

IN THE SUPREME COURT OF ALABAMA
May 1, 2018

ORDER

IT IS ORDERED that the Comment to Rule 32(B)(9), Alabama Rules of Judicial Administration, be adopted to read in accordance with the appendix to this order;

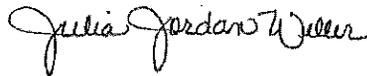
IT IS FURTHER ORDERED that the Comment is effective June 1, 2018;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32:

"Note from the reporter of decisions: The order adopting the Comment to the adoption of Rule 32(B)(9), effective June 1, 2018, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 1st day of May, 2018.



Clerk, Supreme Court of Alabama

FILED May 1, 2018 1:04 pm Clerk Supreme Court of Alabama
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APPENDIX

Comment to Adoption of Rule 32(B)(9) Effective June 1, 2018

A new subdivision (9) was added to subsection (B) and what was subdivision (9) was renumbered subdivision (10). The new subdivision (9) allows the obligor to receive credit against child-support obligations for certain third-party payments made directly to the payee. Subsection (B)(9)(i) is based on Section 3.07 (Social Security Benefit Credit) of the 2013 Michigan Child Support Formula Manual (effective January 1, 2013), which provides credits for certain benefits provided by government insurance programs, with the addition of credit for other third-party payments such as railroad retirement benefits.

Subsection (B)(9)(i) is consistent with current Alabama caselaw. In Goldman v. Goldman, 197 So. 3d 487 (Ala. Civ. App. 2015), the Alabama Court of Civil Appeals held that the veteran's disability benefits of the former husband were to be considered income for purpose of calculating his child-support obligation. A noncustodial parent cannot be required to pay child support when Social Security payments received by a child based on a parent's disability exceeds the guideline amounts. Self v. Self, 685 So. 2d 732 (Ala. Civ. App. 1996). The obligor is also entitled to a credit against his or her obligation when a child receives benefits based on the obligor's retirement benefits. Adams v. Adams, 107 So. 3d 194 (Ala. Civ. App. 2012). Notwithstanding, if the third-party payment to the child is stopped for any reason, the child support owed by the obligor remains the amount of the existing child-support order. For example, if a child is receiving a third-party payment from Social Security that terminates when the child reaches the age of 18, the obligation of the obligor to pay the court-ordered child support will remain in effect until the child reaches the age of majority.

The exclusions of credit enumerated in subsection (B)(9)(ii) reflect current Alabama law. Alabama has consistently held that credit is not allowed for a benefit a child receives based on the work history of someone other than the obligor. See Hebert v. Stephenson, 574 So. 2d 835 (Ala. Civ. App. 1990). See also the court's discussion in Hebert regarding child-support credit based on the child's own disability. 574 So. 2d at 837. Also, the exclusion of credit

for Social Security income benefits in subsection (B)(9)(ii)(5) is consistent with Lightel v. Myers, 791 So. 2d 955 (Ala. Civ. App. 2000), holding that a parent should not get credit for the Social Security income benefits payable to the child as a "supplement to income" for the child based on the child's disability, as was clarified by the court in Adams v. Adams, 107 So. 3d 194 (Ala. Civ. App. 2012), which held that credit could be given to a parent whose child received Social Security retirement benefits based on the parent's work history and, thus, are a "substitute income source." Likewise, the exclusion of credit for adoption-subsidy pay in subsection (B)(9)(ii)(6) is consistent with current law because the adoption subsidy is not a "substitute income source"; rather, it is supplemental to the adoptive parents' income. W.R. v. C.R., 75 So. 3d 159 (Ala. Civ. App. 2011).