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No. 3--09--0892

Order filed January 6, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE DEPARTMENT OF PUBLIC AID	)	Appeal from the Circuit Court
<i>ex rel.</i> STEPHANIE L. GOMEZ,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Petitioner-Appellee,	)	
	)	
v.	)	No. 99--F--11
	)	
CURTIS COOPER, JR.,	)	Honorable
	)	M. Thomas Carney,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Presiding Justice Carter and Justice Wright concurred in the judgment.

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**ORDER**

*Held:* Where the respondent father received a lump sum worker's compensation award, the trial court's decision to award child support based on a portion of the worker's compensation award rather than the entire award was error.

The petitioner, The Department of Public Aid *ex rel.* Stephanie L. Gomez, filed a petition asking the court, among other things, to order the respondent father, Curtis Cooper, Jr., to pay child support from the birth date of the unmarried

couple's child. The court granted the petition. After Cooper received a lump sum workers' compensation award, the trial court ordered him to pay child support from the award based on a portion of the award. On appeal, Gomez argues that the court erred by failing to order Cooper to pay child support based on the entire workers' compensation award. We reverse and remand.

#### BACKGROUND

Gomez gave birth to the child on June 25, 1998. Cooper acknowledged that he was the child's father. On January 12, 1999, the Department of Public Aid filed a petition, on Gomez's behalf, asking the court, among other things, to order Cooper to pay child support from the date of the child's birth. The court granted the petition.

Later, Cooper was injured and could not work. On November 3, 2008, Cooper received a lump sum workers' compensation award. After deducting fees and costs, the award was \$58,526.64. At a hearing on July 9, 2009, the trial court found that this award represented Cooper's lost wages from the time of the award until he reached 80 years of age, which was 584 months. The court determined that the award, therefore, represented monthly payments of \$100.22 until Cooper was 80 years old. The court reasoned that although Cooper received the award as a lump sum, Cooper would need to use the award for his living expenses until he was 80 years of age.

The court also found that it would be 84 months from the date of the hearing until the child would be emancipated at the age of 18. Consequently, the court calculated Cooper's child support obligation based on Cooper's monthly income of \$100.22, multiplied by 84 months, equaling \$8,418.48. The court ordered Cooper to pay child support, from his workers' compensation award, of 20% of \$8,418.48, equaling \$1,683.70, which the court rounded off to \$1,683. The court said, "If I were to award twenty percent of the amount [Cooper] receives of \$58,526 and that twenty percent were to go towards child support, [Cooper] would, in effect, be paying child support until the \*\*\* child reaches the age of 59 years." The court denied Gomez's motion to reconsider, and Gomez appealed.

#### ANALYSIS

Initially, we note that Cooper has not filed an appellee's brief. Nonetheless, we may address the question raised by Gomez on the merits without the benefit of an appellee's brief because both the record is adequate and the issue is clear. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

Gomez contends that the trial court erred by basing Cooper's child support obligation on a portion of his workers' compensation award rather than on the entire award.

We review a child support award in a paternity case for

whether the court's factual determinations were against the manifest weight of the evidence and its ultimate decision was an abuse of discretion. *In re Parentage of Janssen*, 292 Ill. App. 3d 219 (1997).

In a paternity case, an award of child support is governed by section 14 of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/14 (West 2008)). Section 14(a)(1) of the Parentage Act states that "in determining the amount of any child support award \*\*\*, the court shall use the guidelines and standards set forth in subsection (a) of Section 505 \*\*\* of the Illinois Marriage and Dissolution of Marriage Act." 750 ILCS 45/14(a)(1) (West 2008). Section 505(a)(3) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) defines net income for child support purposes "as the total of all income from all sources," minus certain deductions that are not applicable to this case. 750 ILCS 5/505(a)(3) (West 2008).

In *In re Marriage of Dodds*, 222 Ill. App. 3d 99 (1991), the noncustodial father was ordered to pay child support. He received a lump sum workers' compensation award. The trial court determined that the award was income for child support purposes. On appeal, the father argued that the workers' compensation award was not income as defined in section 706.1(A)(4) of the Marriage Act at that time (Ill. Rev. Stat. 1989, ch. 40, par.

706.1(A)(4)).<sup>1</sup> In the 1989 version of section 706.1(A)(4), income was defined as "any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, \*\*\* [and] workers' compensation[.]" Ill. Rev. Stat. 1989, ch. 40, par. 706.1(A)(4). The father contended that his workers' compensation award was not income, under the definition in section 706.1(A)(4), because he received it as a lump sum rather than in periodic payments. The *Dodds* court rejected this argument, noting both that the definition of net income in section 505(a)(3) referred to the total of all income from all sources, and that the definition of income in section 706.1(A)(4) included workers' compensation awards. See *Dodds*, 222 Ill. App. 3d 99. Consequently, the *Dodds* court held that the father's lump sum workers' compensation award was income for child support purposes.

In *In re Marriage of DeRossett*, 173 Ill. 2d 416 (1996), which was a dissolution of marriage case, the husband argued that only a portion of the workers' compensation award he received as a lump sum was marital property because a portion of the award represented lost wages after the dissolution. The Illinois Supreme Court held that the entire workers' compensation award

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<sup>1</sup> We note that the current version of section 706.1 of the Marriage Act does not contain a definition of income. See 750 ILCS 5/706.1 (West 2008).

was marital property because it accrued during the marriage. The *DeRossett* court noted that, with one exception, Illinois appellate courts also had held that such workers' compensation awards were marital property. Additionally, our supreme court observed that where personal injury and disability pension awards represented future lost wages, Illinois appellate courts had ruled that such awards were marital property. *DeRossett*, 173 Ill. 2d 416.

In *Department of Public Aid ex rel. Jennings v. White*, 286 Ill. App. 3d 213 (1997), which was a paternity case, this court held that the father's Federal Employers Liability Act settlement, which represented lost future wages, was income for child support purposes.

In this case, the trial court found that only a portion of Cooper's lump sum workers' compensation award was income for child support purposes. However, under the holding of *Dodds*, such a lump sum workers' compensation award is income for child support purposes. See *Dodds*, 222 Ill. App. 3d 99. Additionally, this court has held that an analogous monetary award that represented future lost wages was income for child support purposes. See *Jennings*, 286 Ill. App. 3d 213. Furthermore, the Illinois Supreme Court rejected the concept that awards representing future lost wages are not present income, for marital property purposes. See *DeRossett*, 173 Ill. 2d 416.

In the present case, under the holdings of *Dodds*, *Jennings*, and *DeRossett*, we find that Cooper's lump sum workers' compensation award was present income to him when he received it on November 3, 2008. Although this award represented future lost wages until Cooper was 80 years old, he was not receiving period payments until the age of 80, but rather, received a lump sum award. Moreover, the trial court's finding that Cooper needed the entire award for his living expenses until he is 80 years old was merely speculative, as the court could not know to what age Cooper will live. Therefore, we hold that the trial court's determination that Cooper's lump sum workers' compensation award represented monthly \$100.22 payments to Cooper until the age of 80 was against the manifest weight of the evidence. Consequently, the trial court abused its discretion by calculating child support on a portion of Cooper's workers' compensation award rather than on the entire award.

#### CONCLUSION

For the foregoing reasons, we reverse the judgment of the Will County circuit court and remand the cause for further proceedings.

Reversed and remanded.