

# 2014 CASE LAW AND LEGISLATIVE UPDATE

October 1, 2014

Mark J. Ponsolle

Patrick Hest

Assistant Ramsey County Attorneys



# OVERVIEW

- Legislative Update
  - Federal
  - State
  - Rules
- Case Law Update

FEDERAL

# FEDERAL LEGISLATIVE UPDATE

## ○ Four Legislative Proposals

- S 1870
- S 1877
- S 508
- H.R. 1896
- H.R. 4980

# S 1870-SUPPORTING AT-RISK CHILDREN ACT

- ◉ Collected Child Support Directed to Certain Youth in Care
- ◉ Require States to Adopt New UIFSA
- ◉ Relief from Certain Passport Sanctions\*
- ◉ Voluntary Parenting Time\*
- ◉ Child Support Task Force
- ◉ Tribes Access to Parent Locator Service

\*NCSEA Positions

# **S.1877-CHILD SUPPORT IMPROVEMENT AND WORK PROMOTION ACT**

Many of the same child support  
provisions as S.1870

# S. 508-STRENGTHEN AND VITALIZE ENFORCEMENT OF CHILD SUPPORT ACT

- ◉ Many of the provisions of the other bills
- ◉ Requires States to establish a:
  - Centralized Registry for Liens
  - Registry on Payment of Property and Casualty Insurance Claims

# **S. 508-STRENGTHEN AND VITALIZE ENFORCEMENT OF CHILD SUPPORT ACT**

Requires all Child and Spousal Support  
Application Fees to be recovered from the  
Absent Parent



# **H.R. 1896-INTERNATIONAL CHILD SUPPORT RECOVERY IMPROVEMENT ACT**

Requires Adoption of the New UIFSA

# H.R. 4980-PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILILES ACT

- ⦿ Passed House on July 23, 2014
- ⦿ Passed Senate on September 18, 2014
- ⦿ Signed by the President by September 29, 2014

# H.R. 4980-PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT

- ◉ Adoption of Hague Conventions on UIFSA
- ◉ Sense of Congress Regarding Offering of Voluntary Parenting Time Arrangements
- ◉ Report to Congress
- ◉ Required Electronic Processing of Income Withholding



STATE

# STATE LEGISLATIVE UPDATE

What did not get passed:

- ◉ Income Withholding changes to 120% Rule (HF2839/SF2458)
- ◉ Artificial Reproductive Technology Amendments to Paternity (HF291/SF2627)

# STATE LEGISLATIVE UPDATE

What did get passed:

- ◎ UIFSA (*Minn. Laws* Ch. 189)
- ◎ Criminal Nonsupport (*Minn. Laws* Ch. 242)

# STATE LEGISLATIVE UPDATE

What did get passed:

- ◉ Child Custody and Parenting Time (*Minn. Laws* Ch. 197)
  - No presumption of, for, or against joint physical custody
  - Use all factors

# STATE LEGISLATIVE UPDATE

What did get passed:

- ◉ Child Custody and Parenting Time (*Minn. Laws* Ch. 197)
  - Disagreement about custody does not indicate inability to cooperate
  - Detailed findings required



# STATE LEGISLATIVE UPDATE

What did get passed:

- ◉ Child Custody and Parenting Time (*Minn. Laws* Ch. 197)
  - Best interests of child includes a child's changing developmental needs

# STATE LEGISLATIVE UPDATE

What did get passed:

- Release of Information to Child Welfare (2014 *Minn. Laws* Ch.291, Art. 11, Sec 1, amending *Minn. Stat.* § 13.46, subd.2 (30))

# STATE LEGISLATIVE UPDATE

The amended provision provides:

“child support data on the ~~parents and the child~~, the parents, and relatives of the child may be disclosed to agencies administering programs under titles IV-B and IV-E of the Social Security Act, as ~~provided~~ authorized by federal law.

# STATE LEGISLATIVE UPDATE

The amended provision provides:

~~“Data may be disclosed only to the extent necessary for the purpose of establishing parentage or for determining who has or may have parental rights with respect to a child, which could be related to permanency planning.”~~

# STATE LEGISLATIVE UPDATE

What did get passed:

- ◉ Data Practices Act Access Provisions (2014 Minn. Laws Ch. 284)

# DATA PRACTICES ACT ACCESS

2014 Minn. Laws Ch. 284

- ◉ Ensure that only those who need it get it
- ◉ Governmental entities, not just State Agency
- ◉ Notice to individuals of breach
- ◉ Report prepared of breach

# BEHIND THE LEGISLATIVE RESPONSE

- ◉ Would have required computer tracking
- ◉ Would have required termination of governmental employees

# STATE LEGISLATIVE UPDATE

What did get passed:

- ◉ Data Practices Commission (*Minn. Laws* Ch. 193)



# STATE LEGISLATIVE UPDATE

What did get passed:

- Repeal of *Minn. Stat. § 518A.53*, subd. 7 (2014 *Minn. Laws* Ch. 262, Art. 1, Sec.12 and 2014 *Minn. Laws* Ch. 291, Art. 1, Sec.12)
  - Subsequent Income Withholding

# STATE LEGISLATIVE UPDATE

What did get passed:

- Imprisonment and Exoneration Remedies Act (*Minn. Laws Ch. 269*)
  - Reimbursement for paid or unpaid child support

# RULE 50

Rules of Juvenile  
Protection Procedure

# NEW RULE 50

- ◎ Background
  - Permanent Change of Custody
    - 260C.515
  - Paternity
    - 260C.150
  - Issues
    - Coordination with Family Court
    - Child Support
  - Attempted Statutory Fix

# NEW RULE 50

## ◉ Committee

### ■ Long Version

- Public v. Private
- Jury Trial
- Complete Case
  - Daddy
  - Custody
  - Name
  - Child Support
- Right to an Attorney
- Process-Ramsey County Example

# NEW RULE 50

- Short Version
  - Restate the Statute
- Final Version
  - Separate but simultaneous

# NEW RULE 50

## ◎ Rule

- File in family court
- Assignment to same judge or not
- Judges talk
- Final Paternity Order awaits Final Child Protection Order

# READ THE RULE

(THE COMMENTS ARE HELPFUL  
AS WELL)





## RULE 8.09

- ◉ Access to Juvenile Protection Records  
Family Court Judicial Officer
- ◉ Requires notice to the parties

## RULE 8.10

- ◉ Access to Juvenile Protection record by Parties and Child's Guardian ad Litem in Family Court Matter

# RULE 50.01

## Scope

- ◉ Establishment of parent and child relationship shall occur in Family Court
- Declaration of the nonexistence of the parent and child relationship shall occur in Family Court

# RULE 50.01

## Scope

- ◉ Juvenile Court Jurisdiction
  - All 260C matters including
    - Removal of a Child
    - Review of Juvenile Court Orders

# RULE 50.01

## Scope

- ◉ Family Court Jurisdiction (when child protection matter pending)
  - Parentage
  - The Child's Name
  - Child Support

# RULE 50.01

## Scope

- ◎ *Stern v. Stern*, 839, N.W.2d 96 (Minn. App. 2013) was discussed and considered

# RULE 50.02

- ◉ Judicial Assignment
  - May assign same judicial officer
  - Judicial Officers may talk (subject to the Code of Judicial Conduct-See Also Rule 8.09)

## RULE 50.03

- ◉ Statutes and Rules applicable when parentage and child protection matters calendared at the same time
  - *Minn. Stat. § 257.70* limiting access to hearings and records



## RULE 50.03

- ◉ Statutes and Rules applicable when parentage and child protection matters calendared at the same time
  - *Minn. Stat.* § 257.69 regarding appointment of counsel
  - Rules of Civil Procedure and Civil Appellate Procedure

## RULE 50.04

- ◉ Responsible Social Services Agency to Provide Copy of Petition and Orders to County Child Support Enforcement Agency

## RULE 50.04

- ◉ Responsible Social Services Agency to Provide Copy of the following to County Child Support Enforcement Agency:
  - Petition;
  - Orders regarding the case plan; and
  - 50.06 Orders

# RULE 50.05

- ⦿ No Extension of Permanency Timeline

# RULE 50.06

- ◉ Notification to Family Court of Juvenile Protection Orders:
  - Guardianship
  - Permanent and Legal Custody to a relative
  - Permanent or Temporary Custody to the agency

## RULE 50.06

- ◉ Notification to Family Court of Juvenile Protection Orders:
  - Order for dismissal
  - Order for termination of juvenile court jurisdiction
- ◉ Facilitates completion of the parentage matter

# READ THE RULE

(THE COMMENTS ARE HELPFUL  
AS WELL)





# ON THE HORIZON



# ON THE HORIZON

- ◉ Repeal the repeal of *Minn. Stat.* § 518A.53, subd. 7
- ◉ Medical Support
- ◉ Eliminate the requirement of an additional 20% income withholding where there is a court-ordered pay back

# ON THE HORIZON

- ◉ Imputing Income at 100% Minimum Wage
- ◉ Imputing Income at 30 hours per week as full-time
- ◉ Automated Recreational License Suspension

# ON THE HORIZON

- ◉ Stop Interest Charging
- ◉ Administrative Equality of Medical Support Obligations
- ◉ Eliminate the Application Fee
- ◉ Child Support Guidelines Commission

# CASE LAW

**“FORGET EVERYTHING  
YOU’VE SEEN ON  
TELEVISION AND IN  
THE MOVIES”**

***–PHILADELPHIA (1993)***

This presentation summarizes in a few sentences many complex cases involving complex scenarios. Before relying on the case summaries, please read them for yourself.



**“IT DOESN’T  
MATTER WHAT I  
BELIEVE. IT ONLY  
MATTERS WHAT I  
CAN PROVE”**

*A FEW GOOD MEN(1992)*

State of Minnesota v. Larry Allen Nelson

842 N.W.2d 433

# STATE V. NELSON

- ◉ Defendant was divorced in 1994 and voluntarily stopped paying his Child Support in mid-1997.
  - ◉ Between 1998 and 2002, defendant made only four involuntary payments
  - ◉ In 2002, the defendant was charged and convicted of five counts of Felony Non-Support
  - ◉ Between 2004 and 2008, defendant made only five involuntary payments, and had an arrears balance of \$83,470.27.
  - ◉ The District Court granted the state's motion to preclude evidence of non-monetary support at trial
- ◉ 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 "care and support" refer exclusively to monetary obligations
    - ◉ Accepting the defendant's interpretation would allow obligors to avoid prosecution by merely proving they provide companionship to their children.

Facts

Court of Appeals

## STATE V. NELSON

- ◉ The court found that interpreting “care” and “support” to mean only monetary support violated the cannon against surplusage.
- ◉ Further, that “and” required the state to prove both a failure to provide care, and a failure to provide support.
- ◉ Finally, “care” means “watchful oversight, attentive assistance or supervision,” and “support” means “monetary assistance.”

Supreme Court





## STATE V. NELSON

### TAKEAWAY:

“Care and Support” means you must prove an absence of both monetary support and care.

(Since abrogated by statute)

# *THE FUGITIVE*

(1993)

State of Minnesota v. John Mark Hentges

844 N.W.2d 500

# STATE V. HENTGES

- ◉ Hentges filed a timely appeal of his conviction of felony failure to pay child support.
- ◉ After filing his notice of appeal, Hentges failed to appear for a hearing on an alleged probation violation.
- ◉ The district court issued a bench warrant for his arrest.
- ◉ The State moved to dismiss Hentges's appeal under the fugitive-dismissal rule.
- ◉ The Court of Appeals noted that Minnesota had neither statutorily nor judicially endorsed the fugitive dismissal rule.
- ◉ Declined to dismiss Hentges appeal.

Facts

Court of Appeals

# STATE V. HENTGES

Adopted the Fugitive Dismissal rule; gave Hentges 10 days to surrender or face dismissal

- ◉ The Court observed that the Fugitive Dismissal Rule has deep roots in American jurisprudence, back at least to 1850.
- ◉ Further, 40 states have adopted the rule.
- ◉ Looked to four policy justifications:
  - Enforceability of judgments
  - Waiver based on flight
  - Judicial efficiency
  - Prejudice to the government

Supreme Court



# STATE V. HENTGES

## TAKEAWAY:

Fugitive Dismissal Rule Adopted in  
Minnesota

# ***RULES OF ENGAGEMENT***

***(2000)***

Ramsey County v. X.L.

*Published Nos. A14-0346, A14-0347*

2014 WL 4289716

# RAMSEY COUNTY V. X.L.

- ◉ Ramsey County brought two actions to establish paternity on children receiving public assistance
- ◉ In both cases, the parents had previously signed a Recognition of Parentage for the children
- ◉ When the ROPs were signed, the parents were all minors
- ◉ Child Support Magistrate dismissed paternity portion of each action
- ◉ Reasoned an ROP was a conclusive determination of paternity, prohibiting further court action under Minn. Stat. Sec. 257.75
- ◉ Further, a birth certificate naming a father was a conclusive proof of father-child relationship

Facts

Expedited Process



# RAMSEY COUNTY V. X.L.

Reversed CSM, finding that the Parentage Act permits court action determining parentage when minors have signed a ROP

- Reasoned that a ROP conclusively determines parentage with 3 exceptions, including when “one or both” parents are minors.
- Provision prohibiting further court action where a ROP has been signed does not apply to ROPs executed by minors.
- Minors have no capacity to enter into binding contract.
- Parentage Act recognizes legally incapacity of minors
- A parent’s name on a birth certificate is not conclusive proof when based on ROP signed by minors

Court of Appeals





## RAMSEY COUNTY V. X.L.

### TAKEAWAY:

Minor ROPs do not preclude parentage actions.

# “EXPLAIN IT TO ME LIKE I’M A FOUR YEAR OLD”

*PHILADELPHIA (1993)*

In re the Matter of: Dakota County, and Lorinda Floding v.  
Darrel Gillespie

*Unpublished No. A13-1240.*

*(review granted, June 17, 2014)*

2014 WL 1272165

# FLODING V. GILLESPIE

- ◉ Father had \$1,977 monthly Child Support obligation
- ◉ Father received RSDI of \$1,872
- ◉ Mother collected both child support and RSDI derivative of \$1,748 for six months
- ◉ Father made a motion to modify support
- ◉ CSM determined that support was reduced to \$229 by RSDI derivative, resulting in a \$6,992 overpayment
- ◉ Dist. Ct. affirmed, but amended order under *Koser*, making overpayment applicable against “prospective” support.

Facts

Expedited Process and District Court

# FLODING V. GILLESPIE

**Court of Appeals affirms, reasoning:**

- ◉ First, court does not overrule its own precedents.
- ◉ Second, denying application of overpayment to prospective support is absurd, when it would be applied to arrears
- ◉ Third, application of overpayment to prospective support is not a retroactive modification
- ◉ Finally, obligor has “right to recover” overpayment, despite no “statutory directive” specifically addressing RSDI

Court of Appeals



## FLODING V. GILLESPIE

### TAKEAWAY:

Overpayments from RSDI count against prospective support

**“THAT IS A LUCID,  
WELL THOUGHT  
OUT OBJECTION.  
OVERRULED!”**

***MY COUSIN VINY (1992)***

In re the Paternity of: GME, Maria Elena Petrilak v. Brian  
Paul Elliot

*Unpublished* No. A13-0590

2013 WL 6725778

# PETRILAK V. ELLIOT

- ◉ Mother and Father executed a ROP for child
- ◉ Mother later filed paternity action seeking custody and support
- ◉ After trial, mother was awarded custody and support
- ◉ Father filed motion for amended findings or new trial
- ◉ In post-trial submissions, father's attorney raised issue of Paternity Act's constitutionality for the first time
- ◉ Despite admonition by Court, father's attorney devoted entire oral argument to constitutionality issue
- ◉ Dist. Ct. dismissed motion, as constitutional claim was improperly before court

Facts

District Court



# PETRILAK V. ELLIOT

## Court of Appeals Affirmed:

- ◉ Father again challenged constitutionality.
- ◉ Court noted that constitutional challenge was never raised before or during trial, thus waived
- ◉ Moreover, father sought relief under the statute he was challenging without complaint
- ◉ Finally, on merits, father's request for amended findings did not demonstrate any error by district court

Court of Appeals





## PETRILAK V. ELLIOT

### TAKEAWAY:

You can't request relief under a statute,  
then later claim it is unconstitutional.

# “THE CAT’S OUT OF THE BAG; IT’S FAIR- GAME FOR ME TO CHASE IT”

*ANATOMY OF A MURDER (1959)*

In re the Custody of: M-TLB and S-ALB, Rang  
Ngoc Bang v. Yenthao Thi Vo

*Unpublished* No. A13-2278

2014 WL 3801204

# BANG V. VO

- ◉ Parties have two children
- ◉ Mother filed action to establish custody and parenting time
- ◉ After trial, Dist. Ct. awarded parties 50/50 parenting time and joint physical custody.
- ◉ Set Child Support at \$1,785, which was guideline support for parent with between 10% and 45% parenting time
- ◉ On motion for amended findings, father requested that support be recalculated according to the 50% parenting time.
- ◉ Rather than adjust child support, the court reduced parenting time by one night, making father's parenting time 44%.
- ◉ Father appealed alleging Dist. Ct. abused discretion by reducing parenting time.

Facts

District Court

# BANG V. VO

**Court of Appeals Affirmed, reasoning:**

- ◉ The District Court has broad discretion in determining both child support and parenting time.
- ◉ Both determinations were supported by the evidence presented, so there was no abuse of discretion in rationalizing the child support order by reducing parenting time by one night.

Court of Appeals



## BANG V. VO

### TAKEAWAY:

Careful what you wish for: District Court has broad discretion to amend findings.

**“WHAT WE HAVE HERE IS A  
FAILURE TO COMMUNICATE”**

*COOL HAND LUKE (1967)*

In re the Marriage of: Kenneth Kuller and  
Elizabeth Kuller

*Unpublished No. A13-2277*

2014 WL 3892503

# KULLER V. KULLER

- ◉ Father brought motion to modify support.
- ◉ On July 31, 2013, an order was filed lowering support
- ◉ Period for bringing motion to review closed August 23, 2013
- ◉ Father's attorney mailed letter requesting permission to bring a motion to review on August 12, 2013
- ◉ Dist. Ct. "dismissed" the request, noting that the letter was correspondence, not a motion, and thus did not conform to an authorized post-decision motion.

Facts

District Court



# KULLER V. KULLER

Court of Appeals affirmed, noting:

- ◉ Rule 377.01 of the Expedited Process Rules prohibits any post-decision relief that is not a motion for review, corrections or alleging fraud.
- ◉ Because the attorney's letter was none of these, it was improper and the time for filing a motion for review had expired.

Court of Appeals





# KULLER V. KULLER

## TAKEAWAY:

A letter is no motion.

# ***BODY OF EVIDENCE***

***(1993)***

In re the Marriage of: James Huntsman v.  
Zenith Huntsman

*Unpublished* No. A12-2147

2013 WL 5777908

# HUNTSMAN V. HUNTSMAN

- ◉ Father brought a motion to modify support since he was now receiving unemployment benefits.
- ◉ He provided tax documents that were redacted and wanted the court to rely on his affidavit of income and oral testimony instead.
- ◉ Dist. Ct. ruled that there was not a significant change in circumstances because there was not enough credible evidence of a change in income.
- ◉ Dist. Ct. sanctioned the Father under Rule 9 of the Minn. R. Civ. Pro., requiring him to pay his arrears before any future motions.

Facts

District Court

# HUNTSMAN V. HUNTSMAN

Court of Appeals affirmed, noting:

- ◉ Father's failure to comply with the Dist. Ct.'s demand of full and complete disclosure of all financial information was grounds to decline a motion to modify.
- ◉ Dist. Ct. need not consider an affidavit nor oral testimony regarding income if the Court has reasonable grounds to dispute its credibility.
- ◉ Dist. Ct. could sanction under Rule 9, as part of its ruling on remand.

Court of Appeals



## HUNTSMAN V. HUNTSMAN

### TAKEAWAY:

When you bring a motion to modify, you have to prove your case.

# “ARE WE NEGOTIATING?”

*DEVIL'S ADVOCATE (1997)*

In re the Marriage of: Mary Myhre v. Steven  
Myhre

*Unpublished* No. A12-2276

2013 WL 5976065

# MYHRE V. MYHRE

- ◉ Parties stipulated as to father's income and mother's potential income, after stipulating to custody during their dissolution.
- ◉ However, Parties disagreed on child and spousal support amounts, so a three-day trial was held.
- ◉ During the trial, Dist. Ct. never indicated it was questioning the stipulation.
- ◉ In its ruling, Dist. Ct. rejected the parties' earlier income stipulation.
- ◉ Dist. Ct. set maintenance without making findings as to the mother's income.

Facts

District Court



# MYHRE V. MYHRE

Court of Appeals reversed noting:

- ⦿ Parties needed to be on notice of the Court's rejection of stipulation and needed to be given the opportunity to at least litigate the issues rejected.
- ⦿ Dist. Ct. needed to make specific findings, consistent with statutory laws, when rejecting a stipulation.

Court of Appeals





## MYHRE V. MYHRE

### TAKEAWAY:

If the parties stipulate, District Court must notice its reason for deviating

**“I OBJECT!”  
“WHY?”  
“BECAUSE IT’S  
DEVASTATING TO MY CASE!”**

***LIAR LIAR (1997)***

In re the Marriage of: Anna Modeo-Price v.  
Anthony Keith Price

*Unpublished* No. A13-0190

2013 WL 5777918

# MODEO-PRICE V. PRICE

- ◉ Appellant father challenges the district court's denial of his motion to modify child support.
- ◉ Father was ordered to pay \$773 on behalf of two children in 2010, and in 2012 sought to have the order modified due to a medical disability.
- ◉ A Child Support Magistrate determined that Appellant father is not impaired by a disability, has the ability to work full time, and should be imputed income.
- ◉ The District Court reviewed the issue de novo and determined that Appellant father failed to verify any changes to his income and continues to have the ability to work.

Facts

District Court

# MODEO-PRICE V. PRICE

Court of Appeals remanded.

- ◉ The court determined that the District Court erred by finding that Appellant father has the ability to work full time and also erred by concluding that mother's income is irrelevant to determining a child support order.
- ◉ The court remanded for consideration of father's objection to mother's part-time imputed status, and the effect of the earnings of both parents on the child support calculation.

Court of Appeals



## MODEO-PRICE V. PRICE

### TAKEAWAY:

Both parents' incomes matter when  
calculating support

# *JUST [']CAUSE*

(1995)

Edward Greco v. Leslie Albrecht-Greco

*Unpublished* No. A13-1840

2014 WL 3558094



# GRECO V. ALBRECHT-GRECO

- ◉ Obligor challenged the District Court's decision to sua sponte order him to pay 50% of private-school tuition and modifying his support without making the requisite findings.
- ◉ Parties divorced in 2004. The divorce order delineated the terms of the divorce including custody and child support for child, D.G.
- ◉ The divorce order did not address the issue of private school tuition.
- ◉ The court considered D.G's enrollment in Holy Angels High School in relation to the terms of the parties' divorce and determined that Obligor should pay 50% of the tuition cost for D.G to attend Holy Angels.
- ◉ The District Court did not make any findings relating to the parties' incomes or their ability to pay tuition.
- ◉ Appellant requested reconsideration which the District Court denied.

Facts

District Court

# GRECO V. ALBRECHT-GRECO

Court of Appeals reversed.

- ◉ The Court determined that the District Court does not have the authority to modify a child support order without a motion requesting modification.
- ◉ Thus the Court found that the District Court abused its discretion by sua sponte modifying Obligor's child support obligation.

Court of Appeals





## GRECO V. ALBRECHT-GRECO

### TAKEAWAY:

District Courts can't *sua sponte* modify support

**“I CHECKED THE  
LIST OF PEOPLE I  
TRUST, AND YOUR  
NAME AIN’T ON IT.”**

*THE LINCOLN LAWYER (2011)*

In re the Marriage of: Jan Kehlenbeck v. Kurt  
Kehlenbeck

*Unpublished* No. A13-2033

2014 WL 3022303

# KEHLENBECK V. KEHLENBECK

- ◉ mother challenges the District Court's order denying her motion for a custody modification and ultimately reducing her child support.
- ◉ mother argues that her child support order was satisfied when the children were living with her with father's consent.
- ◉ The court rejected mother's assertion that the children lived with her because the evidence provided by mother was inconclusive.
- ◉ The court also concluded that father's flexibility with parenting time can hardly prove the children's integration into mother's home and result in a modification of child support.

Facts

District Court

# KEHLENBECK V. KEHLENBECK

The Appeals court affirmed.

- ◉ The Court concluded that the District Court did not abuse its discretion in making its determination, because mother did not establish a prima facie showing that the children were integrated into her home.
- ◉ Furthermore, the District Court did not abuse its discretion by refusing to rule that Appellant's support obligation was satisfied by time spent with the children.

Court of Appeals



## KEHLENBECK V. KEHLENBECK

### TAKEAWAY:

Support isn't satisfied unless the children  
are integrated into your home

**“I DISCOVERED THE  
LAW AGAIN. YOU  
ACTUALLY MADE ME  
THINK ABOUT IT.”**

***THE FIRM (1993)***

In re the Marriage of: Kathryn Goodyear v. Matthew PeKarna

*Unpublished* No. A13-0969

2013 WL 6839911

In re the Marriage of Paul Stutler v. Cristina Moreno

*Unpublished* Nos. A13-0056, A13-0460

2014 WL 349617



# GOODYEAR V. PEKARNA

- ◉ Obligor challenged the District Court's modification of support to a period predating the service of Obligee's motion.
- ◉ On January 28, 2013 Respondent father filed a motion to modify Appellant mother's child support obligation based on a new income disclosure.
- ◉ In response Appellant mother moved to have a custody modification made on behalf of their son.
- ◉ The District Court denied Appellant mother's motion and granted Respondent father's motion increasing Appellant mother's child support obligation and making it affective January 1, 2010.

Facts

District Court

# GOODYEAR V. PEKARNA

The Appeals Court reversed.

- ◉ The Court reversed the retroactive modification reiterating that all modifications may only be made from the date of service of the motion to modify.
- ◉ Although the Court acknowledged the District Court's process in considering Appellant mother's violation of the prior divorce order to disclose income changes with Respondent father, the statute clearly prohibits retroactive modification.

Court of Appeals



# STUTLER V. MORENO

- ◉ Parties married in 1986, had four children and divorced in 2011
- ◉ J&D reserved the issues of spousal maintenance and child support
- ◉ J&D specified that within 10 days of notice of employment, a hearing could be scheduled to calculate child support
- ◉ Father found employment, Wife requested hearing
- ◉ Assigned case to Consensual Special Magistrate (CSM)
- ◉ CSM ordered retroactive support for the two months preceding the hearing determining support
- ◉ Included income from bonuses in the calculation of support

Facts

District Court

## STUTLER V. MORENO

Court of Appeals affirmed inclusion of bonuses, but reversed retroactive support award:

- ◉ Minn.Stat. § 518A.39, subd. 2(e) is clear, and only permits a child support award to be retroactive to the date a motion was served. Here, the date wife requested hearing.
- ◉ CSM correctly included percentage of any bonuses as an *additional* award of spousal maintenance, not included in *base* maintenance.

Court of Appeals



GOODYEAR V.  
PEKARNA

AND

STUTLER V. MORENO

TAKEAWAY:

Child Support is retroactive only to when  
a motion (or hearing request) is made

# “BEND, AND SNAP!”

*LEGALLY BLONDE* (2001)

In re the Marriage of: Samuel Doyle v. Barbara Gianlorenzi

*Unpublished* No. A13-0773

2014 WL 801775

In re the Marriage of: Anthony Jones v. Julie McMahon

*Unpublished* No. A13-0482

2014 WL 801714

# DOYLE V. GIANLORENZI

- ◉ Father filed motion in September, 2011 asking to reduce his child support obligation.
- ◉ Child was no longer minor and was living in local mental-health facility.
- ◉ He requested that support be modified retroactive to the date of the child's emancipation.
- ◉ Dist. Ct. ruled that child's disability required father to pay support, but did not address retroactivity.
- ◉ Father filed a motion for reconsideration - Dist. Ct. granted request.
- ◉ Dist. Ct. held that child was emancipated and reduced obligation effective August 2, 2012.
- ◉ Nothing in findings addressed retroactivity or supporting effective date.

Facts

District Court

# DOYLE V. GIANLORENZI

## Court of appeals reversed:

- ◉ Court of Appeals stated there must be findings providing a factual basis for the effective date because:
  - 1) the Dist. Ct. commented that father should not be responsible for support unless mother was contributing toward the daughter's expenses and
  - 2) The effective date the Dist. Ct. chose was substantially after the date of service of notice of the motion.
- ◉ Court of Appeals held that Dist. Ct. may not exercise broad discretion in setting an effective date without factual findings supporting the choice of date.

Court of Appeals

# JONES V. MCMAHON

- ◉ Mother and father had a marital-termination agreement that was incorporated into their 2009 dissolution.
- ◉ Terms of decree had father's pro-rata support obligation set at \$1,414, for a total of obligation of \$1,834 after parenting time and child-care adjustments.
- ◉ Father moved the Dist. Ct. to lower his obligations.
- ◉ Referee informed the parties of an error in the calculation of support.
- ◉ Both parties agreed support should have set at the lowered amount of \$1,414 minus mother's share of dependent health care.
- ◉ Dist. Ct. corrected the error retroactive to the date of entry of the judgment and decree.

Facts

District Court



# JONES V. MCMAHON

- ◉ Mother appealed claiming the 2009 judgment and decree correctly stated father's support obligation, and that it was not clerical error.
- ◉ Mother argued support was set based on agreement, and that father could have moved the court for relief but never did.
- ◉ Court of Appeals ruled that mother had waived her right to appeal the retroactive correction because she had failed to raise the issue before the Dist. Ct.
- ◉ Mother was put on notice of possible error by referee, and by conceding that it was a clerical error and agreeing to retroactive modification, she waived her right to appeal on the issue.

Court of Appeals





DOYLE V.  
GIANLORENZI

AND

JONES V. MCMAHON

TAKEAWAY:

District Court has broad discretion, but  
can't set erroneous effective dates.

# 2014 BLOCKBUSTERS

- ◉ **State v. Nelson**
  - “care and support”
- ◉ **State v. Hentges**
  - Fugitive Dismissal Rule  
Adopted in Minnesota
- ◉ **Ramsey County v. X.L.**
  - Minor ROPs do not preclude  
parentage actions
- ◉ **Floding v. Gillespie**
  - Overpayments from RSDI  
count against prospective  
support
- ◉ **Petrilak v. Elliot**
  - You can’t request relief  
under a statute, then  
later claim it is  
unconstitutional
- ◉ **Bang v. Vo**
  - Careful what you wish  
for: District Court has  
broad discretion to  
amend findings
- ◉ **Kuller v. Kuller**
  - A letter is no motion
- ◉ **Huntsman v. Huntsman**
  - When you bring a motion to  
modify, you have to prove  
your case

# 2014 BLOCKBUSTERS

- ◉ **Myhre v. Myhre**

- If the parties stipulate, District Court must notice its reason for deviating

- ◉ **Modeo-Price v. Price**

- Both parents' incomes matter when calculating support

- ◉ **Greco v. Albrecht-Greco**

- District Courts can't *sua sponte* modify support

- ◉ **Kehlenbeck v. Kehlenbeck**

- Support isn't satisfied unless the children are integrated into your home

- ◉ **Gooyear v. Pekarna and Stutler v. Moreno**

- Child Support is retroactive only to when a motion (or hearing request) is made

- ◉ **Doyle v. Gianlorenzi and Jones v. McMahon**

- District Court has broad discretion, but can't set erroneous effective dates

# QUESTIONS?



# CONTACT INFORMATION

Mark J. Ponsolle

651-266-3037

[mark.j.ponsolle@co.ramsey.mn.us](mailto:mark.j.ponsolle@co.ramsey.mn.us)

Patrick M. Hest

651-266-3266

[patrick.m.hest@co.ramsey.mn.us](mailto:patrick.m.hest@co.ramsey.mn.us)

