The Supreme Court of South Carolina

In the Matter of Phillip Anthony Curiale, Petitioner.

Appellate Case No. 2018-000014

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 18, 2013, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is an inactive member of the Bar in good standing.

Petitioner has now submitted his resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BY s/ Daniel E. Shearouse
CLERK

Columbia, South Carolina
January 10, 2018

The Supreme Court of South Carolina

In the Matter of Evelyn Joyce Hodson, Petitioner.

Appellate Case No. 2018-000037

ORDER

The records in the office of the Clerk of the Supreme Court show that on June 6, 1990, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is an inactive member of the Bar in good standing.

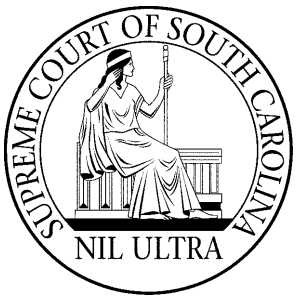
Petitioner has now submitted her resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BY s/ Daniel E. Shearouse
CLERK

Columbia, South Carolina
January 12, 2018



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 3
January 17, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The Supreme Court of South Carolina

Peggy D. Conits, Respondent,

v.

Spiro E. Conits, Petitioner.

Appellate Case No. 2016-001961

ORDER

We deny the Petition for Rehearing. The attached opinion is substituted for the previous opinion, which is withdrawn. The only change is to the final sentence.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

January 17, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Peggy D. Conits, Respondent,

v.

Spiro E. Conits, Petitioner.

Appellate Case No. 2016-001961

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenville County
David G. Guyton, Family Court Judge

Opinion No. 27749
Submitted October 24, 2017 – Filed November 15, 2017
Withdrawn, Substituted, and Refiled January 17, 2018

REVERSED AND REMANDED

David Alan Wilson, of The Law Offices of David A. Wilson, LLC, and Kenneth C. Porter, of Porter & Rosenfeld, both of Greenville, for Petitioner.

Timothy E. Madden, Nelson Mullins Riley & Scarborough, LLP, of Greenville, for Respondent.

PER CURIAM: Spiro E. Conits filed a petition for a writ of certiorari to review the decision of the court of appeals in *Conits v. Conits*, 417 S.C. 127, 789 S.E.2d 51 (Ct.

App. 2016). We grant the petition, dispense with further briefing, reverse the decision, and remand to the court of appeals.

Peggy D. Conits and her husband Spiro litigated many issues in their divorce action in family court, but we address only one—the size and value of a farm Spiro owns in Greece. Spiro appealed the family court's ruling on this issue, but the court of appeals found the issue was not preserved for appellate review. The court of appeals understood Spiro to argue on appeal the farm "does not exist," but that at trial he "made no arguments as to the existence of the . . . farm." 417 S.C. at 137, 789 S.E.2d at 56. We find Spiro made the same argument on appeal he made at trial. The issue is preserved.

The facts of this case are set forth in detail in the court of appeals' opinion. 417 S.C. at 133-36, 789 S.E.2d at 54-56. At trial, the parties presented conflicting evidence about the size and value of the farm in Greece. Spiro admitted he owns a one-half interest in a three-acre farm with a fair market value of $43,750. Peggy claimed the farm is thirty acres with a fair market value of $1,420,200. As the court of appeals observed, "the parties argued about its value and whether the property was three or thirty acres." 417 S.C. at 137, 789 S.E.2d at 56.

The family court found the farm is thirty acres and assigned it a value of $1,420,000. Spiro filed a motion to alter or amend the judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. He argued—among other things—Peggy "completely misrepresented or misunderstood [Spiro's] ownership interests in real estate in Greece and the court erred in adopting such misrepresentation as fact without evidentiary support." Spiro specifically argued he "does not own a thirty-acre farm in Greece" and "[his] interest in [the three-acre . . . farm] is worth between $20,000 and $21,875." The family court denied the motion.

On appeal to the court of appeals, Spiro admitted he owns a three-acre farm in Greece and claimed he does not own a thirty-acre farm. Appellant's Br. 12. Spiro argued in his brief to the court of appeals,

> At trial, [Spiro] clarified and corrected his ownership in the various properties in Greece and confirmed his ownership in a three-acre . . . farm as opposed to a thirty-acre farm. He testified at trial that he only owns three

> acres in Greece. [Spiro] simply does not own a thirty-acre farm in Greece.

Id. Spiro then argued in his brief there is "no support for [Peggy's] 'opinion' as to the value of the farm" and the family court's ruling "should be removed in its entirety and replaced with findings of fact and conclusions of law regarding the three-acre . . . farm." Appellant's Br. 15.

The words Spiro used to make his argument concerning the size and value of the farm in Greece changed from the family court to his Rule 59(e) motion to his brief at the court of appeals. In fact, Spiro confused the true issue when he described it in his brief to the court of appeals as, "Should the Family Court Include in the Marital Estate an Asset That Does Not Even Exist," and repeatedly and emphatically argued that "no such asset even exists." Considering Spiro's arguments practically, however, we clearly see that his argument was the same at each stage of these proceedings—he does not own a thirty-acre farm in Greece; he owns a three-acre farm; and it is not worth anything near what Peggy claims or the family court found. *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner."). When Spiro argued in his Rule 59(e) motion and wrote in his brief to the court of appeals that he "does not own a thirty-acre farm in Greece," he did not argue there was no farm. Rather, he argued the farm he admitted he owns is not thirty acres, and is not worth $1,420,000.

The issue raised at the court of appeals is precisely the same one Spiro raised to the family court at trial and in his Rule 59(e) motion. The family court ruled on the issue, and thus it is preserved. *See Herron*, 395 S.C. at 465, 719 S.E.2d at 642 (stating "issue preservation requires that an issue be raised to and ruled upon by the trial judge").

Accordingly, we **REVERSE** the court of appeals' ruling that the issue concerning the size and value of the farm in Greece is not preserved for appellate review. We **REMAND** to the court of appeals to rule on the merits of the issue and to consider any other issues that arise as a result of its ruling—including whether the status of the farm is still an issue, and if it is, whether the farm is marital or non-marital property.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

Re: Attorney's Fees Under Rules 222 and 242 of the
South Carolina Appellate Court Rules

ORDER

The attorney's fee under Rule 222(b) of the South Carolina Appellate Court Rules is hereby increased to $2,500. This increased fee shall apply to any appeal where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 222.

The attorney's fee under Rule 242(j)(2) of the South Carolina Appellate Court Rules is increased to $2,500. This fee shall apply to any case where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 242(j).

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
January 17, 2018

The Supreme Court of South Carolina

Re: Amendments to the South Carolina Appellate Court Rules

Appellate Case No. 2017-001105

ORDER

On behalf of the Commission on Lawyer Conduct and the Commission on Judicial Conduct, the Office of Commission Counsel has submitted a number of proposed rule amendments to various South Carolina Appellate Court Rules. The proposed amendments adopt debarment as a formal sanction and prohibit debarred lawyers from advertising or engaging in the practice of law in South Carolina. We agree to adopt the proposed amendments, with some modifications to the Commissions' proposed definition of debarment.

Pursuant to Article V, Section 4 of the South Carolina Constitution, Rules 407, 413, and 418 of the South Carolina Appellate Court Rules are amended as set forth in the attachment to this Order. The amendments are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
January 17, 2018

Rule 2(g) of the Rules for Lawyer Disciplinary Enforcement, contained in Rule 413 of the South Carolina Appellate Court Rules, is amended to provide as set forth below. Additionally, current paragraphs (g) through (bb) of Rule 2 are renumbered as paragraphs (h) through (cc), and Rule 16(c) of the Rules for Lawyer Disciplinary Enforcement is amended to correct a reference as being to Rule 2(bb):

> **(g) Debarment:** a sanction imposed on an unlicensed lawyer by the Supreme Court. *See* Rule 7(b)(9). Debarment is a prohibition on practicing law or seeking any form of admission to practice law in South Carolina, including pro hac vice admission, without first obtaining an order from the Supreme Court. While the debarment remains in effect, the lawyer shall not engage in the practice of law in South Carolina (including any conduct that would otherwise be permitted under Rule 5.5 of the South Carolina Rules of Professional Conduct contained in Rule 407, SCACR, or Rule 426, SCACR); shall not be eligible to be admitted to practice law in South Carolina (including pro hac vice admission or any limited certificate to practice law), to be a foreign legal consultant under Rule 424, SCACR, or to be a certified paralegal under Rule 429, SCACR; and shall not advertise or otherwise solicit to provide legal services in South Carolina or engage in any of the form of advertising and solicitation listed in Rule 418(b), SCACR.

Rule 7(b) of the Rules for Lawyer Disciplinary Enforcement, contained in Rule 413 of the South Carolina Appellate Court Rules, is amended to provide:

> **(b) Sanctions.** Misconduct shall be grounds for one or more of the following sanctions:

(1) disbarment;

(2) suspension for a definite period from the office of attorney at law. The period of the suspension shall not exceed 3 years and shall be set by the Supreme Court;

(3) public reprimand;

(4) admonition, provided that an admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of sanction to be imposed;

(5) restitution to persons financially injured, repayment of unearned or inequitable attorney's fees or costs advanced by the client, and reimbursement to the Lawyers' Fund for Client Protection;

(6) assessment of the costs of the proceedings, including the cost of hearings, investigations, prosecution, service of process and court reporter services;

(7) assessment of a fine;

(8) limitations on the nature and extent of the lawyer's future practice;

(9) debarment;

(10) any other sanction or requirement as the Supreme Court may determine is appropriate.

Rule 34(a) of the Rules for Lawyer Disciplinary Enforcement, contained in Rule 413 of the South Carolina Appellate Court Rules, is amended to provide:

RULE 34
EMPLOYMENT OF LAWYERS WHO ARE DEBARRED, DISBARRED, SUSPENDED, TRANSFERRED TO INCAPACITY INACTIVE STATUS, OR PERMANENTLY RESIGNED IN LIEU OF DISCIPLINE

(a) General Prohibition on Employment. Except as provided in paragraph (b), below, a lawyer who is debarred, disbarred, suspended, transferred to incapacity inactive status, or permanently resigned in lieu of discipline shall not be employed directly or indirectly by a member of the South Carolina Bar as a paralegal, investigator, or in any other capacity connected with the practice of law, nor be employed directly or indirectly in the State of South Carolina as a paralegal, investigator, or in any capacity connected with the practice of law by a lawyer licensed in any other jurisdiction. Additionally, a lawyer who is debarred, disbarred, suspended, transferred to incapacity inactive status, or permanently resigned in lieu of discipline shall not serve as an arbitrator, mediator, or third party neutral in any Alternative Dispute Resolution proceeding in this state nor shall any member of the South Carolina Bar directly or indirectly employ a lawyer who has been debarred, disbarred, suspended, transferred to incapacity inactive status, or permanently resigned in lieu of discipline as an arbitrator, mediator, or third party neutral in any Alternative Dispute Resolution proceeding. Any member of the South Carolina Bar who, with knowledge that the person is debarred, disbarred, suspended, transferred to incapacity inactive status, or permanently resigned in lieu of discipline, employs such person in a manner prohibited by paragraph (a) of this rule shall be subject to discipline under these rules. A lawyer who is debarred, disbarred, suspended, transferred to incapacity inactive status, or permanently resigned in lieu of discipline who violates paragraph (a) of this rule shall be deemed in contempt of the Supreme Court and may be punished accordingly.

Rule 5.5(c) and (d) of the South Carolina Rules of Professional Conduct, which is found in Rule 407 of the South Carolina Appellate Court Rules, is amended to provide:

(c) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraph (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment 5 and Comment 15 to Rule 5.5 of the South Carolina Rules of

Professional Conduct, which is found in Rule 407 of the South Carolina Appellate Court Rules, are amended to provide:

> [5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), the Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.
>
> . . .
>
> [15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not debarred, disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

Rule 418 of the South Carolina Appellate Court Rules is amended to add paragraph (f), which provides:

> **(f) Debarred Lawyer.** An unlicensed lawyer who has been debarred in South Carolina pursuant to Rule 7(b)(9), RLDE, is prohibited from advertising or solicitation in South Carolina. *See* Rule 2(g), RLDE.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Michael O. Scott, Appellant,

v.

Karen Scott, and South Carolina Department of Social Services, Respondents,

In the Interest of a Minor Child.

Appellate Case No. 2015-002496

Appeal From Richland County
Dale Moore Gable, Family Court Judge

Opinion No. 5530
Submitted October 5, 2017 – Filed January 17, 2018

AFFIRMED

Laura Puccia Valtorta, of Valtorta Law Office, of Columbia, for Appellant.

G. Robin Alley, of Isaacs & Alley, LLP, of Columbia, for Respondent Karen Scott.

Brenda Gayle Watson, of Columbia, for Respondent South Carolina Department of Social Services.

THOMAS, J.: Michael Scott appeals the family court's order dismissing his outstanding child support arrearage that accumulated after the date he was deemed disabled by the Social Security Administration (SSA) and ordering him to pay his outstanding arrearage that accumulated before his disability. On appeal, Scott argues the family court erred because (1) the finding of disability by the SSA constituted a change in circumstances necessary to stop, change, or modify the child support obligation; (2) the money awarded from the SSA should offset his child support obligations; and (3) it failed to properly keep and file documents submitted as evidence. We affirm.[1]

FACTS/PROCEDURAL HISTORY

In October 2011, the family court ordered Scott to pay $320 per month in child support. In February 2014, Scott sought a modification of his child support obligation and provided proof of a pending disability case with the SSA. The family court determined Scott's child support obligation would be reduced to approximately $66 per week. The enforcement of Scott's child support obligation was suspended for six months to determine his disability status.

The SSA concluded Scott became disabled on September 26, 2013. It determined Scott was entitled to benefits of $1,069.40 per month beginning in March 2014. A cost-of-living adjustment increased Scott's monthly benefits to $1,087.50 in December 2014. Scott's child was also entitled to Social Security benefits and received a check for approximately $6,500 in past due benefits and an ongoing monthly check of $543.

In April 2015, Scott served the child's mother (Mother) and the South Carolina Department of Social Services (DSS) with an amended complaint. Scott argued (1) his child support obligation should be terminated because of a change in circumstances; (2) his child support arrearages should be "terminated in their entirety, or that any arrearage that accumulated after September 26, 2013[,] be terminated"; and (3) he should be given credit for any "social security payments made to the minor child from September 26, 2013[,] forward because of [his] disability, and that these payments be subtracted from any money [he] owe[d] in child support, including arrearages." Mother counterclaimed, requesting attorney's fees.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The family court found that Scott was required to pay the arrearage that accumulated before the date of his disability. The family court's order stated:

> [T]he [c]ourt finds that [Scott] owes the outstanding arrearage as of September 26, 2013, that any part of the arrearage that accumulated beyond that date is dismissed as the benefits that the [minor child] is receiving from Social Security are in lieu of [Scott]'s child support going forward and that [Scott] is to pay toward his arrearage that was in place as of September 26, 2013, at a rate of Seventy-Five Dollars ($75) per month due on first of the month thereafter to begin after this Order is clocked and filed with the [f]amily [c]ourt.

This appeal followed.

ISSUES ON APPEAL

1. Should a finding of disability by the SSA be a change in circumstances warranting the modification of a child support obligation in family court?

2. Is a disabled parent allowed to offset his or her child support obligation by the amount of money received by the child from the SSA on account of the disabled parent's disability?

3. Is the family court required to place and keep in the file every document submitted by the attorneys or parties as evidence or argument?

STANDARD OF REVIEW

"In appeals from the family court, [appellate courts] review[ ] factual and legal issues de novo." *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). "[W]hile retaining the authority to make our own findings of fact, we recognize the superior position of the family court judge in making credibility determinations." *Lewis v. Lewis*, 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011) (footnote omitted). The burden is upon the appellant to convince the appellate court that the preponderance of the evidence is against the family court's findings. *Id.* "Stated differently, [de novo] review neither relieves an appellant of demonstrating error nor requires us to ignore the findings of the family court." *Id.*

at 388–89, 709 S.E.2d at 654.

CHILD SUPPORT MODIFICATION

Scott argues the family court erred by increasing his child support obligation to $543 per month, the amount the child receives in derivative benefits. He contends the family court failed to consider his disability as a change in circumstances, and his child support obligation should have been decreased rather than increased. We disagree.

"A family court has authority to modify the amount of a child support award upon a showing of a substantial or material change of circumstances." *Miller v. Miller*, 299 S.C. 307, 310, 384 S.E.2d 715, 716 (1989). This court has held a "disability constitutes a sufficient change in circumstances to warrant the modification of a child support award." *Justice v. Scruggs*, 286 S.C. 165, 167, 332 S.E.2d 106, 108 (Ct. App. 1985).

According to the family court's order, "the benefits that the [minor child] is receiving from Social Security are in lieu of [Scott's] child support going forward." Nothing in the family court's order increases the amount of Scott's child support obligation. Instead, the family court's order indicates Scott was no longer required to pay his monthly child support obligation because the minor child was receiving monthly Social Security benefits greater than Scott's child support obligation. Although the SSA deemed Scott disabled, he still has an obligation to support his child. *See Peebles v. Disher*, 279 S.C. 611, 615, 310 S.E.2d 823, 825 (Ct. App. 1983) ("As long as a person remains a parent of a minor child, the parent's obligation to support the child continues."). Scott does, however, have the right to offset the monthly disability benefits against his monthly support obligation. *See Justice*, 286 S.C. at 166, 332 S.E.2d at 107 (holding "a parent is entitled to a *credit* on his child support payments for disability benefits paid for the support of the children" (emphasis added)). In the instant case, the disability benefits exceeded Scott's monthly child support obligation, and the family court properly found he was not required to pay any support in addition to the disability benefits. Therefore, we find the family court properly considered Scott's disability when determining his child support obligation and did not err by indicating the disability payments were in lieu of child support.

ARREARAGE

Scott contends he should receive credit toward his arrearage for any amount the child receives from Social Security that is in excess of Scott's existing child support obligation. Scott argues the child receives an overpayment of $261 per month and that amount should be credited toward his arrearage. Scott further asserts the family court erred by not reducing his $7,067.68 arrearage by the lump-sum payment of $6,515 the child received in past-due Social Security benefits. We disagree.

This court has held "a parent is entitled to credit on his child support payments for disability benefits paid for the support of the children." *Justice*, 286 S.C. at 166, 332 S.E.2d at 107; *see also Ward v. Marturano,* 302 S.C. 112, 114–15, 394 S.E.2d 16, 18 (Ct. App. 1990) (finding no error in the family court's decision "to credit [a father] with the amount of social security benefits received on behalf of the child").

Although South Carolina has clearly established that a parent should get credit for Social Security benefits paid to a minor child, the question of whether a child's excess Social Security benefits should be credited against a parent's arrearage is a question of first impression. We note many jurisdictions deem excess benefits a gratuity on behalf of the child. *See Brown v. Brown*, 849 N.E.2d 610, 616 (Ind. 2006) (holding a child's excess Social Security benefits cannot be credited against a parent's arrearages that have accumulated prior to the date the parent files a petition to modify the child support obligation); *Matter of Marriage of Williams*, 900 P.2d 860, 862 (Kan. Ct. App. 1995) (holding the windfall of excess benefits "should 'inure not to the defaulting husband's benefit, but to his bereft children'" (quoting *Kirwan v. Kirwan*, 606 So. 2d 771, 772 (Fla. Dist. Ct. App. 1992))); *Keith v. Purvis*, 982 So. 2d 1033, 1036 (Miss. Ct. App. 2008) ("[W]e find that [Father] is entitled neither to credit any excess amounts against future support obligations nor to reimbursement for overpayment of his support obligations."); *Weaks v. Weaks*, 821 S.W.2d 503, 507 (Mo. 1991) ("Any excess is deemed a gratuity to the extent that it exceeds the amount of support mandated by the decree."); *In re Marriage of Cowan*, 928 P.2d 214, 221 (Mont. 1996) (noting "the majority of jurisdictions faced with this issue have not allowed the application of excess benefits to reduce arrearages" and adopting a consistent rule); *Gress v. Gress*, 596 N.W.2d 8, 14 (Neb. 1999) ("Equitable considerations lead us to allow excess Social Security dependency benefits to be credited against child support arrearage which has accrued from the date of the occurrence which entitled the parent to such benefits, unless the allowance of such credit, in the particular case, would be inequitable."); *Children & Youth Servs. of Allegheny Cty. v. Chorgo,* 491 A.2d

1374, 1379 (Pa. Super. Ct. 1985) ("We do not hesitate in declaring unequivocally that, when support payments are not made prior to the start of disability or retirement, [] any excess in the benefits over the amount needed for current support cannot be applied to those arrearages.")

We agree with these jurisdictions and hold it is proper for the date of disability to be used for the purposes of establishing when Social Security benefits may be utilized as a substitute for income. *See Justice*, 286 S.C. at 166–67, 332 S.E.2d at 107–08 (finding Social Security payments substitute for a parent's income in satisfying a child support obligation). Requiring a parent to pay pre-disability arrears merely puts the minor child in the financial position they would have been in if the parent paid the proper amount of support prior to becoming disabled. This rule properly focuses "on the importance of meeting the *current* needs of children, thereby protecting their right to regular and uninterrupted support." *Newman v. Newman*, 451 N.W.2d 843, 844 (Iowa 1990). Further, we agree with the Mississippi Court of Appeals that "[t]o hold otherwise would create an incentive for a non-custodial parent to withhold support payments in the hope or expectation that a future receipt of disability benefits by the child would later satisfy those obligations." *Keith*, 982 So.2d at 1037. Therefore, the family court properly credited Scott for the lump-sum payment when it dismissed all of his arrearage that accumulated after September 26, 2013—the date he was deemed disabled. We find no error in the family court's refusal to apply the child's excess Social Security benefits to Scott's pre-disability arrearage or the family court's order requiring Scott to repay the arrearage at $75 per month.

MISSING DOCUMENTS

Scott claims that, when he was preparing for his appeal, he requested a complete file of his case from the clerk's office but two documents were missing from his file. This argument is not preserved for our review. Scott did not raise the issue of the clerk's office failing to maintain his file to the family court. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved."). Further, we do not consider this issue because Scott was not aggrieved by any decision or order of the family court. *See* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence[,] or decision may appeal.").

CONCLUSION

For the foregoing reasons, the family court's order is

AFFIRMED.

WILLIAMS and MCDONALD, JJ., concur.