

MEMORANDUM IN SUPPORT OF JURISDICTION

IN THE SUPREME COURT OF OHIO

CLINT BRADLEY III,	:	
	:	On Appeal from the
APPELLANT,		County Court of Appeals,
	:	8 th Appellate District
V.	:	
		Court of Appeals
GWEN BRADLEY,	:	Case No: 109792
	:	
APPELLEE		

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT CLINT BRADLEY III**

Clint Bradley (pro se)
3451 Helen Road
Shaker Heights, Ohio 44122
(216) 926-6886
Clintbradley23@hotmail.com

COUNSEL FOR APPELLANT

Gwen Bradley
3902 Tyndall Road
University Heights, Ohio 44118
Scott Rosenthal (COUNSEL OF RECORD)
Rosenthal, Thurman, Lane, LLC
1001 Lakeside Ave E # 1720,
Cleveland, OH 44114
(216) 589-9600
scott@rtlattorneys.com

COUNSEL FOR APPELLEE

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case presents four critical issues for the future of Domestic Relations Courts in Ohio: (1) whether the court abuses its discretion when it seeks to punish one party by reversing the statutory burden of proof standards; (2) whether an incorrect calculation can be considered a finding of fact; (3) whether a party to a divorce can obtain a lower paying, salaried job to establish a new gross income that is substantially lower than their previous income; and (4) whether the basic fairness of the court is undermined when the court fails to take any action at all on 90% of the motions filed by one party while quickly granting 90% of the motions filed by the opposing party.

(1) In this case, the lower court reversed the statutory burden of proof by allocating separate marital property despite neither party claiming or providing any evidence of separate property at trial. Had the plaintiff argued for separate property at trial, the defendant could have presented evidence against it. But it was the plaintiff's burden to prove, not the defendant's burden to disprove. This presents an important question for the court to clarify if the court is within its discretion to reverse the burden of proof as it did here and how future litigants should proceed if they must be forced to refute arguments that were not raised at trial.

(2) In calculating the defendant's income, the lower court simply made a huge math error. The appeals court did not check the math and simply relied upon the calculations of the lower court as a finding of fact. If this ruling is allowed to stand future courts, whether

accidental or deliberate, will also be able to treat incorrect calculations as “findings of fact” based on erroneous math that will hold up on appeal.

(3) Immediately upon filing for divorce the plaintiff quit her job as a real estate salesperson where she had been making \$180,000 per year and accepted a management position which carried a base salary of \$45,000 per year. This kind of maneuver is common among divorcees and explicit language is included in the Ohio Revised Code to assist the court in calculating income as the “sum of the parent’s gross income and potential income.” In this case, the court seems to add a third distinction that is income

(4) The trial court exercises broad discretion in granting or denying the motions filed by a litigant. However, in this case the court refused to issue any ruling at all regarding the vast majority of the defendants motions. The defendant was left in state of limbo not knowing whether the plaintiff would be compelled to share discovery (she never did) or if she would be compelled to pay temporary support as ordered by the court (she did not). The defendant sought relief from the plaintiff’s stalking, from her removing financial documents and other items from the marital residence years after she moved out, and sought sanctions for her numerous violations regarding court ordered parenting time and custody among many other motions that the court simply ignored. If this case is allowed to stand as is, future courts will have ample precedent to hold litigants in the same case to a different standard and thereby pre-determine the outcome of the cases before them.

STATEMENT OF THE CASE AND FACTS

The parties were married on July 24, 1994 in Cleveland Heights, Ohio. At the time of the marriage, the Plaintiff-Appellee was 20 years old and the Defendant-Appellant was 19. Two

children were born of the marriage. Plaintiff-Appellee Gwen Bradley, thru Counsel filed a complaint for divorce against Defendant-Appellant Clint Bradley on June 24, 2016. At the time of filing, one of the children of this marriage was past the age of emancipation and one was still a dependent minor. The case included numerous motions and hearings. A GAL was appointed and the parties attended custody mediation. Both parties were interviewed by an FES specialist and a psychologist paid for by the Plaintiff.

The case went to trial on several dates including October 11, 12, and 13, 2017. At the request of the Plaintiff, the case was reopened for further testimony on April 30, 2018 and concluded on July 10, 2018. The case was heard before Magistrate Jesse W. Canonico, to whom this matter was referred by Honorable Francine B. Goldberg. The Magistrate issued a decision on 6/11/19 which was subsequently objected to by the Defendant. The Judge later affirmed the Magistrate's decision on 4/16/20 and the final Divorce Decree was adopted by the Court on 6/17/20. On 6/29/20, the Defendant timely filed an appeal with court of appeals which rendered its decision on 7/22/21.

In her original complaint and subsequent testimony, Plaintiff alleged incompatibility with the Defendant, her desire for sole custody of the minor child and to have the Defendant assume responsibility for 100% of the debts incurred during the over 20-year marriage. Defendant argued that given the duration of the marriage, the ages of the parties at the time of marriage and their recent earnings history that all property and custody issues should be divided evenly between the two parties.

It was the decision of the court to award sole custody of the minor child to the Plaintiff-Appellee and to allocate the Defendant 100% of the marital debt along with \$30,000 of pre-marital credit card debt in the name of the Plaintiff-Appellant. The Defendant-Appellant was also ordered to pay over \$800/ month in child support to the Plaintiff-Appellee along with \$10,000 in Plaintiff's attorney fees.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Any party claiming separate marital property bears the responsibility for establishing a claim of separate marital property pursuant to R.C. 3105.171 (C)(2)

While acknowledging that both parties in this case had ample opportunity to evaluate the marital estate, the lower court correctly found that no separate property claims were made by either party at trial. Nonetheless, made a finding of separate property as it relates to the marital debt which the court allocated 100% responsibility to the defendant/husband. This opinion is improper on its face. But it becomes even more improper in light of the court's rationale which is that the unequal division was appropriate given the defendant's alleged "evasive" tactics. That argument is not only a dangerous precedent, but it is also wholly unsupported by the facts of the case as the court cites no evidence submitted at trial to support this unfounded accusation. On the contrary, the record does contain ample evidence of the plaintiff's bad behavior including numerous violations of court orders in this very case.

- A. The plaintiff/mother absconded with the minor child for several weeks during the course of the divorce however the court found that action to be irrelevant to its final allocation of parental rights.
- B. The plaintiff/mother took the audacious step of getting the lender to refund to her three months of payments on one of the family cars so that she could use that money to buy

herself a new car yet the court ruled that the defendant/father should be responsible for the debt because the Plaintiff left the now delinquent vehicle in his possession.

At the very least, the court should have noted the “bad behavior” of both parties, but the court’s decision to penalize the defendant goes against the law which makes no provision for changing the statutory burden of proof. If this ruling is allowed to stand, domestic relations courts in the state will be free to ignore the evidence in favor of the court’s “feeling” about which party should be punished.

Proposition of Law No. 2: Income is defined as sum of the parent’s gross income and any potential income of the parent pursuant to R.C. 3119.01(C)

The addition and subtraction used by the court is just wrong, it does not add up. While the court is within its discretion to impute the defendant’s income by using deposits made to his bank account as it did in this case, the court is still bound by the conventional rules of addition and subtraction. Instead, this court developed a new version of its own math where it defined the cumulative total of both plaintiff’s and defendant’s income as defendant’s income. That is the \$129,550 figure that is used by the court. Although the court “claims” to have deducted the plaintiff’s income from the total it did not. Therefore, it is imperative that this Supreme Court simply do the math that the appeals court was unwilling to do.

If the court wishes to use bank account deposits to establish a parent’s income, it must only use that parent’s income. In this case, the court explicitly stated that it deducted the plaintiff’s income from its calculation but it did not. And the appeals court simply rubber stamped the lower court’s calculation without verifying. If allowed to stand, this precedent will be used to

allow courts to circumvent the rule of law entirely. It is simply unconscionable that this and future courts will be allowed to issue rulings based on grossly inaccurate basic math and call it a “finding of fact.”

Proposition of Law No. 3: Income is defined as sum of the parent’s gross income and any potential income of the parent pursuant to R.C. 3119.01(C)

The lower court also violated R.C. 3119.01(C) as it relates to determining the plaintiff’s income when it determined her potential income. The evidence clearly shows that the plaintiff was earning approximately \$180,000 per year just prior to the divorce. And although she voluntarily changed jobs along with the divorce filing she testified that she retained the same earning power and was likely to receive “commissions” which were not included in the court’s determination of her income as required under R.C. 3119.01(C). Further, the defendant was thwarted in her efforts to further document her income because she did not provide any discovery during this case and the court ruled that she was not required to do so. Still, her own testimony is enough to demonstrate her income and potential income as required by statute totaled \$180,000 per year nearly double the court’s estimate of \$91,000 per year.

In reaching its decision, the lower court seems to accept the plaintiff’s view that her income as a full-time sales agent was commission based and therefore not guaranteed. When she accepted a lower paying, salaried job the court ruled her previous income was no longer relevant. If allowed to stand, this ruling would allow any small business owner or other non-salaried individual to accept a low paying salaried job and claim that as their gross income under R.C. 3119.01(C). To

make matters worse, the plaintiff testified that even after taking the salaried job, she still retained the ability to continue to earn commissions along with her new salary making her effective earning potential as defined un R.C. 3119.01(C) even higher than it had been!

Under R.C. 3119.01(C) income is defined as sum of the parent's gross income and any potential income of the parent. Potential income includes imputed income that the court determines the parent would have earned if fully employed based upon the criteria articulated in R.C. 3119.01(C)(11)(a)(i) through (x). Imputed income is based on a finding that the spouse is voluntarily underemployed *Inscoe v. Inscoe* (1997), 121 Ohio App 3d 396, 424: *Marek v. Marek*, 158 Ohio App 3d 750, 2005-Ohio-5556, at par. 14. However, the court ignored plaintiff's potential income in calculating her income under R.C. 3119.01(C) .

Proposition of Law No. 4: Litigants have a right to equal treatment by the court as it relates to the timely review and response to their motions under Sup.R. 40(A)(3).

Throughout the 4 year history of this case, the lower court granted 90% of the plaintiff's motions. The lower court failed to even rule on over 90% of the defendant's motions. When the court did rule on a motion filed by the defendant it was almost always denied such as when the court ruled that the defendant was not entitled to discovery from the plaintiff although the court ruled that the plaintiff was entitled to discovery from the defendant. The court of appeals noted that Sup.R. 40(A)(3) does not entitle litigants to a timely response a matter of right, however the disparate treatment of the parties in this case must surely trouble the court. It is incumbent on the Supreme Court, therefore to establish the basic parameters of fairness that should guide future

courts. The public trust is undermined when one party is forced to wait **years** for a motion ruling that never comes and another party is able to get timely responses in a matter of days.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merit.

CERTIFICATE OF SERVICE

A copy of the foregoing has been served upon Attorney for the Plaintiff, Scott Rosenthal Esq., located at Rosenthal, Thurman & Lane, LLC 1001 Lakeside Ave E # 1720, Cleveland, OH 44114 via email at scott@rtlattorneys.com on this fifth day of September, 2021.



Clint Bradley III, pro se