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Georgia's Child Support Guidelines Declared Unconstitutional: Are Ohio's Guidelines Constitutionally Sound?

In a stunningly broad decision, Georgia Superior Court Judge C. Dane Perkins declared Georgia's child support guidelines to be "null and void as the Guidelines violate numerous provisions of the Constitutions of both the United States and the State of Georgia" (*Department of Human Resources v Sweat*, ***). The court found that the Georgia guidelines violated the Constitutional requirements of due process, equal protection and privacy. It further found that the guidelines constituted an unconstitutional taking of property.

Georgia employs a "Wisconsin Model" for presumptive child support, which bases the obligation on a percentage of the obligor's gross income. Ohio uses the "Income Shares Model" and, because of this, some of the constitutional issues raised in the Georgia case are not applicable to Ohio's guidelines. However, many are. We will focus on those considerations that apply to Ohio's child support guidelines.

First, because the Sweat court found that the guidelines had "an impermissible impact based on gender" (p. 4), it applied the intermediate scrutiny test, which requires that the statute be "substantially related to an important government objective" (p. 4). The Georgia guidelines failed this test. However, the court added that, had it employed a "rational basis" test—requiring only that the guidelines bear a rational relationship to a legitimate government purpose—it would have still found the guidelines constitutionally defective.

Due Process

Georgia's child support guidelines, like Ohio's, were "hastily enacted" to comply with Federal regulations. They were not sufficiently revised in light of relevant economic data. The Georgia court noted these factors and that the implications of the guidelines were a "gross deviation from all child cost studies" in coming to its conclusion that the guidelines were "arbitrary and capricious" (p. 15). It further noted that among the members of the last two Georgia guideline commissions, only one was "properly qualified by education, background and experience to accurately assess the economic and financial intricacies of the Guidelines" (p. 15).

Georgia's guidelines, the court found, "have no rational relationship to child cost data—further bolstering its conclusion that they are arbitrary and in violation of the Constitution's

guarantee of due process.

Ohio's child support guidelines, like Georgia's, do not specify the assumptions employed in arriving at the presumptive child support amounts. The court noted this feature of the Georgia guidelines and concluded that this deficiency made it unclear what was to be rebutted in a deviation argument (p. 6). As a result the guidelines are "arbitrary and a due process violation" (p. 6). The court further found that the criteria for deviation "do not give any guidance on how to apply deviations in a consistent manner" (p. 12) and, as a result, are unconstitutionally vague. One effect of these deficiencies is that Georgia courts rarely mandate a deviation even where deviation factors are present. (A study done for the most recent Ohio Child Support Guideline Advisory Council showed that Ohio courts impose deviations in less than 2% of cases.)

Equal Protection

"The egregiously different burdens and benefits placed on persons similarly situated but for the award of custody, *i.e.*, parents with the obligation to support their child(ren) and the same means for doing so as when they were married" (p. 16) served as the summary of the argument that the Georgia guidelines violated the constitutional requirement of equal protection of the laws.

The decision cited numerous respects in which the guidelines violated equal protection requirements. For example, the guidelines do not "take into account the large tax-related child cost offsets the custodial parent receives" (p. 7). "Not sharing the child-related tax benefits," the court concluded, "violates equal protection" (p. 7).

Most importantly, the guidelines recognize only the child costs of the custodial parent, while ignoring similar expenses by the non-custodial parent. This fails to "meet the financial needs of the children when they are in the care of the non-custodial parent" (p. 11) and is a violation of equal protection of the laws.

Privacy

Parents have a constitutional right to raise their children without unnecessary interference from the government. The Georgia court found that, because the guidelines were often in excess of amounts needed to provide for the needs of children, child support "obligors are deprived of the constitutional right to raise their children

without unnecessary government intrusion" (p. 13); they "impermissibly interfere with parental decisions regarding financial expenditures on children" (p. 17).

Unconstitutional Taking of Property

Finally, the court ruled that because the Department of Human Resources was attempting to impose child support on Ms. Sweat "for the purpose of the state continuing to receive federal funds...[t]his constitutes a public taking for a public purpose" (p. 18). Because the basis on which the property was taken was unconstitutional *per se*, this constitutes an illegal taking (p. 18).

A Constitutionally Valid Child Support Standard

The court indicated what must be done to establish constitutionally sound child support guidelines:

1. The guidelines must acknowledge, "that both parents are obligated to support their children in accordance with their relative means to do so" (p. 19).
2. The guidelines must "conform to long-acknowledged limitations on government intrusions into the rights of families" (p. 19).
3. The "means chosen for the purpose of determining need and allocating each parent's responsibility in meeting that need, whether in the form of presumptive guideline or otherwise, must be based on a rational relationship between the predicated facts and the conclusion(s) directed (p. 20).

For the full text of the Georgia decision and the economic exhibits used to invalidate the Georgia guidelines, see the web site of R. Mark Rogers:

<http://www.guidelineconomics.com/>

For more information on Rogers' "Cost Shares Model" for presumptive child support, see:

<http://www.economic-indicators.com/CSXCostSharesHome.html>

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