

35678

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE CHILD(REN) OF:

MELISHA A. BOYD,
Petitioner, (now deceased)

and

Civil Action No.: 97-D-133

JOHN E. CAPLINGER,
Respondent

and

JANET HORNBECK,
DONALD HORNBECK,
Intervenors.

ORDER

On the 24th day of August 2009 came the Intervenor and custodial party of the minor child, **Janet Hornbeck**, by counsel, Robert S. Fluharty, Jr., who filed a Petition for Appeal from a Family Court Final Order. The Respondent, **John E. Caplinger**, did not file a response, however, the **West Virginia Bureau for Child Support Enforcement**, by counsel, Aimee L. Morgan, filed a Response to Petition for Appeal.

Whereupon, the Court acknowledged receipt and reviewed the Petition for Appeal, the Response to Petition for Appeal, the Record of the Family Court, and the applicable case and statutory law.

The Court is bound by the record in the trial of the case and accordingly bases its decision as to the Petition for Appeal upon that record. W.Va. Code § 51-2A-14.

The Court, pursuant to W.Va. Code § 51-2A-14, must consider whether the findings of fact by the Family Court were clearly erroneous or whether the Family Court abused its discretion in its application of the law.

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DR. O.B. No. 158
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CAROLE JONES
CLERK CIRCUIT COURT

The Petition for Appeal asserts that to the detriment of the minor child “the Family Court erred as a matter of law, or at the least abused its discretion, when it failed to apply payments made by John E. Caplinger on accrued and unpaid child support, first to accrued and unpaid interest, and then to a reduction of the outstanding principal balance; but rather, the Family Court used the procedure followed by the Bureau of Child Support Enforcement (“BCSE”) and applied such payments first to a reduction of the outstanding principal balance owed and then to accrued and unpaid interest.” The basis for this contention is that the well-settled law of West Virginia dictates that payments on an outstanding debt which bears interest are to be credited first to the accrued and unpaid interest and then to the reduction of the principal balance. See *Liskey v. Snyder*, 66 W.Va. 149 (1909); *Ward v. Ward*, 21 W.Va. 262 (1883); *Hurst’s Adm’r v. Hite*, 20 W.Va. 182 (1882). These cases, and the method used therein, deal primarily with repayment of debts to banking institutions or other for-profit persons or entities.

As a preliminary matter, it appears to the Court that this issue has not previously been decided by the West Virginia Supreme Court of Appeals as there is no case law on point and there are no statutes specifically describing the method to be used in this type of case. However, there are a couple of relevant provisions of state and federal law.

West Virginia Code § 48-18-113(a) states, in pertinent part: “The amounts collected as child support shall be distributed by the Bureau for Child Support Enforcement in accordance with the provisions for distribution set forth in 42 U.S.C. § 657. The Commissioner shall promulgate a legislative rule to establish the appropriate distribution as may be required by federal law.” Federal law on this issues states, in pertinent part:

The State plan shall provide as follows: (a)(1) For purposes of distribution in an IV-D case, amounts collected, except as provided under paragraph (a)(3) of this section, shall be treated first as payment on the required support obligation for the month in which the support obligation was collected and if any amounts which

are in excess of such amount, these excess amounts shall be treated as amounts which represents payment on the required support obligation for previous months. 45 CFR 302.51 Ch. III (10-1-00 Edition).

In essence, the above-cited provisions provide that the State of West Virginia shall follow the federal regulation which does not provide for any distribution with regard to interest charged on past-due child support obligations. The federal law allows the states to determine whether they will charge interest on child support arrearages and, as such, does not provide a method for applying payments for arrearages to the principal and interest. Finally, it appears from the above-cited provisions, that the determination as to how to apply payments for arrearages to the principal and interest owed has been left up to the State, specifically the BCSE.

The BCSE has established, at least in practice, the method of applying payments for arrearages in that it applies the payments first to reduction of the outstanding principal balance owed and then to the accrued and unpaid interest. This procedure has been impliedly approved by the West Virginia Supreme Court of Appeals in that it appears that the BCSE's procedure has not previously been rejected when the Supreme Court of Appeals has decided cases involving the payment of child support arrearages.

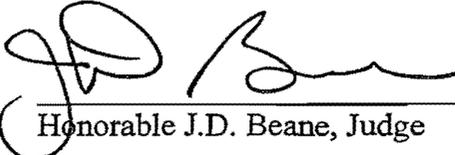
Therefore, in the absence of any statutory guidelines or case law as to how the Family Court is to apply child support arrearage payments to past-due principal and interest and given the BCSE's apparent authority to establish a method of applying these payments and its long-standing practice of applying these payments first to a reduction of the outstanding principal balance owed and then to accrued and unpaid interest, the Court finds that the Family Court did not err as a matter of law nor abuse its discretion in its application of the procedure followed by the BCSE.

Based upon the foregoing and this Court's standard of review, the Court finds that the Family Court was not clearly erroneous in its findings of fact and did not abuse its discretion in its application of the law.

Accordingly, the Court **ORDERS**:

1. The Order of the Court on the Issue of the Respondent's Child Support Arrears of the Family Court entered July 30, 2009, is **AFFIRMED**;
2. The Petition for Appeal is **DENIED**;
3. This is a Final Order disposing of the Appeal; and
4. The Clerk of this Court is directed to forward a copy of this Order to the parties or their respective counsel of record.

Entered this 15th day of October 2009:

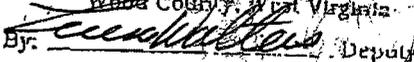


Honorable J.D. Beane, Judge

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 15 day of OCT-2009, as fully as the same appear to me of record.

Given under my hand and seal of said Circuit Court, this the 5 day of OCT 2009


Clerk of the Circuit Court of
Wood County, West Virginia
By:  Deputy