

High court ends 2008 with a flurry of opinions

Last week the state Supreme Court handed down 11 opinions on a range of cases from the legality of the state takeover of the St. Louis School District to clarifying laws over eminent domain and sexually violent predators. Articles about six opinions appear over the next three pages, and summaries of all of the cases appear in the Opinions section beginning on Page 17.

Proof burden clarified in criminal nonsupport cases

Bad economy affecting parents' ability to pay support, lawyers say

BY ALLISON RETKA
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His defense attorney calls it a "sign of the times" case.

A father is laid off from a high-paying job, uses his retirement savings to buy a foundering small business, sees his home foreclosed on and ends up unable to pay child support. Robert Latall Jr. was then hit with criminal charges for five months of missed support payments and found guilty by a Cole County circuit judge.

Last week the Missouri Supreme Court reversed Latall's conviction and used its decision to clarify the burden of proof in criminal nonsupport cases.

But two of the judges issued a dissent to the majority's finding of fact in the case and warned that the ill effects of the opinion will bleed into other cases.

his son."

Judge Michael Maloney, a retired judge from Clay County who heard the Latall case by special designation, sided with the attorney general on this point. He also pointed out the danger of trial courts following the reversal of the majority opinion because prosecutors cannot appeal acquittals.

"The ill effects of the majority opinion will not be limited to this case," he wrote.

Judge Patricia Breckenridge wrote an opinion that concurred with Maloney's dissent and suggested the majority opinion reached its decision by incorrectly relying on Latall's testimony.

Dan Pingleton, a solo family law attorney in Columbia, said he agreed with the dissenting judges that the majority opinion overstepped its bounds in weighing the evidence.

"That is not what an appellate court does," Pingleton said. "Was there sufficient evidence beyond a reasonable doubt? That was the fact-finder's decision."

Financial risk

The majority opinion, written by Judge Michael A. Wolff, pointed out that Latall was making efforts to increase his busi-

ness simply has to inject the issue of good cause, through testimony or other evidence.

The burden then shifts to the state to prove beyond a reasonable doubt that the defendant didn't have good cause for his inability to pay child support, Wolff wrote.

The only evidence that prosecutors leveled against Latall was unsubstantiated testimony from the mother of his child, the court wrote. The woman testified that the professional appearance of the bar's Web site indicated Latall had sufficient funds to pay child support.

The evidence standard for defendants in criminal nonsupport cases is fairly low, and the court's opinion in Latall backs that up, said Nancy McKerrow, a Missouri public defender in Columbia who has handled the appeal of such cases.

Troubled economy increases nonsupport

McKerrow said if the country's economic turmoil worsens, more parents will be unable to pay their child support.

"It makes sense in the economy we're in that as people are laid off, they're not going

to be able to fulfill a lot of their legal obligations," she said. "Then it will be up to state or local prosecutors whether or not they want to prosecute these cases with vigor or want to understand the times."

Roberts, who represents clients on both sides of child support orders, said the economy will raise even more issues on parents' inability to pay support.

"Those cases are going to be flooding the court," he said. "Every day, we're getting tons of calls."

Pingleton said he has seen an increase in the criminal prosecution of parents for nonpayment of child support, and that trend worries him. He would prefer that enforcement agencies use civil actions to enforce child support orders, but the process is more labor-intensive than the criminal route.

"My hope in this area is that the criminal folks will take a hard look to stop prosecuting collection cases," Pingleton said. "You need to prosecute crimes, not use the criminal justice system to collect child support."

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Trial courts could see more criminal nonsupport cases in the coming months as the economy worsens, said Daniel Dodson, the Jefferson City solo attorney for Latall. Many parents may find themselves in the same situation as his client, he said.

"It's good the court is willing to make a distinction between not paying your child support and having the court system doing all it can to see it gets paid, as opposed to labeling nonsupport of child payments a crime," Dodson said. "It's one thing to be behind in your bills. It's another thing to be called a criminal for being behind in your bills."

Latall had raised a "good cause" defense when faced with the criminal charges over his child support. Missouri law allows parents to avoid prosecution for nonsupport if they can demonstrate substantial reasons they were unable to pay.

In Latall's case, he claimed he was unable to make payments after he used \$72,000 from his 401(k) to buy a bar in Grain Valley, outside Kansas City. Latall maintained the bar was not profitable at the time of his purchase, and its financial condition has worsened since.

He claimed he had no money to pay employees and owes thousands of dollars to utility companies. After being unable to make payments on two houses, Latall eventually moved into a room in the bar.

Prosecutors insisted that Latall's dire financial situation did not amount to good cause.

In its appellate brief, the Attorney General's Office said Latall's circumstances were self-imposed. He sunk his savings into a business he knew was not profitable, the office wrote in the brief.

"If his testimony is believed, he made a deliberate choice to work all day, every day, at a job where he earned no net income," the office wrote. "The only logical inference from the evidence was that he pur-

Financial risk

The majority opinion, written by Judge Michael A. Wolff, pointed out that Latall was making efforts to improve his business, including working 18-hour shifts at the bar.

"The purpose of the criminal nonsupport statute is not to prohibit parents from attempting to better themselves economically, even if some risk is involved whether by taking a new job or starting a new business," Wolff wrote.

Greg Roberts, a family law attorney with The Roberts Law Firm in Chesterfield, said the majority opinion was right. It's difficult to fully anticipate the fallout from a financial decision, he said.

"Is a guy buying a bar necessarily the smartest move in the world? No, maybe not," Roberts said. "But had it been successful and he had been able to pay his obligations, well, sometimes we judge those things after the fact."

The majority opinion wrote that if Latall's business continues to founder, he could face future charges for criminal nonsupport.

Dodson agreed that if his client sticks with his failing business for too long, he would open himself up for prosecution.

"But that's a different case for a different courtroom on a different day," he said.

Burden of proof

Remarking that the procedural aspects of the criminal nonsupport law can be confusing, Wolff used his opinion to spell out the procedure.

Pingleton, the Columbia family law attorney and a former contract attorney for the state's Child Support Enforcement program, said the Latall opinion was a perfect procedural blueprint for attorneys.

"That's where you go for criminal nonsupport" he said.

The court decided that in the Latall case, the attorney general misinterpreted the burden of proof set out in state statute.

The defendant in a criminal nonsupport case does not have to offer substantial evi-

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to work for 18 hours a day, so we need a judicial justice system to collect child support."



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