

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN MARY BETTERS,

Plaintiff-Appellee,

v

LARRY WALTER BETTERS,

Defendant-Appellant.

UNPUBLISHED

February 11, 2000

Nos. 211529; 212057

Menominee Circuit Court

LC No. 93-007071 DM

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

SAWYER, J. (concurring in part and dissenting in part).

Although I agree with most of the majority's decision, I must respectfully dissent from that portion of its decision that upholds the trial court's injunction on defendant gambling or entering a place of gambling.

The majority quotes our opinion from *Schaeffer v Schaeffer*, 106 Mich App 452, 457; 308 NW2d 226 (1981), for the proposition that "once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy." However, the majority's decision, by controlling the details of the defendant's daily life, fails to do equity and, for that matter, I fail to see how it will conclude this controversy.

In the case at bar, the attitude of the majority is that, because defendant has been subjected to the court's jurisdiction by virtue of his ongoing child support obligation, the court now has the power to regulate every detail of his life. I do not accept the proposition that we do, or even should, possess such power. I do not accept the idea that the courts are better able to decide how individuals are to run their lives than the individual is. The majority's decision takes away that most precious of personal belongings, the freedom to live our lives unfettered by governmental intrusion so long as we obey the law.

No doubt that defendant could find more constructive ways to spend his time than sitting at a gaming table in a casino. It is not, however, this Court's prerogative to make such determinations. The

point being, we are each free to spend our time in whatever lawful pursuit we wish, so long as we meet our obligations in the process.

The trial court has quite properly imposed a support obligation on defendant. So long as defendant meets that obligation, we have no basis for interfering with his choices of how to live his life. It is simply inappropriate for either the trial court or this Court to tell defendant what he may or may not do in anticipation of whether defendant's choices will make it easier or more difficult to meet his obligation. Indeed, even if defendant does not live up to his obligation, the trial court can pursue the available enforcement means, such as garnishment, withholding orders, and contempt orders. In short, while the trial court may incarcerate defendant for contempt if he willfully violates the support order, it is not appropriate for the trial court, or this court, to tell defendant how to live his life and threaten incarceration by way of an injunction for making lawful choices which the court does not approve

In conclusion, I cannot join in the majority's conclusion that it has the proper authority to decide which lawful choices an individual should make to best live his life. Therefore, I would reverse that portion of the trial court's decision which restrains defendant from lawfully engaging in gaming or entering a gaming establishment.

/s/ David H. Sawyer