

# ORIGINAL

IN THE SUPREME COURT OF FLORIDA

Case No.: 90,071  
Fifth DCA No.: 95-308

GERI E. FINLEY,  
Petitioner,

v.

DENNIS SCOTT,  
Respondent.

**FILED**

SID J. WHITE

JUL 16 1997

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by *[Signature]*  
Chief Deputy Clerk

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BRIEF OF THE ATTORNEY GENERAL  
OF THE STATE OF FLORIDA AS AMICUS CURIAE

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**INTRODUCTION**

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The Attorney General of the State of Florida files this Brief, as Amicus Curiae, to address the following issue:

WHETHER THE CHILD SUPPORT GUIDELINES  
CONTAINED IN SECTION 61.30, FLORIDA STATUTES  
(1993) ESTABLISH THE "NEEDS" OF A CHILD BASED  
UPON THE PARENTS' COMBINED INCOME AND,  
THEREFORE, ARE MANDATORY RATHER THAN  
INSTRUCTIVE AND ANY DEVIATION THEREFROM MUST  
BE DUE TO EXTRAORDINARY CIRCUMSTANCES  
CONTEMPLATED BY THE LEGISLATURE.

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The Attorney General of the State of Florida takes no position with regard to the merits of the action giving rise to this appeal but seeks only to address the above legal issues which the Attorney General believes to be of general importance to the citizens of the State of Florida and the Florida Bar. As a result, this Brief will not address the issues as framed by the Petitioners.

POINT OF AMICUS CURIAE

WHETHER THE CHILD SUPPORT GUIDELINES CONTAINED IN SECTION 61.30, FLORIDA STATUTES (1993) ESTABLISH THE "NEEDS" OF A CHILD BASED UPON THE PARENTS' COMBINED INCOME AND, THEREFORE, ARE MANDATORY RATHER THAN INSTRUCTIVE AND ANY DEVIATION THEREFROM MUST BE DUE TO EXTRAORDINARY CIRCUMSTANCES CONTEMPLATED BY THE LEGISLATURE.

## SUMMARY OF THE ARGUMENT

WHETHER THE CHILD SUPPORT GUIDELINES CONTAINED IN SECTION 61.30, FLORIDA STATUTES (1993) ESTABLISH THE "NEEDS" OF A CHILD BASED UPON THE PARENTS' COMBINED INCOME AND, THEREFORE, ARE MANDATORY RATHER THAN INSTRUCTIVE AND ANY DEVIATION THEREFROM MUST BE DUE TO EXTRAORDINARY CIRCUMSTANCES CONTEMPLATED BY THE LEGISLATURE.

Section 61.30, Florida Statutes (1993) establishes a payment schedule for the support of children based upon the combined income of both parents. This schedule takes into consideration the standard of living, financial status and ability to pay of each parent. Therefore, the amount required by the guidelines to be provided by each parent establishes the "needs" of support of each child. Absent extraordinary circumstances, a trial court may not substitute its own judgment of the child's needs in place of the statutory determination.

Section 61.30 and its guidelines were enacted pursuant to federal mandate. That mandate provides that the guideline amount is presumed correct and must be applied unless the party seeking the deviation rebuts the presumption with evidence which shows that the amount is unjust or inappropriate. The trial court may not, however, substitute its own view as to the reasonableness of the

guideline amount without a showing that extraordinary circumstances exist in the particular case before it which would warrant a deviation.

The specific circumstances which allow deviation are included in section 61.30 and provide the trial court with guidance in defining its ability to adjust the minimum award provided by the child support schedule. Therefore, the trial court is required to order the amount of support contained in the guidelines in all but the exceptional case.

## ARGUMENT

WHETHER THE CHILD SUPPORT GUIDELINES CONTAINED IN SECTION 61.30, FLORIDA STATUTES (1993) ESTABLISH THE "NEEDS" OF A CHILD BASED UPON THE PARENTS' COMBINED INCOME AND, THEREFORE, ARE MANDATORY RATHER THAN INSTRUCTIVE AND ANY DEVIATION THEREFROM MUST BE DUE TO EXTRAORDINARY CIRCUMSTANCES CONTEMPLATED BY THE LEGISLATURE.

All states must establish guidelines for child support by law or judicial or administrative action pursuant to federal mandate. 42 U.S.C.A. § 667(a). In part, that act provides:

There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

42 U.S.C.A. § 667(b) (2).

Florida complied with this mandate by enacting Section 61.30 which in germane part provides:



(1)(a) The child support guideline amount as determined by the section presumptively establishes the amount the trier of fact shall order as child support in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or another chapter. The trier of fact may order payment of child support which varies, plus or minus 5 percent, from the guidelines amount, after considering all relevant facts, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent. The trier of fact may order payment of child support in an amount which varies more than 5 percent from such guidelines amount only upon a written finding, or a specific finding on the record, explaining why ordering payment of such guidelines amount would be unjust or inappropriate.

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(4) Net income for the obligor and net income for the obligee shall be computed **by** subtracting allowable deductions from gross income.

(5) Net income for the obligor and net income for the obligee shall **be** added together for a combined net income.

(6) The following schedules shall be applied to the combined net income to determine the minimum child support need.

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For combined monthly available income greater than the amount set out in the above schedules, the obligation shall be the minimum amount of support provided by the guidelines plus the following percentages multiplied by the amount

of income over \$10,000:

One - 5%...

\*\*\*

(9) Each parent's percentage share of the child support need shall be determined by dividing each parent's net income by the combined net income.

(10) Each parent's actual dollar share of the child support need shall be determined by multiplying the minimum child support need by each parent's percentage share.

The statute speaks in mandatory language and allows the court to deviate above or below the guidelines by 5% without explanation. However, it may deviate by greater than 5% only if there are circumstances intrinsic to the particular case before it which warrants a higher or lower award.

In this case, there is no dispute that the parties' incomes establish a guideline award of \$10,011 per month to be paid by the noncustodial parent. Finley v. Scott, 687 So. 2d 338, 342 (Fla. 5th DCA 1997). However, the trial court determined that the custodial parent had "chosen" a standard of living which required only \$2,000 per month to meet the child's needs. Id., at 341. It then deviated from the guidelines by 50% and awarded \$2,000 to be paid to the custodial parent and an additional \$3,000 to be paid into a trust fund. It gave no explanation for such a deviation. On

appeal, the Fifth District Court of Appeal found that the standard of living established by the custodial parent required only a \$2,000 per month payment and dispensed with the trust fund. Id., at 344.

The legislature provided guidance for the type of circumstances which would allow a trial court to deviate from the schedules as follows:

(11) The court may adjust the minimum child support award, or either or both parent's share of the minimum child support award, based upon the following consideration:

(a) Extraordinary medical, psychological, educational, or dental expenses.

(b) Independent income of the child.

(c) The payment of support for a parent which regularly has been paid and for which there is a demonstrated need.

(d) Seasonable variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though

the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the children spend a substantial amount of their time with the secondary residential parent thereby reducing the financial expenditures incurred by the primary residential parent, or the refusal of the secondary residential parent to become involved in the activities of the child, or giving due consideration to the primary residential parent's homemaking services. If a child has visitation with a noncustodial parent for more than 28 consecutive days the court may reduce the amount of support paid to the custodial parent during the time of visitation not to exceed 50 percent of the amount awarded.

(h) Total available assets of the obligee, obligor, and the child.

(I) The impact of the Internal Revenue Service dependency exemption and waiver of that exemption. The court may order the primary residential parent to execute a waiver of the Internal Revenue Service dependency exemption if the noncustodial parent is current in support payment.

(j) When application of the child support guidelines requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

(k) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary expense or debt which the parties jointly incurred during the marriage.

There is no provision for a court, whether on the trial or appellate level, to reduce a child support payment by 80% based upon the standard of living which the custodial parent alone can maintain. The statute itself establishes the level of "need" for the child based upon the combined incomes of the parents. Section 61.30(6) in part states, "(t)he following schedules **shall** be applied to the combined net income to determine the minimum child support **need.**" (emphasis added),

The appellate court relied upon section 61.30(11)(k) to justify its reduction. However, the entire section must be read together to achieve its intended result. In particular, if a noncustodial parent spends more than 28 consecutive days

with the minor child, the court may reduce the award by no more than 50% and only for that particular period of time. Section 61.30(11)(g). How then can a lower court deem a guideline payment excessive and categorically reduce it by 50% or 80% regardless of where the minor child is actually residing? Therefore, none of the specific circumstances allowed by statute were alleged or proven to justify either the trial or appellate court's ruling.

Further, the trial court is allowed to deviate by only 5% after considering all relevant factors "including the needs of the child". Section 61.30(1)(a). Therefore, that the custodial parent can prove actual expenditures less than the statutory guidelines permits the trial court to lower the amount by no greater than 5%.

Finally, in Miller v. Schoy, 616 So. 2d 436 (Fla. 1993), this Court held that in a modification proceeding, an increase in ability to pay is itself a basis for an increase in child support. Id., at 438. Specifically, this Court stated:

We reject Schou's argument that merely knowing the child's needs as gleaned from Miller's financial affidavit and knowing that Schou has a substantial income sufficient to satisfy those needs is enough to allow the court to make a support determination. Without knowing

Schou's financial status it would be impossible for the trial court to determine the appropriate amount of the increase in support to allow Schou's child to share his good fortune. Simply informing the court that Schou could provide a certain amount of child support did not provide the court with information as to the amount of support which would be reasonable. Schou could be making two hundred thousand dollar a year or ten million dollars a year; either would be sufficient to satisfy the \$3,000 amount Schou said he could pay, yet the amount of support awarded would be drastically different in each case.

Id., at 438.

Further, this Court found that the "child of a multimillionaire would be entitled to share in that standard of living" and noted that there is no maximum award of support even though a child's needs are finite. Id. Therefore, this Court has already decided a similar issue in favor of mandatory application of the guideline amount absent any extraordinary circumstances as contemplated by the legislature.

That a particular court disfavors the guideline amount is simply not an allowable ground for deviation. The uniformity of child support throughout Florida based upon the parents' ability to pay has been achieved through section 61.30 and the

guideline amount must be ordered in this case as well as all others which do not contain the specific extraordinary circumstances contemplated by the legislature.



**CONCLUSION**

Wherefore, the Attorney General of the State of Florida respectfully requests that the Opinion issued in this cause confirm the applicability of the requirement that the child support guidelines be applied in all but the extraordinary case as contemplated by the Florida legislature.

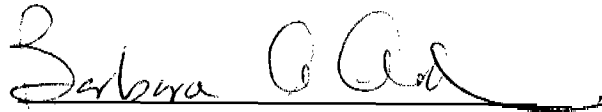
Respectfully submitted,

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By: Barbara A. Ard  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Curiae Brief has been furnished by U.S. Mail to Jane Carey, Counsel for Petitioner, 905 West Colonial Drive, Orlando, Florida 32805 and Michael Walsh, Counsel for Respondent, 326 Fern Creek Avenue, Orlando, Florida 33701 this 15<sup>th</sup> day of July, 1997.



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