**CHILD SUPPORT CALCULATIONS MAY NOT INCLUDE NEW SPOUSE**

**BY: WILLIAM G. MORRIS, ESQ.**

Believe it or not, husband and wife in a divorce case argue about money and kids. Who gets what drives most of the arguments as each spouse makes claims for “what is fair.” When it comes to the issue of children, the parties argue about who the children should live with and the parallel issue of child support.

The Florida Bar recognized the need to bring some order to this area. It would be next to impossible to establish a “one size fits all” schedule for children to live with each parent, but not so difficult when dealing with money alone. The Bar worked with the legislature to establish guidelines for child support.

The concept driving adoption of a child support statute was that people who have more income spend more on their children and with some thought “experts” could establish an amount of support based on net income of the parents. The result is Section 61.30 Florida Statutes.

Section 61.30 Florida Statutes establishes child support guidelines based on the combined net incomes of the parents. The statute includes a list of types of income to include in the calculation, acceptable deductions and even mandates income be imputed to an unemployed or underemployed parent. Each parent’s share of the child support obligation is based on the parent’s percentage of the combined incomes, adjusted by the number of nights a child is with each parent and further adjusted for expenses paid directly by a parent (i.e., health insurance).

The statute allows a judge to vary from the guidelines by up to five percent without explanation. An award of child support that varies from the guideline more than five percent may be awarded only if the judge includes a written explanation why ordering the guidelines amount would be unjust or inappropriate.

The guidelines help, but do not end the frequent fights over child support. In some cases, they are the reason parents fight even harder over the schedule for time of each parent with the children. Since child support is increased or decreased in part by the overnights of children with each parent, a parent facing child support may argue for more time with the children to reduce what he or she has to pay the other parent. Sadly, best interest of the children often gets lost in that argument.

Imputed income can be a fertile field for fighting about child support. It reduces need of a parent for support and it can also increase the ability of one parent to pay. That is particularly true after divorce, as the amount of child support can be increased or decreased based on changed circumstances. Changes justifying adjusted child support include increase in income of a paying former spouse and decrease in income of a recipient.

Statutes related to alimony provide that alimony may be reduced if the recipient’s need is reduced because since divorce, there is a supporting relationship between the recipient and someone with whom the recipient resides. There is no comparable provision in Florida Statutes regarding child support and the appellate courts have refused to create one by case law.

A good example is the recent case of *Sunderwirth v. Sunderwirth*. In that case, Mr. Sunderwirth apparently got a pay raise, was able to move back to Florida and was asking the judge to grant him more time with the children. Ms. Sunderwirth filed a claim for increased child support based on Mr. Sunderwirth’ s increased income and her disability related decrease in income.

The trial judge heard testimony which showed Ms. Sunderwirth had a disability that reduced her income to zero and that she had monthly expenses of $3,368.69. Mr. Sunderwirth was paying $1,524.50 per month in child support so the judge figured Ms. Sunderwirth must have income somewhere. He concluded it was the in-kind contribution of her fiancé that must be the source and denied the request for more child support.

Ms. Sunderwirth filed an appeal and was happy with the result. The appellate court explained in-kind contributions to pay bills and the like by a new spouse were not to be considered in determining child support. That logic applied equally to a fiancé or even someone in a supporting relationship. The appellate court ruled the trial judge was wrong and sent the case back for further proceedings to address the child support issue.

Unlike alimony based on need of a recipient and ability to pay of another, child support is the right of a child. Remarriage or a supporting relationship of one or both parents is irrelevant. That certainly may upset a parent paying child support, as they watch their former spouse enjoy the benefits of a new marriage. But, it will not give the paying spouse any relief in court if he or she wants to reduce child support payments. Conversely, it will not support an increase.

Refusal to apply the concept of contributions in-kind or a supporting relationship reduces the fields for battle in child support consistent with the legislature’s intent. But, it leaves open possible battle over changed circumstances that might otherwise support child support adjustment.

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