

[J-7-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ROBERT J. COLONNA,	:	No. 36 WAP 2002
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered December 21, 2001 at No.
v.	:	1765WDA1999, reversing the Order of the
	:	Court of Common Pleas of Allegheny
	:	County, Family Division, entered April 27,
	:	1999 at FD96-9032.
MARY M. COLONNA,	:	
	:	
Appellant	:	
	:	ARGUED: March 3, 2003

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: April 29, 2004

Because I believe that a custodial parent should not be obligated to pay child support to a noncustodial parent, I must respectfully dissent.

The majority has declared that where “the incomes of the parents differ significantly, we believe that it is an abuse of discretion for the trial court to fail to consider whether deviating from the support guidelines is appropriate” Majority slip op. at 7. The majority further decrees that “the trial court should inquire whether the non-custodial parent has sufficient assets to provide the children with appropriate housing and amenities during his or her period of partial custody.” Majority slip op. at 8. The majority provides an exceedingly vague definition of “appropriate housing and amenities”, stating that “the term

‘appropriate’ does not mean equal to the environment the children enjoy while in the custodial parent’s care, nor does it mean ‘merely adequate.’” Id. Finally, the majority specifically states that this ruling is not limited to those high income cases where the combined net income of the parents exceeds \$15,000.00 per month, but rather encompasses all situations where there is a “significant disparity in income”. Id.

I find this analysis to be troubling for several reasons. First, I can perceive no objective standards within the rule it sets forth. How does a trial court determine what is “appropriate housing and amenities”? Furthermore, what constitutes a “significant disparity” in income? I am concerned that we are providing the trial courts and the practicing bar precious little guidance as to how the majority’s rule should be applied.

Second, I find the majority’s approach disquieting because I believe it transforms a child support action into a quasi-equitable distribution action. In my view, the majority’s new rule is not so much addressing whether the needs of the children are being met (which is a proper subject of a child support action), but rather is focused on augmenting the wealth of the noncustodial parent. While such a focus may be proper in an equitable distribution matter, it has no place in a child support action. A child support action should not be used to jerry-rig a new balance between the respective financial positions of the spouses.

Finally, and most importantly, I am not in accord with the majority’s foundational premise concerning the relationships between parents and children. The majority appears to be of the belief that if there is a disparity in income, the parent-child relationship will perforce be corrupted by the wealthier parent’s desire to “buy the affection of the children” Majority slip op at 7 n.5. The majority goes so far as to state that it is unrealistic to believe that a noncustodial parent’s relationship with her child will not suffer where the custodial parent is more wealthy than the noncustodial parent. Id. at 7. The majority believes we should capitulate to what it perceives to be a social reality, and redistribute the

wealth so that the affections of the child will not be alienated due to a parent's inability to provide the child with material advantages comparable to those provided by the wealthier parent.

I am disturbed by this approach. First, I can find no basis in the law for the proposition that a noncustodial spouse must be enabled, via payments from the custodial parent, to provide material advantages and entertain her children in the same lavish fashion as may the custodial parent. This simply has not been the law of this Commonwealth.

Furthermore, I am disturbed by the philosophy underpinning this rule. Unlike the apparent view of the majority, I do not believe that the health of any given parent-child relationship is measured by a parent's ability to provide a surfeit of expensive possessions or experiences for her child. Rather, the parent-child relationship thrives, or withers, based on the availability of intangibles such as love, attention, and affection. While it may be true that we live in a highly materialistic culture, does this fact stand in contradiction to the timeless realities of parenting? Or, to put it colloquially, can money buy love? I think not. And, more importantly, I balk at this court's implication that not only are a child's affections for sale, but also that our judiciary should be in the business of fostering the market for such a "commodity".

For the foregoing reasons, I respectfully dissent.

Mr. Justice Castille joins this dissenting opinion.