to a successor payee. 20 C.F.R. §404.2060 (2000). Because the \$3,500 were such residual funds, transferring them to Meador was consistent with section 404.2060 and thus not an abuse of discretion. Accordingly, Rumsey's third issue is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed May 24, 2001.

Panel consists of Justices Edelman, Frost, and Cannon.¹¹

Do not publish — TEX. R. APP. P. 47.3(b).

¹¹ Senior Justice Bill Cannon sitting by assignment.