

[Cite as *Marder v. Marder*, 2009-Ohio-3420.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

SHARRON BARBIERI MARDER
nka JOHNSON,

Plaintiff-Appellee,

- vs -

PETER WOLF MARDER,

Defendant-Appellant.

:

:

:

:

:

:

CASE NO. CA2008-11-108

OPINION
7/13/2009

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 93-DM-0744

Michelle M. Wenker, 8549 Montgomery Road, Cincinnati, OH 45236, for plaintiff-appellee

George E. Pattison, 285 East Main Street, Batavia, OH 45103, for defendant-appellant

YOUNG, J.

{¶1} Defendant-appellant, Peter Wolf Marder, appeals a decision of the Clermont County Court of Common Pleas, Domestic Relations Division, holding in abeyance the child support credit he is to receive as a result of Social Security payments made to his son. This is the second time the issue of Peter's child support

credit is before this court.

{¶2} Peter and plaintiff-appellee, Sharron Marder nka Sharron Johnson ("Sharron"), were divorced in 1994. They have one child, Taylor, born in January 1991. Taylor is severely handicapped. It is unlikely Taylor will ever live independently or be self-supporting. Sharron has full custody of Taylor. With the exception of one inadvertent contact, Peter has not seen or communicated with Taylor since the parties' divorce. Both Peter and Sharron are remarried. Sharron does not work outside of the home, cares for Taylor on a full time basis, and cares for the daughter she has with her present husband.

{¶3} Following the divorce, Peter was ordered to pay child support. In October 2005, he moved to adjust his child support obligation to give him credit for Social Security payments received by Sharron on behalf of Taylor as a result of Peter's retirement in 2001. In December 2006, the trial court found that Peter was entitled to "a dollar-for-dollar credit" for the Social Security payments received by Sharron on behalf of Taylor; gave Peter credit and adjusted his child support obligation for March–December 2005 and for 2006; but declined to give him credit for the years 2001-2004.

{¶4} Peter appealed the trial court's refusal to give him credit for the years 2001-2004 and for the January-February 2005 period. On May 27, 2008, we reversed and remanded the trial court's decision:

{¶5} "In light of the language in [*Williams v. Williams*, 88 Ohio St.3d 441, 2000-Ohio-375] and [*Pride v. Nolan* (1987), 31 Ohio App.3d 261], we find that Social Security payments received on behalf of Taylor as a result of Peter's 2001 retirement must be credited toward Peter's support obligation, commencing at such time as the benefit was

received, that is 2001. The trial court, therefore, erred in refusing to adjust Peter's child support obligation for the years 2001-2004 to give him credit for the Social Security payments received by Sharron on behalf of Taylor during those years. We reverse the trial court's denial of Peter's motion to adjust and remand the cause to the trial court to credit Peter's child support obligation with those Social Security payments received on behalf of Taylor for the years 2001-2004." *Marder v. Marder*, Clermont App. No. CA2007-06-069, 2008-Ohio-2500, ¶23. Inadvertently, our decision did not address the issue of Peter's child support credit for the January-February 2005 period.

{¶6} In June 2008, Sharron filed a motion for contempt against Peter for his failure to pay uncovered medical expenses. On September 22, 2008, on remand from this court's decision, the magistrate found that Peter was entitled to \$18,576 in child support credit for the years 2001-2004; ordered Clermont County Child Support Enforcement ("CSE") to "adjust their records to reflect an overpayment for the years 2001 through 2004 in the amount of \$18,576"; forbade CSE to attempt to collect the overpayment from Sharron until the issues in her June 2008 contempt motion were resolved; and instead "[held] the issue of reimbursement, or distribution of the credit, in abeyance." Because our May 27, 2008 decision only addressed Peter's child support credit for the years 2001-2004, the magistrate declined to grant Peter an additional \$818 in child support credit for the January-February 2005 period.

{¶7} Peter filed objections to the magistrate's decision. The trial court overruled the objections and upheld both the magistrate's refusal to credit Peter with \$818 for the January-February 2005 period and the determination that Peter could not collect the \$18,576 child support credit until resolution of the contempt motion regarding unpaid

medical expenses.¹

{¶18} Peter now appeals, raising one assignment of error:

{¶19} "THE TRIAL COURT ERRED BY NOT PROPERLY CREDITING PETER MARDER'S CHILD SUPPORT OBLIGATION WITH OVERPAYMENT FROM SOCIAL SECURITY."

{¶10} This assignment of error challenges the trial court's refusal, on remand, to allow Peter to collect his \$18,576 child support overpayment pending the resolution of Sharron's contempt motion regarding unpaid medical expenses.

{¶11} In our May 27, 2008 decision, we held that "Social Security payments received on behalf of Taylor as a result of Peter's 2001 retirement *must be credited toward Peter's support obligation*, commencing at such time as the benefit was received, that is 2001." We then reversed the trial court's decision and remanded the cause "to the trial court *to credit* Peter's child support obligation with those Social Security payments received on behalf of Taylor for the years 2001-2004." (Emphasis added.)

{¶12} Our holding was based upon the Ohio Supreme Court's decision in *Williams*, 88 Ohio St.3d 441, in which the supreme court clearly held that a "parent is entitled to a *full credit* in his *** child support obligation for Social Security payments received by a minor child." *Id.* at 444. (Emphasis added.) In that case, the supreme court held that the father's child support obligation was to be set off by those Social Security payments received on behalf of his daughter. Because the amount of Social Security payments received on behalf of the daughter exceeded what the father owed, the supreme court ordered the trial court to enter judgment reflecting that no child

1. The record shows that following Peter's filing of a notice of appeal of the trial court's decision, Sharron filed another motion in contempt against Peter for his failure to pay child support. The motion asserts that

support was owed from the time the daughter first received the Social Security benefits.

{¶13} Our May 27, 2008 decision did not condition Peter's right to collect his \$18,576 child support credit on further proceedings or the resolution of pleadings already filed or to be filed. In fact, nothing in our decision provided, even implicitly, that a child support credit under *Williams* could be or should be delayed or held in abeyance pending the resolution of other issues. Rather, we ordered the trial court to credit Peter's child support obligation with the Social Security payments received on behalf of Taylor for the years 2001-2004. The trial court did not, in contravention of our remand.

{¶14} It is well-established that decisions made by a reviewing court regarding legal questions remain the law of that case for all subsequent proceedings at both the trial and appellate levels. See, e.g., *Singleton v. Singleton* (1994), 95 Ohio App.3d 467, 470, citing *Nolan v. Nolan* (1984), 11 Ohio St.3d 1. Absent extraordinary circumstances, such as an intervening decision by the Ohio Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case. *Nolan* at 5. Furthermore, upon remand, the trial court is without authority to extend or vary the mandate given. *Singleton* at 471. While this doctrine is generally considered a rule of practice, the rule is necessary to ensure consistency of results in a case, *to avoid endless litigation by settling the issues*, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution. *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, ¶15. (Emphasis added.)

{¶15} We therefore hold that the trial court improperly refused to give Peter the \$18,576 child support credit he is entitled to and improperly held it into abeyance

Peter was \$5,169.32 in arrearage on his child support obligation as of December 31, 2008.

instead. In doing so, the trial court extended our mandate without authority to do so. As much as it might be inclined to, the trial court simply cannot keep delaying the \$18,576 child support credit Peter is due to receive. Justice delayed is justice denied. We therefore order the trial court to *immediately* credit Peter's child support obligation with the \$18,576 child support overpayment.

{¶16} Peter also asserts that "[o]nce the Court determines the amount of overpayment, that determination is an Order upon which statutory interest accrues, pursuant to R.C. 1343.03(A)." Peter claims he is entitled to statutory interest under R.C. 1343.03(A) "from October 4, 2005, when the trial court should have found the amount of the overpayment."

{¶17} It is well-established that any unpaid and delinquent installments in a domestic relations proceeding which have not been reduced to a lump sum judgment are not subject to the interest provisions of R.C. 1343.03. See *Dunbar v. Dunbar*, 68 Ohio St.3d 369, 370, 1994-Ohio-509 (holding that child support arrearages not reduced to a lump-sum judgment are not subject to the interest provisions of R.C. 1343.03). The child support credit Peter is entitled to has not been reduced to a judgment entry, and Peter has not moved the trial court for a judgment entry. Further, the issue of interest under R.C. 1343.03 has never been before the trial court. We therefore decline to address the issue.

{¶18} Finally, Peter argues that the trial court improperly refused to credit him with \$818 for the Social Security payments received by Sharron on behalf of Taylor in January and February 2005. As noted earlier, our May 27, 2008 decision inadvertently did not address the issue of Peter's child support credit for the January-February 2005

period. In his appellate brief, and in a separate motion to amend our May 27, 2008 decision, Peter requests this court to correct this oversight and to amend our previous decision to include Peter's overpayment of \$818 for the January-February 2005 period. We decline to do so.

{¶19} Given that our May 27, 2008 decision only addressed the trial court's refusal to give Peter credit *for the years 2001-2004* and clearly required, on remand, that Peter's child support obligation be credited for the Social Security payments received on behalf of Taylor *for the years 2001-2004*, neither the magistrate nor the trial court erred in refusing to give Peter credit for the January-February 2005 period. A lower court has no discretion to disregard the mandate of a superior court and is instead required to follow the mandate. *Nolan*, 11 Ohio St.3d at 3-4.

{¶20} We further decline to amend our May 27, 2008 decision. Following that decision, Peter could have filed a motion for reconsideration under Civ.R. 26 and brought to our attention the obvious error. Alternatively, Peter could have filed a notice of appeal to the Ohio Supreme Court to challenge our oversight. Peter did neither. As a result, our May 27, 2008 decision is the law of the case.

{¶21} Peter's assignment of error is accordingly overruled in part and sustained in part. Judgment affirmed in part, reversed in part, and remanded for further proceedings.

POWELL, P.J., and HENDRICKSON, J., concur.