

**Summary of SC90996, *In re the Marriage of Tanya L. Lindhorst and Eric J. Lindhorst*;  
*Tanya L. Lindhorst, n/k/a Tanya L. Templeton v. Eric J. Lindhorst***

Appeal from the St. Louis County circuit court, Judge Robert S. Cohen

Argued and submitted January 12, 2011; opinion issued June 14, 2011, and modified August 30, 2011

**Attorneys:** The mother was represented by Craig J. Hoefer, a solo practitioner from Wildwood, (636) 345-7100; and the father was represented by Margaret A. Smith, Eric J. Lindhorst and Larry A. Reed of the Lindhorst Law Firm LLC in St. Louis, (314) 241-5553.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A mother receiving Social Security disability benefits appeals the trial court's modification of a father's monthly maintenance and child support obligations. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the trial court's judgment in part, reverses it in part and remands (sends back) the case. The trial court erred in considering both income imputed to the mother and continued disability benefits as a basis for reducing the father's maintenance obligation as well as in declining to make the father's new child support obligation retroactive to when the mother was served with the father's motion to modify the dissolution decree. The remainder of the judgment is affirmed.

**Facts:** When a mother and father of two children dissolved their marriage in 1998, the mother was employed as a registered nurse earning \$1,387 per month, and the father was employed as an attorney earning \$5,500 per month. The dissolution decree ordered the husband to pay \$1,100 per month in child support and \$1,000 per month in maintenance. In 2003, the Social Security Administration determined that the mother was eligible for disability benefits due to rheumatoid arthritis, anemia and hypothyroidism. Five years later, the father filed a motion to modify the decree to reduce his child support obligations and to eliminate his maintenance obligation. As of the date of the trial on this motion, the mother was receiving monthly disability benefits of \$1,215.60 for herself and \$668 for her children, and the father was earning \$125,000 per year in his law practice. The mother's treating physician testified that the mother's arthritis left her unable to work, while the father's expert medical witness testified that his observations of the mother on surveillance videos led him to conclude that the mother was not disabled and could return to work. A vocational rehabilitation expert also testified, on the father's behalf, that the mother could earn a full-time annual salary of up to \$52,000 based on a sedentary level of activity. The trial court concluded the mother was not totally disabled, was able to perform part-time sedentary work, and could earn \$20 per hour for 20 hours per week for 48 weeks out of the year for an average income of \$1,600 per month. The trial court recognized this imputed income as income in addition to the mother's Social Security disability benefits. The trial court reduced the father's monthly maintenance obligation to \$500, increased his monthly child support obligation to \$1,273 and ordered him to pay 85 percent of the children's post-secondary education costs. It did not make its modified child support award retroactive to the date when the mother was served with the father's motion to modify. The mother appeals.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Court en banc holds:** (1) The trial court erred in reducing the father's monthly maintenance obligation. In reducing the maintenance obligation, the trial court imputed to the mother the ability to work more than 80 hours per month and earn more than \$530 per month. That level of work and income, however, would constitute "substantial gainful activity" disqualifying the mother from continuing to receive Social Security disability benefits. As such, the trial court erred in considering both the imputed income and the disability benefits as a basis for reducing the father's maintenance obligation.

(2) Because the trial court erred in relying on an assumption – in determining child support – that the mother's financial situation included both the \$1,600 in imputed monthly income and her continued receipt of Social Security disability benefits, the court's decision not to make the child support award retroactive to the date the mother was served with the father's motion also must be reversed. The rest of the judgment is affirmed.