IN THE SUPERIOR COURTOF ATKINSON COUNTY
STATE OF GEORGIA

GEORGIA DEPARTMENT OF HUMAN RESOURCES ex. rel. CHARLES R. REDDICK Special Assistant Attorney General o/b/o ROBIN KAYLA SWEAT SAMUEL E. SWEAT, JR. CYNTHIA M. SWEAT	*	
Plaintiff	*	
v.	*	CIVIL ACTION NO. 2000 C 127
MICHELLE L. SWEAT And SAMUEL SWEAT, SR.	*	
Defendants	*	

ORDER DECLARING GEORGIA'S CHILD SUPPORT GUIDELINES VOID AND UNCONSTITUTIONAL

WHEREAS, Defendant Michelle Sweat filed a Motion to Declare Georgia's Child Support Guidelines Unconstitutional (hereinafter, the "Challenge"), and

WHEREAS, sworn testimony, documentary evidence and both oral and written argument of counsel has been presented thereon and duly considered by this Court,

NOW, THEREFORE, this Court hereby declares the child support guidelines codified in section 19-6-15, O.C.G.A. (hereinafter, the "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 for the reasons set forth below.

FILED IN OFFICE
22 DAY OF February 2022
C.S.C. ATKINSON COUNTY, GA

FACTS

The Case Sub Judice

In the case now before this court, the "family" consists of the father, Samuel Ezell Sweat, Sr., who is the custodial parent ("CP"), the mother, Michelle Lynn Sweat, who is the noncustodial parent ("NCP"), and three minor children, to-wit: .Cynthia Marie Sweat, date of birth March 7, 1985; Samuel E. Sweat, Jr., date of birth October 11, 1990; and Robin K. Sweat, date of birth March 30, 1983. The parents were married July 16, 1984. They separated September 20, 1998. They were divorced in Civil Action Number 98-D-37 by this court on November 12, 1998, the Hon. Dane Perkins presiding. The parties had agreed that the father would have custody of the minor children, the mother would have visitation rights, and she would not be obligated to pay child support. The parties' agreement was made the judgment of the court on November 12, 1998. On or about July 14, 2000, Monica Houseal, an agent with Child Support Enforcement ("Agency") in Nashville, Georgia, forwarded a document to the NCP advising her that the agency had received a written request for "possible modification", and requesting she furnish certain financial information to the agency. NCP responded by completing the questionnaire sent to her. The only "special Circumstance" she indicated was the ages of the children. Agent Houseal prepared a document entitled "Agency Recommendation". This document found that the father's gross monthly income was $2,647.50, and that the mother's gross monthly income was $1,585.95. Subsequently, the mother's monthly gross income has risen to $1,862. Her expenses totaled $2,127.00 at that time. Houseal found no "special circumstances" to exist, and recommended the mother pay child support for three children based on the child support guidelines which provide a range of

25% to 32% for three children. Her recommendation was further that the NCP pay between $132.16 and $169.17 per child per month as support and that she provide accident and sickness insurance if it was available to her " . . . at a reasonable cost not to exceed 5% of NCP gross income". There was no recommendation that the mother get credit for her medical insurance payment for the children against the child support she was recommended to pay, nor was there a recommendation that any "co-payments" be paid by the CP or at least that he share such expenses. Agent Houseal recommended to this Court, less than two years after approving the parties' agreement as stated above, to order the mother to pay her former husband child support in the amount of $150.67 per child, which is exactly midway between the percentages, but rounded up to sixty-seven cents rather than leave it at sixty-six. Ms. Sweat was sought to be obligated to pay $452.01 in child support and up to $79.29 per month for insurance, or a total of $531.30 out of her before taxes income. Subsequent to the initiation of this action, Ms. Sweat filed for Chapter 13 bankruptcy protection with payments to the Chapter 13 Trustee being set at $295.00 per month. Agent Houseal stated that this factor was not considered when making a recommendation for Ms. Sweat's child support obligation. After initiation of this action, the Challenge was filed.

STANDARD OF SCRUTINY ON CONSTITUTIONAL ISSUES

The only evidence before this Court regarding the impact of the Guidelines on any cognizable group is the study of custody awards in 14 south Georgia counties between 1995-97 conducted by Kent Earhardt, J.D., Ph.D., which found that, in 82.2% of contested cases, custody was awarded to the mother. It follows, therefore, that a support obligation under the Guidelines was imposed on the fathers in those cases. *Ehlers v.*

Ehlers, 264 Ga. 668 (1994). There has been no credible challenge to the methodology or the result of the Earnhardt study. Therefore, this Court finds that men are adversely impacted by the Guidelines *as applied* to a grossly disproportionate degree, which constitutes an impermissibly discriminatory effect on a group based upon their gender.

Having found an impermissible impact based on gender, the standard of scrutiny to be applied is the intermediate test, i.e., are the Guidelines substantially related to an important governmental objective? *Clark v. Jeter*, 486 U.S. 456, 108 S. Ct. 1910, 1914 (1988).

All parties concede that providing a rational basis for the calculation of the child support obligation of *both* parents as set forth in section 19-7-2, O.C.G.A. is a legitimate governmental purpose. The question is whether it is of such importance as to justify the vehicle chosen by the legislature, i.e., the Guidelines? Because of the myriad of constitutional flaws in the Guidelines set forth below, this Court finds that the State of Georgia has not satisfied this test.

Further, if this Court were only to apply the lowest standard of scrutiny, i.e., whether the Guidelines bore a rational relationship to a legitimate government purpose, the Guidelines would still fail.

FINDING OF HARM

This Court finds that the Guidelines as applied to Defendant Michelle Sweat in this case as well as every other parent in this State who is not granted custody of his or her child is harmful and that the harm flowing from the constitutional flaws in the Guidelines is suffered each and every time a payment calculated thereunder is due.

ECONOMIC/FINANCIAL ISSUES

Inasmuch as the essential nature of the Guidelines is to allocate economic and financial burdens and benefits, their validity must be determined primarily, if not exclusively, on an economic analysis.

The purpose of the Guidelines is to conform to the federal mandate found in 42 U.S.C.A. section 651, et seq. and 45 CFR sections 302.55 and 302.56, that govern the receipt of federal funds by states under the Social Security Act. The regulations cited require an economically rational form of guideline for apportioning child "costs" between parents obligated to support the children in question with "appropriate" support awards. Therefore, the intended purpose of Georgia's child support guidelines is to determine an economically appropriate child support award. This Court finds that the Guidelines fail to do so.

There having been no evidence, credible or otherwise, to contradict the matters presented therein, this Court adopts as part of its findings of fact the Economic Exhibit of R. Mark Rogers (hereinafter, the "Economic Exhibit") as the cornerstone for its finding that the Guidelines are economically unsound. A copy of the Economic Exhibit is attached hereto and incorporated herein by this reference. Certain matters set forth in the Economic Exhibit and articulated in greater detail in the hearings before this Court bear highlighting, though this is not intended to overlook the importance of other economic matters.

FINDINGS OF FACT

1.

The Guidelines adopted by Georgia as originally designed by the underlying economic study were intended only for welfare situations—the current use for all situations was not the intended purpose. The underlying facts of the presumptions—their application only in welfare situations and with constraints such as a low ceiling award limited in size to the amount of the welfare payment to the custodial parent—no longer exist. The presumptive percentages were based only on data for low-income cases and were extended without the benefit of data for non-welfare cases. In the current case, the percentages are applied beyond the amount needed for recovery of any welfare payment to the custodial parent that might have been made.

2.

Georgia's presumptive awards rise as a share of obligor after-tax income. No child cost studies show child costs rising as a share of after-tax income. All child cost studies show child costs declining as a share of after-tax income. The state has presented no evidence that child costs rise as a percentage of household net income. Georgia's Guidelines are arbitrary and are not rational since there is no economic foundation for presumptive awards that rise as a share of household net income. In the current case, the presumptive percentage results in a significantly higher obligation than one based on actual child costs that decline as a share of net income.

3.

There are no baseline components to the Guidelines. It is not clear what is being rebutted, therefore they are arbitrary and a due process violation.

4.

The Guidelines do not take into account the large tax-related child cost offsets the custodial parent receives. Custodial parents typically receive $200 to $350 per month in extra after-tax income just for having custody. These child-related tax benefits are head of household status, child exemptions, child tax credits, child care credits, and earned income credits. Both parents have an equal duty of support for the costs attributable to the children. Both parents are equally entitled to the cost offsets attributable to the same children but in proportion to their obligation. Not sharing the child-related tax benefits violates equal protection. Not sharing the tax benefits with both parents is an extraordinary benefit for the custodial parent and an extraordinary burden for the non-custodial parent. In this case, Mr. Sweat, the custodial parent, receives approximately $300 per month in extra after-tax income from having custody and as a result of current income tax law. This is a cost offset benefit that Ms. Sweat is denied by the Guidelines. The original study by Jacques van der Gaag upon which the Guidelines were based was done in 1982 when the parent that contributed the most support for the children was given rights to claim the tax exemptions of the child. The original study also was limited to low-income households with incomes averaging $12,000 in 1982 dollars, or $21,426 in year 2000 dollars.

5.

The presumptive award results in the custodial parent receiving a huge financial windfall—or profit--in excess of child costs. For typical income situations, the custodial parent ends up with a higher standard of living than the non-custodial parent—even when the non-custodial parent earns significantly more than the custodial parent. This is an

extraordinary benefit for the custodial parent and an extraordinary burden for the obligor. In the current case, expert testimony has shown that the custodial parent's profit (presumptive award less an economics based award) is substantial.

6.

The Georgia presumptive award does not allocate the child support burden according to the parents' relative ability to pay. This is because the obligor has a rising after-tax percentage of income paid to the custodial parent for child support. These percentages exceed actual child costs and the custodial parent uses the profit as an offset to the custodial parent's implied contribution to child costs. Additionally, the custodial parent receives substantial child-related tax benefits that the non-custodial parent does not receive. The outcome is that the custodial parent does not contribute to child costs at the same rate as the non-custodial parent and, often, not at all.

7.

Evidence presented based on presumptive after-tax, after-child support awards and the standard of living benchmark of the U.S. government's poverty thresholds show that the Guideline presumptive awards include such large amounts of hidden alimony (presumptive award less an economics based award) that a non-custodial parent is unable to provide for a child when in the non-custodial parent's care to the same extent as in the custodial parent's household. Presumptive awards have been shown to typically exceed total actual costs according to the U.S. Department of Agriculture. This violates equal protection standards for both the child and the non-custodial parent. Such excessive child support awards are not in the best interest of the child because the non-custodial parent is not able to sufficiently provide for the children while in the non-custodial parent's care.

in the current case, the presumptive award leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living.

8.

The Guidelines are biased toward including hidden alimony for the custodial parent even when the custodial parent earns substantially higher gross income than the non-custodial parent. The Guidelines do not meet standards of fairness even for alimony. If the Guidelines did, there would be a narrowing of the standard of living gap for the non-custodial parent when the custodial parent has a higher gross income. Instead, the Guidelines boost the standard of living of the custodial parent relative to non-custodial parent in both circumstances—when the custodial parent earns either substantially less or substantially more than the non-custodial parent. The Guidelines bear no relationship to the standards for child support of requiring each parent to have an equal duty in supporting the child.

9.

The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment. That is, different obligors with the same income can end up with presumptive obligations that differ by hundreds of dollars per month. The difference between upper and lower bound presumptive awards is substantial. The upper bound presumption is higher than the lower bound presumption by as much as 35 percent. The guidelines give no guidance on how to choose the presumption within the ranges, resulting in arbitrary decisions. Georgia is the only state to use a range of presumptive percentages. This conflicts with the intent of 45 CFR 302.56 that intends the presumptive formula result in a single presumptive figure for a

given case in order to reduce uncertainty of what the presumptive award is. For the current case, the presumptive award range varies by $130 (upper bound award less lower bound award). This is seven percent of the obligor's gross income—a substantial variation in the presumptive award.

10.

The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor and, potentially, an additional burden on taxpayers. This violates equal protection. This is contrary both to public policy and common sense.

11.

The Guidelines do not take into account custodial parent income. The presumptive child support award does not vary with family income—only obligor income. This is not economically rational and violates equal protection. The custodial parent is not held to the same standard for contributing to child costs. In most cases, the custodial parent's obligation of support ends up being largely or entirely paid by the non-custodial parent. In the current case, the child support case worker for the case gave testimony specifically stating that the custodial parent's income had no bearing on the recommended award. This case worker stated there is no formula in their official procedures by which case workers can determine how the custodial parent's income affects the presumptive award.

12.

Child costs of only the custodial parent are covered by the Guidelines. Similar costs incurred when the child is with the non-custodial parent do not receive similar

consideration. Yet, parents are similarly situated when child costs are incurred by either parent. Each parent has an equal duty to provide financially for the children when in the care of the other parent. The Guidelines were based on welfare situations in which the obligor parent was absent, did not require the custodial parent to support the children financially (the custodial parent did not work and had no earned income), did not take into account the custodial parent receiving large child-related tax benefits, and did not take into account the obligor paying substantial income taxes (with the obligor outside the assumed very low income level). However, in actual practice, typically the non-custodial parent is not absent and incurs substantial child costs that the guidelines do not require the custodial parent to contribute. This violates equal protection and does not meet the financial needs of the children when they are in the care of the non-custodial parent. In the current case, the obligor provides housing, food, clothing, entertainment and other needs for the children when in her care. The Guidelines do not require that the custodial parent share in the costs of the non-custodial parent.

13.

Medical insurance costs are not treated the same for all obligors. The presumptive award includes typical medical expenses. The Guidelines allow the court to either treat an obligor's payment of the children's medical insurance as an add-on or as a credit toward the presumptive award. This dissimilar treatment violates equal protection. Additionally, there is different treatment for obligors depending on whether insurance is available through employers. Obligors with medical insurance coverage available through employers are held to a higher standard than those without availability of medical insurance through employers. For the current case, the obligor pays approximately $70

dollars each month to provide health insurance for the children. The Guidelines allow the court to either subtract this $70 as a credit for the obligor against a presumptive cash award or to add $70 to the presumptive cash award as an add-on. The difference between these alternatives is $140 per month for the obligor.

14.

The Guideline criteria for deviation do not give any guidance on how to apply the deviations in a consistent manner. This is unconstitutionally vague and generally results in no deviations in most cases—even when the circumstances to deviate exist.

15.

The Guidelines are arbitrary and bear no relationship to the intended federal purpose of determining an economically appropriate child support award. The Guidelines have no rational relationship to child cost data. Among other considerations, first of all, the Guidelines were implemented for all cases (beyond just welfare cases) without the benefit of any supporting economic data. Additionally, the presumptive awards rise as a share of net income—which conflicts with all child costs studies. The Guidelines do not take into account where the actual child costs are incurred—that is, which parent incurs what costs. The Guidelines do not take into account child costs net of tax benefit offsets.

16.

The Guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.

17.

Which parent is the obligor and which is the obligee should be determined only after examination of the relevant factors—not before. The financial circumstances should

determine which parent is obligor. The Guidelines arbitrarily presume that the obligor is always the non-custodial parent when the financial circumstances may indicate just the opposite. Importantly, mere classification before-hand of the obligor does not provide sufficient information to determine the economically appropriate award. The classifications of obligor and obligee are not rationally related to the intended purpose of the Guidelines of determining the economically appropriate award.

18.

The Guidelines interfere with a non-custodial parent's constitutional right to raise one's children without "unnecessary" government interference. The Guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs—detracting from parenting without state justification. Low-income obligors are frequently forced to work in a cash economy to survive as a result of child support obligations that if paid push the obligor below the poverty level. This is the result of automatic withholding of child support with payroll jobs and use of guidelines that presumptively push minimum wage obligors below the poverty level. As these workers are forced to "disappear" into unofficial society, these obligors are deprived of the constitutional right to raise their children without unnecessary government intrusion. In fact, any government mandate beyond basic child costs interferes with this right to privacy as occurs with the current guidelines.

For the current case, the presumptive award pushes Ms. Sweat, the obligor, to just above the poverty level and below the poverty level if she pays court ordered bankruptcy payments. This is an extraordinary burden imposed on the obligor by the Guidelines.

In the present case, the earnings of the obligee, Samuel Sweat, significantly exceed those of the obligor. Nonetheless, the guidelines require the obligor, Michelle Sweat, to pay out a significant amount of her before tax income to the obligee, to whom this money will be tax free. The income of the obligee will be considerably increased, and he will have the tax advantages attendant to being a custodial parent. Additionally, the obligee will have the additional benefit of his new spouse's earnings. In the meantime, the obligor's net earnings will probably put her at or below the poverty line, and will in any event leave her with less than half of her earnings to live on. This scheme thus constitutes a windfall to the obligee and financial disaster to the obligor.

Thus, any calculation of a support award under the Guidelines would be so far removed from any economically rational and appropriate award that it constitutes a gross error well beyond any "mere imprecision."

CONCLUSIONS OF LAW

CONSTITUTIONAL ISSUES

This Court hereby incorporates by this reference the authorities cited in the Challenge as well as the Findings of Fact set forth above. As with certain of the matters contained in the Economic Exhibits, some highlights are in order.

Due Process

The United States' Constitution provides that no state may "deprive any person of life, liberty or property without due process of law." U.S. Constitution, Am. 5, Am. 14, section 1. The Constitution of the State of Georgia contains an almost identical guarantee at Ga. Const., Art. I, section I, paragraph 1. Protection from arbitrary state action is the

very essence of *substantive* due process. *Slochower v. Bd. of Higher Educ. of the City of New York*, 350 U.S. 551, 76 S. Ct. 637 (1956).

Given the very nature and purpose of the Guidelines, this Court finds that there is an overriding governmental pecuniary purpose involved. *D.H.R. v. Ofutt*, 217 Ga. App. 823 at 825 (1995).

This Court finds that the Guidelines were hastily enacted and left unchanged without sufficient examination of relevant economic data and for those reasons as well as the gross deviation from all child cost studies as noted previously, finds them to be arbitrary and capricious. See, *Sierra Club v. Martin*, 168 F. 3d 1 (11th Cir., 1999).

With all due respect to the members of the Governor's Commissions on Child Support (hereinafter, the "Commission") in both 1998 and 2001, it is clear that only one member in 1998, Mr. Mark Rogers, and none in 2001 were properly qualified by education, background and experience to accurately assess the economic and financial intricacies of the Guidelines. This, too, the Court finds to be indicative of arbitrary state action.

This Court also finds that Mr. Rogers, as well as other economists well versed in child support matters, testified in 1998 as to the many flaws in the Guidelines. Mr. Rogers again testified before the Commission in 2001. In addition, this Court takes Judicial notice pursuant to section 24-1-4, O.C.G.A. and, further, has heard evidence of the publication of an article in the October 2000 issue of the Georgia Bar Journal discussing at some length the equal protection and due process violations with which the Guidelines are rife. William C. Akins, *Why Georgia's Child Support Guidelines are Unconstitutional*. Thus, the State of Georgia can no longer contend that the Guidelines

remain in place out of "official ignorance." This Court finds that this constitutes further proof of arbitrariness on the part of the State and, if left in place, may rise to a volitional violation of the constitutional protections afforded the citizens of this State.

In declaring that the Guidelines violate the aforesaid substantive due process guarantees, this Court takes guidance from the very state upon whose guidelines Georgia's are purportedly based. In *Parrett v. Parrett*, 146 Wis. 2d 830 at 842, 432 NW 2d 664 (6) (1988, the Court of Appeals of Wisconsin), a case that did not raise constitutional issues, found that, particularly in higher income situations, their guidelines, like Georgia's, would "result in a figure so far beyond the child's needs as to be irrational." This is the very sort of arbitrary result the due process clauses are designed to prevent. *Manley v. Georgia*, 279 U.S. 1, 49 S. Ct. 215 (1929). Additionally, the presumption is unconstitutional because the underlying facts (the Guidelines application only in welfare cases for recovery of only up to the welfare payment to the custodial parent) no longer exist. *Leary v. United States*, 395 U.S. 6 at 32-37 (1969).

Equal Protection

The United States' Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Am. XIV, section 1. Ga. Const., Art. I, section I, paragraph 2 provides essentially the same 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, has been explained at length above. This Court finds that such disparate treatment violates the guarantees of equal protection cited above. *Jones v. Helms*, 452 U.S. 412, 101 S. Ct. 2434

(4,5) (1981), *South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160, 119 S. Ct. 1180 (1999), *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620 (1996) and *Simpson v. State*, 218 Ga. 337 at 339 (1962). The Guidelines do not result in awards based on the constitutionally sound principles of equal duty and proportional obligation (proportional to available financial resources such as each parent's income). See *Smith v. Smith*, 626 P 2d 342, 345-348 (Oregon, 1980); *Meltzer v. Witsberger*, 480 A.2d 991 (Pa. 1984); and *Conway v. Dana*, 318 A.2d 324 (Pa. 1985).

Right to Privacy

While the source of the right to privacy has been held to originate in varying constitutional provisions, it has been long recognized to apply to "family" concerns *whether the family exists within the confines of marriage or not. Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029 (8) (1972), *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 at 726-28 (1973).

This Court finds that, by requiring the non-custodial parent to pay an amount in excess of those required to meet the child's basic needs, as the economic analysis has shown, the Guidelines impermissibly interfere with parental decisions regarding financial expenditures on children. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054 (2000) and 147 L. Ed. 2d 49 (U. S. 2000); *Moylan v. Moylan*, 384 NW 2d 859 at 866 (Minn., 1986).

Unconstitutional Taking of Property

Georgia's guidelines as set out in OCGA Sec. 19-6-15 (b) are unconstitutional per se and as applied to Michelle Sweat in that by reducing her to poverty status she is thereby denied access to the courts in violation of the Constitution of 1983, Art. 1, Sec. 1,

Par. XII which reads, "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this State." In this case Ms. Sweat has filed a separate motion for recordation of these proceedings; however, as a result of the confiscatory nature of the guidelines she will be unable to afford to pay the cost of transcribing the proceedings, and as a result, may be denied her right to appeal. It is therefore ordered that the State provide Michelle Sweat with a transcript at no cost to Michelle Sweat in the event of an appeal.

Georgia's guidelines are also unconstitutional per se and as applied in that they constitute an illegal taking in violation of the Constitution of Georgia of 1983, Art.1, Sec. I I I, Par.I, because the plaintiff is seeking to impose an award under the Guidelines against Ms. Sweat for the purpose of the state continuing to receive federal funds under 45 CFR 302.56 and related federal code. This constitutes a public taking for a public purpose. See also *DHR v. Ofutt* above.

Recent Supporting Forcign Opinion

One issue of equal protection is taking into account all of an obligor's dependents—not just those involved in the instant case. On January 29, 2002, a Tennessee Court of Appeals issued an opinion that Tennessee's child support guidelines not having a presumptive formula for ensuring that all of an obligor's dependents received support on an equal basis violated equal protection rights and is unconstitutional. See *Dee Ann Curtis Gallaher v. Curtis J. Elam*, in the Court of Appeals of Tennessee at Knoxville, July 11, 2001 Session, Appeal from the Juvenile Court for Knox County, No. B-3443, filed January 29, 2002, No. E2000-02719-COA-R3-CV. Georgia's Guidelines do not have a presumptive formula for dependents of an obligor not

in the instant case to ensure their equal support. Any formula for deviation on this matter that Georgia DHR may have is not presumptive, is not statutory, and is not applied statewide in all cases in which an obligor has additional dependents other than those in the instant case. For the reasons stated in *Dee Ann Curtis Gallaher v. Curtis J. Elam*, Georgia's Guidelines without such presumptive formula likewise violate equal protection requirements as related to multiple family situations and are unconstitutional.

The Constitutionally Acceptable Child Support Standard

This Court finds, as a matter of law, that a constitutionally sound standard for the determination of child support guidelines can readily be determined.

First, it must acknowledge the principle codified in section 19-7-2, O.C.G.A., that *both* parents are obliged to support *their* children in accordance with their relative means to do so. The Supreme Court of the United States has provided ample reason to conclude that any guideline discriminating against either parent would be found constitutionally defective. See, for example, *Orr v. Orr*, 440 U.S. 268 (1979), *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) and the authorities cited in the equal protection section above. The decisions of our sister States in holding unconstitutional statutory presumptions that custody of children of "tender years" should be awarded to the mother is also persuasive. *State ex rel. Watts v. Watts*, 350 N.Y.S. 2d 285 (N.Y. City Fam. Ct., 1973), *Commonwealth ex rel. Spriggs v. Carlson*, 368 Atl. 2d 635 (Pa., 1977). Procreation is both a joint act and a joint *responsibility*.

Secondly, it must conform to long-acknowledged limitations on government intrusion into the rights of families articulated in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and the authorities cited in the

section on the right to privacy, above. That is, the government's interest in family expenditures on children, whether that family exists before or after the dissolution of marriage, or even in the absence of marriage, is limited to insuring that the children's basic needs are met. Not extravagances, not luxuries, but needs. Once that occurs, government intrusion must cease. *Moylan v. Moylan,* above.

The third and final criteria is that the means chosen for the purpose of determining need and allocating each parent's respective responsibility in meeting that need, whether in the form of a presumptive guideline or otherwise, must be based on a rational relationship between the predicate facts and the conclusion(s) directed. *Leary v. U.S., Western & A.R.R. v. Henderson,* above.

This standard is not dissimilar to the former needs vs. ability to pay standard, but with the additional criteria that the needs are not excessive, the ability to pay is that of both parents and that the method of calculation is economically rational.

As explained above, the Guidelines fail miserably in meeting these standards.

CONCLUSION

In light of the Georgia child support guidelines being unconstitutional, Michelle Sweat shall not be required to pay Samuel E. Sweat any child support based upon her gross income of $1,862 per month, the father's gross income of $2,647.50 per month, and the mother having parenting time with the children at least 20 percent of the time. The mother shall, however, continue to provide health insurance for the children which currently costs approximately $70 per month for so long as it is available through her employer. The mother shall also pay 14.3 percent of any unreimbursed medical expenses

[illegible] must exceed $250 per year. This percentage is based on her share of [illegible] above self-support needs.

For the foregoing reasons, the Defendant's Motion to Declare Georgia's Child Support Guidelines Unconstitutional is hereby GRANTED.

SO ORDERED this 25th day of February 2002.

HONORABLE C. DANE PERKINS
Judge of Superior Court
Alapaha Judicial Circuit
State of Georgia

FILED IN OFFICE
27th day of February 02
CLERK, [illegible] COUNTY, GA