

visits arranged on 48-hours notice. The parties have stipulated a \$1,000 child support arrearage by the Plaintiff.

The Plaintiff is providing health insurance for Christopher and Mikel, and she incurs the cost of travel to visit them. The Defendant's monthly gross income is \$2,400 and the Plaintiff's monthly gross income is \$1,733. The Plaintiff seeks a downward modification of her child support and she seeks to have Georgia's child support guidelines declared null and void due to the state's failure to follow the federal mandate for establishing the guidelines, as well as the state's failure to have them reviewed and amended after appropriate study required by the federal mandate.

Modification of Child Support

O.C.G.A. § 19-6-15 provides that the child support award shall be determined by multiplying the noncustodial parent's gross income per pay period by a percentage based on the number of children for whom child support is being determined. *O.C.G.A. § 19-6-15 (b) (5)*. Application of these guidelines creates a rebuttable presumption that the amount of support awarded is correct; however, the presumption may be rebutted by "a written finding or specific finding on the record" that application of the guidelines would be unjust or inappropriate in a particular case. *Id.* The Code provides a list of 18 "special circumstances" that must be considered before the trier of fact may vary the final award of child support up or down from the range enumerated in the guidelines; the written finding that one or more special circumstance is present makes the presumptive award either excessive or inadequate:

"(1) Ages of the children;

(2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;

(3) Educational costs;

- (4) Day-care costs;
- (5) Shared physical custody arrangements, including extended visitation;
- (6) A party's other support obligations to another household;
- (7) Income that should be imputed to a party because of suppression of income;
- (8) In-kind income for the self-employed, such as reimbursed meals or a company car;
- (9) Other support a party is providing or will be providing, such as payment of a mortgage;
- (10) A party's own extraordinary needs, such as medical expenses;
- (11) Extreme economic circumstances including but not limited to:
 - (A) Unusually high debt structure; or
 - (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over \$75,000.00 per annum;
- (12) Historical spending in the family for children which varies significantly from the percentage table;
- (13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;
- (14) In-kind contribution of either parent;
- (15) The income of the custodial parent;
- (16) The cost of accident and sickness insurance coverage for dependent children included in the order;
- (17) Extraordinary travel expenses to exercise visitation or shared physical custody; and
- (18) Any other factor which the trier of fact deems to be required by the ends of justice.”

O.C.G.A. § 19-6-15 (c).

The presumptive award in this case is calculated by multiplying the Plaintiff's gross monthly income of \$1733 by the statutory range of 23 to 28 percent for the support of two children, as specified in the guidelines. This results in a presumptive award of \$389 at the lower

end of the percentage range to \$485 at the higher end. In considering the enumerated special circumstances, the Court finds that two of them should be applied: (15) the Defendant's income of \$2400 (\$1874 after taxes), and (18) the Plaintiff's income *as reduced by required taxes* (\$1410). To this Court, the effect of federal, state and other mandated taxes on the noncustodial parent's gross income is always a factor "required by the ends of justice" to be considered in calculating child support awards.

In this case, consideration of the aforementioned factors justifies a downward departure from the statutory range; accordingly, the Court finds that the Plaintiff's total monthly child support obligation shall be \$258. Because the Plaintiff provides health insurance for the two minor children at a monthly cost of \$125, the net cash award to the Defendant shall be \$133, payable through an income deduction order. The Plaintiff is further ordered to maintain said health insurance policy or its equivalent as long as coverage is reasonably available through her current or future employer. If such insurance is not maintained, the Plaintiff shall be liable to pay Defendant the total amount of \$258 cash per month. The parties shall each pay half of the unreimbursed medical expenses.

After one child is no longer eligible for support, child support shall be reduced to \$185 per month for the Plaintiff's total obligation for the remaining child. This is based on \$125 per month for medical insurance coverage and \$60 monthly cash paid by the Plaintiff to the Defendant. If such medical insurance is not maintained for the remaining child, the Plaintiff shall be liable to pay the Defendant the total amount of \$125 cash per month.

The Plaintiff must satisfy her \$1,000 child support arrearage to the Defendant within 60 days of this Temporary Order.

By agreement of the parties, they shall execute all appropriate documents required by Georgia law to allow direct payment from the Plaintiff's employer to the Defendant.

The Plaintiff's summer visitation is reduced to two weeks by stipulation of the parties. However, other visitation as provided in previous Orders shall remain in effect.

Declaratory Judgment

The Supremacy Clause of the U.S. Constitution limits the power of the government of the State of Georgia when it participates in federally funded programs. It provides that "this Constitution, and the Laws of the United States made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *U.S. Const., art. VI, cl. 2.* As part of our constitutional system of checks and balances, this Court has oversight of the laws passed by the General Assembly to ensure that they do not violate principles of federalism or abridge individual constitutional rights. For the reasons set forth below, this Court concludes that Georgia's child support guidelines fail to comply with the federal mandate requiring the state to adopt and periodically revise the guidelines in line with current economic data.

Congress first used its spending power to require states to establish non-binding child support guidelines in the Child Support Enforcement Amendments of 1984.¹ In the Family Support Act of 1988, Congress made the guidelines *mandatory* and required states to use them in setting child support awards.² Regulations applying to all state guidelines were adopted by the U.S. Department of Health and Human Services (HHS) and set forth at 45 C.F.R. § 302.56, providing, in pertinent part:

¹ See Pub. L. No. 98-378, sec. 18, 98 Stat. 1305, 1320-1 (1984) (codified as amended at 42 U.S.C. § 667).

² See Pub. L. No. 100-485, tit. I, sec. 103(a) & (b), 102 Stat. 2343, 2346 (1988) (codified as amended at 42 U.S.C. § 667).

“(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State....

(e) The State *must review*, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts....

(h) As part of the review of a State’s guidelines required under paragraph (e) of this section, a State *must consider economic data on the cost of raising children* and analyze cost data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines....”

45 C.F.R. § 302.56 (emphasis supplied)

In response to the federal mandate, the General Assembly revised Georgia’s child support guidelines in its 1989 regular session “to implement certain provisions of the federal Family Support Act of 1988”³ and , in 1994, following an HHS complaint, the General Assembly amended the guidelines to address non-compliance with the Act.⁴ Georgia, however, has failed to comply with the federal mandate to review and revise its guidelines every four years to “ensure that their application results in the determination of appropriate child support amounts.”

42 U.S.C. § 667(a); 45 C.F.R. § 302.56 (e). As part of its review, the state is required to consider economic data on the cost of raising children. 45 C.F.R. § 302.56 (h). Georgia has not complied with this mandate, despite having convened two child support commissions since 1989.⁵ The 1998 Georgia Commission candidly concluded that “[a]nother problem encountered by the members [of the Commission], in their evaluation of Georgia’s Child Support Guidelines, was the lack of accurate data on the cost of raising a child in Georgia.” *1998 Georgia Report* at 2.

The 2001 Georgia Commission less candidly “determined that the present guidelines were

³ See 1989 Ga. Laws 861, 862 (preamble) (codified as amended at O.C.G.A. §19-6-15).

⁴ See 1994 Ga. Laws 1728 (preamble) (“to provide for written findings” and “to provide a rebuttable presumption”) (codified as amended at O.C.G.A. § 19-6-15).

⁵ *Report of the 2001 Georgia Commission on Child Support (2001 Georgia Report)* at 1 (“Pursuant to 42 U.S.C. § 667 and 45 C.F.R. § 303.56 [sic], a state must review child support guidelines every four years”); *Report of the 1998*

generally appropriate and reflective of the ‘costs of raising a child,’” but without citing any economic data. *2001 Georgia Report* at 1.

Furthermore, the state has never analyzed case data on how courts apply and deviate from the guidelines as mandated by 45 C.F.R. § 302.56 (h). The 1998 Georgia Commission apparently relied on anecdote and public perception to conclude that “the current guidelines are working well and should not be changed.” *1998 Georgia Report* at 4. The 2001 Georgia Commission similarly failed to review any actual case data in concluding that the guidelines “result in child support awards that are generally appropriate.” *2001 Georgia Report* at 2.

The state’s inaction has not been redeemed by the periodic appointment of child support commissions with limited time, no resources or continuity to develop and study economic and case data, and no authority to correct any identified deficiencies in the guidelines. The 2001 Georgia Commission reported that:

“[its] members agonized over some issues that could not be decided in the limited time frame [53 days] The deliberations of the Commission led to the conclusion that there is need for one or more systematic studies conducted prior to the next Commission related to . . . [t]he need for and effect of a low-income reserve, . . . [t]he application of the guidelines for high-income obligors . . . , [t]he application of the guidelines when there are multiple/successive households . . . , [the fact that the] obligee’s income is not explicitly factored into the guidelines . . . , [and whether] the guideline ranges [should] be eliminated or narrowed.”

2001 Georgia Report at 3.

In the same vein, the 1998 Georgia Commission reported that it “contacted Georgia State University to investigate the feasibility of the University doing a systematic and statistically valid case data analysis . . . [but] such a study could not be completed within the term of the 1998 Georgia Commission” *1998 Georgia Report* at 2.

Georgia Commission on Child Support (1998 Georgia Report) at 1 (“The [1998] Commission was created in accordance with the Family Support Act of 1998 . . . [and] the federal regulations at 45 C.F.R. § 302.56(e)”).

Congress directed states to develop child support guidelines based on economic study, yet Georgia has failed to do so. The Senate Report accompanying the 1984 Child Support Enforcement Amendments made clear that “[t]he development of such guidelines will necessarily require States to devote some study to what is appropriate and to review what other States have done. For this reason, the amendment allows two full years (until October 1986) for States to develop the guidelines.” *1984 U.S.C.C.A.N. 2397, 2436*. Georgia’s session laws reveal no legislative activity until 1989, when the present guidelines were adopted, and the record is devoid of any evidence that prior economic study was done.⁶ According to the uncontroverted evidence before this Court,⁷ the state has *never* shown any economic basis for its guidelines.⁸ Georgia adopted a guideline formula, based primarily on obligor gross income and the number of children to be supported, that the national Advisory Panel on Child Support Guidelines had previously concluded was against the economic evidence.⁹ The Panel’s report recommended that states adopt one of two types of guideline formulae in use at that time, the Income Shares model or the Melson formula.¹⁰ In adopting a guideline formula that is “contrary to the economic evidence on actual child rearing expenditures,”¹¹ Georgia ignored the federal mandate to consider economic data on the cost of raising children; accordingly, Georgia’s guidelines conflict with 45 C.F.R. § 302.56 (h) in violation of the Supremacy Clause.

Because the General Assembly enacted child support guidelines to ensure that Georgia would continue to receive federal funding for child support programs, the Supremacy Clause of

⁶ 1989 Ga. Laws 861 (codified as amended at O.C.G.A. § 19-6-15).

⁷ The Attorney General was served with notice of this hearing but did not appear or present evidence.

⁸ Mark Rogers, the economist who testified in this case, inquired directly to HHS regarding this issue. In response to a request directed by Mr. Rogers to HHS under the Freedom of Information Act, HHS confirmed in its reply dated January 7, 2003, that it did not have on file any studies, or records of any studies, to validate Georgia’s guidelines as economically appropriate and consistent with professional studies on child costs. *See* HHS FOIA Case No. 2001-617RE, May 3, 2002.

⁹ *See* Office of Child Support Enforcement, U.S. Department of Health and Human Services, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (1987)

¹⁰ *Id.* at I-15.

the U.S. Constitution requires the state to comply with the applicable federal regulations. *Townsend v. Swank*, 404 U.S. 282 (1971); *Calif. Dept. of Human Resources Development v. Java*, 402 U.S. 121 (1971); *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309 (1968). The U.S. Supreme Court has recognized the right of adversely affected individuals to challenge state non-compliance with federal funding mandates. *Id.* Furthermore, the Supremacy Clause requires this Court to invalidate the guidelines if they violate the federal mandate. *Id.* Finally, the U.S. Supreme Court has held that a reviewing court is not bound by a federal agency finding of state compliance and must undertake an independent review when state compliance is challenged by an individual claimant. *Townsend v. Swank*, 404 U.S. at 286.

The evidence before this Court is clear and uncontroverted that the State of Georgia has not complied with federal requirements in setting and/or revising its child support guidelines. It has not considered economic data on the cost of raising children nor analyzed case data in reviewing the guidelines as contemplated by 45 C.F.R. § 302.56 (e) and (h). Georgia's failure to comply with the federal mandate makes the application of the state's child support guidelines inconsistent with federal law under the Supremacy Clause of the U.S. Constitution, which this Court is bound to uphold.

Until such time as the General Assembly brings O.C.G.A § 19-6-15 into compliance with the federal mandate pursuant to which it was adopted, this Court stays the application of Georgia's child support guidelines and declines to apply the statute in future cases. Accordingly, Plaintiff's Motions for Modification of Child Support and Declaratory Judgment are **GRANTED**.

SO ORDERED this _____ day of February, 2003.

¹¹ *Id.* at I-26.

Sidney L. Nation, Sr., Chief Judge
Rockdale Superior Court
Rockdale Judicial Circuit

**IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA**

LAURA JEAN MCFALL,)
)
 Plaintiff)
) **Civil Action**
 v.) **File No. 02-CV-2287N**
)
 CHRISTOPHER WADE WARD,)
)
 Defendant)

CERTIFICATE OF IMMEDIATE REVIEW

The Court hereby certifies that the issues addressed in the Temporary Order in this case are of such importance to this case and to this state that *immediate review* is appropriate and is therefore granted, sua sponte.

This 10th day of February 2003.

Sidney L. Nation, Sr., Chief Judge
Rockdale Superior Court
Rockdale Judicial Circuit