

FAMILY SUPPORT FORUM

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Cumulative Case Law Index - 2000 Supplement

The following is an index of case law reported in Vol. 11 (1999) of the *Family Support FORUM*. It supplements the January, 1994 and January, 1999 Cumulative Case Law Indices of case law reported in Vols. 1 through 5 (1989-1993), and 6 through 10 (1994-1998) respectively.

Cases cited are not necessarily the leading or controlling authority for the categories noted, but are indicative of recent decisions in the area. Issues of the *FORUM* in which the cases were summarized are indicated in brackets; "C&C" refers to "Cases & Commentary" sections.

by Thomas P. Sweeney

- Assignment of Support -

Dept. of Public Aid ex rel. Peavy vs. Peavy, 307 Ill. App. 3d 16, 716 N. E. 2d 1261 (2nd Dist., 9/7/99). [Support assigned to IDPA (prior to October, 1998) includes arrearages accrued during gaps in public assistance benefits.] [C&C 8-9/99]

- Attorney's Fees -

Sovereign Immunity:

Williams vs. Davenport, 306 Ill. App. 3d 465, 713 N. E. 2d 1224 (1st Dist., 6/30/99). [Statutes imposing fees and costs must specifically include the State to avoid Court of Claims exclusive jurisdiction over claims against State.] [C&C 8-9/99]

- Bankruptcy -

Debt vs. Maintenance:

In Re Marriage of Adamson, 308 Ill. App. 3d 759, 721 N.E. 2d 166 (2nd Dist., 11/22/99). [Debt payments intended as maintenance not discharged in bankruptcy.] [C&C 11-12/99]

- Contempt -

Continuing Jurisdiction:

In Re Marriage of Hartman, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99) [Illinois

court retains jurisdiction to enforce support despite UIFSA order.] [C&C 8-9/99]

- Enforcement -

Jurisdiction:

In Re Marriage of Hartman, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99) [Illinois court retains jurisdiction to enforce support despite UIFSA order.] [C&C 8-9/99]

- Guidelines -

Deviation:

In Re Marriage of Demattia, 302 Ill. App. 3d 390, 706 N.E. 2d 67 (4th Dist., 1/28/99) [Extensive visitation does not require deviation from guidelines.] [C&C 2-3/99]

- IDPA -

Assignment of Support:

Dept. of Public Aid ex rel. Peavy vs. Peavy, 307 Ill. App. 3d 16, 716 N. E. 2d 1261 (2nd Dist., 9/7/99) [Support assigned to IDPA (prior to October, 1998) includes arrearages accrued during gaps in public assistance benefits.] [C&C 8-9/99]

- IDPA, cont'd. -

Fee Assessment:

Williams vs. Davenport, 306 Ill. App. 3d 465, 713 N. E. 2d 1224 (1st Dist., 6/30/99) [Circuit Court lacks jurisdiction to assess guardian-ad-litem fees against IDPA.] [C&C 8-9/99]

- Income -

Deduction:

In Re Marriage of Crossland, 307 Ill. App. 3d 292, 717 N. E. 2d 549 (3rd Dist., 9/9/99) [IRS "per diem" allowance not allowable as deduction from income used to set support.] [C&C 8-9/99]

Depreciation:

In Re Marriage of Boland, 308 Ill. App. 3d 1063, 721 N.E. 2d 815 (4th Dist., 12/8/99) [Depreciation not deductible as expenditure for repayment of debt for purposes of child support calculation.] [C&C 11-12/99]

Pension Benefits:

People ex rel. Meyers vs. Kidd, 308 Ill. App. 3d 593, 720 N. E. 2d 1125 (5th Dist., 11/25/99) [Pension fund income is properly included in income for child support calculation.] [C&C 11-12/99]

- Insurance -

Enforcement:

In Re Marriage of Takata, 304 Ill. App. 3d 85, 709 N.E. 2d 715 (2nd Dist., 4/9/99) [Full cost of unpaid insurance premiums is due when insurance not provided.] [C&C 5-6/99]

- Maintenance -

"Continuing Conjugal Relationship:"

In Re Marriage of Weisbruch, 304 Ill. App. 3d 99, 710 N.E. 2d 439 (2nd Dist., 4/14/99) [Intertwined finances, not sexual relationship, creates "Continuing Conjugal Relationship: to end maintenance."] [C&C 5-6/99]

Efforts Toward Self-Sufficiency:

In Re Marriage of Koenigs knecht, 302 Ill. App. 3d 474, 707 N.E. 2d 112 (1st Dist., 12/21/98) [Extension of maintenance improper when recipient's efforts toward self-sufficiency were inadequate.] [C&C 2-3/99]

- Modification -

Agreement:

In Re Marriage of Adamson, 308 Ill. App. 3d 759, 721 N.E. 2d 166 (2nd Dist., 11/22/99) [Parties may agree to modification where court otherwise lacked jurisdiction to consider it.] [C&C 11-12/99]

IDPA Standing:

Dept. of Public Aid ex rel. Marshall vs. Ringo, 303 Ill. App. 3d 250, 706 N.E. 2d 1047 (4th Dist., 1/27/99) [IDPA has standing to seek modification of support on behalf of public aid recipients.] [C&C 2-3/99]

Retroactive:

In Re Marriage of Pettifer, 304 Ill. App. 3d 326, 709 N.E. 2d 994 (3rd Dist., 4/21/99) ["Temporary" support, pending paternity determination, is not retroactively modifiable.] [C&C 5-6/99]

Standard of Living:

In Re Marriage of Koenigs knecht, 302 Ill. App. 3d 474, 707 N.E. 2d 112 (1st Dist., 12/21/98) [Maintenance of improved standard of living constitutes change of circumstances justifying modification.] [C&C 2-3/99]

Temporary Order:

In Re Marriage of Pettifer, 304 Ill. App. 3d 326, 709 N.E. 2d 994 (3rd Dist., 4/21/99) ["Temporary" support, pending paternity determination, is not retroactively modifiable.] [C&C 5-6/99]

- Name Change -

Standing:

In Re Marriage of Charnogorsky, 302 Ill. App. 3d 649, 707 N.E. 2d 79 (1st Dist., 12/8/98) [Non-custodial parent lacks standing to seek change in child's name.] [C&C 2-3/99]

- Paternity -

Adoption:

Meza vs. Rodriguez, 305 Ill. App. 3d 777, 713 N.E. 2d 764 (2nd Dist., 6/25/99) [Father's parentage claim is moot following his surrender for adoption.] [C&C 8-9/99]

- Paternity, cont'd. -

Lost Wages:

Stockton vs. Oldenburg, 305 Ill. App. 3d 897, 713 N.E. 2d 259 (4th Dist., 7/1/99) [Wages lost for maternity leave not recoverable as expenses related to pregnancy and delivery.] [C&C 8-9/99]

Prior Adjudication:

In Re Parentage of Griesmeyer, 302 Ill. App. 3d 905, 707 N.E. 2d 72 (1st Dist., 12/18/98) [Finding of parentage in dissolution action where child was represented by guardian-ad-litem bars later paternity action on behalf of child.] [C&C 2-3/99]

- Post Majority Support -

"Slow Learner:"

In Re Marriage of Thurmond, 306 Ill. App. 3d 828, 715 N. E. 2d 814 (2nd Dist., 8/11/99) ["Slow learner" non-minor child is not "disabled" to justify extension of post-majority support.] [C&C 8-9/99]

- Sovereign Immunity -

Attorney's Fees:

Williams vs. Davenport, 306 Ill. App. 3d 465, 713 N. E. 2d 1224 (1st Dist., 6/30/99) [Statutes imposing fees and costs must specifically include the State to avoid Court of Claims exclusive jurisdiction over claims against State.] [C&C 8-9/99]

- Statute of Limitations -

URESAs:

People ex rel. Brady vs. Butler, Rule 23 order (4th Dist., No. 4-98-0409, 2/8/99) [Arrearage claim raised under URESA governed by 20-year statute of limitation.] [C&C 2-3/99]

- Support -

Children's Needs:

In Re Marriage of Takata, 304 Ill. App. 3d 85, 709 N.E. 2d 715 (2nd Dist., 4/9/99) [Support based on children's needs, rather than guidelines, is appropriate where evidence of income is unclear.] [C&C 5-6/99]

Credit:

In Re Marriage of DiFatta, 306 Ill. App. 3d 656, 714 N. E. 2d 1092 (2nd Dist., 7/29/99) [Support reduction is improper as credit for asset dissipation or support overpayment resulting from retroactive modification.] [C&C 8-9/99]

Miscalculation:

In Re Marriage of Takata, 304 Ill. App. 3d 85, 709 N.E. 2d 715 (2nd Dist., 4/9/99) [Miscalculation of support cannot be corrected by nunc pro tunc order.] [C&C 5-6/99]

Unreported Income:

In Re Marriage of Takata, 304 Ill. App. 3d 85, 709 N.E. 2d 715 (2nd Dist., 4/9/99) [Retroactive award of support is appropriate upon discovery of unreported income.] [C&C 5-6/99]

- Tax Exemption -

Allocation:

In Re Marriage of Moore, 307 Ill. App. 3d 1041, 719 N.E. 2d 326 (5th Dist., 10/13/99) [Splitting tax exemptions for children not an abuse of discretion where contributions to support are fairly equal.] [C&C 11-12/99]

Financial Contribution:

Stockton vs. Oldenburg, 305 Ill. App. 3d 897, 713 N.E. 2d 259 (4th Dist., 7/1/99) [Party seeking tax exemption has burden to show greater contribution to child's support; contribution is not limited to financial support.] [C&C 8-9/99]

- UIFSA -

Enforcement:

In Re Marriage of Hartman, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99) [Illinois court retains jurisdiction to enforce support despite UIFSA order.] [C&C 8-9/99]

Parties:

In Re Marriage of Hartman, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99) ["Petitioner" who is not the party in UIFSA order settlement is not barred from relitigating arrearages under original order.] [C&C 8-9/99]

- URESA -

Statute of Limitations:

People ex rel. Brady vs. Butler, Rule 23 order (4th Dist., No. 4-98-0409, 2/8/99)
[Arrearage claim raised under URESA governed by 20-year statute of limitation.]
[C&C 2-3/99]

- Visitation -

Incarceration:

In Re Parentage of Sims, 308 Ill. App. 3d 311, 719 N. E. 2d 1166 (2nd Dist., 10/28/99)
[Denial of visitation during incarceration is not an abuse of discretion.] [C&C 11-12/99]

- Workers Compensation -

SEE: Fitzpatrick, "Collecting Child Support from Worker's Compensation," 5-6/99 FORUM, pg. 9

Alphabetical Listing of Cases

- Dept. of Public Aid ex rel. Marshall vs. Ringo**, 303 Ill. App. 3d 250, 706 N.E. 2d 1047 (4th Dist., 1/27/99); Modification, IDPA Standing.
- Dept. of Public Aid ex rel. Peavy vs. Peavy**, 307 Ill. App. 3d 16, 716 N. E. 2d 1261 (2nd Dist., 9/7/99); Assignment of Support; IDPA, Assignment of Support.
- In Re Marriage of Adamson**, 308 Ill. App. 3d 759, 721 N.E. 2d 166 (2nd Dist., 11/22/99); Bankruptcy, Debt vs. Maintenance; Modification, Agreement.
- In Re Marriage of Boland**, 308 Ill. App. 3d 1063, 721 N.E. 2d 815 (4th Dist., 12/8/99); Income, Depreciation.
- In Re Marriage of Charnogorsky**, 302 Ill. App. 3d 649, 707 N.E. 2d 79 (1st Dist., 12/8/98); Name Change, Standing.
- In Re Marriage of Crossland**, 307 Ill. App. 3d 292, 717 N. E. 2d 549 (3rd Dist., 9/9/99); Income, Deduction.
- In Re Marriage of Demattia**, 302 Ill. App. 3d 390, 706 N.E. 2d 67 (4th Dist., 1/28/99); Guidelines, Deviation.
- In Re Marriage of DiFatta**, 306 Ill. App. 3d 656, 714 N. E. 2d 1092 (2nd Dist., 7/29/99); Support, Credit.
- In Re Marriage of Hartman**, 305 Ill. App. 3d 338, 712 N.E. 2d 367 (2nd Dist., 6/8/99); Contempt, Continuing Jurisdiction; Enforcement, Jurisdiction; UIFSA, Enforcement; UIFSA, Parties.
- In Re Marriage of Koenigskecht**, 302 Ill. App. 3d 474, 707 N.E. 2d 112 (1st Dist., 12/21/98); Maintenance, Efforts Toward Self-Sufficiency; Modification, Standard of Living.
- In Re Marriage of Moore**, 307 Ill. App. 3d 1041, 719 N.E. 2d 326 (5th Dist., 10/13/99); Tax Exemption, Allocation.
- In Re Marriage of Pettifer**, 304 Ill. App. 3d 326, 709 N.E. 2d 994 (3rd Dist., 4/21/99); Modification, Retroactive, Temporary Order.
- In Re Marriage of Takata**, 304 Ill. App. 3d 85, 709 N.E. 2d 715 (2nd Dist., 4/9/99); Insurance, Enforcement; Support, Children's Needs, Miscalculation, Unreported Income.
- In Re Marriage of Thurmond**, 306 Ill. App. 3d 828, 715 N. E. 2d 814 (2nd Dist., 8/11/99); Post Majority Support, "Slow Learner."
- In Re Marriage of Weisbruch**, 304 Ill. App. 3d 99, 710 N.E. 2d 439 (2nd Dist., 4/14/99); Maintenance, "Continuing Conjugal Relationship."
- In Re Parentage of Griesmeyer**, 302 Ill. App. 3d 905, 707 N.E. 2d 72 (1st Dist., 12/18/98); Paternity, Prior Adjudication.
- In Re Parentage of Sims**, 308 Ill. App. 3d 311, 719 N. E. 2d 1166 (2nd Dist., 10/28/99); Visitation, Incarceration.
- Meza vs. Rodriguez**, 305 Ill. App. 3d 777, 713 N.E. 2d 764 (2nd Dist., 6/25/99); Paternity, Adoption
- People ex rel. Brady vs. Butler**, Rule 23 order (4th Dist., No. 4-98-0409, 2/8/99); Statute of Limitations, URESA; URESA, Statute of Limitations.
- People ex rel. Meyers vs. Kidd**, 308 Ill. App. 3d 593, 720 N. E. 2d 1125 (5th Dist., 11/25/99); Income, Pension Benefits.
- Stockton vs. Oldenburg**, 305 Ill. App. 3d 897, 713 N.E. 2d 259 (4th Dist., 7/1/99); Paternity, Lost Wages; Tax Exemption, Financial Contribution.
- Williams vs. Davenport**, 306 Ill. App. 3d 465, 713 N. E. 2d 1224 (1st Dist., 6/30/99); Attorney's Fees, Sovereign Immunity; IDPA, Fee Assessment; Sovereign Immunity, Attorney's Fees.