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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JESSICA CASTRO DOMINGO, Petitioner v. DAVID IGLESIAS CELIS Jr., Respondent.	Civil Action No. FCD 09-0250 **ORDER**

I. INTRODUCTION

On July 8, 2013, Petitioner Jessica Castro Domingo ("Petitioner") filed a complaint to enforce a child support order issued by this Court on August 6, 2009 ("2009 Order"). Respondent David Iglesia Celis, Jr. ("Respondent") filed an answer on December 3, 2014 denying any knowledge of the Court's 2009 Order and how much child support he still owes. The matter came before the Court for an evidentiary hearing on January 30, 2015 and was continued to February 20, 2015.

II. BACKGROUND

From January 1992 to September 2000 Petitioner and Respondent were involved in a relationship that resulted in the birth of two daughters: Deyvee Jeen Castro Celis ("Deyvee'), born

on July 24, 1994; and Derrienne Cheyenne Castro Celis ("Derrienne"), born on December 26, 1995. Petitioner and Respondent cohabitated for several years beginning in July 1993 and ending in September 2002, and Respondent was declared the natural father of both children by decree. The order determining custody simultaneously entered by the Court in 2009 provided that Petitioner would be awarded legal and physical custody of the children and the parties would work out a visitation schedule between themselves. The 2009 Order also required Respondent to pay child support in the amount of $250 per month, plus $50 per month in arrearages. The Court found that the Respondent owed arrearages in the amount of $24,900 for the period of September 2002 through August 2009.

Since the Court's 2009 Order, Petitioner has come to this Court seeking past due child support payments. The Court found on two separate occasions, February 4, 2010[1] and April 9, 2012, that Respondent has not paid child support since 2009. On April 9, 2012, an order to show cause hearing was held whereby it was revealed that the Respondent had been paying child support directly to his two children. This Court thereby instructed Respondent that anything he gives to the children from that point forward would be considered gifts and would not be credited against his child support arrearages.

On July 8, 2013, Petitioner filed her complaint to enforce the 2009 Order, seeking collection of current child support totaling $11,020 and accumulated arrearages. On December 3, 2014, Respondent subsequently filed an answer essentially alleging two things: (1) that he was unaware of the Court's 2009 Order; and (2) that he was unaware of how much support he still owes. An evidentiary hearing was held on January 30 and February 20, 2015 to address Respondent's child support obligations. During the hearing, the Court heard extensive testimony from the parties. The

[1] Respondent failed to appear for a Review Hearing on February 4, 2010. The Court found that the Respondent had not paid child support since the 2009 Order and ordered Petitioner to file an Order to Show Cause re Contempt against Respondent.

Court also heard from three witnesses: Deyvee, Derrienne, and Tita Gabredo who provided testimonies indicating that the Respondent has been providing child support payments directly to his two children. Petitioner argued that the parties had never agreed to this arrangement, instead, they had agreed for Respondent to make child support payments to Petitioner via the Torres' Office.[2]

III. ISSUE

Whether a non-custodial parent should be given any credit against any accumulated arrearages for money paid directly to the child:

(1) When the controlling statute does not specifically mention support payments made directly to the child; and

(2) When the non-custodial parent has been ordered by this Court to pay child support to the other parent.

IV. DISCUSSION

A. Applicable Legal Standard

While 8 CMC § 1717(b) provides the Court with strict guidelines as to whom an obligor parent shall pay child support, Commonwealth courts have yet to address a case where a non-custodial parent makes child support payments directly to the child in contravention of an order by the Court. The relevant portion of 8 CMC § 1717(b) provides, "[t]he court may order support payments to the mother, the clerk of court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court."[3] 8 CMC § 1717(b).

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[2] It was brought to the Court's attention that the Respondent has only made one payment in the amount of $480 on April 17, 2012 to the Petitioner since the Court issued its 2009 Order.

[3] The Court agrees with Petitioner's argument that 8 CMC § 1717(b) limits the option as to whom the child support payments is to be made and that direct payments to the children is not an option intended by the statute. Pet'r's Proposed Findings of Fact and Conclusions of Law at 2. The Court also notes that Respondent has not provided an alternative statute for the Court to consider. Therefore, the Court has looked at how other jurisdictions have addressed this particular matter.

Since the controlling Commonwealth law does not specifically mention whether a non-custodial parent may make child support payments directly to the child, and the Court is unaware of any CNMI cases regarding this matter, the Court finds that many jurisdictions have addressed this particular issue.

As a general rule, a majority of courts have held that a non-custodial parent is not entitled to receive credit against child support arrearages when the payment is made directly to the child. *See Young v. Williams*, 583 P.2d 201, 203 (Alaska 1976). *See also State of Or. ex rel. Worden v. Drinkwater*, 700 P.2d 150, 153 (Mont. 1985) ("A non-custodial father cannot be relieved of his duty for child support by making payments directly to his children when the divorce decree specifically ordered him to make support payments to the mother."); *Briggs v. Briggs*, 165 P.2d 772, 777 (Or. 1946) (finding that because defendant paid child support directly to his children in spite of a divorce decree requiring him to pay it to the plaintiff, he cannot claim credit for the payments he voluntarily made to the children).[4] The rationale behind this general rule is that by allowing a non-custodial parent to pay child support directly to the child, it would significantly undermine the custodial parent's rights to disburse the funds as he or she deems fit. *Young*, 583 P.2d at 203. Thus, the manner in which child support is to be used should be left to the discretion of the custodial parent. *Id*. at 203; *Williams v. Budke*, 606 P.2d 515, 517 (Mont. 1980). Considering the principles announced in *Young* and *Williams*, courts have been very reluctant to credit a non-custodial parent's efforts to pay child support when it is voluntarily made to the children, and it is very infrequent for courts to entertain a non-custodial parent's request for credit. Therefore, courts have broad discretion to decide whether to grant or deny a credit towards support arrearages. *See Campbell v.*

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[4] *Transylvania County Dept. of Social Services on Behalf of Dowing v. Connolly*, 443 S.E.2d 892, 894 (N.C. Ct. App. 1994); *State ex rel. Child v. Sanders*, 1998 WL 158857 (Ohio ct. App. 8th Dist. Cuyahoga County (1998) (unreported opinion); *Ruehle v. Ruehle*, 97 N.W.2d 868, 872-73 (Neb. 1959) (stating the general rule that a non-custodial will not receive credit for child support payments made directly to the child).

Campbell, 827 So.2d 111, 113 (Ala. Civ. App. 2002). Moreover, in deciding whether Respondent is entitled to credit, the Court finds that the basic questions addressed in other jurisdictions are (1) whether there has been substantial compliance, in whole or in part, with the child support order; and (2) if substantial compliance is found, whether allowing credit can be done without injustice to the custodial parent. *Williams*, 606 P.2d at 517; *see also Goldman v. Goldman*, 529 So.2d 1260, 1261 (Fla. App. 3 Dist. 1988) (finding that the father's payment for child's room and board during college indicates a substantial compliance with the "spirit and intent" of the child support order when the parties entered into a property settlement agreement and desired to have their children enrolled in college); *Hadford v. Hadford*, 663 P.2d 1181, 1181 (Mont. 1981) ("[t]est for whether child support payments required by divorce decree can be satisfied by other payments made by the obligor parent is whether there is substantial compliance with the child support order."); *Ediger v. Ediger*, 479 P.2d 823, 827 (1971) ("[A]llowing such credit [should] not work a manifest injury to the custodial parent.")."The question of what constitutes substantial compliance depends . . . upon the circumstances of each individual claim." *Bradford v. Futrell*, 171 A.2d 493, 496 (Md. 1961). The Court believes that this is the best approach to the issue.[5]

B. Application of Standard to the Facts

[5] The Court also acknowledges that other jurisdictions have awarded a non-custodial parent credit against child support arrearages in the following circumstances: **(1)** Where allowed by statutes. *See e.g.*, *In re Marriage of Krauth*, 2001 WL 487371 (Iowa Ct. App. 2001); *Monicken v. Monicken*, 226 Wis.2d 509, 514 (Wis. Ct. App. 1999); **(2)** Where payments were made according to a proven agreement between the parents. *See e.g.*, *Hadford v. Hadford*, 663 P.2d 1181, 1186-7 (Mont. 1981); *Gomez v. Gomez*, 609 So.2d 263, 265 (La. App. 3d Cir. 1992); *Gleason v. Gleason*, 247 A.D.2d 384, 385 (2d Dep't 1998); **(3)** Where the custodial parent receives money that was given to the child by the non-custodial parent. *See e.g.*, *Bradford v. Futrell*, 171 A.2d 493 (Md. 1961); *Scott v. Sylvester*, 302 S.E.2d 30 (Va. 1983); **(4)**Where the child was living with or visiting the obligor parent at the time of payment. *See e.g.*, *Thompson v. Wright*, 613 So.2d 1289, 1291 (Ala. Civ. App. 1992); and **(5)** Courts are split on whether a noncustodial parent is allowed to receive credit when the child is in college. *Compare Dorsey v. Doresey*, 470 P.2d 581, 583 (Colo. App. 1970) (finding that special considerations of an equitable nature exited in justifying the court in crediting the support payments made to child while in college), *with Adams v. Adams*, 169 S.E.2d 160, 162 (holding that trial court did not err in refusing to consider non-custodial parent's support payments for the purpose of paying college educational expenses).

1. Respondent was aware of the Court's 2009 Order.

Respondent argues that he had no knowledge of the Court's 2009 Order and how much child support he still owes. The Court is not swayed by Respondent's argument and is appalled by Respondent's indifference for the 2009 Order. The Court issued and e-filed an order of child support on August 11, 2009 requiring Respondent to pay child support in the amount of $300 per month, fifty dollars of which would be used as payments towards arrearages totaling $24,900 for the period of September 2002 through August 2009. *See* Ct.'s Decree of Paternity and Order for Child Supp. at 2. Although Respondent claims that he had no knowledge of the 2009 Order, the facts on record illustrate that Respondent was well aware of the order and he intentionally chose to disregard it.

Respondent submitted a detailed summation of child support payments that he made directly to his two children beginning sometime in 2005 and ending in 2012 for his oldest daughter, Deyvee. *See* Celis Summation of Respondent's Child Support Payments at 1-4. Respondent continued to provide support payments directly to Derrienne up until this year. *Id*. at Ex. 1-A. The Respondent was instructed by verbal order in an April 9, 2012 order to show cause hearing ("Verbal Order") that anything he gives to his children from that point forward would be considered gifts and would not be credited towards his child support arrearages. Respondent, through his counsel, acknowledged the Verbal Order and agreed to forward child support payments to the Torres' Office. Respondent has only paid the total sum of $480 to Petitioner for the time period of August 2009 through April 2012. *See* Pet'r's Proposed Findings of Fact and Conclusions of Law at 5. Since then, Respondent has defied the Verbal Order and continued to provide direct payments of support to his children. Now, Respondent claims that he is entitled to credit.

The Court will not be manipulated by Respondent's efforts to mislead the Court. The fact that Respondent has been paying child support directly to his children after the 2009 Order and

continued to do so even after receiving stern warning from the Court's Verbal Order shows that the Respondent intentionally disregarded his child support obligation. The Court finds that Petitioner was aware of the 2009 Order and that he did have knowledge of it.

2. Respondent's Direct Payment of Support to His Children is Not in Substantial Compliance with the Court's 2009 and Verbal Orders.

First, Respondent attempts to show that he should be credited for the payments he made directly to his daughters before August 2009 by proffering support calculations beginning in 2005. *See* Celis Summation of Respondent's Child Support Payments at 1-4. The Court is unwilling to entertain Respondent's request for credit for payments he voluntarily made to his children before 2009 because, in essence, Respondent is asking the Court to retroactively modify its 2009 Order. Respondent is asking the Court to modify its 2009 Order judgment ordering him to pay $24,900 in arrearages because he had previously paid child support directly to his children. This Court lacks authority to retroactively modify its 2009 Order. *See generally Weathersbee v. Weathersbee*, 1998 MP 14, 3-4 (1998) ([a]lthough *Weathersbee* primarily addresses retroactive modification of a decree concerning spousal support under 8 CMC § 1311, section 1311 also covers revision of "any decree as to support of minor children."). Stated simply, "[w]here a divorce decree provides for the payment of stipulated monthly sums for the support of [] minor [] children . . . such payments become vested in the payee as they accrue. The courts are without authority to reduce the amounts of such accrued payments...." *Ruehle v. Ruehle*, 97 N.W.2d 868, 873 (Neb. 1959); *Weathersbee*, 1998 MP at 4 (citing *Delbridge v. Sears*, 160 N.W.218, 220 (Iowa 1916)). Therefore, the Court finds that any support payments that Respondent made directly to his children before the 2009 Order will not be credited against his child support arrearages.

Second, Respondent argues that he is entitled to credit for the direct support payments he made to his children since August 2009. Particularly, Respondent alleges that he paid

approximately $12,390[6] directly to his children by providing the following: school allowance, school clothes, shoes and other personal care, school supplies for school projects and other expenses, and a Western Union remittance to Derrienne. *See* Celis Summation of Respondent's Child Support Payments at 1-4. Moreover, Respondent argues that the Court should credit these payments against any accumulated arrearages since 2009. Again, the Court will not entertain Respondent's request for credit because the Court finds that these payments are not in substantial compliance with the Court's 2009 and Verbal orders.

Respondent's first contention is that both parties had orally agreed that he could pay child support directly to his daughters. However, Petitioner adamantly disputes this fact. Normally, courts will not enforce an out-of-court agreement that prospectively alters the amount of support due under a divorce decree. *Sutton v. Schwartz*, 808 S.W.2d 15, 18 (Mo. Ct. App. 1991). However, absent proof of an out-of-court agreement, circumstances may exist that justify a court in crediting voluntary payments in the child's behalf. *Id*. When deciding whether to grant or deny credit against arrearages, courts that have considered the equitable principle of "substantial compliance" tend to fall under one general consideration—"the implied or apparent consent of the mother who occupies the position of parent-trustee." *Ediger v. Ediger*, 479 P.2d 823, 827-28 (Kan. 1971).*See generally Briggs v. Briggs*, 165 P.2d 772, 778 (Or. 1946) (awarding credit to father after finding apparent consent of the mother). "While parties may waive their rights which arise under an agreement[,] waiver is not . . . inferred from mere silence. What is required is affirmative conduct evidencing a waiver." *Mitchell v. Mitchell*, 170 A.D.2d 585, 586 (N.Y. App. Div. 1991).

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[6] The Court's calculation of Respondent's support payments vaguely resembles Respondent's own calculation of estimated support payments. The Court notes that Respondent is suggesting that he paid approximately $22,400 in support payments to his children. However, the Court took into consideration certain accounting errors found throughout Respondent's summation of child support, including double counting and additional support payments beginning in 2005.

In the present case, Petitioner has repeatedly objected to the existence of an agreement between the parties regarding direct payments to the children. Instead, Petitioner wanted Respondent to make support payments to her through the clerk of court. The evidence on record heavily reflects Petitioner's refusal to allow Respondent to make direct support payment to the children, which negates Respondent's claim that an agreement existed. Since the Court's 2009 Order, Petitioner has come to this Court numerous times in an attempt to compel Respondent to pay his child support obligation. More particularly, Petitioner has filed four petitions for an order to show cause and contempt in the span of three years since the 2009 Order.[7] Additionally, Petitioner lodged the present complaint seeking to enforce the 2009 Order due to Respondent's lack of child support payments to her. Thus, to say that an agreement exists, whether implied or not, is not supported by the weight of evidence. In this respect, the Court finds that Respondent was not in substantial compliance with its 2009 Order.

Finally, the effect given by the Verbal Order served to clarify Respondent's obligation for payments under the 2009 Order. The 2009 Order directed Respondent to make support payments "to Petitioner." The underlying Verbal Order instructed Respondent to cease any payments made directly to his children as such payments would be characterized as gifts. Respondent, at the time the Verbal Order was made, acknowledged the Order and agreed to direct his payments to the Torres' Office. Any noncompliance on the part of Respondent would therefore be to his detriment. *See Campbell*, 827 So.2d at 114 ("The father was on notice after the trial court's . . . judgment that he was to make child support payments . . . to the mother through the clerk's office, and his failure to comply with that direction was at his own peril."). Therefore, the Court finds that any continued payments that Respondent made directly to his children does not substantially comply with its 2009

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[7] Petitioner has filed four petitions for an order to show cause and contempt with this Court since the 2009 Order. The petitions were filed on March 11, 2010, June 17, 2010, January 24, 2011, and April 2, 2012.

and Verbal orders, and as such, Respondent is not entitled to credit against any accumulated arrearages since 2009.[8]

Assuming *arguendo* that substantial compliance is met, the Court believes that Petitioner would suffer a manifest injustice if it awards Respondent credit for support payments he made directly to the children. Petitioner was awarded physical and legal custody of the parties' two daughters in 2009. She moved to Dallas, Texas with her two children on July 4, 2012. Petitioner is currently enrolled in the federal Supplemental Nutrition Assistance Program ("SNAP") and receives food benefits and Medicaid in Texas. Petitioner has only received nominal and sporadic child support payments since the Court's 2009 Order. Additionally, Petitioner's estimated monthly net income is substantially less than her estimated monthly expenses. It is for these reasons that the Court rejects Respondent's request for credit. Moreover, by allowing Respondent credit for nearly $12,390 spent directly on behalf of the minor children, we would effectively be allowing Respondent to substitute his own judgment for that of the custodial parent, the Petitioner, as to how child support monies are to be spent. *Williams*, 606 P.2d at 517.

V. CONCLUSION

Based on the foregoing reasons, the Court hereby DENIES Respondent's request for credit against any accumulated child support arrearages for money given directly to the children before and after the Court's 2009 Order.

The Court finds that for the time period of April 2009 through December 2013, the Respondent should have paid $13,250 in current child support ($250 per month for 53 months). He paid to the Petitioner the total sum of $480 during this period. Thus, Respondent's child support

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[8] The Court appreciates that Respondent has made consistent payments to Derrienne via Western Union throughout the time period between January 2013 and January 2015. The Court, however, is reluctant to apply credit for these payments because it was done after the Court's Verbal Order instructing him to stop payments to his children. The Court also finds that no payment was made at all to Petitioner during these times. Because of Respondent's total lack of respect for the Verbal Order, the Court refuses to grant Respondent credit for these payments.

arrears for this period is $12,770. Respondent is thereby ordered to pay delinquent child support to Petitioner in the amount of $12,770 to be added to the previous judgment of $24,900 plus accrued interest at a rate of 9% per annum beginning in 2009.

SO ORDERED this 21st day of April, 2015.

/s/_____
KENNETH L. GOVENDO
ASSOCIATE JUDGE