

***Metz v. Metz*, 120 Nev. Adv. Op. 86, 101 P.3d 779 (2004)¹**

DOMESTIC RELATIONS – CHILD SUPPORT

Summary

This appeal involves an ongoing custody dispute between the appellant Robert Metz (“Robert”) and the respondent Amy Metz (“Amy”). Robert appealed two orders issued by the district court in April of 2003. One order stated that the district court could not order Amy to pay child support because her income derives from supplemental security income (“SSI”) and social security disability (“SSD”) payments. The other order denied both Amy and Robert’s motions to modify the custody arrangements, with two minor changes. The Nevada Supreme Court reversed and remanded the portion of the April order that declined to take into account Amy’s SSD income and affirmed the order concerning the child custody arrangements.²

In 1998, Robert and Amy were granted a divorce. They have one child, who is now eight years old. The divorce decree awarded joint legal custody with Amy receiving primary physical custody of their child. Robert was ordered to pay \$360 per month in child support. Because Amy suffers from seizures and short-term memory loss, the divorce decree required that Amy place the child in day care for eight hours each weekday. The decree also stipulated that Amy and Robert exchange physical custody of their child at the day care.

Amy and Robert “have fought bitterly over child custody issues” in the ensuing years.³ Indeed, in 1999, Robert and Amy entered into a new custody arrangement in which Robert retained primary physical custody and Amy had visitation every other week-end and the entire month of July. Amy also agreed to pay \$100 per month in child support.⁴ Three years later, Amy and Robert were back in court when Amy filed a motion to modify the custody arrangement in September of 2002, maintaining that she could provide her child with a better home environment. Robert filed a countermotion for child support arrears and an opposition to Amy’s motion. The matter was set for a hearing. However, in January 2003, Robert filed an ex parte motion for an order to show cause before the court could rule on the motions. He additionally filed for sole physical and legal custody.⁵

In April of 2003, the district court entered two orders in the case. First, the court concluded that it could not order Amy to pay child support because she receives SSI and SSD benefits. Second, it affirmed the 1999 custody arrangement but required that the physical exchanges take place either at the child’s school or at the Washoe Sheriff’s department and allowed both Amy and Robert telephone access to their child. Robert appealed both orders.⁶

¹ Commentary by Angela Morrison

² *Metz v. Metz*, 120 Nev. Adv. Op. 86, 101 P.3d 779, 782, 787 (2004).

³ *Id.* at 781.

⁴ *Id.*

⁵ *Id.* at 781-82.

⁶ *Id.* at 782.

Issue and Disposition

Issue

Whether 42 U.S.C. § 407(a)⁷ exempts both SSI benefits and SSD benefits from being considered gross monthly income under Nevada's child support statute.⁸

Disposition

Title 42 U.S.C. § 407(a) exempts SSI benefits from consideration as gross monthly income, but Congress waived the exemption for SSD benefits. Thus, SSD benefits may be considered as gross monthly income but not SSI benefits. The Nevada Supreme Court affirmed in part and reversed and remanded in part.

Commentary

State of the Law Before *Metz*

The Nevada Supreme Court had not considered previously the issue of whether SSD and SSI benefits may be considered gross income for purposes of determining child support.⁹ Under an earlier version of the Nevada child support statute, there was no need for courts to consider whether gross income included social security benefits because the statute defined gross income, in part, as “the total amount of income from any source of a *wage-earning* employee or the gross income from any source of a self-employed person.”¹⁰ However, in 2001, the Nevada legislature passed the current version,¹¹ which replaced the term “wage-earning employee” with “person who is not self-employed.”¹² The change in terms created ambiguity about whether the Nevada Legislature intended gross income to include only sources of income from employment or all sources of income. Because of this ambiguity it was not clear whether the Nevada child support statute mandated that courts include social security benefits in their computations of child support. The ambiguity created a possible conflict between Nevada law and federal law.

⁷ 42 U.S.C. § 407(a) provides:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

⁸ NEV. REV. STAT. 125B.070(1)(a) provides:

“Gross monthly income” means the total amount of income received each month from any source of a person who is not self-employed or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.

⁹ *Metz*, 101 P.3d at 783.

¹⁰ *Id.* at 784 (citing *Rodgers v. Rodgers*, 110 Nev. 1370, 887 P.2d 269, 271 (1994)).

¹¹ *Id.* (citing 2001 Nev. Stat., ch. 386, § 1, at 1865) (as codified at NEV. REV. STAT. 125B.070(1)(a)).

¹² *Id.*

Other Jurisdictions

The Nevada Supreme Court's decision in *Metz* follows the rule set forth in other jurisdictions that have considered whether SSD or SSI payments are exempt from the jurisdiction's child support statutes. In the states where courts have looked at whether courts may include SSD benefits in meeting a litigant's child support obligations, all of the courts have held that SSD benefits should be reachable for satisfying court orders for child support.¹³ For instance, in *In re Marriage of Schonts*, the Iowa appellate court held that, under 42 U.S.C. § 407, a court could order a father to pay child support using his social security disability payments.¹⁴

On the other hand, all of the jurisdictions that have considered whether courts may order parents to pay child support based on SSI or other welfare-type benefits have held that such benefits are exempt.¹⁵ Recently, the California Court of Appeal ruled that courts may not use SSI benefits as part of a parent's gross income when making child support calculations.¹⁶ Therefore, the Nevada Supreme Court's decision reflects the law in other jurisdictions which allows courts to use SSD benefits when making child support calculations but exempts SSI payments from such calculations.

Effect of *Metz* on Current Law

Metz has three main effects on current law. First, it clarifies the ambiguity in the Nevada child support statute. Second, the decision specifically exempts SSI payments from consideration in child support calculations. Third, *Metz* allows courts to include SSD payments as part of a parent's gross monthly income.

In deciding this case, the Nevada Supreme Court first determined whether the new version of the Nevada child support statute, like the prior version, limited gross monthly income to income from employment.¹⁷ Using traditional tools of statutory construction the court reached the conclusion that "[t]he statute provides that income received from 'any source,' regardless of whether the parent is 'not self-employed' or is 'self-employed,' should be used to calculate a parent's child support obligation."¹⁸ This interpretation allows any source of income to be used to calculate child support. Hence, the court concluded that both SSD and SSI payments qualify as a source of income under Nevada Revised Statute 125B.070.

As a result, the Nevada statute conflicts with 42 U.S.C. § 407(a), which exempts certain welfare benefits from legal processes. The court noted where federal law conflicts with state family law, the federal law preempts the state law if "Congress has

¹³ Jane Massey Draper, *Enforcement of Claim for Alimony or Support, or for Attorney's Fees and Costs Incurred in Connection Therewith, Against Exemptions*, 52 A.L.R.5th 221, § 31 (2004).

¹⁴ *Id.* (citing *In re Marriage of Schonts*, 345 N.W.2d 145 (Iowa App. 1983); *cf.* *Burns v. Edwards*, 842 A.2d 186, 192 (N.J. Ct. App. Div. 2004) (holding that SSD benefits are not exempt from income in calculating child support obligations), *cited by Metz*, 101 P.3d at 786; *see also* *Knickerbocker v. Norman*, 938 F.2d 891 (8th Cir. 1991) (same)).

¹⁵ Draper, *supra* note 13, at § 33.

¹⁶ *Elsenheimer v. Elsenheimer*, 22 Cal. Rptr. 3d 447, 449-50 (Cal. Ct. App. 2004); for other decisions and statutes holding the same see *Metz*, 101 P.3d at 785-86 n.n. 33-41.

¹⁷ *Metz*, 101 P.3d at 784.

¹⁸ *Id.*

‘positively required by direct enactment’ that preemption is necessary.”¹⁹ Before a federal law can preempt a state law, however, it “must do ‘major damage’ to ‘clear and substantial federal interests.’”²⁰ Thus, the court examined whether using SSI and SSD benefits to determine child support would do “major damage” to “clear and substantial federal interests.”

The court determined that the federal exemption for SSI benefits did preempt Nevada law. In a prior decision, *Boulter v. Boulter*, the Nevada Supreme Court held that 42 U.S.C. § 407 barred courts from enforcing marital settlement agreements that divided social security benefits.²¹ Drawing on this decision and the purposes of SSI, which is “to provide a recipient with a minimum income for his or her own needs,” the court concluded that the inclusion of SSI would do “major damage” to a “clear and substantial federal interest.”²²

Conversely, the court held that SSD payments may be used by Nevada courts to calculate child support obligations. The court reasoned that “[i]n spite of the federal exemption, Congress has consented to income withholding, garnishment, and similar proceedings from federal moneys payable based on ‘remuneration for employment.’”²³ Because SSD benefits are funded from remunerations for employment, the court determined the Congressional exception applied to SSD benefits. Thus, Nevada courts may include a parent’s income from SSD payments to calculate child support obligations.

Unanswered Questions

Because the Nevada Supreme Court found that the Nevada child support statute includes SSI payments in gross monthly income, it is unclear whether the Nevada Legislature should rewrite that provision of the statute. Specifically, the Nevada Legislature ought to revise the statute to better reflect the decision in *Metz*. Another unanswered question is what other sources of income 42 U.S.C. § 704 bars. For instance, may courts use other types of federal welfare benefits to calculate child support? This, too, is an area which would be appropriate for the Nevada Legislature to address.

Conclusion

In *Metz*, the Nevada Supreme Court concluded that federal law prohibits courts from using SSI benefits to determine child support obligations. Additionally, the court found that SSD payments may properly be considered in child support calculations. The court’s decision clarifies an area of Nevada law that was left ambiguous by changes to the Nevada child support statute. Finally, the decision allows courts to use any source of income to calculate child support payments that is otherwise not prohibited by law – state and federal.

¹⁹ *Id.* at 785 (quoting *Rose v. Rose*, 481 U.S. 619, 625 (1987)).

²⁰ *Id.*

²¹ *Id.* (citing *Boulter v. Boulter*, 930 P.2d 112 (1997)).

²² *Id.* at 785-86.

²³ *Id.* at 786 (citing 42 U.S.C. § 659(a)).