

DARYL G. LeCROY AND ASSOCIATES

4609 Wieuca Road
Atlanta, Georgia 30342
404-256-0918, facsimile 404-256-1978

PRESS RELEASE – GEORGIA CHILD SUPPORT -- 3-24-04

On March 22, 2004, the Georgia Supreme Court denied Laura Jean McFall's Motion for Reconsideration of the Supreme Court's reversal of Judge Sydney Nation of Rockdale County, in the case of *Ward v. McFall*, No. S03A1365. McFall is a non-custodial mother who contested the soundness of Georgia's child support guidelines and whether Georgia complied with federal regulations on them. Judge Nation ruled on February 10, 2003, that he would not utilize the Georgia Child Support Guidelines in his court until the State of Georgia complied with the mandates of the Health and Human Services branch of the federal government. HHS directed Georgia to:

- 1) conduct studies to determine the actual costs of raising a child in Georgia as a basis for the child support guidelines; and
- 2) re-evaluate the guidelines based upon case studies at least once every four years.

Economist Mark Rogers, who testified at the trial on these issues, stated:

“Based on very specific Freedom of Information Act requests made of both U.S. Department of Health and Human Services and Georgia Department of Human Resources, the state has no economic study to validate the current guidelines, and no case studies have been conducted to ‘fine-tune’ the guidelines by automatically incorporating deviation factors—such as parenting time—as required by the federal mandate.”

Justice Harris Hines of the Georgia Supreme Court ruled that, even though Georgia may not have followed all of the federal requirements concerning child support, there had not been “substantial damage” to the federal objectives, and, since HHS had not reduced Georgia's funding for child support enforcement, the Supreme Court would take no action.

McFall, in her motion for reconsideration, pointed out to the court that it had inappropriately used traditional “preemption analysis” in stating that federal regulations do not preempt state law in family law issues. McFall argued that this case instead involves “cooperative federalism,” in which the state is obliged to follow federal requirements in return for Georgia accepting federal funding, and thus a party who is injured by the state's failure to comply is entitled to relief through the courts, even if the agency does not seek to enforce its own rules.

Attorney Daryl LeCroy, who argued the case for McFall, stated:

“The problem with our guidelines is that they have no relationship to the actual cost of raising children in Georgia. At low incomes, they are inadequate to cover costs but do not address the issue of affordability. Yet, if the payor earns more than about \$30,000 per year, they are excessive, and become increasingly so at higher incomes. The Georgia Supreme Court’s failure to address such an obvious inequity which affects so many Georgians is disturbing.”

The Supreme Court denied McFall’s motion for reconsideration in a unanimous vote, exclusive of Justice Carol Hunstein, who was disqualified because she has been Chairperson of the Georgia Child Support Commission since the adoption of the guidelines in 1989. Attorney Daryl LeCroy stated that the decision will be appealed to the U.S. Supreme Court.

Bills which would bring Georgia’s guidelines more in line with other states have been pending before the Georgia legislature for at least ten years.