STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1240

In re the Matter of: Dakota County, petitioner,
Appellant,

Lorinda Elaine Floding,
Petitioner,

vs.

Darrell Ray Gillespie,
Respondent.

Filed March 31, 2014
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19-F2-00-008288

James C. Backstrom, Dakota County Attorney, Sandra M. Torgerson, Assistant County Attorney, West St. Paul, Minnesota (for appellant)

Christi Cameron Johnson, Maple Plain, Minnesota (for petitioner Floding)

Justin R. Anderson, Kratochwill & Anderson, P.A., Elbow Lake, Minnesota (for respondent Gillespie)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant Dakota County challenges a district court order providing that excess derivative benefits for the children of a child-support obligor received by the obligee may be credited to the obligor's future child-support payments. Because the district court's order is based on a prior decision of this court that resolves the issue, we affirm.

FACTS

Respondent Darrell Gillespie and petitioner Lorinda Floding are the parents of twins born in 1999. The children live with petitioner. By 2012, respondent's monthly child-support obligation was $1,977. He was then receiving $1,872 monthly in Retirement, Survivors, and Disability Insurance (RSDI) benefits; petitioner received the children's monthly derivative benefits of $1,748. For six months, February through July, 2012, petitioner received both child support from respondent and derivative RSDI benefits on behalf of the children from Social Security.

In July 2012, respondent moved to modify child support, relying on *County of Grant v. Koser*, 809 N.W.2d 237, 244-45 (Minn. App. 2012) (citing Minn. Stat. §§ 518A.31(c), .34(f) (2010) for the proposition that "social security disability benefits paid to an obligee parent on behalf of joint children based on the obligor parent's eligibility must be subtracted from the obligor parent's child-support obligation" and remanding for remaining derivative-benefit overpayment to be applied against the obligor's prospective child-support payments).

A child support magistrate (CSM) determined that respondent's $1,977 child-support obligation was reduced to $229 by the children's $1,748 derivative benefit payment ($1,977 - $1,748 = $229) and that, after deductions for medical expenses incurred for one child, petitioner had received an overpayment of $6,992 in February through July, 2012. The CSM's order stated that the $6,992 was to be applied to any arrearages and that any remainder was to "be addressed as provided by statute and/or applied to additional unreimbursed/uninsured expenses."

Petitioner, respondent, and appellant Dakota County, which had an interest under Minn. Stat. § 518A.49 (2012), all filed motions for review of the CSM's order. The district court denied petitioner's and appellant's motions and granted respondent's motion in part, amending the order to conform to *Koser* by providing that any remainder of the overpayment could also be applied "to [r]espondent's net child support obligation to include prospective child support."

Appellant challenges the amended order, arguing that this court should hold both that any remainder of the overpayment may not be applied to respondent's prospective child-support payments, thus overruling *Koser*, and that the overpayment should not be applied to respondent's arrearages or his share of unreimbursed/uninsured expenses.

D E C I S I O N

1. Application of overpayment to future child-support obligations

"Statutory interpretation and the application of a statute to undisputed facts present questions of law that this court reviews de novo." *Id.* at 240 (citing *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007)).

"If Social Security . . . benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee . . ., then the amount of the benefits shall also be subtracted from the obligor's net child support obligation as calculated pursuant to section 518A.34." Minn. Stat. § 518A.31(c) (2010). "If Social Security benefits . . . are received by one parent . . . based on the other parent's eligibility, the court shall subtract the amount of benefits from the other parent's net child support obligation, if any." Minn. Stat. § 518A.34 (f) (2010). *Koser* interpreted these statutes to mean that "the district court must subtract from the obligor's net child-support obligation *all* social security benefits received by the obligee parent for a joint child based on the obligor parent's eligibility." *Koser*, 809 N.W.2d at 243.

Appellant asks this court to overrule *Koser*. As a threshold matter, this court does not overrule its own opinions. "[A]ppellate courts are bound by the doctrine of stare decisis, which directs that 'we adhere to former decisions in order that there might be stability in the law.'" *Doe v. Lutheran High Sch. of Greater Minneapolis*, 702 N.W.2d 322, 330 (Minn. App. 2005) (quoting *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000)), *review denied* (Minn. Oct. 26, 2005). And, although stare decisis "is not an inflexible rule of law," this court does not overrule a former decision absent a

compelling reason. *See Oanes*, 617 N.W.2d at 406 (quotation omitted). We see no compelling reason to overrule *Koser*.[1]

Appellant first argues that *Koser* ignored the concluding phrase "if any" in Minn. Stat. § 518A.34(f). Appellant construes that statute to mean that "a subtraction [of the benefits received by the obligee from the obligor's net child support obligation] is not permitted for periods prior to service of a motion to modify." But the statute says nothing about a motion to modify. Minn. Stat. § 518A.34 begins "(a) To determine the presumptive child support obligation of a parent, the court shall follow the procedure set forth in this section"; it then lists six steps, beginning with determining the gross income of each parent. Nothing in Minn. Stat. § 518A.34 indicates that any part of it pertains only to calculations performed while a motion for modification of child support is pending.

The statute also uses the phrase "if any" to modify the credit for nonjoint children, Minn. Stat. § 518A.34(b)(2), and the parenting expense adjustment, Minn. Stat. § 518A.34(b)(6); there is no basis to suppose that when "if any" is used to modify "the other parent's net child support obligation" in Minn. Stat. § 518A.34(f), it means the provision applies only if a motion to modify child support is pending. This court will not

[1] One reason appellant gives for overruling *Koser* is that only the appellant in that case filed a brief and appeared at oral argument. But there is no legal support for the implied view that this court's decisions do not become law unless both parties have filed briefs and argued. *See* Minn. R. Civ. App. P. 142.03 (stating that, if the respondent in an appeal defaults, the appellate court "shall" decide the appeal "on the merits"); *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988) (holding that a decision of the court of appeals becomes final when the deadline for petitioning for review has expired without referring to the number of briefs filed).

add to a statute "that which the legislature purposely omits or inadvertently overlooks." *Rohmiller v. Hart*, 811 N.W.2d 585, 591 (Minn. 2012) (quotation omitted).

Appellant then argues that, even if Minn. Stat. § 518A.34(f) applies, respondent was current in his child-support payments from February through July 2012 so there was no arrearage from which to subtract the benefits petitioner received for those months. But Minn. Stat. § 518A.34(f) does not say that derivative benefits are to be subtracted from arrearages; it says they are to be subtracted from a "net child support obligation" with no reference to whether that obligation is in arrears. Again, this court cannot add language to a statute. *See id*.

Moreover, it is unlikely that the legislature intended to reward obligors whose payments are in arrears by permitting them to subtract derivative benefits received by obligees, but not permitting obligors whose payments are current to subtract the benefits. This court must presume that "the legislature does not intend a result that is absurd." Minn. Stat. § 645.17 (2012); *see also Koser*, 809 N.W.2d at 244 n.8 (observing that, if benefit could be credited only to an obligor's arrearages and any remainder became a windfall to the obligee, obligors "would have an incentive to withhold child-support payments" while applications for benefits were pending).

In addition to overruling *Koser*, appellant wants this court to adopt the ruling of *Holmberg v. Holmberg*, 578 N.W.2d 817, 827 (Minn. App. 1998) (concluding that an overpayment remaining after arrearage was paid was windfall to children), *aff'd* 588 N.W.2d 720 (Minn. 1999), and *Casper v. Casper*, 593 N.W.2d 709, 713 (Minn. App. 1999) (same). *Koser* declined to follow *Holmberg* because

> [it was] interpreting the 1996 version of the child-support statute, which was substantively different than the current version of the statute and did not provide for the subtraction of social security disability benefits from an obligor's child-support obligation. The current language of [Minn. Stat. §§] 518A.31(c) and 518A.34(f) does not specify the manner in which the district court must subtract social security benefits from an obligor's child-support obligation, and does not limit the application of a credit to either arrearages or prospective obligations.

Koser, 809 N.W.2d at 244. *Holmberg* joined "a majority of jurisdictions [that] . . . allow a credit against a support obligation for benefits paid on behalf of a child," 578 N.W.2d at 827, and was superseded in 2006 by Minn. Stat. § 518A.34(f) ("[T]he court shall subtract the amount of benefits [received by the obligee] from the [obligor]'s net child support obligation . . . ."). 2006 Minn. Laws ch. 280, § 27. Appellant does not explain why a case that applies an outdated statute and has in turn been superseded by a statute should control here.

Appellant also argues that federal law prohibits crediting respondent's prospective child-support payments in the amount of the overpayment because "Under *Koser*, [petitioner] would be forced to pay a portion of the children's vested social security benefits to [respondent]" in violation of 42 U.S.C. § 407(a) (2006) (providing that the right to benefits "shall not be transferrable or assignable" and that benefits paid "shall [not] be subject to execution, levy, attachment, garnishment, or other legal process"). But the children's right to benefits is not being transferred to respondent, and the benefits are not being taken from the children and given to respondent by any legal process. The amount credited to respondent is not from the children's benefits; it is from child-support

payments he made and was not obliged to make in February through July 2012, before the children's derivative payment was subtracted from his obligation pursuant to Minn. Stat. § 518A.34(f).

Finally, appellant argues that crediting benefits against prospective child-support payments "would effectively constitute a retroactive modification of support" and would be prohibited by 42 U.S.C. § 666(a)(9)(c) (2012) (providing that a state-ordered child support payment "is not subject to retroactive modification" by that state) and Minn. Stat. § 518A.39, subd. 2(e) (2012) (providing that a "modification of support . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification . . ."). But child support has not been retroactively modified: the amount to which the children were entitled before, during, and after in February through July 2012 has not changed.

Under *Koser*, the overpayment received in February through July 2012 was properly credited against respondent's prospective child-support payments, and appellant has shown no reason for overruling *Koser*.

2. Application of overpayment to arrearages and unreimbursed/uninsured medical expenses

The district court affirmed the CSM's order on this point; therefore, the CSM's order is treated as that of the district court. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). The order was based on statutory analysis and is reviewed de novo. *See Brodsky*, 733 N.W.2d at 477.

Minn. Stat. § 518A.52 (2012) provides procedures for repaying "overpayments [made] because of a modification [in a child-support obligation] or error in the amount owed." Appellant argues that: (1) the only reference to overpayment in Chapter 518A is at Minn. Stat. § 518A.52; (2) respondent did not receive an overpayment within the meaning of that statute; and (3) therefore, respondent is not entitled to have his overpayment credited to any payments he owes or will owe. Respondent's overpayment was not the result of a modification because his child-support obligation has not been modified; nor did the overpayment result from an error in the amount owed in child support.

But appellant errs in concluding that, because the statute provides a procedure for repaying two types of overpayment, only two types of overpayment can exist. Caselaw indicates otherwise. *See, e.g.*, *Koser*, 809 N.W.2d at 244 (directing district court to use its discretion in applying remainder of lump-sum benefit paid to obligee to obligor's prospective child-support obligations); *Goplen v. Olmsted County Support and Recovery Unit*, 610 N.W.2d 686, 688 (Minn. App. 2000) (holding that obligor who had paid child support for 18 months after the obligation stopped was "entitled to recover his excess child support payments from [the obligee]"); *Holmberg*, 578 N.W.2d at 827 (in the absence of any statutory provision regarding derivative benefits paid to children of obligors, directing that an obligor whose sole income was from disability benefits receive appropriate credit for derivative benefits paid to the obligee against his prospective support obligation and arrearages). Thus, the fact that there is no statutory directive for repaying child-support payments made when the obligee was also receiving

the child's derivative benefits does not mean that the obligor has no right to recover the overpayment.

The district court correctly ordered that the $6,992 overpayment was to be applied to any arrearages and that any remainder was to be applied to additional unreimbursed or uninsured expenses or to respondent's prospective child-support obligations.

Affirmed.