SUPREME COURT OF ARKANSAS

Montgomery v. Bolton

79 S.W.3d 354, 349 Ark. 460 (2002) · No. 01-827 · Decided June 27, 2002

SUMMARY

The Supreme Court of Arkansas considered whether mandatory Tier II railroad-retirement withholdings may be deducted from income when calculating child support under Arkansas Supreme Court Administrative Order No. 10. The court held that “railroad retirement” includes both Tier I and Tier II benefits and that mandatory Tier II withholdings do not constitute disposable income. It reversed the trial court’s child-support order and remanded for further proceedings consistent with the opinion.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown; Glaze, J.; Imber, J.
JURISDICTION	Arkansas
DECIDED	June 27, 2002
DOCKET	01-827
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Gary Montgomery appealed an order increasing his child-support obligation and refusing to deduct mandatory Tier II railroad-retirement withholdings from his income. The Supreme Court of Arkansas reviewed the chancery court's ruling and reversed and remanded.
STANDARD OF REVIEW	Chancery cases are reviewed de novo on the record; factual findings are not reversed unless clearly erroneous, and child-support determinations are not reversed absent an abuse of discretion. Conclusions of law receive no deference on appeal.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Gary Montgomery v. Jade Bolton

TOPICS

child support · statutory interpretation · standard of review · appellate procedure · family law procedure

PRACTICE AREAS

family law | child support | statutory interpretation | appellate procedure

QUESTIONS PRESENTED

1. Whether mandatory Tier II railroad-retirement withholdings qualify as deductible railroad-retirement deductions under Section II of Arkansas Supreme Court Administrative Order No. 10 when calculating income for child-support purposes.
2. Whether the 1997 deletion of the word "equivalent" from the railroad-retirement deduction provision of Administrative Order No. 10 limited the deduction to the Social Security-equivalent Tier I benefits.

HOLDINGS

1. Mandatory Tier II railroad-retirement withholdings are deductible from income under Section II of Administrative Order No. 10 because they constitute "railroad retirement" deductions and do not form part of the obligor's disposable income.
2. The deletion of the word "equivalent" from Section II of Administrative Order No. 10 was intentional and did not restrict the railroad-retirement deduction to Tier I benefits.

KEY QUOTATIONS

> *"As we read it, the term "railroad retirement" in Section II of Administrative Order No. 10 is not limited to any particular Tier or to a social security equivalent."* (79 S.W.3d at 358)

> *"We hold that the mandatory Tier II withholdings do not form part of disposable income under the clear terms of Section II of Administrative Order No. 10 and that Tier II withholdings are part of "railroad retirement" deductions."* (79 S.W.3d at 359)

FACTUAL BACKGROUND

Montgomery, a railroad employee, was required to make Tier I and Tier II railroad-retirement withholdings from his pay. After Bolton sought increased child support, the chancery court calculated Montgomery's income by allowing deductions for Tier I retirement, but not Tier II retirement, and set support at $144 per week. The Tier II withholdings were mandatory and nonrefundable, and Montgomery had not yet received the related benefits.

PROCEDURAL HISTORY

Montgomery and Bolton divorced in 1993, with Bolton receiving custody of their two minor children and Montgomery ordered to pay support. In 2000, Montgomery moved for contempt and a change in custody, and Bolton counterclaimed for increased child support. After a February 2001 hearing, the chancery court modified visitation and support, determining that Tier I but not Tier II railroad-retirement withholdings could be deducted. Montgomery appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to enter an order consistent with the opinion, allowing deduction of the mandatory Tier II railroad-retirement withholdings when calculating Montgomery's disposable income for child-support purposes.

CASES CITED

- Waldon v. Waldon, 34 Ark. App. 118, 806 S.W.2d 387 (1991)
- McWhorter v. McWhorter, 346 Ark. 475, 58 S.W.3d 840 (2001)
- Myrick v. Myrick, 339 Ark. 1, 2 S.W.3d 60 (1999)
- Hunt v. Hunt, 341 Ark. 173, 15 S.W.3d 334 (2000)
- Scroggins v. Scroggins, 302 Ark. 362, 790 S.W.2d 157 (1990)
- City of Lowell v. M & N Mobile Home Park Inc., 323 Ark. 332, 916 S.W.2d 95 (1996)
- Kelly v. Kelly, 341 Ark. 596, 19 S.W.3d 1 (2000)
- Smith v. Smith, 341 Ark. 590, 19 S.W.3d 590 (2000)
- Faulkner v. Arkansas Children's Hospital, 347 Ark. 941, 69 S.W.3d 393 (2002)
- Raley v. Wagner, 346 Ark. 234, 57 S.W.3d 683 (2001)
- Dunklin v. Ramsay, 328 Ark. 263, 944 S.W.2d 76 (1997)
- Stephens v. Arkansas School for the Blind, 341 Ark. 939, 20 S.W.3d 397 (2000)
- Burcham v. City of Van Buren, 330 Ark. 451, 954 S.W.2d 266 (1997)
- State v. McLeod, 318 Ark. 781, 888 S.W.2d 639 (1994)
- Davis v. Office of Child Support Enforcement, 341 Ark. 349, 20 S.W.3d 273 (2000)
- Hisquierdo v. Hisquierdo, 439 U.S. 572, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979)
- R.N. v. J.M., 347 Ark. 203, 61 S.W.3d 149 (2001)
- Davis v. Old Dominion Freight Line, 341 Ark. 751, 20 S.W.3d 326 (2000)
- In re Administrative Order Number 10: Arkansas Child Support Guidelines, 329 Ark. 668 (1997)
- In re Administrative Order Number 10: Arkansas Child Support Guidelines, 347 Ark. Appx. (Jan. 31, 2002)
- In re Guidelines for Child Support Enforcement, 301 Ark. 627, 784 S.W.2d 589 (1990)
