

MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2017 ANNUAL CONFERENCE




Legislative Update

Lisa Kontz
Assistant Dakota County Attorney

MN Legislative Session 2016-2017




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"A mediator hasn't worked, so I brought in everyone's moms."

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Bills that passed


- Co-parenting Education Appropriation for North Minneapolis health and wellness center
 - Onetime appropriation of \$150,000 each in 2018 and 2019
 - Northpoint Health and Wellness Center
- Goodwill-Easter Seals FATHER Project
 - \$500,000 each year, onetime appropriation

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Bills that passed


- AccessAbility Incorporated
 - \$350,000 in 2018
 - Provide job skills training to individuals released from incarceration for felony-level offense and are no more than 12 months from date of release
 - Annual report to commissioner must include information and data about child support compliance among other things



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Bills that passed

- Decrease in court filing fees
 - Civil action moving party ~~\$310~~ \$285
 - Defendant/adverse or intervening party ~~\$310~~ \$285
 - Marriage dissolution ~~\$340~~ \$315 (moving and adverse party)
 - Motion or response to a motion in civil, family ~~\$100~~ \$75
 - Motion or response to a motion for modification of child support ~~\$100~~ \$50
 - 2017 Session Law Chapter 95 effective 8/1/17



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Bills that passed



- Parental Contribution Amount Changed
 - Household Adjusted Gross Income 275% - 545% Federal Poverty Guidelines
 - Sliding fee scale begins at ~~2.23~~ 1.94 % of AGI and increases to ~~6.08~~ 5.29% of AGI
 - Household Adjusted Gross Income greater than 545% and less than 675% Federal Poverty Guidelines
 - Parental contribution shall be ~~6.08~~ 5.29% of AGI

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Bills that passed



- Parental Contribution (continued)
 - Household Adjusted Gross Income 675% and less than 975% Federal Poverty Guidelines
 - Sliding fee scale begins at ~~6.08~~ 5.29% of AGI and increases to ~~8.4~~ 7.05% of AGI
 - Household Adjusted Gross Income equal to or greater than 975% Federal Poverty Guidelines
 - Parental contribution shall be ~~10.13~~ 8.81% of AGI
 - 2017 Session Law Chapter 6 effective 7/1/17

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Bills that passed




- Child Support Task Force Open Meeting
 - Child Support Task Force is subject to chapter 13D (Minnesota Open Meeting Law)
 - Meeting occurs when quorum is present and members receive information, discuss, or take action on any matter relating to the duties of the task force
 - Task Force may conduct meetings at any location in the state that is appropriate as long as the location is open and accessible to the public
 - 2017 Session Law Chapter 4, effective 1/1/18

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Bills that did not pass


- Motion to Transfer to Tribal Court
 - Applies to post judgment child support, custody or parenting time action
 - District court and tribal court have concurrent jurisdiction
 - Tribal IV-D case is open
- Public assistance v. public coverage
 - NCP must not be ordered to contribute toward the cost of public coverage if the NCP receives public assistance coverage.



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Bills that did not pass


- Credit Bureau "clean up"
 - Delete requirement in 518A.685 that public authority report to consumer reporting agency that the obligor is currently paying child support as ordered by the court
- Certificate of Adjudication
 - Eliminates need to file paternity adjudication order with Vital Records



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Bills that did not pass

- Automatic termination of child care support
 - Terminates the first of the month following the child turning 13 OR
 - First of the month following termination of child care assistance for a child 13 years or older
 - Termination may be challenged by motion



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Bills that did not pass

- Cooperative Private Divorce
- Human Services Finance Reform Task Force
- Gestational Carrier Contracts Established
- Paternity Disestablishment
- Joint Physical Custody Presumption
- Equal Parenting Time Presumption

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Next Session

- Policy bills introduced this session that did not pass
- New proposals



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Final Rule

- Statutory changes required by the Flexibility, Efficiency and Modernization in Child Support Enforcement Programs Final Rule
 - 302.33 Notice of Continued Services
 - 302.33 Paternity Only Services
 - 302.56 Guidelines
 - 303.31 Health Care Coverage

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Notice of Continued Services 302.33

- Requirement to notify family who is no longer eligible for assistance under IV-A and Medicaid programs that IV-D services will be continued unless they indicate they no longer want services
- Also applies when a child is no longer eligible for IV-E foster care, *but only in those cases that the IV-D agency determines that such services and notice would be appropriate*
- 518A.51 Fees for IV-D Services may need to be changed to provide for the flexibility stated in the rule
- Compliance by August 1, 2018

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Paternity Only Services 302.33

- State option to allow applicant to request paternity only limited services
- If state chooses this option, must define how process will be implemented and establish and use procedures, including domestic violence safeguards
- If MN elects to provide paternity only services legislative changes will be needed

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Guidelines 302.56

Imputation of income takes into consideration the specific circumstances of the parent to the extent known, including such factors as:

- Assets
- Residence
- Employment and earnings history
- Job skills
- Educational attainment
- Literacy
- Age
- Health
- Criminal record and other employment barriers
- Record of seeking work
- Local job market
- Availability of employers willing to hire parent
- Prevailing earnings level in the local community
- Other relevant background factors in the case

- 518A.32 Potential Income will need to be changed to add factors
- Compliance by December 31, 2019

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Guidelines 302.56

- Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders
- 518A.32, subd. 3(3) Parent not considered voluntarily unemployed if unemployment is due to incarceration, except where the reason for incarceration is the parent's nonpayment of support
- Legislative change to remove exception for nonpayment of support
- Compliance by December 31, 2019

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Health Care Coverage 303.31

- Health care coverage includes
 - Fee for service
 - Health maintenance organization
 - Preferred provider organization
 - Other types of private health insurance AND
 - Public health care coverage under which medical services could be provided to the dependent children
- 518A.41 states health care coverage does not include any form of public coverage
- Legislative change to clarify that both public and private insurance are considered health insurance
- Compliance by August 1, 2018

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New Proposals/Ideas

- Proposals generated from Systems Modernization planning
- Minimum support order does not apply to obligors who receive TANF
- Lump sum payments and Consumer Credit Protection Act
 - 518A.53 states CCPA does not apply to lump sums which is inconsistent with federal law
- Recipients of GA and SSI are not considered voluntarily unemployed/underemployed
- Eliminate the 1 year requirement for husband's joinder in ROP



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New Proposals/Ideas

- Loophole in recreational license statute which allows obligors to still receive certain types of licenses even if recreational license is suspended or barred under 518A.68
- PEA statute error
 - 518A.39, subd. 2(d)(2)(i) which provides formula for calculating basic support when parties agreed to equal parenting time adjustment under previous law
 - Multiply the combined basic support obligation by ~~0.075~~ .75.
- Clarification of deduction of court ordered and statutory arrears payments (*Branch*)

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MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

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Comprehensive Legal Vision

Shila Walek
 Chief Deputy Isanti County Attorney

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What is CLV?



- Purpose
 - Resolve statewide legal issues
- Groups involved
 - DHS, MCAA, County IV-D programs
- Four large groups and executive committee
 - Court
 - Enforcement
 - Guidelines
 - Medical
- Membership

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What has been approved?



- Court group
 - ✓ Minor ROPs
 - ✓ Appellate decision
 - ✓ Policy change coming
 - ✓ Possible legislation
 - ✓ Filing paternity adjudication orders with MDH
 - ✓ Joint letter sent
 - ✓ Certified copies of ROPs not required
 - ✓ Joint letter sent
 - ✓ Reconciliation
 - ✓ PRSM update
 - ✓ Parenting Expense Adjustment without court ordered parenting time
 - ✓ County message sent
- Court group
 - ✓ Parenting Expense Adjustment
 - ✓ Facilitating ROPs at county IV-D offices
 - Policy being updated
 - Letter after policy update
 - ✓ Competing presumptions of paternity
 - Best Practices Manual written
 - Letter after manual published
 - Possible legislation
 - ✓ ROP signed and genetic tests indicate ROP father not bio father
 - ✓ Same as above

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Approved and/or Status continued



- Court Group
 - ✓ Deceased ALF
 - How is paternity determined where alleged father is deceased prior to the commencement of a paternity action?
 - Policy approved in concept
 - ✓ Consent form for release of GT results
 - ✓ Case closure
 - ✓ CP case closure request and arrears remain
 - ✓ Role reversal establishments and user doc
 - ✓ Paternity Order Elements
 - ✓ Basis for modification
 - ✓ Multiple families

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What has been approved?

- 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

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Approved and/or Status continued


- ✓ Judgments by Operation of Law
 - ✓ Updated judgments policy nearly finished




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What has been approved?

- 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




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Approved and/or Status continued




- 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
 - ✓ No income to NCP \$50 or \$0 obligation
 - ✓ DHS will update web calculator to match PRISM calculator




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DHS - SIR SharePoint Page





- What is it?
 - Share information about CLV
 - Working site for CLV
 - Form for new CLV issues
- Includes
 - Submitted issues
 - Approved issues
 - Communications
 - New issue form
 - Updated issues list with status of each item
 - Contact info
 - Calendar
- Subcommittee



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Thank you!

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Case Law Update

October 2016 – September 2017

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Standard Legal Release



- Most people know that a lawyer who represents himself or herself in court has a fool for a client.
- It is a lesser known truth that a lawyer who relies on these slides without reading the actual cases is twice a fool.

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Special Thanks!



- Susan Hanstad and Becky Morrisette, Assistant Hennepin County Attorneys
- Shirin Johnson and Meg Hennessy, Hennepin County law clerks
- Sara Lauthen, Assistant Ramsey County Attorney
- Alexa Grapentine, Katie Rawls, and Joua Yang, Ramsey County law clerks

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More to come...

- Summaries for all cases will be published on the MFSRC website in the near future.
- Important since we are only going to have time to cover less than half of all the family court cases that came out over the last year.

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This year's theme...

- **Unconventional Wisdom**
- I searched the ends of the earth looking for these rarely seen pearls of wisdom to greater enrich your lives.
- I hope you enjoy them as much as I did when I discovered them for the first time.


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Minnesota Supreme Court

- **Curtis v. Curtis**, 887 NW2d 249, A14-1841, 11/16/16
- **Issue** – How does the income earning potential of assets given to a party as part of a dissolution affect possible spousal maintenance?
- **Holding** – DC needed to take a closer look at how liquid the assets were so the party would not be forced to invade the principal of the assets in question. DC must also consider the tax consequences of reallocating assets.

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Minnesota Supreme Court



- **Crowley v. Meyer**, 897 NW2d 288, A15-1471, 06/28/17
- **Issue** – Who has the burden to modify joint physical custody after several temporary orders granted one party sole physical custody?
- **Holding** – The burden is still on party with temporary custody even if a significant passage of time has occurred. DC should have held evidentiary hearing before permanently changing custodial arrangement.

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Minnesota Supreme Court



- **Crowley v. Meyer**, 897 NW2d 288, A15-1471, 06/28/17
- **Strong rebuke** – Except in the most extraordinary cases, the practice of requiring repeated hearings and leaving the question of permanent custody undecided for an extended period of time is inadvisable and unnecessary.
- A series of temporary custody orders do not become a permanent custody modification just based on the passage of time.

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Published Court of Appeals



- **Baertsch v. Baertsch**, 886 NW2d 235, A16-1279, 10/11/16
- **Issue** – How does a pending claim for conduct based attorney’s affect the finality of an order for purposes of appealing the underlying order?
- **Holding** – A post decree order granting enforcement of the terms of a judgment and decree is not final and appealable until the DC rules on the pending motion for conduct based attorney fees. Extends prior rulings regarding needs-based attorney fees.

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Published Court of Appeals



- **Tornstrom v. Tornstrom**, 887 NW2d 680, A16-0209, 11/21/16
- **Issue** – Whether the terms of a mediated settlement could be enforced when one party no longer agreed to the terms of the settlement?
- **Holding** – Yes, because the parties orally recorded their agreement to the terms of the settlement, acknowledged their intent to form a binding agreement, and the agreement was supported by consideration.

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Published Court of Appeals



- **J.M.M. o/b/o Minors**, 890 NW2d 750, A16-0646, 02/13/17
- **Issue** – Whether the minor name-change statute requires the applicant-parent to provide notice of a name-change application to a bio-parent who does not have a legally recognized relationship with the child?
- **Holding** – No, notice is only required if the bio-parent has a legally recognized relationship with the child prior to the name-change application.

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Published Court of Appeals



- **Hansen v. Todnem**, 891 NW2d 51, A16-0698, 02/13/17
- **Issue 1** – Does the \$15,000 statutory cap apply to the determination of the parties' PICS?
- **Holding 1** – No, the presumed child support obligation is capped but not the accurate determination of the parties' PICS.

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Published Court of Appeals



- **Hansen v. Todnem**, 891 NW2d 51, A16-0698, 02/13/17
- **Issue 2** – What is the impact of deductibles and copayments on the question of which party has the most affordable dependent health care coverage?
- **Holding 2** – The DC has the discretion to consider premiums and deductibles and copayments when determining which party has the most affordable dependent health care coverage. This issue is currently being looked at by the Medical CLV subgroup.

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Published Court of Appeals



- **Hansen v. Todnem**, 891 NW2d 51, A16-0698, 02/13/17
- **Outstanding Issue** – The Minnesota Supreme Court granted review on the issue of one parent’s request to have additional parenting time instead of having the child attend before and after school childcare. The DC denied the request as not being in the child’s best interests but did not address all the statutory factors. COA held full analysis of all factors in not necessary when the court is simply clarifying current parenting time. Supreme Court non-oral panel was held on 09/06/17.

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Published Court of Appeals



- **Beckendorf v. Fox**, 890 NW2d 746, A15-1991, 02/13/17
- **Issue** – Whether evidence of prospective childcare expenses can constitute documentation of childcare expenses as required by statute?
- **Holding** – Yes, evidence of prospective childcare expenses may constitute documentation of childcare expenses. Party does not have to rely solely on childcare expenses actually spent as this could create a hardship and is not judicially efficient.

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Published Court of Appeals



- **Shearer v. Shearer**, 891 NW2d 72, A16-0434, 02/27/17
- **Issue** – Whether the DC was required to use the stated parenting time of 50% with each party in calculating child support even though NCP was not exercising the full parenting time?
- **Holding** – Yes, the DC must use the stated parenting time percentages in the order when determining child support even if the NCP is not exercising the full parenting time.

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Published Court of Appeals



- **Estate of Nelson**, ___ NW2d ___, 2017 WL 3863989, A16-1545 & A16-1546, 09/05/17
- **Issue** – Whether the Parentage Act can exclude potential heirs in a subsequent probate dispute?
- **Holding** – Yes, when the decedent already has a legal parent, potential heirs cannot attempt to establish a genetic relationship to the decedent in the probate proceeding through someone other than the legal parent.


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Unpublished Court of Appeals




- **Taylor v. Taylor**, 2016 WL 6077203, A16-0577, 10/17/16
- **Issue** – Whether the court can proceed with a hearing if a party is appearing by phone and reasonable efforts to contact the party are not successful?
- **Holding** – Yes, the court does not violate due process by conducting the hearing without the party if reasonable attempts made to contact the party by phone are not successful.

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Unpublished Court of Appeals 


- **M.J.E.B. v. A.L. et al.**, 2016 WL 6923694, A16-0487, 11/28/16
- **Issue** – Whether the DC adequately weighed the evidence when determining paternity between two presumed fathers?
- **Holding** – Yes, the DC properly weighed the child’s best interests and the considerations of policy and logic when choosing which presumed father should be the child’s legal father, and did not overvalue the genetic testing.

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Unpublished Court of Appeals 


- **Stillwell v. Stillwell**, 2016 WL 7041900, A16-0114, 12/05/16
- **Issue** – Whether the DC’s decision to impute at 150% of minimum wage instead of using the previous imputation of income was supported by the record under the prior statutory framework?
- **Holding** – Yes, the DC was required to consider the facts and circumstances existing at the time of the application for child support. Prior imputation of income for purposes of spousal maintenance was not binding on the DC.

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Unpublished Court of Appeals 


- **Sands v. Lovick**, 2016 WL 7438705, A15-1807, 12/27/16
- **Issue** – Can the DC impose new purge conditions on a child support obligor as part of a civil contempt action?
- **Holding** – Yes, the DC can impose new purge conditions when appropriate, but in this case the basis for the DC’s modification and determination of the obligor’s income was unclear and incomplete so remand was needed for further clarification of how the obligor’s income was determined.

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Unpublished Court of Appeals 


- **Ibrahim v. Dawid**, 2017 WL 751239, A16-1111, 02/27/17
- **Issue** – Did the CSM properly calculate the party's potential gross monthly income?
- **Holding** – Yes, the CSM was allowed to use at the party's recent and lengthy work history at \$15.00 per hour when the party did not provide adequate documentation of his current financial circumstances as an Uber driver and car wash attendant or his alleged medical conditions that limited his ability to work.

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Unpublished Court of Appeals 


- **Benson v. Peterson**, 2017 WL 878685, A15-1967, 03/06/17
- **Issue 1** – Can distributions from an inherited IRA be counted as gross income by the court?
- **Holding 1** – Yes, the IRA distributions in this case could be considered periodic payments from a 3rd party that should have been considered as gross income to the party.

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Unpublished Court of Appeals 


- **Benson v. Peterson**, 2017 WL 878685, A15-1967, 03/06/17
- **Issue 2** – Did the court properly require the parties to share in the new travel expenses related to parenting time?
- **Holding 2** – Yes, since the travel expenses were related to new parenting time the court was not required to show a substantial change in circumstances and could instead equitably apportion the new travel expenses between the parties.

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Unpublished Court of Appeals 


- **Benson v. Peterson**, 2017 WL 878685, A15-1967, 03/06/17
- **Issue 3** – Did the court properly require the disclosure of the joint child’s medical and school information when the primary parent was a participant in the Safe at Home program?
- **Holding 3** – No, the court should have analyzed whether the information was needed, whether there was a more practicable way of obtaining the information and whether the potential harm to the participant is outweighed by the interest to disclose.

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Unpublished Court of Appeals 


- **Swart v. Swart**, 2017 WL 1053873, A16-1405, 03/20/17
- **Issue** – Was a change in primary custody enough to warrant a modification of child support when the parties had agreed not to seek modification for a set period of time even if physical custody changed?
- **Holding** – No, the party seeking modification did not provide enough financial information to prove that the existing order was unreasonable and unfair. The DC was not bound by the prior agreement but could use it as one factor in the overall analysis.

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Unpublished Court of Appeals 


- **Weiss v. Griffin**, 2017 WL 1375336, A16-1632, 04/17/17
- **Issue** – Can the court modify civil contempt purge conditions if new information becomes available?
- **Holding** – Yes, the prior contempt order indicated that the purge conditions could be reviewed from time to time and the obligor’s receipt of a significant inheritance was enough to justify the modified purge conditions.

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Unpublished Court of Appeals 


- **US Bank v. Ward**, 2017 WL 2625780, A16-2004, 06/19/17
- **Issue** – Was there sufficient evidence to support jurisdiction based on the substitute abode service?
- **Holding** – No, the DC improperly shifted the burden to the Defendant to prove by clear and convincing evidence that the home was not his usual abode at the time of service when the person effectuating the abode service did not have personal knowledge of the Defendant's usual place of abode at the time of service.

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Unpublished Court of Appeals 


- **Moreno v. Greene**, 2017 WL 3013234, A16-1701, 07/17/17
- **Issue** – Does a recreational license revocation unreasonably interfere with the obligor's right to earn a living as a hunter/trapper?
- **Holding** – No, the right to work is not a fundamental right. There is a rational connection between the statute and the public interest of securing child support payments, and the obligor could enter into and comply with a payment agreement to have the recreational license reinstated.

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Unpublished Court of Appeals 


- **Gomes v. Meyer**, 2017 WL 3863822, A16-1015, 09/05/17
- **Issue 1** – Can the court modify a child support obligation even if the new amount is less than 20% and \$75.00 change from the existing child support amount?
- **Holding 1** – Yes, a change of 20% and \$75.00 creates a presumption, however the court can still make findings that a substantial change in circumstances that renders the existing order unreasonable and unfair occurred even if the 20% and \$75.00 change did not occur.

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Unpublished Court of Appeals 


- **Gomes v. Meyer**, 2017 WL 3863822, A16-1015, 09/05/17
- **Issue 2** – Did the court correctly apply Minnesota law to the determination of child support in a modification of a Georgia order here in Minnesota instead of Georgia law?
- **Holding 2** – Yes, when a Minnesota court modifies an issuing state’s child support order pursuant to UFISA, the court should apply Minnesota substantive law in calculating a child support obligation.

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Unpublished Court of Appeals 

- **Gomes v. Meyer**, 2017 WL 3863822, A16-1015, 09/05/17
- **Issue 3** – Did the court correctly subtract the full amount of spousal maintenance from the obligor’s income and add it to the obligee’s income, even though the obligor was not consistently paying the full amount?
- **Holding 3** – Yes, the statute requires that the court use the amount of spousal maintenance that is ordered even if the full amount is not being paid.


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Unpublished Court of Appeals 

- **Gomes v. Meyer**, 2017 WL 3863822, A16-1015, 09/05/17
- **Issue 4** – Did the CSM have the authority to determine that the child E.J.M. was emancipated for child support purposes and did the CSM do so correctly?
- **Holding 4** – Yes, the CSM has to determine how many joint children there are and so the issue of emancipation is one the CSM has to be able to determine. In this case, the determination was not clearly erroneous.

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Unpublished Court of Appeals



- **Gomes v. Meyer**, 2017 WL 3863822, A16-1015, 09/05/17
- **Food for Thought** – This panel allowed the DC’s characterization of the parenting time for purposes of the parenting expense adjustment in a way that is arguably inconsistent with a prior panel’s ruling in **Lonneman**. Both cases are unpublished. The CLV group’s recommendation and DHS policy to follow the holding in **Lonneman** when addressing the parenting expense adjustment has not changed. This issue will likely be resolved once the new parenting expense adjustment framework is being used by the courts.

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