

September 26, 2012

Mark J. Ponsolle and Patrick M. Hest
Assistant Ramsey County Attorneys

LEGISLATIVE AND CASE LAW UPDATE

OVERVIEW

- Legislative Update
- Miscellaneous Updates
- Case Law Update

FEDERAL LEGISLATIVE UPDATE

- No answers-mainly questions
- Await the Presidential Election in November 2012

STATE LEGISLATIVE UPDATE

- What did not get passed:
 - Paternity Bills
 - Adjudication in Juvenile Court
 - Paternity Hearings Public
 - Parenting Plans
 - Permissive Appointment of Counsel in Parentage Cases*

STATE LEGISLATIVE UPDATE

- What did not get passed:
 - Calculation of Maintenance
 - Notice to Joint Account Holders
 - Interest on Debts owed to the State and Political Subdivisions

STATE LEGISLATIVE UPDATE

- What did not get passed:
 - UIFSA Major*
 - Data Sharing*

STATE LEGISLATIVE UPDATE

- What did get passed:
 - Child Care
 - Statute of Limitations (Elimination of 20-year SOL extension)

STATE LEGISLATIVE UPDATE

- What did get passed:
 - UIFSA Minor
 - The Bermuda Rule
 - Appointed Counsel in Parentage Cases

CHILD CARE

- Allows the county to stop child care upon:
 - Verification that child care costs are no longer being incurred; or
 - Failure by the custodial parent to respond to a request for verification
- 2012 *Minn. Laws* Ch. 216, Art. 5, Sec. 3 and Ch. 247, Art. 5, Sec. 5 (Effective August 1, 2012)

JUDGMENTS - STATUTE OF LIMITATIONS

- Judgments

- Reverses the 2010 extension of the Statute of Limitations to 20 years
- The Statute of Limitations remains at 10 years

- 2012 *Minn. Laws* Ch. 183 Sec. 1-2 and Ch. 216, Art. 1, Sec. 45-46

UIFSA MINOR

- ***Wareham fixed***

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order unless:

- (1) ~~as long as~~ this state ~~remains~~ is no longer the residence of the obligor, the individual obligee, ~~or~~ and the child for whose benefit the support order is issued; or
- (2) ~~until~~ all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

★ 2012 *Minn. Laws* Ch. 216, Art. 5, Sec. 4 (Effective August 1, 2012)

THE BERMUDA RULE

- Provides for a reciprocal child support agreement with Bermuda

★ 2012 *Minn. Laws* Ch. 216, Art. 5, Sec. 5 (Effective October 1, 2013)

APPOINTED COUNSEL IN PARENTAGE CASES

- Provides that appointed counsel in parentage case is limited to the issue of establishment of parentage

★ 2012 *Minn. Laws* Ch. 212, Sec. 2 (Effective August 1, 2012)

MISCELLANEOUS UPDATES

- What may get passed:
 - Presumption of Joint Physical Custody

PRESUMPTION OF JOINT PHYSICAL CUSTODY

- HF 322/SF 1402
- HF 322 provides:
 - Presumes joint physical custody
 - Presumes 45.1 parenting time
 - CHIPs standard to overcome presumption
 - Passed in the House April 18, 2012

PRESUMPTION OF JOINT PHYSICAL CUSTODY

- HF 322/SF 1402
- SF 1402 provides:
 - Presumes 35 percent parenting time
 - Does not include Paternity Cases
 - Not passed in Senate

STATE OF CHILD SUPPORT

- Data Sharing Bulletin
- E-filing and Electronic Records
- Funding

STATE OF CHILD SUPPORT

- Regionalization
- Tour of State
- Comprehensive State Wide Legal Plan

CHILD WELFARE AND CHILD SUPPORT DATA SHARING

- Recently the federal data sharing rules were broadened. (*Federal Register*, Vol. 75, No. 249)
- Minnesota Bulletin #12-75-01 outlined the changes but cautioned a change in Minnesota Law is needed. (Did not pass in 2012)
- Read both!

E-FILING AND ELECTRONIC RECORDS

- E-filing
 - File documents electronically
- Electronic Records
 - Maintain documents electronically

E-FILING AND ELECTRONIC RECORDS

- E-filing
 - Not just emailing
 - File set up by filer
 - PRISM docs need to be scanned
 - Short term - more work
 - Long term?

E-FILING AND ELECTRONIC RECORDS

- E-filing
 - Hennepin and Ramsey County 2011
 - 8 more Counties 2013
 - 20 more Counties 2014

E-FILING AND ELECTRONIC RECORDS

Stay Tuned!

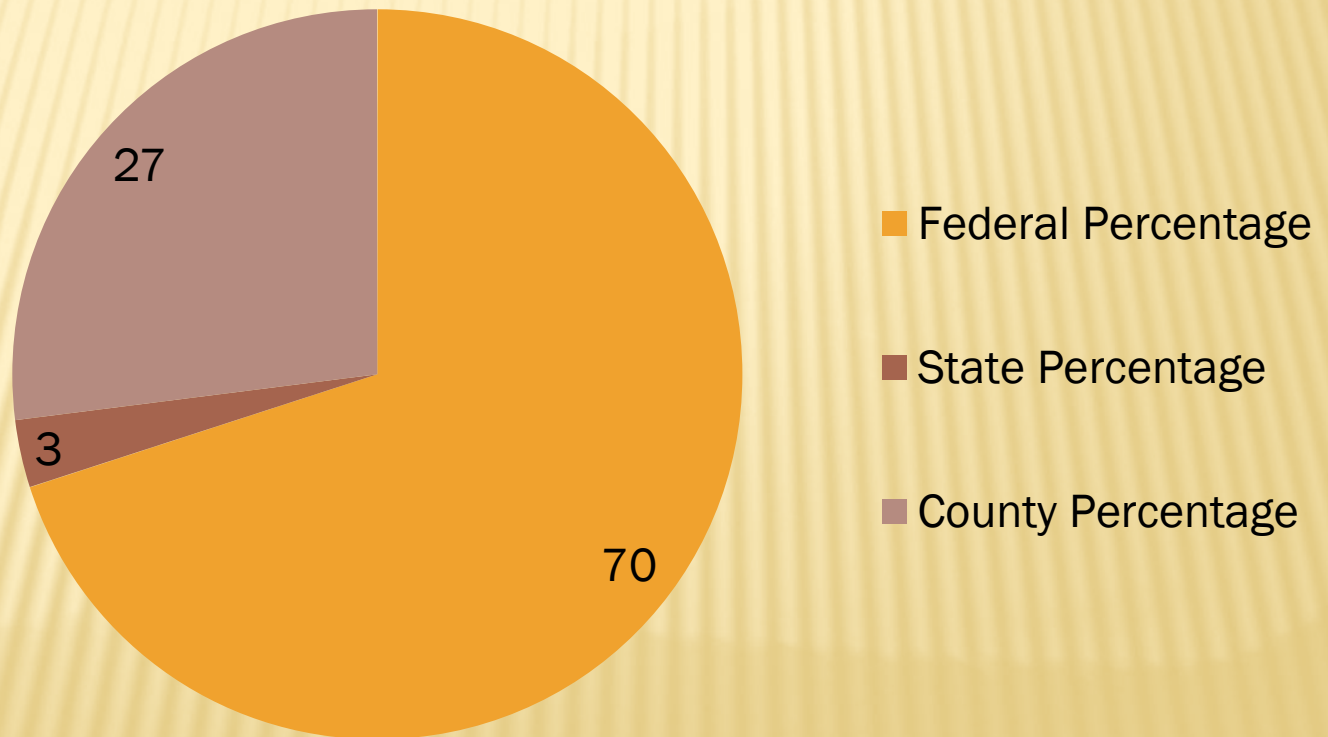
FUNDING

- Reminder in 2011
 - State Incentives for orders eliminated; and
 - An increase in cost recovery fee increased to 2%
- Loss of State Incentives not made up by increase in Fees
- Net loss in State Funds to Counties

FUNDING

EXAMPLE: RAMSEY COUNTY FFY 2011

Federal, State, and County Contribution to Program Funding



REGIONALIZATION

- Delivery of Human Services
- Regionalization and/or State Operated
- Subset is Child Support

REGIONALIZATION

- Examples

- Region 10

- Dodge, Fillmore, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona Counties
 - County Delivery of Human Services by Region except possible State Pilot of Child Support

REGIONALIZATION

- Examples

- Region 3

- Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and St. Louis Counties
 - County Delivery of Human Services by Region

REGIONALIZATION

Stay tuned!

COMPREHENSIVE STATE WIDE LEGAL PLAN

- Proposal to resolve legal issues across the state
- Committee of Attorney General; Department of Human Services; and MCAA
- Inventory issues
- Assign work groups

COMPREHENSIVE STATE WIDE LEGAL PLAN

- Possible solutions:
 - Agreement
 - Litigation and Appeal
 - Legislation
- Best Practices Manual

COMPREHENSIVE STATE WIDE LEGAL PLAN

- MCAA endorsed the concept by Resolution on April 20, 2012
- Work continues

THE CAMPAIGN TRAIL



CASE LAW UPDATE
SEPTEMBER 2011 – SEPTEMBER 2012

YOUR CAMPAIGN ADVISORS

Patrick M. Hest

Assistant Ramsey County Attorney/Chief Strategerist

(651) 266-3266

Jordan Sing

Senior Law Clerk/Policy Wonk

JD Oborn

Law Clerk/Research Whiz

BEFORE WE HIT THE TRAIL...

- This is intended to be a brief survey of some of the most important or interesting cases and issues over the last year. It is not intended to be comprehensive.
- We weren't directly involved with the cases (or won't admit to it).
- Reasonable minds can differ.

WINSTON'S WISDOM

- I am always ready to learn although I may not always like being taught.
- True genius resides in the capacity for evaluation of uncertain, hazardous, and conflicting information.
- There is no such thing as public opinion. There is only published opinion.

IN OTHER WORDS...

- Be an informed voter.
- Read the cases and draw your own conclusions.
- As Ronald Reagan would say, “Trust, but verify!”

CAN'T WORK OR CAN I?

Zaldivar v. Rodriguez

819 N.W.2d 187 (Minn. Ct. App. 2012)

Reed v. Baaj

2011 WL 7701440 (Minn. Ct. App. 2012)

ZALDIVAR V. RODRIGUEZ

- The Facts:
 - Unauthorized alien from El Salvador ordered to pay child support of \$327 in 2007
 - Not authorized to reside or work in the US
 - Support modified in 2010 to \$313 but added a medical support obligation of \$62
 - Invoked 5th Amendment during modification hearing and offered no evidence of efforts to become legally employed

ZALDIVAR V. RODRIGUEZ

- The Facts continued:
 - In 2011, the DC held him in contempt and ordered him to serve 90 days unless purge conditions were met
 - DC drew a negative inference against Appellant due to the lack of evidence about how he supported himself
 - At hearing to lift the stay on the 90 day confinement, Appellant testified that he could not work but two friends testified that they had given him \$14,000 over two years

ZALDIVAR V. RODRIGUEZ

- The District Court
 - Appellant failed to demonstrate inability to pay and that his immigration status is not dispositive
 - He had received \$14,000 tax free and never made a child support payment
 - The stay conditions had been violated and he was ordered to report to the jail
 - Appellant did not report and a warrant was issued for his arrest

ZALDIVAR V. RODRIGUEZ

- The Court of Appeals – Two Issues
 1. Did the DC err by holding Appellant in contempt for failing to pay child support despite the fact that he is not authorized to work in the US by federal law?
 2. Did the DC err when determining Appellant had ability to pay and that confinement would produce compliance?

ZALDIVAR V. RODRIGUEZ

- The Court of Appeals - Issue #1
 - Under federal law an unauthorized alien can work in the US without risk of criminal punishment as long as false documents are not used
 - Federal law does not prohibit unauthorized aliens from being held in contempt for failure to pay child support
 - Minnesota law permits holding unauthorized alien in contempt for not paying child support
 - The Appellant can comply with the purge condition of applying for work

ZALDIVAR V. RODRIGUEZ

- The Court of Appeals - Issue #2
 - Appellant had the ability to pay his obligations because of evidence that he had previously worked in the US
 - DC did not err in determining confinement would produce compliance because Appellant had been able to support himself for years and he refused to disclose details about an inheritance

REED V. BAAJ

- The Facts:
 - A complicated but exhaustive PT order issued in 2008
 - In April 2010 parties filed cross motions to hold the other in contempt of 2008 order
 - Both found in contempt and ordered to serve 30 days confinement with the purge condition of strict compliance with 2008 order
 - In November 2010 parties petitioned to have the other incarcerated for failing to comply with purge conditions

REED V. BAAJ

- The District Court
 - Appellant was in contempt for failing to pay shared transportation costs, not notifying Respondent of her right to first refusal of PT, and for not paying support
 - Court imposed 10 days of confinement with no purge conditions and stayed the remaining 20 days as long as he complied with the prior order

REED V. BAAJ

- The Court of Appeals
 - Appellant was in contempt
 - The DC confused civil and criminal contempt because the confinement for 10 days without a purge condition operated as punishment for past conduct
 - The court erred in ordering confinement because if criminal contempt was intended there were no procedural safeguards, and if civil contempt was intended the court should have set a purge condition to ensure a remedial purpose

MISTAKES WERE MADE!

Kellen v. Kellen

2012 WL 3263788 (Minn. Ct. App. 2012)

Guiliani v. Anderson

2011 WL 5119264 (Minn. Ct. App. 2011)

Kerr v. Kerr

2012 WL 612315 (Minn. Ct. App. 2012)

KELLEN V. KELLEN

- The Facts:
 - Marriage dissolved and Father awarded less than 25% of parenting time with no explanation
 - Father required to pay \$782 per month in child support – GMI included in-kind payments from sister's business
 - Father required to pay \$200 in spousal maintenance

KELLEN V. KELLEN

- The Court of Appeals
 - DC failed to apply the 25% PT presumption or make appropriate findings
 - Use of in-kind payments appropriate for calculating support because they reduce expenses
 - DC erred in failing to consider child support when examining each party's current situation and the need for spousal maintenance; remanded to consider the effect on child support

GUILIANI V. ANDERSON

- The Facts:

- The parties sought a dissolution and agreed that Mother would have sole physical custody subject to reasonable parenting time
- Father ordered to pay \$773 in child support based on a consideration of a one-time bonus when determining Father's GMI
- Father granted 13.7% PT

GUILIANI V. ANDERSON

- The Court of Appeals
 - The Court could not review the DC decision because there were no findings explaining why the 25% PT presumption did not apply or why a one-time bonus was included in Father's GMI
 - DC reversed and the issues remanded

KERR V. KERR

- The Facts:
 - In 2007 a temporary order granted Appellant 6 overnights every two weeks
 - The DC utilized three different methods to calculate PT percentages and each time it resulted in less than 45%
 - In the 2008 J&D the same PT schedule was incorporated and PT was determined to be 42.8%

KERR V. KERR

- The Facts continued:
 - In January 2011 he motioned to recalculate PT percentages because his increased income resulted in a change of circumstances making the prior order unreasonable or unfair
- The District Court
 - The change in circumstances was not substantial, did not render the prior order unreasonable or unfair, and Appellant's PT was 43.4% which did not change his support obligation

KERR V. KERR

- The Court of Appeals
 - There was an error in the calculation of support and there was a \$75 and 20% difference creating an irrebuttable presumption of changed circumstances but there also has to be a finding that the existing order is unreasonable or unfair
 - The Appellant was not prejudiced because the modification would have increased his obligation
 - The issue of PT calculation had not been preserved on appeal but even if it had the DC has broad discretion in determining PT percentages

READ MY LIPS: SOMETHING ABOUT TAXES A/K/A FUZZY MATH

Gunsallus v. Schoeller

2011 WL 5829308 (Minn. Ct. App. 2011)

GUNSALLUS V. SCHOELLER

- The Facts:

- CP motioned to increase child support from \$307 to \$1,293 per month
- The original order noted an anticipated change in NCP's income and permitted modification without meeting statutory requirements and an effective date of the change of employment
- NCP had gross receipts of \$352,832 but a net loss of \$36,574 due to expenses
- NCP used accelerated depreciation tables and listed \$170,816 in unspecified "other expenses"

GUNSALLUS V. SCHOELLER

- Ex Pro Order
 - CSM did not allow any depreciation and found NPC had a GMI of \$15,168
 - CSM allowed the deduction of the \$170,816 in “other expenses”
 - CSM modified support to \$1,293 per month and made it retroactive to the time of the change in employment

GUNSALLUS V. SCHOELLER

- The Court of Appeals
 - It was appropriate to not allow the depreciation expense deductions from NCP's GMI because he did not prove they were necessary expenses
 - The CSM did not subtract agreed upon expenses from NCP's GMI
 - The GMI should be \$5,441 not \$15,168
 - Making the order retroactive to June 2009 was not appropriate without specific findings that the NCP's income had increased in that month or that the effective date was based on language from the original order

FOLLOW THE MONEY (INTO THE FUTURE)

County of Grant and Koser v. Koser

809 N.W.2d 237 (Minn. Ct. App. 2012)

KOSER V. KOSER

- The Facts:

- Child support of \$665 per month ordered in January 2010
- In May 2010, Father qualified for RSDI and Mother received a lump sum of \$4,752 for the period of July 2009 through May 2010 and a monthly derivative benefit for the children of \$432
- Support modified to \$278 per month but application of the lump sum payment towards arrears not addressed
- Father filed MFR arguing that his support should not have been modified and that the lump sum payment should be applied as a credit to prospective obligations

KOSER V. KOSER

- The District Court
 - Presumption applied because of \$75 and 20% difference in child support
 - Applied the derivative lump sum benefit towards arrears but not towards prospective support and determined the additional benefit was a windfall
- The Court of Appeals
 - The modification was appropriate
 - The new statute effectively overturns Holmberg on this issue
 - The DC must exercise discretion in applying the credit as the statute does not direct how the payments are to be credited

THE BUCK STOPS HERE, BUT ONLY FOR JUDICIAL REMEDIES

County of Anoka and Halberg v. Storberg

2012 WL 426609 (Minn. Ct. App. 2012)

HALBERG V. STORBERG

- The Facts:

- In 1997 Anoka County received a judgment against Appellant in the amount of \$801.50 for past public assistance in place for his child
- The judgment was never renewed and in 2011 Appellant moved to vacate the judgment
- Motion denied because the “county is not barred from seeking administrative enforcement remedies for child support arrearages, which include judgments for reimbursement for public assistance expended”

HALBERG V. STORBERG

- The Court of Appeals
 - *Gerber* remains good law and the Appellant did not distinguish his case from *Gerber*
 - Administrative remedies to secure payment of a judgment (even one beyond the statutory window for renewal) are permissible as they are not an “action” subject to the renewal requirement

A HOUSE DIVIDED AGAINST ITSELF NOT ALLOWED TO STAND

Christianson v. Henke and Holewa

812 N.W.2d 190 (Minn. Ct. App. 2012), review granted (May 30, 2012)

CHRISTIANSON V. HENKE

- The Facts:
 - Mother and Father signed a ROP for T.L.H.
 - Parents lived next to Respondent, the paternal grandfather, who was allowed substantial access
 - After a falling out, Mother decided Respondent could no longer spend time with the grandchild
 - Respondent moved for visitation rights under Minn. Stat. § 257C.08, subd. 2.

CHRISTIANSON V. HENKE

- The District Court
 - Determined that a ROP established a sufficient basis upon which a request for grandparent visitation may be asserted
- The Court of Appeals
 - The DC had subject matter jurisdiction because the signing of a ROP constitutes a parentage determination for purposes of Minn. Stat. 257C.08, subd. 2.

SOMEONE ELSE HAD SEXUAL RELATIONS WITH THAT WOMAN

Thies v. Kramp

2012 WL 1070114 (Minn. Ct. App. 2012)

In re Custody of D.T.R.

796 N.W.2d 509 (Minn. 2011)

THIES V. KRAMP

- The Facts:
 - Appellant signed a ROP for N.T. in 2006
 - In 2009 Appellant petitioned the court for an adjudication of paternity
 - The Court issued an order for custody and PT that included a finding that the parties had acknowledged paternity and that “an adjudication of paternity shall be entered herein” but an adjudication was not ordered
 - In 2010 the Appellant obtained GT results showing he is not the biological father and moved to vacate the ROP
 - A GAL moved to dismiss under Rule 12 because Appellant’s motion was moot and barred by res judicata

THIES V. KRAMP

- The District Court
 - Granted the GAL's motion to be moot and barred by res judicata because it could not nullify the 2009 order, could not trump the presumption created by holding himself out as N.T.'s father, and the 2009 order determining paternity was final and barred the declaration of non-paternity
- The Court of Appeals
 - Determined that there was a misapplication of the law because Minn. Stat. § 257.75, subd. 4 controls the vacation of a ROP and contains no exceptions, timelines, or doctrines of res judicata or mootness that would deny the Appellants requested relief
 - This decision does not vacate the 2009 order or determine that he is entitled to a declaration that he is not the legal father because that is beyond the scope of the appeal

IN RE CUSTODY OF D.T.R.

- The Facts:

- D.T.R. was conceived when Appellant (mother) had a sexual relationship with Richards while she was engaged to Respondent
- D.T.R. was born after Appellant and Respondent were married
- In 2008 Richards participated in GT, discovered he was the biological father, and petitioned for custody and to have Respondent's non-paternity established
- Later in 2008 Respondent filed for divorce from Appellant when D.T.R. was 4 years old

IN RE CUSTODY OF D.T.R.

- More Facts:
 - Appellant and Respondent were granted equal PT with D.T.R. and in early 2009 Richards was granted temporary PT
 - At the paternity hearing the parties agreed that Respondent's presumption was that the child was born during his marriage and that he had held himself out as the father
 - Richard's presumption was based on GT results

IN RE CUSTODY OF D.T.R.

- The District Court
 - Court adjudicated Respondent the father and dismissed the petition with prejudice after determining that D.T.R. had a long standing relationship with Respondent and the parties joint child, that Respondent had provided emotional, financial and physical support, and that the child called the Respondent “dad”
 - The Mother appealed, Richards (bio dad) did not

IN RE CUSTODY OF D.T.R.

- The Court of Appeals
 - Under Minn. Stat. § 257.55, subd. 2 when two or more presumptions conflict no one presumption trumps
 - The DC properly determined that biology is not determinative and considered the best interest of the child
 - This case is distinguishable from *In Re Paternity of B.J.H.* because of the age of D.T.R., the established relationship with Respondent, and the recommendation by the neutral custody evaluator that Respondent be adjudicated

THE RENT IS TOO DAMN HIGH (AND MAYBE THE ARREARS ARE TOO)

Hlavac v. Hlavac

2012 WL 34023 (Minn. Ct. App. 2012)

HLAVAC V. HLAVAC

- The Facts:

- In divorce Husband ordered to pay child support and spousal maintenance retroactively
- Wife awarded home and required to pay mortgage but only made one payment
- Husband petitioned court for credit towards his retroactive support for paying the mortgage and other necessary household expenses

HLAVAC V. HLAVAC

- The District Court
 - Request to credit payments towards arrears denied
- The Court of Appeals
 - Husband's affidavit supports his claim that his payments satisfied his support obligations
 - DC failed to develop an adequate record to support denying Husband's request and the case must be remanded for findings with a high degree of particularity to ensure meaningful review

HOT OFF THE PRESSES

McDeid v. McDeid

2012 WL 4052809 (Minn. Ct. App. 2012)

MCDEID V. MCDEID

- The Facts:
 - Appellant is a civilly committed sex offender
 - Appellant participated in the “Work for Pay” program with a GMI of \$365 and a personal needs allowance of \$89
 - CSM determined Appellant could pay \$100 a month towards arrears for emancipated children
- The District Court
 - Affirmed CSM’s findings and order

MCDEID V. MCDEID

- The Court of Appeals
 - The County was a real party in interest because rights had been assigned and is able to bring a motion to modify
 - County attorney appeared on behalf of the County and not as a court appointed attorney for CP
 - Appellant's income had increased by more than 20% satisfying the presumptions under Minn. Stat. § 518A.39, subd. 2(b)(1)

MCDEID V. MCDEID

- The Court of Appeals cont.
 - Cost of Care expenses associated with a civil commitment are determined after child support is deducted
 - The minimum support obligation of \$50 only applies to prospective support and not to arrears only cases
 - Appellant is supported by the state and the Self Support Reserve does not apply

McGowan v. McGowan

2012 WL 4328682 (Minn. Ct. App. 2012)

MCGOWAN V. MCGOWAN

- Contempt case which held that based upon unique facts of the case the two stage Hopp and Mahady Hearing Process could be combined into one hearing.
- Caution the two stage process continues to be required as a general rule.

LESSONS FROM THE CAMPAIGN TRAIL

- Minnesota law permits holding unauthorized aliens in contempt for not paying child support.
- When pursuing civil contempt for non-payment of support purge conditions must be set when ordering confinement to ensure a remedial purpose.
- In-kind payments that reduce expenses should be considered when calculating GMI.
- A one-time bonus should not be considered as a periodic payment for calculating GMI without specific findings supporting inclusion of the bonus.

LESSONS CONTINUED

- Even if the irrebuttable presumption of substantial change in circumstances is established by a modified obligation that is \$75 and 20% different, there still must be findings supporting the rebuttable presumption that the prior order is unreasonable or unfair.
- A retroactive effective date for a support modification is not appropriate unless there is a finding that income changed at that time or there is a finding that the effective date is based on a previous order.

LESSONS CONTINUED

- A derivative lump sum payment should be credited towards arrears and can be applied to prospective child support.
- A county is not barred from administratively collecting support on a judgment that has not been renewed.
- Vacation of ROP cannot be barred by res judicata or mootness and is controlled by statute.
- Grandparent's can use an ROP as a basis for grandparent visitation request.

LESSONS CONTINUED

- No paternity presumption trumps any other.
- A party's payment of mortgage and other household necessities should be credited towards his support obligation unless there are specific findings to the contrary.
- A civilly committed NCP with income may be obligated to make payments toward arrears

MORE WINSTON WISDOM

- I always avoid prophesying beforehand, because it is a much better policy to prophesy after the event has already taken place.
- Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.

Contacts:

mark.j.ponsolle@co.ramsey.mn.us
651-266-3037

patrick.m.hest@co.ramsey.mn.us
651-266-3266

DON'T FORGET TO VOTE!