
COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-11104

MARLENE MORALES
(Plaintiff/Appellant)

v.

RICHARD MORALES
(Defendant/Appellee)

REPLY OF APPELLANT TO AMICUS BRIEF OF
DEPARTMENT OF REVENUE

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REPLY OF APPELLANT TO AMICUS BRIEF OF DEPARTMENT OF REVENUE

The Child Support Enforcement Division of the Massachusetts Department of Revenue ("DOR") filed its Amicus Brief of the Department of Revenue ("Amicus Brief") on October 2, 2012, in connection with Morales v. Morales, Docket No. SJC-11104. Appellant submits her Reply to DOR's Amicus Brief.

As DOR correctly states on page eight of its Amicus Brief, "The language of section 28 makes clear that "inconsistency" with the child support guidelines is the standard for child support modification. The phrase "material and substantial change" is used solely in reference to modifying a "care" or "custody" order, while "inconsistency" is the standard for modification of "orders of maintenance and for support of minor children.""

DOR discusses in detail the regulatory framework and history of G.L. c. 208, §28 leading up to the statute's amendment in 1993. DOR correctly states that, because of increasingly stringent federal regulation in connection with modification of child support orders, "the "inconsistency" standard was substituted, in section 28, for "material and substantial change in circumstances" standard that formerly governed. In doing so, the Legislature conformed our state laws to the federal framework for modification of child

support orders." See Amicus Brief of Department of Revenue at 16-17.

The first two sections of DOR's Amicus Brief offer a thorough and precise analysis of the statutory and regulatory evolution of G.L. c. 208, §28, and a straightforward and accurate recitation of the correct modification standard for child support orders under Massachusetts state law ("inconsistency" between the current order and the order that would result from application of the guidelines). However, the analysis in section three of its Amicus Brief is misleading, incorrect, and contradictory to its first two sections.

DOR erroneously creates a false dichotomy in modification actions between child support orders that are less than three years old as opposed to those that are greater than three years old. Despite its argument to the contrary in sections one and two of its brief, DOR advocates in its third section that the "inconsistency" standard in G.L. c. 208, §28 only applies to orders that are more than three years old. It goes on to create its own standard for child support orders that are less than three years old, stating that "under the guidelines, support orders that are less than three years old may be modified only if: (1) as a threshold matter, there has been a change in the availability of health insurance or a "material change in circumstances," and (2) application of the

guidelines would result in an order that is inconsistent with the current order."

Both the Child Support Guidelines and G.L. c. 208, §28 contain language about modification of child support orders. The Child Support Guidelines exist to guide finders of fact and litigants in calculating an appropriate child support order, whether it is an initial order or a modified order. When there is a conflict between language contained in a statute and in guidelines or regulations on the same topic, the statutory language trumps because it is law. There is no need to complicate the issue and create competing standards for child support modification cases based on age of the order as DOR advocates in its third section; G.L. c. 208, §28 states in plain language the correct standard to apply.

As Harvard Legal Aid Bureau states in its amicus brief, utilizing an "inconsistency" standard reduces litigation because it is objective. It allows litigants to quickly and mathematically determine, by using the Child Support Guidelines, whether it is appropriate for them to return to Court to modify a prior child support order. The "floodgates" of increased child support litigation would have occurred either when §28 was modified in 1994 or after the major revision of the Child Support Guidelines in 2009; there is no data which suggests that such an increase in litigation has ever occurred.

Marlene Morales, Appellant
Through her Attorney

Dated: 10/16/12

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