

Legislative and Update,  
The State of Child Support and  
Case Law Update

September 21, 2010

Mark J. Ponsolle  
Assistant Ramsey County Attorney

---

---

---

---

---

---

---

---

Overview

- State Legislative Update
- Selected Issues
- State Strategic Planning Update
- Child Support Service Delivery Committee
- Case Law Update

---

---

---

---

---

---

---

---

State Legislative Update

- Access to Data
- Redirection
- Judgments
- Interest

---

---

---

---

---

---

---

---

## State Legislative Update

- Access to Data
  - 2010 **Minn. Laws** Ch. 238, Sec. 1 (Amends **Minn. Stat.** 256.978, Subd. 2).
  - Access to mobile telephone and e-mail address.
  - Definition of utility companies expanded to include satellite and internet service providers.
  - Effective 8-1-10.

---

---

---

---

---

---

---

---

## State Legislative Update

- Redirection
  - 2010 **Minn. Laws** Ch. 238, Sec. 2 (Amending **Minn. Stat.** 518A.46, Sub. 5).
  - Redirect child support when caregiver
    - Has custody order or a voluntary placement agreement
    - Has custody under court-ordered placement
    - Receives public assistance (Minn.Stat. 256.741)

---

---

---

---

---

---

---

---

## State Legislative Update

- Judgments
  - 2010 **Minn. Laws** Ch. 238, Sec. 4, 5 and 6 (Amending **Minn. Stat.** 541.04;548.09, Sub.1; and deleting 548.092). Further Amended by 2010 **Minn. Laws** Ch. 371.
  - Extends Statute of Limitations to 20 years.
  - Effective 7-11-11.

---

---

---

---

---

---

---

---

### State Legislative Update

- Interest
  - 2010 **Minn. Laws** Ch. 249 (Amending **Minn. Stat.** 549.09).
  - Exempts debts owed by or owed to State and County from the 10 % Interest rate for judgments over \$50M.
  - Does not exempt debts owed to custodial parents over \$50M.
  - Effective Day following Enactment.

---

---

---

---

---

---

---

---

### State Legislative Update

- Uniform Foreign-Country Money Judgments Recognition Act.
  - 2010 **Minn. Laws** Ch. 263 (Adding **Minn. Stat.** 548.54 to 548.63).
  - Effective 8-1-10.

---

---

---

---

---

---

---

---

### Selected Issues

- ROP Policy
- Maintaining County Policy

---

---

---

---

---

---

---

---

### Selected Issues

- ROP Policy
  - Old policy, reissued. Conversion from eMilo to SIR.
  - Limiting the role of the County and County Attorney after a valid ROP is signed but genetic test requested or obtained and parentage questioned.

---

---

---

---

---

---

---

---

### Selected Issues

- ROP Policy provides
- A Child Support Officer (CSO) or County Attorney must not assist parties in any action to vacate an ROP or initiate genetic testing in such cases without an order from the court.

---

---

---

---

---

---

---

---

- Old ROP Policy
- If the results of genetic testing establish that the man who executed the ROP is not the father, the court must vacate the ROP. Any associated Husband's Non-Paternity Statement is also vacated. The court must also terminate the child support obligation for the man who signed the ROP. Any termination of the child support obligation may be retroactive only to the date of service of the motion to vacate the ROP on the other party or parties.

---

---

---

---

---

---

---

---

### Selected Issues

- Maintaining County Policy
- Review it at
  - [https://www.dhssir.cty.dhs.state.mn.us/PRISM/User\\_docs/SIRMILO/Maintaining\\_County/Pages/default.aspx](https://www.dhssir.cty.dhs.state.mn.us/PRISM/User_docs/SIRMILO/Maintaining_County/Pages/default.aspx)

---

---

---

---

---

---

---

---

### Selected Issues

- Get on SIR and review policies, messages and notices.
- Respond when asked and you have a question or opinion.
- DHS wants to hear your thoughts.

---

---

---

---

---

---

---

---

### State Strategic Plan Update

- Five Year Plan:
  - Approved in October 2007.
  - Plan contained a comprehensive list of goals, strategies, and objectives.
  - Being updated.

---

---

---

---

---

---

---

---

### State Strategic Plan Update

- Priority Objectives
  - Enhance Productivity through technology.
  - Implement Incremental System Renewal.
  - Simplify and Create User-Friendly Policies and Legal Processes.

---

---

---

---

---

---

---

---

### State Strategic Plan Update

- Priority Objectives
  - Set Individualized Performance Goals for. each County and the State.
  - Address Findings Raised in the Service Delivery Study.

---

---

---

---

---

---

---

---

### Child Support Service Delivery Committee

- Committee consists of representatives from DHS, MACSSA, AMC, MCAA and the Courts.

---

---

---

---

---

---

---

---

Child Support Service Delivery  
Committee

- Focus:
  - Review issues challenging the Minnesota Child Support Program as identified in the service delivery study.
  - Identify and address areas of agreement and disagreement and try to resolve differences.

---

---

---

---

---

---

---

---

Child Support Service Delivery  
Committee

- Focus:
  - Define roles and responsibilities of the parties.
  - Recommend changes to address issues identified in the service delivery study.

---

---

---

---

---

---

---

---

Never a dull  
moment in child  
support!

---

---

---

---

---

---

---

---

# END

Questions???

[mark.j.ponsolle@co.ramsey.mn.us](mailto:mark.j.ponsolle@co.ramsey.mn.us)  
651-266-3037

---

---

---

---

---

---

---

---

## “The Sweet Sixteen”



### Case Law Update

September 2009-September 2010



---

---

---

---

---

---

---

---

## Referees

**Patrick Hest**

Assistant Ramsey County Attorney  
(651) 266-3266

**Sara Lauthen**

Senior Law Clerk

**Jenna Eisenmenger**

Law Clerk

---

---

---

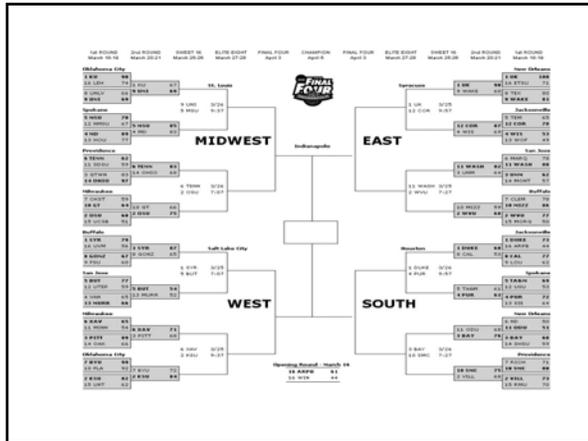
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

---

---

## Rules of the Game

- o There are a lot more cases out there, these are just some of the highlights.
- o No summary, even ones as good as the ones you are about to see, is a substitute for reading the case for yourself.
- o This is just a starting point.
- o Unlike real referees, you get to overrule our interpretation of a case, and use it how you see fit.
- o Finally, there is no instant replay.

---

---

---

---

---

---

---

---

---

---

---

---

## Forced Turnover

Savig v. First National Bank  
 Omaha  
 781 N.W.2d 335 (Minn. 2010)  
 AmericInn v. Eagle Contractors  
 772 N.W.2d 81 (Minn.Ct.App. 2009)

---

---

---

---

---

---

---

---

---

---

---

---

## Savig v. First Nat'l Bank of Omaha

- The Facts
  - Not a FIDM case.
  - A default judgment was entered against Mona Savig for failure to make credit card payments.
  - A post-judgment garnishment summons was served on Mona and Midwest Bank, where she and her husband held joint checking and savings accounts.
  - Midwest Bank withheld \$2,003.78 from the accounts.

---

---

---

---

---

---

---

---

## Savig v. First Nat'l Bank of Omaha

- The Facts (cont.)
  - The Savigs filed a complaint in federal district court alleging conversion, wrongful levy, and invasion of privacy because a portion of the funds withheld belonged to Mona's husband, Robert
  - In response, First Nat'l filed a motion for judgment on the pleadings, for summary judgment, or for certification of questions of law.
  - MN Supreme Court accepted the certified questions of law presented.

---

---

---

---

---

---

---

---

## Savig v. First Nat'l Bank of Omaha

- Question #1
  - Whether a judgment creditor may serve a garnishment summons on a garnishee, attaching funds in a joint account to satisfy the debt of an account holder, even though not all of the account holders are judgment debtors?
- MN Supreme Court's Answer
  - "[A] judgment creditor may serve a garnishment summons on a garnishee, attaching funds in a joint account to satisfy the debt of an account holder, even though not all of the account holders are judgment debtors."

---

---

---

---

---

---

---

---

## Savig v. First Nat'l Bank of Omaha

- Question #2
  - Does the judgment creditor or the account holders bear the burden of establishing net contributions to the account during the garnishment proceeding?
- MN Supreme Court's Answer
  - “[T]he account holders in a joint account bear the burden of establishing net contributions to the account in the garnishment proceeding.”

---

---

---

---

---

---

---

---

## Savig v. First Nat'l Bank of Omaha

- Question #3
  - What applicable presumptions regarding ownership apply in absence of proof of net contributions?
- MN Supreme Court's Answer
  - “[A] judgment debtor is initially, but rebuttably, presumed to own all of the funds in a joint account, and if the presumption is not rebutted, all of the funds in the account are subject to garnishment.”

---

---

---

---

---

---

---

---

## AmericInn v. Eagle Contractors

- The Facts
  - Again, not a FIDM case.
  - AmericInn obtained a civil judgment against Dale Werth and garnished \$44,309 from Werth's IRAs and bank account held jointly with his son.
  - Werth filed claim of exemption on the IRAs and the joint bank account under Minn. Stat. §550.37 subd. 24(a) and MN Multiparty Accounts Act.
- The District Court
  - Denied both claims because Werth failed to meet his burden.

---

---

---

---

---

---

---

---

## AmericInn v. Eagle Contractors

- The Court of Appeals
  - A Debtor's property is subject to attachment unless a specific exemption applies. Minn.Stat. §550.37 subd.24(a) expressly exempts IRAs regardless of whether the funds were derived from employment.
  - Any amounts garnished from Werth's IRAs remain his property and should be returned to him.
  - Funds in a joint account belong to the parties in proportion to their net contributions.
  - No evidence showed the funds in the joint account were also owned by Werth's son. The district court didn't err by denying appellant's claim for exemption of the joint bank account.

---

---

---

---

---

---

---

---

## Judgments Going into Overtime

Dahlin v. Kroening  
784 N.W.2d 406 (Minn.Ct.App 2010)  
Bakken v. Helgeson  
785 N.W.2d 791 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Dahlin v. Kroening

- The Facts
  - In 1978 the parties' dissolution judgment awarded obligee spousal maintenance.
  - In 1988, after obligor had not paid, obligee brought an action on the judgment and obtained a new judgment for arrearages.
  - In 1998, the judgment continued to be unpaid so obligee brought another action for a new judgment and obtained a new judgment.
  - In 2008, obligee filed an action on the 1998 judgment.

---

---

---

---

---

---

---

---

## Dahlin v. Kroening

- The District Court denied the obligee's motion to obtain a new judgment because more than ten years had passed since the first judgment.

---

---

---

---

---

---

---

---

## Dahlin v. Kroening

- The Court of Appeals
  - There is no Minnesota statute expressly allowing spousal maintenance judgments to be repeatedly renewed as it does for child support judgments, but there is no indication that it was the legislative intent to restrict multiple judgment renewals solely to child support judgments.
  - Minnesota Statutes sections 541.04, 548.09, and 548.091 require judgment creditors to commence actions on judgments within ten years after the entry of each judgment, expressly allowing child support judgments to be renewed repeatedly.

---

---

---

---

---

---

---

---

## Bakken v. Helgeson

- The Facts
  - A June 15, 1983 judgment dissolved the parties' marriage.
  - Bakken was awarded a lien against the property in the amount of \$5,000 when the property was sold.
  - The judgment containing the lien was recorded on June 16, 1983.
  - The property was conveyed several times.
  - In September 2008, Bakken sought to foreclose her lien by serving all individuals who had owned the property.

---

---

---

---

---

---

---

---

## Bakken v. Helgeson

- The District Court
  - Granted summary judgment for the defendants and dismissed Bakken's claim.
  - Bakken's lien is a judgment lien, so she is required to collect on the lien within 10 years of entry of the dissolution judgment.

---

---

---

---

---

---

---

---

## Bakken v. Helgeson

- The Court of Appeals
  - Marital liens are NOT judgment liens, but are a method used to distribute property in a dissolution.
  - Marital liens may be foreclosed as a mortgage when the original judgment doesn't expressly state a different means of enforcement.
  - The statute of limitations for mortgage foreclosure is 15 years.
  - Distinguished this case from *Dahlin*, which applied to spousal-maintenance arrearage judgments. The judgment in this case was awarded by the court as a method of property division not money judgment.

---

---

---

---

---

---

---

---

## The Parenting Time Three Point Play

Hesse v. Hesse  
778 N.W.2d 98 (Minn.Ct.App. 2009)  
Apel v. Nelson  
2009 WL 4910800 (Minn.Ct.App. 2009)  
Hagen v. Schirmers  
M783 N.W.2d 212 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Hesse v. Hesse

- The Facts

- Parties divorced in 2006 and father was ordered to pay \$1,107 per month in child support.
- The judgment contained a detailed parenting time schedule for the father because of his seasonal employment in construction.
- In 2008, father filed a motion to modify his child support after the new statute went into effect which allowed for a parenting expense adjustment.
- CSM denied his motion because he didn't exercise the 2-week vacation period of his parenting time, so wasn't included as a part of his parenting time and no substantial change in circumstance making the existing order unreasonable and unfair.

---

---

---

---

---

---

---

---

## Hesse v. Hesse

- The District Court

- Determined the father's failure to exercise the 2-week vacation parenting time wasn't relevant.
- The percentage of parenting time to be used in determining whether to use a parenting expense adjustment is the time "scheduled to spend with a parent during a calendar year according to a court order."
- The father's parenting time with the vacation period was 45.1%-50%, which required a 50% parenting expense adjustment.
- Remanded the case to the CSM who recalculated support which resulted in both a 20% and \$75 lower child support obligation creating a presumption that there was a substantial change in circumstances.

---

---

---

---

---

---

---

---

## Hesse v. Hesse

- The Court of Appeals

- CSM didn't err by including the 2-week vacation parenting time in the parenting expense adjustment.
- The plain language of Minn.Stat. §518A.36 subd. 1(a) provides for a parenting expense adjustment to be based upon the terms of the a court order scheduling parenting time whether or not the parenting time is exercised.
- A party who wants to challenge the compliance with the parenting time provisions in a court order should move for a hearing to resolve the parenting time dispute.

---

---

---

---

---

---

---

---

## Apel v. Nelson

- The Facts
  - Father exercises parenting time every other weekend but there is no court order awarding parenting time.
  - Itasca County moved to increase father's basic support obligation and have mother contribute towards the cost of dependent health coverage.
  - CSM denied motion to increase the basic support after applying a parenting expense adjustment, but granted the request for mother to contribute towards the health care coverage.
  - CSM denied Mother's motion for review.

---

---

---

---

---

---

---

---

## Apel v. Nelson

- The Court of Appeals
  - The CSM erred by considering a parenting expense adjustment because there isn't a court order awarding parenting time.
  - "If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment." – Minn. Stat. §518A.36, subd. 2(1).
  - CSM erred by ordering mother to contribute towards the cost of dependent health care coverage because the father incurred no additional cost by insuring the child.

---

---

---

---

---

---

---

---

## Hagen v. Schirmers

- The Facts
  - In 2005, the parties stipulated to paternity, mother was awarded sole physical custody, joint legal custody and father's parenting time schedule was structured and graduated.
  - Father's parenting time was to increase after the child's 5th birthday.
  - In November 2008, mother petitioned to relocate the child to California, so she could marry her fiancée and reside in California. Mother's petition included a change of the father's parenting time to less than 10%.
- The District Court
  - Granted mother's motion.

---

---

---

---

---

---

---

---

## Hagen v. Schirmers

- The Court of Appeals
  - The district court didn't abuse its discretion by approving the relocation to CA. The court considered the best interests of the child.
  - The district court erred by failing to consider the 25% presumption of parenting time set forth in Minn.Stat. §518.175, subd.1(e).
  - Courts must "demonstrate an awareness and application of the 25% presumption when the issue is appropriately raised and the court awards less than 25% parenting time."

---

---

---

---

---

---

---

---

## Illegal Blocking Foul Costs Dearly

Rooney v. Christ's Household of  
Faith  
782 N.W.2d 572 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Rooney v. Christ's Household of Faith

- The Facts
  - Parties were married in 1964 and divorced in 1988. Obligor Rooney was ordered to pay child support and spousal maintenance in the dissolution.
  - In '90 and '91, CHOF was determined to be obligor's employer and was ordered to withhold money for child support and spousal maintenance.
  - After 20 years of litigation, obligee Rooney obtained a judgment of approximately \$235,000 against CHOF.
  - Obligee Rooney sought to recover attorney fees she incurred in enforcing CHOF's obligation to withhold funds for her benefit.

---

---

---

---

---

---

---

---

### Rooney v. Christ's Household of Faith

- The District Court denied the obligee Rooney's request for attorney's fees incurred between 2001 and 2008 in pursuing the judgment against CHOF and seeking to collect on the judgment.

---

---

---

---

---

---

---

---

### Rooney v. Christ's Household of Faith

- The Court of Appeals held:
  - A third party "payor of funds" to a child support obligor whom is held liable to the obligee for amounts the payor failed to withhold is also liable for reasonable attorney fees incurred by the obligee in enforcing the withholding liability.
  - Also, the "payor of funds" is liable for attorney fees incurred before or after an arrearages judgment is entered against the payor.

---

---

---

---

---

---

---

---

## Technical Foul Leads to Proper Ejection

Lawrence v. Ratzloff Motor Express  
785 N.W. 2d 819 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Lawrence v. Ratzloff Motor Express

- The Facts

- On July 20, 2009, DEED determined Lawrence wasn't eligible for unemployment benefits.

- DEED found Lawrence had committed misconduct by failing to maintain a driver's license which was required for his employment as a truck driver.

---

---

---

---

---

---

---

---

## Lawrence v. Ratzloff Motor Express

- The Unemployment Law Judge

- Lawrence was discharged after his license was suspended for non-payment of child support.

- Lawrence has the responsibility to ensure his child support payments are paid.

- Lawrence couldn't perform his duties as a truck driver without a driver's license.

- Lawrence's failure to ensure his child support payments were paid resulted in his license being suspended and his conduct meeting the definition of employment misconduct.

---

---

---

---

---

---

---

---

## Lawrence v. Ratzloff Motor Express

- The Court of Appeals

- Affirmed ULJ's decision.

- "An applicant who is discharged for employment misconduct is ineligible for unemployment benefits."  
Minn.Stat. §268.095 subd.4.

- An employee commits employment misconduct when an employee's driver's license is suspended when the employee's child support obligation is unpaid due to the employee's intentional, negligent, or indifferent conduct.

---

---

---

---

---

---

---

---

# Double Team Can Be Effective

Welsh v. Welsh  
775 N.W.2d 364 (Minn.Ct.App. 2009).

---

---

---

---

---

---

---

---

## Welsh v. Welsh

- The Facts
  - In 1999, the parties stipulated to dissolution which included ordering the father to pay \$2,100 in child support per month.
  - In 2008, father filed a motion to reduce his child support based upon increased expenses and an increase in mother's income.
  - After the dissolution, mother started receiving monthly payments from a trust.
  - CSM reduced father's child support obligation. CSM used mother's trust income and made a determination mother was voluntarily unemployed.
  - Mother's gross income included potential income and actual income from her trust.

---

---

---

---

---

---

---

---

## Welsh v. Welsh

- The District Court
  - Upheld the CSM's order finding the CSM had properly calculated the mother's gross monthly income.
  - Found it was appropriate to impute potential income to mother because the CSM found her "voluntarily unemployed."
  - Determined gross income includes both actual and potential income.
  - Twins are 13 years old so there is no basis to reduce imputed income due to caretaker responsibilities.
  - There has been a substantial change in circumstances which renders the father's child support obligation unreasonable and unfair.

---

---

---

---

---

---

---

---

## Welsh v. Welsh

- The Court of Appeals
  - Gross income includes both potential and actual income.
  - Potential income can be considered even if a parent has direct evidence of current income.
  - According to Minn. Stat. §518A.32, “[i]f a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.”
  - The word “or” is read as disjunctive.
  - The district court didn’t make sufficient findings addressing the factors to consider regarding whether a stay at home parent is voluntarily unemployed in Minn.Stat. §518A.32, subd. 5.

---

---

---

---

---

---

---

---

## Minnesota’s Law Gets Benched

Hill v. Hill  
777 N.W.2d 252 (Minn.Ct.App. 2009)

---

---

---

---

---

---

---

---

## Hill v. Hill

- The Facts
  - Parties were married for 10 years and their marriage was dissolved by Mississippi court order.
  - Father was ordered to pay child support until youngest child emancipated, which under Mississippi law was 21 yrs.
  - Mother moved to Minnesota in 1992 and Father moved to Minnesota in 2003.
  - The Mississippi child support order was registered in Minnesota for enforcement and modification.
  - Subsequent orders modified the father’s child support obligation pursuant to Minnesota law.
  - Father moved to terminate his support obligation when the youngest child turned 20 and the CSM denied his motion.

---

---

---

---

---

---

---

---

## Hill v. Hill

- The District Court
  - Applied UIFSA as codified in Minnesota to Father's appeal. (see Minn. Stat. §§ 518C.101-902)
  - Affirmed the CSM's denial concluding Mississippi law wouldn't allow the duration of the Father's child support obligation to be modified.

---

---

---

---

---

---

---

---

## Hill v. Hill

- The Court of Appeals
  - The text of Minn.Stat. §518C.611 is subject to more than one reasonable interpretation because the language is ambiguous.
    - "(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner."
    - "(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls must be recognized under section 518C.207 establishes the aspects of the support order which are nonmodifiable."

---

---

---

---

---

---

---

---

## Hill v. Hill

- The Court of Appeals (cont.)
  - If a provision in a uniform law is ambiguous, the court should examine any drafters' notes.
  - Applied the Comment to section 611 of UIFSA, which states if an aspect of a child support obligation may not be modified under the law of the state that first imposed the obligation, that aspect of the obligation may not be modified under the law of any other state.
  - Minn.Stat. §518C.611 doesn't allow modification of any aspect of a child support order issued by a court of another state if issuing state's law wouldn't allow that aspect of the order to be modified.

---

---

---

---

---

---

---

---

# A Modification That Went Over and Back

Viele v. Viele  
2010 WL 2266498 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Viele v. Viele

- The Facts
  - In August 2004, the obligor's child support obligation was set at \$1,350.
  - At that time, the obligor challenged the child support determination and the case was remanded for more specific findings.
  - On remand, the district court amended the order and determined obligor's net income was \$4,500, but the child support remained \$1,350.
  - 5 months later obligor filed motion to modify his child support obligation and CSM denied his request.

---

---

---

---

---

---

---

---

## Viele v. Viele

- The District Court affirmed the CSM's denial of the obligor's motion to modify.

---

---

---

---

---

---

---

---

## Viele v. Viele

- The Court of Appeals
  - “Findings of fact are clearly erroneous when manifestly contrary to the weight of the evidence and not reasonably supported by the evidence as a whole.” Actual income did not go up.
  - Gifts regularly received from a dependable source must be used to determine the amount of the party's child support obligation.
  - When the 20% and \$75 difference is shown, the presumption of substantial change is irrefutable.

---

---

---

---

---

---

---

---

## Legal Substitution

Tiede v. Tiede  
2010 WL 3220129 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Tiede v. Tiede

- The Facts
  - In 2006, the parties were divorced and father was ordered to pay child support. Mother was awarded the marital homestead subject to two mortgages.
  - In June 2009, father filed a motion requesting permission to pay a portion of his child support obligation directly to the companies holding the mortgages on the marital homestead.
  - Mother was more than 30 days late in paying the first mortgage and more than 60 days late paying the second mortgage. Father's credit affected.

---

---

---

---

---

---

---

---

## Tiede v. Tiede

- The District Court
  - Granted Father's request to pay a portion of his child support obligation directly to the mortgage companies.
  - Equity favors allowing the Father to make mortgage payments directly to the mortgage company if the Mother isn't going to make those payments
  - Equity favors offsetting the mortgage payments against his monthly child support obligation.

---

---

---

---

---

---

---

---

## Tiede v. Tiede

- The Court of Appeals
  - The court may characterize payments regarding homestead property as being in the nature of child support and may allow the obligor to offset those payments against child support payments.
  - The children benefit directly from the obligor making the mortgage payments by allowing the children to remain in the marital homestead.
  - The primary public policy underlying child support law in MN is the welfare of the children.

---

---

---

---

---

---

---

---

## Request for Relief is Out of Bounds

Mandeville v. Henderson  
2010 WL 346396 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Mandeville v. Henderson

- The Facts
  - On June 9, 1998, the court awarded sole physical custody to mother and ordered father to pay \$465 per month in child support for their two children.
  - In May 2002, father was incarcerated, so he filed a motion to modify his child-support in July 2003.
  - Mille Lacs County filed a responsive motion requesting a judgment be entered for outstanding arrearages.
  - CSM reduced father's child support obligation to \$0 and entered a judgment for \$7,134.05 representing outstanding arrearages at the time.

---

---

---

---

---

---

---

---

## Mandeville v. Henderson

- The Facts (cont.)
  - In 2007 and 2008, the father filed motions to modify the arrearages by changing the effective date of the order and/or forgiving the arrearages based upon incarceration.
  - CSM denied both motions.

---

---

---

---

---

---

---

---

## Mandeville v. Henderson

- The District Court
  - Denied the father's motion to modify and adopted the CSM's reasoning.
  - "If [appellant] objected to the August 25, 2003 order, he should have filed an appeal within the time frame allowed—not five years after the fact."
  - Noted the father failed to cite any authority requiring the county to unilaterally determine when an obligor is incarcerated and subsequently suspend his support obligation.

---

---

---

---

---

---

---

---

## Mandeville v. Henderson

- The Court of Appeals
  - “A modification of child support may not be made retroactive beyond the date that the party seeking modification served notice of the motion on the responding party.” Minn.Stat. §518A.39, subd. 2(e)
  - The forgiveness of arrearages constitutes a retroactive modification of support.
  - The father’s motions to modify were all filed after January 1, 2007 so the court had no authority to change his arrearages.

---

---

---

---

---

---

---

---

## Blocked Shot at Modification

Braatz v. Braatz  
2010 WL 72882 (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Braatz v. Braatz

- The Facts
  - In May 2008, the obligor was ordered to pay basic child support and child care based upon his income from the Air Force of \$3,913/mo.
  - In December 2008, the obligor voluntarily left the military to transition to a new career. He took online classes in operations management at MN State University-Moorhead.
  - The obligor has been unemployed while studying for his degree, so he filed motion to modify.
  - CSM denied to modify his obligation. CSM determined he was voluntarily unemployed and had potential income of \$3,913/mo.

---

---

---

---

---

---

---

---

## Braatz v. Braatz

- The Court of Appeals
  - A parent is not voluntarily unemployed if “the unemployment is temporary and will ultimately lead to an increase in income or the unemployment represents a bona fide career change that outweighs the adverse effect of that parent’s diminished income on the child.”
  - No evidence was presented to show the obligor’s income would increase due to he career change.
  - No finding of bad faith is required to impute income to the obligor.

---

---

---

---

---

---

---

---

## A Change of Possession Doesn’t End the Proceeding

Ochu v. Tomas  
2010 WL 1286903, (Minn.Ct.App. 2010)

---

---

---

---

---

---

---

---

## Ochu v. Tomas

- The Facts
  - In 2006, Ochu was ordered to pay child support and a judgment was entered for past support.
  - In May 2008, the district court granted Ochu sole physical and legal custody of the minor child.
  - In August 2008, Stearns County sent Ochu a notice of intent to suspend his driver’s license. In response, he filed motion to suspend collection of child support arrears.
  - At the hearing, the CSO testified there were still arrears owed to the State and Tomas when Ochu was awarded custody of the child.
  - The CSM denied Ochu’s motions and ordered him \$150 per month towards his child-support arrears. Affirmed by the district court.

---

---

---

---

---

---

---

---

## Ochu v. Tomas

- The Court of Appeals
  - Affirmed the district court's order.
  - If a parent lives in the same household as the minor child, a parent may seek suspension of collection efforts or a payment agreement based on the ability to pay.
  - An agency may suspend collection of arrears so long as the parent is living with the child in the same household and the gross household income is less than 185% of the federal poverty level.
  - Suspension of collection efforts is at the discretion of the agency and not the court.
  - The court may suspend charging of interest if a statutory condition is met.

---

---

---

---

---

---

---

---

## Overtime

---

---

---

---

---

---

---

---

## Buzzer Beaters???

- Questions???

---

---

---

---

---

---

---

---