

**IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
GEAUGA COUNTY, OHIO**

FILED
IN COMMON PLEAS COURT
2009 JAN -9 AM 10:36
JUDGE M. K. HANSEN
CLERK OF COURTS
GEAUGA COUNTY

CHRISTINA NOLAN :

Plaintiff :

-vs- :

TIMOTHY NOLAN :

Defendant :

CASE NO.: 02 DC 000282

JUDGE FORREST W. BURT

**MOTION TO
MODIFY CHILD SUPPORT,
AND VACATE PREVIOUS
CHILD SUPPORT ORDERS AND
CSEA ARRERAGES**

I. Motion to Recalculate Child Support

Now comes before the court the Defendant requesting a recalculation of child support to zero (\$0.00). Attached is defendant's affidavit of income expenses (See Attachment #1) required for the court's basic child support schedule and applicable worksheet (ORC 3119.022, 3119.023).

The recalculated amount is more than ten percent less than the existing child support order of \$507.73, which is a change of circumstances substantial enough to require a modification of the child support pursuant to ORC § 3119.79(A).

Defendant has no resources that can be included as gross income for child support calculation purposes. Defendant's Veterans Administration Disability Pension and Veterans' Administration Aid and Attendance are means-tested, needs-based disability benefits administered by the federal government. Defendant is not an "employee" of the Veterans' Administration. (See Attachment #2; January 2, 2009, John Roberts, National Service Dir.)

ORC § 3119.01 Calculation of child support obligation definitions.

(C)(7)(a) "Gross income" **does not include:** Benefits received from means-tested government administered programs, including Ohio works first; prevention, retention, and contingency; **means-tested veterans' benefits;** supplemental security income; food stamps; disability financial assistance; or other assistance **for which eligibility is determined on the basis of income or assets. (Emphasis added)**

Ohio Revised Code describes when a court should require no child support from a medically verified disabled parent.

ORC § 3119.06 Minimum Child Support Order.

(Paragraph 1) Except as otherwise provided in this section, in any action in which a court issues or modifies a child support order or in any other proceeding in which a court determines the amount of child support to be paid pursuant to a child support order, the court shall issue a minimum child support order requiring the obligor to pay a minimum of fifty dollars a month. The court, in its discretion and in appropriate circumstances, may issue a minimum child support order requiring the obligor to pay less than fifty dollars a month or not requiring the obligor to pay an amount for support. **The circumstances under which a court may issue such an order include the nonresidential parent's medically verified or documented physical or mental disability or institutionalization in a facility for persons with a mental illness or any other circumstances considered appropriate by the court. (Emphasis added)**

Defendant has a medically verified and documented physical disability and should not be required to pay child support pursuant to the Ohio Revised Code.

Where disabled father's only income was Supplemental Security Income (SSI), the trial court's order that he pay \$ 50 a month child support was reversed and remanded because SSI was not considered as a part of gross income under RC B 3119.01(C)(7)(a) and the court of common pleas' order to pay support under RC B 3119.06 was an abuse of discretion. *Morris v. Morris*, 2003 Ohio 5598 (Oct. 16, 2003).

The distinction between earned income and federal means-tested public benefit is clarified in Ohio Administrative Code.

Ohio Administrative Code 5101:1-2-30 Citizenship: Ohio works first and disability financial assistance.

(B)(3) Definitions: "Federal means-tested public benefit" is a benefit in which eligibility for the benefit or the amount of the benefit, or both, is determined on the basis of income or resources of the assistance group seeking the benefit. Federal means-tested public benefits include food stamps (including the food assistance block grant programs in Puerto Rico, the Commonwealth of Northern Mariana Islands and American Samoa), OWF and supplemental security income (SSI).

The Ohio Tenth District Court of Appeals explains the meaning of means-tested benefits, which further clarifies the distinction between moneys that count towards gross income in child support calculations in contrast to moneys that are to be excluded, such as the Defendant's VA benefits.

The United States Court of Appeals for the Seventh Circuit has explained the meaning and operation of "means-tested" programs thusly: Means-tested

public assistance programs place a tax on earnings. Not a direct tax, after the fashion of the Internal Revenue Code, but an indirect one. Greater earnings yield less assistance. This is what it means to say that a program is means-tested, with benefits concentrated on persons with lower incomes or wealth. *Harbour v. Ridgeway*, 2005 Ohio 2643. Citing *Vaughn v. Sullivan*, 83 F.3d 907 (7th Cir. 1996).

This court is already aware of Defendant's disability and VA Benefits. The Eleventh District Court of Appeals described such facts in their March 31, 2008 decision.

{¶20} According to the August 22, 2006 letter from the Department of Veterans Affairs, Dr. Raghuram R. Satta ("Dr. Satta"), staff physician, indicated that appellant appeared to have weakness in his legs and arms and that he was unable to stand or walk. He gave a history that **he was diagnosed to have multiple sclerosis in 2002**, and that the department was investigating the problem. Dr. Satta stated that appellant was currently disabled and unable to work. **(Emphasis added)**

{¶12} In a September 16, 2004 letter from UPMC physician, Dr. Iris A. Brossard ("Dr. Brossard"), it was indicated that **appellant has multiple sclerosis and is unable to work. (Emphasis added)**

{¶21} In a September 20, 2006 letter from the Department of Veterans Affairs, Christine Alford ("Alford"), Veterans Service Center Manager, stated that appellant was entitled to receive non service-connected pension benefits in the amount of \$881 per month. She said that appellant was rated as permanently and totally disabled for VA purposes.

{¶22} According to the October 3, 2006 letter from Dr. Christopher A. Sheppard ("Dr. Sheppard"), neurologist at Oak Clinic for Multiple Sclerosis, appellant was a patient at the clinic. Dr. Sheppard stated that appellant had increasing difficulty with side effects from the medication for multiple sclerosis. *Nolan v. Nolan*, 2008 Ohio 1505

Because Defendant has no income that is to be included for child support calculation purposes, and because he has a medically verified physical disability, his child support obligation should be zero (\$0.00).

Furthermore, while the court has not corrected the child support obligation, the county prosecutor can not oblige Defendant to pay support because his only financial resources are needs based, means tested; his obligation to pay support is suspended.

ORC § 3119.06 Minimum Child Support Order.

(paragraph 2) If a court issues a minimum child support order pursuant to this section and the obligor under the support order is the recipient of need-based public assistance, any unpaid amounts of support due under the support order shall accrue as arrearages from month to month, and the obligor's current obligation to pay the support due under the support order is suspended during any period of time that the obligor is receiving need-based public assistance and is complying with any seek work orders issued pursuant to section 3121.03 of the Revised Code. **The court, obligee, and child support enforcement agency shall not enforce the obligation of the obligor to pay the amount of support due under the support order while the obligor is receiving need-based public assistance** and is complying with any seek work orders issued pursuant to section 3121.03 of the Revised Code. **(Emphasis added)**

II. Requesting Order to Produce Documents and Set Hearing for January 30, 2009

Defendant asks the court to order the Plaintiff to produce documents that are relevant to child support modification (proposed order attached). Defendant asks the court to schedule an evidentiary hearing for January 30th at 1:30 pm because the parties already have a hearing schedule at that time for motion to impose jail. A corrected child support order shall make the motion to impose jail moot.

III. Motion to Vacate Child Support Enforcement Agency Order to Withhold

Defendant asks the court to vacate the CSEA "Order/Notice to withhold income for Child and Spousal Support" issued September 25, 2006 to the Veteran's Administration, 1240 East 9th Cleveland (See attachment #3). The CSEA order states that the Veteran's Administration is "required to deduct these amounts from the above-named employee's/obligor's income until further notice" [...] "Total of \$587.25 per month to be forwarded to the payee below." **(Emphasis added)** [...] "Make it payable to: Ohio Child Support payment Central." The Ohio Administrative Code specifies that the Defendant's veteran's disability benefits **CANNOT** be withheld by the CESA. Also defendant is **NOT** an employee of the Veteran's Administration.

5101:12-50-10.1 Income which may be withheld or deducted.

(B) Sources of income that are not subject to withholding or deduction include but are not limited to: (2) Monetary benefits paid by the department of veterans affairs that are generally based on the veteran's disability, war-time service, or disability from service-connected injury or disease; and (3) Means-tested income or benefits including, but not limited to, supplemental security income benefits.

III. Motion to Vacate previous Child Support Orders

Pursuant to Ohio Rules of Civil Procedure 60(B)(5) the Defendant is asking the court to vacate the Child Support Orders issued December 2, 2003 and January 28, 2005. For the reasons stated: income shown on worksheet was never validated; basis for determination of support was never provided; the amount of arrearages due was never declared; Defendant had no opportunity to cross examine witnesses; and no sworn testimony regarding facts was provided to court to establish just cause for the court to deprive the Defendant of his property.

RULE 60. Relief From Judgment or Order

(B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (5) any other reason justifying relief from the judgment.

In the magistrate's decisions filed on December 2, 2003, there was no validation of the Defendant's income (See Attachment #4). While a Child Support Computation Worksheet was included in the December 2, 2003 record, the worksheet was only signed by the Plaintiff and her attorney (journal volume #81, page 020334). This same worksheet was included in the nunc pro tunc judgment entry issued by the trial court on January 27, 2005 for the purpose of correcting clerical mistakes (See Attachment #5). Defendant was not giving an opportunity to challenge the figures and computations on the worksheet.

No sworn testimony was provided by the Plaintiff or Defendant confirming or denying the Defendant's alleged annual income of \$52,867.37. However, the Defendant has submitted a motion to modify child support on July 22, 2003, and the court's Child Support Enforcement Agency knew the Defendant was unemployed due to medical reasons. From February 27, 2003 through September 17, 2003, the CSEA withheld the Defendant's unemployment benefits as child support collection. Because the Defendant's income stated on the Worksheet was fraudulent, the Defendant should be relieved from the court order obliging him to pay \$507.73 monthly child support. Ohio revised codes specifies that the parents' income must be validated.

ORC § 3119.05 Other computing and calculating guidelines.

When a court computes the amount of child support required to be paid under a court child support order or a child support enforcement agency computes the amount of child support to be paid pursuant to an administrative child support order, all of the following apply: (A) The parents' current and past income and personal earnings **shall be verified** by electronic means or with

suitable documents, including, but not limited to, pay stubs, employer statements, receipts and expense vouchers related to self-generated income, tax returns, and all supporting documentation and schedules for the tax returns.

The CSEA has been doing their own calculation of arrearages, but if the court does not specifically declare the amount of arrearages due in the final divorce decree (See Attachment #5), the balance shall be zero (\$0.00). The Defendant asks the court to instruct CSEA to correct their records to reflect arrearages of zero from the date of the issuance of the nunc pro tunc judgment entry on January 27, 2005; and the clerically mistaken judgment entries on December 2, 2003.

Geauga County Local Rules of Court, Common Pleas

Rule 11. Divorce, Legal Separation, Annulment, & Dissolution Of Marriage.

(D) Final decree judgment entries shall declare the amount of arrearages due, if any, on temporary spousal support and child support orders, as of the date of the trial granting the divorce, otherwise such balance shall be deemed zero.

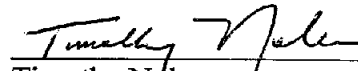
Because the magistrate never considered the Defendants verified income, his unemployment or his physical disability in the calculation of child support in both December of 2003 or January of 2005, the Defendant deserves relief from the Child Support order of \$507.73 per month. In March 2004, the CSEA charged Defendant with contempt of court for being behind in child support. The Court of Appeals, Eleventh District described the facts:

{¶11} While that appeal was pending, on March 9, 2004, appellee, Geauga County Child Support Enforcement Division, filed a motion to show cause. [...] At the August 5, 2004 rescheduled hearing, appellant admitted his contempt of the trial court's order to timely pay child support. Pursuant to the August 9, 2004 agreed judgment entry, appellant was able to purge himself of contempt by making additional monthly payments toward the arrearage in the amount of \$68.00. He was sentenced to thirty days, which was suspended so long as he completed his purge conditions. Nolan v. Nolan, 2008 Ohio 1505 .

The CSEA had no power to oblige Defendant to pay support because he had a medically verified and documented disability and his only source of income was needs-based. (See Attachment #6 Motion to Impose).

The Defendant moves this court to vacate previous child support orders for the aforementioned reasons. Ohio Revised Code was violated with impunity. Geauga County Local Rules of Court Common and Geauga County Rules were violated with impunity. The defendants right to due process were violated with impunity wherein he was not afforded the

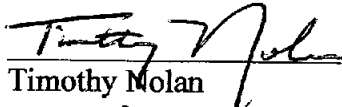
opportunity to provide sworn testimony regarding the alleged income used in the original worksheet.



Timothy Nolan
7906 Plains Road, Unit 11
Mentor OH 44060

CERTIFICATE OF SERVICE

This is to certify that the foregoing was provided via U.S. mail to John Salem, Denman Learner, 8039 Broadmoor Road, Mentor, Ohio 44060; on the 7 day of January 2009; and to Katherine Wiles, Geauga County Child Support Enforcement Agency, 12480 Ravenwood Drive, Chardon, OH 44024-9009.



Timothy Nolan

Sworn to and subscribed before me this 7 day of January, 2009.



NOTARY PUBLIC

BETH A. HEETER
NOTARY PUBLIC, STATE OF OHIO
RECORDED IN LAKE COUNTY
MY COMMISSION EXPIRES 1-15-2013