

SUPREME COURT OF LOUISIANA

No. 98-C-3044

ROBERT STOGNER

Versus

BENITA STOGNER

LEMMON, J., Concurring

I agree wholeheartedly with the majority's interpretation of La. Rev. Stat. 9:315.1. I write separately to point out that this court is not reversing the 1994 judgment which was not attacked until two years after it was rendered; rather, this court is reversing the 1997 judgment denying the 1996 motion to increase child support, although that reversal is based on the 1994 error in originally fixing child support. In setting child support on remand based on current circumstances and on the mandatory guidelines, the trial court may not make any increase retroactive beyond the 1996 filing of the motion to increase. La. Rev. Stat. 9:315.21C.

The underlying problem in this case is the effect given to consent judgments in child support cases. Consent judgments play an important role in family law litigation. Nevertheless, a child should not be prevented, by court-made rules giving a consent judgment the same effect as a considered judgment for purposes of a rule to increase child support, from obtaining the support mandated by law simply because the domiciliary parent made an error (or succumbed to economic or other pressures) in consenting to an insufficient amount of support at the initial fixing. In my view, the burden of a domiciliary parent in obtaining an increase in child support should not be as great when the amount was set by consent judgment as when the amount was set in a considered judgment. I would reconsider prior jurisprudence in the appropriate case.