

**IN THE SUPREME COURT OF OHIO**

FRANCES MANDELBAUM : Case No. 2007 - 2422  
 : Case No. 2008 - 0375  
 Appellee :  
 v. : On Appeal from the Montgomery  
 : County Court of Appeals, Second  
 STANLEY E. MANDELBAUM : Appellate District  
 :  
 Appellant :

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**APPELLEE'S STATEMENT IN LIEU OF BRIEF**

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**FILED**

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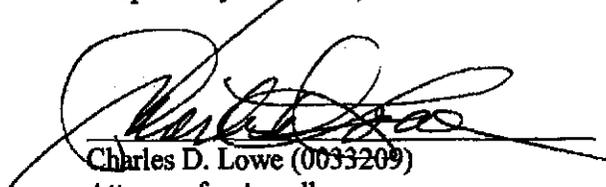
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SUPREME COURT OF OHIO

Appellee submits this statement in lieu of her Merit Brief in response to Appellant's Merit Brief. The issue ("Issue") before the Court is:

May a trial court modify spousal support under R.C. 3105.18 without finding That: (1) a substantial change in circumstances has occurred; and (2) the change was not contemplated at the time of the original decree.

The Issue was not one identified or argued at the trial level; and Appellee does not believe that its determination is material to the resolution of the issues raised by Appellant below. While the Issue is interesting, Appellee cannot afford financially to participate in its resolution. Consequently, she respectfully declines to brief the Issue. Parenthetically, however, Appellee's attorney submits that a trial court may modify spousal support under R.C. §3105.18 without finding that a substantial change in circumstances has occurred and that the change was not contemplated at the time of the original decree; so long as the change in circumstances has caused the existing spousal support order to no longer be reasonable and appropriate; and, further, that the change in circumstances is not one brought about by the spousal support payor to circumvent the previous order of the Court. Essentially, this is the same position as that advanced by the Appellant.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing was served upon the following this 7<sup>th</sup> day of July 2008 via U.S. Mail:

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