

Comprehensive Legal Vision- Compilation of Court Issues

Basis for a Mod

Does the whole order need to meet the presumption or just one of the three obligations (CCH, CCC, CMS)? There is recent case law that suggests it is the whole order.

Competing Presumptions

For a child who is born in a marriage, but the CP says that the husband is not the father, is it the counties responsibility to assist with a ROP and a husband non-paternity statement? Regardless, if there are competing presumptions of a husband, GT and or ROP, how should the county proceed? The courts seem to be all over the board on this.

Married but Separated

A: Medical Only:

If medical is the only public assistance open, is this a medical reimbursement case only? This will be a bigger problem under the ACA.

B: NPA Case

If it is an NPA case, is there jurisdiction to establish support when there is no court order for custody and there is nothing showing both parties consent to the CP having custody?

C: Calculation:

What calculation should be used: presumed joint custody calculation or regular calculation?

D: Application Fee:

Can the \$25 fee be reimbursed if the county determines it cannot pursue support?

E: PA Reimbursement Only:

If we must do a PA reimbursement, only monitoring the case to charge during PA months is time consuming and difficult.

F: Maintaining County: If the case needs to be transferred to a county with a differing opinion, this causes problems.

Parenting Expense Adjustment (PEA)

A: PEA Basis:

MN Ct of Appls. issued an unpublished opinion requiring a specific percentage of parenting time before the PEA can apply. Many orders say "reasonable" or "liberal" or "as agreed" and M.S. §518.175 Subd. 1(e) provides for 25% presumption of parenting time, so counties have been giving the PEA based on this language. Now counties can't, yet court orders still contain that language and the court and the parties expect us to apply the PEA.

B: CMS Jurisdiction:

Can a CSM apply the PEA when there is no court order for parenting time even if the parties are present and agree that parenting time is happening? Should this be a deviation?

Redirection

When the child support order is redirected, does the redirected order stop when the CP loses custody? Some counties have this interpretation and then require the party who has court ordered custody of the child and had the redirected order to apply for IV-D services and go through the establishment of a new order. TPR, Ramsey County gets permanent custody but no TPR.

Role Reversal

A: No Court Order:

Without a showing of consent of the CP for placement with the NCP, there is no basis to set support except for PA reimbursement only.

B: Modification of the Existing Order:

When the child leaves the custodial household we need a mechanism to be able to stop the child support without having to do a full modification.

C: Maintaining County:

Counties do not agree on how to handle these cases which presents a problem if a new legal action is need and no parties remain in the original county.

ROPS

A: ROPS as a presumption unless GT's:

If GT's happen after a ROP but before the adjudication there are two presumptions: the ROP and the GT's, and not just an establishment based on the ROP.

B: Facilitation ROPS

There may be some counties that will not facilitate ROP's and this creates a burden to their own staff and is a maintaining county issue if the case transfers before an adjudication is complete.

C: Copies of ROP:

Are counties required to provide certified copies to the court of the ROP now that there is an MDH interface?

Subsequent Children

After a ROP is signed, counties should be able to do a modification instead of a new action to add a subsequent child so that a new court file does not need to be opened and ultimately merged and a COV won't be necessary if parties don't continue to live in the original county.

Subsequent Marriage

When there is a 256.87 order or a paternity order and then the parties subsequently marry, counties differ on what happens to the 256 order after the marriage, and then ultimately when the parties break up (can it be reinstated or is it dead?). What happens when they are divorced and then get married? There is no Minnesota law that addresses this.

Filing Adjudication Orders

A. Filing the Order with MDH - After the county obtains a court ordered adjudication, some counties take the next step and file the adjudication order with MDH and pay a \$40 per filing fee (for which the county gets 66% reimbursed). Other counties simply instruct the parents to do this themselves. Is it the public authority's job to "complete the adjudication" by filing the adjudication order?

B. Filing the Order with the Birth State if that is not MN - Same question as above, but does the public authority in MN have an obligation to file with another state and pay the other state's fee?

C. Filing Fees - If the public authority does not have to pay filing fees to the court, shouldn't the public authority also be exempted from paying the adjudication filing fee? See M.S. § 144.226, subd. 1 that requires the fee from everyone:

(b) The fee for processing a request for the replacement of a birth record for all events, except when filing a recognition of parentage pursuant to section [257.73, subdivision 1](#), is \$40. The fee is payable at the time of application and is nonrefundable.

Reconciliation

Counties handle couples who reconcile and later separate differently in cases where the CP wants the case closed and does not want arrears collected, but also does not want to forgive the arrears. State policy allows to close the case without the need for a written request (closure can be a verbal request). State also policy prohibits forgiveness of NPA arrears without the CP requesting that. Some counties ask the CP to send in a letter asking us to close and remove her arrears or they will continue charging and collecting. This is because if they break up again, they don't want to re-add the NPA arrears back in because it is unknown what the NCP paid in the mean time. Some counties will close the case upon CP's request by making a screen print of the NPA arrears, but then zero them out on PRISM so they can close the case, and then if the CP asks for the case to be reopened, they have the screen print of the arrears and they ask the CP for an affidavit of arrears, then they add the arrears back on. NCP can file a motion if NCP does not agree with the amount of arrears added back on. Some counties are making forgiveness of arrears a condition of closing the case.

Comprehensive Legal Vision- Compilation of Enforcement Issues

Deceased Persons

What happens to an order when someone dies (CP, NCP, or child)? Does the case remain open, and if so, how do we enforce?

FIDM

A: Exemptions:

What types of funds and accounts are exempt from the FIDM levy? We have to string so many statutes and rules together to figure this out why can't there be one clear law?

B: JOL's and FIDM

Can a FIDM be pursued on a JOL or must the arrears be entered and docketed before pursuing a FIDM?

C: Account Balances:

Financial institutions need to be mandated to provide us with account balances.

D: Expand use of FIDM:

FIDM is a useful tool and should be expanded to be used even when there is a payment agreement in place and when tax intercept is not pursued.

Garnishment of Veterans Benefits

It is impossible to do income withholding or any form of garnishment from veterans' benefits even with a court order. The VA won't cooperate. It is income, so the CSM's order support based on it, then we can't get at it.

Income Withholding (IW)

A: Reconciliation of Parties:

Since the state policy says IW for arrears automatically reduce to 20% rather than 120% if the couple reconciles but there are arrears that remain, can the 200% IW be automatic? Also, this is applied inconsistently.

B: Emancipation or a TPR:

Does IW for arrears stay at 120% automatically if the obligation ends for emancipation or a TPR?

C: IW Variance:

IW increases to 120% when payments are behind, how does this apply with the IW variance?

D: Eliminate 20% when Court Ordered Payback:

We need clarification on whether the court ordered payback can be collected without the additional 20% that is automatically tacked on when income withholding is in place.

Interest

A: Administrative Suspension:

To administratively suspend interest, the statute requires that the obligor contact the county to request suspension. Why can't the county identify when a case has paid for 12 months and notice the parties for administrative suspension without a request? If anyone objects, they can ask for a hearing.

B: Future Interest:

When AAMP strategies are in place, is there a way to forgive future interest rather than having to forgive the interest after each month?

C: Do not charge interest

Charging interest has been shown not to be effective and makes our financial system complex and difficult to manage. Why don't we enact legislation to eliminate interest?

D: IW Variance

Can interest be stopped when there is an IW variance?

Old Arrears

Are arrears over 10 years old enforceable if arrears are not entered and docketed as a judgment? Do JOL's ever expire if they are not entered and docketed as a judgment? It is difficult to distinguish between old arrears that are over 10 years old and new arrears that are less than 10 years old.

Passport

Does the state court have jurisdiction to reinstate a passport? This comes into play when (a) a case is not paid in full and the case closes so all enforcement remedies must terminate and (b) when the obligor files a motion to reinstate without paying in full.

Recreational Licenses

A: Court Process:

The process to suspend a rec. license is time consuming because it requires a motion and court order after a hearing when it could be administrative like DLS and OLS.

B: Reinstatement:

The statute is not clear on a process to reinstate the rec. license particularly when the case closes but arrears are still owed, different courts are handling this differently.

C: Threshold for Suspension:

Make the threshold for suspension 3 months rather than 6 months to be consistent with the DLS and OLS.

Satisfaction of Obligation

A: Under M.S. §518A.34, Subd. 3, the court can deem that the obligor has satisfied the support obligation by providing care for the child, the county should have the administrative ability to do the same.

The courts application of satisfaction is inconsistently applied because it is discretionary.

It is costly to the parties, the court, and the counties to require a modification every time the children move homes. This could be part of Appendix A.

Comprehensive Legal Vision Court Group Parking Lot¹

- Clarify Minnesota's paternity disestablishment law
- How to proceed when the ALF is deceased
- Need an interface with marriages to prevent ROPS being filed with the ROP father when there is a marriage with the husband
- Education about paternity and ROPs to social services agencies and courts
- Minor ROPs - followed by a paternity adjudication or an establishment? Sub-issue - does it depend on whether the parents are still minors at the time of the legal action?
 - NOTE - Ramsey County appealed 2 cases. A published court of appeals decision was issued with strong direction to do a paternity adjudication regardless of how old the parents are at the time of the action. Now the issue is the consistent application of this decision.
- Consistent ROP Facilitation in Counties
- Require all Counties File Paternity Adjudication Orders with MDH
- Issues with MDH and Paternity Adjudications
- Competing Presumptions of Paternity
- There is no generic motion form for pro se parties to use (a specific use might be for requesting GTs after a ROP or adjudication)
- Partial paternities in Ex Pro if no full agreement by the parties - some courts won't establish the legal parentage issue when there isn't a full agreement because in essence that is ordering that the "mother" (the CP) gets custody and the "father" (the NCP) gets no parenting time.
- Filing Out-of-State Paternity Adjudication Issues through DHS or MDH rather than by each county and each State

¹ Parking lot issues listed in no particular priority. Ver. 9/9/13

COMPREHENSIVE LEGAL VISION – GUIDELINES ISSUES

Guidelines Chart

The child support guidelines do not work for the lower middle wage earners (\$9-\$15) or cases where that level of income is imputed. This results in unenforceable orders where counties have difficulty modifying and end up having to do arrears management. Too many deviations are necessary. The guidelines were based on USDA statistics from 2006/2007. The tables need to be updated periodically.

Self-Support Reserve

A: NCP's Portion of Insurance Under SSR:

The self-support reserve does not take into consideration the NCP's portion of the medical and dental insurance. If the self-support reserve is supposed to accurately reflect what the obligor can reasonably pay without putting him or her into poverty, it should be included.

B: Non-joint child credit not considered:

PRISM and the web calculator are programmed to not include the non-joint child credit when applying the self-support reserve. If the self-support reserve is supposed to accurately reflect what the obligor can reasonably pay without putting him or her into poverty, it should be included.

Effect of the change in minimum wage

The minimum wage changed to \$8.00 on 8/1/14. It will change to \$9.00 on 8/1/15, then \$9.50 on 8/1/16, then there is sort of a CPI index after that. The minimum wage case before 8/1/14 (1 kid, no other obligation) was \$89.00 per month because of the SSR. On 8/1/14, that minimum wage case with the same facts comes out to \$212.00.

Questions raised:

1. If a pleading uses the current minimum wage but goes to default or hearing after 8/1/14, what are counties going to do? Amend pleadings? Set on for hearing? Stick to what was pled?
2. When will counties start pleading based on the \$8.00 an hour – wait until after 8/1/14, or when they know it will be an order signed by the court after 8/1/14?
3. If you have a hearing or default in July, with an effective date of 8/1/14, what are counties planning on doing?
4. What do counties plan on doing with the 150% imputation now that 150% will be \$12 an hour? We don't use 150% anymore.
5. If a county is imputing minimum wage at 40 hours because they have no other information, and that results in a \$212 order, is this too much for an obligor without work history, are counties deviating?

TANF Recipient

M.S. § 518A.32 Subd. 4 provides that potential income shall not be imputed to a TANF cash recipient. This is not equitable because TANF recipients have a requirement to find a job and once that happens the obligation will change and modifications are not generally pursued when the TANF recipient starts working. Also some TANF recipients are on and off of grants frequently so we may have a situation where the case is plead with TANF in place and by the time of the default or hearing TANF is not in place but then two months later TANF is in place again.

NCP's on Cash PA

When an NCP is on GA or SSI, the support order should be \$0.00 or reserved with a review hearing set, rather than minimum support orders or imputed income orders. NCP's have been SMRT'd by financial workers. How do CSM's have the authority to question the financial worker's determination of the NCP's ability to work.

Credit for Prior Order

Does the Branch v. Branch 632 N.W.2d 261 Minn. App., 2001 case survive the new guidelines? State policy is that the NCP's payments towards arrears on another case are not to be included as a credit for prior order based on how PRISM and the web calculator are programmed. However, many counties and CSM's believe the case survives and manual calculations are necessary. When calculating support for non-joint children, should the payback on arrears payment be included?

Relative Caretaker Calculation

The income shares guidelines use both parents' incomes when calculating child support. When child support is calculated for a relative caretaker, two cases need to be pursued one for the CP v RC and one for the NCP v RC. In relative caretaker calculations zero income is included for the relative caretaker and the picks are 100% for the parent. This can result in an onerous obligation for the parents since there are two separate obligations. Not all relative caretaker situations involve parents who are living in two separate households.

State Funded MFIP

A: Establishment when CP is on State Funded MFIP:

When the CP is on state funded MFIP, the counties need to do a lot of manual intervention to determine what arrears are owed to the state and what arrears are owed to the CP. One county, maybe more, is asking for PA reimbursement for this kind of case to avoid this manual intervention, but that means the family is not getting the opportunity to become self-sufficient and remains reliant on state programs. PRISM could be reprogrammed to send the arrears to the proper place or legislation could be pursued to assign state funded MFIP.

B: State Funded MFIP:

Is state funded MFIP different from TANF based MFIP as it relates to imputing potential income?

Lump Sum Payment Towards Arrears

Under the County of Grant v Koser 809 N.W.2d 237 Minn. Appl., 2012 case, how should counties deal with lump sum prospective payments if the obligor is on RSDI? PRISM is not programmed to do this requiring extensive manual intervention.

Medical

A: Affordable Medical Insurance

The state law is silent and the federal medical support regulation says no more than 5% of the obligated party's gross income; but now the ACA defines affordable as between 8% to 10%. Additionally, some counties aren't even using the 5% definition and still get orders for a parent to provide insurance if it's available without regard to cost.

B: Equity

M.S. §518A.41 Subd. 16 provides an offset for when an obligor carries the coverage and the obligee reimburses, the offset can be removed if the obligor stops carrying the coverage. When the obligee carries coverage and the obligor reimburses, there is no method to stop the obligors reimbursement when the obligee stops carrying the coverage. The only option in this situation is to do a time consuming and costly modification.

C: NCP on MA or MinnesotaCare

It is not in the family's best interest to charge an NCP for medical support when they themselves are on MA or MinnesotaCare. However, there may be a difference between whether or not the CP is on MA or MinnesotaCare or providing private medical coverage.

D: Catastrophic or high deductible medical insurance appropriate health care coverage

Is catastrophic or a high deductible (\$2,000) medical insurances appropriate healthcare coverage that should be ordered?

Tribes

A: Per Capita Tribal Income

Counties are inconsistently dealing with per capita tribal income. Some are imputing income in addition to per capita and some are not. Some tribal statutes allow for the garnishment of up to one half of the monthly amount.

B: Establishment of Support in Native American Relative caretakers cases

Establishment of support in relative caretaker cases is not culturally appropriate for Native American families. It is culturally expected for Native American children to be raised by their extended family when their parents can no longer do so, and there is not an expectation for the parents to pay their families to take care of their children.

CLV-ENF Committee

Parking Lot Issues

- The availability of national databases that would allow the Child Support Offices to cross match obligors with insurance claims. In the past were the Child Support Offices allowed this information and the state of Minnesota opted out due to funding/compatibility?
It is a fact that the Child Support Offices stumble upon many of the lump sum insurance claims. Submitted by Thomas Kelly, Senior Assistant County Attorney – Olmsted County on March 13, 2014.
- COLA Language: Should the counties follow the post marked date on the affidavit of service when calculating the tie frame within which a motion to contest COLA must be received?

See: DHS-SIR > PRISM > User Documentation > SIR MILO > Cost-of-Living Adjustment (COLA) > Contesting > Receiving a Motion to Contest the Cost-of-Living Adjustment, which contains the following note: "Note: The hearing does not have to be scheduled before May 1. However, the motion must have been filed and served before May 1."

- DL Suspension Threshold: can we remove the \$ requirement and have it be 3 months worth of arrears, no matter what the obligation amount is? (With presumptive minimum orders it takes too long to hit the \$500 threshold.)