

IN THE COURT OF APPEALS OF IOWA

No. 7-153 / 06-1431
Filed April 11, 2007

STATE OF IOWA ex rel.
JAY DONALD SAWVEL, Minor Child,
and WENDY BRIGGS,
Petitioner-Appellant,

vs.

JAY L. SAWVEL,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge.

The State appeals from the order granting Jay Sawvel's application to suspend collection of accrued child support. **REVERSED AND REMANDED WITH DIRECTIONS.**

Thomas J. Miller, Attorney General, and Patricia Hemphill and Michael Parker, Assistant Attorneys General, for appellant.

Russel Neuwoehner of Lange & Neuwoehner, Dubuque, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

BAKER, J.

Jay Sawvel and Wendy Sawvel, n/k/a Wendy Briggs, have one child, Jay, who was born in 1992. In 1996, Sawvel was ordered to pay \$334.00 per month in child support for Jay, who was then in the care of Briggs. Starting in 1998, Sawvel became delinquent in his child support payments. After Sawvel became delinquent, Briggs began receiving public assistance from the State. By operation of law, see Iowa Code section 239B.6(1)(b) (2005), Briggs assigned her rights to receive child support to the State while receiving such benefits.

As of June 6, 2006, Sawvel had amassed a child support delinquency of \$14,263.57. Based on the statutory assignment to the State during that time, Sawvel owed the State of Iowa \$7229.05 in child support principal. In addition, he owed Briggs \$7034.52.

Sawvel's support obligation ended in January of 2002 when he obtained physical care of Jay. Briggs was at that time ordered to pay \$285.84 per month in child support to Sawvel. In November of 2002, that amount was decreased to \$118.08 per month. Like Sawvel, Briggs also became delinquent on her support payments.

In April of 2006, Sawvel filed an "Application to Suspend Collection" in which he asked the court to allow him to cease payment on his delinquency because Briggs had not paid her full amount for Jay. At the time of the hearing on this application, Briggs had amassed child support arrears of \$708.55. Following the hearing, the court granted Sawvel's request, finding it "inequitable to allow the State of Iowa to collect delinquent support from [Sawvel] and then pay it to a party [Briggs] who is delinquent on current support." It ordered the

State to suspend all collection efforts against Sawvel. The State appeals from this order.

Scope of Review.

Our scope of review in this equitable matter is de novo. Iowa R. App. P. 6.4. Under such review our duty is to examine the entire record and adjudicate anew rights on issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

Analysis.

The State maintains the district court's order does not adequately provide for its rights to and interest in the collection of Sawvel's delinquent support. For the reasons which will follow, we agree.

When Briggs began to receive public support in the form of the Family Investment Program (FIP) due to Sawvel's failure to pay, the State became an assignee of Briggs's right to Sawvel's delinquent support payments.

A determination that a child or another person covered by an application is eligible for assistance under [FIP] creates an assignment by operation of law to the department of all rights to periodic support payments not to exceed the amount of assistance received by the child and other persons covered by the application.

Iowa Code § 239B.6(1)(b). This assignment "applies to both current and accrued support obligations, and terminates when an applicant or another person covered by an application ceases to receive assistance" *Id.* § 239B.6(2). Our supreme court has affirmed the absolute nature of the assignment right:

The State, as an assignee, is an innocent bystander whose subrogation rights remain unaffected by any difficulties the parties are having in meeting their individual support obligations to each other.

State ex rel. Heidick v. Balch, 533 N.W.2d 209, 213 (Iowa 1995).

Here, the court's order expressly precluded the State from undertaking efforts to collect on Sawvel's delinquent support payments. This order not only served to remedy the apparent inequity of allowing the State to collect delinquent support from Sawvel and then pay it directly to Briggs, who is delinquent on current support, but it also effectively prevented the State from exercising its assignment rights in perpetuity. This order clearly conflicts with the relevant statutory and case law and must be reversed. See *State ex. rel. Mack v. Mack*, 479 N.W.2d 327, 329 (Iowa 1992) (“[T]he State is entitled to recover in its own right without regard to the terms of court orders affecting the rights and obligations of the parents.”).

Having determined the court erred in halting Sawvel's payment of his delinquency, we next address the State's proposed remedy. It suggests that we lay out Sawvel's arrearage to Briggs next to Briggs's current arrearage to Sawvel and calculate the difference between the two. It believes we should then reduce Sawvel's arrears to that remainder and limit the State's ability to collect the remainder to that amount. We conclude this suggested remedy is both equitable and permissible under the current state of the law. When arrearages are mutual between two parties, as they are here between Briggs and Sawvel, a court may set off those amounts against each other. Our supreme court stated in *In re Marriage of Ballstaedt*, 606 N.W.2d 345, 350 (Iowa 2000):

Setoff is a remedial process by which a court reduces or cancels the claim of a party. *Barnhouse v. Hawkeye State Bank*, 406 N.W.2d 181, 188 (Iowa 1987). The doctrine is essentially an equitable one requiring that the demands of mutually indebted parties be set off against each other and that only the balance be

recovered in a judicial proceeding by one party against the other. 20 Am.Jur.2d *Counterclaim, Recoupment, and Setoff* § 6, at 232 (1995); accord *Tuttle v. Bisbee*, 144 Iowa 53, 56, 120 N.W. 699, 700-01 (1909). In order to establish the right to a setoff, the demands must be mutual and must exist between the same parties, and be of the same grade and nature or due the same capacity or right.

Accordingly, we order that the State first apply any funds it receives to Sawvel's arrearage to Briggs after the setoff against Briggs's arrearage. See 42 U.S.C. § 657(a)(2)(b) (providing that when collecting a delinquency, the State must first send that money to the payee before it is allowed to credit the arrearage to the State). The net due to Briggs from Sawvel if we offset her arrearage is \$6325.97. This offset is permissible. Further, to the extent Briggs fails to pay support, such accruing arrearages may be offset against Sawvel's obligation to her. The State, however, is not foreclosed from pursuing its remedies under Iowa Code chapter 252D. The State shall also have the right to intercept federal tax refunds and apply such proceeds to the amount owed the State pursuant to 42 U.S.C. section 657(a)(2)(b)(iv) and 42 U.S.C. section 664. We remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.