

14 Ohio Dom. Rel. J. 3

Domestic Relations Journal of Ohio
January/February 2002

by Craig P. Treneff, Esq. OSBA Certified Family Specialist Fellow
in the American Academy of Matrimonial Lawyers Columbus, Ohio

Legislative Review-House Bill 208

On October 10, 2001, the General Assembly passed House Bill 208 which was approved by the Governor on October 26, 2001. The bill will become effective on January 25, 2002, and makes several changes to domestic relations law, including allowing direct payment of spousal support.

Direct Payment of Spousal Support

Current law provides that when a court issues or modifies a support order, the order must require that the support payments be made to the Ohio Department of Job and Family Services, Office of Child Support. The Department acts as trustee for remittance of the payments to the person entitled to receive them. A processing charge of two percent is added to the amount of support ordered.

H.B. 208 creates new section 3121.441 of the Ohio Revised Code which allows a spousal support obligor to make payments directly to the obligee, and eliminate the processing charge, if two conditions are met: 1) when there are no minor children born as issue of the marriage, and, 2) the obligee has not assigned the spousal support payments to the Ohio Department of Job and Family Services as a condition of public assistance pursuant to R.C. 5101.59 or R.C. 5107.20.

The court may permit the direct payment in three circumstances. First, the withholding 'bypass' may occur when the court 'issues or modifies' a spousal support order pursuant to R.C. 3105.18 or R.C. 3105.65. Second, direct payment may be allowed when the court 'grants or modifies' a decree of dissolution incorporating a separation agreement which provides for spousal support. Finally, the third circumstance provided in the new section permits the direct payment 'at any time after the issuance, granting or modification of an order or decree of that type.' Thus, it appears that the 'bypass' may be allowed at any time the court exercises jurisdiction in a divorce, dissolution or legal separation, or 'at any time' after the exercise of that jurisdiction.

R.C. 3121.441(B) requires that the order for direct payment provide that such payments will be made by check, money order, or 'any other form that establishes a clear record of payment.'

Default in payment of spousal support pursuant to this section may result in the rescission of the direct payment order upon the motion of the obligee or the court. In such case, any arrearages and all future payments will be required to be made by withholding order and all permitted collection procedures will be applicable.

Arrearage Collection Efforts Amended

Presently, Section 3123.22 of the Revised Code provides that if a support obligor is subject to an arrearage, the child support enforcement agency administering the order may take any of the following steps to collect the arrearage: 1) issue one or more withholding or deduction notices; 2) collect a lump sum; 3) intercept any federal or state tax refund due to the obligor; 4) issue a withdrawal directive; or, 5) obtain administrative offset pursuant to R.C. 3123.85. Additionally, current law limits the application of above collection procedures to support orders issued after March 22, 2001.

H.B. 208 amends R.C. 3123.22 to create an exception to the potential collection procedures outlined above by permitting the obligor and obligee to agree in writing that the additional collection actions of the agency be limited to

intercepting the federal and state income tax refund of the obligor. The agreement must be approved by the court by journal entry. Further, both the additional collection procedures and the exception to them apply to any support order, regardless of when the order was issued.

Arrearage Payment Changes

R.C. 3123.21 currently provides that a withholding order for current support and any arrearage owed by the obligor pertaining to the same child or spousal support order must require that the arrearage amount collected equal at least 20% of the current support payment. Less than 20% of the current order may be permitted for the arrearage collection if good cause is shown. Good cause is defined as a change in the obligor's circumstances that would make the 20% arrearage withholding a hardship on the obligor. Further, good cause would exist if the current support payment and the arrearage payment exceed the maximum permitted under the Consumer Credit Protection Act.

This section is amended by House Bill 208 to remove the language requiring an additional 20% of the current order to be required to be collected. Instead, the requirement language is modified to provide that an order 'shall be rebuttably presumed to provide' an arrearage collection amount of at least 20% of the current support payment. Additionally, the good cause language for arrearage collection of less than 20% is eliminated and is replaced with a provision that permits a court or hearing officer to consider evidence of household expenditures, 'income variables,' extraordinary health care issues or other reasons for a deviation from the 20% presumption.

Relief from Paternity Determination or Support Order

Section 3119.961 of the Revised Code currently permits a person to file a motion for relief from judgment, court order or administrative determination or order that determines the person or male minor to be the father of a child or which orders the person or male minor to pay child support. This statutory authority is notwithstanding any provisions to the contrary in Ohio Civ. R. 60(B). The current code requires the motion to be filed in the juvenile court or other court with jurisdiction under R.C. 2101.022¹ or R.C. 2301.03² of the county in which the original judgment, court order, administrative determination or order, or child support order was made. Current law creates an exception to this rule if the determination of paternity is an acknowledgment that has become final under R.C. 2151.232, R.C. 3111.25, R.C. 3111.821, or former R.C. 3111.211 or R.C. 5101.314. In the case of acknowledgment, the person must file the motion in the juvenile court or other court with jurisdiction in the county in which the person or the child who is the subject of the acknowledgment resides.

H.B. 208 amends Section 3119.961 of the Revised Code to require the filing of the motion for relief from judgment in the division of the court of common pleas of the county in which the original judgment, court order, or child support order was made or issued or in the division of the court of common pleas of the county that has jurisdiction involving the administrative determination or order, instead of the juvenile court or other court with jurisdiction under R.C. 2101.022 or R.C. 2301.03. The code amendment does not change the exception for filing a motion for relief from a determination of paternity that is an acknowledgment of paternity.

Footnotes

¹ This section pertains to the concurrent jurisdiction of the judge of the probate division of the Court of Common Pleas of Marion County with the judge of the domestic relations-juvenile-probate division of that Court over all matters that are within the jurisdiction

of the probate division of that Court and all matters that are within the jurisdiction of the domestic relations-juvenile-probate division of that Court.

- 2 This section establishes in the courts of common pleas of specified counties domestic relations divisions, juvenile divisions, 'combined' juvenile and domestic relations divisions, and the domestic relations-juvenile-probate division of the Court of Common Pleas of Marion County.

Copyright © 2002 by West, a Thomson business

14 OHDRJ 3

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.