

NOTICE
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2012 IL App (4th) 110737-U

Filed 6/8/12

NO. 4-11-0737

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of)	Appeal from
SHANNON A. MAYFIELD, n/k/a SHANNON A.)	Circuit Court of
DYKES,)	Woodford County
Petitioner-Appellee,)	No. 02D99
and)	
HOWARD R. MAYFIELD,)	Honorable
Respondent-Appellant.)	John B. Huschen,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's allocation of the lump-sum workers' compensation settlement as child support.

¶ 2 Following an April 2011 hearing, the trial court ordered respondent, Howard R. Mayfield, to pay \$47,984 or 20% of the \$239,920 he received for a lump-sum workers' compensation settlement to petitioner, Shannon A. Mayfield, now known as Shannon A. Dykes, as child support within 30 days.

¶ 3 Howard appeals, arguing that the trial court erred by awarding Shannon 20% of the proceeds of the lump-sum workers' compensation settlement as child support. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In 1995, the parties were married, and they had two children, Zachary (born March 11, 1993) and Jessica (born February 11, 1997). In December 2003, the parties divorced,

and the trial court ordered Howard to pay child support of \$158 per week.

¶ 6 In January 2004, Howard filed a petition to modify child support. Shannon responded that Howard was in arrears. In June 2004, the trial court found Howard \$1,580 in arrears and ordered him to pay \$32 per week to satisfy that debt. In May 2009, Howard filed a petition to modify child support because Zachary began living with him. In June 2009, the court calculated Shannon's child support obligation to be \$270.03 per month and Howard's child support obligation to be \$432.74 per month. The court modified the then-existing child support order and ordered Howard to pay child support of \$37.57 per week to reflect the new living arrangements and the parties' respective support obligations.

¶ 7 In January 2011, Shannon filed a petition to modify child support because Zachary had reached the age of majority. At an April 2011 hearing on Shannon's petition, Howard testified that he suffered a workplace injury and had entered into an Illinois worker's compensation settlement contract for a lump-sum settlement. Howard received a lump-sum payment of \$300,000 consistent with the terms of the contract. Howard testified that he had spent most of the settlement proceeds, as follows: (1) paid his home mortgage balance, (2) spent approximately \$44,000 for hunting property, (3) paid off a \$9,000 loan, (4) purchased a motorcycle for \$10,000, (5) took a \$5,000 Florida vacation, and (6) extensively remodeled his home. Howard admitted that he did not notify Shannon of his workers' compensation claim.

¶ 8 Shannon testified that Jessica was 14 years old and in need of support. While Howard's workers' compensation case was pending, he was unemployed, which caused her to experience significant reduction in child support. Shannon did not know about Howard's settlement until the April 2011 hearing.

¶ 9 Howard's workers' compensation settlement contract, dated May 17, 2010, revealed that Howard's injury occurred on October 12, 2007, and that Howard received temporary total disability payments of \$646.40 per week for approximately 170 weeks. In sum, Howard received a total lump-sum settlement of \$239,920 after deducting attorney fees, medical reports, and X-rays. The contract states as follows: "It is the parties['] intent and agreement that this shall constitute the equivalent of monthly payments for the duration of [Howard's] life expectancy of 34 years which comes out to \$580.30 per month." The contract further stated that Howard would be responsible for medical bills incurred after the date of the contract.

¶ 10 Howard's financial affidavit reflected (1) that he continued to receive a disability pension check in the amount of \$986 per month, and (2) a money market account with a balance of approximately \$31,000 at the time of the hearing.

¶ 11 At trial, Howard argued that apportionment of a workers' compensation award for purposes of child support is a matter of first impression.

¶ 12 The trial court's April 2011 order, in pertinent part, provides as follows:

"The Court has reviewed the authorities provided. This Court is compelled to follow [*In re Marriage of Dodds*, 222 Ill. App. 3d 99, 583 N.E.2d 608 (1991)]. [*Dodds*] found workers['] compensation awards to be income and approved a percentage distribution of the lump sum payment for child support. [Howard] is correct in pointing out that the lump sum payment he received represented his wage differential basis over his 34[-]year life expectancy. However [section] 9 [of the Workers' Compensation

Act (Compensation Act) (820 ILCS 305/9 (West 2010))] provides that workers may elect to receive the compensation due them resulting from work injury in a lump sum payment. The compensation however is an amount which will equal the total sum of the probable future payments capitalized at their present value. If [Howard] had desired to pay his child support in weekly or monthly payments, he could have ignored the election and taken his compensation over his life expectancy."

Thereafter, the court ordered Howard to pay \$47,984 or 20% of his workers' compensation settlement to Shannon within 30 days, and to continue paying \$197.20 per month in child support.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Howard appeals, arguing that the trial court erred by awarding Shannon 20% of the proceeds of the lump-sum workers' compensation settlement as child support.

¶ 16 A. The Standard of Review

¶ 17 Findings of a trial court as to net income and the awarding of child support are within the discretion of the trial court and will not be disturbed on review absent an abuse of discretion. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 42, 961 N.E.2d 980, 989 (quoting *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103, 655 N.E.2d 1144, 1148 (1995)). Because Howard challenges the trial court's interpretation of the child support statute—the application of law to undisputed facts—our review is *de novo*. See *In re Marriage of Baylor*,

as '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts and the like.' Black's Law Dictionary 778 (8th ed. 2004)."

¶ 21 C. Workers' Compensation As "Income" for Child Support Purposes

¶ 22 Howard concedes that workers' compensation awards should be treated as income for purposes of child support under the Second District's decision in *In re Marriage of Dodds*, 222 Ill. App. 3d 99, 583 N.E.2d 608 (1991). In *Dodds*, 222 Ill. App. 3d at 103, 583 N.E.2d at 611, the court held that the one-time receipt of money from a lump-sum payment of workers' compensation settlement is included as "net income" under the Dissolution Act. However, although the trial court ordered the obligor to pay 21% of the lump-sum settlement as child support, the appellate court specifically did not address whether the trial court properly determined the child support amount, concluding that the issue had been forfeited. *Dodds*, 222 Ill. App. 3d at 104, 583 N.E.2d at 612.

¶ 23 Shannon argues that this case is controlled by *Dodds* and its determination that workers' compensation is includable as income for child support purposes. For additional support, Shannon notes that workers' compensation is defined as income under section 15(d) of the Income Withholding for Support Act (750 ILCS 28/15(d) (West 2010)).

¶ 24 We begin our analysis with the long-settled public policy that parents have a duty to provide for the support of their children. 750 ILCS 5/505(a) (West 2010); 750 ILCS 45/1.1 (West 2010); see also *McMahill v. McHail's Estate*, 113 Ill. 461, 467 (1885) ("The public policy is dwelt upon the maintaining of such a provision for the support of minor children in their

helplessness."); *In re Matt*, 105 Ill. 2d 330, 335, 473 N.E.2d 1310, 1313 (1985) (balancing the public policy of ensuring child support judgments are enforced by all available means against the policy of protecting spendthrift trusts); *In Interest of J.R.Y.*, 157 Ill. App. 3d 396, 399, 510 N.E.2d 541, 544 (1987) ("A noncustodial parent is charged with as much responsibility as a custodial parent for the support, protection, and care of a child.").

¶ 25 In *Rogers*, 213 Ill. 2d at 138-39, 820 N.E.2d at 391, the supreme court elaborated on the duty to provide for support and the definition of income, as follows:

"[T]he relevant focus under section 505 is the parent's economic situation at the time the child support calculations are made by the court. If a parent has received payments that would otherwise qualify as 'income' under the statute, nothing in the law permits those payments to be excluded from consideration merely because like payments might not be forthcoming in the future. ***

* * *

Recurring or not, the income must be included by the circuit court in the first instance when it computes a parent's 'net income' and applies the statutory guidelines for determining the minimum amount of support due under section 505(a)(1) of the Act. If, however, the evidence shows that a parent is unlikely to continue receiving certain payments in the future, the circuit court may consider that fact when determining, under section 505(a)(2) of the Act [citation], whether, and to what extent, deviation from the

statutory support guidelines is warranted."

¶ 26 While workers' compensation payments are excluded from income for federal income tax purposes (26 U.S.C. § 104 (2006)), this is not dispositive for child support purposes. As the court stated in *Rogers*, 213 Ill. 2d at 137, 820 N.E.2d at 390, income for purposes of section 505(a)(3) includes payments that would not be taxable as income under the Internal Revenue Code. The generosity of the federal tax code is separate from child support as the statutory provisions of each are designed to achieve different purposes. *Rogers*, 213 Ill. 2d at 137, 820 N.E.2d at 390. "While the Internal Revenue Code is concerned with reaching an amount of taxable income, the support provisions in the Dissolution Act are concerned with reaching the amount of parental income in order to determine the sum each parent can pay for the support of their child." *Bradley*, 2011 IL App (4th) 110392, ¶ 44, 961 N.E.2d at 990.

¶ 27 To recover compensation under the Compensation Act, a claimant must prove that he has suffered a disabling injury that arose out of and in the course of his employment. *Freesen, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 1035, 1039, 811 N.E.2d 322, 326 (2004). Section 8 of the Compensation Act provides the amount of compensation for nonfatal cases and is limited to the proscribed remedies. 820 ILCS 305/8 (West 2010). Section 10 of the Compensation Act provides that compensation for injuries is computed on the basis of the "average weekly wage" of the employee. 820 ILCS 305/10 (West 2010).

¶ 28 In the child support context, our focus is the "parent's economic situation at the time" the support calculations are made. *Rogers*, 213 Ill. 2d at 138, 820 N.E.2d at 391. Workers' compensation is not a return of investment or capital but compensation for lost wages. See *In re Marriage of O'Daniel*, 382 Ill. App. 3d 845, 850, 889 N.E.2d 254, 258 (2008) (holding

disbursements from individual retirement account representing contributions were not income for child support purposes). As workers' compensation payments are intended to replace lost wages, it is only logical that it is a type of "income" under the Act. These payments consist of a financial benefit received by the obligor parent that has a positive impact on the parent's ability to support his children. Including workers' compensation as income is consistent with the policy of including all income from all sources as it improves a parent's economic situation at the time of the payment. Therefore, we agree that workers' compensation payments are included in the statutory definition of "net income."

¶ 29 Indeed, several sister states have specifically included workers' compensation in their definition of income for purposes of child support. See Indiana ("Weekly Gross Income *** includes *** workmen's compensation benefits") (Indiana Rules of Court Child Support Rules and Guidelines, Guideline 3A, at 6 (2010)); Missouri (" 'Gross income' includes *** workers' compensation benefits") (Missouri Directions, Comments For Use And Examples For Completion of Form 14, at 2 (2012)); North Carolina (" 'Income' includes a parent's actual gross income from any source, including *** workers compensation benefits") (North Carolina Child Support Guidelines, at 3 (2011)); N.Y. Fam. Ct. Act § 413 1(b)(5)(iii)(A) (McKinney 2011); N.H. Rev. Stat. Ann. § 458-C:2 IV (2011); Ky. Rev. Stat. Ann § 403.212(2)(b) (West 2011).

¶ 30 D. Allocation of Lump-Sum Workers' Compensation Settlements for Child Support Purposes

¶ 31 Turning to the allocation of Howard's lump-sum workers' compensation settlement, Howard contends that the trial court erred by awarding 20% of the total settlement as child support. Howard asserts that this amounts to child support beyond the child's majority

because the settlement is intended to replace lost wages over his life expectancy. We disagree.

¶ 32 We view the lump-sum workers' compensation settlement as constituting current income to Howard. Although a workers' compensation award would not be taxable, had a lump sum like the award in this case been realized through employment or investment, it would be ordinary income for purposes of determining child support. This approach is consistent with *Dodds*, 222 Ill. App. 3d at 103, 583 N.E.2d at 611, as well as *Illinois Department of Public Aid v. White*, 286 Ill. App. 3d 213, 217-18, 675 N.E.2d 985, 988 (1997).

¶ 33 In so concluding, we point out that trial courts always possess the authority to deviate from the statutory guidelines when they believe doing so is appropriate, provided that (as the statute requires) they explain their reasoning.

¶ 34 As a last matter, we note that Shannon has a motion pending for fees to defend Howard's appeal in this case. After further consideration, we deny that motion.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's judgment.

¶ 37 Affirmed.