COMMONWEALTH OF KENTUCKY
SUPREME COURT
NO. 2013-SC-000812-DE

RACHEL ADAMS-SMYRICHINSKY — APPELLANT

v.

REPLY BRIEF
FOR THE APPELLANT
RACHEL ADAMS=SMYRICHINSKY

PETER T. SMYRICHINSKY — APPELLEE

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APPEAL FROM
KENTUCKY COURT OF APPEALS
OPINION NO. 2013 CA-000181

Appellant's brief submitted by

Michael R. Slaughter
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Counsel for Appellant, Rachel Adams-Smyrichinsky

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was this 16th day of May, 2014 mailed to the Honorable Timothy Feeley, Oldham Circuit Court, Family Division, Courthouse, 100 W. Main Street, La Grange, Kentucky 40031 and Rebecca A. Reichenbecher, Attorney for Peter T. Smyrichinsky, the Appellee, 802 Lily Creek Rd., Suite 101, Louisville, KY 40243, and to the Clerk of the Supreme Court, Room 209 State Capitol, 700 Capitol Avenue, Frankfort, Kentucky, 40601-3488

Michael R. Slaughter

REPLY INDEX

REPLY TO APPELLEE'S ARGUMENTS

KRS 407.561(3)

Appellee cites the wording of KRS 407.5613(1) in his argument that Kentucky Family Court had jurisdiction to modify the Indiana Child Support Order. As the Court of Appeals points out, the Appellant utilized that portion of the statute to request a modification of support in Kentucky. However, it should be understood by all parties that the App0ellant, at no time, ever asked the Court to modify the NON-modifiable portion of the Indiana child support order. At no time, did the Appellant, motion the Court to reduce or increase the age of emancipation either in Kentucky or Indiana.

The Appellant relies on the plain and unambiguous wording of KRS 407.5611(3) that says that only the *modifiable* parts of an original child support order in an issuing state can be modified by another state, when neither party is living in the issuing state.

It should seem extremely obvious to all concerned that IF one of the parties was still living in the issuing state, another state could NOT modify any portion of the child support order, and most especially not a part that is not modifiable at all. For that one reason, alone, whether Indiana has given up jurisdiction to Kentucky or not, makes no difference in this case.

KRS 407.5611(3) was enacted by the Commonwealth, to be utilized ONLY when there were no parties living in the issuing state, just like this case.

In Koerner v Koerner, (Ky App 2008) 270 S.W. 3d 413., the Court of Appeals restated the long standing Court's position that the plain and unambiguous wording of a statute must be followed. That case involved two unified statutes regarding a single

child. One statute had plain and unambiguous wording that granted jurisdiction to Kentucky to modify custody of a child to a different parent while the other statute denied jurisdiction to Kentucky to modify the child support being paid for that child because one of the parents still lived in the issuing state.

In this case, Kentucky has the undeniable jurisdiction to modify child support but does not have jurisdiction to modify the emancipation clause of the Indiana child support statute or its order regarding the emancipation of these minor children.

The Appellant cited *Holbrook v Cummings,* (Md. Ct. App. 2000) 750 A. 2d 724 in her brief. The Issuing state was New York. Neither Party was living in New York at the time of the motion by the father of the child to modify support in Maryland where the child was living. The father was living in California. The Maryland Appellate decision held that the emancipation year in New York must be recognized by all parties.

In *Robdau v Commonwealth* (Va. Ct. App. App. 2001) 543 S.E. 2d 602 it is unclear from the history of the case presented in the opinion as to whether either of the Parties was still living in the issuing state of New York. However, what is clear from the opinion is that the same unified statute as is relied upon by the Appellant is cited as authority for that Court's opinion. It would seem that reliance of that part of the statute would be unnecessary if one of the two parents still lived in the issuing state.

FEDERAL CHILD TAX DEDUCTION

The Federal Laws governing the propriety of a parent taking the child tax deduction is extremely clear and completely documented in the Appellant's brief. The citation of a Federal Tax Court opinion of one year ago, Shenk v Commissioner, 140 T.C.

No. 10 (2013), could not be clearer in its discussion of this issue which is before this Court.

The Supremacy Clause of the United States Constitution could not be more clear as to the obligation of state courts to follow Federal Law. The Appellant cited several other state appellate cases which come to the same conclusion as should this case. No stringing together of dozens of cases by the Appellee in a footnote to his brief can change the coupling of the Supremacy Clause with the Federal Code section 152. Such citing by the Appellee would only require this Court to utilize its valuable time to do the research for the Appellee. When the Appellant cited a case, she provided a copy of it along with the Appendix page number to help the Court.

While the Appellee states a portion of the Code which says that IF a non-custodial parent is to qualify for the deduction, the residential custodial parent must complete IRS Form8332. No where in that law does it say that the residential custodian must be REQUIRED to sign the form against her will, when she has every right to the deduction under the law.

Even the case cited by the Appellee, Knochelmann, Jr. V Commissioner, comes down on the side of the "residential" custodian as having the right to the deduction. From a reading of the overview in that case, apparently the parents had close to "shared" or equal residential custody of the child. Even so, the parent who had "physical custody (of the child) for a greater portion of the calendar year" had the right to the child deduction. Mirroring Federal Code section 152.

In the other case cited by the Appellee, Armstrong v Commssioner, in Head note

4, quotes statute 26 USCS 152(c)(1)(B) as "to claim a qualifying child as a dependant, the child must live with the taxpayer for more that half of the taxable year." A complete discussion of the meaning of the statute in that case is found on Page 6 of the opinion in the Appellee's Appendix Number 4. Even so that case is distinguishable by the case before the Court because it deals with a contractual agreement between the parties regarding the tax deduction and not an order from the Court taking the deduction away from one parent and arbitrarily give it to the other parent.

EQUITY

The Appellant stands by her arguments in her brief on this issue, believing that they are extremely clear and compelling.

Respectfully Submitted,

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