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

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Overview

- Legislative Update
- State of Child Support
- Case Law Update

Federal Legislative Update

Is there a Congress?

State Legislative Update

- What **did not** get passed:
  - Child support federal tax offset distribution modification (HF 100)
  - Child support obligation imposed on individuals whose parental rights have been terminated (HF 101)

State Legislative Update

- What **did not** get passed:
  - Suspension or reinstatement of medical support contributions (HF 163/SF 141)

State Legislative Update

- What **did not** get passed:
  - Assisted reproduction modifications to the Parentage Act (HF 291/SF 370)
  - UIFSA Update (HF 892/SF 347) (Passed in the Senate)

State Legislative Update

- What **did** get passed:
  - Health Exchange
    - 2013 Minn. Laws Ch. 9.

State Legislative Update

- What **did** get passed:
  - Case closure for uncollectable debts
    - 2013 *Minn. Laws* Ch. 108, Art. 3, Sec. 41 (Effective July 1, 2013)(codified in *Minn. Stat.* 518A.60, (f), (g) and (h).

State Legislative Update

- What **did** get passed:
  - Same Sex Marriage
    - 2013 *Minn. Laws* Ch. 74 (Effective August 1, 2013)

Health Exchange

Implementation of the Affordable Care Act

Same Sex Marriage

- Amends the Marriage Statute to allow marriage between *two persons*

Same Sex Marriage

- However, the Law provides in Sec. 6 [517.201], Subd. 2:

  When necessary to implement the rights and responsibilities of spouses or parents in a civil marriage between persons of the same sex under the laws of this state, **including those that establish parentage presumptions based on a civil marriage**, gender-specific terminology, such as "husband," "wife," "mother," "father," "widow," "widower," or similar terms, must be construed in a neutral manner to refer to a person of either gender. [Emphasis added].

Same Sex Marriage

- What effect does this have on establishing parentage under *Minn. Stat.* Ch. 257?

Case Closure

- Allows the county to close cases:
  - When the debt is determined uncollectable.
    - Children are emancipated.
    - No payment in three years.
    - All enforceable tools attempted or not appropriate.
    - No known assets or income.

Case Closure

- Allows the county to close cases:
  - The underlying debt remains.
  - Counties do not have to close the case.

Presumption of Joint Physical Custody

Nary a word!

State of Child Support

Affordable Care Act

- Workgroup
- Some of the Issues
  - Reasonable cost
  - Increased caseload
  - Change in processes

Comprehensive State Wide Legal Plan

- Proposal to resolve legal issues across the state
- Committee composed of representatives from the Department of Human Services and MCAA

Comprehensive State Wide Legal Plan

- Work to do
  - Inventory issues-Completed
  - Assign work groups-October 24, 2013
  - Resolve Issues

Comprehensive State Wide Legal Plan

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

Comprehensive Legal Vision (CLV)

- Executive Committee
- Inventory Subcommittee
- Issue Subcommitees

Inventory Subcommittee

- First Meeting - April 26, 2013
  - Themes
    - Court
    - Enforcement
    - Financial/Guidelines
    - Program Management
- Second Meeting
  - Refine
  - Communication Plan

Executive Committee

- Met on May 22, 2013
  - Prioritize
  - Establish Subcommittees
  - Establish Communication Plan

Executive Committee

- Will Meet on October 24, 2013
  - Appoint Members to the Subcommittees
  - Establish Communication Plan

Subcommittees

Begin the Work!

Case Law Update

Where in the World is Carmen San Diego?
or
Where is Patrick Hest?

Nothing substitutes for reading the cases

“Reasonable” is not Reasonable!

In re the Marriage of Lonneman v. Lonneman

2013 WL 141674

Lonneman v. Lonneman

- The Facts:
  - The Parties were divorced in 2008 with two children.
  - The divorce decree gave Mother sole physical custody of their children, but the parties shared joint legal custody.
  - Father was granted “reasonable parenting-time” in the divorce decree.
  - In July 2011, Father made a motion to decrease his support obligation.

Lonneman v. Lonneman

- The District Court:
  - An evidentiary hearing was held over a period of three days to determine the parties' income, assets, expenses and debts.
  - The Court granted Father's motion, imputing income to both parties.
  - The Court also applied a 12% parenting-time expense adjustment, based upon father's "reasonable" parenting-time.
  - Mother appealed.

Lonneman v. Lonneman

- The Court of Appeals:
  - On appeal, mother challenged, among other things, the District Court's grant of a 12% parenting-time expense adjustment.
  - She argued that Minn. Stat. § 518A.36 subdivisions 1(a) and (b)(2010) required a specific court ordered parenting-time percentage over 10%.

Lonneman v. Lonneman

- The Court of Appeals:
  - Since father was only granted “reasonable” parenting time with no set percentage, and there was no set schedule from which a percentage could be deduced, the court ruled that he was not entitled to a parenting-time expense adjustment.
  - The Court thus modified father’s obligation to not include a 12% parenting-time expense adjustment.

In re the Marriage of Lonneman v. Lonneman

Takeaway:

A Court Ordered Parenting-Time Percentage MUST Underlie All Parenting-Time Expense Adjustments

When “if” means or”!

In re the Custody of: A.B.T.

2013 WL 4710925

A.B.T.

- Facts:
  - The parties have one joint child born in 2009, who resided primarily with mother.
  - Father commenced action to establish custody, support and parenting-time.
  - The court appointed a neutral custody and parenting-time evaluator.
  - The parties entered into a stipulation of facts, but left the issues of child support for resolution by the district court.

In re the Custody of: A.B.T.

- The District Court:
  - At trial, the parties agreed to follow the evaluator's parenting-time schedule, but did not agree on how parenting time should be calculated.
  - Mother argued that the court should calculate parenting-time based on the number of overnights the child spent in each home.

In re the Custody of: A.B.T.

- The District Court:
  - Father argued that the court should calculate parenting time based on the number of hours the child was with each parent, in accordance with 518A.36, subd. 1.
  - The District court used the alternative method in its order, and calculated parenting-time according to how many hours the child was with each parent, not according to overnights.

A.B.T.

- The Court of Appeals:
  - Mother argued that the court may only calculate a parenting-time adjustment based on something other than overnights when:
    - The child has significant time in that parent's physical custody
    - AND the child is under the direct care of that parent.
  - Because the child was in daycare during father's parenting-time, she argued, father did not meet the second condition.

A.B.T.

- The Court of Appeals (Continued):
  - The Appeals Court affirmed the District Court holding that:
    - “Direct care” does not mean the child must be physically with the parent during the entirety of that parent’s parenting-time
    - The statute “plainly” allows either calculation method to be used

A.B.T.

- The Court of Appeals (Continued):
  - The Appeals Court affirmed the District Court holding that:
    - "A district court does not err when it calculates a parenting-expense adjustment based on an ordered or agreed-upon schedule *regardless of whether those parenting hours are actually exercised*" (emphasis added)

In re the Custody of A.B.T.

Takeaway:

The Court May Use a Means Other Than Overnights to Calculate Parenting-Time.

Child Need Not be in Parents Immediate Control to be in Their "Direct Control"

To impute or not to impute: it depends!

In re the Marriage of Jensen v. Jensen
2012 WL 5990304

Espeland and Siemieniewski v. Dixon
2012 WL 6652613

In re the Marriage of Edmond v. Grace
2013 WL 1395586

In re the Marriage of Johnson v. Johnson
2013 WL 2149899

Jensen v. Jensen

- Facts:
  - The parties dissolved their 13-year marriage in March, 2010 with three minor children, two of whom had special needs.
  - Father had a work history working as a pipeliner and a truck driver, but was temporarily unemployed.

Jensen v. Jensen

- Facts:
  - In a February 2010 temporary order, the Court found that father earned $2,145 a month, based on his unemployment benefits and set support at $981 a month.
  - Father did not pay his obligation, and in December, 2010, moved to suspend his obligation, citing his unemployment, an inability to obtain *Union* work, and the end of his unemployment benefits.

Jensen v. Jensen

- The District Court:
  - Father testified that he wanted to work, but could not find any union jobs.
  - Father alleged that taking a non-union job would jeopardize his pension benefits.
  - The Court asked Father to provide confirmation from the union regarding the effect taking non-union jobs would have on his pension, and left the record open for two weeks.

Jensen v. Jensen

- The District Court:
  - A month later, the Court had received no documentation from Father and issued an order denying his motion to suspend.
  - The court found that he was voluntarily unemployed, had the ability to earn substantial income, and had not demonstrated a change in circumstances.

Jensen v. Jensen

- The District Court (Continued):
  - Father requested reconsideration under Minn. R. Gen. Pract. 115.11, and submitted a news article about the difficulty of finding pipeliner work, and a statement from someone in Texas regarding the effects of taking a non-union job on his benefits.
  - The Court denied reconsideration stating the documentation did not constitute the requested evidence.

Jensen v. Jensen

- The Court of Appeals:
  - Father argued that because the district court did not find him voluntarily unemployed at prior hearings, and never found that he was unemployed in bad faith, the Court's finding that he was voluntarily unemployed was erroneous, Citing *Schneider v. Schneider* (1991).

Jensen v. Jensen

- The Court of Appeals:
  - The Court cited a change in the statute since *Schneider*, which no longer required a finding of bad faith (Minn. Stat. § 518A.32)
  - Moreover, the Court deferred to the District Court's finding that Father's submitted documentation was not credible.
  - The Court of Appeals thus affirmed the District Court.

In re the Marriage of Jensen v. Jensen

Takeaway:

Inability to Find Union Jobs – Without Verification – Is not Involuntary Unemployment

Espeland and Siemieniewski v. Dixon

- Facts:
  - In this consolidated appeal, Father had three children with two Mothers.
  - Beginning sometime in 1999, he was ordered to pay $263 for one child and $415 for the remaining two, totaling $678.
  - In 2011, Father moved to reduce his obligations after having his drivers license suspended repeatedly for non-payment.

Espeland and Siemieniewski v. Dixon

- The District Court:
  - Father admitted that he only worked 12-14 hours per week earning $13 an hour, but argued that his felony record and history of unemployment made it impossible to find more work
  - The CSM concluded that Father had the ability to work full-time at $13 and was voluntarily underemployed.

Espeland and Siemieniewski v. Dixon

- The District Court:
  - After imputing Father additional income at $13 an hour, the CSM determined that his guideline support would actually increase from $678 to a total of $882 a month.
  - The CSM thus denied his motion to decrease.

Espeland and Siemieniewski v. Dixon

- The Court of Appeals:
  - Father argued that the CSM failed to consider his felony record and history of unemployment when it determined that he was voluntarily underemployed.
  - The Court noted that the CSM *expressly* considered each of those factors in its order.

Espeland and Siemieniewski v. Dixon

- The Court of Appeals:
  - Moreover, it found that Father had failed to present any information that the CSM had erroneously failed to consider.
  - The Appeals Court affirmed the District Court, reiterating the District Court's broad discretion in making findings of fact relating to employment status and income.

Espeland and Siemieniewski v. Dixon

Takeaway:

A Felony Record Without Credibility is No Excuse for Not Working

Edmond v. Grace

- Facts:
  - The parties dissolved their marriage in 2009 with two children.
  - They stipulated to joint legal custody, but sole physical custody to Mother subject to Father's parenting time.

Edmond v. Grace

- Facts:
  - The decree recognized that Father was a licensed teacher working part-time for an annual income of $19,992, and agreed not to impute income to him to allow him to complete his master's degree.
  - Support was set at $200 a month for the first year with an automatic increase to $350 a month for the second year.

Edmond v. Grace

- Facts (Continued):
  - In 2009, Father's part-time teaching job ended. He quit his degree program and took a full-time position as an achievement coordinator, earning $32,000 annually.
  - In late 2010, the parties agreed that father would increase his child support payments to $583 a month, but never reduced the agreement to writing.

Edmond v. Grace

- Facts (Continued):
  - In 2011, Father decided to leave education and take a position as a “living card game designer” earning $29,000 annually. He called the position his “dream job.”

Edmond v. Grace

- The Expedited Process:
  - Mother moved to modify child support in 2011, and Father made a counter-motion to reduce his obligation.
  - Following an evidentiary hearing, the CSM determined that Father was voluntarily underemployed, imputed annual income to him of $36,800 and ordered him to pay the guideline amount of $563 a month in Child Support.

Edmond v. Grace

- The District Court:
  - The District Court reviewed the case and found that Father was NOT voluntarily underemployed, finding his career change to be in good faith.
  - It ordered him to pay $474 a month based on his actual income.

Edmond v. Grace

- The Court of Appeals:
  - Mother argued that Father voluntarily chose to leave his career in education and could earn more money, had he remained in that field.
  - The Court first noted that the statute does not create a duty that an obligor remain “employed in the highest paying position.”

Edmond v. Grace

- The Court of Appeals:
  - The Court deferred to the District Court's determination that Father's career change was in good faith, citing the District Court's extensive findings regarding Father's efforts to find teaching work and the modest reduction in his income.
  - The Appeals Court thus affirmed the District Court's finding that Father was not voluntarily underemployed.

In re the Marriage of Edmond v. Grace

Takeaway:

A Genuine Career Change, Backed with Credibility, Justifies a Smaller Paycheck

Johnson v. Johnson

- Facts:
  - The parties dissolved their marriage in 2004 with one child.
  - Father was ordered to pay $1,000 a month in child support as a result of the dissolution.
  - Father is a farmer and has a complex income structure. He pays himself a salary of $12,000, pays himself commodities, which he then sells in his personal name, and also borrows money from his farming corporation to cover some personal expenses.

Johnson v. Johnson

- Facts:
  - His income thus fluctuates considerably year to year.
  - In 2011, Mother suspected Father's income had increased and made a motion to increase his support obligation.

Johnson v. Johnson

- The District Court:
  - At an evidentiary hearing, Father and his accountant testified regarding Father's income.
  - The District Court evaluated Father's income over a five year period, and determined that loans he took out against the farming corporation were personal loans averaging $53,590 a year on top of the income he received from his crops.

Johnson v. Johnson

- The District Court:
  - The District Court thus determined Father's income to be $14,385 a year and ordered him to pay a total Child Support obligation of $1,615 a month.

Johnson v. Johnson

- The Court of Appeals:
  - Father argued that the District Court misinterpreted the loans taken against his farming corporation and overstated the value of the in-kind payments made to him.
  - The Appeals Court determined that the District Court had clearly misunderstood the value of the loans, based on the testimony of both Father and his accountant.

Johnson v. Johnson

- The Court of Appeals:
  - It also determined that the value of Father's in-kind payments were based not on testimony, but on a further misunderstanding of Father's tax returns.
  - The Court reversed the District Court and remanded with instructions regarding the interpretation of Father's income.

In re the Marriage of Johnson v. Johnson

Takeaway:

Check, Check and Triple Check How You Impute Income to a Farmer.

“Show Me the Money”

State v. Nelson

823 N.W.2d 908

State v. Nelson

- Facts:
  - Defendant was divorced in 1994 and voluntarily stopped paying his Child Support in mid-1997.
  - Between 1998 and 2002, defendant made only four payments – all involuntary – was held in civil contempt and was jailed on several occasions for failing to pay his ordered support.
  - In 2002, the defendant was charged and convicted of five counts of Felony Non-Support, four of which were upheld by the Court of Appeals.

State v. Nelson

- Facts:
  - Between 2004 and 2008, defendant made only five involuntary payments, and had an arrears balance of $83,470.27.
  - In August of 2008, the state charged Father (defendant) with Felony Non-Support.
  - The state moved to preclude the defendant from presenting any evidence of non-monetary support at trial.

State v. Nelson

- The Facts (Continued):
  - It contended that such evidence was irrelevant to the state's burden of proof, which only required proving a failure to provide *monetary* support.
  - The District Court granted the state's motion.
  - The parties agreed that the issue was dispositive, defendant waived his right to a jury trial and was found guilty of Felony Non-Support.

State v. Nelson

- The District Court:
  - Defendant moved to dismiss the charges against him at a contested omnibus hearing in December, 2008.
  - Defendant argued that because Minn. Stat. § 609.375 criminalizes the failure to provide ordered "care and support," the state was required to prove that he failed to provide both monetary *and non-monetary* support (e.g. emotional care, companionship, etc.)
  - The court dismissed the defendant's motion.

State v. Nelson

- The Court of Appeals:
  - Defendant argued that the district court erred by interpreting Minn. Stat. § 609.375 as requiring the state to prove only that he failed to provide monetary support to obtain a conviction.
  - The state argued that Minn. Stat. § 609.375 requires the state to prove only that a defendant failed to provide *either* care *or* support.
  - The court found the phrase “care and support” to be ambiguous.

State v. Nelson

- The Court of Appeals (continued):
  - The Court of Appeals determined that “care and support” refers only to monetary support. It found that:
    - The legislature clearly intended the statute to refer only to monetary support
    - Similar child support statutes indicate that “care and support” refer exclusively to monetary obligations

State v. Nelson

- The Court of Appeals (continued):
  - Accepting the defendant's interpretation would allow obligors who fail to follow a court order to avoid prosecution by merely proving they provide companionship to their children.
  - Accepting the state's interpretation would penalize obligors who are fully current with their obligation, but don't provide other forms of caregiving to their children.

State of Minnesota v. Nelson

Takeaway:

"Care and Support" means "Money"

Free Lawyers Freed From Case Once “Daddyhood” Determined

In re D.F. on Behalf of K.D.F.

828 N.W.2d 138

K.D.F.

- The Expedited Process:
  - The parties are the parents of one child.
  - During the expedited process, the parties disputed the issues of parentage, custody and support.
  - The CSM appointed an attorney to represent Mother until “the conclusion of the hearing determining the father-child relationship,.”

K.D.F.

- The Expedited Process:
  - The CSM further determined that counsel would be discharged at the end of that hearing, “even if the issues of custody, parenting-time and/or the child’s name, are unresolved.”
  - At the hearing, Father admitted parentage, and Mother’s Counsel requested the court to extend her appointment.

K.D.F.

- The Court of Appeals:
  - Mother's court appointed attorney sought a writ of mandamus from the court of appeals to compel the CSM to extend counsel's appointment to proceedings concerning parenting-time.
  - The Court first explained that a writ should only be issued to compel a CSM to "perform duties with respect to which he or she plainly has no discretion as to the precise manner of performance and where only one course of action is open." citing *State v. Davis* (1999).

K.D.F.

- The Court of Appeals:
  - The Court found that the new language of Minn. Stat. § 257.69, subd. 1 (2012) overruled earlier case law, requiring that “the representation of appointed counsel is limited in scope to the issue of establishment of parentage.”
  - The Court ruled that “the district court did not have a duty, for which it ‘plainly had no discretion,’ to extend the appointment of [Mother’s] counsel.”

In re: D.F. on behalf of K.D.F.

Takeaway:

Court Will Not Compel Continued Appointment of Counsel After Adjudication

The presumption is not rebutted just because you say so!

In re the Matter of Brys v. Peterson

2013 WL 4404594

Brys v. Peterson

- The Facts:
  - The parties are the parents of one joint child, who resided with Mother.
  - In 2010, Father's obligation was was set at $1,910.
  - In 2012, Father moved to reduce his support obligation to $1,461, which was the guideline support amount for his average gross monthly income of $11,540.

In re the Matter of: Brys v. Peterson

- The Expedited Process:
  - The CSM found that appellant's monthly income was $11,117 a month, which had a guideline support amount of $1,410.
  - The CSM found further that the reduced guideline obligation was "clearly 20% and $75 less than [Father's current obligation]."
  - The CSM nevertheless denied Father's motion, determining that Father had not demonstrated his current obligation was unreasonable and unfair.

Brys v. Peterson

- The District Court:
  - Father sought District Court review, which determined the CSM's holding, "ignores the clear mandate of Minn. Stat. § 518A.39, subd. 2(b), and remanded.

Brys v. Peterson

- Remand:
  - On remand, the CSM added a finding stating, “the presumption that the existing child support order is unreasonable and/or unfair has been rebutted” because Father “has sufficient funds and sufficient discretionary income (as evidenced by his spending) to continue to pay the amount ordered.”

Brys v. Peterson

- The Court of Appeals:
  - The Court held that the CSM did not make the necessary findings to support an upward deviation.
  - The court said “absent an explanation of the reasons justifying a child-support obligation that is 35% and more than $500 over the guideline amount, [father] is entitled to a guideline child-support obligation”

In re the Matter of: Brys v. Peterson

Takeaway:

"Unreasonable and Unfair" is not distinct from "20% and $75," Absent Strong Findings

Toto we still are in Kansas!

In re the Marriage of Ziemke v. Ziemke

2013 WL 4404590

Ziemke v. Ziemke

- The Facts:
  - The parties were divorced in 2003 with two children.
  - Mother was granted sole physical custody, subject to Father's reasonable parenting-time, and support was set.
  - In 2012, Father filed a motion to reduce his support due to a back injury that made him unable to work.

Ziemke v. Ziemke

- The District Court:
  - The District Court reserved Father's motion to modify until the completion of an evidentiary hearing, citing the limited information on the permanency of his back injury.
  - Father supplied a large amount of medical information, including, among other things, lab results and a Dr.'s note.

Ziemke v. Ziemke

- The District Court (Continued):
  - During the evidentiary hearing, Mother raised a hearsay objection to all of the medical documentation, in so far as no doctor was present to testify to its meaning.
  - The District Court never explicitly ruled on the objection, but denied Father's motion, citing Father's inability to provide proof of his inability to work.

Ziemke v. Ziemke

- The Court of Appeals:
  - Father contended that his medical documents qualified under the business-records exception to the hearsay rule.
  - Mother argued that the District Court had implicitly granted her objection and rejected Father's medical documents.

Ziemke v. Ziemke

- The Court of Appeals (Continued):
  - The Court noted first, that for the business-records exception to the hearsay rule to apply, a qualified witness must testify that the documents satisfy four elements.
  - Since Father presented no qualified witness, his documents did not fall under the exception and could not be considered.
  - The court then ruled that Father was unable to meet his evidentiary burden, and affirmed the District Court's decision.

In re the Marriage of: Ziemke v. Ziemke

Takeaway:

Even in Ex-Pro, Hearsay Applies

What a dad
will
do for his child!

In re the Marriage of Garlick v. Garlick

2013 WL 2925394

Garlick v. Garlick

- The Facts:
  - The parties were divorced in 2001 with two children.
  - The divorce decree ordered Father to pay $1,800 a month in Child Support – the statutory maximum at that time.
  - The Court found that at that time, Father's income was $141,000 for 2000.

Garlick v. Garlick

- The Facts:
  - Father later sold stock and purchased $750,000 of classic cars and storage space.
  - In 2005, Father became totally disabled and began receiving Social Security Disability Benefits of $8,400 a month and Mother began receiving an RSDI derivative benefit of $1,150 a month on behalf of the parties' children.

Garlick v. Garlick

- The Expedited Process and District Court:
  - In 2012, Father moved to reduce his obligation, which had increased to $2,227 a month. When combined with the RSDI benefit, his child support payments totaled $3,377 a month.
  - Father requested his obligation be lowered to the guideline amount for his income, $1,577, less the RSDI benefit.

Garlick v. Garlick

- The Expedited Process and District Court:
  - The CSM found that Father's guideline amount should be $1,577 a month, but deviated upward to $2,727 based upon Father's ownership of the classic car collection, which it determined was income.

Garlick v. Garlick

- The Court of Appeals:
  - Father argued that the CSM correctly calculated his guideline support obligation, but then inexplicably and erroneously deviated upward.
  - The Court noted that the CSM made no finding imputing more than $15,000 to Father, and thus based its decision solely on his classic car collection.

Garlick v. Garlick

- The Court of Appeals:
  - The Court held that the collection was more akin to a retirement asset, and thus was not income. It thus reversed the District Court and remanded for determination of Father's income and obligation.

In re the Marriage of Garlick v. Garlick

Takeaway:

Classic Car Collections aren’t “Income;” Income is.

Early Retirement Not Working for Former Fly-Boy

Waletski v. Waletski

2013 WL 141720

Waletski v. Waletski

- The Facts:
  - The parties were divorced in 2002 with one child.
  - The court awarded Mother sole legal and physical custody of the child, and determined Father's income to be $3,747. It set Father's obligation at $352 a month.

Waletski v. Waletski

- The Facts:
  - In 2011, Father took early retirement from his job at Delta Airlines, and began a part-time job at his wife's company, earning $1,800 a month.
  - He then moved to reduce his Child Support, citing his decreased income.

Waletski v. Waletski

- The District Court:
  - The Court determined that Father's career change was not credible and that he was voluntarily underemployed.
  - It imputed income to him consistent with his job at Delta, $3,474, and dismissed his motion after determining that his circumstances had not changed.

Waletski v. Waletski

- The Court of Appeals:
  - Father argued that he would be employed full-time, and the lifetime flying privileges he received from retiring were a benefit.
  - Because Father did not submit any evidence that he has the requisite skills to be employed in his new field, and the record indicated he and his wife were attempting to game the system, the Court affirmed the District Court's imputation.

Waletski v. Waletski

Takeaway:

Early Retirement Does Not Justify Lowered Income

On the Other Hand!

Boehne v. Boehne

2012 WL 5834452

Boehne v. Boehne

- The Facts:
  - The parties were divorced in 2000 and Father's child support obligation was set at $1,184 for the parties' three children.
  - In 2003, the Court increased Father's obligation to $1,685 a month.

Boehne v. Boehne

- The Facts:
  - In May, 2011, the Court again increased his obligation to $2,136 and found his income to be $14,822 a month.
  - In July 2011, Father moved to reduce his obligation based upon his retirement as an Air-Traffic Controller.

Boehne v. Boehne

- The District Court:
  - Father explained to the Court that he had retired from his job in 2011 because his medical condition precluded him from performing the job safely.
  - He requested the Court set his obligation based on his expected pension income of $5,383 a month.

Boehne v. Boehne

- The District Court:
  - Mother argued that his retirement was voluntary.
  - The District Court found that Father was voluntarily unemployed and attempting to avoid his Child Support in bad faith.
  - The District Court later denied Father's request for amended findings of fact, stating that Father "simply reargues his interpretation of the evidence."

Boehne v. Boehne

- The Court of Appeals:
  - The Court noted that the record contained:
    - Testimony from father regarding his physical incapacitation,
    - An affidavit from a “Front Line Manager” at Father’s Control Tower stating that father had lost his certification to perform his duties and had exhausted all sick and vacation days before retiring “in good faith.”

Boehne v. Boehne

- The Court of Appeals:
  - A physician's report indicating he was unable to perform Air-Traffic Control duties.
  - The Court determined that Father was incapacitated, retired in good faith, and thus reversed and remanded.

Boehne v. Boehne

Takeaway:

Credible Retirement Justifies Lowered Income

Takeaways!

- A Court Ordered Parenting-Time Percentage MUST Underlie All Parenting-Time Expense Adjustments
- The Court May Use a Means Other Than Overnights to Calculate Parenting-Time
- Child Need Not be in Parents Immediate Control to be in Their “Direct Control”

Takeaways!

- Inability to Find Union Jobs – Without Verification – Is not Involuntary Unemployment
- A Felony Record Without Credibility is No Excuse for Not Working
- A Genuine Career Change, Backed with Credibility, Justifies a Smaller Paycheck

Takeaways!

- Check, Check and Triple Check How You Impute Income to a Farmer
- “Care and Support” means “Money”
- Court Will Not Compel Continued Appointment of Counsel After Adjudication
- “Unreasonable and Unfair” is not distinct from “20% and $75,” Absent Strong Findings

Takeaways!

- Even in Ex-Pro, Hearsay Applies
- Classic Car Collections aren’t “Income;” Income is.
- Early Retirement Does Not Justify Lowered Income
- Credible Retirement Justifies Lowered Income

The Facts matter
Prove them!

Thanks to:

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Questions?

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