

## DECEMBER, 2014 CASE LAW REVIEW

*Waibel v. Waibel*, 2014 Ohio 5534

Procedural History: The parties were divorced in 2010. Pursuant to the separation agreement incorporated into their divorce decree, the parties' two eldest children would reside with father and the youngest child would reside with mother. Neither party would pay the other child support.

In 2013, after the two eldest children had emancipated, mother lost her employment and began receiving public benefits, including cash assistance, for herself and the minor child. The CSEA motioned the court for a support order against father. Father was ordered to pay support after a hearing by a magistrate. Father objected to the magistrate's decision, arguing that the court lacked jurisdiction over the matter because of the parties' agreement that neither party would pay support. The trial court overruled father's objections and father appealed.

Synopsis: On appeal, father argued that the trial court lacked authority to order him to pay support in light of the parties' prior agreement. He relied on *Rieger v. Rieger* (2002 Ohio 6991) and *Flanagan v. Flanagan* (2007 Ohio 6209). However, the case *sub judice* differed from both *Rieger* and *Flanagan* in that those cases both involved the CSEA attempting to set an administrative support order where no prior order existed. In the case *sub judice*, the trial court, not CSEA, was ordering father to pay support.

Decision: Affirmed.

*Grosse v. Grosse*, 2014 Ohio 5642

Procedural History: The parties were divorced after a brief marriage. Husband was ordered to pay wife attorney fees in the amount of \$12,853.34. Husband appealed.

Synopsis: On appeal, husband argued that the trial court erred in allowing wife's attorney to submit an affidavit in support of attorney fees when the affidavit was not in compliance with Local Rule 12 (requiring that the exhibit be provided at least seven days before the hearing). The Ninth District disagreed. It found that the affidavit of fees was "more akin to testimony than an exhibit" and did not fall under the purview of Local Rule 12. Additionally, husband did not request a continuance, ask wife's attorney to testify or challenge the substance of the affidavit. For these reasons, husband's assignment of error was overruled.

Husband also argued that the trial court erred in ordering him to pay wife attorney fees in the amount of \$12,853.34. In this case, there was not a disparity in the parties' income. However, wife alleged that

husband engaged in financial misconduct during the marriage (used marital income to support a mistress in another home). Husband was also found in contempt for failure to provide discovery. For these reasons, the Ninth District overruled husband's assignment of error.

Decision: Affirmed.

*Price v. Klapp*, 2014 Ohio 5644

Procedural History: The reallocation of parental rights and responsibilities was pending in front of the magistrate. The magistrate dismissed the matter when father and his attorney failed to appear at the hearing. The trial court remanded the matter back to the magistrate after it determined that the magistrate heard the matter 20 days prior to the date scheduled for hearing. Mother appealed this decision.

Synopsis: The Ninth District determined that appealed order was not a final appealable order.

Decision: Dismissed for lack of a final appealable order.

*Wells v. Wells*, 2014 Ohio 5646

Procedural History: Both parties filed for divorce in 2007 and have been in almost constant litigation since that time including several appeals. The parties are the parents of two minor children and father was ordered to pay child support. Most recently, father appealed the child support order. Father raised multiple assignments of error. I have discussed those assignments of error relating to the calculation of support on income above \$150,000 as I believe it is the only issues applicable to our interests.

Synopsis: On appeal, father argued that the trial court erred in considering the lifestyles of the parents and children after the *de facto* termination date of the marriage. The Ninth District disagreed. It noted that the Court has previously held that a trial court should consider the standard of living the parents and children would have enjoyed had the marriage continued as well as the current standard of living of the parents (*Bajzer v. Bajzer*, 2012 Ohio 252).

The Ninth District also did not agree with father's argument that the trial court erred in failing to consider the deviation factors found in R.C. 3119.23 and .24 when it awarded support in excess of the amount indicated in the child support worksheet. The Ninth District found that because the combined income was above \$150,000, the trial court was not obligated to consider the deviation factors. The trial court would have only been obligated to consider those factors if it ordered a downward deviation from the \$150,000 equivalent amount of support.

Decision: Affirmed in part. Reversed in part.

*Sifferlin v. Sifferlin*, 2014 Ohio 5645

Procedural History: The parties' marriage was terminated via a decree of dissolution. Incorporated into the decree was a shared parenting plan whereby the parties agreed that due to the nearly equal income of the parties and the nearly equal amount of time the parties spent with the children, child support would be set at \$0. This represented a deviation.

Fourteen months later, mother filed a motion to establish child support. Mother's motion was denied and she appealed.

Synopsis: On appeal, mother argued that the trial court erred in denying her motion to establish child support. The Ninth District disagreed. It began its analysis by noting that a \$0 support order, as found in the parties' shared parenting plan, is a support order. In light of this, mother's motion to *establish* support was improper. Instead, mother should have filed a motion to modify child support.

The Ninth District found that when the parties had previously agreed to deviate from the child support guidelines, the trial court must find more than a ten percent difference between the current support and the recalculated amount. The trial court must additionally find "a substantial change in circumstances that was not contemplated at the time of the issuance of the child support order under R.C. 3119.79(C)." The Court goes on to note, "It is axiomatic that any recalculation of child support pursuant to the worksheet and schedule would result in a greater than ten percent difference where the prior support obligation was zero dollars." Therefore, the moving party must prove that a change of circumstance had occurred that was not contemplated at the time of the original agreement.

Because no change of circumstance not contemplated by the parties had occurred that would justify an order of support obligating father, the trial court's decision was affirmed.

Decision: Affirmed.

*Loewen v. Newsome*, 2014 Ohio 5786

Procedural History: The parties are the unmarried parents of one minor child. The parties have been involved in almost constant litigation over the custody of the child. Most recently, the matter was before the trial court after being remanded by the Ninth District. The trial court issued a temporary order naming father the legal custodian of the child.

A G.A.L. was appointed and the parties were ordered to pay the regular G.A.L. costs along with the costs for the G.A.L. to travel to Florida to interview the father and child at their home and the costs for the child

to travel to Ohio so that the G.A.L. could interview the child and mother at her home. The parties were ordered by the trial court on multiple occasions to deposit the G.A.L. costs with father's attorney. Mother failed to deposit all the costs. When she spoke to the G.A.L., mother indicated that she would not be able to afford the travel costs. Finally, after several delays caused by mother's motions, and in light of mother's failure to comply with the court order to pay the G.A.L. costs, the trial court dismissed the G.A.L.

Synopsis: On appeal, mother argued that the trial court erred in naming father the temporary legal custodian of the child without first finding a change of circumstance. The Ninth District disagreed. No change of circumstance, as described in R.C. 3109.04(B), is required for temporary orders.

Mother also argued on appeal that the trial court erred in dismissing the G.A.L. despite mother's failure to follow the court's orders and pay the travel deposit and despite testimony from the G.A.L. indicating that mother did not intend on paying the G.A.L. The Ninth District agreed with mother and remanded the issue for further consideration.

Decision: Affirmed in part and reversed in part.