



{¶ 4} The court recognizes at the outset that it has broad discretion in determining whether a class action may be maintained. *Marks v. C.P. Chem. Co., Inc.* (1987), 31 Ohio St.3d 200. However, the court's discretion is "bounded by and must be exercised within the framework of Civ.R. 23." *Hamilton v. Ohio Savings Bank*, 82 Ohio St.3d 67,70, 1998-Ohio-365. Thus, this court must "carefully apply the class action requirements and conduct a rigorous analysis into whether the prerequisites of Civ.R. 23 have been satisfied." *Id.* Citing *Gen. Tel. Co. of the Southwest v. Falcon* (1982), 457 U.S. 147, 160-161; *Gulf Oil Co. v. Bernard* (1981), 452 U.S. 89, 100, 101; *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (C.A.5, 1996); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (C.A.6, 1996).

{¶ 5} Plaintiffs bear the burden of establishing the right to a class action. *Shaver v. Standard Oil Co.* (1990), 68 Ohio App.3d 783. This court is required to make seven affirmative findings before plaintiffs' case may be certified as a class action. The first two of the findings are required by implication, the next five are specifically set forth in Civ.R. 23(A) and (B). *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91, paragraph one of the syllabus. The required findings are that: 1) an identifiable class exists and the definition of the class is unambiguous; 2) the named representatives are members of the class; 3) the class is so numerous that joinder of all members is impracticable; 4) there are questions of law or fact common to the class; 5) the claims or defenses of the representative parties are typical of the claims or defenses of the class; 6) the representative parties fairly and adequately protect the interests of the class; and 7) one of the

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activities and activities to establish and enforce orders allocating parenting rights and responsibilities and parenting time orders, the office is authorized to obtain information concerning the residential address and income of taxpayers if that information is contained in the state tax records maintained by the department. The department shall not provide any information to the office if the provision of the information is prohibited by state or federal law."

three Civ.R. 23(B) requirements must be met. See Civ.R. 23(A) and (B); Id. at 96-98.

{¶ 6} Upon consideration of the complaint, the memoranda filed by the parties and the arguments of counsel, the court finds for the following reasons that plaintiffs have not satisfied all of the implicit and explicit prerequisites required under Civ.R. 23(A), and that therefore their action is not maintainable under Civ.R. 23(B)(3).

{¶ 7} In order for the court to conduct its analysis regarding class certification it is necessary for the court to review both the allegations of the complaint and the relevant laws regarding the delivery of child support services in Ohio.

{¶ 8} R.C. 3125.03 provides, in relevant part:

{¶ 9} "The office of child support shall establish and administer a program of child support enforcement that meets the requirements of Title IV-D of the 'Social Security Act,' 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, and any rules adopted under Title IV-D. The program of child support enforcement shall include the location of absent parents, establishment of parentage, establishment and modification of child support orders and medical support orders, enforcement of support orders, collection of support obligations, and any other actions appropriate to child support enforcement. \*\*\*"

{¶ 10} Under R.C. 3125.10, the 88 counties in the state are charged with the responsibility of operating support enforcement programs. R.C. 3125.10 provides:

{¶ 11} "Each county shall have a child support enforcement agency. A government entity designated under former section 2301.35 of the Revised Code prior to October 1, 1997, or a private or government entity designated under section 307.981 [307.98.1] of

the Revised Code on or after that date may serve as a county's child support enforcement agency."

{¶ 12} Under R.C. 3125.11 the general duties of the county agencies are set forth as follows:

{¶ 13} "The child support enforcement agency for a county is the local Title IV-D agency for the county and shall operate a program for support enforcement in the county that complies with Title IV-D of the 'Social Security Act,' 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, any rules adopted pursuant to that title, and state law. Each child support enforcement agency shall be \*\*\* responsible in the county it serves for the enforcement of support orders and shall perform all administrative duties related to the enforcement of any support order."

{¶ 14} The crux of plaintiffs' complaint is that defendant has a statutory duty to ensure that each of the 88 county child support agencies and their contractees timely provide all of the services to which every qualified applicant is entitled under all existing support programs.

{¶ 15} Each of the six plaintiffs is listed below, together with a brief description of circumstances underlying their claims:

{¶ 16} Rhonda Bungard

{¶ 17} Rhonda Bungard (Bungard) alleges that defendant failed to ensure that she promptly received child support payments after she obtained legal custody of her niece, Tori Kenyon. Bungard's sister, Kimberly Kenyon and the child's mother, continued to receive and retain child support payments pursuant to the original order of a Licking County court even though she had relinquished physical custody of the child to Bungard. The alleged error is that the Franklin County Child Support Services mistakenly informed Bungard that she needed to apply for services in Licking County, the jurisdiction where the original support order was issued,

rather than Franklin County, the jurisdiction of residence. Bungard further alleges that the Licking County agency did not act on the application in a timely manner.

{¶ 18} Lora Ramsey-Labbe and Paula Labbe

{¶ 19} Lora Ramsey-Labbe and Paula Labbe each gave birth to a child during their separate marriages to Charles Labbe and each is owed child support from Mr. Labbe. Mr. Labbe is an employee of Timken Co. and his wages have been garnished to pay his support obligations. In the complaint Lora Ramsey-Labbe and Paula Labbe alleged that defendant has implemented a "state wide SETS collection and disbursement system"; that this system is seriously flawed; that they have not received child support payments in a timely manner; that support payments payable to Lora Ramsey-Labbe were paid to Paula Labbe; and that defendant is illegally withholding "administrative fees" from the support payments.

{¶ 20} Lisa Walker

{¶ 21} Lisa Walker is entitled to receive both child and spousal support payments from her former husband, William Walker, pursuant to a divorce decree entered in Jefferson County. From 1989 to 1999, Mr. Walker met his support obligations only sporadically. According to the complaint, the Jefferson County Child Support Enforcement Agency is underfunded and understaffed and, as a result, has failed to take the steps necessary to enforce the court-ordered obligation. Walker alleges that she is owed more than \$65,000 in back support.

{¶ 22} Celeste Spradlin

{¶ 23} Celeste Spradlin is entitled to child support from Charles Willis for each of her two sons. Although the Fayette County Child Support Enforcement Agency has filed three motions for contempt against Mr. Willis, Ms. Spradlin alleges that the agency has repeatedly refused to employ other legal methods to enforce the

obligation, such as suspending Willis' mortgage brokers license, requesting a court-ordered cash bond, and administratively transferring a wage attachment to Willis' new employer.

{¶ 24} Vicki Krafthefer

{¶ 25} Vicki Krafthefer is entitled to receive child support from her former husband, Gary Krafthefer, Sr., pursuant to a divorce decree. According to the complaint, the Franklin County Child Support Enforcement Agency has failed to enforce the obligation by requiring her, without legal justification, to provide additional information regarding Mr. Krafthefer's employment; and has illegally withheld child support payments to offset public assistance payments she allegedly received.

{¶ 26} With respect to the seven required findings, defendant first contends that plaintiffs have failed to establish the existence of an identifiable class. The court agrees.

{¶ 27} For a class to be maintainable, the court must first find that it exists, and in order to satisfy the requirement of an identifiable and unambiguous class, the proposed class must be "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." *Hamilton, supra*, at 71-72, citing 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* (2 Ed. 1986) 120-121, Section 1760. The method for determining the particular individuals who are members of the class must be precise enough "to permit identification within a reasonable effort." *Id.*

{¶ 28} Plaintiffs estimate the number of cases for review to be approximately 750,000. While the identity of these 750,000 or more individuals is ascertainable from the records of each of the 88 county agencies, the inquiry regarding class membership is considerably more complicated. Here, identifying plaintiffs' proposed class would require the parties and the court to delve

into the facts and circumstances surrounding each individual claim and to apply all relevant rules regarding all existing child support programs to those facts and circumstances. This means that in order to determine whether a particular individual is a member of the class, an extensive examination of the merits of the legal claims of each potential member must be undertaken.

{¶ 29} Based upon the foregoing, the court finds that the proposed class, as defined by plaintiffs, is so indefinite that it is not administratively feasible for the court to determine whether a particular individual is a member. Additionally, the method required to identify members requires an effort on the part of the court that under the circumstances is clearly unreasonable. Thus, plaintiffs have not established the existence of an identifiable class.

{¶ 30} Moving to the second and third prong of the seven-part test, and assuming for purposes of argument that the proposed class is identifiable, there is no question that the named representatives would be members of the class and that the class would be so numerous that joinder of all members is impracticable.

{¶ 31} The court must next examine the commonality requirement of Civ.R. 23(A)(2). In order to make this finding, the court must determine whether there exists a "common nucleus of operative facts" or "generally common legal and factual questions." *Hamilton, supra*, at 77.

{¶ 32} Based upon the allegations made by the individual plaintiffs in this case, it is clear that the operative facts are not common to all class members and that the legal and factual issues vary from member to member. Nevertheless, in ruling on a motion for class certification, the existence of a common legal issue is sufficient to satisfy the commonality element. *Warner, supra*, at 97. In this regard, the following common legal issues

exist: 1) whether defendant owes a legally enforceable duty to all individuals entitled to child support services; 2) whether a breach of that duty is enforceable by an action for damages.

{¶ 33} The next required finding concerns the typicality requirement set forth under Civ.R. 23(A)(3). In order to satisfy this requirement, it is not necessary that the representatives' claims be identical to those of every single class member; it is sufficient to show that there is "no express conflict between the class representatives and the class." *Hamilton, supra*, at 77. Indeed, "a unique defense will not destroy typicality \*\*\* unless it is 'so central to the litigation that it threatens to preoccupy the class representative to the detriment of the other class members.'" *Id.* at 78 quoting 5 Moore's Federal Practice (3 Ed.1997) 23-126, Section 23.25[4][b][iv], and 23-98, Section 23.24[6].

{¶ 34} As demonstrated above, the claims of the potential class members in this case are far from identical. However, the court notes that the broad class definition encompassing "all individuals \*\*\* entitled to child support *services* \*\*\*" (emphasis added) arguably includes those individuals who pay child support as well as those who may be entitled to receive those payments. Thus, the potential for conflicting claims does exist.

{¶ 35} Finally, Civ. R. 23(B)(3) provides, in pertinent part, that "[a]n action may be maintained as a class action if, \*\*\* the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already

commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action." Generally speaking, "a claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position." *Cope v. Metro. Life Ins. Co.* (1998), 82 Ohio St.3d 426, 429-430.

{¶ 36} As stated above, the issues of legal duty common to the class are very broad in scope. On the other hand, the factual and legal issues involved in determining class membership, the appropriate standard of care owed to plaintiffs and the question whether that standard of care was breached by defendant require a case-by-case analysis. The claims asserted by the named class members include allegations of: incompetence, under-staffing, under-funding, refusal to act where there is a duty to do so, complete failure of action where there is a duty to act, failure to timely act when there is a duty to act, failure to employ certain methods of enforcement when requested, poor record keeping, illegally withholding payments, and imposing illegal administrative fees. These allegations involve every aspect of child support services under Ohio and federal law.

{¶ 37} In *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 2000-Ohio-397, a class was certified in a case where a group of policyholders based their claims against an insurer for its use of standard forms and routine procedures, combined with a common omission to inform policyholders that multiple uninsured and underinsured motorist policies in the same household were a waste of money because they could not be stacked. *Id.* at 490. Similarly, in a case where defendant sold replacement life

insurance policies as new, the evidence consisted of defendant's standard forms and routine procedures that were common to the entire class. See *Cope*, supra.

{¶ 38} In those cases, unlike this one, there existed a generalized body of evidence common to the entire class that could be relied upon to prove, or to disprove, the claims of the class. Here, as is evident from the factual allegations of the named plaintiffs, there is no generalized body of evidence.

{¶ 39} In *George v. Ohio Department of Human Services* (2001), 145 Ohio App.3d 681, a case relied upon by plaintiffs, the issue common to all class members was defendant's utilization of an "income first" approach instead of a "resource first" approach in determining the Medicaid eligibility of all potential class members. In *George*, unlike this case, defendant admitted uniformly applying the income first approach in determining eligibility class-wide. While plaintiffs allege in the instant case that all potential class members were harmed as a result of defendant's class-wide customs, practices and procedures, the allegations of the complaint do not reveal any truly uniform custom, practice or procedure. Thus, the *George* case is clearly distinguishable on its facts.

{¶ 40} In short, to the extent that there are some common questions of law and fact, it is clear to the court that those common questions do not predominate. The individual factual and legal issues pertaining to each individual class member will dominate the litigation.

{¶ 41} Moreover, as noted in *Hamilton*, "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively

paltry potential recoveries into something worth someone's (usually an attorney's) labor.'" At 80 citing *Amchem Prods, Inc. v. Windsor* (1997), 521 U.S. 617, 117 S. Ct. 2231, 2246. (Additional citations omitted.)

{¶ 42} Here, unlike many class actions, the recoveries sought by each of the potential class members is both personally and financially significant. Thus, it is not likely that the potential class members will forego legal efforts either to enforce the individual support orders or pursue their claims against defendant.

{¶ 43} Indeed, it is obvious from the face of the complaint that litigation is currently pending in various forums with respect to all of the named plaintiffs. Although the pending litigation does not involve the specific claim for damages brought against defendant herein, the other pending matters brought by each potential member of the class arise from the same transaction or occurrence and involve the same child support questions that would be at issue in determining both individual class membership and liability herein. Clearly, the existence of these parallel actions weighs heavily against class certification in this case. See *Pyles v. Johnson*, 143 Ohio App.3d 720, 740, 2001-Ohio-2478.

{¶ 44} For all of the foregoing reasons, the court finds that plaintiffs have not met their burden of proof and their motion for class certification shall be denied.

**IN THE COURT OF CLAIMS OF OHIO**

RHONDA BUNGARD, etc., et al. :  
Plaintiffs : CASE NO. 2002-08521  
v. : Judge J. Warren Bettis  
OHIO DEPARTMENT OF JOB AND : JUDGMENT ENTRY

FAMILY SERVICES

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Defendant

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This matter came before the court for oral hearing on plaintiffs' motion for class certification. For the reasons set forth in the decision filed concurrently herewith, plaintiffs' motion for class certification is DENIED.

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J. WARREN BETTIS  
Judge

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