

IN THE SUPREME COURT OF OHIO

Marka M. Tonti (now known as Lyle), :

Appellee, :

v. :

Case No. 07-1320

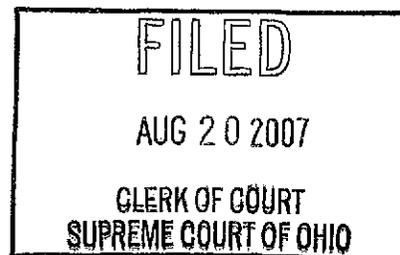
Thomas A. Tonti, :

Appellant. :

**APPELLEE MARKA M. LYLE'S MEMORANDUM IN RESPONSE TO APPELLANT'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

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I. STATEMENT OF APPELLEE'S POSITION

Appellee submits that a substantial constitutional question is not involved and the case is not of sufficient public or great general interest. Appellee respectfully submits that the appeal should be dismissed as to the constitutional questions and leave to appeal denied as there is no public or general interest.

II. ARGUMENT

A. PROPOSITION OF LAW NO. 1: EQUAL PROTECTION

Appellant's claim that he has been denied equal treatment under the law is without merit because he has failed to demonstrate that members of the same class were treated differently. His argument that the parties are members of the same class is based on the overly broad basis that they are parents under a shared parenting plan. Second, his argument of different treatment rests on the fallacy that the trial court applied statutory factors and analysis only to him and not Appellee.

1. Same Class

The question of whether the parties are in the same class for the purposes herein does not end with the mere fact that they are shared parents. At issue is an award of child support made under a host of statutory factors. The parties are dissimilar in consideration of the relevant factors and analysis required by the former statutes; there is no question that Appellant has not been denied equal protection.

It would be difficult to imagine a scenario where an equal protection argument against the former child support statutes would pass the initial test of similar classes. Perhaps if parties had **extraordinarily** similar parenting time, household incomes, housing, and expenses related to the

children. The statutes required a case by case determination of multiple facts and granted the trial courts great discretion in applying them. This field of law is a poor one for an equal protection claim.

Former 3113.21.5(B) (3) established multiple criteria for the court to consider in a deviation from guideline child support; just one example is disparity in income between the parties. 3113.21.5(B) (3) (g). Plaintiff-Appellee and Defendant-Appellant are not similarly situated when Defendant's income for child support purposes is four times greater than Plaintiff's income for child support purposes.

2. Dissimilar Treatment

Appellant's claim that he was treated differently because the trial court applied a child support analysis to him and not to Appellee, repeatedly set forth in a convenient chart, is factually incorrect and disingenuous at best.

Former R.C. 3113.21.5 (B)(6)(a) required courts to calculate a child support worksheet through line 24, unless the application of the worksheet would be unjust and inappropriate, directing the court to the criteria set forth in the deviation subsection (B)(3), as well as (B)(6)(b). Likewise, in high income cases when the combined gross incomes exceeded One Hundred Fifty Thousand Dollars, former R.C. 3113.21.5(B)(2)(b) directed the courts to do a case by case analysis, and also referred to subsection (B)(3).

The Magistrate presented her analysis under the required statutory factors on pages 15 through 20, inclusive, of her September 18, 2000 Magistrate's Decision. As to Plaintiff-Appellee, she cites her birth of another child; imputed income; household income; her remarriage; payment of children's activities; withdrawals from savings; borrowing money from her parents; standard of living; and real estate taxes. In ruling upon Appellant-Defendant's

objections to the Magistrate's Decision, the trial court held that "[t]he magistrate properly considered the factors and included sufficient findings of fact and conclusions of law in the record." May 24, 2002 Judgment Entry and Decision, p. 27.

B. PROPOSITION OF LAW NO. 2: DUE PROCESS

Appellant claims that trial court denied him due process of law because, after the alteration of one finding of fact in the original Magistrate's Decision, it did not alter the percentage it deviated from the guideline worksheet it recalculated support. This argument must fail because the trial court properly considered all statutory factors in arriving at a final support award.

The Magistrate made specific findings as to 16 separate statutory factors in her support analysis. September 18, 2000 Judgment Entry and Magistrate's Decision, pp. 15-20. Upon Appellant's objections the trial court found error in the following: allocation of mortgage expenses; inclusion of capital gains in Plaintiff-Appellee's gross income; averaging of Defendant-Appellant's interest and dividend income ; and imputation of child care expenses. May 24, 2002 Judgment Entry and Decision.

The above factors impacted the worksheet guideline calculation except for the allocation of mortgage expense. The Magistrate recalculated child support pursuant to the trial court's instructions; as a result the guideline support amount changed only from \$2,794.67 per month to \$2,727.23 per month. She applied the same deviation percentage, 37.38, to arrive at the final support amount. July 25, 2002 Magistrate's Decision.

Appellant argues that because the Magistrate did not alter the deviation percentage based on the revision of mortgage expense he was denied due process of law. Yet the Magistrate and trial court expressly stated their respective consideration of all the statutory factors in the second calculation. Furthermore, the question of how to allocate a portion of mortgage expense to children who do not live in the home full time, and then how the weight that allocation influences the calculus of establishing an appropriate child support award, is difficult at best.

There is no denial of due process when the trial court follows the statute and one isolated, conceivably minor factor does not change the outcome. Appellant is merely dissatisfied with the result. His argument is based on a trifling; he does not present a substantial constitutional that would require this Court to review the case.

C. SUFFICIENT PUBLIC OR GREAT GENERAL INTEREST

As the foregoing sections demonstrate, Appellant is attempting to bolster minor factual disagreements into grave matters of constitutional import. The minutia of the trial court's child support analysis herein, properly conducted pursuant to statutory directives that required consideration on a case by case basis, do not hold such sweep over all shared parenting child support determinations in this State such that any public or general interest would be served by this Court accepting jurisdiction.

This Court previously declined Appellant's discretionary appeal of the exact same calculations and analysis in case number 2004-1069 (the Franklin County Court of Appeals remanded the first appeal herein on the issue of imputed child care expense, not a worksheet item; calculation of an attorney fee award; and the trial court's procedure errors in addressing the

constitutionality of the former statute). Appellee respectfully requests that the Court decline the case again.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of this document upon Ray J. King, Attorney for Appellant, 107 W. Johnstown Road, Suite D, Gahanna Ohio 43230 by regular U.S. Mail, postage pre-paid, this 20th day of August 2007.



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