

# memo

To: Judge Quinn, Judge Dezso, Magistrates  
From: Julie Toth  
Date: 9/1/2015  
Re: August 2015 Case Law Update

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## **Michaels v. Sanders, 2015-Ohio-3172**

The Court of Appeals held that the trial court did not abuse its discretion in determining that Mother should be awarded sole custody based on the factors in R.C. 3109.04(F)(1). The Court also held that the trial court did not err when Father was not afforded a deduction for the parties' child on Line 8 of the child support worksheet. Line 8 only allows for a deduction when the child at issue is one born "to the parent and a person other than the other parent who is involved in the immediate child support determination." R.C. 3119.05(C). It did not apply in this instance because the child was born to the parties, not to one of the parties and another person.

## **Denkewalter v. Denkewalter, 2015-Ohio-3171**

In this case, the record did not indicate that there was a failure to prosecute. The Court of Appeals held that the trial court erred by construing the magistrate's previous order in a manner that made it appear otherwise and dismissing the motion *sua sponte*.

Since the Court of Appeals reversed the trial court's decision dismissing Mother's motion, the error with respect to the participation of a judge who had not been assigned to the case is moot. As for the participation of an unassigned Summit County magistrate, Mother failed to object properly, thereby forfeiting her argument.

The remaining three assignments of error were premature to consider and not ripe for decision.

## **McDowall v. McDowall, 2015-Ohio-3213**

The Court of Appeals held that competent, credible evidence supported the trial court's finding that Wife's father did not loan the couple money. There was no documentary evidence to support the existence of the loans or the terms.

The Court also held that the pay-off of a premarital student loan during the marriage is not a basis for distributive award.

The party alleging financial misconduct has the burden of proof, and the trial court is to determine the credibility of the party or witness.

## **Tustin v. Tustin, 2015-Ohio-3454**

The Court of Appeals remanded the case back to the trial court to determine the de facto termination date of marriage. R.C. 3105.171(A) creates a presumption that the

# memo

proper date for termination of marriage is the date of the final divorce hearing, however, the trial court may in its discretion impose a de facto date “where the evidence clearly and bilaterally shows that it is appropriate based on the totality of the circumstances.” Because the issue of when the marriage terminated was remanded, the assignment of errors regarding property division and spousal support were not ripe for consideration.

Further, the Court of Appeals overruled assignments of error related to child support calculations, including income, childcare expenses and private school tuition.

**Eslinger v. McKnight**, *2015-Ohio-3446*

The Court of Appeals affirmed the trial court’s decision to terminate the parties’ Shared Parenting Plan and designate Mother as the children’s sole legal custodian and residential parent. R.C. 3109.04(E)(2)(d) controls the trial court’s action after the termination of a Shared Parenting Plan.