

[Cite as *Trigg v. Holdman*, 2009-Ohio-2887.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANGELA TRIGG,	:	APPEAL NO. C-080613
	:	TRIAL NO. P07-1263
Plaintiff-Appellee,	:	
	:	
and	:	<i>DECISION.</i>
	:	
CHILD SUPPORT ENFORCEMENT	:	
AGENCY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
KENNETH HOLDMAN,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: June 19, 2009

Jeffrey M. Rollman and Wood & Lamping, LLP, for Plaintiff-Appellee,

Joel G. Deutch, for Defendant-Appellant.

Note: We have removed this case from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant Kenneth Holdman appeals from a child-support order issued by the Hamilton County Juvenile Court. We reverse the order and remand the cause for a hearing on a deviation from the child-support guidelines.

{¶2} Holdman is the natural father of a minor child born in 2002. Plaintiff-appellee Angela Trigg is the natural mother of the minor child. Holdman resides in Massachusetts and Trigg resides with the child in Ohio.

{¶3} Trigg filed a complaint for child support in May 2007, and the Child Support Enforcement Agency (“CSEA”) issued an administrative order. Trigg objected to the order, and the matter was set for a hearing on child support before a magistrate.

{¶4} The magistrate essentially bifurcated the child-support hearing: (1) one part was devoted to income and expenses, and (2) the other concerned any deviation from the child-support guidelines. He received testimony on the parties’ income and expenses, but due to time constraints, he did not receive testimony on the issue of deviation. The magistrate suggested that, in lieu of testimony, Holdman submit his grounds for a downward deviation as part of a written “closing argument” on child support. Accordingly, Holdman submitted argument in favor of a deviation in his written closing argument, relying on some information that was not presented at the hearing. He contended that a deviation was warranted due to extensive parenting time and extraordinary costs for implementing visitation. Trigg presented argument against a deviation, also relying on information that was not presented at the hearing.

{¶5} After considering the evidence at the hearing and the information in the closing arguments, the magistrate ordered Holdman to pay current child support of \$633 per month without a deviation, effective July 1, 2006, and a monthly amount toward arrearages.

{¶6} Holdman objected to the magistrate’s decision for several reasons, including the magistrate’s failure to hold a hearing on the issue of a deviation. The trial court affirmed the magistrate’s decision and issued an order of support. The court did not specifically address Holdman’s objection to the lack of a hearing on a deviation, but it did state that Holdman’s request for a deviation for extraordinary travel expenses was unfounded because Holdman had agreed to be responsible for all travel expenses in an earlier parenting agreement that the parties had entered into during litigation on visitation.

{¶7} On appeal, Holdman challenges the amount of support, including the lack of a deviation. In oral argument, Holdman argued that the magistrate’s decision was erroneous as a matter of law, as was the trial court’s decision adopting it, where the magistrate had failed to hold a hearing on the issue of a deviation.

{¶8} R.C. 3119.22 affords a parent the opportunity to rebut the presumption that the guideline amount of child support is fair, just, and in the best interest of the child. The court must hold a hearing to properly consider the deviation factors.¹ In this case, the magistrate denied Holdman a deviation from the presumed amount of support without providing Holdman with the opportunity to present testimony and evidence in support of his position. This was error.

{¶9} Holdman must be afforded a hearing on the issue of a deviation. Thus, the trial court’s decision, which adopted the magistrate’s rejection of a deviation without a hearing, was erroneous as a matter of law. Accordingly, we reverse the order of support and remand the cause for a deviation hearing.

{¶10} Because we are reversing the order of support, we decline to address

¹ See R.C. 3119.23.

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Holdman's other arguments challenging the amount of child support.

Judgment reversed
and cause remanded.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.