The Supreme Court of Ohio

V.C.

v.

O.C.

Case No. 2021-0736

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Cuyahoga County Court of Appeals; No. 109988)

Maureen O'Connor
Chief Justice

The Supreme Court of Ohio

V.C.

v.

O.C.

Case No. 2021-0736

RECONSIDERATION ENTRY

Cuyahoga County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Cuyahoga County Court of Appeals; No. 109988)

Maureen O'Connor
Chief Justice

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

V.C., :

No. 109988

:

Plaintiff-Appellee,

:

v.

:

O.C.,

:

Defendant-Appellant.

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART; REVERSED IN PART; REMANDED
RELEASED AND JOURNALIZED: April 29, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case Nos. DR-11-338367 and DR-18-371176

Appearances:

Ronald A. Skingle, *for appellee* Mother.

John H. Lawson, *for appellees* Children.

O.C., *pro se.*

EILEEN A. GALLAGHER, P.J.:

{¶ 1} Father-appellant, O.C. ("Father"), pro se, appeals from the trial court's order terminating a shared parenting plan, designating Mother-appellee,

V.C. ("Mother"), as residential parent and legal custodian of the parties' three minor children and ordering Father to pay $2,444.83 per month in child support and costs. Father also challenges several of the trial court's interim orders relating to child custody and child support, the trial court's denial of his motion to remove the guardian ad litem and certain evidentiary rulings.

{¶ 2} For the reasons that follow, we find that the trial court did not abuse its discretion in terminating the parties' shared parenting plan and designating Mother as residential parent and legal custodian of the parties' minor children. However, we find that the trial court failed to apply the appropriate standard and, therefore, abused its discretion, in determining the amount of Father's child support obligation. Accordingly, we reverse the trial court's child support order and remand for proceedings on that issue. We otherwise affirm the trial court's decision.

Procedural and Factual Background

{¶ 3} Mother and Father were married on August 21, 1999 in Nigeria. The couple later immigrated to the United States. They have four children — daughter C.C. (d.o.b. 1/29/00), son C.F.C. (d.o.b. 3/27/03), daughter C.T.C. (d.o.b. 8/24/06) and son U.C.C. (d.o.b. 5/28/10).

{¶ 4} On September 13, 2011, Mother filed a complaint for legal separation in Cuyahoga C.P. No. DR-11-338367. On March 26, 2013, the couple was granted a legal separation. The judgment entry of legal separation (the "separation order") incorporated a shared parenting plan for the parties' minor children. Under the shared parenting plan, Mother and Father were both designated residential parents

and legal custodians of their minor children and were to have alternate weeks of parenting time, i.e., following a 50/50 parenting time schedule. Each week, the parent who was then "in possession" of the children was to deliver the children to the other parent on Sunday evening at 5:00 p.m. At that time, Mother and Father, who are both physicians, resided in separate residences in Solon. Although Mother was designated the child support obligor in the separation order, no child support was ordered to be paid under the separation order when Mother was providing private health insurance for the children. The separation agreement provided that the designation of Mother as child support obligor and Father as child support obligee was "without prejudice" and that "[u]pon the filing of a motion to modify child support * * *, there shall be a de novo determination as to this designation."

{¶ 5} In or around October 2016, Father obtained a new position. He began working Monday-Friday, 8:00 a.m. – 4:30 p.m., at the Veteran's Administration Medical Center in Marietta, Ohio, more than a couple hours commute from his Solon residence, and established a second residence in or near Marietta, Ohio.[1] Father did not initially inform Mother of his change in employment. On the days he worked during his scheduled parenting time, Father remained in Marietta and hired nanny services to care for the children after school, left the younger children in the care of the couple's eldest daughter overnight and before school and "cyber-

[1] There is some confusion in the record as to whether Father worked and maintained an apartment in Marietta, Ohio or in Chillicothe, Ohio. For purposes of this appeal, we use Marietta, Ohio.

parented" his children from Marietta, using video surveillance and communicating with the children via FaceTime or Skype.

{¶ 6} At this time, Mother worked 19 weeks per year plus an additional three nights per month at the Cleveland Clinic's Medina campus. When Mother was required to work during her parenting time, she employed a nanny to care for the minor children.

{¶ 7} On February 1, 2018, Mother filed a motion to terminate the shared parenting plan and to modify the parenting time schedule, claiming that the co-parenting arrangement provided for in the shared parenting plan had proven to be "unworkable." At this time, all of the parties' three minor children were exhibiting behavioral issues and difficulties with their school work. Mother alleged that Father refused to comply with the terms and spirit of the shared parenting plan, refusing to make joint decisions relating to the health care and education of the children and attempting to "sabotage or undermine" her relationship with the children. She further alleged that due to Father's new job in Marietta, he was unable to care for the children during his scheduled parenting time. Mother requested that the court modify the parenting time schedule, that she be designated the sole residential parent of her then-three minor children[2] and that the children reside primarily with her.

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[2] C.C. turned 18 on January 29, 2018. Following her graduation from high school, she attended The Ohio State University. C.F.C. turned 18 on March 27, 2021 during the pendency of this appeal.

{¶ 8} On March 21, 2018, Father filed a complaint for divorce in Cuyahoga C.P. No. DR-18-371176 (the "divorce action"). A final divorce decree was entered on April 25, 2018.

{¶ 9} The trial court appointed Attorney John Lawson as counsel and guardian ad litem for the children (the "GAL") and the matter was referred to the court's family evaluation services ("FES") for evaluation pursuant to R.C. 3109.04(C).

{¶ 10} In the spring of 2018, a dispute arose between the parties regarding the education of the couple's youngest child, U.C.C., who was exhibiting significant behavioral issues at school. Father filed a motion for a temporary restraining order in the divorce action to prevent Mother and the Solon City School District (the "School District") from conducting a disability evaluation of U.C.C. Over Father's objection, but with Mother's consent and involvement, the School District evaluated U.C.C. and determined that he had an emotional disability, qualifying him for special education services. Over Father's objection, U.C.C. was transferred to an alternative school, where his behavioral issues improved significantly.

{¶ 11} In May 2018, Mother filed a motion for an emergency ex parte order designating Mother the residential parent for school purposes with authority to make school decisions for U.C.C. The court granted the motion. The trial court denied Father's motion to vacate the order, and Father filed a motion for reconsideration. Following a hearing at which Mother, Father and representatives from the School District testified, the magistrate denied Father's motion for

reconsideration, concluding that it was in the best interest of U.C.C. for Mother to continue to be designated the residential parent for school purposes and be granted temporary authority to make schooling decisions for the child until the pending parenting motions were resolved. Overruling Father's objections, the trial court approved and adopted the magistrate's decision.

{¶ 12} Father filed a due process complaint with the Ohio Department of Education, asserting that the School District had improperly identified U.C.C. as a child with a disability. Following an administrative hearing on the matter, the hearing officer determined that Father had failed to meet his burden of proof that U.C.C. was inappropriately identified as a child with a disability. Father appealed and the decision was affirmed.[3]

{¶ 13} On July 25, 2018, Father filed a motion to remove the GAL, alleging that the GAL was "pre-disposed to making recommendations that favor" Mother and asserting that "[a]s a result," the meetings between them had become "increasingly contentious." The trial court denied the motion.

{¶ 14} In or around September 2018, after C.C. went off to college, Father discontinued his cyber-parenting and began commuting on a daily basis between Solon and Marietta during his parenting time weeks, employing nannies to see the children off to school in the morning after he left for work.

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[3] Father filed a federal lawsuit challenging the decision, but his complaint was dismissed for lack of standing. The Sixth Circuit Court of Appeals affirmed. *See [Father] v. Solon City School Dist.*, 6th Cir. No. 19-3574, 2020 U.S. App. LEXIS 12863 (Apr. 20, 2020). The United States Supreme Court denied certiorari. *[Father] v. Solon City School Dist.*, 141 S.Ct. 816, 208 L.Ed.2d 398 (2020).

IN THE SUPREME COURT OF OHIO

Father	:	
Appellant	:	
	:	On Appeal from the Cuyahoga County Court
v.	:	of Appeals Eight Appellate District
	:	
Mother	:	Case No. CA-20-109988
Appellee	:	
	:	
	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT (FATHER)

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EXPLANATION OF WHY THIS CASE IS OF PUBLIC INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

[¶ 1] This cause presents the following critical issues of public interest in the modification of parental rights and in the determination of the best interest of a child:

1. Whether the exclusion of a father's proposed statements of facts and conclusions of law, as untimely, and the adoption of a mother's own as timely, for a finalized order, when both documents were timely, does not adversely affect a father's right to due process, under section one of the fourteenth amendment of the US constitution?
2. Whether an arbitrary increase of a father's child support amount, by more than 100%, which impaired the father's capability to pay for legal representation and transcripts, in a child custody case, does not adversely affect the father's right to due process, under section one of the fourteenth amendment of the US constitution?
3. Whether a trial transcript is required to prove facts that are prima facie verifiable from the docketing statements, under Appellate Rule 9 (B) (4)?
4. Whether the best interest of a child can be determined by adopting a process that relies on the narrative of one parent (Mother), while arbitrarily excluding the narrative of the other parent (Father), under O.R.C. 3109.04 (F)(1), and whether such a process is not a denial of due process, under section one of the fourteenth amendment of the US constitution?

[¶ 2] In this case, a trial court, adopted a process that excluded the narrative of an appellant (Father), when it terminated an existing shared parenting plan and granted the appellee (Mother) full custody and child support on July 30, 2019, in the interim, without hearing Father's

testimony and the testimony of his witnesses, who were present in court during the trials on 07/25/2019 and 07/26/2019. The court thereafter, increased Father's child support obligation by over 100% on October 24, 2019, and made it effective from October 15, 2019, which was 10 days after Father retained an attorney, for his legal representation in the custody case[1]. Father lost his legal representation before the finalized trial on 08/05/2020, due to financial hardship[2].

[¶ 3] After the finalized trial, the trial court ordered both parents, to file their proposed findings of facts and conclusions of law, on or before 08/28/2020. Both parents complied and filed the documents, timely, on 08/28/2020. On 09/09/2020, the trial court adopted Mother's proposed findings of facts and conclusions of law as timely and excluded Father's proposed statements[3] of facts and conclusions of law as untimely, whereas they were both timely.

[¶ 4] The appellate court decided that Father did not show that he was prejudiced by the error, in excluding Father's statements of facts and conclusions of law as untimely and ruled that the trial court must be presumed to be regular in adopting Mother's findings of facts and conclusions of law, verbatim, as its own. The appellate court, therefore, affirmed the finalized order of the trial court, based on Mother's proposed findings of fact, which was adopted by the trial court verbatim, and denied Father's assignments of error that were not consistent with Mother's proposed findings of fact. The appellate court vacated and remanded the child support determination on the basis that the correct statute was not applied. However, the appellate court, did not review the factual errors that were verifiable in the docketing statements, but held an

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[1] This was clarified in Father's proposed statements of facts and the associated exhibits.

[2] Father's Income and Expense affidavit, which was filed with the trial court, showed that he has more expenditure than Mother, despite earning less income than Mother, yet Father's child support was increased by more than 100%.

[3] In Father's proposed **Statements of Facts or Findings of Facts,** Father included the legally significant **facts** that the trial court would use in analyzing and applying the rule to the case, based on the exhibits and testimonies presented during the trial. It was a rebuttal evidence of Mother's findings of fact and the recommendations of the GAL and the FES.

opinion, that when reviewing Father's assignments of error for factual errors, only Mother's proposed findings of fact, can be used, because Father did not provide trial transcripts. The appellate court, therefore, excluded Father's proposed statements of facts, in their entire review of the case, when they affirmed the finalized order of the trial court and only reversed the child support order based on law.

[¶ 5] The failure of the appellate court to review factual errors verifiable from the docketing statements, includes their failure to recognize that Father was denied procedural due process, when Father's capability for legal representation was adversely affected by severe financial hardship due to an arbitrary increase in Father's child support payment by direct wage deduction, by more than 100%, since October 15, 2019.[4]

[¶ 6] Father's constitutional rights, for equal protection under the law of his liberty and property interests, was denied since he was not provided the same procedural due process that was provided to Mother, when the appellate court affirmed the finalized order of a trial court, which arbitrarily excluded Father's proposed statements of facts and conclusions of law. The error in the appellate court's decision is of general and public interest because it is unconstitutional to deny anyone the same procedural due process that is the right of any US citizen or Citizen of Ohio. It is a dangerous precedence for the appellate court to affirm a finalized order that is based on a prima facie denial of procedural due process. A citizen's rights for liberty of "equal protection under the laws", is well expressed in Section one of the 14th Amendment of the US Constitution:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

[4] The lack of trial transcripts was due to Father's financial hardship which was caused by the trial court's abuse of discretion in increasing Father's child support by over 100%, which led to loss of legal representation.

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[¶ 7] It is a well-known fact that the public interest in protecting the welfare of children, is not possible without a comparable interest in correct fact-finding, which requires due process. In Bailey v. Alabama, 219 U.S. 219 (1911), the US Supreme Court, clarified that,

"While states may, without denying due process of law, enact that proof of one fact shall be prima facie evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue."

The exclusion of Father's proposed statement of facts and conclusions of law, as untimely, and the adoption of Mother's own as timely, while both were timely, is arbitrary and demonstrates lack of due process, wherein the opportunity to review all the facts bearing on the issue was denied. This implies that the public interest in the welfare of the children was not met, because the fact-finding did not follow due process of the law.

In *Lindsey v. Normet, 405 U.S. 56 (1972)*, the US Supreme Court, clarified that,

"If a full and fair trial on the merits is provided, due process does not require a state to provide appellate review. But if an appeal is offered, the state must not so structure it as to arbitrarily deny to some persons the right or privilege available to others."

In this case, a citizen's proposed statement of facts and conclusions of law, which was arbitrarily excluded by a trial court, was also excluded by the appellate court, in their opinion. Moreover, this citizen's liberty to manage his salary was unlawfully limited by an excessive child support payment by direct wage deduction, which placed him in severe financial hardship, making it difficult for him to retain an attorney for the appellate proceeding and to pay for transcripts, thereby denying him the same privilege that was available to another citizen in the same case.

[¶ 9] It is a well-known fact that our society is an aggregation of families bound together by a constitution, which must form the basis for an appellate decision. The public implication of the

decision of the appellate court to affirm the finalized child custody order of the trial court, without following constitutional due process, includes but not limited to the following:

1. Lack of public trust and confidence in the judicial system – since the appellate court ignored and covered up a constitutional error, which is a dangerous precedence.
2. The role of a Father in the upbringing of his children was adversely undermined which affected the discipline and the psycho-social development of the children. A precedence that encourages this situation is dangerous for our society, because there will be increase in the incidence of disciplinary and psycho-social problems among children and young adults in our society. This was illustrated in this case, by the objective evidence of significant decline in the academic and psychosocial behavior of the children, following the significant exclusion of Father, in the upbringing of the children, since July 30, 2019.
3. A dangerous precedence will be set, wherein child custody cases will be driven more by fear of victimization by the judicial system rather than respect for the judicial system for justice and fairness. This is illustrated in this case, by the imposition of excessive child support, which placed Father in severe financial hardship, that prevented him from retaining legal representation and limited his ability to obtain justice and fairness.
4. A dangerous precedence will be set, wherein the focus on the provision of support for children, during child custody cases, will be obscured by lack of due process. This was illustrated in this case, where the performance of the children declined during the three-year long trial.

[¶ 10] If the decision of the appellate court to adopt the findings of fact of the trial court as regular, is allowed to stand, despite the lack of due process, it means that the court has ignored

an important section of the US constitution and made a law that undermines the foundation for our freedom and peaceful co-existence.

STATEMENT OF THE CASE AND FACTUAL ANALYSIS

Father and Mother were married on August 21, 1999, in Nigeria and immigrated to the United States in 2001, when Father was granted a clinical fellowship position in Houston, Texas. They lived in various states and had three (3) minor children (CC, d.o.b. 01/29/2000; CFC, d.o.b. 03/27/2003; CTC, d.o.b. 07/24/2006), at the time Father relocated to Solon, Ohio, on January 31, 2010, while Mother was in residency training in Michigan[5]. The fourth child (UCC, d.o.b. 05/28/2010), was born towards the end of Mother's residency training in Michigan. Mother was not interested in rejoining the family in Solon, Ohio, when she completed her residency training on June 30, 2010 and had relocated with UCC to Euclid, Ohio, from Michigan. Mother reluctantly rejoined Father and the three older children in Solon, in August 2010, and filed for legal separation in February 2011 (immediately she completed 6 months of stay in Ohio), but withdrew it in May 2011, and refiled it again on September 13, 2011. Statements filed in court by both parents, at that time, showed that there were parental conflicts, but no academic or psycho-social problems with the children.[6] The cause of the parental conflict was two-fold: Father was concerned about Mother's poor capability in providing the children with consistent disciplinary structure at home, whenever she was alone with the children, while Mother was

[5] Father had been living with the 3 minor children alone in Pennsylvania, since October 2008, before relocating to Solon, Ohio, in 2010, while Mother was doing residency training in Michigan. The children were all doing well and had no problems.

[6] Father's effort to maintain consistent discipline and structure at home for the children, was often disrupted by Mother's lack of cooperation – this was demonstrated with evidence in Father's proposed statements of facts and conclusions of law, which was filed with the trial court on 08/28/2020.

concerned about the possibility of Father depending on her income, given that Father's residency training was done abroad, so she refused a plan to buy a home in Solon, in October 2010, but rented a separate apartment in December 2010, when she started working. Father was not involved in any marital infidelity or domestic violence, but has been providing for the children since 2001, when he immigrated to the United States, with his foreign qualifications.

In December 2011, the court issued a temporary custody arrangement in which Father was the residential parent for the three older children (CC, CFC and CTC) and Mother was the residential parent for UCC, who was 17 months old at that time. The parents were legally separated at pre-trial, on 03/26/2013, and had a separation agreement which adjudicated all issues, in which both parents agreed that there will be no spousal support or child support, and both parents were residential parents for all the children, with an alternate week shared parenting plan, with equal decision-making authority.

The circumstances of the children started declining after the shared parenting plan, in 2013, because of the differences in parenting style. Whereas Father, was proactive in providing structure and discipline for the children at his residence, Mother was not. For example, whereas Father purchased a 4-bedroom house, with finished basement and three and half bath in 2013 (which had a room for a nanny in the basement as well as recreational and study areas), Mother remained in a 2-bedroom apartment with the children, every alternate week, from 2013 till October 2017. Whereas Father placed UCC in a pre-school in 2013, to enable him to interact with peers in a structured monitored environment prior to starting kindergarten, Mother left UCC in her apartment during her weeks, thereby disrupting the benefit of a consistent pre-schooling, for UCC. Whereas Father provided extracurricular activities like music

lessons, sports (tennis, biking and swimming) and online educational software, Mother provided none, during the school year. Hence, the back-and-forth movement of the children, every alternate week, prevented the consistent application of discipline and structure, unlike when they were predominantly with Father, before the shared parenting plan began. This gradually led to episodes of juvenile delinquencies, suspensions from school and preventable physical injuries, none of which were present when Father was the residential parent, before the shared parenting plan began in 2013.[7]

In October 2016, Father started a new job at the VA clinic, in Marietta, Ohio, to augment the declining income from where has been working at Euclid, Ohio[8]. He was compliant with the shared parenting plan, despite his new job and there was no objective evidence of any decline in the school or social performance of the children, in the 2016-2017 school year, compared to their performance in the previous school year, 2015-2016, before his new job.

However, Mother, upon hearing that Father got a new job in Marietta, bought a house in Solon, in October 2017,[9] and filed a motion three months later, on February 1, 2018, seeking for full custody of the children and for child support, claiming that the circumstances of the children changed because of Father's new work in Marietta, Ohio, in October 2016.

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[7] Whereas Father disclosed this information to the Family Evaluation Service (FES) and the Guardian Ad Litem (GAL), they were misrepresented in their reports and excluded when father's statements of facts and conclusions of law, was excluded under the pretext of being untimely. Hence, the determination of the best interest of the children did not consider all the evidence.

[8] There was a decline in the need for hyperbaric medicine, which led to reduced working hours for physicians with the Mobile Hyperbaric Center, contracted to the Cleveland Clinic, at Euclid Hospital, Ohio. Father's working days was reduced to weekends, which was not enough to sustain a reasonable income, for his family, so he took the only available additional job, which happened to be at Marietta, in Ohio. This evidence was included in Father's financial affidavit and in his proposed statements of facts and conclusions of law, which was filed with the trial court – showing that Father was compliant with the shared parenting plan despite his new job.

[9] Father was surprised that Mother, who is a physician like himself, allowed the inequality in the environmental situation of the children for more than 4 years and bought a house 3 months before she filed a motion for full custody and child support. Father's effort to raise the children was disrupted throughout the 4 years (2013-2017).

[¶ 12] The trial court ignored all the above information, including the evidence that the change in the circumstances of the children was not due to Father's new job, but due to Mother's failure to be proactive in providing consistent discipline and structure, which affected the children when the shared parenting plan began in 2013. They also ignored the evidence that the academic and social performance of the children was worse during the 2019-2020 school year, when Mother was granted full custody and child support, compared to the 2016-2017 school year, during the shared parenting plan, when Father started working in Marietta. All the above information were part of Father's proposed statements of facts and conclusions of law, which was excluded by the trial court, under the pretext of being untimely, for the finalized judgement, in its judgement entry on 09/09/2020 and in its finalized order on 09/25/2020. On 04/29/2021, the court of appeal, affirmed the finalized order of the trial court, with respect to custody, based only on Mother's proposed findings of fact and conclusions of law, and vacated the child support determination because it was not based on the appropriate statute, O.R.C. 3119.04. The error in the court of appeal decision, will lead to a dangerous precedence for the public, if allowed to stand, hence appellant proposes as follows:

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1: Proposed statements of facts and conclusions of law of any litigant shall not be arbitrarily excluded in a finalized judgement, pursuant to the requirements of section one of the fourteenth amendment of the US Constitution.

Section 1 of the Fourteenth Amendment of the US Constitution states that,

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The current prevailing standard in determining due process was formulated by the US Supreme Court decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

"Procedural due process must be evaluated using a balancing test that accounts for the government's interests, the individual's interests, and the risk of error under the existing process as well as how much additional procedures would help."

The US Supreme Court clarified in various rulings, including, in *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972), *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978), *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980) and in *Nelson v. Adams*, 529 U.S. 460 (2000), that:

"The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel."

Whereas the purpose of "Notice" is to ***"afford [them} an opportunity to present [their] objections"*** (see *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 1950), and "notice" was properly given by the trial court, when on 08/13/2020, it ordered parties to file their proposed findings of fact and conclusions of law, on or before 08/28/2020; Impartiality was lacking because Father was not granted the same procedural rights as Mother, when Father's statements of facts were excluded as untimely and Mother's own adopted as timely, whereas both were timely. This case illustrates the public and general interest in this proposition of law, because every citizen deserves the same procedural right under similar circumstances, and it is unconstitutional to do otherwise. The US Supreme Court clarified, in Greene v. McElroy, 360 U.S. 474, 496-97 (1959):

"In the absence of explicit authorization from either the President or Congress, the Secretaries of the Armed Forces were not authorized to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination."

Father's statement of facts and conclusions of law was an exercise of his right to summarize his objections based on the testimonies and exhibits presented during the trials, hence, its exclusion was a significant denial of due process. It is of public interest to avoid such precedence.

In *Lindsey v. Normet, 405 U.S. 56 (1972)*, the US Supreme Court, clarified that,

"If a full and fair trial on the merits is provided, due process does not require a state to provide appellate review. But if an appeal is offered, the state must not so structure it as to arbitrarily deny to some persons the right or privilege available to others."

In this case, the erroneous exclusion of Father's proposed statement of facts and conclusions of law, was an arbitrary denial of the same right and privilege available to Mother, which is a violation of section one of the 14th amendment of the constitution of the United States.

PROPOSITION OF LAW NO. 2: An arbitrary child support determination that imposes substantial financial hardship on a litigant which limits the capability for legal representation is a denial of procedural due process under section one of the fourteenth amendment of the US Constitution.

The US Supreme court ruling in *Mathews v. Eldridge*, provided three main factors that courts should consider in cases involving procedural due process, as follows:

"First is the strength of the individual interest in retaining property and the degree to which the individual would be harmed by being deprived of it.
Then the strength of the government interest in the efficient resolution of dispute and the smooth operation of the administrative process, as well as any other government interests that might be implicated.
Finally, the risk of error under the current procedures and the extent to which additional procedures might reduce the risk of error." (ibid)

In this case, Father has strong property interest in his salary, which he uses to take care of his family, including his children, his dependents and himself; the government, through the trial court, has interest in taking part of Father's salary as child support to be paid to Mother; there was significant risk of error in the procedure adopted by the government, which was not addressed by the trial court, despite repeated attempts by Father to have

the error addressed. The appellate court confirmed that the trial court abused its discretion and was in error in the child support determination. However, the trial court's failure to correct the error, has placed Father in financial hardship and made him unable to retain an optimal legal representation including paying for trial transcripts, for the appellate review. Father's financial hardship and its impact on the care of his family, his dependents, his children, and the quality of his legal representation, could have been prevented if the trial court did not abuse the procedural due process in depriving Father his property interest. The appellate court failed to recognize that Father was unable to pay for trial transcripts, due to the trial court's denial of Father's liberty interest in the management of his salary, by the 100% increase in Father's child support payment. The increase was not made in the best interest of the children, but to impair Father's capability for efficient legal representation, which is a denial of due process – it is a dangerous precedence to allow it.

PROPOSITION OF LAW NO. 3: Trial transcript is not required to prove facts that are verifiable from other court records, under Appellate Rule 9 (B) (4).

The Appellate Rule 9 (B) (4) states that:

"If the appellant intends to present an assignment of error on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of proceedings that includes all evidence relevant to the findings or conclusion."

In this case, the two main issues in the assignments of errors on appeal, occurred outside the trial transcript, and cannot form part of the transcript of the trial, as follows:

a) The exclusion of Father's proposed statements of facts and conclusions of law under the false pretense that it was untimely, occurred on 09/09/2020, and the documents referenced were filed on 08/28/2020, hence, both events occurred after the final trial which was on 08/05/2020, so they cannot form part of the transcripts of that trial, but

were part of the docketing statements submitted to the appellate court. Father's proposed statements of facts and conclusions of law, where rebuttal evidence of Mother's proposed findings of fact and conclusions of law. Therefore, the trial transcript is not required to determine whether, Father was prejudiced by the exclusion of his rebuttal evidence. The exclusion of the rebuttal evidence affected the substantial rights of Father, so it cannot be regarded as a harmless error. Therefore, the appellate court was in error, when it stated that Father "has not shown that he was prejudiced by the error". It is a dangerous precedence to allow this ruling, which is of general interest.

b) The trial court's modification of the child support on 10/24/2019, which increased Father's child support payment by over 100%, occurred without any hearing or trial, and was available in the docketing statements along with Father's motion to vacate the order, which indicated the error in the order. Therefore, the phrase, "a transcript of the proceedings that includes all evidence relevant to the findings or conclusion," is not applicable to these events since they were not decided during the trial. The paystubs and financial affidavit of both parents were available in the docketing statements, which showed the factual errors in the child support determination. Therefore, the appellate court was in error when it ignored the factual error in the child support determination and its implication on Father's capability to pay for optimal legal representation, which was a denial of due process – therefore it is of general interest.

In *Eastley v. Volkman, 132 Ohio St.3d 328*, the Supreme Court of Ohio, clarified the standard a court of appeals must use to determine the weight of evidence in a case, as follows:

"We hold that when the evidence to be considered is in the court's record, a party need not have moved for directed verdict or filed a motion for a new trial or a

motion for judgment notwithstanding the verdict to obtain appellate review of the weight of the evidence. We also hold that in civil cases, as in criminal cases, the sufficiency of the evidence is quantitatively and qualitatively different from the weight of the evidence."

In this case the evidence to be considered to determine whether Father was prejudiced by the exclusion of his proposed statements of facts and conclusions of law, were in the court's records or docketing statements. Both Father and Mother filed their proposed statements of fact and conclusions of law timely with the trial court and they were included in the docketing statements made available to the appellate court. The exclusion of Father's own as untimely, while adopting Mother's own as timely, whereas they were both timely, was a prima facie evidence of prejudice, verifiable from the docketing statements. The exclusion of Father's own, affects the sufficiency and the weight of the evidence used in the finalized judgement by the trial court, because the entire evidence was not reviewed. Therefore, the appellate court was in error in affirming the finalized judgement of the trial court, given that Father was prejudiced by the arbitrary exclusion of his rebuttal evidence and that Father was denied due process.

PROPOSITION OF LAW NO. 4: The determination of the best interest of a child, who has two fit parents, shall include an impartial review of the concerns of both parents regarding the child and their family situation, under O.R.C. 3109.04 (F)(1), and in compliance with section one of the fourteenth amendment of the US constitution.

O.R.C. 3109.04 (F)(1) states that:

> ***"In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, ..."***

Father's proposed statements of facts and conclusions of law addressed every aspect of the O.R.C. 3109.4 (F)(1), but it was completely excluded by the trial court under the

false pretense of being untimely, while Mother's proposed findings of fact, which was submitted the same day as Father's own, was adopted as timely. Therefore, Father was denied the same procedural due process that was provided to Mother, by the trial court, and that denial implies that the court did not consider "all relevant factors", as required by O.R.C. 3109.04 (F)(1). The trial court relied only on the narratives of one parent, Mother, while arbitrarily, excluding the narratives of the other parent, Father. This implies that there was no impartial determination of the best interest of the children by the trial court in its finalized order and there was a denial of procedural due process. The process adopted by the court is therefore not in the best interest of the children and is unconstitutional, and it is a dangerous precedence for the appellate court to have affirmed it. The public interest in determining the best interest of the children was not respected and section one of the fourteenth amendment of the US constitution was violated, which is of both public and general interest.

CONCLUSION

This case involves matters of public and great general interest, since it raises a substantial constitutional question. The appellant therefore requests this court to accept jurisdiction in this case, so that the important issues presented will be reviewed on their merits.

Respectfully submitted,

s/FATHER, Pro Se/Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by email to the counsel to the Appellee, Mr. Ronald Skingle (rskingle@ronaldskingle.com) and to the counsel to the children and guardian ad litem, Mr. John Lawson (cwlegal2@yahoo.com), on June 10, 2021.

s/FATHER

PRO SE/APPELLANT

APPENDIX

The Judgement Entry of the 8th District Court of Appeal on April 29, 2021 is hereby attached, as a separate document.