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Drummond v. State

The Court of Appeals of Maryland held that to obtain modification of a child support order, the non-custodial parent must show a material change in circumstance. *Drummond v. State*, 350 Md. 502, 714 A.2d 163 (1998). The court further held that a parent's child support obligation should not be automatically reduced by the amount the child receives in social security disability dependency benefits. However, the court may use its discretion in applying the child support guidelines to avoid an unjust result.

On March 24, 1995, James E. Drummond ("Drummond") and Shirley A. Drummond ("Mrs. Drummond") entered into a consent order for child support for their son, Joshua M. Drummond ("Joshua"), wherein Drummond was ordered to pay \$38.00 per month. At the time of the Order, Drummond was receiving social security disability benefits, from which he paid child support. Based on Drummond's entitlement to disability benefits, Joshua was eligible and applied for social security disability dependency benefits. In July 1995, the Social Security Administration approved Joshua's application, and Joshua began receiving benefits in the amount of \$53.00 per month. Consequently, Mrs. Drummond's Aid to Families with Dependent Children benefits were reduced from \$292.00 to \$247.00 per

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By Anna R. Benshoof

month. On August 1, 1995, Drummond moved to modify the child support order based on Joshua's entitlement to the benefits.

At a hearing on December 5, 1995, the domestic relations master recommended suspension of Drummond's support obligation, finding that Joshua was financially independent. The state filed timely exceptions, and the Circuit Court of Maryland for Allegany County remanded the case to the master for recalculation of child support, finding that the master had incorrectly computed Joshua's benefits. At a second hearing held on January 28, 1997, the master found that Drummond was not entitled to modification, stating that the current child support figure was appropriate. The circuit court accepted the master's findings and recommendations. The plaintiff then filed a timely Notice of

Appeal. The Court of Appeals of Maryland issued a writ of certiorari, bypassing the Court of Special Appeals of Maryland.

The court of appeals addressed two issues in *Drummond*, including whether Drummond was entitled to modification of his child support obligation based upon Joshua's receipt of social security benefits, and if so, whether Drummond was entitled to an automatic credit against his child support obligation. *Drummond*, 350 Md. at 505-07, 714 A.2d at 165. In addressing the first issue, the court noted that a parent may seek modification of a child support order pursuant to section 12-104 of the Family Law Article of the Annotated Code of Maryland where there has been a "material change of circumstance." *Id.* at 507-08, 714 A.2d at 166. The court of appeals explained that the statute restricts modification in two ways. *Id.* at 509, 714 A.2d at 166-67. "First, the 'change of circumstance' must be relevant to the level of support a child is actually receiving or entitled to receive." *Id.* Second, the change must be "material," and "of sufficient magnitude to justify judicial modification of the support order." *Id.* These criteria, the court noted, may be satisfied by either an event that causes an increase or decrease in the level of support, or a change in the income pool from which the child support

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is calculated. *Id.* at 509-10, 714 A.2d at 167.

The court then analyzed the Maryland child support guidelines, section 12-202 of the Family Law Article of the Annotated Code of Maryland. *Id.* at 511-12, 714 A.2d at 168. Child support is calculated by totaling the parents' combined adjusted actual income to establish the child's total monetary needs. *Id.* at 512, 714 A.2d at 168. That sum is then apportioned to each parent, based on their adjusted actual incomes, as their individual basic support obligation. *Id.*

In the case at bar, the court evaluated both parents' income to determine if a material change of circumstance existed. *Id.* at 513, 714 A.2d at 169. The court found that from the time of the initial child support hearing, both parents' income had changed. Drummond's had increased by \$41.00, and Mrs. Drummond's had decreased by \$45.00. The court held this was not enough to substantiate a modification. *Id.* at 513-14, 714 A.2d at 169. The court noted that the only change in circumstance from the initial order was Joshua's receipt of social security disability dependency benefits, to which he had been legally entitled at the time of the order. *Id.* at 514, 714 A.2d at 169. Therefore, the court concluded, the change in circumstance was not material. *Id.* Additionally, the statute states that, generally, the child's income is not relevant to the child support calculation. *Id.* at 513, 714 A.2d at 168. The court opined that "[i]t is the parents with

whom lies the legal duty to support their child." *Id.* The court determined that there was no material change in circumstance, and therefore, a modification of the original child support order was not warranted. *Id.* at 515, 714 A.2d at 170.

Although the court found that Drummond was not entitled to a modification, it went on to address whether a noncustodial parent would be entitled to an automatic credit against his child support obligation. *Id.* at 515-16, 714 A.2d at 170. First, the court clarified that Joshua, not his mother, received the dependency benefits because he was entitled to them under federal law and would receive them whether his parents were married or separated. *Id.* at 520-21, 714 A.2d at 172. Because Joshua would receive these benefits despite his parents' marital status, to consider them when calculating child support would unjustly penalize him for his parents' separation. *Id.* at 521, 714 A.2d at 172. However, the court of appeals agreed with the court of special appeals' analysis in *Anderson v. Anderson*, 117 Md. App. 474, 700 A.2d 844 (1997), where it held that a court may use its discretion in deviating from the child support guidelines if it appears that because of a child's income the resulting child support would be inappropriate or unjust. *Drummond*, 350 Md. at 518, 714 A.2d at 171. Relying upon extensive analysis of other states' case law and procedures, the court concluded that where a case results

in an unjust or inappropriate award, a noncustodial parent may be entitled to a credit against his child support obligation. *Id.* at 518-26, 714 A.2d at 171-75. The general rule, however, is that a child's money belongs to the child and is not computed with the parents' income to determine the child support obligation. *Id.* at 526-27, 714 A.2d at 175. Finding that the facts did not result in an unjust result, the court held that Drummond was not entitled to a modification.

Because cases frequently arise in which a child receives federal benefits as a result of a parent's disability, Maryland family law practitioners had been awaiting guidance from the court on how such benefits should be addressed. Unfortunately, the ruling in *Drummond v. State* does not establish a bright-line test that many practitioners would prefer. The court left open the possibility that the trial court, in its discretion, could give the parent(s) credits against their child support obligation if the result was inappropriate or unjust. The court's ruling is fair and well reasoned, but it did not strictly define the exceptions or what would constitute an inappropriate or unjust award. As such, more litigation will likely result as practitioners struggle with defining these terms and unique circumstances until the court of appeals creates a more strict definition.