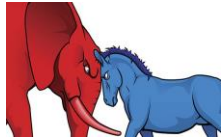


2016 Legislative, Case Law & CLV Update

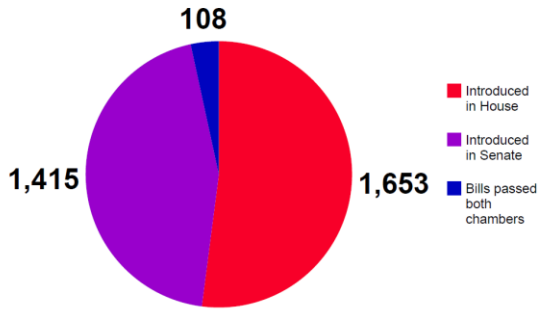
MFSRC Conference
October 5, 2016

Lisa Kontz
Assistant Dakota County Attorney
Patrick Hest
Assistant Ramsey County Attorney
Melissa Rossow
Assistant Director and Assistant Ramsey County Attorney

MN Legislative Session 2015-2016



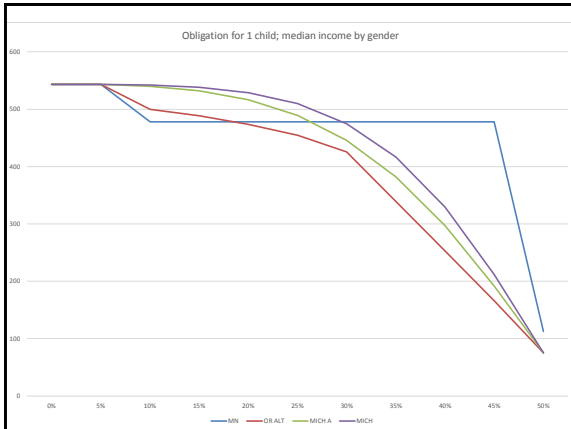
2016 Minnesota Legislature



StarTribune

Child Support Workgroup

- Created by legislature last year
- Current Parenting Expense Adjustment (PEA) viewed as unfair
 - Same adjustment for wide variation in time
 - Cliff effect
- Two tasks
 - Review PEA and make recommendations
 - Make recommendations for Permanent Child Support Task Force



Parenting Expense Adjustment

- HF2749/SF2356 Session Law 189
- Effective August 1, 2018
- Michigan model

$$\frac{(Ao)^2 (Bs) - (Bo)^2 (As)}{(Ao)^3 + (Bo)^3}$$

Where:

- Ao – Approximate annual number of overnight equivalents the children will spend with parent A
- Bo – Approximate annual number of overnight equivalents the children will spend with parent B
- As –Parent A’s base support obligation
- Bs –Parent B’s base support obligation

Parenting Expense Adjustment

- Formula will be programmed in calculator
- Use specific number of overnights for each parent
- Rebuttable presumption of \$0 basic support if parent has more than 55% court ordered parenting time

PEA Bill -- Other Provisions

- New criteria for modifying parenting time
- Application to cases that previously gave adjustment without court ordered parenting time
- Split custody
- First modification following implementation may be limited if it would create a hardship

Child Support Task Force

- HF2749/SF2356 Session Law 189
- Effective day following enactment
- Expires June 30, 2019 unless extended
- Members include legislators, MCAA, MFSRC, parents, DHS, court, tribal IV-D, legal aid, MSBA
- First meeting September 28th
- Meetings open to the public

Child Support Task Force

Purpose: advise the commissioner on matters relevant to maintaining effective and efficient child support guidelines that will best serve the children of Minnesota and take into account the changing dynamics of families

Child Support Task Force

- General Duties
 - Review effects of implementing PEA
 - Advising on quadrennial review
 - Collect and study information and data relating to child support awards
 - Comprehensive review of child support guidelines

Child Support Task Force

- Make recommendations on priority issues:
 - Self-support reserve for custodial and noncustodial parents
 - Simultaneous child support orders
 - Obligor with support orders in multiple counties
 - Parents with multiple families
 - Non-nuclear families
 - Standards to apply for modifications
 - Updating the guidelines chart
- Report due February 15, 2018 and biennially thereafter

Other bills that passed

- Disregard changed to all child support that exceeds \$100 for 1 child/\$200 for 2 or more children not just “current” support
 - HF2749/SF2356 Session Law 189
 - Effective 8/1/16
- Alternative Dispute Resolution information required to be provided by court
 - HF3308/SF2973 Session Law 167
 - Effective 8/1/16

Other bills that passed

- Spousal Maintenance may be modified based on cohabitation
 - HF1333/SF3420 Session Law 132
 - Effective 8/1/16
- Legislative Surrogacy Commission
 - HF2749/SF2356 Session Law 189
 - Effective day following enactment
- OFP filing fees waived for Respondent
 - HF2553/SF2568 Session Law 176

Bills that did not pass

- Cooperative Divorce
- Surrogacy Task Force



2017 Session

January 3, 2017



Federal Update

- NPRM: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs
- National Child Support Strategic Plan for 2015-2019
 - Families First
 - Case Specific Tools
 - Modern Technology
 - Resourceful Partnership
 - Evidence-Based

Case Law Update Ripped From The Headlines

2016 Edition

Ripped From The Headlines

- This year's Case Law Update legal disclaimers come from a famous newspaper man from the past. Can you guess who it is?
- All you need in this life is ignorance and confidence, and then success is sure.
- Get your facts first, then you can distort them as you please.

Ripped From The Headlines

- Why shouldn't truth be stranger than fiction? Fiction, after all, has to make sense.
- A man who carries a cat by the tail learns something he can learn in no other way.
- The rule is perfect: in all matters of opinion, our adversaries are insane.

Ripped From The Headlines

Our mystery newsman?

Samuel Clemens a/k/a Mark Twain

Brace Yourselves!

Our journey through the wild and wonderful world of the 2016 Case Law Update begins now....

MN Supreme Court Cases

- Not paying child support can result in losing your law license and facing additional legal discipline.
- There were other factors involved in each case, but not paying child support was specifically mentioned in each of these cases.

A.A.G.; 871 N.W.2d 567; A15-1146; 11/17/15;
P.R.R.; 874 N.W.2d 773; A14-0804; 2/10/16;
D.C.T.; 879 N.W.2d 659; A15-1901; 6/2/16.

MN Supreme Court Cases

- Using certified mail does not qualify as proper personal service even if a party signs the return receipt card.
- Card only acknowledges receiving envelope and does not acknowledge receiving the summons and complaint, which is required by the rules.
- Rules are clear and must be complied with specifically.

Meillo v. Heitland; 880 N.W.2d 862; A15-0083; 6/22/16.

MN Supreme Court Cases

- Substitute abode service is not effective unless the person with whom the pleadings are left with actually resides at the property.
- In this case, service on Defendant’s son who no longer lived at the property was not sufficient to satisfy the rule.
- Strict compliance is required, actual notice is not relevant.

Jaeger v. Palladium; 2016 WL 4536499; A14-0803; 8/31/16.

MN Ct of Appeals - published

- Court does not need to address Rule 60 factors when considering a motion to vacate a dissolution judgment under section 518.145.
- The statute is more specific and therefore controls the court’s analysis of whether the motion should be granted or not.
- In fact, it may have been reversible error if court had relied on Rule 60 factors in this case.

Knapp v. Knapp; 883 N.W.2d 833; A15-1914; 8/15/16.

MN Ct of Appeals - published

- Disagreement about child’s legal name in paternity cases does not create a contested issue in the Expedited Process if no prior notice and other party defaults.
- County’s request was to leave the name the same. Neither ALF appeared. Mom appeared and wanted to change name, but did not file anything prior to the hearing.
- Oral request did not require DC referral.

S.G.M.M. v. J.A.O.; 872 N.W.2d 755; A15-0618; 11/30/15.

MN Ct of Appeals - published

- Juvenile court has original and exclusive jurisdiction over visitation issues raised in a post-permanency proceeding.
- Mom permanently transferred custody to relative and later brought motion to expand parenting time that was denied by juvenile court.
- Mom tried to argue that family court rules should apply to her request but court disagreed.

In Re Child of: A.H. (parent); 879 N.W.2d 1; A15-1992; 4/25/16.

MN Ct of Appeals - published

- Parental fees depend on whether child placed at facility licensed by MN Department of Human Services or by another agency.
- If facility is licensed by DHS, then section 252.27 governs. Otherwise 260C.331 controls.
- In this case the facility was licensed by DOC so 260C.331 controlled issue of parental fees.

In Re Child of: J.P.-S. and J.D.F. (parents); 880 N.W.2d 868; A15-1729; 6/6/16.

MN Ct of Appeals - unpublished

- Modifying the parenting time expense adjustment needs a corresponding modification to parenting time.
- Arguing that a parent is not exercising the parenting time or that a parent is exercising more parenting time is not enough to justify a modification of the parenting expense adjustment.

Schneider v. Schneider; 2015 WL 7941225; A15-0409; 12/7/15;

Hedberg v. Hedberg; 2015 WL 6633087; A15-0266; 11/2/15.

MN Ct of Appeals - unpublished

- Party claiming mental incapacitation has burden to prove limits on ability to work.
- In this case, the party testified about her disability and provided letter from a doctor recommending she take a leave of absence from work.
- Court did not find party to be credible and that temporary stress from the divorce was not sufficient to warrant finding an inability to work.

Pulsifer v. Pulsifer; 2015 WL 9437613; A15-0457; 12/28/15.

MN Ct of Appeals - unpublished

- Court can deny modification if the change is not substantial or there are additional resources that still make the current order reasonable and fair.
- Party not able to show current decrease represents a sufficient change using 5 year average.
- Party had additional resources that were sufficient to make up for loss of employment.

Myhre v. Myhre; 2016 WL 1397215; A15-1464; 4/11/16;
Wilder v. Wilder; 2016 WL 4497220; A15-1595; 8/29/16.

MN Ct of Appeals - unpublished

- Court has broad discretion to determine how to impute income to parties but must be based on the evidence in the record.
 - Marxen v. Jacobs; 2015 WL 7693542; A15-0439; 11/30/15; Determining proper depreciation deduction in self-employed case.
 - Carreon v. Sorensen; 2015 WL 7941277; A15-0528; 12/7/15; Determining income for part-time nurse.
 - Swenson v. Pedri; 2016 WL 4596530; A15-1900; 9/6/16; Using party's last full-time income to impute income.
 - Hood v. Downing; 2016 WL 3461912; A15-1515; 6/27/16; Using party's current income and not income that was stipulated as part of an earlier agreement when deciding opposing party's motion to modify.

MN Ct of Appeals - unpublished

• Court has broad discretion to determine how to impute income to parties but must be based on the evidence in the record.

• Jegbadai v. Akinnola; 2016 WL 764369; A15-0667; 2/29/16; Imputing income to party who finished law school but was not trying hard enough to get a job.

• Newman v. Newman; 2015 WL 9264101; A15-0561; 12/21/15; Imputing income to unemployed CP ok even if court also finds CP needs retraining and temp spousal maintenance.

• Hedberg v. Hedberg; 2015 WL 6633087; A15-0266; 11/2/15; Imputing additional income to CP who admits being able to work more hours at current job.

“Real” Headlines

• Not paying child support can result in losing law license.

• Certified mail does not qualify as proper personal service.

• Abode service is not effective unless the person with whom the pleadings are left with actually resides at the property.

• Rule 60 factors not needed to vacate a dissolution judgment under 518.145.

• Child's legal name not a contested issue if no prior notice and other party defaults.

• Juvenile court has original and exclusive jurisdiction over visitation issues raised in a post-permanency proceeding.

“Real” Headlines

• Parental fees depend on whether child placed at facility licensed by DHS or by another agency.

• Modifying parenting time expense adjustment needs a corresponding modification of parenting time.

• Party claiming mental incapacitation has burden to prove limits on ability to work.

• Modification can be denied if change is not substantial or there are additional resources that still make the current order fair.

• Court has broad discretion to determine how to impute income to parties but must be based on the evidence in the record.

Comprehensive Legal Vision (CLV)

What is CLV?

- How it started
 - Deloitte Business Process Redesign Study and Cooperative Agreement
- Purpose
 - Resolve statewide legal issues
- Groups involved
 - DHS, MCAA, County IV-D programs
- Getting it off the ground

March 2016 Reorganization

- Worked out the process
 - If we waited until every detail was worked out, we would just be starting now
 - Fluid process meant to be updated and improved
- Executive Committee
- “New” Group Chairs
- Group membership changes
 - A “bench” is being created if you are interested in joining in the future
- Communication plans
- New and improved recommendation form

Getting the Word Out!



- I am here today
- CLV standing agenda item at
 - MCAA Child Support Committee meetings
 - MFSRC Board meetings
 - DHS Advisory Board meetings
- Communicate about issues and decisions at regional meetings
- MCAA presentation
- NCSEA presentation

What has been approved and status of proposals?

- | | |
|---|--|
| <ul style="list-style-type: none"> • Court group <ul style="list-style-type: none"> ✓ Minor ROPs <ul style="list-style-type: none"> ✓ Appellate decision • Policy change coming • Possible legislation ✓ Filing paternity adjudication orders with MDH <ul style="list-style-type: none"> ✓ Joint letter sent ✓ Certified copies of ROPs not required <ul style="list-style-type: none"> ✓ Joint letter sent ✓ Reconciliation <ul style="list-style-type: none"> ✓ PRISM update ✓ Parenting Expense Adjustment without court ordered parenting time <ul style="list-style-type: none"> ✓ County message sent | <ul style="list-style-type: none"> • Court group <ul style="list-style-type: none"> • Facilitating ROPs at county IV-D offices <ul style="list-style-type: none"> • Policy being updated • Letter after policy update ✓ Competing presumptions of paternity <ul style="list-style-type: none"> ✓ Best Practices Manual written ✓ Letter after manual published • Possible legislation ✓ ROP signed and genetic tests indicate ROP father not bio father <ul style="list-style-type: none"> ✓ Same as above • Deceased ALF <ul style="list-style-type: none"> • Policy approved in concept • Policy being drafted |
|---|--|

What has been approved and status of proposals?

- Enforcement Group
 - ✓ FIDM exemptions
 - ✓ Notice about exemptions updated and FIDM checklist created
 - ✓ Partial or early release of lien
 - ✓ IW and 20%
 - ✓ Legislation passed
 - ✓ Termination of IW upon emancipation or TPR
 - Judgments by Operation of Law
 - Updated judgments policy nearly finished



What has been approved and status of proposals?

- Guidelines
 - ✓ RSDI
 - ✓ Appeal
 - ✓ NCP on MA or MNCare
 - ✓ Statutory change
 - PRISM being updated
 - ✓ High deductible healthcare coverage and definition of affordable difference in ACA and MN Law
 - ✓ County message forthcoming
- Guidelines
 - State funded MFIP
 - Update DHS policy and procedures to treat State or Federally funded the same
 - Further research on assignment of arrears
 - Credit for Court ordered Arrears (Branch case)
 - Possible legislative proposal
 - Imputation of Income for recipients of GA/SSI
 - Possible legislative proposal

What is on the horizon?

- Form for new CLV issues on the MCAA website and DHS Sir
 - New issues will require homework and research prior to submission
- Medical CLV group
- More recommendations from the groups
- Magic Book



Thank you!

- Original planning team
- Original issue submitters
- Past and present group chairs and sub chairs
- Past and present group members
- Managers and supervisors of all of the above

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