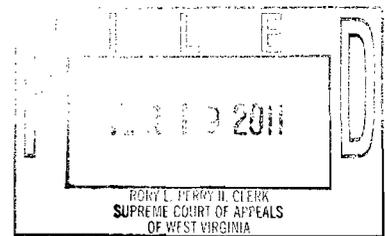


**ARGUMENT
DOCKET**

NO. 35678



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MELISHA A. BOYD (DECEASED), Petitioner Below,

Appellee,

v.

JOHN E. CAPLINGER, Respondent Below,

Appellee,

v.

JANET HORNBECK and DONALD HORNBECK, Intervenors Below,

Appellants.

**From the Circuit Court of Wood County, West Virginia
The Honorable J.D. Beane
Civil Action Number 97-D-133**

REPLY BRIEF OF APPELLANTS

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TABLE OF AUTHORITIES

Cases

<i>Morton v. Godfrey L. Cabot, Inc.</i> , 63 S.E.2d 861, 134 W.Va. 55 (1949)	1
<i>Hurst's Adm'r v. Hite</i> , 20 W.Va. 183, 1882 WL 3509 (1882)	1
<i>Ward v. Ward</i> , 21 W.Va. 262, 1883 WL 3151 (1883)	1
<i>Liskey v. Snyder</i> , 66 W.Va. 149, 66 S.E. 702, 709 (1909)	1
<i>Johnson v. Terry</i> , 149 P.2d 795, 797, 48 N.M. 253 (1944)	1
<i>Occidental Life Ins. Co. of Cal. v. Kielhorn, D.C. Mich.</i> , 98 F.Supp. 288 (1951)	1

Other

Section 1, Article VI, Constitution of the State of West Virginia	2
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REPLY OF APPELLANTS

The Response Brief of the Bureau for Child Support Enforcement ("BCSE") misses the point. As per Federal mandate, all child support payments are first allocated to child support for the current calendar month. The issue *sub judice* is how to credit the amount paid in excess of the child support due for the current calendar month. One who withholds money from the rightful owner on the date on which it should be paid is liable for interest. *Morton v. Godfrey L. Cabot, Inc.*, 63 S.E.2d 861, 134 W.Va. 55 (1949). The BCSE does not dispute that the law enunciated by this Court in *Hurst's Adm'r v. Hite*, 20 W.Va. 183, 1882 WL 3509 (1882), *Ward v. Ward*, 21 W.Va. 262, 1883 WL 3151 (1882), and *Liskey v. Snyder*, 66 W.Va. 149, 66 S.E. 702, 709 (1909), requires that payments made on a judgment be applied first to the payment of accrued interest and then to the reduction of the unpaid principal balance. If a child support award is not paid on the day required by the decretal judgment, the individual to whom that payment is owed is a judgment creditor who may cause an execution, suggestion, or suggestee execution to issue against the judgment debtor in order to obtain satisfaction of his or her judgment. The creditor's rights of a judgment creditor owning a child support judgment are as great as the rights of any other judgment creditor.

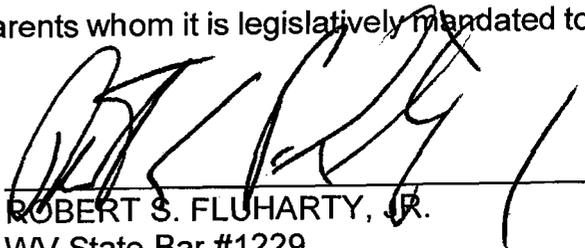
'Substantive law', is that which creates duties, rights and obligations. *Johnson v. Terry*, 149 P.2d 795, 797, 48 N.M. 253 (1944). Substantive law is that part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion. *Occidental Life Ins. Co. of Cal. v. Kielhorn, D.C. Mich.*, 98 F.Supp. 288 (1951). The right of a creditor to have the debtor's payments applied first to accrued and unpaid interest

before those debtors payments reduce the outstanding principal balance of the debt is a substantive right.

The BCSE is a bureau contained within a department of the executive branch of the West Virginia state government. The BCSE lacks the authority change the substantive law of West Virginia, whether that law is contained in the opinions of this Court or set forth in the statutes enacted by the legislature. Section 1, Article VI, of the Constitution of the State of West Virginia provides, "The legislative powers shall be vested in a Senate and House of Delegates." Appellants do not dispute that it is within the power of the legislature to change the manner in which payments on past due child support are applied; however, an executive agency (BCSE) has no right to change the substantive law of this State.

It is the Appellant's position that the BCSE should calculate the unpaid balance of accrued child support in accordance with the case law promulgated by this Court. Requiring the BCSE to follow what this Court has determined to be the law in this State will not modify any existing court order, and will protect the substantive rights of those judgment creditors who are owed past due child support.

Finally, if the BCSE wants to give away the State of West Virginia's money (by incorrectly calculating the interest owed on money which the State of West Virginia advanced for the support of children) that is its business; however, the BCSE should not be giving away the money of children and the parents whom it is legislatively mandated to protect.



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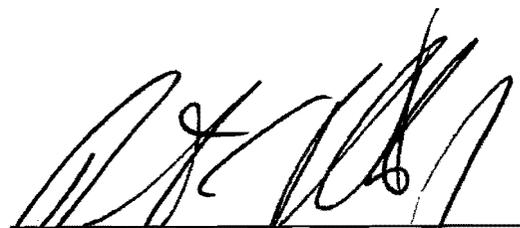
CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Appellants, hereby certifies that on the 15th day of April 2011, he served the foregoing and hereto attached **REPLY OF APPELLANTS** upon the parties listed below by United States mail, postage prepaid, at the last known addresses for said parties:

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