

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Marriage of:)	
)	
STEVEN ALLAN CHASE,)	S061222
)	(A148342, 21 Feb 2013
Petitioner-Appellant,)	Per Curiam)
Petitioner on Review,)	
)	Washington County
and)	No. C98-1383DR
)	
STATE OF OREGON,)	Judge Andrew Erwin
)	
Petitioner below,)	
)	
and)	
)	
CATHJY LYNN CHASE,)	
)	
Respondent-Respondent,)	
Respondent on Review.)	

Brief on the Merits of Respondent on Review

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Brief on the Merits of Respondent on Review

Statement of the Case

Respondent restates Appellant's Statement of the Case as follows.

Nature of the Proceeding

The instant proceeding at trial was brought in an attempt to establish and enforce overdue support owed by Petitioner-Appellant, some of which is now years in arrearage. The issue before the trial court was how to determine correctly the overdue support amount (based on the stipulations of the parties regarding the prior record of payments and a CPA's calculations of interest to be approximately \$33,072.01 as of 12/31/2010, or approximately 47 months of unpaid support at the then current support amount) and the accrued interest, given that two other earlier child support enforcement supplemental judgments consolidating unpaid support awards had already been entered prior to that proceeding.

Nature of the Judgment

When faced with the bewildering history of non-payment and prior enforcement attempts, the trial court applied *In Re Mannix*, 146 Or.App. 36, 932 P.2d 70. (1997) and the parties' stipulation to use the payment history provided by the State of Oregon - Division of Child Support and a CPA's calculation of simple interest in order to establish the support arrearage, and

included in that arrearage amount interest that had accrued on the prior, unpaid, supplemental judgments entered in this matter.

Basis for Appellate Jurisdiction

The judgment establishing the unpaid support amounts in this matter from 2011 is an appealable supplemental judgment per ORS 19.205, unlike the monthly support awards that formed the basis for the present action, which are not appealable and the two earlier supplemental judgments establishing the arrearages, which are no longer appealable. ORS 19.205; 18.005. The prior enforcement judgments entered in 2001 and 2005 were not appealed, and are not subject to collateral attack in this appeal. *Marriage of Barrett*, 320 Or. 372, 380, 886 P.2d 1. (1994)

Question Presented on Appeal

Which is the "judgment" referenced in the statute of ORS 82.010(2)(c), ("Interest accruing from the date of the entry of *a judgment* shall also accrue on interest that accrued before the date of entry of *a judgment*." Emphasis added)? Is it only the original general judgment or is it a later supplemental judgment to enforce unpaid support?

Summary of Argument

Future monthly child support award payments are called "judgments" as they accrue but do not conform to our Oregon statutory definition of a judgment or a judgment document that can be enforced with judgment remedies absent

further court or administrative action. ORS 107.135(7); ORS 25.089. Thus, a child support award incorporated in a general judgment of dissolution or filiation that calls for future payments of support does not fall within the ambit of ORS 82.010(2)(b) or 82.010(2)(c) until that support becomes an unpaid support arrearage and through the request for relief of establishment of arrearages is reduced to a judgment document with a money award, at which point prior unpaid interest becomes *pre-judgment interest* in the supplemental judgment document establishing and enforcing the support arrearage. Oregon statutes regarding child support permit future judgment documents that reflect unpaid support arrearages, as well as issuance of a Governing Child Support Judgment ("GCSJ") that establishes arrearages and determines awards for multiple obligees, and ORS 82.010(2)(c) permits those later GCSJ judgments to include interest on unpaid prior amounts.

Factual Summary

These parties divorced in 1998. At that time, Petitioner-Appellant's child support obligation was \$550 per month. Petitioner-Appellant is and has been at all times relevant an attorney and member of the Oregon bar. Within 3 1/2 years of the entry of the judgment of dissolution, in 2001, Petitioner-Appellant was \$19,483.02 in arrears on his support obligation, representing unpaid support over 35 months during that time, and that arrearage was established by a court, including interest that had accrued, and reduced to a judgment document. OJIN

Entry #115. Petitioner-Appellant did not appeal this judgment establishing his arrearage including interest on the unpaid support awards. Another 3 years and 7 months later, in 2005, Petitioner-Appellant's unpaid support balance had ballooned to \$38,002.01. OJIN Entry #206. Again, the court established the arrearage amount and reduced the arrearage to a judgment document including interest on both unpaid support and the unpaid enforcement judgment. Again, Petitioner-Appellant did not appeal that judgment. Shortly thereafter, this very court suspended Petitioner-Appellant from the practice of law for 30 days as a sanction for DR 7-106(A) (ignoring a court order by willfully failing to pay his child support obligation) as a result of his sanction for contempt following the 2001 enforcement action. *In re Conduct of Chase*, 339 Or 452. (2005). By 12/31/2010, the parties stipulated that Petitioner-Appellant would use the payment history of the Division of Child Support - Support Enforcement District Attorney and the interest calculation provided by CPA Robert Griffith. Based on that, as of 12/31/2010, Petitioner-Appellant was \$33,072.01 in arrears, representing 47 months of unpaid support obligations at the current support amount of \$700 per month. The simple interest alone on the unpaid support amount of \$33,072.01 as of 12/31/2010 at 9% interest is \$248.04 per month. Petitioner-Appellant pays \$50 per month towards the arrearage; in other words, the arrearage will **never** be paid but instead will climb by \$198.04 per month forever. Over the history of the case, including the matters of the unpaid support

arrearages and the disciplinary matter, Petitioner-Appellant has been represented by counsel.

No writs of execution or attachment or levy have issued in this matter, nor have any liens been possible. Aside from the 30-day bar disciplinary suspension mentioned *supra*, and a 30-day jail sentence imposed following failure to comply with probation in the contempt matter, no license revocation or similar sanction action has been taken. Respondent-Respondent and the State of Oregon through the Support Enforcement District Attorney have limited avenues to seek a remedy for Petitioner-Appellant's willful disregard of a court's lawful orders. Establishing support arrears and reporting that information to credit reporting bureaus is one of the only avenues still available.

Response to Assignment of Error

Appellant construes the definition of "judgment" in ORS 82.010(2)(c) too narrowly and misconstrues available remedies for support arrearage enforcement; nothing in Oregon caselaw or statutes prohibits enforcement of an overdue support award of the nature involved in the instant case through establishment of arrears in a supplemental judgment.

Standard of review

The trial court applied existing appellate interpretation of current law; this matter is reviewed for legal error.

Argument

What is a "judgment" for the purposes of ORS 82.010(2)c)?

A judgment "means the concluding decision of a court on one or more requests for relief in one or more actions, as reflected in a judgment document." ORS 18.005(8). A judgment document must be titled either a "limited judgment, a general judgment or a supplemental judgment." ORS 18.038(2). A "request for relief" means a claim [...] or any other request for a determination of the rights and liabilities of one or more parties in an action that a legal authority allows the court to decide by a judgment. ORS 18.005(16). Judgment document means "a writing in the form provided by ORS 18.038 that incorporates a court's judgment." ORS 18.005(9). A "'money award' means a judgment or portion of a judgment that requires the payment of money" and must have a separate section in a judgment document labeled "money award." ORS 18.005(14), ORS 18.042(1). And finally, a "support award" means a money award or agency order that requires the payment of child or spousal support. ORS 18.005(19). States such as Oregon that receive Social Security Act funds under Title IV-D also have Federal regulations that affect how child support awards are to be treated. (E.g. 45 CFR §302.70 Required State laws) including the requirement that a child support award be treated as a "judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced." 73 FR 74920, Dec. 9, 2008.

In some cases, there could be several child support money awards reflected in multiple judgment documents, involving a variety of obligees, or multiple supplemental judgments involving the same obligor and obligee. The statutes provide guidance in those situations as well. A "child support judgment' means the terms of a judgment or order of a court, [] that provide for past or current child support." ORS 25.089(1). If, as in this case, there are multiple judgments or judgment documents that affect the same parties and children, and "the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each judgment was issued in this state, the court shall apply the provisions of ORS 25.091 to determine the controlling terms of the child support judgments and to issue a governing child support judgment as defined in ORS 25.091." ORS 25.089(5)(a).

Thus a case can have a limited judgment establishing temporary support, a general judgment granting custody establishing a "final" amount of support, and more than one supplemental judgment modifying support and establishing arrearages. This judgment under appeal is such a supplemental judgment.

What requests for relief exist when a child support obligee wishes to establish a support arrearage and seek enforcement of the original support award?

The trial court was faced with exactly this problem of a general judgment and a later request for relief - one support obligor and one support obligee with both a current child support judgment for prospective payments and a request for relief regarding an arrearage that merited an enforcement supplemental judgment. The trial court established the arrears in that request for relief - what is owed for the arrearage - involving these same parties in this enforcement matter with a supplemental judgment. Once the trial court took on this matter, the only way to resolve that request for relief is through another judgment and a judgment document - which could be the Governing Child Support Judgment - in a supplemental judgment with a money award representing the arrearage owed since the last judgment was entered, including interest.

ORS 82.010(2)(c) by its plain wording permits pre-judgment interest to be incorporated in "a judgment" document with money award that also then accrues interest from the date of that later judgment. ORS 82.010(2)(c). In the case of a support award in an arrearage enforcement action, that pre-judgment interest would be the interest that accrues for unpaid support before that unpaid support is reduced to a supplemental judgment document. Nothing in ORS 82.010(2)(c) requires that the interest included in "a judgment" - the later judgment - must *solely* refer to the general judgment of dissolution or custody which established the original support scheme and money award. In fact, the number of statutes that discuss supplemental judgments, retaining jurisdiction

over modifications, and so on, imply the legislative assembly was well aware that more than one judgment may be involved over the years from a general judgment of custody and support to the time the minor children are no longer supported. *See generally*, ORS 107.105(4) and (6); 107.843; 107.465; 107.415; 107.820(5), 18.031.

Petitioner-Appellant states in his brief that there is the specter of an obligee returning to court repeatedly, even monthly, and obtaining a judgment reflecting the prior month's unpaid arrears, with interest, and thus creating a *de facto* system of compound interest in contravention of ORS 82.010(2)(b). *Appellant's Brief and Excerpt of Record*, p. 12-13. The preceding discussion establishes that 82.010(2)(c) would possibly permit that result. Aside from the practical impossibility of paying attorney's fees and court costs for such a scheme, that result would only be possible if a support obligor *never paid his support obligation in a timely manner*. This strawman argument obscures that reducing a past due child support award to a judgment document is a process permitted by the statutes referenced above, in order to ensure an obligee gets paid what is due to raise the children affected by the child support judgment, and it would only be through the non-payment by an obdurate obligor that such an elaborate scheme would ever even be conceivable.

The effect of which Petitioner-Appellant complains is the predictable result of his failure to pay support over many years. In addition, the legislative

assembly has had ample opportunities to address chapter 82 and chapter 25 (Support Enforcement) since *Ramberg* and *Mannix* were decided. The Legislative Assembly is presumed to be aware of decisions of the Supreme Court and Court of Appeals, including *Ramberg* and *Mannix* especially as it concerns judicial interpretations of statutes such as ORS 82.010. *Nakashima v. Board of Education*, 344 Or. 497, 185 P.3d 429 (2008) (citing with approval *Joshi v. Providence Health System*, 342 Or. 152, 158, 149 P.3d 1164 (2006). (court will presume that the legislature is aware of existing decisions interpreting the legal meaning of terms that the legislature uses in legislation).

Stare Decisis

The fact that the Legislative Assembly has not seen fit to alter or amend these statutes militates against doing so through this court. *Mannix* has been established law in this state for many years regarding how to handle support arrearages. ORS 107.135 has been amended in some way in nearly every legislative session since *Mannix* was decided (1999, 2001, 2003, 2005, 2007, and 2009.) ORS 25.089 has been amended in some way three times since 2003. And even ORS 82.010 was amended in 2003, after *Mannix*, and Petitioner's interpretation was not incorporated into those statutes. Incorporating Petitioner's interpretation through this court would introduce significant upheaval to how support enforcement of arrearages is conducted in this state.

Conclusion

It is important to remember that reducing a past due support award to a judgment document fits within the broad scheme of support enforcement.

Without that judgment document, an obligee may have few, if any, options to collect monies that are required to pay for children's expenses such as food, rent, heat, light, school books and supplies, clothing, and so on. When the support obligation goes unpaid, sometimes for years, as happened in this case, the obligee faces a Hobson's choice - fail to provide for her children's needs, or borrow, through credit cards or other lenders, nearly all of whom charge compound interest by contract, at rates significantly higher than the obligor pays on his unpaid support obligation, or turn to public assistance and shift the obligor's duty to the taxpayers of this state. A child's expenses usually accrue monthly, which is part of the reason support is expected to be predictable.

Waiting until a child's 18th birthday to pay all support arrearages with interest will have done nothing to provide for that child on a daily basis. And, when an obligor with the skill, knowledge, and will to frustrate the system of support enforcement sets out to do so, that obligee winds up falling further and further in debt to provide for her children when the statutes are designed to prevent exactly that outcome. The judgment should be affirmed.

Dated 31 July 2013

____/s/ Howard Hudson

August 2013

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**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND
TYPE SIZE REQUIREMENTS**

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 2,477 words, per ORAP 5.05(2)(a).

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF SERVICE

I certify that on 1 August 2013, I served a true copy of this Brief on the
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