

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-21

Date issued: December 21, 1989

Requested by: Owen K. Mehrer  
Stark County State's Attorney

- QUESTION PRESENTED -

Whether court-ordered payments for spousal support, contained in a court order or decree which also directs payments of separate and distinct amounts for the support of children, are within the definition of "child support" found in N. D. C. C. ' 14-09-09. 10(1).

- ATTORNEY GENERAL'S OPINION -

It is my opinion that court-ordered payments for spousal support, contained in a court order or decree which also directs payments of separate and distinct amounts for the support of children, are within the definition of "child support" found in N. D. C. C. ' 14-09-09. 10(1).

- ANALYSIS -

The 1965 Legislative Assembly enacted Senate Bill No. 48 concerning alimony and child support payments. 1965 N.D. Sess. Laws ch. 115. Section 1 of the bill stated that "[i]n any action wherein a court decrees that payments for child support or alimony combined with child support be made, the court may provide in its decree that such payments be paid to the clerk of court in lieu of making such payments directly to the recipient." This section of the bill was codified as N. D. C. C. ' 14-08-07. It has since been amended on several occasions, though not in any way relevant to the question.

N. D. C. C. ' 14-08-07 was repealed by Senate Bill No. 2245, ' 36, 51st Leg. (1989). Senate Bill No. 2245, ' 2, 51st Leg. (1989), is codified at N. D. C. C. ' 14-09-08.1. Subsection 1 of that section presently provides that "[i]n any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, for remittance to the obligee." (Emphasis supplied.) The term "child support" was defined in Senate Bill No. 2245, ' 5. As amended by section 5, N. D. C. C. ' 14-09-09. 10 provides as follows:

For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.

(Emphasis supplied.)

N. D. C. C. ' 11-16-01(15), which sets forth duties of the state's attorney with respect to child support, has a similar history. That subsection was originally added to the law describing the duties of the state's attorney by Senate Bill No. 48, ' 5, 39th Leg. (1965). The subsection required the state's attorney to "[a]ssist the district court in behalf of the recipient of payments for child support or alimony combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments." (Emphasis supplied.) Subsection 15 was amended by Senate Bill No. 2245, ' 1, 51st Leg. (1989). That amendment replaced the word "alimony" with the phrase "spousal support," but did not otherwise change the subsection.

Currently, the law is ambiguous with respect to court orders and decrees which address both child support and spousal support, but identify separate payment amounts with respect to each type of obligation. Such orders are "combined" in the sense that they address both forms of payments. However, they are not "combined" with respect to a single payment amount. No reported judicial decision resolves the ambiguity. Thus, legislative history surrounding these enactments must thus be examined.

Senate Bill No. 48, 39th Leg. (1965), was one of several bills introduced following work by a legislative research committee during the 1963-1956 interim. The Legislative Research Committee's Report touches briefly upon this bill stating:

The committee has prepared and recommends the approval of a bill which provides that child support payments, or alimony combined with child support, may be made to the clerk of court upon decree of the court. The bill further provides that the clerk of court, with the assistance of the state's attorney, shall keep all records pertaining to such support payments, send notices of arrears when there is a failure to make required payments, and request the district judge to issue a citation for contempt of court upon failure of the person required to make such payment, within ten days from the date of notice. . . . the committee is of the opinion that the remedy provided by this bill, which is in addition to other remedies provided for by law, and facilitate the enforcement of support payments, and conserve welfare funds, and will be an especially useful remedy in the case of chronic offenders.

Report of the North Dakota Legislative Research Committee to the 39th Legislative Assembly, at 123-24 (1965) (emphasis supplied). The report uses the key phrase "alimony combined with child support," but does not explain its use. Similarly, the records of the Interim Committee on State, Federal, and Local Government, which reviewed this subject and the actions of the 39th Legislative Assembly, offer no guidance to the resolution of the ambiguity.

The records concerning the 1989 Legislative Assembly are more helpful, but furnish no definitive answer.

As introduced, Senate Bill No. 2245, 51st Leg. (1989), would have removed references to the phrase "alimony combined with child support" in sections 1, 2, 5, and 6 of the bill. Section 1 of the bill would have deleted this phrase from N. D. C. C. ' 11-16-01(15). The phrase "alimony combined with child support" would not be included in a new section of N. D. C. C. ch. 14-09, which otherwise replicates N. D. C. C. ' 14-08-07, created by section 2 of the bill. In section 5, the term "child support" would be defined without reference to alimony. In section 6, the phrase "or the payment of alimony and child support" would be deleted where that phrase appears in N. D. C. C. ' 14-09-09. 11.

In explaining the bill before the Senate Human Services and Veteran Affairs Committee, Assistant Attorney General Blaine Nordwall indicated that the bill draft had been presented to the Juvenile Procedures Committee of the supreme court and that, in the view of the Juvenile Procedures Committee, the "alimony combined with child support" language should be removed. Mr. Nordwall advised the Committee that questions existed concerning the meaning of the phrase, that such orders are rare because of differential tax treatment between alimony and child support, and that the phrase might be regarded as surplusage (as any order that in any way combined alimony and child support would nonetheless be an order for child support). Hearing on S. 2245 Before the Senate Committee on Human Services and Veterans Affairs, 51st Leg. (January 27, 1989).

Senator Stenehjem remarked that "the reason for that is so state's attorneys won't get involved in collecting just alimony." Senator Stenehjem continued, "As long as somebody is supposed to pay child support -- and alimony -- if they're not paying the alimony then they are probably not paying the child support either and those people should be involved in attempting and assisting to collect it." Id.

Mr. Nordwall advised the Committee that some members of the judiciary believed the state's attorney and the clerks of court should not be involved in collecting alimony. Senator Stenehjem then asked how much work it was to put the requirement back in the bill and explained that, in some cases, the parties negotiate a lower child support amount and a higher alimony amount because the alimony is tax deductible to the payer while child support is not.

Mr. Nordwall observed that the practice described by Senator Stenehjem would not be ended by the bill. Senator Stenehjem expressed the view that the involvement of state's attorneys in pressing alimony claims would avoid the

need for two proceedings each to enforce separate parts of the order, with the additional cost entailed by the second proceeding. Id.

Following the hearing, Mr. Nordwall wrote to Senator Kelsch, the Committee chairman, stating his understanding that some members of the Committee desired the preparation of proposed amendments. Mr. Nordwall enclosed a list of proposed amendments, including one described as follows:

The responsibility of child support enforcement officials to enforce orders combining alimony with child support is restored with amendments to section 1 and 5 of this bill. The term "spousal support" is used, rather than the term "alimony," as the former term is the preferred usage. The amendment to section 5 of the bill makes the change throughout N.D.C.C. ch. 14-09 by amending the definition of "child support" to include combined payments for the support of children and spouses or former spouses.

January 30, 1989, letter from Mr. Nordwall to Senator Kelsch, regarding draft amendments to Senate Bill No. 2245.

When the Committee took the bill up for final action on February 17, Senator Stenehjem offered several amendments. He began his presentation to the Committee by stating, "We are reinserting into the bill, and into the statute . . . the authority to the clerks or to the courts to continue collecting not just child support but also spousal support. Spousal support is the new, improved term that is used by the courts in place of the old term alimony." Senator Heinrich asked, "You're not talking about spousal support and child support, but just plain old spousal support cases?" Stenehjem answered, "Right, and child support." The Committee intern interjected, "And child support -- that stays in there then." Senator Heinrich then asked, "But the old one was -- they only dealt with alimony if there was child support involved." Senator Stenehjem answered, "Right -- and now it's spousal support. And they should. I think the clerks of District Court should collect that, and they've been doing that for free." Hearing on S. 2245 Before the Senate Committee on Human Services and Veterans Affairs, 51st Leg. (February 17, 1989). The Committee then adopted the amendments as presented by Senator Stenehjem, 1989 Senate Journal 785, and passed the bill as amended, 1989 Senate Journal 816.

The legislative history clearly reflects the fact that the Senate Committee knew that the existing language in N.D.C.C. " 11-16-01(15) and 14-08-07 was ambiguous. This was one of the reasons given for seeking the removal of the language. The Senate reinstated the language at the urging of Senator Stenehjem, who suggested that state's attorneys and clerks of court should be involved in enforcing spousal support orders if those officials were going to be involved in enforcing child support orders. Senator Stenehjem appears to have proceeded on the assumption that the phrase "combined payments for the support of children and spouses or former spouses" includes all orders which

provided for both kinds of payments. However, neither the Legislature, the Committee, nor Senator Stenehjem unequivocally offered that position as the correct interpretation of the phrase.

When the meaning of an ambiguous statute is not readily resolved by reference to the legislative history, principles and rules of statutory interpretation are applied. It is a generally held principle that a remedial statute is to be liberally construed to effectuate its purpose. Brown v. Smith, 102 N.W. 171, 173 (N.D. 1904); Kusma v. Citizens' State Bank of Belfield, 244 N.W. 26, 27 (N.D. 1932). This principle has been equated with the requirement that North Dakota laws be construed liberally, with a view to effecting their objects and to promoting justice. N. D. C. C. ' 1-02-01.

The legislative history of Senate Bill No. 2245 reveals that the Senate Committee was dissatisfied with the proposal for ending the involvement of state's attorneys and clerks of court in the collection of alimony. That committee took affirmative action to see that those duties were maintained. Thus, Senate Bill No. 2245 should be viewed as a remedial statute and a liberal construction should be employed to carry out its intent.

It is my opinion, therefore, that a proper understanding of the phrase "spousal support combined with child support" and the phrase "combined payments for the support of children and spouses or former spouses" is that those phrases include payments required by orders and decrees which direct the payment of both spousal support and child support, whether or not a single payment amount is required. State's attorneys must assist the court in the collection of child support orders which are described by these phrases.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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