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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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MORRIS W. CARTER
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STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

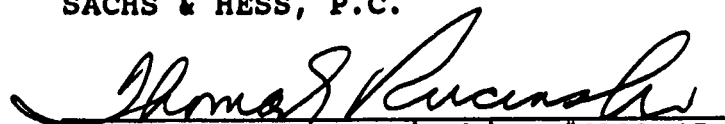
IN THE PORTER SUPERIOR COURT

CAUSE NO. 84-PSC-1017

IN RE THE MARRIAGE OF)
)
GWYNNE HALL, formerly)
GWYNNE RAKOCZY)
)
) -and-)
)
JACOB RAKOCZY)

Comes now Gwynne Hall, formerly Gwynne Rakoczy, and files with the Lake County Recorder's Office an Order of the Porter Superior Court granting her a Judgment against Jacob Rakoczy of 1994 Calumet, Lowell, Indiana.

SACHS & HESS, P.C.



BY: Thomas E. Rucinski - #6223-45
Attorney for Petitioner
5832 Hohman Avenue
Hammond, IN 46320
Tel. No. (219) 932-6070

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per

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STATE OF INDIANA)

IN THE PORTER SUPERIOR COURT

COUNTY OF PORTER)

SS:

CONTINUOUS TERM, 1997

IN RE: THE MARRIAGE OF:
GWYNNE RAKOCZY,
Petitioner,

FILED
IN OPEN COURT

SEP 15 1997

John V. Bradford
JUDGE PORTER SUPERIOR COURT

VS.

CAUSE NO. 64D01-84-PSC-1017

JACOB RAKOCZY,
Respondent.

RECORDS
FILE COPY

FINDINGS AND ORDER REGARDING CONTEMPT AND MODIFICATION

This cause is submitted to the Magistrate for hearing on Petitioner's two (2) petitions for citation and her petition to modify child support as well as Respondent's petition for citation and modification. Parties appeared in person and by counsel. Evidence was heard and concluded. Written proposed findings and conclusions were received from counsel. Respondent's motion to file additional proposed findings and affidavits was denied. The Magistrate, having had the matter under advisement, now finds and recommends as follows:

1. That the parties' dissolution decree was entered on September 6, 1984. It provided that Respondent would have reasonable visitation with the children upon twenty-four (24) hours advance notice to Petitioner.

2. That in response to Respondent's Motion to Correct Errors, the Court entered a child support provision which is attached hereto and incorporated by reference herein as Exhibit "A". This was entered January 9, 1985 and was made effective as of the date of the decree.

3. That neither party complied with that portion of the support order which required them to exchange tax returns annually. In September of 1987, the Petitioner did file a petition for contempt on this issue and for a modification of support. The Respondent at that time filed a petition to modify custody. In December, 1987, both parties dismissed their pending petitions. Nothing more was done as to these issues until February 13, 1996, when the first of the pending petitions was filed.

4. That Respondent argues that the decree (as corrected) contains an impermissible and

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thus, unenforceable, escalation clause or self-adjusting support order. Petitioner, on the other hand, now asks for some ten (10) years of arrearages.

5. A self-adjusting support order is not improper *per se*. In this case, a fixed amount of support was ordered based upon a certain percentage of earnings of the Respondent, with a maximum amount included. Calculation of the exact amount is a simple matter and not difficult to administer. Had the parties exchanged tax returns, they would know exactly how much the Respondent owed or how much he should be reimbursed. The fact here are not dissimilar to those in Ferguson v. Ferguson, 519 N.E. 2nd 735 (Ind. App. 1988), in which such an order was upheld.

6. That with the numerous changes which have occurred in both parties' lives since 1984, as well as the adoption of the Indiana Child Support Guidelines, the child support order should now be modified. Support should now be increased to Four Hundred Twenty-Five Dollars (\$425.00) per week for nineteen (19) weeks per year (when the son is home from college), and Two Hundred Eighty Dollars (\$280.00) per week for the thirty-three (33) weeks that only one (1) child is at home. Annualized into one payment, the support should be Three Hundred Thirty-Three Dollars (\$333.00) per week. These payments should be made through the Clerk of this Court via an income withholding order to be prepared by Respondent's counsel. The Petitioner's request for retroactive application of this Order should be denied and the effective date should be September 1, 1997. (See Exhibits B and C attached).

7. That the Petitioner's request for support arrearages should be granted. As previously noted, the original support order was valid; the Petitioner's claim is well within the statute of limitations; and the Respondent has never moved to modify the existing order. The Respondent is not entitled to credit for the non-conforming, gratuitous payments which he has made over the years. Therefore, the arrearages are found to be Fifty-Three Thousand Five Hundred Dollars (\$53,500.00), in accordance with Petitioner's Exhibit 2. This sum is reduced to judgement in favor of the Petitioner

and against the Respondent and should bear interest at the statutory rate from this date.

8. That no contempt is found in relation to the failure to exchange tax returns, nor for the accrued arrearages. The parties tacitly acquiesced in a pattern of conduct in which the Respondent paid Seven Hundred Fifty Dollars (\$750.00) per month support and made other contributions when asked. The non-compliance with the 1984 order cannot be termed willful.

9. That pursuant to the Indiana Child Support Guidelines, health care expenses for the children should be apportioned between the parents. For purposes of this provision, the term "health care" shall include all reasonable and necessary medical, dental (including orthodontia), hospital, optical, psychological and pharmaceutical (including non-prescription) health care expenses and costs incurred for the health, welfare and benefit of the children.

The Respondent shall maintain group health insurance coverage for the benefit of the parties' children; and, shall provide the Petitioner with all necessary forms and information for the utilization of such insurance. Pursuant to the Guidelines, the Petitioner should pay the first One Thousand One Hundred Eighteen Dollars (\$1,118.00) per calendar year of uninsured health care expenses for the minor children. Any such expenses in excess of that amount should be apportioned at ninety-four percent (94%) to the Respondent and six percent (6%) to the Petitioner.

10. That college expenses have previously been paid by Respondent. Hereafter, they should be apportioned ninety-four percent (94%) to the Respondent and six percent (6%) to the Petitioner.

11. That Respondent has had very little visitation with the children. While it has not been proven that Petitioner actually interfered with or prevented visits; neither was it shown that she did anything but remain neutral. This is in violation of her duty as custodial parent to encourage and

foster a loving and respectful relationship between the children and their father. This misfeasance is also evidenced by the fact that the Petitioner neglected to provide Respondent with information in regard to the children's education and activities. Her inaction cannot be said to rise to the level of contempt, as it was not in violation of an actual court order. She is admonished, however, that should she continue her policy of neutrality, contempt may be found in the future.

12. That visitation between father and son should be arranged directly between the two of them. Visitation between father and daughter should be in accordance with Appendix B of L. R. 21 of the Local Rules of the Porter Superior Court.

13. That there has been no showing that a change in custody would be in the son's best interests. Respondent's request in that regard should be denied.

14. That Petitioner is not in contempt for failing to utilize health care providers which would maximize Respondent's insurance coverage as the decree did not require her to. However, in keeping with rhetorical paragraph 9 above, she should henceforth use preferred providers. Her failure to do so, absent emergency, will result in Petitioner bearing the entire cost.

15. That due to the disparity in earnings, as well as the fact that Petitioner primarily prevailed, Respondent should pay directly to Petitioner's attorney Thomas E. Rucinski, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) on or before November 1, 1997.

ALL OF WHICH IS FOUND AND RECOMMENDED this 15th day of September,
1997.


James A. Johnson, Magistrate

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And the Court, having reviewed the findings and recommendations of its Magistrate, now adopts same as its Court Order.

Roger V. Bradford

Roger V. Bradford, Judge
Porter Superior Court #1

IN TESTIMONY, that the foregoing is a true copy taken from the records of Porter Circuit/Superior Court, Douglas W. Olson, Clerk thereof set my hand and affix the Seal of Said Court.
This 28 day of Sept, 1992
Douglas W. Olson CLERK
CIRCUIT/SUPERIOR COURTS COUNTY OF PORTER, INDIANA
By *[Signature]* Deputy Clerk

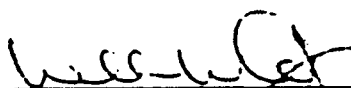
cc: Thomas Rucinski
5832 Hohman Ave.
Hammond, IN 46320

Timothy Kelly
9250 Columbia Avenue
Suite 2A
Munster, IN 46321

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that after the real estate is sold support shall be paid by respondent to petitioner in the amount of Seven Hundred Fifty Dollars (\$750.00) per month. This support order is based on respondent's belief that his projected income for 1984 will be Thirty-Five Thousand Dollars (\$35,000.00) and is further based upon petitioner's current earnings of Three Dollars and Thirty-Five Cents (\$3.35) per hour for hourly weeks of Twenty (20) to Thirty Nine (39) hours per week. In the event that respondent's gross income for a particular year hereafter exceeds Twenty Four Thousand Dollars (\$24,000.00) then, and in that event, respondent shall pay to petitioner as support for the parties minor children the sum of Twenty-Five Percent (25%) of said gross income up to a gross income level of Fifty Five Thousand Dollars (\$55,000.00). Said Twenty Five Percent (25%) of said gross income between Twenty Four Thousand Dollars (\$24,000.00), on the one hand, and said Fifty Five Thousand Dollars (\$55,000.00), on the other, shall be payable within sixty (60) days after the end of each calendar year. Respondent shall, within Sixty (60) days after the end of each calendar year, compute what his gross income was for that year and shall then pay to petitioner Twenty-Five (25%) of that gross income figure less the amount of support paid to petitioner during that year. Both petitioner and respondent shall exchange tax returns within Ten (10) days after filing of said tax returns with the Internal Revenue Service. Respondent shall be entitled to claim both children as exemptions for State and Federal income tax purposes and petitioner is ordered to sign all documents necessary with the Internal Revenue Service to effectuate this Order."

In all other respects, the terms and provisions of said Decree of Dissolution of Marriage, made and entered herein September 6, 1984, are confirmed and ratified, to be and remain in full force and effect, as amended herein.

So Ordered And Adjudged this _____ day of January, 1985.



William W. Anderson, Jr.
Commissioner

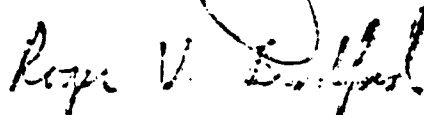


EXHIBIT "A"

IN RE: GWYNNE HALL
and
JACOB RAKOCZY

CAUSE NO. 84-PSC-1017
FATHER: JACOB RAKOCZY
MOTHER: GWYNNE HALL

WORKSHEET - CHILD SUPPORT OBLIGATION

Children	DOB	Children	DOB	
2				
0. WEEKLY GROSS INCOME		FATHER	MOTHER	
Multipliers .935 .903 .878 .863 .854		\$2766.00	\$192.00	
Subsequent Children		0	1	
1. WEEKLY GROSS INCOME (multiplied)		\$2766.00	\$179.52	
A. Child Support / Court Order		\$0.00	\$0.00	
B. Child Support / Legal Duty		\$0.00	\$0.00	
C. Health Ins. Premium for Children		\$0.00	\$0.00	
D. Maintenance Paid		\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI)		\$2766.00	\$179.52	\$2945.52
2. PERCENTAGE SHARE OF TOTAL WAI		93.9053%	6.0947%	
A. Work-related Child Care Expense				\$0.00
3. COMBINED WEEKLY ADJUSTED INCOME				\$2945.52
4. BASIC CHILD SUPPORT OBLIGATION				\$455.00
A. Work-related Child Care Expense				\$0.00
B. Extraordinary Health Care Expense				\$0.00
C. Extraordinary Education Expense				\$0.00
5. TOTAL CHILD SUPPORT OBLIGATION				\$455.00
6. PARENT'S CHILD SUPPORT OBLIGATION		\$427.27	\$27.73	
7. RECOMMENDED CHILD SUPPORT ORDER		\$425.00	\$0.00	

REASON FOR DEVIATION:

I affirm, under the penalties for perjury,
that the foregoing representations are true.

Preparer: COURT

Father: _____

Dated: 08/27/97

Mother: _____

Comments: Calculated for 2 children. The 1997 Guidelines were used.
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EXHIBIT B

IN RE: GWYNNE HALL
and
JACOB RAKOCZY

CAUSE NO. 84-PSC-1017
FATHER: JACOB RAKOCZY
MOTHER: GWYNNE HALL

WORKSHEET - CHILD SUPPORT OBLIGATION

Children	DOB	Children	DOB	
1				
0. WEEKLY GROSS INCOME		FATHER	MOTHER	
Multipliers .935 .903 .878 .863 .854		\$2766.00	\$192.00	
Subsequent Children		0	1	
1. WEEKLY GROSS INCOME (multiplied)		\$2766.00	\$179.52	
A. Child Support / Court Order		\$0.00	\$0.00	
B. Child Support / Legal Duty		\$0.00	\$0.00	
C. Health Ins. Premium for Children		\$0.00	\$0.00	
D. Maintenance Paid		\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI)		\$2766.00	\$179.52	\$2945.52
2. PERCENTAGE SHARE OF TOTAL WAI		93.9053%	6.0947%	
A. Work-related Child Care Expense				\$0.00
3. COMBINED WEEKLY ADJUSTED INCOME				\$2945.52
4. BASIC CHILD SUPPORT OBLIGATION				\$303.00
A. Work-related Child Care Expense				\$0.00
B. Extraordinary Health Care Expense				\$0.00
C. Extraordinary Education Expense				\$0.00
5. TOTAL CHILD SUPPORT OBLIGATION				\$303.00
6. PARENT'S CHILD SUPPORT OBLIGATION		\$284.53	\$18.47	
7. RECOMMENDED CHILD SUPPORT ORDER		\$280.00	\$0.00	

REASON FOR DEVIATION:

I affirm, under the penalties for perjury,
that the foregoing representations are true.

Preparer: COURT

Father: _____

Dated: 08/27/97

Mother: _____

Comments: Calculated for 1 child. The 1997 Guidelines were used.
Software Copyright 1996 Professional Software Corporation 812-838-4495

EXHIBIT 'C'