

Maynard, J., Dissenting Opinion, Case No.23551 David B. Lang v. Catherine L. Iams

No. 23551 - David B. Lang v. Catherine L. Iams, Formerly Catherine L. Lang

Maynard, Justice, dissenting:

I dissent, not because the majority is wrong in its application of the law in this case; in fact, they are absolutely right. The law cited by the majority on this case is well-reasoned and well-settled. There can be no dispute that it is our law that circuit courts lack power to alter or cancel accrued child support installments. It is also plainly our law that parties may not modify or terminate child support orders by private agreements.

The social and policy considerations which gave rise to these rules are substantial, and the rules serve necessary and legitimate ends. For one thing, they prevent an avalanche of fraud and perjured testimony which unquestionably would occur if we were to recognize private oral or written agreements modifying court orders. To allow such a thing would victimize innocent children and result in chaos. Accordingly, our present rules in this area are probably the only sensible rules we can fashion.

So, what's the problem? Well, the problem occurs when these rules are applied in the real world rather than in the world of lawyers and judges. The outcome then is often really harsh and unfair, and in many, many cases, it is simply cruel.

When a person's income is reduced or eliminated because he or she is between jobs, or is laid-off, or loses a job and that person genuinely cannot pay what has been ordered, we nevertheless require that he or she engage in complicated litigation, in an adversary setting, in order to secure a simple reduction of child support.

The process is so complex that most people need lawyers, and this is a time when they simply cannot afford lawyers! After all, the process requires the filing of a verified petition with mandatory and specific allegations, proper service thereof with correct proof of service on the return, scheduling a hearing, conducting the hearing, and so on. I am convinced that most people don't even know that a court-ordered modification is required, much less how to go about obtaining it, and even less still about how to comply with all the procedural technicalities. In the past, the Supreme Court has tried to simplify the process and now even makes forms available to assist "do-it-yourselfers" with modification petitions. Unfortunately, that has not solved the problem.

What would solve it? Well, for one thing, a slight change in our rules might help provide part of the solution. Private agreements modifying court orders simply can never be allowed for obvious reasons. That is a hard rule, but a good one. No change is desirable or practical regarding this rule.

However, the solution might be to give trial judges, in the proper exercise of their sound discretion, the power to modify accrued child support installments when there is absolutely clear and cogent evidence, supported by work record documents, that an obligor has genuinely suffered a substantial reduction in income due to job loss, lay-off or change of jobs. I believe our trial judges would wisely and carefully use that power, and the time has come to modify the rule so they can. The present rule is simply too inflexible. To be just and fair, I think it must be changed.

The trial judge in this case was only trying to achieve justice and reach a fair result. I wish our law would allow him to do that. Since it won't, I respectfully dissent.