

Amicus Curiae Briefs Family Law Issues

Child Support

Case: *Boris v. Blaisdell*

Court: Appellate Court of Illinois, First Judicial District, 1985

Amicus Brief: Women's Legal Defense Fund

Case: Blaisdell and Boris had been divorced in 1979, at which time Boris obtained custody of the minor child and Blaisdell was ordered to pay support. This action commenced in 1984, when Boris sought a modification of the original support order based on the changing needs of the child and the salary increases of both parents. The trial court ordered an increase in child support payments in accordance with Illinois' new child support guidelines. Blaisdell appealed claiming that the statutory guidelines served as an unconstitutional deprivation of property and unconstitutionally denied the equal protection of the laws to male parents.

Amicus Brief: The brief explains that the Illinois child support guidelines statute is one of many across the nation that have come into existence as a response to the inadequacy of previous awards. Prior to the enactment of such legislation, child support awards were insufficient to cover even half the cost of raising a child and, consequently, left many children and divorced women (who constituted the vast majority of custodial parents) impoverished. When contrasted with the fact that such awards often left the non-custodial parent at relatively the same standard of living he would have been in had there been no child support award, it was obvious a change was warranted. This change came in the form of a federal law enacted in 1984, and in accordance with that law, the Illinois statute is quantitative, leaving little to the trial judge's discretion when determining the amount of the child support award. The Illinois statute is based on an income sharing theory of support awards and uses a percentage of income formula. The theory takes into consideration that intact families spend money on their children in proportion to their income, so as income increases, money spent on the children increases. The actual proportion or percentages of income remain relatively constant among varying income levels. Therefore, using a percentage of income formula for post-divorce awards places the child in the same position the child was in while the family was intact. Furthermore, because the awards are based on a percentage of income, the award is predictable and is neither left to the judge's discretion nor can it become a sticking point in settlement negotiations.

The brief argues that there is no case law supporting Blaisdell's assertion that determining the amount of support a parent desires to provide his child is a fundamental right, the interference with which requires review under heightened scrutiny. Rather, this issue has long been under state control and, therefore, must be subjected merely to rational review. Under rational review, Illinois must show that it has a legitimate purpose to which the means it employs are rationally related. The objective of ensuring that non-custodial parents adequately contribute to the support of their children is a legitimate purpose, and in light of the long history of insufficient orders, a quantitative system of determining awards could rationally further this end. The brief also argues that the guidelines do not violate procedural due process for the non-custodial parent is free to admit into evidence any relevant information upon which the court may make its express

findings of fact which are to be the basis for the support award. The brief explains that the statute does not violate the separation of powers for the legislature is merely directing the trial court to follow a particular guideline; the legislature is not acting as fact-finder in a particular case.

CWEALF: CWEALF joined the brief because of its belief that guidelines help to equalize the income disparity and financial hardship on women resulting from divorce, particularly from divorces where women are the resulting custodial parents who must bear much of the financial and emotional burdens of raising children.

Holding: The Court affirmed the trial court's modification of child support after holding that the child support guidelines statute was constitutional. The Court, after examining the legislative history of the statute, found that the statute did not violate the separation of powers for the guidelines were not binding on the court; the court could make upward or downwards adjustments from the guidelines in any case where the court determined the facts warranted such an adjustment. Furthermore, the statute is a matter of substantive law, and the enactment of substantive law has always been within the jurisdiction of the legislature. The Court also found that there was no substantive due process violation for depriving the petitioner of property, for there existed no doubt regarding the trial court's statutory and judicial authority to order child support awards. There were also no procedural due process violations for the petitioner was accorded a full evidentiary hearing for which he had adequate notice. The Court also held that the statute did not violate the equal protection rights of any class. Because the statute differentiated between custodial and non-custodial parents, the legislature only had to utilize means rationally related to achieving its end. The Court found that sufficient differences existed between custodial and non-custodial parents so that their different treatment was warranted.

Case: *Bowen v. Gilliard*

Court: Supreme Court of the United States, 1987

Amicus Brief: NOW Legal Defense and Education Fund

Case: In 1984, Congress amended the statute authorizing Federal Aid to Families with Dependant Children (AFDC) to require that eligibility for benefits under that program must take into account all income being received in the household by all individuals within the household, including child support paid by a non-custodial parent. (A parent who included a child in the filing unit had to assign all rights to support for that child to the state.) Prior to this amendment, a family could exclude a child from the filing unit if doing so would be financially advantageous to the family unit (i.e. if a child were receiving support payments from a non-custodial parent or were receiving wages from a job, that child could be excluded from the unit filing for AFDC). North Carolina adopted regulations in accordance with this amendment, a class action for relief was reopened (this was based on a notion to reopen an earlier pre-1984-amendment case regarding the automatic inclusion of a child in the filing unit). The District Court found for the class and held that the inclusion of all household members in the filing unit and of all child support payments constituted an unconstitutional taking under the Fifth Amendment, for it forced a custodial parent to use monies meant exclusively for the support of a child, and violated the Fifth and Fourteenth Amendments' Equal Protection Clause for it punished a child for

exercising his/her fundamental right to live with his/her family. The Supreme Court noted probable jurisdiction.

Amicus Brief: The brief argues that Congress intended for states to be aware of those individuals not applying for AFDC living in the same home as children who are applying for AFDC; Congress did not intend that the income of these individuals be taken into account in order to disperse that income to all family members as opposed to keeping it with the child receiving the money, especially that amount of the support that the child required for his/her own personal needs. That Congress did not intend for independently supported children to apply for AFDC when their needy siblings so applied is evidenced by Congress' use of the terms "needy dependent" and "non-needy siblings." AFDC is a program only for needy dependents. By causing all members of the household to file within the family unit, independently supported children are losing the full benefit of their child support income, leaving those children in a worse position than they would have been in had they not been forced to file. This is in contradiction to the purpose for which AFDC was created—to provide support for children and families deprived of a father's support.

The brief argues that forcing independently supported children to share their benefit with their needy siblings violates the Equal Protection Clause for it treats independently supported children who live with needy siblings differently than independently supported children whose siblings are not needy. Thus, it classifies children based on their living arrangements, something that often is out of the child's control. Because the regulation draws classifications based on family life, the privacy of which is fundamental, heightened scrutiny is the appropriate standard of review. However, the classification and the government's reasoning fail to satisfy even rational review. While the government may have a legitimate purpose in reducing the federal deficit, to do so by confiscating child support from non-needy children is not only arbitrary, but irrational as well. The brief also distinguishes *Lyng v. Castillo* (which found constitutional a statute requiring all siblings to be counted as one household for purposes of food stamp allotment) for that case dealt with the classification of welfare as a fundamental right, whereas this case involves whether legally restricted income can be presumed available to needy siblings.

CWEALF: CWEALF joined the brief because of its belief that children and their families are harmed when monies earmarked for the support of one child are dispersed so that child is denied. The system amici argue against has the effect of thinly spreading money meant to support a child's health, education, and living necessities to satisfy the most dire needs of an entire family. Rather than help the family, this system instead perpetuates the cycle of poverty that AFDC was created to ameliorate.

Holding: The Supreme Court reversed the District Court's decision. They noted that Congress has the power to define the scope and duration of benefits. Therefore, the Court's review under the Equal Protection Clause must be deferential. The Court found that Congress had a legitimate purpose of reducing federal expenditures and of distributing benefits among competing needy families in a manner that is most fair. Congress could have reasonably believed that including independently-supported children and the support they receive in the family filing unit would present to it the fullest picture of all needy children so that the most benefits could be given to the most needy. The Court specifically refused to review the amendment under heightened

scrutiny, for it found that any intrusion on family living arrangements was purely incidental. The Court also held that Congress is not required to provide benefits; limiting those benefits, therefore, cannot be an unconstitutional taking of property under the Fifth Amendment.