

IN THE COURT OF CLAIMS
STATE OF OHIO

JAMES CULLINAN,
4988 Thornhill Lane
Dublin, Ohio 43017

Plaintiff,

Vs.

OHIO DEPARTMENT OF JOB
AND FAMILY SERVICES
30 East Broad Street, 32nd Floor
Columbus, Ohio 43215

Defendant.

2011-11513

CASE NO.:

ORIGINAL

JUDGE:

JUDGE JOSEPH T. CLARK

FILED CLAIMS
COURT OF OHIO
2011 SEP 30 PM 2:23

COMPLAINT

1. Plaintiff, James Cullinan, is and was at all relevant times an individual residing in Franklin County, Ohio.
2. Defendant, The Ohio Department of Job and Family Services (hereinafter "ODJFS"), is a public agency of the State of Ohio that administers the child support system and serves as the state agency responsible for the collection and distribution of child support. ODJFS is headquartered at 30 East Broad Street, 32nd Floor, Franklin County, Columbus, Ohio, 43215.
3. Defendant, ODJFS, administers Ohio's child support program. The Office of Child Support ("OCS") runs the program for ODJFS. It provides direction and supervision to the local Child Support Enforcement Agencies ("CSEA"s).
4. The CSEAs enforce and, or, establish child support orders. They are the point of contact for both the obligor (often times referred to as the "non-custodial parent") and the obligee (often times referred to as the "custodial parent").

ON COMPUTER

5. By law, child support may not be paid directly to the obligee; it must go through the State system.
6. The CSEA acts as a mere conduit and is required to immediately transfer the funds to ODJFS. In short, all money paid into the child support system finds its way to ODJFS.
7. ODJFS maintains records through its Support Enforcement Tracking System (“SETS”) and distributes the child support to the obligee by the way of its Child Support Payment Central (“CSPS”). ODJFS is required by Ohio law to keep a Case Registry of all support orders, including payment records of those orders.
8. Under current ODFJS policies, over-collected or overpaid child support may not be recouped while an active child support order is in place. Furthermore, recoupment cannot be accomplished through the reduction of child support payments unless the obligee has consented to, or a court has explicitly ordered such a reduction.
9. Plaintiff, James Cullinan, was divorced in the Franklin County Common Pleas Court in the summer of 1999. As a result of Plaintiff’s divorce, he was ordered to pay child support, plus the 2% processing charge, for a total payment of \$1,330.78 (One Thousand Three Hundred and Thirty and Seventy-eight Cents), per month.
10. At all relevant times, Plaintiff was identified in the child support system as Participant Number 302047332288. Likewise, Plaintiff was provided with a SETS Case Number of 7011268179.
11. Plaintiff complied with the child support order each month, sending his child support payments to ODJFS through the Franklin County Child Support Enforcement Agency. These payments were made by Plaintiff’s bank through Plaintiff’s bank account.

12. Notwithstanding the fact that Plaintiff's bank was sending his payments of child support each month directly from Plaintiff's bank account, Defendant, ODJFS, through the Franklin County Child Support Enforcement Agency, issued a wage withholding order to Plaintiff's employer in November of 2004, ordering that a second support payment, totaling an additional \$1,330.78 (One Thousand Three Hundred and Thirty and Seventy-eight Cents), be withdrawn directly from Plaintiff's paycheck by Plaintiff's employer.
13. At all relevant times, Plaintiff was unaware that his employer was taking a second child support payment directly out of his pay pursuant to the withholding order. Even though the complete child support payment was taken out of Plaintiff's bank account each month, ODJFS continued to collect a second payment of \$1,330.78 (One Thousand Three Hundred and Thirty and Seventy-eight Cents) from Plaintiff's wages from November of 2004 until June of 2010.
14. Therefore, from November of 2004, until the emancipation of his daughter, and the termination of his child support in June of 2010, the ODJFS wrongfully collected double payments of child support each month.
15. On June 28, 2010, Plaintiff's obligation to pay child support was terminated as a result of the emancipation of Plaintiff's child.
16. From July 1, 1999, through May 31, 2010, Plaintiff was obligated to pay a total amount of \$171,171.75 (One Hundred and Seventy-one Thousand One Hundred and Seventy-one and Seventy-five Cents) in child support. However, during that same time, Defendant, ODFJS, collected \$253,677.89 (Two Hundred Fifty-three Thousand and Six Hundred and Seventy-seven and Eight-nine Cents) in child support resulting in an overpayment of child support by Plaintiff in the amount of \$82,506.14 (Eighty-two Thousand Five

Hundred and Six Dollars and Fourteen Cents). A copy of the findings and recommendations relating to the termination of the child support order is attached hereto as Exhibit A.

17. At all relevant times, Defendant was without privilege or legal authority to collect any amount above the court ordered monthly child support payment of \$1,330.78 (One Thousand Three Hundred and Thirty and Seventy-eight Cents).
18. Plaintiff was unaware of the over collection of child support by Defendant, ODJFS, until June of 2010. At no time prior to June of 2010 did Defendant or any of its agents or employees ever inform Plaintiff of the over-collection of child support. In fact, Defendant fraudulently concealed the overpayments until June of 2010.
19. To date, Defendant has not refunded the over collected child support to Plaintiff, nor has Plaintiff been successful in collecting any of the overpaid child support from his ex-wife.

Claim One: Conversion

20. Plaintiff realleges paragraph one through nineteen as it is fully rewritten herein.
21. Defendant, ODJFS, has in the past, and continues to wrongfully exercise dominion over Plaintiff's personal property, namely that portion of Plaintiff's funds over collected above the court ordered child support, to the exclusion of the rights of Plaintiff. Furthermore, Defendant has withheld these funds from Plaintiff's possession under a claim that is inconsistent with Plaintiff's rights without legal authority to do so. Defendant had absolutely no legal authority to collect double child support payments from 2004 through the first half of 2010, nor did Defendant have the authority to charge an extra 2% on that amount as a processing charge.

22. At the time of Defendant's actions, Plaintiff had, and continues to have, an ownership interest in those funds earned or possessed through employment and, or, other means.
23. Without Plaintiff's permission, Defendant took possession of Plaintiff's funds for a significant and indefinite period of time, and, or, prevented Plaintiff from having access to the money for significant and indefinite period of time. More specifically, Defendant, knowingly received from Plaintiff's employer or from Plaintiff's bank, more funds than were required by the Court to be paid by Plaintiff as child support. Moreover, Defendant, transferred all, or a portion of those funds to Plaintiff's ex-wife and/or entities, and, further retained a portion of those funds as payment for the processing charge.
24. At no time did Plaintiff ever consent to Defendant collecting twice the amount of required child support, and at no time did Plaintiff ever consent to Defendant exercising dominion and control over Plaintiff's money for any period of time.
25. Plaintiff was harmed by Defendant taking possession of Plaintiff's money for a significant and indefinite period of time and, or, preventing Plaintiff from having access to the money for a significant and indefinite period of time. Again, specifically, Defendant has wrongfully converted Plaintiff's funds in the amount of \$82,506.14 (Eighty-two Thousand Five Hundred and Six Dollars and Fourteen Cents) that being the amount that Defendant wrongfully over-collected and retained and/or distributed to others.
26. Furthermore, Plaintiff lost the time-value of his money, by virtue of the fact that Plaintiff was unable to use his funds, and was otherwise unable to collect any interest or receive any return on said funds.

27. Defendant's wrongful conduct was a direct and proximate cause of Plaintiff's damages in this matter. As a direct and proximate result of Defendant's wrongful conversion of Plaintiff's funds, Defendant is legally obligated to compensate Plaintiff for Plaintiff's damages in the amount of \$82,506.14 (Eighty-two Thousand Five Hundred and Six Dollars and Fourteen Cents) plus interest.

Count Two: Equitable Restitution

28. Plaintiff realleges paragraph one through twenty-seven as it is fully rewritten herein.

29. Defendant has wrongfully taken and held money identified as belonging, in good conscience, to Plaintiff. Namely, Defendant has wrongfully taken that portion of Plaintiff's funds collected over and above the court ordered child support in the amount of \$82,506.14 (Eighty-two Thousand Five Hundred and Six Dollars and Fourteen Cents).

30. The money taken by Defendant can clearly be traced to Defendant's possession and control. More specifically, Defendant knowingly received from Plaintiff's employer or other payors more funds than were ordered for child support, at the very least in the amount constituting the 2% processing fee on all of the over collected funds.

31. Plaintiff seeks equitable relief through the refund and restoration of Plaintiff particular funds that remain in Defendant's possession or alternatively that a constructive trust be imposed upon Defendant for the benefit of Plaintiff. More specifically, Plaintiff seeks the return of the 2% processing charge retained by Defendant as a fee on all of the funds over collected above and beyond the court ordered child support amount.

Count Three: Constructive Trust/Breach of Fiduciary Duty

32. Plaintiff realleges paragraph one through thirty-one as it is fully rewritten herein.

33. Defendant has a duty to hold in constructive trust all funds collected in an excess of the amount required to be paid pursuant to the existing child support order issued by the Franklin County Common Pleas Court.
34. Defendant is subject to a duty to hold all funds over collected in excess of the court ordered child support amount for Plaintiff on the ground that Defendant, and others, would be unjustly enriched if they were permitted to retain or use those over collected funds.
35. The duty to hold the over collected funds in trust arose because the funds were required through the tortious and fraudulent conduct of ODJFS in the over-collection of Plaintiff's child support obligation. The duty to hold all over-collected funds in trust further arose from the breach of fiduciary duty by Defendant because Plaintiff was required to pay all child support through ODJFS and may not, by law, directly pay his ex-wife. Instead, Plaintiff, and those similarly situated, must rely solely on, and trust, that ODJFS will collect and pay the proper amount of child support. In addition, this duty arose because of the wrongful disposition of the over collected funds by ODJFS knowingly receiving and retaining, and, or, passing on to others the funds in excess of the court ordered child support amount.
36. Defendant has breached its duty to hold the over collected funds in trust, and as a direct and proximate result, Plaintiff has been harmed in the amount of \$82,506.14 (Eighty-two Thousand Five Hundred and Six Dollars and Fourteen Cents)

WHEREFORE, Plaintiff demands judgment against Defendant, on all counts, in an amount to be determined at trial and in excess of \$82,000 (Eighty-two Thousand Dollars), plus interest and all other relief to which Plaintiff is entitled under the law.

Respectfully Submitted,



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FAX: (614) 228-0253
jttyack@tblattorneys.com
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

In re: or

WENDELYN K CULLINAN
Plaintiff / Petitioner

JAMES E CULLINAN
Defendant / Petitioner

Case #: 98DR-06-2285

Judge: GILL

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2010 JUN 28 PM 4:09
CLERK OF COURTS

FINDINGS AND RECOMMENDATIONS TO TERMINATE
THE SUPPORT ORDER

Date Issued: June 16, 2010

A. The Franklin County Child Support Enforcement Agency (CSEA) has conducted an investigation to determine whether one of the administrative termination reasons, as described in Ohio Administrative Code rule 5101:12-60-50, exists to terminate a support order.

B. As a result of the investigation, the CSEA **FINDS and RECOMMENDS** that (only those boxes that are checked apply):

1. The child support and medical support provisions for CORINE CULLINAN, born 01/08/1992, should terminate effective 06/06/2010 for the following reason: the child(ren)'s emancipation
2. There is another minor child(ren) subject to the support order. The Obligor should continue to pay child support in the amount of \$ _____ per month per child, plus processing charges, for _____, date(s) of birth _____. The Obligor and Obligee should comply with all medical support provisions of the child support order.
- There is another minor child(ren) subject to the support order. When private health insurance is being provided in accordance with the support order for _____, date(s) of birth _____, the Obligor should pay \$ _____ per month per child for current child support, plus processing charge.

When private health insurance is **not** being provided in accordance with the support order for _____, date(s) of birth _____, or is not available to either party, the Obligor should pay \$ _____ per month per child for current child support and \$ _____ per month per child for cash medical support, plus processing charge.

Obligor and Obligee should comply with all medical support provisions of the child support order.

3. Spousal Support for _____ in the amount of \$ _____ per month shall terminate effective _____.
4. Continued disbursement of payments paid to the order is not expected to result in an overpayment.
 Continued payment and disbursement of payments paid pursuant to the order is expected to result in or add to an overpayment. **Therefore, the support payments shall be impounded (held by the OCSPC) until further order of the Court.**

ALL CALCULATIONS DO NOT INCLUDE PAYMENTS BEING HELD BY THE OHIO CHILD SUPPORT PAYMENT CENTRAL (OCSPC). THE CALCULATIONS ONLY INCLUDE PAYMENTS MADE AND DISBURSED. THE CALCULATIONS MAY INCLUDE MONEY DUE TO THE OHIO DEPARTMENT OF JOB & FAMILY SERVICES. THE CALCULATIONS INCLUDE CHARGES AS OF THE ARREARAGE OR OVERPAYMENT DATE STATED HEREIN.

5. There is a total support overpayment of \$82449.57 (including \$82449.57 in support and \$N/A in cash medical), plus an arrearage of \$0.00 in processing charge, as of 06/15/2010.



IF THERE IS A SUPPORT ARREARAGE AND A PROCESSING CHARGE CREDIT, THE CSEA RECOMMENDS THAT THE PC CREDIT BE APPLIED TO THE SUPPORT ARREARAGE, THEREBY REDUCING THE AMOUNT OF THE SUPPORT ARREARAGE. UPON APPROVAL OF THE COURT, THE CSEA/OCSPC RECORDS WILL REFLECT THE REDUCTION IN THE PC CREDIT AND THE CORRESPONDING AMOUNT WILL BE POSTED AS A PAYMENT TO BE CREDITED TOWARDS THE SUPPORT ARREARAGE.

- The arrearage shall be liquidated by paying \$ _____ per month, plus processing charge, until fully liquidated.
6. No collections are being held by the CSEA.
 The OCSPC is holding collections totaling **\$8291.74** as of 06/15/2010. Therefore, The FCCSEA recommends that any money being held and any money received after the aforementioned "HOLD" date be disbursed in accordance with the Ohio Administrative Code.
7. Pursuant to the current court order, ongoing spousal support shall continue in the amount of \$ _____ per month, plus processing charge.
8. The Obligor owes amounts for other minor children, arrears, other balances, or other obligations. Therefore, an income withholding notice should be issued or should continue.
 The Obligor does not owe any amounts for other minor children, arrears, other balances, or other obligations. Therefore, an income withholding notice should not be issued or should be terminated.
 The Obligor owes amounts for arrears, other balances, or other obligations. However, the money currently on hold will satisfy the arrearage balance. Therefore, an income withholding notice should not be issued or should be terminated.
- C. If neither the Obligor nor the Obligee requests an administrative hearing to object to the findings and recommendations, the findings and recommendations will be issued as a Court order.

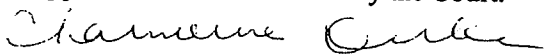
ADMINISTRATIVE HEARING RIGHTS

Both the Obligee and Obligor have the right to request an administrative hearing to object to the findings and recommendations contained in this notice.

To request an administrative hearing, complete the "Request for Administrative Hearing" on the last page and return the completed "Request for Administrative Hearing" to the CSEA. You have 30 days after receipt of the Findings and Recommendations to return the "Request for Administrative Hearing" to the CSEA. (Receipt is defined as 3 days after the Findings and Recommendations was mailed.)

If either the Obligee or Obligor requests an administrative hearing within 30 days after receipt of this notice, a revised support order will not be issued until a final determination is made by the Court.

If neither the Obligor nor Obligee requests an administrative hearing within 30 days after receipt of this notice, a revised support order will be issued by the Court.



CHARMAINE DRAKE

Franklin County CSEA
80 East Fulton Street
Columbus, OH 43215

06/14/10
Date

Telephone Number: (614) 462-3275
Toll Free Number: (800) 827-3740
Fax Number: (614) 719-8523

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH**

In re: or

WENDELYN K CULLINAN
Plaintiff / Petitioner

Case #: 98DR-06-2285

JAMES E CULLINAN
Defendant / Petitioner

Judge: GILL

REQUEST FOR ADMINISTRATIVE TERMINATION HEARING

I object to the Findings and Recommendations because they contain the following mistake(s):

I request an administrative hearing so I can prove to the CSEA that the mistake(s) mentioned above exist in the Finding and Recommendations. I understand that I have 30 days after receipt of the Findings and Recommendations to return this request to the CSEA named below. (Receipt is defined as 3 days after the Findings and Recommendations was mailed.)

Franklin County CSEA
80 East Fulton Street
Columbus, OH 43215
Fax Number: (614) 719-8523

Signature	Print Name
Address 1	
Address 2	
City, State, ZIP	

