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RECENT DEVELOPMENT

IN RE RYAN W.: STATE COURTS LACK SUBJECT MATTER JURISDICTION OVER MATTERS CONCERNING A REPRESENTATIVE PAYEE'S ALLOCATION OF OASDI BENEFITS FOR A CHILD IN NEED OF ASSISTANCE; REPRESENTATIVE PAYEES MUST PROVIDE NOTICE TO THE CHILD'S LEGAL REPRESENTATIVE WHEN AN INSTITUTION INTENDS TO RETAIN THE CHILD'S BENEFITS.

By: Jacqueline K. Lovdahl

The Court of Appeals of Maryland held that the Circuit Court of Baltimore City lacked subject matter jurisdiction to consider and resolve an allocation dispute involving the Baltimore City Department of Social Services' ("Department") use of a Child in Need of Assistance's ("CINA") Old-Age, Survivor's and Disability Insurance ("OASDI") benefits. *In re Ryan W.*, 434 Md. 577, 76 A.3d 1049 (2013). The court concluded that the Department, while acting in its capacity as a representative payee, correctly used its discretion to allocate a foster child's benefits under the law. *Id.* at 608, 76 A.3d at 1067. Due process, however, requires that notice must be given to the child's legal representative when an appointed institution applies for and intends to retain the child's benefits as his or her representative payee. *Id.* at 612, 76 A.3d at 1069-70.

On June 4, 2002, the Circuit Court for Baltimore City, sitting as the juvenile court, determined that Ryan W. ("Ryan") was a CINA and placed him under the custody of the Department. *In re Ryan W.*, 434 Md. at 589, 76 A.3d at 1055. Ryan was subsequently placed in a number of foster homes while the Department paid for his care. *Id.* After both of his biological parents died, the Department applied to be the representative payee for Ryan's OASDI benefits. *Id.* at 589, 76 A.3d at 1055-56. When the Department was approved to receive the benefits, it failed to give notice of its appointment to Ryan, his CINA counsel, or the juvenile court. *Id.* The Department received \$31,693.50 in OASDI payments on Ryan's behalf and used the entire amount to reimburse itself for foster care costs. *Id.* at 590, 76 A.3d at 1056.

Ryan's counsel filed a "motion to control conduct" in the juvenile court alleging that the Department wrongly retained his benefits without any notification. *In re Ryan W.*, 434 Md. at 590, 76 A.3d at 1056. Ryan alleged that the Department improperly allocated and misused his benefits without a separate determination as to which uses of the funds would be in his best interest. *Id.* The juvenile court found that the Department violated Ryan's due process and equal protection rights by neglecting to notify him of the Department's allocation of his benefits. *Id.* at 591, 76 A.3d at 1057. The

juvenile court determined that it would be in the best interest of the child to order the Department to return all of the misused funds to a constructive trust in Ryan's name. *Id.*

On appeal, the Court of Special Appeals of Maryland reversed, in part, and found that the juvenile court did not have proper jurisdiction to create a constructive trust. *In re Ryan W.*, 434 Md. at 591, 76 A.3d at 1057. The court, however, ordered that the Department return \$8,075.32 of the misused funds to Ryan. *Id.* The Department filed a motion for reconsideration on the amount ordered reimbursed and argued, alternatively, that the holding of the Court of Special Appeals of Maryland barred any reimbursement. *Id.* at 592, 76 A.3d at 1057. While the Department's motion was pending in the Court of Special Appeals of Maryland, counsel for Ryan filed a petition for writ of certiorari with the Court of Appeals of Maryland. *Id.* The Court of Special Appeals of Maryland, on reconsideration, reiterated that the juvenile court lacked authority to establish the trust, but reduced Ryan's reimbursement amount to \$660. *Id.* Having concluded that the constructive trust was an improper remedy, the court did not decide the Department's question of sovereign immunity. *Id.* at 592, 76 A.3d at 1058. The Department then petitioned the Court of Appeals of Maryland, and the court granted both parties writs of certiorari. *Id.* at 592-93, 76 A.3d at 1058.

The Court of Appeals of Maryland began its analysis by reviewing federal and state laws to determine whether the juvenile court had jurisdiction to reallocate OASDI benefits. *In re Ryan W.*, 434 Md. at 594-95, 76 A.3d at 1059. The court determined that the Social Security Act ("Act") explicitly stated that any individual seeking review of a decision made by the Department shall do so in a civil action brought in a district court of the United States; thus, the statute set forth mandatory directives that explicitly gave federal courts the jurisdiction over these types of disputes. *Id.* at 595-96, 76 A.3d at 1059-60. The 2004 amendments to the Act permitted the beneficiary to seek recovery from the Department through federal administrative channels, as well as judicial review, when a representative payee was suspected of misusing the funds. *Id.* at 597, 76 A.3d at 1061. The court distinguished previous holdings by reiterating that the amendments to the Act provided Ryan with different ways to seek full restitution where a representative payee allegedly misused funds. *Id.* at 599, 76 A.3d at 1061-62.

The court reiterated that federal law typically governed representative payees and required the use of benefit payments to be made for the use and benefit of the beneficiary's best interests. *In re Ryan W.*, 434 Md. at 596-97, 76 A.3d at 1060 (citing 20 C.F.R. § 404.2035(a)). Under the Act, representative payees could apply a beneficiary's benefits to costs associated with the beneficiary's "current maintenance" that the Social Security Administration ("SSA") considered to be in line with the child's best interest. *In re Ryan W.*, 434 Md. at 596-97, 76 A.3d at 1060 (citing 20 C.F.R. § 404.2040(a)(1)). Only the SSA Commissioner had the authority to promulgate these regulations; therefore, the juvenile court lacked the

authority to monitor and readjust the allocation of benefits by a representative payee. *In re Ryan W.*, 434 Md. at 597, 76 A.3d at 1061-62.

Having concluded that the juvenile court did not have jurisdiction over the allocation of OASDI benefits by a representative payee, the court next turned to the Courts & Judicial Proceedings Article of the Maryland Code (“Article”) to determine whether the juvenile court had authority to consider disputes over the use of OASDI benefits for CINA children. *In re Ryan W.*, 434 Md. at 601-02, 76 A.3d at 1063-64. The Article provided the juvenile court concurrent jurisdiction over custody, visitation, and support of CINA individuals. *Id.* The court determined that “support,” within the context of the Article, meant “child support,” or “parental obligation[s] to support a child financially.” *Id.* at 603, 76 A.3d at 1064. Because the Department was neither collecting nor applying for child support in this case, the court reiterated that the juvenile court lacked subject matter jurisdiction to settle disputes involving the allocation of federal OASDI benefits to CINA individuals. *Id.* at 604, 76 A.3d at 1065.

The court next addressed the validity of state regulations that required the automatic and non-discretionary taking of OASDI benefits without addressing the beneficiary’s best interests. *In re Ryan W.*, 434 Md. at 605, 76 A.3d at 1065 (citing MD. CODE REGS. 07.02.11.29(K)(2014)). The SSA determined that the use of benefit funds by institutional payees to address the costs of a beneficiary’s “current maintenance” was appropriate. *In re Ryan W.*, 434 Md. at 605, 76 A.3d at 1065. As such, the Department allocated Ryan’s OASDI benefits as his representative payee consistently under federal law, which allowed “current maintenance” and “customary charges” as appropriate spending of such benefits. *Id.* at 608, 76 A.3d at 1067.

Finally, the court turned to the actions that implicated Ryan’s due process rights. *In re Ryan W.*, 434 Md. at 609, 76 A.3d at 1068. The court took three factors into consideration and applied them to Ryan’s situation: the private interests at stake by the official action; “the risk of erroneous deprivation of interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards”; and the governmental interest and administrative burdens that additional procedural safeguards would entail. *In re Ryan W.*, 434 Md. at 609, 76 A.3d at 1068 (quoting *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)). Examining the first factor, the court recognized that the private interest at stake was Ryan’s interest in his “free use of his social security benefits.” *In re Ryan W.*, 434 Md. at 611, 76 A.3d at 1069 (citing *McGrath v. Weinberger*, 541 F.2d 249, 253-54 (10th Cir. 1976)). Turning to the second factor, the court noted that proper notice would alleviate the risk that a child would be deprived of his interest in his benefits and would give the child and his attorney enough time to utilize the proper review process. *In re Ryan W.*, 434 Md. at 611-12, 76 A.3d at 1069. Lastly, since the juvenile courts and the SSA work closely together to review these types of cases, there would be no burden that would hinder the State’s interest in the efficient administration of its foster care system. *Id.* at 612, 76 A.3d at 1069. In light of these factors weighing in favor of Ryan’s due

process rights, the court concluded that the Department must notify a CINA's counsel when it has applied to be the child's representative payee and also when the Department retains the child's benefit payments. *Id.*

In *In re Ryan W.*, the Court of Appeals of Maryland found that state courts lacked jurisdiction over matters involving the allocation of OASDI benefits. Though the federal and administrative procedures in place adequately outlined the Department's right to retain a child's benefit payments, the Department must notify a child's counsel of their status as a representative payee. Without access to these funds, children stuck in the foster care system may have even more financial difficulties when trying to successfully move forward from the system. Therefore, Maryland practitioners must advocate for a child's due process rights by ensuring that proper notification is received when a representative payee applies for and obtains a child's benefit payments.