SUPREME COURT OF LOUISIANA

NO. 98-C-3044

ROBERT STOGNER

versus

BENITA STOGNER

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FIRST CIRCUIT, PARISH OF WEST FELICIANA**

VICTORY, J., dissenting.

The majority's analysis of La. R.S. 315.1 is fatally flawed. Subsection A states the ***general*** rule, i.e., use the guidelines in all cases. Yet, Subsection B says the court may deviate and ***not*** use the guidelines "if their application would not be in the best interest of the child or would be inequitable to the parties." Subsection B is a ***specific*** law that is an exception to the ***general*** law set out in Subsection A.

Likewise, Subsection D is another specific law that is an exception to the general law found in Subsection A. And, in my view, Subsection D means what it says: The Court ***may*** [not shall] review and may approve a stipulation between the parties. The review is clearly optional with the court. If the trial court decides to review the stipulation, he is required to ***consider*** [not "use"] the guidelines as to the adequacy of the stipulated amount. And, contrary to the majority's holding, Subsection D does not speak of deviation (as does Subsection B), thus Subsection D requires no reasons for deviation.

If the majority's holding of La. R.S. 315.1 is correct, I fail to understand why the Legislature passed Subsection D. Since, according to the majority, the guidelines

must be used in *all* cases, stipulated or not, and reasons for deviation from them must be used in all cases, stipulated or not, Subsection D has no meaning.

I also dissent from the majority's dicta concerning the burden of proof required to increase/decrease child support. It is dicta since, according to the majority, the "flawed judgment" must be disregarded and child support apparently will now be set using the guidelines or a deviation from them. In any event, Ms. Stogner will not have the burden of proving either a "change of circumstances" or a "substantial change of circumstances," and the discussion of the issue is unnecessary.

Further, the majority plays with words when stating the change of circumstances need not be "substantial." Yet, the majority cites Blakesley for the change to be "material," and ***Rousseau v. Rousseau*** for the change to be "sufficient to justify" the increase or decrease. We should all agree that the trial court is given much discretion in deciding if the change proven is [great, substantial, material, or sufficient] enough to warrant an increase or decrease. Yet, the mover should be required to allege facts, which if proven, would justify a change in the child support award. If all the mover has to do is to allege facts of *any* change in circumstances, the trial court will be obliged to hold a hearing on all such rules and even grant an increase or decrease reflecting the change, no matter how insubstantial. Clearly, the Legislature never intended such results.