NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1945

CHRISTIAN VACCARI

VERSUS

JOAN Y. VACCARI

Judgment Rendered: JUL 29 2010

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2004-10277

The Honorable Raymond S. Childress, Judge Presiding

* * * * * * * *

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* * * * * * * *

Downing, J. concurs.

BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.

McClendon, J agrees in part, concurs in part & dissents in part - with reasons
By EGJ

GAIDRY, J.

In this case, a father appeals a trial court judgment awarding final child support. For the following reasons, that judgment is amended, and as amended, affirmed.

FACTS AND PROCEDURAL HISTORY

Christian Vaccari and Joan Vaccari were married on April 8, 1989. Four children were born of the marriage, all of whom were minors at the time the petition for divorce was filed. Mr. Vaccari filed a petition for divorce on January 16, 2004. Mrs. Vaccari filed an answer and reconventional demand on March 5, 2004, asking for interim spousal support, child support, and use of the former matrimonial domicile. The Vaccaris were divorced on April 21, 2004. Thereafter, Mr. Vaccari sought rental reimbursement for Mrs. Vaccari's use of the former family home pending partition of the community.

The hearing officer made a recommendation that Mr. Vaccari pay Mrs. Vaccari child support in the amount of $7,000.00 per month. This amount was based on the parties' income and expenses and an extrapolation of the child support guidelines because the income was in excess of the guidelines. The hearing officer also recommended that Mr. Vaccari provide medical and dental insurance for the children, as well as pay 100% of insurance deductibles and necessary medical expenses not covered by insurance, tuition, tutoring, uniforms, activity fees, after school expenses, and mutually agreed-upon summer camps. The hearing officer recommended Mr. Vaccari pay Mrs. Vaccari spousal support in the amount of $3,000.00 per month. She also recommended that Mr. Vaccari pay the homeowner's insurance, flood insurance, real estate taxes, and maintenance

expenses on the former community home which would be occupied by Mrs. Vaccari and the children.

A November 8, 2004[1] consent judgment provided that the parties would list the former community home for sale, Mrs. Vaccari would continue to occupy the home pending its sale, and Mr. Vaccari would not be entitled to rental reimbursement for that use. The parties further agreed that Mr. Vaccari would continue to pay the following expenses on the former community domicile directly to the parties owed: the mortgage note, agreed-upon maintenance, the outdoor man who maintains the exterior of the premises, property taxes, homeowners' insurance, and flood insurance. Mrs. Vaccari would reimburse Mr. Vaccari for these payments at the time of the partition of the community.

In a May 5, 2005 judgment, the court ordered Mr. Vaccari to pay child support of $7,000.00 per month retroactive to the date of the hearing officer's recommendation, "without any prejudice whatsoever to the rights of the parties, concerning the ultimate amount of child support."

After a hearing on the issue of child support, the court appointed Greg Verges, CPA, CVA, as an expert in forensic accounting to assist it in determining the income of the parties and the needs of the children for purposes of calculating the appropriate amount of child support. Mr. Verges issued his first report on January 26, 2007, after which the court granted Mr. and Mrs. Vaccari the opportunity to provide additional information for Mr. Verges's consideration.

On April 30, 2007, Mrs. Vaccari filed a petition seeking to annul the November 8, 2004 consent judgment, alleging that her consent to the

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[1] This judgment was later referred to by the court in its reasons for judgment as the "October 2004 judgment."

judgment was induced by fraud and ill practice, as Mr. Vaccari made "gross misrepresentations concerning his income." Mrs. Vaccari alleged that she only agreed to list the former community domicile for sale based upon Mr. Vaccari's misrepresentation that he had insufficient income to support the current expenses of the home and current lifestyle of his family. Mrs. Vaccari alleged that once Mr. Vaccari was ordered by the court to produce proof of his income for 2004 and subsequent years to Mr. Verges, she realized that his income was "exponentially greater than he revealed to the Court, the hearing officer, or Mrs. Vaccari."

Mr. Verges issued a revised report on June 25, 2007. After the revised report was issued, the court allowed both parties the opportunity to depose Mr. Verges regarding his report prior to trial. After the trial, Mr. Verges issued a final report to the court dated November 30, 2007.

On June 6, 2008, the court signed a consent judgment dismissing Mrs. Vaccari's petition to nullify the November 8, 2004 consent judgment with prejudice and providing that the former matrimonial domicile would be taken off the market and would instead be dealt with in the community property partition, which would be tried within one year of the date of the judgment. The consent judgment also "reaffirmed and ratified" the paragraphs of the November 8, 2004 consent judgment which provided that Mrs. Vaccari would continue to reside in the former community domicile; that Mr. Vaccari would not be entitled to rental reimbursement for her use of the former community domicile; and that Mr. Vaccari would continue to pay the mortgage, agreed-upon maintenance, the outdoor man, the property taxes, the homeowners' insurance, and the flood insurance, but that "he will be reimbursed by Joan Y. Vaccari from her one-half share of the community property at partition."

After considering Mr. Verges's report and recommendations as well as the testimony and other evidence offered by the parties in support of their positions, the court rendered another judgment on October 3, 2008, which set child support at $16,546.00 per month, retroactive to March 4, 2004. The court noted that this $16,546.00 "includes an amount for repairs, maintenance, property taxes, and insurance on the former matrimonial domicile." In addition to the monthly child support payment of $16,546.00, the court ordered Mr. Vaccari to pay a monthly vehicle allowance of $500.00 per month retroactive to the date of filing until the partition of the community or replacement of the vehicle, whichever comes first, and $800.00 per month thereafter. The court also ordered Mr. Vaccari to pay Mrs. Vaccari a monthly housing allowance of $4,000.00 upon partition of the community or sale of the former matrimonial domicile, whichever comes first.

Mr. Vaccari filed a motion for new trial, which was denied by the court in a June 30, 2009 judgment. This appeal followed, in which Mr. Vaccari raises the following assignments of error:

1. The trial court erred in making the final child support award retroactive where there was an interim child support award in effect.
2. The trial court erred in not using Worksheet B of the child support guidelines to determine child support where the parties shared joint custody.
3. The trial court erred in substantially altering two final judgments.
4. The trial court erred in awarding Mrs. Vaccari an additional amount for a vehicle allowance when an amount for vehicle replacement was included in the child support payment.

5. The trial court erred in failing to impute some income to Mrs. Vaccari for child support purposes.
6. The trial court erred in including the entire estimated housing costs for the house in which Mrs. Vaccari lives in the child support award.
7. The trial court erred in ordering Mr. Vaccari to pay a speculative housing allowance for Mrs. Vaccari.
8. The trial court erred in awarding an *in globo* child support award.
9. The trial court erred in ordering Mr. Vaccari to pay 100% of the children's "major activities."

DISCUSSION

As a preliminary matter, we note that the standard of review in a child support case is manifest error. Generally, an appellate court will not disturb a child support order unless there is an abuse of discretion or manifest error. *State, Department of Social Services ex rel. D.F. v. L.T.*, 05-1965, p. 6 (La. 7/6/06), 934 So.2d 687, 690.

Retroactivity of Child Support Award

In his first assignment of error, Mr. Vaccari argues that the trial court erred in making the final child support award in the October 3, 2008 judgment retroactive to March 4, 2004, the date Mrs. Vaccari first filed her request for child support, where the May 5, 2005 interim child support award was in effect when the October 3, 2008 judgment was signed.

Louisiana Revised Statutes 9:315.21 addresses retroactivity of child support judgments, providing in pertinent part:

> A. Except for good cause shown, a judgment awarding, modifying, or revoking an interim child support allowance shall be retroactive to the date of judicial demand, but in no case prior to the date of judicial demand.

> B. (1) A judgment that initially awards or denies final child support is effective as of the date the judgment is signed and terminates an interim child support allowance as of that date.
>
> (2) If an interim child support allowance award is not in effect on the date of the judgment awarding final child support, the judgment shall be retroactive to the date of judicial demand, except for good cause shown, but in no case prior to the date of judicial demand.
>
> C. Except for good cause shown, a judgment modifying or revoking a final child support judgment shall be retroactive to the date of judicial demand, but in no case prior to the date of judicial demand.

In *Moran v. Moran*, 02-1562 (La.App. 1 Cir. 06/27/03); 858 So.2d 581, *writ denied*, 03-2124 (La. 11/7/03); 857 So.2d 502, this court held that under the clear meaning of La. R.S. 9:315.21, where there is an interim child support award in effect, a trial court's award of final child support is effective only from the date the judgment was signed, and thus the trial court's determination that the final child support award was retroactive to the date of filing of the petition for divorce was erroneous. Mr. Vaccari argues on appeal that under this court's holding in *Moran v. Moran*, the lower court was without authority to make the final child support award retroactive.

Mrs. Vaccari alleges that the language included in the May 5, 2005 judgment awarding interim child support, stating that the award was made without prejudice to the rights of the parties concerning the ultimate amount of child support, was intended to allow for the final child support award to be retroactive. She further alleges that the interim child support award was calculated based upon Mr. Vaccari's gross underreporting of his income in an affidavit provided to the hearing officer. In support of her assertion that the trial court always intended to make its final child support award retroactive, she points to the fact that after it was determined that Mr.

Vaccari's income was much higher than he previously reported, the trial court denied Mrs. Vaccari's request in 2007 to modify the interim child support award, stating that "the Court has ordered that any final judgment of support shall be retroactive to the original date of filing." Mrs. Vaccari argues that nothing in La. R.S. 9:315.21 would prevent the court from making a final award of child support retroactive for good cause shown, despite the existence of an interim award, and that Mr. Vaccari's gross underreporting of his income constitutes such good cause.

As this court previously held in *Moran*, La. R.S. 9:315.21 clearly states that a trial court's award of final child support is effective only from the date the judgment is signed where an interim child support award is in effect at the time final support is awarded. Thus, the trial court erred in making the final child support award retroactive to the date of filing. Therefore, the October 3, 2008 judgment is amended to remove the provision making the award retroactive to the date of filing.

Application of Worksheet B of the Child Support Guidelines

In his second assignment of error, Mr. Vaccari alleges that the trial court erred in failing to use Child Support Guidelines Worksheet B, or a substantially similar form adopted by local court rule, to determine child support where the parties have shared custody.

The Vaccaris stipulated at the trial of this matter that the parties "enjoyed physical custody of these children equal 50/50." Louisiana Revised Statutes 9:315.9 provides that in situations involving shared custody, *i.e.*, where each parent has physical custody of the child for an approximately equal amount of time, child support shall be calculated as follows:

> A. (2) If the joint custody order provides for shared custody, the basic child support obligation shall first be multiplied by one and one-half and then divided between the parents in proportion to their respective adjusted gross incomes.
>
> (3) Each parent's theoretical child support obligation shall then be cross multiplied by the actual percentage of time the child spends with the other party to determine the basic child support obligation based on the amount of time spent with the other party.
>
> (4) Each parent's proportionate share of work-related net child care costs and extraordinary adjustments to the schedule shall be added to the amount calculated under Paragraph (3) of this Subsection.
>
> (5) Each parent's proportionate share of any direct payments ordered to be made on behalf of the child for net child care costs, the cost of health insurance premiums, extraordinary medical expenses, or other extraordinary expenses shall be deducted from the amount calculated under Paragraph (3) of this Subsection.
>
> (6) The court shall order each parent to pay his proportionate share of all reasonable and necessary uninsured medical expenses under the provisions of R.S. 9:315(C)(7) which are under two hundred fifty dollars.
>
> (7) The parent owing the greater amount of child support shall owe to the other parent the difference between the two amounts as a child support obligation. The amount owed shall not be higher than the amount which that parent would have owed if he or she were a domiciliary parent.
>
> B. Worksheet B reproduced in R.S. 9:315.20, or a substantially similar form adopted by local court rule, shall be used to determine child support in accordance with this Subsection.

The child support guidelines set forth in La. R.S. 9:315-315.48 are to be used in any proceeding to establish or modify child support filed on or after October 1, 1989. La. R.S. 9:315.1(A). However, the court may deviate from these guidelines if their application would not be in the best interest of the child or would be inequitable to the parties. La. R.S. 9:315.1(B)(1).

The trial court addressed its decision not to use Worksheet B in its August 29, 2008 Reasons for Judgment:

> The Court declines to apply the reductions requested by Mr. Vaccari based on the unique facts of this case. As directed by statute, where deviations from the guidelines are warranted, the Court must use its discretion based on the best interests of

> the children and the circumstances of each parent. Given the great disparity in the income of the parties, the former lifestyle sought to be maintained for the children, and the current lifestyle of the parents, the Court concludes that it is not in the best interest of the children to reduce the child support . . . because of the shared custody arrangement. [This reduction] would result in the children enjoying a lesser lifestyle when they are with Mrs. Vaccari than when they are with Mr. Vaccari.

While the use of "shall" in La. R.S. 9:315.9 does make it seem that the use of worksheet B is mandatory in shared custody cases, the court may deviate from the child support guidelines, of which La. R.S. 9:315.9 is a part, when their application is not in the best interests of the children or not equitable to the parties. The trial court did not abuse its discretion in determining that the use of worksheet B was not in the children's best interests. This assignment of error is without merit.

Conflict with Prior Consent Judgments

In his third assignment of error, Mr. Vaccari asserts that the portion of the October 3, 2008 judgment which includes in the child support award "an amount for repairs, maintenance, property taxes, and insurance on the former matrimonial domicile" is absolutely null because it alters the substance of two prior final judgments, *i.e.*, the November 8, 2004 and June 6, 2008 consent judgments. Those two prior judgments provided that Mrs. Vaccari would continue to reside in the former matrimonial domicile; that Mr. Vaccari would not be entitled to rental reimbursement for her use of the former matrimonial domicile; and that Mr. Vaccari would continue to pay the mortgage, agreed-upon maintenance, the outdoor man, the property taxes, the homeowners' insurance, and the flood insurance, but that he will be reimbursed by Joan Y. Vaccari upon partition of the community.

The court stated in its written reasons for judgment that when it awarded child support, it considered whether or not to include maintenance,

property taxes, and insurance, which were addressed in the November 8, 2004 consent judgment,[2] in the expenses of the children. The court concluded that the November 8, 2004 consent judgment dealt only with community property matters and not with child support, and that nothing in the consent judgment precluded the court from considering and ruling upon the same expenses in the context of child support. Although those expenses were being paid by Mr. Vaccari directly to the parties owed pursuant to the consent judgments, they will be reimbursed to Mr. Vaccari at the time of the partition.

We agree with the trial court that the prior consent judgments addressed community property matters and not child support. The first consent judgment resolved pending rules for use and occupancy of the former matrimonial domicile, rental reimbursement, and an advance of community funds. At the time of the second consent judgment, Mrs. Vaccari had filed a petition to nullify the first consent judgment, alleging that Mr. Vaccari had misrepresented his income.

Since Mr. Vaccari will be reimbursed by Mrs. Vaccari at the partition for his prior payment of these expenses, we see nothing in the prior consent judgments which would preclude the trial court from including them in the child support obligation. To do otherwise would deprive the children of the same standard of living when they are with Mrs. Vaccari that they enjoy when living with Mr. Vaccari. This assignment of error is without merit.

Vehicle Allowance

In his fourth assignment of error, Mr. Vaccari argues that the trial court erred in ordering him to pay a separate amount for a vehicle allowance,

[2] The court did not mention the June 2008 consent judgment in its reasons; however, the June 2008 judgment merely ratified the parties' agreement contained in the earlier judgment.

in addition to the $16,546.00 child support payment, when the vehicle allowance was already included in the $16,546.00. We agree.

The October 3, 2008 trial court judgment which ordered Mr. Vaccari to pay $16,546.00 a month in child support states that the amount "is the amount recommended by Mr. Verges in his final report of November 30, 2007." In his report, Mr. Verges recommended that a "vehicle allowance of $400 per month *be included in the child support obligation* retroactively and $800 per month upon replacement of the vehicle or partition of the community." (Emphasis added). Mr. Verges's calculation of the children's "lifestyle" for child support purposes of $195,550 per year ($16,296.00 per month)[3] included $9,600.00 per year ($800.00 per month) for vehicle replacement cost. However, in addition to awarding the amount of child support recommended by Mr. Verges, which included the vehicle allowance, the trial court judgment ordered Mr. Vaccari to pay to Mrs. Vaccari "$500.00 per month retroactive to the date of filing until the partition of the community property or replacement of the former community vehicle; and $800.00 per month upon partition of the community property or replacement of the vehicle, whichever comes first." It is clear from a review of the record that the court did not intend to award this amount for vehicle replacement cost twice. As such, the October 3, 2008 judgment is amended to delete paragraph 2, which ordered Mr. Vaccari to pay a monthly vehicle allowance in addition to the $16,546.00 monthly child support obligation.

Mrs. Vaccari's Income

Mr. Vaccari's fifth assignment of error is that the trial court erred in failing to impute any income to Mrs. Vaccari for child support purposes and

[3] The court increased this amount by $250.00 for "Clothing and Grooming" expenses at Mrs. Vaccari's request, resulting in the total of $16,546.00.

ordering Mr. Vaccari to pay 100% of the child support obligation. Mr. Vaccari argues that the law is clear that each parent owes his or her percentage of child support in accordance with his or her proportion of the resources, and the trial court lacked discretion to order him to pay 100% of the child support obligation.

In awarding child support in this case, the trial court accepted the recommendations of Mr. Verges as to the income of the parties, the net worth of the parties, and the lifestyle expenses of the children when they are with Mrs. Vaccari. Mr. Verges noted that Mrs. Vaccari had a Bachelor's degree in marketing from Auburn University and estimated that she had an income potential of at least $25,000.00 per year. Mrs. Vaccari also had invested funds resulting from the partition of some community stock; however, Mr. Verges stated that she may owe some of these funds to either Mr. Vaccari due to a reimbursement claim or to the bank for her portion of the funds used to purchase the stock. Mr. Verges calculated the children's lifestyle expenses to be $195,550.00 per year. Mr. Verges concluded that considering the actual income from Mrs. Vaccari's investment portfolio and her personal earnings capacity, "it is clear that Ms. Vaccari can barely provide for her own personal needs, much less those of the children or the common expenses (utilities, transportation, etc.)."

The child support guidelines provide for imputing income for child support purposes to a spouse who is voluntarily unemployed and not mentally or physically incapacitated or caring for a child of the parties under the age of five, according to that party's income earning potential. La. R.S. 9:315.11(A). However, the court may deviate from the guidelines where their application is not in the best interests of the children or is inequitable to the parties. La. R.S. 9:315.1(C)(8). In light of the gross disparity in the

parties' income, we cannot say that the trial court abused its discretion in refusing to impute any income to Mrs. Vaccari or assessing 100% of the child support obligation to Mr. Vaccari. This assignment of error is without merit.

Reduction of Housing Expenses for Mrs. Vaccari's Enjoyment

Mr. Vaccari's sixth assignment of error concerns the trial court's inclusion in the child support award of the entirety of the expenses for the house occupied by Mrs. Vaccari and the children when they are with her, without any reduction for her enjoyment, where some of the expenses are irrefutably attributable to her. He asks that the portion of the child support award for the following expenses be reduced by 20% as her share: pest control, pool service, alarm monitoring, maid/cleaning, association dues, other maintenance, repairs and improvements, transportation costs, and utilities.

Final child support is to be determined based on the needs of the child, as well as the ability of the parents to provide support. LSA-C.C. art. 141. The trial court's discretion in determining final child support includes consideration of a child's standard of living, as well as the child's needs. *Harang v. Ponder*, 09-2182 p. 24, FN 6 (La.App. 1 Cir. 03/26/10), ____ So.3d ____, *writ denied*, 10-0926 (La. 5/19/10), 36 So.3d 219. Children are entitled to the same standard of living that they would enjoy if they lived with their father if their father's financial circumstances are sufficient to permit this. When setting the amount of child support to be paid by a parent, the court should strive to maintain the lifestyle of the child, when possible, while considering the child's reasonably proven expenses and the parent's ability to provide. *Id.*

Mr. Vaccari argues that Mrs. Vaccari was not awarded spousal support, and he should not be made to pay child support to support Mrs. Vaccari. However, it is inevitable in a case with a great disparity in income between the parties that the parent receiving the child support payment to maintain the children's lifestyle will derive some benefit therefrom. The court in this case concluded that Mrs. Vaccari was unable to provide for the children's needs or their common expenses. While as trier of fact we might have apportioned some amount of the total child support obligation to Mrs. Vaccari, we cannot say that the trial court abused its discretion in finding as it did. Thus, we find no merit in this assignment of error.

Speculative Housing Allowance

In his seventh assignment of error, Mr. Vaccari argues that the trial court erred in awarding, as part of the child support award, a speculative housing allowance of $4,000.00 per month upon partition of the community or sale of the former matrimonial domicile, whichever occurs first.

In calculating child support, the court considers the parties' current income and expenses; anticipated changes to income or expenses "are matters that address themselves to future deliberation and review." *Graves v. Graves*, 197 So.2d 206, 208 (La.App. 1 Cir. 1967). A child support award may be modified if the circumstances of the child or of either parent materially change. La. C.C. art. 142. Although this court in *Hunsicker v. Hunsicker*, 385 So.2d 347 (La.App. 1 Cir. 1980), upheld the inclusion in a child support award of a future expense where the incurring of the expense was "imminent" and not "remote and speculative," that is not the case here. In *Hunsicker*, the mother of the children was moving to another state in the "immediate future," the house that she was to rent had been selected, and the moving expenses had been ascertained. *Id.* at 348. In the instant case, Mr.

Verges noted that no housing allowance was presently necessary because Mrs. Vaccari and the children are living in the former matrimonial domicile rent-free; however, he recommended that upon the settlement of the community or Mrs. Vaccari and the children moving to a new residence, the child support obligation include a $4,000.00 per month housing allowance "to pay for one-half of the cost of a new home with a value in the range of the current home or Mr. Vaccari's residence." The court accepted Mr. Verges's recommendation and ordered Mr. Vaccari to add the $4,000.00 housing allowance to his child support obligation upon partition of the community or sale of the former matrimonial domicile, whichever occurs first. The inclusion of this speculative housing allowance was an abuse of discretion by the court. Mrs. Vaccari could choose to move to a home with a value nowhere near the value of the former matrimonial domicile, or she could receive the former matrimonial domicile in the partition. There is no indication in the record that her need for the housing allowance is "imminent," as required by this court in *Hunsicker*. Upon the partition of the community or sale of the home, Mrs. Vaccari can request a housing allowance by way of a rule to modify the child support award based upon a material change in circumstances. Therefore, the October 3, 2008 judgment is amended to remove paragraph 3 and the $4,000.00 housing allowance from Mr. Vaccari's child support obligation.

In Globo Child Support Award

Mr. Vaccari's eighth assignment of error alleges that the trial court erred in awarding an *in globo* child support award as opposed to a per child award, since their oldest child is now out of high school and almost twenty years old.

Mr. Vaccari cites no authority for this assignment of error; he simply states that under the circumstances, *i.e.*, his oldest child being so close to the age of majority and going to boarding school at the time the judgment awarding child support was rendered, a per-child rather than *in globo* award would have been appropriate. The child support guidelines provide for *in globo* child support awards in most circumstances, as explained by this court in *Walden v. Walden*, 00-2911 p. 13 (La.App. 1 Cir. 8/14/02); 835 So.2d 513, 523:

> [C]hild support awards in Louisiana are "in globo" awards. Two basic theories underlying the design of the schedule of basic child support obligations are that certain household expenses considered in the cost of a child's support cannot simply be divided by the number of children in the home and thus equitably stated and that a smaller percentage of total income is spent on each child as a result of the economies of scale as the number of children in a family increases. (Citations omitted).

We find no error in the trial court's *in globo* child support award. This assignment of error has no merit.

Children's "Major Activities"

Mr. Vaccari next urges that the trial court erred in ordering him to pay for 100% of the children's "major activities," in addition to the child support award, which already includes certain activities for the children. He argues that the provision in paragraph 4 of the judgment that orders him to pay for 100% of major activities for the children is "more double-dipping, and is impermissibly vague."

Mr. Vaccari again cites no authority for his position and makes no argument other than that this provision of the judgment is vague and constitutes "double-dipping." Although the child support award does include an amount for the children's activities based upon the cost of their activities in prior years, paragraph 4 is not duplicative; it simply orders Mr.

Vaccari to pay for any major activities which were not included in the $16,546.00 child support award. We find no abuse of discretion in this award. We agree that the description is rather vague, but decline to remand for the court to be more specific as the parties already have a remedy and can file a rule if an issue arises as to reimbursement for major activities. This assignment of error is without merit.

CONCLUSION

The October 3, 2008 judgment, as amended herein to remove the provisions regarding retroactivity, the additional vehicle allowance, and the housing allowance, is affirmed. Costs of this appeal are to be borne by appellant, Christian Vaccari.

AMENDED, AND AS AMENDED, AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1945

CHRISTIAN VACCARI

VERSUS

JOAN Y. VACCARI

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McCLENDON, J., agrees in part, concurs in part, and dissents in part.

While I am concerned that the trial court denied Mrs. Vaccari's 2007 request for modification of the interim support award because the trial court intended to apply any subsequent child support award retroactively to Mrs. Vaccari's March 5, 2004 answer, the issue of the 2007 request is not before us on appeal. Moreover, we are constricted by the plain language of LSA-R.S. 9:315.21(B)(1) as previously interpreted by this court in **Moran v. Moran**, 02-1562 (La.App. 1 Cir. 6/27/03), 858 So.2d 518, writ denied, 03-2124 (La. 11/7/03), 857 So.2d 502. Thus, I concur with the majority on this issue.

Further, although I may have applied the guidelines under LSA-R.S. 9:315.9(A) regarding shared custody in determining the child support award, I concur with the majority opinion given the discretion granted the trial court pursuant to LSA-R.S. 9:315.1(B)(1).

I also concur with the majority opinion insofar as it finds that the trial court did not abuse its discretion in declining to reduce the housing expenses for Mrs. Vaccari's enjoyment of the former community home.

I dissent to the extent that I would have considered Mrs. Vaccari's income earning potential in determining the child support award as required by LSA-R.S. 9:315.11(A), despite the disparity between Mr. Vaccari's income and the earning potential of Mrs. Vaccari.

I agree with the remainder of the opinion.