

Interpretation of the Illinois Child Support Guidelines. Determining the net income of the non-custodial spouse is rarely an easy task. Unsettled issues such as the deductability of non-reimbursable business expenses require that the custodial parent's attorney exercise greater due diligence in the discovery process.

As a family law practitioner there is almost always an issue with relation to child support. As we are all aware the court looks after minor children and even a poorly drafted and presented Child Support Petition will be granted. I have encountered clients who feel that if their spouse is able to obtain guideline support that they have in effect "lost" the case. Any experienced family law practitioner can relate stories of how their clients have told them that they simply cannot live if they have to pay the guideline child support.

Child support is governed by 750 ILCS 5/505 of the Illinois Marriage and Dissolution of Marriage Act and states in relevant part the following:

"Sec. 505. Child support; contempt; penalties.

(a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, a proceeding for child support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for child support under Section 510 of this Act, or any proceeding authorized under Section 501 or 601 of this Act, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for his support, without regard to marital misconduct. The duty of support owed to a child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child. For purposes of this Section, the term "child" shall include any child under age 18 and any child under age 19 who is still attending high school.

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Children Percent of Supporting Party's Net Income

1 20%

2 28%

3 32%

4 40%

5 45%

6 or more 50%

(2) The above guidelines shall be applied in each case unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child in light of evidence including but not limited to one or more of the following relevant factors:

(a) the financial resources and needs of the child;

(b) the financial resources and needs of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child, and his educational needs; and

(e) the financial resources and needs of the non-custodial parent.

If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines.

(3) "Net income" is defined as the total of all income from all sources, minus the following deductions:

- (a) Federal income tax (properly calculated withholding or estimated payments);
- (b) State income tax (properly calculated withholding or estimated payments);
- (c) Social Security (FICA payments);
- (d) Mandatory retirement contributions required by law or as a condition of employment;
- (e) Union dues;
- (f) Dependent and individual health/hospitalization insurance premiums;
- (g) Prior obligations of support or maintenance actually paid pursuant to a court order;
- (h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self-executing modification upon termination of such payment period. ..."

The figures under Paragraph (a) subparagraph (1) are minimum guideline support. Those are the guidelines that are applied in each case unless the Court makes a specific finding that application of the guidelines would be inappropriate. Usually the exceptional circumstances necessary to make a finding that the minimum guidelines are inadequate is when you have a child of special needs who has physical, emotional or mental problems that require a great deal of care. Downward adjustments to the guidelines usually include those exceptional circumstances where the non-custodial parent is supporting children from another marriage the non-custodial parent is subject to an order of support entered in a paternity case or the non-custodial parent has an obligation for post majority education for his other children.

The child support statute cited above also advises the formula for determining how to calculate from gross income to net income. There usually is very little dispute with relation to the deductions for Federal income tax and State income tax with the proviso that you should always take into account what would be the properly calculated withholding or estimated payments rather than just looking at the paystub. For instance, a number of non-custodial parents usually increase their amount of dependents on their W-4s so that they have more tax withheld than necessary which would lessen their obligation for child support. They also would receive a substantial tax refund based upon the fact that they overpaid their State and Federal income taxes. Utilizing either Fin Plan or obtaining prior years tax returns and comparing them to the paystubs and the W-2s will assist in properly calculating the withholding.

There are some cases that I have run across in post decree divorce litigation where the original child support was calculated deducting premiums for life insurance that was court ordered pursuant to the judgment. I have also seen deducting for long term and short term disability premiums. The theory is that these expenses would fall under subparagraph H. However, the 5th District Appellate Court has stated in *In Re the Marriage of Burris*, 263 Ill. App. 3d 495, 636 N.E. 2d 71 (1995) that deductions for life insurance premiums are not specifically mentioned in the child support statute should not be deducted when calculating the amount of net income to the non-custodial parent. Additionally, the Court has a problem determining whether any type of insurance was actually for the expenditure for repayment of debts that present reasonable and necessary expenses for the production of income. The *Burris* case is still good law and has not been distinguished nor is there a contrary opinion in any of the other Appellate Court districts in the State of Illinois.

However, there are situations where the 1st District Appellate Court has ruled that non-reimbursed business expenses are deductible under the Child Support Statute as long as they are reasonable and necessary expenses for the production of income. *Rimkus v. Rimkus*, 199 Ill. App. 3d 903, 557 N.E. 2d 638 (1990). An example of this would be a salesman who was required to travel for his employer and his travel expenses were for the most part non-reimbursed. Those non-reimbursed

business expenses would then be considered reasonable and necessary expenses for the production of income. However, it's not on every situation nor every non-reimbursed business expense that qualifies as a deduction under the Child Support Statute.

For instance, it's hard to see how meals, other than those that would constitute client entertainment would be a proper deduction. Certainly, a salesman would have to eat no matter if he was traveling his territory or if he was based at his office. Additionally, there is a conflict between the 1st District and the 4th District Appellate Courts on this issue. In the case of *Gay v. Dunlop*, 279 Ill. App. 3d 140, 644 N.E. 2d 88 (4th Dist. 1996) the 4th District Appellate Court rejected the reasoning of the 1st District Appellate Court in *Rimkus v. Rimkus*, supra. The court rejected reimbursed business expenses and stated:

"However, we conclude as inappropriate to take them into account in the initial determination of net income. The Legislature could have kept the statute in its 1979 form if it had wished to do so, but it did not. In the context of determining net income, it specifically chose to allow the deduction of business expenses for the repayment of debt."

The 4th District Appellate Court went on to state that the Legislature had to find that income for purposes of the Statute as the total of income from all sources minus the "specifically enumerated allowable deductions which had then proceeded to list". 279 Ill. App. 3d 146

It will always be necessary to examine the tax returns of the non-custodial parent in trying to ascertain child support. Non-reimbursed business expenses will most likely be listed on the non-custodial parent's income tax return. Sometimes, if the deduction for non-reimbursed business expenses are not itemized you may have to inquire further through discovery, as to what constitutes the unreimbursed business expenses and whether or not the person claiming the same has receipts for these items.

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Law Offices of Michael Meschino represent clients throughout the northwest suburbs of Chicago, Illinois, including Palatine, Arlington Heights, Wheeling, Rolling Meadows, Buffalo Grove, and Barrington. They understand that when a person needs a lawyer, the underlying legal matter is important. As such, they are committed to providing every client with the attention they need and deserve.

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