

Workman, Justice, dissenting:

I must respectfully dissent from the majority as it wrongly concludes that a single statutory provision is controlling with respect to the collection of child support arrearages. In holding that the procedures of West Virginia Code § 48A-5-2 (1998) must be followed prior to instituting automatic withholding of an obligor's income, the majority has failed to comprehend the statutory scheme of child support collection established by the Legislature. Rather than only one procedural mechanism for collecting child support arrearages, there are in fact four separate means of collecting child support.

One method by which an obligee of child support may seek to collect unpaid child support is to follow the procedures set forth in West Virginia Code § 48A-5-2 for instituting a lien against the obligor's personal property. A second method of collecting child support obligations, both current and past due, is to pursue the mechanism provided for in West Virginia Code § 48A-5-3 (1998), which authorizes automatic withholding from the obligor's wages. Under the provisions of West Virginia Code § 48A-5-4 (1998), an obligee can file a lien against the obligor's real property for overdue child support. The final method contemplated by the Legislature for enforcement of support obligations involves the commencement of contempt proceedings in accordance with West Virginia Code § 48A-5-5 (1998).

The majority wrongly focused on language found in West Virginia Code § 48A-5-2, which addresses the procedures that are to be followed prior to obtaining a writ of execution, suggestion, or suggestee execution in connection with filing a lien against an obligor's personal property, and concluded that these procedures similarly apply to wage withholding collection scenarios. Nothing could be further from the truth.<sup>1</sup> As delineated above, the Legislature clearly set forth four different mechanisms for collecting child support. While an obligee could clearly opt to pursue collection efforts under all four of these statutory provisions, the procedures necessary to obtain the issuance of a writ of execution, suggestion, or suggestee execution as stated in West Virginia Code § 48A-5-2 are not a prerequisite to seeking child support through the means of wage withholding provided for in West Virginia Code § 48A-5-3.

Another serious mistake in reasoning that the majority makes is to conclude that the wage withholding provisions set forth in West Virginia Code § 48A-5-3 only apply to current support obligations. Even a cursory examination of the language of West Virginia Code § 48A-5-3 reveals that the Legislature both envisioned and provided for wage withholding for support obligations that are current, past-due, or a past due

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<sup>1</sup>The majority similarly errs in its statement that “totally different collection procedures are provided for current obligations as opposed to accrued, past due obligations.” This is patently fallacious as all four types of collection/enforcement mechanisms apply in cases where child support obligations are past due. Since income withholding applies to both current and past due obligations under West Virginia Code § 48A-5-3, the majority's view of collection procedures is simply not supported by law.

support obligation that coexists with a current support obligation. Contrary to the majority's ruling, automatic income withholding is legally mandated under the provisions of West Virginia Code § 48A-5-3. This is in accord with federal law which requires income withholding as a mechanism for collecting child support. See 45 C.F.R. § 303.6 (1995).

The majority spends much time discussing the need for due process protections in connection with child support collection efforts. Presumably, the majority finds fault with automatic wage withholding on the grounds of notice. Yet, consistent with federal law, see 42 U.S.C.A. § 666(b) (1998), notice is only required in automatic wage withholding cases in two instances. Pursuant to West Virginia Code § 48-2-15b(c) (1998), income withholding shall not be automatic where good cause is established or where the parties submit an agreement providing for an alternate arrangement for collection. In the instant case, the parties conceded that neither of these exceptions apply.

The ruling of the majority has placed this State in a precarious financial situation as the Child Support Enforcement Division ("Division") argues that it is now at risk of placing federal funds<sup>2</sup> in jeopardy if it follows the majority's position and first

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<sup>2</sup>The Division represents the amount of federal funds at risk as \$130,000,000.

jumps through the procedural hoops delineated in West Virginia Code § 48A-5-2 (i.e. obtaining an affidavit and/or court order) before instituting income withholding under West Virginia Code § 48A-5-3. As the Division points out in its brief supporting its petition for rehearing, by adhering to the procedures outlined in West Virginia Code § 48A-5-2 it stands at risk of violating federal law mandating automatic withholding, 42 U.S.C.A. § 666(a)(1)(B), (b)(9) (1998), due to the possibility that an obligor would schedule a hearing pursuant to West Virginia Code § 48A-5-2(f) to contest the affidavit of accrued support. Furthermore, the Division argues that compliance with the majority's ruling will force it to violate federal time limits that require it to withhold income within two days of locating an obligor's source of income. See 42 U.S.C.A. §§ 653a(g)(1); 654 (g)(1)(a) (1998). Violation of this two-day requirement seems inevitable if the majority position is followed given the fourteen-day moratorium imposed upon the collecting party by West Virginia Code § 48A-5-2(g).<sup>3</sup>

Once again, as is all too often the case where children are involved, the delays in receiving child support that will result from adherence to the majority ruling and possible federal funding losses brought about by the majority's ruling will surely inure to the detriment of the child. Any delay in the receipt of child support payments, which we have previously declared to be "exclusively for the benefit and economic best

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<sup>3</sup>Under West Virginia Code § 48A-5-2(g), the obligor has fourteen days in which to contest the affidavit of accrued support by informing the Division in writing of its basis for contesting the affidavit or to obtain a court hearing for the same purpose.

interest of the child,” will undoubtedly exacerbate the negative impact already realized by the child who is owed support. Carter v. Carter, 198 W. Va. 171, 176, 479 S.E.2d 681, 686 (1996). Through the majority’s emasculation of the automatic wage withholding mechanism of collecting child support, this State’s previously-declared public policy to resolve issues of “visitation, child support and child custody” consistent with the “best interest and welfare of the children” in mind has been violated. Carter, 198 W. Va. at 176, 479 S.E.2d at 686.

I am authorized to say that Chief Justice Davis joins me in this dissent.