

No. 09-0753

IN THE
SUPREME COURT OF TEXAS

JAMES DERWOOD ILIFF,

Petitioner,

V.

JERILYN TRIJE ILIFF,

Respondent.

**BRIEF OF AMICUS CURIAE,
THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS**

TO THE HONORABLE SUPREME COURT OF TEXAS:

Amicus curiae, the Office of the Attorney General of Texas, respectfully submits this brief.

ARGUMENT

I. Introduction

As the respondent's brief on the merits showed, the rule requiring proof of an intent to avoid or reduce child support payments for a finding of voluntary unemployment or underemployment stems primarily from the Tyler court of appeals's decision in *Dubois v. Dubois* in 1997. 956 S.W.2d 607, 610 (Tex. App.—Tyler 1997, no pet.). After the Fort Worth court of appeals adopted the *Dubois* rule in 2000, *In re P.J.H.*, 25 S.W.3d 402,

405-06 (Tex. App.–Fort Worth 1997, no pet.), all the other courts of appeals in Texas followed, except for Amarillo and Austin. See Respondent’s Brief on the Merits at 18-19. The Austin court of appeals has explicitly rejected the rule more than once.

Hollifield v. Hollifield, 925 S.W.2d 153, 156 (Tex. App.–Austin 1996, no writ); *Iloff v. Iloff*, No. 03-08-00382-CV, 2009 WL 2195559, at *6-*7 (Tex. App.–Austin July 21, 2009, pet. filed) (mem. op.); *Smith v. Dietrich*, No. 03-07-00726-CV, 2010 WL 143287, at *4-*6 (Tex. App.–Austin Jan. 13, 2010, no pet.) (mem. op.).

Although the *Dubois* rule has gained currency in almost all of the courts of appeals, this Court should not endorse it. It has no statutory basis, applying it faithfully will lead to absurd results, and it is difficult to apply it in a manner that is both equitable and consistent. The Attorney General believes that the concerns that animate the *Dubois* rule can be better addressed with a different approach, which the Attorney General will outline below.

II. This Court should reject the *Dubois* rule requiring, for a finding of voluntary unemployment or underemployment, proof of intent to avoid or reduce child support payments.

A. The rule has no statutory basis.

Even the Fort Worth court of appeals – the first to follow the *Dubois* rule – has acknowledged that Family Code section 154.006 does not require proof that an obligor voluntarily became or remained unemployed or underemployed for the purpose of

reducing child support payments. *In re A.J.J.*, No. 2-04-265-CV, 2005 WL 914493, at *3 (Tex. App.–Fort Worth April 21, 2005, no pet.) (mem. op.). Courts have “no right to engraft upon the statute any conditions or provisions not placed there by the legislature.” *Duncan, Wyatt & Co. v. Taylor*, 63 Tex. 645, 649 (1885); see *Kappus v. Kappus*, 284 S.W.3d 831, 833 (Tex. 2009) (this Court refused to engraft a new ground for removal of an independent executor onto a probate statute).

This Court’s practice when construing a statute is to recognize that “the words [the Legislature] chooses should be the surest guide to legislative intent.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (quoting *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999)). Thus, when the text of a statute is clear, text is determinative of the legislature’s intent. *Entergy*, 282 S.W.3d at 437. Courts resort to rules of construction or extrinsic aids only when the words are ambiguous. *Id.* The issue here is what it means for unemployment or underemployment to be “intentional” under Tex. Fam. Code Ann. § 154.066 (Vernon 2008) [Appendix (“Apx.”) A]. There is no ambiguity about the word “intentional.” In the context of this statute, it simply means that the obligor is unemployed or underemployed by his or her own voluntary choice. See *Starck v. Nelson*, 878 S.W.2d 302, 307 (Tex. App.–Corpus Christi 1994, no writ).

The plain language of a statute should be applied literally unless the statute as written would produce absurd results. *Entergy*, 282 S.W.3d at 437. The petitioner in this

case (Mr. Iliff) has suggested that a literal interpretation of intentional unemployment or underemployment would lead to absurd results, such as an attorney being held to be intentionally underemployed if he or she gave up a lucrative private practice to become a judge or a public interest lawyer. Petitioner’s Brief on the Merits at 8. The Attorney General will address this argument below.

In his reply brief, Mr. Iliff has also argued that the *Dubois* rule should be presumed to be correct because of the doctrine of legislative acceptance. Reply Brief at 2-7. He says that between the enactment in 1989 of Family Code section 14.053(f) – the original “intentional unemployment or underemployment” provision – and its recodification in 1995 as Family Code section 154.066, two courts of appeals had held that an obligor could not be found to be intentionally unemployed or underemployed without proof of an intent to avoid or decrease the payment of child support.

One of the cases he cites, *Starck v. Nelson*, does not hold that proof of an intent to avoid or decrease child support is required for a finding of voluntary unemployment or underemployment. 878 S.W.2d at 307. *Starck* held that the obligor was not voluntarily unemployed because his unemployment was not the result of his voluntary choice. *Id.* In a footnote, the court stated that cases pre-dating section 14.053(f) “*seem* to require an intent to avoid or reduce child support as a motivating factor in the obligor’s voluntary job change or rejection of suitable employment.” *Id.* at 307 n.10 (emphasis added). This, though, is dictum (and is not entirely correct, since, as Ms. Iliff’s brief showed at 10 and

12, a number of cases pre-dating section 14.053(f) did not require such an intent).

The other case cited by Mr. Iliff, *Woodall v. Woodall*, did require evidence that the obligor's "income reduction was designed to obtain a decrease in his child support obligation. . . ." 837 S.W.2d 856, 858 (Tex. App.–Houston [14th Dist.] 1992, no writ). However, between the enactment of section 14.053(f)¹ in 1989 and its nonsubstantive recodification in 1995, several cases were decided in which voluntary unemployment or underemployment was an issue and the courts did not require proof of an intent to avoid or reduce child support. *Roosth v. Roosth*, 889 S.W.2d 445, 454 (Tex. App.–Houston [14th Dist.] writ denied); *Kish v. Kole*, 874 S.W.2d 835, 838 (Tex. App.–Beaumont 1994, no writ); *Baucom v. Crews*, 819 S.W.2d 628, 633-34 (Tex. App.–Waco 1991, no writ). There was thus no settled interpretation of section 14.053(f) that the Legislature could have accepted in the 1995 recodification.

In addition, the legislative acceptance doctrine applies only to ambiguous statutes. *Fleming Foods v. Rylander*, 6 S.W.3d 278, 282 (Tex. 1999). As argued above, there is nothing ambiguous about the language of the current statute, Family Code section 154.066. Therefore, the literal language of this statute, which contains no requirement of proof of intent to avoid or decrease support, is still the best guide to the Legislature's intent. *See id.* at 283-287.

¹ Act of May 5, 1989, 71st Leg., R.S., ch. 617, 1989 Tex. Gen. Laws 2030, 2037 [Apx. B], repealed by Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 2(1), 1995 Tex. Gen. Laws 113, 282 [Apx. C], recodified as Tex. Fam. Code § 154.066 by Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 154.066, Tex. Gen. Laws 113, 160 [Apx. C].

B. Under the rule requiring proof of intent to avoid the payment of child support, an obligor can decrease his or her child support payments by proving that he is unemployed or underemployed as a result of simple laziness.

The *Dubois* rule would produce its own absurd result. If proof of an intent to avoid paying child support is required, an unemployed obligor must be assessed little or no child support if he or she can prove that although he or she is unemployed by choice, it is not because of an intent to avoid paying support, but because of an aversion to work. The Attorney General believes that the obligor made such a case in *Schaben-Maurer v. Maurer-Schaben*, 238 S.W.3d 815 (Tex. App.–Fort Worth 2007, no pet.).

In *Schaben-Maurer*, the obligor (Basil Schaben-Maurer) and his wife were divorced in 2006. *Id.* at 819. The evidence showed that Basil was an architect with a master's degree who had been employed in 1997 or 1998 and had made \$40,000 per year. *Id.* at 827. Although there was testimony that the market was excellent for architects in the late 1990's, *id.*, in 1997 or 1998, Basil began working only sporadically. *Id.* at 819. He gave no explanation for this. *Id.* at 827. He had not earned a salary since 2000. *Id.* at 819. The couple's first child was born in 2002. *Id.*

Ms. Maurer-Shaben testified that Basil simply liked to sleep late, watch television, play on the computer all night, and not have to go to a job. *Id.* The only thing he did for the children was to take them to daycare (before going back to bed), and he left the

household chores for his wife to do after she came home from work. *Id.* He led this life of indolence up to Ms. Maurer-Schaben's suit for divorce in 2005. *Id.* at 819.

The Fort Worth court held that all these circumstances provided sufficient evidence that Basil was intentionally underemployed, which according to its standard means that he had become or remained unemployed in order to avoid paying child support. *Id.* at 828. This decision is clearly wrong. Basil became underemployed, working sporadically, at least four years before he had any children. He stopped working completely about two years before the birth of his first child. He remained unemployed for about another three years before his wife filed for divorce. It strains credulity to think that he became underemployed and then unemployed to avoid child support he might have to pay in the future if he were to have any children and then later get divorced. It strains credulity further to think that he would remain unemployed for years before his divorce to avoid paying child support if he ever did get divorced. His ex-wife's testimony points, not to any desire to avoid paying support, but to his astounding laziness. The evidence in *Schaben-Maurer* conclusively establishes that Basil was intentionally unemployed because he was lazy and did not like to work. There is not a scintilla of evidence that he was unemployed for the purpose of avoiding child support. If the Fort Worth court of appeals had faithfully applied the *Dubois* rule, it would have held that Basil was not intentionally unemployed and that child support would have to be assessed on his actual earnings, which were zero. Hence, by virtue of his laziness, Basil would

have been ordered to pay no child support.

The Fort Worth court of appeals was rightly reluctant to come to this conclusion. But the logic of the *Dubois* rule led to that conclusion. It could easily do so in other cases as well. A rule that leads to this kind of absurd result should be avoided if at all possible.

C. If the *Dubois* rule is applied strictly, it will be extremely difficult to prove voluntary unemployment or underemployment, but if courts do not apply it strictly, cases will be decided in an inconsistent and arbitrary manner.

If “smoking gun” evidence, such as an admission, is required for proof of the intent to reduce child support, cases in which a party will be able to prove voluntary unemployment or underemployment will be rare. In the vast majority of cases, the obligor will not admit to the obligee that he or she became or remains unemployed or underemployed for the purpose of decreasing his or her child support obligation. There will not be many cases in which the obligee will be able to find a witness who will testify that the obligor made such an admission. However, *Dubois* and *P.J.H.* held that “[t]he requisite intent, or lack thereof . . . may be inferred from such circumstances as the parent’s education, economic adversities and business reversals, business background, and earning potential.” *Dubois*, 956 S.W.2d at 610; *accord*, *P.J.H.*, 25 S.W.3d at 406.

Fairly frequently, appellate courts have inferred this intent from circumstances that equally yield a different and inconsistent inference. In *In re Marriage of Wilson*, the

evidence showed that the obligor had during the marriage held welding jobs paying \$15 and \$16 per hour. No. 10-07-00159-CV, 2008 WL 2522326, at *4-*5 (Tex. App.–Waco June 25, 2008, no pet.) (mem. op.). After the divorce, the obligor became self employed. *Id.* His net monthly income dropped to only about 25 cents between February and July, 2006 and \$190 from July to September 2006. *Id.* There was conflicting evidence about whether a back injury limited the obligor’s ability to work, *id.*, but the trial court could have resolved this conflict against the obligor. The obligee testified that in her opinion the obligor was “‘intentionally underemployed for child support.’” *Id.* However, this opinion testimony was both conclusory and speculative, since (so far as can be discerned from the court’s opinion) the obligee gave no factual basis for it. *See Coastal Transport Co., Inc. v. Crown Central Petroleum Co.*, 136 S.W.3d 227, 232 (Tex. 2004); *Burrow v. Arce*, 997 S.W.2d 229, 235 (Tex. 1999) (“it is the basis of the witness’s opinion, and not the witness’s qualifications or his bare opinions alone, that can settle an issue as a matter of law; a claim will not stand or fall on the mere *ipse dixit* of a credentialed witness”); *Fairow v. State*, 920 S.W.2d 357, 361 (Tex. App.–Houston [1st Dist.] 1996) (“A *speculative* opinion, such as an opinion on what someone else was thinking at a specific time, does not help the jury to either (1) understand the witness’ testimony better, or (2) decide the question of the other person’s intent.”) (emphasis in original), *quoted in Board of Trustees of Fire & Police Retiree Health Fund v. Towers, Perrin, Forster, & Crosby, Inc.*, 191 S.W.3d 185, 193-94 (Tex. App.–San Antonio 2005, pet. denied). Conclusory

and speculative testimony amounts to no evidence. *Coastal*, 136 S.W.3d at 232, 234-35 (conclusory and speculative testimony); *City of San Antonio v. El Dorado Amusement Co., Inc.*, 195 S.W.3d 238, 247 (Tex. App.–San Antonio 2006, pet. denied) (speculative testimony).

This evidence thus shows no more than that the obligor became self-employed after the divorce and that his income dropped precipitously. From this, the trial court could easily infer that he had deliberately chosen a kind of work life that would bring in much less money. But there are no circumstances that point unequivocally to an intention to reduce his income so that he could reduce his child support. From this evidence, it could equally be inferred that he did not want to be employed by someone else and was willing, and somehow able, to bear the drop in income that came with being self-employed. The equal inference rule prohibits a factfinder from inferring an ultimate fact from meager circumstantial evidence that could give rise to any number of inferences, none more probable than another. *See Tubelite, a Div. of Indal, Inc. v. Risica & Sons, Inc.*, 819 S.W.2d 801, 805 (Tex. 1991) (“When the circumstances are equally consistent with either of two facts, neither fact may be inferred.”), *quoted in City of Keller v. Wilson*, 168 S.W.3d 802, 813 (Tex. 2005). Thus, the court could not have properly inferred an intent to decrease the child support obligation from these facts. Yet, after having defined intentional underemployment as underemployment for the purpose of decreasing support payments, the court held that “we cannot say that the [trial] court abused its discretion by

finding that Tracy [the obligor] was intentionally underemployed.” *In re Marriage of Wilson*, 2008 WL 2522326, at *5.

Similarly, in *Karenev v. Kareneva*, the husband had been a program manager in the computer field, earning about \$120,000 per year, plus an annual bonus of about \$25,000. No. 2-06-269-CV, 2008 WL 755285, at *6 (Tex. App.—Fort Worth March 20, 2008, no pet.) (mem. op.). After being laid off in late 2003, he could have chosen to remain with the company in a different capacity, but he declined to do so. *Id.* Instead, he unsuccessfully looked for work and then assisted his wife with her law practice. *Id.* However, the two separated in 2004. *Id.* In June 2005, he found work as an independent insurance agent, earning about \$600 per month. *Id.* He testified that he could not find a job in his field because many computer jobs were being sent overseas and because he had a criminal conviction. *Id.* The opinion does not recite any contrary testimony. From all this, the court of appeals concluded that “there is some probative and substantive evidence supporting the trial court’s express finding that husband was underemployed. . . .” *Id.* According to the court’s definition of “underemployed,” this would have to mean that he remained underemployed for the purpose of reducing his child support obligation. *See id.*, at *5.

However, his underemployment began before he was separated from his wife and his obligation to pay child support began. He declined to stay at his computer company before that point. He testified that he could not find a job in the computer field, and this

is at least one possible inference from the circumstances established by the evidence. Another possible inference is that he simply tired of working in the computer industry and wanted to do something different. Again, there are no circumstances that point unequivocally to an intention to avoid paying child support. In fact, it is hard to draw an inference from this evidence that this was his intention. But assuming that such an inference can be drawn, it is no more plausible than the other inferences that could be drawn from the circumstances.

In *Beach v. Beach*, the obligor serviced and repaired copying machines until in 2001 he lost his job. No. 05-05-01316-CV, 2007 WL 1765250, at *4 (Tex. App.—Dallas June 20, 2007, no pet.). His wife sued for divorce in 2003, and the court signed the divorce decree in 2005. *Id.*, at *1. After the obligor lost his job in 2001, he earned income by buying broken copiers, repairing them, and reselling them. *Id.*, at *4. He was frequently at his child’s school at lunch and recess. *Id.* The child’s godmother testified that he said he did this because ““he thought that he had the privilege of not having a job.”” *Id.* According to his own testimony, his job search consisted of only six job applications and two job interviews. *Id.* The court of appeals concluded that the trial court could reasonably have found that he could have found a job paying a similar salary to the one he had before. *Id.* It then concluded that the trial court did not abuse its discretion by finding the obligor to be voluntarily unemployed. *Id.*

The court could certainly infer from these circumstances and the direct testimony

that the obligor was unemployed by his own choice. But these circumstances yield the inference that the obligor simply did not want to work just as much as the inference that he wanted to avoid an obligation to pay child support. Indeed, the fact that his unemployment began in 2001, more than a year before the divorce suit, cuts against an inference that he became unemployed or remained unemployed to avoid paying child support, since he would have had no obligation to make support payments before the suit.

Finally, in *Hardin v. Hardin*, the obligor had been terminated from his job after his divorce, and he moved to modify the divorce decree to decrease the amount of child support. 161 S.W.3d 14, 18, 21 (Tex. App.–Houston [14th Dist.] 2004, no pet.). He was still unemployed at the time of the hearing on his motion to modify. *Id.* at 21. He offered a number of reasons to explain why he could not find a job, but there was evidence putting them into question. *Id.* at 21-22. He testified that he had used two employment recruiters and had sought employment, but he admitted on cross-examination that he had not pursued any positions advertised in the local paper related to his field (construction) for the past three weeks. *Id.* at 22. At the time of trial, he was hosting a weekly television show and participating in an internet show, all for free. *Id.*

His ex-wife gave testimony addressing whether he was unemployed for the purpose of avoiding the payment of child support. The court of appeals characterized her testimony this way:

Charlotte testified that she believed James was intentionally unemployed because he did not want to pay child support in the amount agreed to in the

Decree. She stated that her problems with James began after she requested a child support wage withholding order when he worked in Dallas.

According to Charlotte, James was vehemently opposed to any wage withholding. She believed James's retaliatory fervor to remain unemployed after he lost his job in Dallas accelerated in June 2002, when she asked the attorney general's office to enforce the child support order because he had stopped paying monthly, or paid less than the amount of child support due.

Id. at 22. However, Charlotte's statements of belief about James's intentions were, like the testimony about the obligor's intentions in *Wilson, supra*, only speculative conclusions and should not have counted as evidence. The only evidence relating to voluntary unemployment was consequently that the obligor had been let go from his job, that he had not found a job in seven months, that he had vehemently opposed wage withholding, that he had not been diligently seeking another job, and that he was spending his time on unpaid activities. While one might infer from these circumstances a desire to remain unemployed to avoid having child support withheld from his paycheck, one might equally infer a desire to pursue the unpaid activities (hosting television and internet shows) rather than work in construction. The circumstantial evidence here also amounts to no evidence of an intention to remain unemployed to avoid paying child support.

These cases contrast with others in which courts have been unwilling to find intentional unemployment or underemployment without evidence specifically pointing to an intention to avoid or decrease the child support obligation. *E.g., Colvin v. Colvin*, No. 13-03-00034-CV, 2006 WL 1431218, at *5 (Tex. App.—Corpus Christi May 25, 2006, pet. denied) (mem. op.); *Gaxiola v. Garcia*, 169 S.W.3d 426, 431 (Tex. App.—El Paso

2005, no pet.); *In re J.C.S.*, No. 06-04-00085-CV, 2005 WL 927173, at *5 (Tex. App.–Texarkana April 18, 2005, no pet.); *Dubois*, 956 S.W.2d at 610-11 (Tyler).

It appears that courts have with some frequency applied the *Dubois* rule loosely when the obligor became or remained unemployed or underemployed or reduced his or her income without an apparent good reason. In doing so, courts have overlooked the equal inference rule and have credited speculative and conclusory testimony about the obligor’s intent. It seems that a strict application of the *Dubois* rule can lead to inequitable results that courts wish to avoid. This reveals a problem with the rule. It is also problematic that courts apply the rule strictly in some cases and loosely in others. A rule that encourages this kind of inconsistent application is not a good rule. The Attorney General believes that there is a better approach.

III. The words “intentional unemployment or underemployment” in Family Code section 154.066 should be interpreted literally, but courts have discretion in intentional unemployment or underemployment cases in deciding whether to apply the guidelines to the obligor’s earning potential.

Section 154.066 reads, “If the actual income of the obligor is significantly less than what the obligor could earn because of intentional unemployment or underemployment, the court *may* apply the support guidelines to the earning potential of the obligor.” Tex. Fam. Code Ann. § 154.066 (Vernon 2008) (emphasis added) [Apx. A]. Under the Code Construction Act, the word “may” creates discretionary authority or

grants permission or a power.” Tex. Gov’t Code Ann. § 311.016(1) (Vernon 2005) [Apx. D]. Thus, section 154.066 gives trial courts the discretion to apply the support guidelines to the earning potential of the obligor when the obligor is intentionally unemployed or underemployed.

It is consequently unnecessary to depart from the literal meaning of “voluntary unemployment or underemployment” to give courts the discretion they need to account for equitable considerations such as, for example, a parent’s right to pursue his or her own happiness. (Concern for this right appears to have played a major role in the decisions requiring proof of an intent to avoid paying support. *See, e.g., P.J.H.*, 25 S.W.3d at 406; *Dubois*, 956 S.W.2d at 610.) A court may thus consider in a straightforward way whether the obligor has become or remained unemployed or underemployed by choice, and then, if it finds that he or she has, exercise its discretion in deciding whether to apply the guidelines to the obligor’s earning potential.

The courts’ discretion, though, is not unlimited. A court abuses its discretion if it fails to follow guiding rules or principles. *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 854 (Tex. 2009). One guiding rule or principle governing decisions regarding child support is that the primary consideration is the best interest of the child. *E.g., Burney v. Burney*, 225 S.W.3d 208, 214 (Tex. App.—El Paso 2006, no pet.); *In re R.J.P.*, 179 S.W.3d 181, 184 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Royer v. Royer*, 98 S.W.3d 284, 286 (Tex. App.—Beaumont 2003, no pet.). Other things

being equal, receiving more child support is in the child's best interest. Hence, when intentional unemployment or underemployment has been proven, a court's decision not to apply the guidelines to the obligor's earning potential will be within its discretion only if (1) the record shows some reason why assessing support on the obligor's earning potential would not be in the child's best interest or (2) the record shows some other equitable justification that trumps the child's interest in greater financial support.

This approach will avoid the absurd result suggested by Mr. Iliff of a literal interpretation of "intentional unemployment or underemployment." Mr. Iliff suggests that under a literal interpretation, a highly-paid lawyer in private practice who chooses to become a judge or a public-interest lawyer would be found to be intentionally underemployed and have support assessed on the basis of his income in private practice. Petitioner's Brief on the Merits at 8. Under the Attorney General's interpretation, a court could (and likely should) find that the public interest and the attorney's right to pursue his own happiness provides sufficient equitable justification for the attorney's decision to take a lower-paying job as a judge or public-interest lawyer. Thus, in the absence of some other special circumstances, the court could exercise its discretion properly by not applying the child support guidelines to the attorney's earning potential, and by instead applying them to his or her actual income.

The Attorney General therefore urges the Court to reject the rule requiring proof of an intent to avoid or decrease child support as a precondition for a finding of

unemployment or underemployment under Family Code section 154.066. The Attorney General urges the Court to adopt instead the approach suggested above by holding that: (1) A finding of voluntary unemployment or underemployment under section 154.066 must be made whenever the obligor has become or remained unemployed or underemployed by voluntary choice, and (2) when a finding of voluntary unemployment or underemployment is made, a court should apply the guidelines to the obligor's earning potential unless there is evidence that this would not be in the child's best interest or that some other equitable consideration outweighs the child's interest in receiving greater support.

Respectfully submitted,

GREG ABBOTT
ATTORNEY GENERAL OF TEXAS

ANDREW WEBER
FIRST ASSISTANT ATTORNEY GENERAL
State Bar No. 00797641

ALICIA G. KEY
DEPUTY ATTORNEY GENERAL FOR
CHILD SUPPORT
TITLE IV-D DIRECTOR

MARA FRIESEN
DEPUTY DIRECTOR OF FIELD OPERATIONS
MANAGER OF FIELD LEGAL PRACTICE

RANDE K. HERRELL
MANAGING ATTORNEY
APPELLATE LITIGATION SECTION
CHILD SUPPORT DIVISION
State Bar No. 09529400

JOHN B. WORLEY
Assistant Attorney General
State Bar No. 22001480

MICHAEL D. BECKER
Assistant Attorney General
State Bar No. 02015760

DETERREAN GAMBLE
Assistant Attorney General
State Bar No. 24062194

Child Support Division
Appellate Litigation Section
Mail Code 038-1
P.O. Box 12017, Capitol Sta.
Austin, Texas 78711-2017
Phone: (512) 460-6521
Fax: (512) 460-6612

ATTORNEYS FOR AMICUS CURIAE, THE
OFFICE OF THE ATTORNEY GENERAL OF
TEXAS

CERTIFICATE OF SERVICE

I certify that a copy of this brief is being served by United States Mail, certified, on the parties or their counsel listed below on May 17, 2010.

John B. Worley\$ork049

Assistant Attorney General

Georganna L. Simpson
Jeremy C. Martin
1349 Empire Central
Woodview Tower, Ste. 600
Dallas, TX 75247

Thomas M. Michel
2200 Forest Park Blvd.
Fort Worth, TX 76110

Attorneys for Petitioner, James Derwood Iliff

Frank Suhr
473 S. Seguin Ave., Ste. 100
New Braunfels, TX 78130

Michael Scanio
144 E. San Antonio
San Marcos, TX 78666

Attorneys for Respondent, Jerilyn Trije Iliff