

SUPREME COURT OF VERMONT

Michelle E. Stein v. Daniel E. Stein, 173 Vt. 627

800 A.2d 460 (2002) · No. No. 00-263 · Decided April 15, 2002

SUMMARY

The Vermont Supreme Court affirmed enforcement of a child support order in a shared-custody case. The court held that the father's constitutional and other challenges to the original support calculation, including the child support guidelines and differing school-year and summer amounts, were impermissible collateral attacks barred by res judicata because he had not appealed the original order. The court also upheld refusal to enforce the mother's alleged agreement to reduce support and waive arrears.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Amestoy, C.J.; Dooley, J.; Morse, J.; Johnson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	April 15, 2002
DOCKET	No. 00-263
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the family court's judgment affirming a magistrate's enforcement order concerning his child support obligation.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	Daniel E. Stein v. Michelle E. Stein

TOPICS

- child support
- family law procedure
- res judicata
- appellate procedure
- equal protection

PRACTICE AREAS

- family law
- constitutional law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether father could constitutionally challenge the child support guidelines and the specific amounts set in the original child support order during a later enforcement action after failing to appeal the original

order.

2. Whether father could collaterally attack the original order's separate school-year and summer support amounts on equal-protection grounds.
3. Whether an alleged agreement by mother to accept reduced support payments and waive accrued arrears was enforceable.

HOLDINGS

1. A parent may not collaterally attack the constitutionality of child support guidelines or the amount of a final child support order in a later enforcement proceeding when the parent had an adequate opportunity to challenge the original order by appeal.
2. Father could not collaterally attack, on constitutional or other grounds, the original order's specific support amounts or its provision for separate school-year and summer payments during the enforcement action.
3. The alleged agreement by mother to accept reduced child support and waive accrued arrears was unenforceable.

KEY QUOTATIONS

"We conclude, like the magistrate, that father may not now attack the constitutionality of the child support guidelines used to establish his child support obligation in this enforcement action given his failure to appeal the original final child support order; it constitutes a collateral attack on that order barred by the principles of res judicata." (800 A.2d at 462)

"He may not simply disobey the order and wait for mother to bring an enforcement action to do so." (800 A.2d at 462)

FACTUAL BACKGROUND

The parties were divorced and shared custody of their two children. A magistrate ordered father to pay \$546.45 per month during the school year and \$253.89 per month during the summer. Father generally failed to pay the full ordered amount, after which mother initiated enforcement proceedings. Father then challenged the child support guidelines, the original support amounts, his ability to pay, and an alleged agreement by mother to accept reduced payments and waive arrears.

PROCEDURAL HISTORY

The parties were divorced in 1999 and stipulated to shared custody of their two children. The magistrate entered a final child support order requiring father to pay different monthly amounts during the school year and summer. After father failed to pay the ordered amounts, mother initiated an enforcement action; the magistrate determined arrears, rejected father's collateral challenges to the original order, and found his alleged agreement with mother unenforceable. The family court affirmed, and the Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Hixson v. Plump, 167 Vt. 202, 205, 704 A.2d 1159, 1161 (1997)
- Agway, Inc. v. Gray, 167 Vt. 313, 316, 706 A.2d 440, 442 (1997)
- Wursthau, Inc. v. Cerreta, 149 Vt. 54, 55, 539 A.2d 534, 535 (1987)
- Lerman v. Lerman, 148 Vt. 629, 629, 528 A.2d 1121, 1122 (1987) (mem.)
- Jessen v. Jessen, 259 Neb. 644, 611 N.W.2d 834, 838-40 (2000)
- In re Marriage of Williams, 998 S.W.2d 724, 727-28 (Tex. App. 1999)
- NLRB v. Local 282, 428 F.2d 994, 998-99 (2d Cir. 1970)
- Callaert v. Callaert, 156 Vt. 265, 267, 591 A.2d 99, 100 (1991)