

FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

Vol. 12

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Nos. 1 & 2

Clerks Seek Relief from Child Support Responsibility

By Thomas P. Sweeney

Illinois Circuit Clerks are seeking to be relieved from responsibility for a child support system over which they no longer have any control.

In one of several special meetings held to address problems related to the state's centralized disbursement unit (SDU), the Illinois Association of Circuit Court Clerks on May 1 voted 50-4 in favor of a proposal to push for changes in state law that would relieve clerks of the mandate to work on resolving processing problems for recipients. Specifically the proposal called for the association "to move towards the ultimate goal of having a single agency to provide the best customer service to the constituents receiving and paying child support."

Under the proposal that responsibility would move to the state. Clerks suggested the work be transferred to state offices already operating in counties. The plan is modeled after Wisconsin's new system, which took effect when that state's central clearinghouse opened in early 1999.

"This plan seems to make more sense than the current one, which is creating confusion and inefficiency for our constituents," said Carla Bender, Logan County Circuit Clerk. "We care about these people. Now we're not able to give them what they need," she said.

Implementation of the federally mandated SDU on October 1, 1999, has left the circuit clerks – the elected local officials designated by the state to help recipients deal with the changes – without a good way to keep track of the cash flow or help families resolve problems with late, missing or incorrect payments. Typically circuit clerks will no longer certify even their own support payment records because they cannot in good faith vouch for the reliability of payment data provided by the SDU.

"We have the responsibility, but no authority or control over how the payments are being processed," said Champaign County Circuit Clerk Linda Frank. "It would be better if they gave the job back to us, but since that's not going to happen it makes more sense that it be handled entirely by one agency," she said.

"We just want the job to be done right, whoever does it."

Under the proposal, circuit clerks in Illinois, as in Wisconsin, still would maintain the official court record of cases, but they would voluntarily give up the last vestiges of a check-processing and recording system that had come to be relied upon by both recipients and the courts.

Kathy Hott, the Macon County Circuit Clerk and President of the Clerk's association, said the proposal has widespread support among circuit clerks statewide, even though only about half were represented in the vote.

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***Depending on contributions, the FORUM will attempt to publish
four times a year - in March, June, August/September, and December.***

Items for publication are needed by the 8th of the month.

**News items and other articles of interest to Illinois family
support practitioners are eagerly sought.**

Contact the Editor for details.

Please Contribute - its YOUR Newsletter!



From the Statehouse . . .

. . . LEGISLATIVE UPDATE

2000 Illinois Support-Related Legislation

Since the Governor signed into law P.A. 91-677 (H.B. 2773, the "SDU Clean-up" bill) on January 5, 2000 (reported in the last issue of the FORUM), the legislature has addressed few bills related to child support enforcement, and passed only two of those on to the Governor. The following is a summary of bills relevant to family support enforcement addressed by the Illinois Legislature during the Spring term (other than P.A. 91-677).

by Thomas P. Sweeney

- Bills Passed -

H.B. 2979

P.A. 91-767, eff. 6/9/00

Amends § 10-10 of the Public Aid Code, § 505 of the IMDMA, § 20 of the Non-Support Punishment Act and § 14 of the Parentage Act of 1984 to add the following: If (a) a non-custodial parent was properly served with a request for discovery of financial information relating to his ability to provide child support, (b) he failed to comply with the request, despite having been ordered to do so by the court, and (c) he is not present at the hearing to determine support despite having received proper notice, then any relevant financial information concerning his ability to provide child support that was obtained pursuant to subpoena and proper notice shall be admitted into evidence without the need to establish any further foundation for its admission.

S.B. 1638

P.A. 91-793, eff. 6/9/00

Adds new § 10-26.5 to the Public Aid Code; provides that upon the request of an "adversely affected recipient of support," (defined as a person entitled to support disbursement through the SDU whose payment was delayed or not received and who receives an adverse credit rating resulting from the delay or non-receipt of support), IDPA shall send a letter to the recipient verifying the delayed or undisbursed support payment (rather than requiring IDPA to notify the credit reporting agency directly as originally proposed). Provides further that the recipient may send the letter to the credit reporting agency to place in his file, but does not require any particular response by the credit reporting agency.

Disposition of Other Bills Receiving Some Consideration

H.B. 2920, introduced 11/4/99, by Rep. Moffitt. As amended, amends § 10-26 of the Public Aid Code to impose a 2% civil penalty on support payments not disbursed by the SDU within the timeframes prescribed by federal guidelines, such penalty to be paid out of funds allocated for operation of the SDU. *Passed by the House 11/18/99, 118-0; essentially no action since its arrival in the Senate.*

H.B. 3054, introduced 12/27/99, by Rep. O'Brien. As amended, would amend § 10-26 to require IDPA to terminate the current contract for operation of the SDU, and enter into a new contract with an "entity" (originally "a private entity") no later than April 1, 2000, to perform that function; any new contract is to include performance standards and penalties for non-performance. *Passed by the House 2/3/00, by a vote of 96-16-4; essentially no action since its arrival in the Senate.*

H.B. 3126, introduced 1/12/00, by Rep. Eileen Lyons. As amended, would amend the Public Aid Code to require IDPA to pass through to TANF recipients up to 1/2 of all child support received (rather than 2/3 as originally proposed, or \$50 under current policy), and to disregard those payments in assistance calculation until the total of non-exempt income and support equals three times the family's assistance level. *Passed by the House 2/22/00, by a vote of 114-0; essentially no action since its arrival in the Senate.*

H.B. 3460, a "shell bill" introduced in the House 1/20/00 by Rep. Parker-Schmitz. As amended in the Senate, would extend the life of the Electronic Funds Transfer Committee established within IDPA by P.A. 91-677 (H.B. 2773), and the deadline for its final report from 12/1/2001 to 12/1/2002; would extend the date after which employers of 250 or more employees must use electronic funds transfer for payment of withheld support from 6/30/2000 to 3/1/2001, and change from 2001 to 2002 the year in which employers with fewer than 250 employees must use electronic funds transfers. *Shell bill passed by the House 3/3/00; amended version passed by the Senate 4/4/00, by a vote of 54-; concurrence not addressed in the House.*

H.B. 3649, introduced 1/24/00 by Rep. Kenner. As amended, would amend the Comptroller Act to exempt

(Cont'd. on page 4)

per diems or other work-related reimbursement payments from income withholding for child support. *Defeated in the House, by a vote of 41-74-2.*

H.B. 4611, introduced 2/7/00, by Rep. Shirley Jones. As introduced, would have required the Bureau of the Budget to certify to each circuit clerk the annual change in the consumer price index, would allow orders for support or maintenance to include provisions for an automatic increase equal to the percentage increase in the consumer price index, and would require the circuit clerks to notify obligors, obligees and employers of the change. Following a Fiscal Note from the Administrative Office of the Illinois Courts pointing out the potential impact of the bill to increase the workload and expenses of circuit clerks' offices and increased demands on judicial resources, the bill was amended to delete all of its original provisions.

As amended, would amend the Public Aid Code to require IDPA to establish a pilot program in 5 counties requiring employers who withhold child support to send to the circuit clerk for the county in which the support order is entered a copy of the employee's W-2 for earnings in years 2000 through 2003, and requires the circuit clerks to forward copies of the W-2's to the obligor and obligee. *Passed by the House 3/3/00, by a vote of 89-26; essentially no action since its arrival in the Senate.*

S.B. 1636, introduced 2/2/00 by Sen. Geo-Karis. As introduced and passed by the Senate, would amend § 14 of the Parentage Act to require that judgments in parentage cases shall contain or explicitly reserve provisions for custody and visitation as well as support terms, and spell out that a parent not granted custody is entitled to visitation unless the court finds it would seriously endanger the child. § 14 would further provide that a party may not remove the child from the state without leave of court, and that the party having custody may be granted leave for removal under the standards and provisions of § 609 of the IMDMA.

House amendments changed provisions regarding removal to provide that in cases where a visitation order has been entered containing a specific visitation schedule for the non-custodial parent, the custodial parent shall give written notice of a proposed relocation outside the state to the other parent 90 days prior to the move, including the new address, the date of the move and any proposal for changes in visitation. If the non-custodial parent does not file an objection with the court within 21 days the custodial parent may relocate; if a timely objection is filed the custodial parent may not remove the child without court approval, governed by § 609 of the IMDMA. Further House amendments added new provisions to the IMDMA regarding grandparent (and even great-grandparent) visitation. *Original bill passed by the Senate 2/24/00, by a vote of 59-0.; House amendments were not finalized by the House.*

NEW LAWS FOR HUNTING LAWYERS

While hunting has become a popular sport in many countries, laws have to be developed to both keep the populations in balance as well as to allow for a fair fight. New Rules and Regulations also have to be legislated whenever new species become the object of the hunt. With this in mind comes . . .

NEW REGULATIONS FOR THE HUNTING OF LAWYERS

US Government Department of Fish and "wildlife" Sec. 1200

1. Any person with a valid hunting license may harvest attorneys.
2. Taking of attorneys with traps or deadfalls is permitted. The use of currency as bait is prohibited.
3. Killing of attorneys with a vehicle is prohibited. If accidentally struck, remove dead attorney to roadside and proceed to nearest car wash.
4. It is unlawful to chase, herd, or harvest attorneys from a snow machine, helicopter or aircraft.
5. It shall be unlawful to shout "whiplash," "ambulance" or "free Perrier" for the purpose of trapping attorneys.
6. It shall be unlawful to hunt attorneys within 100 yards of BMW dealerships.
7. It shall be unlawful to hunt attorneys within 200 yards of courtrooms, law libraries, whorehouses, health spas, gay bars, ambulances or hospitals.
8. If an attorney is elected to government office, it shall be a felony to hunt, "entrap" or possess it.
9. Stuffed or mounted attorneys must have a state health department inspection for rabies and vermin.
10. It shall be illegal for a hunter to disguise himself as a reporter, drug dealer, pimp, female legal clerk, sheep, accident victim, bookie or tax accountant for the purpose of hunting attorneys.

BAG LIMITS

(Maximum number of catches allowed per hunting season)

- | | |
|---|-------------------|
| 1. Yellow Bellied Sidewinder | 2 |
| 2. Two-faced Tort Feasor | 1 |
| 3. Back-stabbing Divorce Litigator | 4 |
| 4. Big-mouthed Pub Gut | 2 |
| 5. Honest Attorney On the Endangered Species List | (Illegal to hunt) |
| 6. Cut-throat | 2 |
| 7. Back-stabbing Whiner | 2 |
| 8. Brown-nosed Judge Kisser | 2 |
| 9. Silver-tongued Drug Defender | |

\$100 BOUNTY

(It's a JOKE, found somewhere on the internet!)

SDU: Behind the Headlines

(Reprinted from the February-March, 2000, issue of Open Lines, published by the Illinois Dept. of Public Aid, Div. of Child Support Enforcement)

Much of what has happened at the State Disbursement Unit (SDU) has been reported in the newspapers and on the nightly news. But there is another story.

There are scores of dedicated staff—Governor George H. Ryan's staff, those in the Circuit Court Clerks' and legislators' offices, scores more at the SDU in Wheaton and at the SDU South in Springfield—who have done their best to get child support payments to the children and their parents who desperately need them. These dedicated staff are people who care very much about the delays that have caused disruptions in people's lives. They understand the impact of the situation and are committed to finding solutions for the problems with child support payments—long hours and stressful workdays have become the norm.

Seventy thousand payments were sent from the SDU in a recent week. Another 600 payments were deferred—those requiring further research before payments could be sent to custodial parents. This means that just over 99% of all the payments that came in were processed and sent on. That is impressive progress, but the SDU still has improvements to make.

The computer programming staff housed in Wheaton are making the changes necessary to refine and improve the processing time and the accuracy of the system. Many of the changes that have already been made are a result of suggestions by the Circuit Court Clerks. Other suggestions have come from legislators, employers, IDPA staff and from the front line staff at the SDU, in Wheaton, and at the hotline at the SDU South, in Springfield.

Many criticize the federal government for imposing a new program on a system that most agree was not broken. However, our federal partners have been working with the state to ensure that we have all the resources necessary to fix this system and get it working.

While the headlines have been critical of the SDU, there are many things that have occurred and continue to happen that are not reflected in those glaring banners

The Circuit Court Clerks and Director Ann Patla have created regional hubs statewide, which will be a much needed resource for Circuit Court Clerks. All but one of the hubs are located in Circuit Court Clerks' offices or in courthouses. They are staffed with IDPA employees who are the most knowledgeable in child

support enforcement. IDPA staff are able to provide one-on-one training and timely information in addition to working with Circuit Court Clerks in resolving problem cases. If hands-on assistance is needed, Circuit Court Clerks now have the resource tools to use in their own environment. IDPA staff have provided assistance to more than 50 Circuit Court Clerks' offices already—and they will stay to help for as long as necessary.

IDPA has set up what is now called the SDU South, in Springfield—the only hub not located in a Circuit Court Clerk's office or a courthouse. At the most critical stages of the SDU, this site was operating 24 hours-a-day, seven days-a-week. The SDU South is where the SDU hotline for clients' calls is located. The Department has reassigned its most experienced staff to this site to work with the SDU, in Wheaton. The cooperation between the SDU, in Wheaton, and the regional statewide hubs is a demonstration of partnership — a partnership created by crisis — that has come together to identify problems and come up with solutions.

One of the main stumbling blocks to the success of the SDU has been the lack of adequate information that must be provided by employers. The Department has sent out new mailings to every employer in the state to explain how they can help to ensure the accuracy of the system. In addition, the Department has offered training specifically for employers and their payroll clerks to assist them in understanding the SDU and what they, as employers, need to do.

Director Patla and Child Support Enforcement Administrator, Bob Lyons, have been traveling throughout the state to meet with the Circuit Court Clerks and their staff to learn firsthand the problems they are experiencing and how those problems can best be fixed. In addition, IDPA staff have been conducting informational sessions at the request of an advocacy group that has been very vocal in its concerns about the problems facing parents as a result of the delays experienced by the implementation of the SDU.

Even though more than 99% of all payments coming in are processed and sent on, each of the partners will continue their efforts to eliminate the remaining problems. They are dedicated to developing new avenues to help stabilize the child support payment process.

From the I D P A . . .

. . . ILLINOIS IV-D UPDATE

(From the Office of the Administrator, Illinois Dept. of Public Aid, Division of Child Support Enforcement)

IDPA's Non-Custodial Parent Services Unit Promotes Involvement of Both Parents

Understanding that children need the love and support of both parents, the Illinois Department of Public Aid operates the Non-Custodial Parent Services Unit (NCPSU) within the Division of Child Support Enforcement. The unit has served non-custodial parents in Cook County since 1995, and in St. Clair County since 1996.

"The role of both parents in a child's life cannot be underestimated," says Norris Stevenson, Manager of NCPSU. "Each parent brings to their child's development a unique set of values and ideals that helps to develop a secure and well-balanced individual."

NCPSU Services

NCPSU staff works to address issues facing non-custodial parents to help them assume financial responsibility and provide for their child's emotional well-being. Parents receive individual assessments to determine assignments for appropriate services, which may include:

- employment-related services, such as Earnfare and the Court-Monitored Job Search;
- referrals to community organizations (in Cook County only) for supportive services;
- information on child support policies and other programs;
- paternity establishment in Illinois prisons; and
- assistance with access and visitation.

While staff does not provide legal advice, staff can make recommendations and referrals to participants for resolution of issues.

Non-custodial parents who tell a judge that they are unable to pay child support because of unemployment are referred to the unit to prepare them for employment. Parents who participate in the Department's administrative process for paternity establishment can also be referred to the unit.

Illinois Child Support's Outreach Efforts Among the Best in the Nation

Three initiatives in Illinois' Child Support Program will be featured in the forthcoming edition of the Federal Office of Child Support's (OCSE) Best Practices publication. Each year, OCSE selects the best services and practices offered by the nation's child support programs and features them in a publication that is distributed nationwide.

This year the Non-Custodial Parent Services Unit (NCPSU) and two programs in the Community Relations Unit, the Catholic Charities WIC Paternity Pilot and the Illinois Child Support/Head Start/Child Care collaboration, will be featured in the 2000 Edition of Best Practices. Together, the Community Relations and NCPSU comprise Child Support's Community Outreach Program.

The Child Support/Head Start/Child Care collaboration efforts of Community Relations staff continue to receive national attention. Illinois' activities were featured at the recent National Head Start Association conference in Washington, D.C. in a workshop entitled "Collaboration-The Illinois Experience." A collaboration poster received an award from the printing industry for its design and message "Making A Difference in Children's Lives." That motto, which is featured on materials highlighting the collaboration, was created by a

(Cont'd. on page 8)

Non-custodial parents may be eligible for the following:

Earnfare: a six-month program of training for persons with little or no work record. Jobs are based

(Cont'd. on page 7)

upon the individual's skill levels, interests and location. Earnfare participation is restricted to non-custodial parents who have children receiving Temporary Assistance for Needy Families (TANF) or individuals receiving food stamps, who volunteer for the program. Earnfare employers are encouraged to provide permanent employment for participants. Participants who receive food stamps work up to a maximum of 80 hours a month and those who do not receive food stamps work up to a maximum of 57 hours a month. The first \$50 collected in child support goes to the custodial parent. After working the hours needed to cover the value of the monthly food stamps (up to 26 hours), workers receive \$5.15 per hour for additional hours and can earn up to \$244 a month.

Court-Monitored Job Search Program:

Through the use of a Job Search Diary, the employment efforts of participants are monitored. Job Search Diary entries are investigated and reports of activities prepared for the court. In addition to the Job Search Diary, individuals must register with the Illinois Department of Employment Security for access to the state job service database. Participants who find permanent employment have income withholding orders entered and child support payments deducted from their checks. Participants who fail to cooperate with the requirements of service provision with NCPSU are referred back to court for failure to comply with court or administrative orders.

Parentage Programs for Inmates

If an inmate is unsure that he is the father, he may request genetic (DNA) testing. The inmate must sign a form agreeing to be bound by the results of the test. If an inmate believes he is not the father, he may contest the claim of paternity and have a hearing at the prison before a Child Support Administrative Law Judge. The mother can participate via teleconference. The hearing request also involves an order for a genetic test. An inmate's failure to cooperate could result in paternity being established by default.

Child Support staff also interviews men at work release centers to establish support orders and begin income withholding.

Access and Visitation Programs

Often non-custodial parents become frustrated because they must meet their child support obligations, but are unable to see their children. In September, 1997, through the Department of Health and Human Services, Administration of Children and Families, IDPA's Division of Child Support Enforcement received an Access and Visitation grant allotment of \$449,673. This program enables the state to establish and administer programs to support and facilitate non-custodial parents' access to and visitation of their children by means of activities including mediation (both voluntary and mandatory). The program also provides counseling, education, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), development of guidelines for visitation and alternative custody arrangements, and development of parenting plans. Parenting plans, setting specific times for visitation and duties and responsibilities for each parent, are a key component of the program.

"Usually the issue of access and visitation is not addressed for non-custodial parents who never married," says Joseph Mason, Administrator for the Access and Visitation Program. "Now this population can receive much needed services in this area."

Illinois developed its program by contracting with the court-affiliated "Family In Focus Program" in Cook County and the Parents and Kids Partnership Program (PAK) in DuPage County. Illinois Child Support staff is expanding the programs to include more of the IV-D population, as this is an area of the population which is under-represented in receiving access and visitation services. Cook and DuPage Counties were chosen since these are larger counties in Illinois with the most diverse populations. The contracts with these organizations enable them to hire and/or maintain additional staff, expand existing services, produce educational materials as well as provide additional services to individuals in order to enhance non-custodial parents' access to their children.

The Family In Focus Program's primary concerns are the best interests of the child(ren). The program provides the following services for individuals who are court ordered to participate in the program:

- mediation for visitation and custody disputes,

(Cont'd. on page 8)

("Illinois IV-D Update," cont'd. from page 7)

- assistance in developing parenting plans,
- interviews of the children at issue (ages 4 to 18 years) to screen for potential problems,
- domestic violence interventions and
- conciliation and reconciliation counseling.

The DuPage County PAK program provides the following services:

- community and school-based resource centers which provide safe, supervised after-school activities;
- Caring, Coping and Children, an educational program mandated for all divorcing parents with minor children in DuPage County;
- Families Focusing on Change, Understanding and Support, a series of educational and coun-

seling programs expanding the Caring, Coping and Children Program;

- domestic violence programming;
- outpatient and intensive outpatient substance abuse/dependency programs; and
- comprehensive family assessment services.

In addition, the Department of Public Aid developed an access and visitation informational video, "The PAK Program." The video, for national distribution, describes the Illinois Access and Visitation program. This collaborative effort includes access and visitation representation from judicial, programmatic, participant and funding sources from DuPage, Cook and Peoria Counties.

For more information, call the Non-Custodial Parent Services Unit at 312-793-7987. TTY: 800-526-5812; Fax: 312-793-7047.

("Outreach Efforts Among the Best.," cont'd. from page 6)

consensus of collaboration partners from child support, child care and Head Start staff.

Although the collaboration formally began in 1997, when Illinois received a three-year grant to work with Head Start and child care agencies, Community Relations staff have been working with these organizations for many years. As part of the collaboration, Head Start and child care agencies work with us to provide clients information on child support and paternity establishment services. In addition, child support staff learn about Head Start and child care services and pass that information on to their clients.

Since 1996, Community Relations staff have worked with the Catholic Charities of the Archdiocese of Chicago's Women, Infant and Children (WIC) program to help unmarried parents establish paternity for their children. The WIC Food Center sites, the only ones that exist in the nation, offer one-stop shopping for parents. Mothers and mothers-to-be can purchase WIC food products and attend free nutritional and child care classes. Four years ago, WIC staff received training on the Voluntary Acknowledgment of Paternity forms and since that time, have helped parents establish paternity for almost 500 children. In 1998, DCSE received a one-year Improvement Grant to create a model of the WIC program that can be shared with other states interested in setting up a similar program. Under the grant,

staff developed a procedures manual and video tape explaining how the program works.

The Non-Custodial Parents Services Unit; which helps non-custodial parents with child support and related issues, was among the first of its kind to be created by a child support enforcement agency. The program's unique collaboration of government, private, and community-based organizations have helped non-custodial parents acquire on die job training, find jobs, complete GED's, learn parenting skills, and most importantly, take an active role in their children's lives. The first site opened in Cook County in 1995, and a second site in Belleville opened in 1996.

Non-custodial parents are usually referred to the unit through the courts, but since 1999, NCP's in Cook County whose children are involved in a TANF case can sign up for services without a referral.

The unit also received an Access and Visitation grant to help never-married parents with issues surrounding visitation and custody of their children. Services include mediation, counseling, visitation enforcement, and development of guidelines for visitation and alternative custody arrangements.

"Illinois' Child Support Program is taking a holistic approach to child support enforcement," says Joseph Mason, Manager, Community Outreach. "Although children need financial support, they also need the emotional support and active involvement of both parents."

FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

SUPPLEMENT - JANUARY, 2000

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.

SDU Emergency Payments May be Recovered -- But HOW?

by Thomas P. Sweeney

The Illinois Department of Public Aid “is entitled” to repayment of emergency payments made by the State Disbursement Unit (SDU) to custodial parents during the first five months of its operation. So says an opinion of the Illinois Attorney General’s office. But how, or if, that will happen is not so certain.

In a 28-page opinion dated May 11, 2000, the Attorney General responded to inquiries by State Auditor General William Holland and members of the Legislative Audit Commission on several concerns raised in the audit of the SDU conducted by Holland’s office. On January 11, 2000, the Legislative Audit Commission requested Holland’s audit to supplement a private audit already being conducted by Bank One under a contract with IDPA. While both audits examined the operations of the SDU following its October 1, 1999 implementation, the Auditor General’s audit was also specifically directed to look into the planning and development of the SDU—including the process of selecting and contracting with the DuPage County Circuit Clerk—and issues related to issuance and recovery of more than \$10 million in emergency payments made to recipients adversely affected by its operations.

SDU Contracts Authorized

The first concern addressed to the Attorney General was whether IDPA had authority to enter into contracts with the DuPage County Circuit Clerk to operate the SDU. The initial contract with DuPage County was entered into on February 26, 1999 – nearly five months before the July 20, 1999 effective date of legislation (P.A. 91-212) authorizing creation of the SDU.

The opinion concluded that IDPA was not authorized under the Public Aid Code to create the SDU in February, 1999. However, at that time § 3 of the Intergovernmental Cooperation Act did authorize “agreements between the Illinois Department of Public Aid and public agencies for the establishment and enforcement of child support orders . . .” The Attorney General’s opinion concluded that: “The creation of a centralized office responsible for the collection and distribution of all child support payments and for maintaining the necessary documentation associated therewith would appear to be one phase of the child support order enforcement process.” Since the DuPage County Circuit Clerk was a “public agency,” IDPA was authorized by this section to enter into the initial SDU contract, as well as the several subsequent amendments to it.

Emergency Payments Advanced

The “principal questions” addressed by the Attorney General’s opinion concerned the funding and recovery of the “emergency payments” issued by the SDU. After payment processing delays became apparent, on October 19, 1999, Gov. Ryan announced that emergency checks would be issued to those whose payments had been delayed. The Auditor General’s audit reported that as of January 5, 2000, \$10,556,243 in emergency payments had been issued, of which \$881,857 had been repaid, returned or not cashed. This left \$9,674,386 outstanding, toward which IDPA had advanced \$8 million and the SDU had paid \$500,000 “borrowed” from payments received from employers but not yet distributed; the balance came from other SDU funds.

To fund the emergency payments IDPA’s contract with DuPage County was amended three times to increase the “Operational Services Service Fees” of the SDU. The latest amendment, dated February 15, 2000, included the following language: “. . . DuPage may also draw upon an additional \$8,000,000.00, subject to the prior approval of *and repayment to the State* (by offset or otherwise), as initial cash flow for the orderly operation of the SDU.” The Attorney General concluded IDPA was authorized to transfer those funds to the SDU from the Child Support Enforcement Trust Fund, since Trust Fund money may be used for administrative expenses, including personal and contractual services incurred in performing IV-D activities.

IDPA Entitled to Repayment

Based on the clear “subject to repayment” language of the various amendments to the SDU Agreement, the Attorney General concluded that IDPA “is entitled to be repaid the amounts it made available to the State Disbursement Unit’s use for the purpose of making emergency payments.” But from whom?

The Auditor General’s audit had found that prior to November 10, 1999, it did not appear that custodial parents calling the SDU hotline were specifically informed of their potential obligation to repay any emergency payments provided, nor were they required to sign any documentation indicating they were entitled to such payments or agreeing to an offset against future support payments. However, beginning November 10, the SDU began enclosing a notice with each emergency

(Cont’d. on page 10)

check, and subsequently sent notices to all persons who had received an emergency check indicating they would receive further notice of "the process for recovery, if this applies to your case." The Attorney General's opinion concluded:

"Given the publicity surrounding the problems experienced by the State Disbursement Unit in distributing payments to custodial parents, there can be little doubt that the recipients recognized that the emergency payments were temporary in nature and would be recovered at some point in the future. Indeed, to permit the recipients to retain the emergency payments, in addition to the child support payments ultimately received, would constitute unjust enrichment. Therefore, it is clear that the emergency payments may be recovered from the recipients thereof."

Offsets Not Allowed, Unless . . .

But how? As far back as November, 1999, IDPA Director Ann Patla had announced a plan expected to begin after the holidays to recover emergency payments. Under the plan recipients would receive bills and be given the option to repay the debt all at once or over two or three months. They could also agree to have amounts owed offset from future support payments, or could seek an administrative appeal. This plan, and particularly its timing, prompted widespread outrage from legislators and recipients.

More recently in March, 2000, it was reported that Patla had sought input from the legislature on even whether to go after the money. House Speaker Michael Madigan was reported to have found that inquiry amusing. "Since when does an agency want our direction? They usually do just the opposite of what we tell them," said Madigan (D-Chicago). On March 28, lawmakers on the Legislative Audit Commission suggested that IDPA should propose a plan for getting the money back. Media reporting the interchanges opined that neither the Executive nor the Legislative branch wanted to be the prime mover in efforts to recover the emergency payments.

At that time Patla had advised that federal regulations prohibited recovering the payments by offsetting recipient's future support payments. The Attorney General's opinion confirmed that conclusion, at least under the current interpretation of its regulations by the federal Dept. of Health & Human Services (DHHS). In a 1997 Action Transmittal (AT 97-13), DHHS interpreted distribution rules under § 457 of the Social Security Act "generally" to prohibit offset of overpayments from future support collected without consent of the recipient. And under recognized law, since that interpretation is "not unreasonable," it should be followed.

Audits Criticize SDU Implementation, Operations

Two audits have directed heavy criticism of the state's planning, implementation and management of the federally-mandated SDU.

The audit conducted by Bank One from December 17, 1999 through February 11, 2000, focused on the management and operation of the SDU. Without assigning blame, the audit found the SDU to have failed in each of the nine areas of risk it studied.

The Auditor General's audit focused on the planning and contracting for the SDU, and concerns related to issuance of emergency payments. The final, 120-page report identified numerous factors that contributed to the SDU's well-publicized problems.

Due to lack of space (and inspiration), these audits will not be summarized here. The full report of the Auditor General's audit can be found on the Internet at www.state.il.us/auditor. The Auditor General's audit and the Executive Summary of the Bank One audit are available on IDPA's web site at www.state.il.us/dpa.

However, the Attorney General's opinion continues, while HHS's "general" interpretation may be "not patently unreasonable," it may be "inequitable" under Illinois' circumstances. The opinion concludes:

"If [HHS's] interpretation of the provisions of section 457 of the Social Security Act is applicable in these circumstances, then neither the Department of Public Aid nor the State Disbursement Unit will be allowed to recoup the amount of an emergency payment by offsetting the amount against future child support collections unless the custodial parent consents to the offset *or unless the Federal agency's interpretation of section 457 is challenged*. Action transmittal 97-13, however, only addresses the issue of whether States may offset overpayments from a custodial parent's next monthly support check *generally*. Action transmittal 97-13 does not contemplate the particular circumstances which have been presented in Illinois." (emphasis added)

Accordingly the Attorney General is requesting from HHS a policy interpretation addressing Illinois' circumstances to see if an offset would be permitted to recover emergency payments in the absence of consent by the recipient custodial parent. Stay tuned.

The Attorney General's opinion can be found on the Internet at www.ag.state.il.us/opinions/00-010.pdf (requires Adobe Acrobat Reader). A text version is available at www.ag.state.il.us/opinions/00-010.html.

USDA Report Estimates Child Rearing Costs Down to \$237,000

WASHINGTON, April 27, 2000. Agriculture Secretary Dan Glickman today released a new report finding that an average, middle-income family with a child born in 1999 can expect to spend about \$160,140 (\$237,000 when adjusted for inflation) for food, shelter, and other necessities to raise that child over the next seventeen years.

Those figures were up from \$156,690 (but down from \$240,000 when adjusted for inflation) estimated in the USDA report released in 1999 for 1998 figures.

"The cost of raising a child is just above 2 percent from last year, a testament to the amazingly strong U.S. economy and our low rate of inflation," Glickman said.

For 1999, the child-rearing cost estimate for middle-income, two-parent families ranges from \$8,450 to \$9,530 per year, depending on the age of the child.

The report by USDA's Center for Nutrition Policy and Promotion notes that family income affects child rearing costs, with low-income families projected to spend \$117,390; middle-income families \$160,140; and upper-income families \$233,850 over a seventeen year period. In 1960, a middle-income family could expect to spend \$25,230 to raise a child through age seventeen.

Housing costs are the single largest expenditure on a child, averaging \$53,310 or 33 percent of the total costs over seventeen years. Food was the second largest expense, averaging \$27,990 or 18 percent of the total.

The report notes geographic variations in the cost of raising a child, with expenses the highest for families living in the urban West, followed by the urban Northeast and urban South. Families living in the urban Midwest and rural areas have the lowest child-rearing expenses. The expenditure estimates for two-parent families for the overall United States is summarized in Table 1, reproduced on page 12.

The report provides an

example of estimated future expenditures on the younger child in a husband-wife family with two children in Table 12, reproduced below. The example assumes a child is born in 1999, reaching age 17 in year 2016, and the average annual inflation rate over this time is 4.3 percent (the average annual inflation rate over the past 20 years). As can be seen, total family expenses on a child through age 17 would be \$174,090 for households in the lowest income group, \$236,660 for those in the middle, and \$344,800 for those in the highest. In 1999 dollar values, these figures would be \$117,390, \$160,140, and \$233,850, respectively.

USDA develops annual estimates on the cost of raising a child to assist state agencies and courts in determining child support guidelines and foster care payments.

Expenditures in Single-Parent Families

As in past years, most of the data in the report focuses on costs for two-parent families. The report

(Cont'd. on page 12)

Table 12. Estimated annual expenditures on children born in 1999, by income group, overall United States.

| Year | Age | Income Group | | |
|--------------|-----|------------------|------------------|------------------|
| | | Lowest | Middle | Highest |
| 1999 | < 1 | \$6,080 | \$8,450 | \$12,550 |
| 2000 | 1 | 6,340 | 8,810 | 13,090 |
| 2001 | 2 | 6,510 | 9,190 | 13,650 |
| 2002 | 3 | 7,050 | 9,830 | 14,570 |
| 2003 | 4 | 7,350 | 10,250 | 15,200 |
| 2004 | 5 | 7,670 | 10,690 | 15,850 |
| 2005 | 6 | 8,120 | 11,200 | 16,360 |
| 2006 | 7 | 8,470 | 11,680 | 17,070 |
| 2007 | 8 | 8,840 | 12,180 | 17,800 |
| 2008 | 9 | 9,250 | 12,630 | 18,400 |
| 2009 | 10 | 9,640 | 13,180 | 19,200 |
| 2010 | 11 | 10,060 | 13,740 | 20,020 |
| 2011 | 12 | 11,850 | 15,560 | 22,290 |
| 2012 | 13 | 12,360 | 16,230 | 23,250 |
| 2013 | 14 | 12,890 | 16,930 | 24,250 |
| 2014 | 15 | 13,260 | 17,920 | 25,950 |
| 2015 | 16 | 13,830 | 18,690 | 27,070 |
| 2016 | 17 | 14,420 | 19,500 | 28,230 |
| Total | | \$174,090 | \$236,660 | \$344,800 |

("USDA Report," cont'd. from page 11)

notes that the estimates of expenditures on children by husband-wife families do not apply to single-parent families, which continue to account for an increasing percentage of families with children. Separate estimates were made of child-rearing expenses in single-parent households--90 percent headed by a woman.

In the single-parent study the two higher income groups from the two-parent family study were combined, because only 17 percent of single-parent households had before-tax income of \$31,000 and over (in

1992 dollars). Single-parent income included child support payments. Estimates of child-rearing expenses for single-parent families are in Table 7, reproduced on page 13.

A comparison of estimated expenditures on the younger child in a two-child, lower-income, single-parent family with those in a lower-income, husband-wife family is presented in Table 10, reproduced on page 13.

(Cont'd. on page 13)

Table 1. Estimated annual expenditures* on a child by husband-wife families, overall United States, 1999

| Age of Child | Total | Housing | Food | Transportation | Clothing | Health care | Child Care and Education | Miscellaneous † |
|---|-----------|----------|----------|----------------|----------|-------------|--------------------------|-----------------|
| Before-tax income: Less than \$36,800 (Average = \$23,000) | | | | | | | | |
| 0 - 2 | \$6,080 | \$2,320 | \$860 | \$730 | \$380 | \$430 | \$760 | \$600 |
| 3 - 5 | 6,210 | 2,290 | 960 | 700 | 370 | 410 | 860 | 620 |
| 6 - 8 | 6,310 | 2,210 | 1,240 | 820 | 410 | 470 | 510 | 650 |
| 9 - 11 | 6,330 | 2,000 | 1,480 | 890 | 460 | 510 | 310 | 680 |
| 12 - 14 | 7,150 | 2,230 | 1,560 | 1,000 | 770 | 510 | 220 | 860 |
| 15 - 17 | 7,050 | 1,800 | 1,680 | 1,350 | 680 | 550 | 360 | 630 |
| Total | \$117,390 | \$38,550 | \$23,340 | \$16,470 | \$9,210 | \$8,640 | \$9,060 | \$12,120 |
| Before-tax income: \$36,800 to \$61,900 (Average = \$49,000) | | | | | | | | |
| 0 - 2 | \$8,450 | \$3,140 | \$1,030 | \$1,090 | \$450 | \$560 | \$1,250 | \$930 |
| 3 - 5 | 8,660 | 3,110 | 1,190 | 1,060 | 440 | 530 | 1,380 | 950 |
| 6 - 8 | 8,700 | 3,030 | 1,520 | 1,180 | 480 | 610 | 890 | 990 |
| 9 - 11 | 8,650 | 2,820 | 1,790 | 1,250 | 530 | 660 | 580 | 1,020 |
| 12 - 14 | 9,390 | 3,050 | 1,800 | 1,360 | 900 | 670 | 420 | 1,190 |
| 15 - 17 | 9,530 | 2,620 | 2,000 | 1,720 | 800 | 700 | 730 | 960 |
| Total | \$160,140 | \$53,310 | \$27,990 | \$22,980 | \$10,800 | \$11,190 | \$15,750 | \$18,120 |
| Before-tax income: More than \$61,900 (Average = \$92,700) | | | | | | | | |
| 0 - 2 | \$12,550 | \$4,990 | \$1,370 | \$1,520 | \$590 | \$640 | \$1,880 | \$1,580 |
| 3 - 5 | 12,840 | 4,960 | 1,550 | 1,500 | 580 | 620 | 2,050 | 1,580 |
| 6 - 8 | 12,710 | 4,880 | 1,870 | 1,610 | 630 | 700 | 1,410 | 1,610 |
| 9 - 11 | 12,600 | 4,670 | 2,170 | 1,680 | 690 | 760 | 980 | 1,650 |
| 12 - 14 | 13,450 | 4,900 | 2,280 | 1,800 | 1,140 | 760 | 750 | 1,820 |
| 15 - 17 | 13,800 | 4,470 | 2,400 | 2,180 | 1,030 | 800 | 1,330 | 1,590 |
| Total | \$233,850 | \$86,610 | \$34,920 | \$30,870 | \$13,980 | \$12,840 | \$25,200 | \$29,430 |

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 1999 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.

Eighty-three percent of single-parent families and 33 percent of husband-wife families fall in this lower income group. Total expenditures on a child up to age 18 were, on average, 5 percent lower in single-parent households than in two-parent households. But more single-parent than husband-wife families fell in the bottom range of this lower income group. Single-parent families in this lower income group, therefore, spend a larger proportion of their income on their children.

The report concludes that estimates of child-rearing expenses for the higher income group of single-parent families were about the same as those for the highest income group of two-parent households. However, the average income of single-parent households was much lower. Therefore, child-rearing expenses in the higher

(Cont'd. on page 16)

Table 10. Comparison of estimated expenditures* on children by single-parent and husband-wife families, overall United States, 1999

| Age of child | Single-parent households | Husband-wife households |
|--------------|--------------------------|-------------------------|
| 0 - 2 | \$5,090 | \$6,080 |
| 3 - 5 | 5,770 | 6,210 |
| 6 - 8 | 6,480 | 6,310 |
| 9 - 11 | 6,070 | 6,330 |
| 12 - 14 | 6,540 | 7,150 |
| 15 - 17 | 7,240 | 7,050 |
| Total | \$111,570 | \$117,390 |

*Estimates are for the younger child in two-child families with 1999 before-tax income less than \$36,800.

Table 7. Estimated annual expenditures* on a child by single-parent families, overall United States, 1999

| Age of Child | Total | Housing | Food | Transportation | Clothing | Health care | Child Care and Education | Miscellaneous † |
|---|-----------|----------|----------|----------------|----------|-------------|--------------------------|-----------------|
| Before-tax income: Less than \$36,800 (Average = \$15,400) | | | | | | | | |
| 0 - 2 | \$5,090 | \$2,080 | \$950 | \$680 | \$340 | \$210 | \$470 | \$360 |
| 3 - 5 | 5,770 | 2,370 | 1,010 | 600 | 360 | 300 | 650 | 480 |
| 6 - 8 | 6,480 | 2,510 | 1,270 | 690 | 430 | 350 | 590 | 640 |
| 9 - 11 | 6,070 | 2,420 | 1,470 | 500 | 430 | 450 | 280 | 520 |
| 12 - 14 | 6,540 | 2,420 | 1,470 | 580 | 730 | 480 | 360 | 500 |
| 15 - 17 | 7,240 | 2,560 | 1,600 | 910 | 850 | 470 | 270 | 580 |
| Total | \$111,570 | \$43,080 | \$23,310 | \$11,880 | \$9,420 | \$6,780 | \$7,860 | \$9,240 |
| Before-tax income: \$36,800 or more (Average = \$55,900) | | | | | | | | |
| 0 - 2 | \$11,680 | \$4,480 | \$1,480 | \$2,080 | \$490 | \$470 | \$1,170 | \$1,410 |
| 3 - 5 | 12,550 | 4,770 | 1,560 | 2,000 | 510 | 630 | 1,460 | 1,620 |
| 6 - 8 | 13,340 | 4,910 | 1,870 | 2,090 | 590 | 720 | 1,370 | 1,790 |
| 9 - 11 | 12,880 | 4,810 | 2,250 | 1,900 | 590 | 870 | 800 | 1,660 |
| 12 - 14 | 13,690 | 4,820 | 2,210 | 1,980 | 980 | 920 | 1,140 | 1,640 |
| 15 - 17 | 14,120 | 4,960 | 2,340 | 2,140 | 1,120 | 910 | 930 | 1,720 |
| Total | \$234,780 | \$86,250 | \$35,130 | \$36,570 | \$12,840 | \$13,560 | \$20,610 | \$29,820 |

* Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 1999 dollars using the Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year old). The figures represent estimated expenses on the younger child in a single-parent, two-child family. For estimated expenses on the older child, multiply the total expense for the appropriate age category by 0.93. To estimate expenses for two children, the expenses on the younger child and older child—after adjusting the expense on the older child downward—should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.35. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.72—after adjusting the expenses on the other children downward. For expenses on all children in a family, these totals should be summed.

† Miscellaneous expenses include personal care items, entertainment, and reading materials.



From the Courthouse . . .

. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Anyone who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

by Thomas P. Sweeney

DNA Exclusion Required Before Seeking Unadjudication of Parentage

In Re Marriage of Lubbs, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (3rd Dist., No. 3-99-0265, 3/9/00), affirmed dismissal of a petition to declare nonexistence of parent-child relationship for failure to allege DNA evidence of non-paternity.

In September, 1996, Lori petitioned for dissolution of her marriage to Judson, alleging that they were married on December 14, 1995, had separated the following day, and that one child, Taylor, was born to the parties on May 24, 1993. Judson's answer denied being Taylor's father. The judgment of dissolution entered on May 9, 1997, found that Taylor had been born to the parties, granted Lori custody and ordered Judson to pay support and maintenance.

In October, 1998, Judson filed a petition to declare the non-existence of a parent-child relationship under § 7 (b-5) of the Parentage Act, alleging he "was reliably informed and believed" that DNA testing would show he is not Taylor's father and that Lori would not voluntarily agree to DNA testing. IDPA intervened and moved for dismissal, contending that exclusion by DNA testing was a condition precedent to filing such a petition. Dismissal granted. Judson appeals.

Affirmed. Construing § 7 (b-5) (as a matter of first impression), the court concluded: "Section 7 (b-5) provides a new cause of action allowing an adjudicated father to challenge the adjudication 'if' DNA tests establish nonpaternity. However, we construe section 7 (b-5) to provide such a cause of action only if DNA testing has established, *prior to the filing of the petition*, that the adjudicated father is not the natural father. Section 7 (b-5) does not authorize such action to be brought in the absence of DNA testing, nor does it provide a mechanism for compelling the mother or child to undergo DNA testing." (emphasis in original) Language in § 8(a)(4) tolling limitations against petitions under the new section during periods when the mother or child refuses to cooperate with DNA testing does not authorize the filing of such a petition without first obtaining DNA results. Legislative history of PA 90-715 supports this conclusion. "We conclude that section

7(b-5) (of the Parentage Act creates a limited exception to the rule that an adjudicated father is barred from challenging the adjudication."

Acknowledged Father Not Entitled to Visitation In Absence of an Order

Wilson vs. Jackson, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (3rd Dist., No. 3-99-0383, 4/20/00), reversed entry of a plenary order of protection as an abuse of discretion in light of petitioner's abuse of the process.

Robby and Erica had lived together but broken up prior to the birth of their son, Ansley. Prior to and following Ansley's birth Robby had persistently tried to get back together with Erica, but she resisted. When Ansley was born Robby signed a voluntary acknowledgment of parentage but there were no further proceedings to establish custody, support or visitation.

When Erica continued to rebuff Robby, one week-end when he had Ansley for visitation he filed a petition for an emergency order of protection in an obvious attempt to get custody and/or visitation. Among other allegations of abuse he claimed Erica had interfered with his visitation with Ansley. The trial court issued an emergency order of protection, followed by interim and plenary orders. Erica appeals.

The Appellate Court reversed, primarily on the basis of the obvious abuse of the domestic violence law to address custody and visitation issues. While rejecting some findings of abuse and questioning others, the Court specifically concluded a finding of abuse based on alleged interference with visitation was an abuse of discretion. Section 214(c)(5) of the Domestic Violence Act states that no rights or responsibilities for a child born outside of marriage attach to a putative father until a father-child relationship has been legally established. While the paternity acknowledgment has the full force and effect of a judgment of paternity, "it does not itself establish visitation rights. Instead, establishing paternity is a precondition to gaining visitation, custody, or physical care and possession of the child."

(Cont'd. on page 16)

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(“Cases & Commentary,” cont’d. from page 14)

**Removal Provisions of IMDMA
Not Applicable to Parentage Cases**

In Re Parentage of Melton, ___ Ill. App. 3d ___, ___ N.E. 2d ___ (1st Dist., No. 1-99-2463, 5/30/00), vacated an injunction preventing removal of a child from Illinois and remanded for further consideration of visitation issues.

Following the birth of Bremen in May, 1997, Lynn filed a petition to establish parentage against Brace. In it she also sought permanent custody and support. An agreed order was entered in April, 1999, temporarily awarding Lynn child support and custody, and granting Brace supervised visitation at Lynn’s parents on specified days of the week. Almost immediately Lynn petitioned to remove the child to live with her in Vermont. The court enjoined any removal from the state, and changed the visitation days. Lynn appeals.

Injunction vacated. While sections 14, 15 and 16 of the Parentage Act incorporate “relevant standards” and “relevant factors” of the IMDMA related to establishment, enforcement and modification of support,

custody and visitation, the Parentage Act does not incorporate the procedures of the IMDMA “and does not broadly confer on the court the same powers conferred on the court in actions under [IMDMA]. . . . In particular, the Parentage Act nowhere confers on the court the power to enjoin parents from removing the child from the state . . .”

HOWEVER, the Parentage Act *does* incorporate “relevant factors” and “relevant standards” of the IMDMA for ordering, modifying and enforcing visitation by non-custodial parents. Here there is a specific visitation schedule that Lynn could not possibly meet if she removed the child from Illinois. While she could seek modification of that order the court could find it not in the best interests of the child to have that schedule changed. The Court specifically rejected language from a prior decision stating that the non-custodial parent in a parentage case has the burden of showing that visitation is in the child’s best interests. So, until the legislature addresses removal issues in cases governed by the Parentage Act, non-custodial parents are not entirely without hope when mom wants to leave the state.

(“USDA Report,” cont’d. from page 13)

income group of single-parent families consume a larger proportion of income than they do in husband-wife families

In short, the report concludes (in language identical to that used in last year’s report), “Expenditures on children do not appear to differ very much among single-parent and husband-wife households. What differs is household income levels. As single-parent families have one less potential earner (the absent partner), their total household income is lower and child-rearing expenses consume a greater percentage of income.”

The single-parent estimates only covered out-of-pocket child-rearing expenditures made by the parent with primary care of the child. Expenditures by the non-custodial parent were not estimated. The report concludes, therefore, that overall expenses paid by both parents on a child in a single-parent household are likely to be greater than the study’s estimates.

Copies of the report may be requested by writing to USDA’s Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200 North Lobby, Washington, DC 20036-3406. The full report, “Expenditures on Children by Families,” is available on the web at www.usda.gov/cnpp.

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