

11-0679

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

In re the marriage/children of:

WENDY GREVE,

Petitioner,

v.

SHAWN ROMANO,

Respondent.

2010 NOV 22 PM 4:12  
CATHY S. GATSON, CLERK  
KANAWHA CO. CIRCUIT COURT

Civil Action No. 05-D-171

ORDER ON PETITIONS FOR APPEAL AND FOR CROSS APPEAL

On March 30, 2010, this Court entered its Order granting Petitioner's Petition for Appeal and Respondent's Petition for Cross Appeal. On May 5, 2010, the said appeals came on for hearing before the Court above named, the Honorable Paul Zakaib, presiding; both parties appeared in person and by and through their respective counsel of record.

Petitioner contends that the Family Court erred (1) when it concluded that the parties had agreed not to apply the child support guidelines to their respective income and expense data and (2) when it deviated from the application of the guidelines because "the parties had agreed to deviate."

Respondent on his cross appeal contends that the Family Court erred when it applied the terms of the 2008 Order as crafted.

This Court concludes that there is no factual basis in the record, including the several Orders entered by the family court, to support a finding or conclusion the parties reached an agreement not to use the guidelines when calculating child support. More

specifically, there is no factual basis in the record to support a finding or conclusion that the parties agreed not to utilize income averaging for self-employed persons and/or attribution of income for unemployed or underemployed persons.

It is clear from the record and the admissions of the parties in this Court that the parties agreed to use historical income and expense data when calculating child support. They agreed not to argue about current or projected income and expenses; they agree to use tax return/historical numbers. It is not, however, reasonable to imply from this agreement another further agreement that income averaging and/or attribution guideline concepts would not be used when child support was calculated. In fact, the family court Order at issue actually says: after the data (income and expenses) is determined, child support shall be calculated "using the Guidelines for Child Support Awards."

Under all of the circumstances here present, this Court determines that:

1. There was no evidence in the record below to support the Family Court's finding that parties agreed to deviate from the child support guidelines when calculating child support.<sup>1</sup>

2. There was no evidence in the record below to support the Family Court's finding that parties agreed not to income average for self-employed persons and/or not to attribute income to underemployed persons.

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<sup>1</sup> The parties' agreement to use the income and expense data for prior years does not imply an agreement not to income average and/or attribute income.

3. Respondent in his cross petition has not demonstrated that the Family Court's determination that the recalculation of child support be retroactive to April 1, 2010, rather than January 1, 2010, was either clearly erroneous or an abuse of discretion.

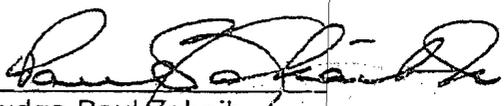
**NOW, THEREFORE,**

1. It is **ORDERED** that the child support Order at issue be and the same is hereby vacated.

2. It is **ORDERED** that the Family Court shall, consistent with the above findings, on remand recalculate the Respondent's child support obligation to Petitioner retroactive to April 1, 2009.

3. It is **ORDERED** that the Clerk shall provide counsel of record with certified copies of this Order after it is entered.

ENTERED: Nov 19, 2010

  
\_\_\_\_\_  
Judge Paul Zakaib

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 13  
DAY OF NOVEMBER, 2010  
  
\_\_\_\_\_  
CATHY S. GATSON, CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SHAWN ROMANO,

Petitioner,

v.

Kanawha County Circuit Court  
Civil Action No. 0

WENDY GREVE,

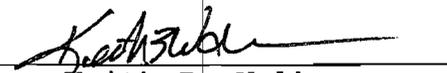
Respondent.

FILED  
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BARRY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

CERTIFICATE OF SERVICE

I, Keith B. Walker, an attorney for Petitioner Shawn Romano, hereby certify that on March 21, 2011, I served a true and correct copy of the foregoing "**DOCKETING STATEMENT**" on the parties hereto via U.S. Mail, first class, postage prepaid, addressed as follows:

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St. Albans, WV 25177  
Counsel for Petitioner Below, Wendy Greve

  
\_\_\_\_\_  
Keith B. Walker  
(WV Bar No. 10912)