

<p><u>In the Matter of: Angela C. Daniels, individually and o/b/o Shyanne Welch, petitioner, Respondent, vs. Kenneth Wayne Welch, III, Appellant., (Unpub.), A06-1335, Washington County, filed June 12, 2007 (Minn. App. 2007):</u> Appellant argues district court abused its discretion by admitting evidence and issuing findings of domestic abuse based on allegations not set forth in respondent's ex parte petition for OFP. Court finds where the record contains sufficient permissible evidence to support the court's conclusion without regard to impermissible evidence, the admission of the impermissible evidence is harmless error.</p>	<p>Where the record contains sufficient permissible evidence to support the court's conclusion without regard to impermissible evidence, the admission of the impermissible evidence is harmless error.</p>
<p><u>In re the Marriage of: Kim Teresa Pattinson, petitioner, Respondent, vs. Daniel Keller Pattinson, Appellant., (Unpub.), A06-1300, Anoka County, filed July 31, 2007 (Minn. App. 2007):</u> Fourth appeal related to spousal maintenance provisions of J&D. Court of Appeals remanded to district court with instructions. Subsequent district court order appealed here. Court of Appeals reverses and remands with instructions to follow prior remand instructions. District court adopted respondent's findings verbatim. These findings lacked income information and were unsupported by the record; Court of Appeals determined that they were clearly erroneous.</p>	<p>Re-remanded for district court to comply with prior order and instructions of court of appeals. Findings – Standard of Review.</p>
<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent., (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007):</u> Appellant in dissolution proceeding entered into oral stipulation after court denied his request for fourth continuance. Appellant argues stipulation should be vacated because he acted under duress. <i>Shirk</i> standard, holding that after judgment is entered the only available relief is through section 518.145, should be the standard used where a motion to vacate the stipulation is made <i>before</i> the judgment is entered. If a dissolution stipulation has been properly formed and accepted, it will be enforced unless a contract defense would apply. Appellant has failed to establish the stipulation was the product of fraud, duress, or mutual mistake.</p>	<p><i>Shirk</i> standard should be used where a motion to vacate the stipulation is made before the judgment is entered. If a dissolution stipulation has been properly formed and accepted, it will be enforced unless a contract defense would apply.</p>
<p><u>Arneson v. Meggitt, (Unpub.), A06-1437, filed 10/30/07 (Minn. App. 2007):</u> On review of CSM decision, NCP failed to ask district court to review CSM's denial of his motion to reduce support. NCP is therefore barred from appealing from the sufficiency of the district court's findings to support its decision upholding the CSM's decision on that issue.</p>	<p>No Appeal of Issue Not Raised in District Court on Review of CSM Decision</p>
<p><u>Arneson v. Meggitt, (Unpub.), A06-1437, filed 10/30/07 (Minn. App. 2007):</u> On review of CSM decision, CP failed to ask district court to review CSM's bifurcation of NCP's support payments into part payments and part arrears. Likewise, on appeal from decision of district court, CP failed to give notice of request to review the issue. CP was required to do both to raise the issue on appeal.</p>	<p>No Appeal of Issue Not Raised in District Court on Review of CSM Decision, nor of Issue Not Included in Notice of Appeal</p>
<p><u>County of Nicollet o/b/o Stevenson vs. Machau, (Unpub.), A06-2345, F & C, filed March 4, 2008 (Minn. App. 2008):</u> Evidence submitted by appellant on appeal not previously submitted to the CSM is stricken.</p>	<p>Evidence not submitted to CSM stricken from record on appeal</p>
<p><u>Martin vs. Martin, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008):</u> Appellant argues that the district court erred in refusing to modify his health care obligation. The lower court refused to consider the matter on review after concluding the issue had not been raised before the CMS. Although appellant checked a box on the notice of motion form marked "establishing medical support", there is no other evidence on the record that he raised the issue before the CSM. Simply checking a box on a standardized form does not conclusively establish that the issue was raised below.</p>	<p>Review denied where issue not properly before lower court.</p>

I.A.1.- Standard and Scope of Review

<p><u>Dean Preston Kennedy v. State of Minn.</u>, (Unpub.), K5-99-000440, Isanti County, filed March 20, 2007 (Minn. App. 2007): Appellant pleaded guilty to the charged crime of felony nonsupport of a child and waived his right to a pre-sentence investigation despite the court's concern with correctly determining the proper restitution amount. Subsequently, an Isanti Magistrate issued an order suspending appellant's child support obligations and staying the interest on the arrears for the time periods during which appellant was incarcerated. The result decreased the arrearage by \$12,763.60. Appellant filed motion for post conviction relief seeking to have the court vacate the order for restitution. Court denied.</p> <p>Appellant contends the district court erred when it declined to conduct an evidentiary hearing and instead determined appellant's motion to rescind the judgment was barred by the doctrine of collateral attack. Court of Appeals reversed and remanded under an abuse of discretion standard of review. A "collateral attack" is "an attack on a judgment entered in a different proceeding". (Citing <u>Black's Law Dictionary</u>, 255 (7th ed. 1999). Minnesota does not permit the collateral attach on a judgment valid on its face. (Citing <u>Nussbaumer v. Fetrow</u>, 556 N.W.2d 595, 599 (Minn. App. 1996). Conversely, it is permissible to attack a judgment under an attempt to annul, amend, reverse or vacate or to declare it void in a proceeding instituted initially and primarily for that purpose; such as by appeal or proper motion. (Citing <u>Strumer v. Hibbing Gen. Hosp.</u>, 242 Minn. 371, 375, 65 N.W.2d 609, 612 (1954). Court of appeals does not vacate the judgment, but holds the district court erred when it denied appellant's petition. The petition was a proper attack on the judgment and the restitution ordered in the criminal case should conform to appellant's arrearage as determined by the CSM.</p>	<p>Appellant's restitution ordered for felony nonsupport of a child should match the arrearage amount determine by the child support magistrate.</p> <p>Post conviction motion for review where arrears do not match restitution amount is not barred by the doctrine of collateral attack.</p>
<p><u>In re the Marriage of: Thomas Caroll Rubey v. Valerie Ann Vannett</u>, A05-310, COA, filed May 4, 2006 (Minn. Sup. Ct. 2007): Minn. R. Civ. P. 59.03. Appellant requested new trial/amended findings within 30 days of custody order, but failed to obtain hearing or extension for good cause within 60 days as required by Minn. R. Civ. App. P. 59.03. District Court properly denied motion for new trial. However, timely filing of motion for new trial tolled limitation on appeal, regardless whether hearing was untimely. Minn. R. Civ. App. P., Rule 104.01, subd. 2. Remanded to Court of Appeals to consider appeal from custody order.</p>	<p>Minn. R. Civ. P. 59.03. requires hearing of motion for new trial/amended findings within 60 days, or written confirmation of extension of hearing time for good cause.</p> <p>Per Minn. R. Civ. App. P. 104.01 limitation is tolled by timely motion for new trial, regardless whether timely hearing is scheduled.</p>
<p><u>Askar vs. Sharif</u>, (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): The County challenges the district court's affirmance of a CSM's decision to reinstate respondent's driver's license. Because the county acquiesced in the CSM's decision to reinstate the obligor's drivers license, the county has waived its arguments on appeal that the CSM had no authority to do so.</p>	<p>Where a party agrees at the hearing, cannot later raise an appeal as to agreed upon issues.</p>

I.A.2.- Appealability of Orders/Judgments

<p><u>In Re the Marriage of Bender v. Bernhard</u>, (Unpub.), A05-1545, filed June 20, 2006 (Minn. App. 2006): Upheld a district court decision that ordered guidelines child support for a child with documented special needs. The Court was unwilling to reverse <u>McNulty v. McNulty</u>, 495 N.W.2d 471 (Minn. App. 1993), <i>review denied</i> (Minn. Apr. 12, 1993), noting that that case was a unique situation where the Ct. of Appeals affirmed a presumptively incorrect above guidelines obligation, whereas this case would require the Court to reverse a presumptively correct guidelines obligation.</p>	<p>No reversal of guidelines support amount on the basis that the child has special needs.</p>
<p><u>Kozel n/k/a Kurzontkowski v. Kozel</u>, A06-30 (Minn. Ct. App. October 10, 2006): The court did not abuse its discretion by declining to reopen the record to hear new evidence when the case was remanded. The district court's remand order did not specify whether the district court was to reopen the record and receive new evidence on remand and the case was not remanded for the purpose of hearing additional evidence. The testimony, exhibits of record, together with the submitted arguments of counsel were a sufficient basis for determination of the obligor's earning ability.</p>	<p>District Courts have broad discretion regarding how to proceed on remand absent specific instructions.</p>
<p><u>In re the Marriage of: Kim Teresa Pattinson, petitioner, Respondent, vs. Daniel Keller Pattinson, Appellant.</u>, (Unpub.), A06-1300, Anoka County, filed July 31, 2007 (Minn. App. 2007): Fourth appeal related to spousal maintenance provisions of J&D. Court of Appeals remanded to district court with instructions. Subsequent district court order appealed here. Court of Appeals reverses and remands with instructions to follow prior remand instructions. District court adopted respondent's findings verbatim. These findings lacked income information and were unsupported by the record; Court of Appeals determined that they were clearly erroneous.</p>	<p>Re-remanded for district court to comply with prior order and instructions of court of appeals. Findings – Standard of Review.</p>
<p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008): The time limit for a party to directly appeal to this court from a CSM's order is 60 days after service of notice of filing of the order. Appellant does not contest that he neither appealed the CSM's 2005 order to this court nor filed a motion for district court review. Therefore, appellant's appeal for review of the 2005 order is untimely.</p>	<p>Untimely appeal</p>
<p><u>Martin vs. Martin</u>, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008): Appellant argues the court abused its discretion by denying his motion to modify his child support obligation. Appellant argues the order is not supported by the record. Even assuming the record lacks clear support for the findings of the district court, appellant has the burden to show that a modification is justified, and has failed to meet that burden. Additionally, lacking any credible support to contradict the findings of the district court, appellant fails to meet his burden to demonstrate the district court abused its discretion.</p>	<p>Petitioning party has burden</p>

I.A.4.- Appeals Generally

<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent.</u>, (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007): Oral stipulation in dissolution proceeding. Written order included a reservation of maintenance that was not included in the oral stipulation. Where the parties in a dissolution have reached a stipulation, the court cannot impose conditions to which the parties did not stipulate and thereby deprive the parties of their day in court. A decree that is silent as to spousal maintenance cannot thereafter modify the decree to award spousal maintenance. A decree that reserves spousal maintenance can be modified.</p>	<p>Where parties in dissolution have reached a stipulation, the court cannot impose additional conditions without giving the parties a chance to litigate.</p>
<p><u>In re the Marriage of: Loren Helen Faibisch, petitioner, Appellant, vs. Manuel Esquerra, Respondent.</u>, (Unpub.), A06-1751, Ramsey County, filed August 21, 2007 (Minn. App. 2007): Appellant argues the district court should have held an evidentiary hearing on her motion to modify. Noncontempt family motions are decided without an evidentiary hearing unless otherwise ordered by the court for good cause (<i>citing Minn. R. Gen. Pract. 303.03(d)</i>). No evidentiary hearing was requested by either party.</p>	<p>Noncontempt family motions are decided without an evidentiary hearing unless otherwise ordered by the court for good cause.</p>
<p><u>Krznarich vs Freeman.</u> (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The fact that the judge did not read the motions filed by the parties until after the hearing did not deprive the parties of a fair hearing, and does not merit a new trial.</p>	<p>Due process not violated where judge did not read motions before the hearing.</p>
<p><u>Sperling vs. Sperling.</u> (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): The district court cannot abdicate its statutory role as the final arbiter of support determinations to a third party for annual review and adjustment.</p>	<p>Alternative Dispute Resolution of Child Support</p>

I.B.2. - Service	
Minn. R. Civ. P. 4, 5, 6; Minn. R. Family Court P. 302.01, 302.03; 308.01; 355 (Expedited Process); Minn. Stat. § 543.20 - service at place of employment or educational institution; Minn. Stat. § 518.255 - order for public authority to serve legal documents in a party-initiated support proceeding.	
<u>Thomas v. Fey</u> , 405 NW 2d 450 (Minn. App. 1987): Evidence of mailing of referee's; recommended order was insufficient without proof of custom or habit of mailing.	Proof of Mailing
<u>Smigla v. Schnell</u> , 547 NW 2d 102 (Minn. App. 1996): The term "day" in Minn. R. Gen. Prac. 114.09 comprises the 24 hour period ending at midnight. Therefore, a filing made after business hours by facsimile on the court's fax machine was timely. (But see change in rules requiring a fax to be made during business hours.)	Service by FAX
<u>Abu-Dalbouh v. Abu-Dalbouh</u> , 547 NW 2d 700 (Minn. App. 1996): Minn. R. Civ. P. 4.04 permits service by publication of marriage dissolution action where other party lives outside of state or county, summons has been mailed to last known address, and returned, forwarding address unknown, and petitioner tried diligently to locate husband's new address.	Service by Publication
<u>Gorz v. Gorz</u> , 552 NW 2d 566 (Minn. App. 1996): Although contempt actions must be initiated by personal service of an order to show cause, obligor waived any objection to jurisdiction based upon obligee's failure to personally serve order to show cause and contempt motion because he had already invoked the court's jurisdiction over him and the child support issue by moving for modification and by participating in the proceedings and personally appearing at the hearing.	Failure to Personally Serve Order to Show Cause
<u>Imperial Premium Finance Co. v. GK Cab Co.</u> , 603 NW 2d 853 (Minn. App. 2000): A party challenging an affidavit of service must overcome it by clear and convincing evidence. Where person alleged to have received service alleges that he does not remember being served, and that he did not follow procedures he normally follows when accepting service, the affidavit of service was not overcome.	Challenge to Service
<u>Turek v. A.S.P., Inc.</u> , 618 NW 2d 609 (Minn. App. 2000): Pursuant to Minn. R. Civ. P. 4.05, service acknowledged by mail is ineffective if the sender does not receive the acknowledgment form within the time required by the rules. (In this case, an acknowledgment of service returned after 20 days was ineffective.)	Strict Time Frames for Service by Acknowledgment
<u>Turek v. A.S.P., Inc.</u> , 618 NW 2d 609 (Minn. App. 2000): Actual notice is irrelevant where service is made by acknowledgment under Minn. R. Civ. P. 4.05, as the actual notice exception only applies to cases involving substitute service at the usual place of abode.	Actual Notice
<u>Pipestone County Sheriff v. Pipestone County Board of Commissioners</u> , 633 NW 2d 875 (Minn. App. 2001), CX-01-618, F & C, filed 9-25-01: Under Minn. Stat. § 270A.03, Subd. 2 (2000), service of process by a sheriff who is a party to the action is not effective service of process under Minn. R. Civ. P. 4.02.	Not Okay by Sheriff Who is a Party
<u>Kloncz, n.k.a. Black v. Kloncz</u> , 670 NW 2d 618 (Minn. App. 2003): When service is effected both by mail and facsimile on the same day, the three additional days under Minn.R.Civ.P. 6.05 for mailing does not apply to the time allotted for response. The response time is calculated from the day of the facsimile. (This case applied specifically to service of a Notice of Filing.)	3 Days N/A to Service of NOF by Facsimile
<u>Ritter v. Ritter</u> (unpub) A03-1472, filed 5-25-04 (Minn. App. 2004): The notice requirement for service of motions and responsive motions in child support modification cases is governed by Minn. R. Gen. Prac. 303.03(a), and not by Minn. R. Civ. P. 6.04. Under 303.03(a), the imposition of sanctions for late-filing is permissive and not mandatory.	Minn.R.Gen.P ract. 303(a) Applies in MTM Cases
<u>Maki v. Hansen</u> , 694 NW 2d 78 (Minn. App. 2005): Although respondent served documents on the other party and not the other party's attorney, and although respondent mailed the documents herself, rather than having a third party mail the documents, as required by Minn. R. Gen. Pract. 355.01 and 355.02, where other party had actual notice of the motion, and the opportunity to respond and be heard, he was not prejudiced, and the motion should not be dismissed due to improper service.	Actual notice and opportunity to respond overcomes failure to follow rules of service
<u>State v. Pierce</u> , 100 NW 2d 137 (Minn. 1959): Where personal service is required, but service is made by mail and the party to be served actually receives the documents, service is effective.	Service effective if papers actually received even if not personally served

I.B.2.-Service

<p><u>County of Freeborn v. Walker</u>, (Unpub.), A07-375, filed April 8, 2008 (Minn. App. 2008): The county served a person identified by a social security number and name located in California with a paternity action. That person failed to appear or answer and a paternity order was entered by default. Subsequently, the county intercepted tax refunds and began income withholding against appellant, a person with the same or similar name and social security number. Appellant objected, argued he wasn't served with any paternity action, indicated he was a victim of identity theft, and was later excluded as the biological father of the child through genetic testing. The district court order required the county to reimburse appellant for child support collected from him and distributed to obligee. The county appealed. The Court of Appeals held that the undisputed lack of proper service renders the resulting judgments void. Restitution is equitable in nature and there is no abuse of discretion to order the county to reimburse the monies. Finally, the court rejected the argument that the funds should be recouped from mother citing (1) that the funds are disbursed does not absolve the county from having to reimburse Appellant if the facts warrant repayment. (2) A series of mistakes by the county resulted in the void judgments. (3) an innocent child support payor should not sue an innocent mother on public assistance to attempt to recover funds incorrectly procured from the payor as a result of void judgments. This is not in the best interest of the child for whom the child support system was created.</p>	<p>County ordered to reimburse defendant past child support collected based on default adjudication, where service on defendant was defective.</p>
<p><u>Ayala vs. Ayala</u>, (594 N.W.2d 257), A07-0657, filed May 27, 2008 (Minn. App. 2008): Service of an OFP by publication is not effective unless there has first been an attempt at personal service by law-enforcement personnel that has failed because the respondent concealed himself, and either a copy of the petition and notice of hearing have been mailed to the respondent's residence or the petitioner does not know the address. Where both requirements are not followed, service is lacking, and the court does not have personal jurisdiction over the respondent.</p>	<p>Service by publication</p>

<p><u>In re the Marriage of: Thomas Carroll Rubey v. Valerie Ann Vannett</u>, (Unpub.), A05-310, filed May 15, 2007 (Minn. App. 2007): Parties were denied due process when district court, at conclusion of trial regarding physical custody, rejected their stipulation to joint legal custody <i>sua sponte</i>, without opportunity to be heard.</p>	<p>District court cannot change the terms of a stipulation without giving timely notice and opportunity to the parties to present evidence and argument.</p>
<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent.</u>, (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007): Appellant in dissolution proceeding entered into oral stipulation after court denied his request for fourth continuance. Appellant argues stipulation should be vacated because he acted under duress. <i>Shirk</i> standard, holding that after judgment is entered the only available relief is through section 518.145, should be the standard used where a motion to vacate the stipulation is made <i>before</i> the judgment is entered. If a dissolution stipulation has been properly formed and accepted, it will be enforced unless a contract defense would apply. Appellant has failed to establish the stipulation was the product of fraud, duress, or mutual mistake.</p>	<p><i>Shirk</i> standard should be used where a motion to vacate the stipulation is made before the judgment is entered. If a dissolution stipulation has been properly formed and accepted, it will be enforced unless a contract defense would apply.</p>
<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent.</u>, (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007): Oral stipulation in dissolution proceeding. Written order included a reservation of maintenance that was not included in the oral stipulation. Where the parties in a dissolution have reached a stipulation, the court cannot impose conditions to which the parties did not stipulate and thereby deprive the parties of their day in court. A decree that is silent as to spousal maintenance cannot thereafter modify the decree to award spousal maintenance. A decree that reserves spousal maintenance can be modified.</p>	<p>Where parties in dissolution have reached a stipulation, the court cannot impose additional conditions without giving the parties a chance to litigate.</p>
<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent.</u>, (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007): Appellant in dissolution proceeding entered into oral stipulation. Appellant argues stipulation should be vacated because the parties failed to reach an agreement about material terms. Proper remedy to this is to modify the written order. Default rules can supply material terms.</p>	<p>Default rules can supply material terms to a stipulation where the parties failed to reach an agreement on all issues.</p>
<p><u>Stevermer vs. Stevermeyer</u>, (Unpub.), A07-594, F & C, filed September 4, 2007 (Minn. App. 2007): Dissolution of parties reserved child support from Wife to allow her to obtain additional education and establish employment. The timeframe for reservation (May 2004 to September 2008) exceeded the estimated length of time (1 year) Wife would need to complete her education and allowed time for her to establish employment. Husband argues Wife is now working, and based on the change in circumstances, child support should be established. Court of Appeals affirmed ruling that the district court properly denied Husband's motion to establish support and properly construed the agreement of the parties.</p>	<p>Where J&D reserved support obligation for specific unexpired period upon agreement of the parties, court did not abuse discretion in denying Husband's motion to establish support.</p>

I.B.3.-Stipulations

<p><u>In re the Marriage of Weeks v. Weeks</u>, (Unpub.), A06-2147, filed October 2, 2007 (Minn. App. 2007) Wright County: Appellant sought to modify child support after having stipulated to a child support amount lower than guidelines in the original dissolution. The court ruled the obligation was not unreasonable or unfair because, while the obligor formerly paid child support at a reduced rate due to a contribution to child care costs, the obligor currently paid TEFRA medical contribution instead of child care costs and the combined obligation was only slightly less than the guidelines support amount.</p>	<p>Where parties stipulate to a deviation in child support in J&D, the order must be shown to be unreasonable and unfair to modify.</p>
<p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette</u>, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008): Husband appeals district court's decision to decline approval of parties' stipulation. Appellant urges a stipulation should be vacated only for fraud, duress, or mistake. Appellate court held that district court is a "third party" in dissolutions and has a duty to protect interest of both parties to ensure fair and reasonable stipulation. District court may apply equitable principles to ensure fairness. Affirmed.</p>	<p>Stipulations. Fairness / equity.</p>

I.B.3.-Stipulations

<u>Storm v. Siwek</u> , (Unpub.), C4-03-280, filed 7-8-03 (Minn. App. 2003): The court has the discretion whether to hear a motion for reconsideration. A request to reconsider is intended to be decided by the judicial officer who heard the case. Minn.RGen.Pract. 115.11.	Motion to Reconsider
<u>Mingen v. Mingen</u> , 679 NW 2d 724 (Minn. 2004): Minn. R. Civ. App. P. 104.01, subd. 2 provides that the filing of a post-decision motion under MRCP 50, 52, 59 or 60 tolls the time to appeal the order or judgment until 60 days after notice of filing of the order disposing of the post trial motion. However, the post decision motion must be brought within 60 days after entry of judgment, and cannot be delayed based upon the fact that the notice of entry of the original order was not given until after entry of judgment.	Tolling of Time to Appeal Based on Post-Decision Motion
<u>Williams v. Carlson</u> , 701 NW 2d 274, (Minn. App. 2005): The receipt of genetic test results excluding the father as a biological father was not the basis for a new custody trial due to newly discovered evidence because the parties had agreed at the close of trial and before the genetic results were received that the parties had seven days after receipt of genetic tests to submit written arguments and proposed findings, and the court addressed the test results in its conclusions and memorandum.	Genetic tests not basis for new trial where parties could address the tests in their arguments
<u>In re the Marriage of Bydzovsky v. Bydzovsky</u> ; Minn. Ct. App. Unpub. (A05-1702): Appellant-husband appealed the denial of his motions for amended findings or a new trial. Court affirmed the district court's refusal to enforce a proposed but unsigned MTA. The proposed agreement lacked two of the four elements required for district court approval: the parties agreement was recited in open court and acknowledgement of understanding and approval of its terms.	MTA
<u>In re the Marriage of Jeremy James Zander v. Melinda Alice Zander</u> . A05-2094, Filed 8/22/06 (Minn.App. 2006); rev. denied November 14, 2006: Husband lived on reservation at time of dissolution. Wife moved for amended findings or new trial partially on basis that husband moved off reservation shortly after dissolution. The court held that the move was not newly discovered evidence or fraud on the court as there was no intent to deceive the court. Motion for amended findings or new trial on this basis denied.	Amended findings or new trial.
<u>In re the Marriage of: Thomas Caroll Rubey v. Valerie Ann Vannett</u> , A05-310, COA, filed May 4, 2006 (Minn. Sup. Ct. 2007): Minn. R. Civ. P. 59.03. Appellant requested new trial/amended findings within 30 days of custody order, but failed to obtain hearing or extension for good cause within 60 days as required by Minn. R. Civ. App. P. 59.03. District Court properly denied motion for new trial. However, timely filing of motion for new trial tolled limitation on appeal, regardless whether hearing was untimely. Minn. R. Civ. App. P., Rule 104.01, subd. 2. Remanded to Court of Appeals to consider appeal from custody order.	Minn. R. Civ. P. 59.03. requires hearing of motion for new trial/amended findings within 60 days, or written confirmation of extension of hearing time for good cause. Per Minn. R. Civ. App. P. 104.01 limitation is tolled by timely motion for new trial, regardless whether timely hearing is scheduled.
<u>In re the Marriage of: Erickson v Erickson</u> , (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): A pay increase that occurs after the district court has already made its order reducing child support, and, in this case, after the reduction has already been appealed, is a proper basis for a future motion to modify, but not a motion for new trial under Rule 60.02.	Motion for New Trial Based on New Circumstances
<u>H.T.S. vs. R.B.L.</u> , (Unpub.), A07-0561, filed December 11, 2007 (Minn. App. 2007): The decision whether to reopen the record based on a claim of surprise rests within the district court's discretion. Denial did not violate due process. Decision governed by caselaw and rules 60 and 59 of the Minn. R. Civ. Proc.	Claim of surprise. Failure to reopen record not a violation of due process.

I.B.6.-New Trials/Amended Findings and Orders/Motion for Reconsideration

<p>Northland Temporaries vs. Anthony Turpin, et al., A06-2201, filed February 5, 2008 (Minn. App. 2008): District court denied appellant's motion to vacate a default judgment. Reversed and remanded as district court's determination of <i>Hinz</i> factors based partially on mistake of fact and error of law. Dicta indicates that a lay person's failure to answer in some circumstances may not be unreasonable. Remand is appropriate where erroneous decision below is based on factual error as it is within the province of the district court to resolve factual disputes in testimony and affidavits and to determine whether excuse is reasonable.</p> <p><i>Hinz</i> and <i>Finden</i> do not limit the district court's discretion to grant rule 60.02 relief. They limit discretion to deny relief. Satisfaction of all four <i>Hinz</i> factors is not required for district court to grant relief. Cannot deny relief if all four factors met. Must show a meritorious claim or reasonable defense on the merits.</p>	<p>Rule 60.02 relief does not require all four <i>Hinz</i> factors be fully met</p> <p>Mistake of Fact</p> <p>Error of Law</p>
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<p><u>Lohmann and Kopeska v. Alpha II Mortgage</u>, (Unpub.), A04-608, F & C, filed 1-18-05 (Minn. App. 2005): Husband was employed by (non party) Alpha II, and there was a dispute as to whether he was also part owner. Despite confidentiality stipulation that would seal the file to maintain confidentiality of the Alpha II business information, husband did not respond to discovery requests regarding relationship to Alpha II. Wife subpoenaed officer of Alpha II, requesting Alpha documents regarding husband's ownership interest. Alpha sought a protective order to quash the subpoena duces tecum, because Alpha II is not a party to the dissolution. The district court did not abuse its discretion in refusing to quash the subpoena after balancing the need of the party to inspect the documents against the burden or harm on the person subpoenaed.</p>	<p>Subpoena duces tecum of other party's employer was proper, even though not a party.</p>
<p><u>In Re Petition of S.A.L.H.</u>, A05-2213 (Traverse County): Obligee challenged the court's authority over child custody issues when obligor filed a motion for custody in October 2004, prior to the court's adjudication in December 2004. The Court of Appeals determined that since paternity was never disputed, obligor's premature filing of his motion constitutes a technical defect, which does not prejudice either party and does not provide grounds for dismissal. Second, it is not error to allow further discovery to confirm obligor's income and authorize the county to recalculate support by applying the guidelines to any revised income where the court ordered monthly child support based on the evidence before it and the parties could challenge the public authority's calculation in district court. Third, the Court of Appeals held the district court lacked the authority to bind a stepparent and erred in directly ordering the stepparent to provide medical support.</p>	<p>Additional discovery appropriate.</p>
<p><u>Schneider vs. Schneider and County of Anoka, Intervenor</u>, (Unpub.), A06-1788, F & C, filed August 28, 2007 (Minn. App. 2007): In February 2006, Respondent was served with notice of hearing and intent to suspend drivers license. At February 2006 hearing, CSM temporarily denied the county's request pending an April 2006 review hearing. At the review hearing, county indicated that contrary to the order, Respondent's license had been suspended in error. CSM imposed fine of \$150 against the county to reimburse Respondent for reasonable costs incurred as a result of the county's wrongful suspension of the driver's license. District court affirmed. Court of Appeals reversed finding that "the record contains no evidence regarding costs incurred by Respondent as a result of the suspension of his driver's license and the incurrence of costs by Respondent was the stated reason for imposing the fine..." The Court did not address the county's argument that the district court did not have the inherent authority to impose the fine.</p>	<p>Record does not support imposing fine on county for erroneously suspending obligor's driver's license.</p>

I.B.8.- Discovery and Sanctions

<p><u>Maki v. Hansen</u>, 694 NW 2d 78 (Minn. App. 2005): Although respondent served documents on the other party and not the other party's attorney, and although respondent mailed the documents herself, rather than having a third party mail the documents, as required by Minn. R. Gen. Pract. 355.01 and 355.02, where other party had actual notice of the motion, and the opportunity to respond and be heard, he was not prejudiced, and the motion should not be dismissed due to improper service.</p>	<p>Actual notice and opportunity to respond overcomes failure to follow rules of service</p>
<p><u>Kozel v. Kozel, nka Kurzontkowski</u>, (Unpub.), A04-1714, F & C, filed 5-24-05, Minn. App. 2005): When conducting a <i>de novo</i> review of a CSM's order, the district court is not required to make specific findings as to each point raised in appellant's motion; the district court need only "specifically state in the order that those findings... are affirmed." Further, the district court is required to "affirm the order unless it determines that the findings and order are not supported by the record or the decision is contrary to law." Minn. R. Gen. Pract. 377.09, Subd. 2(b).</p>	<p>Review of CSM Order by District Court; Standard and Findings Required.</p>
<p><u>Jones v. Simmons</u>, (unpub.) A05-1325, filed May 16, 2006 (Minn. App. 2006). Ct. App. affirmed district court decision overruling CSM's imputation of income. When Court Administrator serves CSM decision <i>by mail</i>, parties have 23 days in which to request district court review. Notwithstanding inconsistent rules of court, District Court review is <i>de novo</i>, and CSM decision is not entitled to deference. When parties failed to supply District Court with transcript of CSM hearing, and CSM did not make necessary finding that NCP "chose to be unemployed," District Court properly ruled that imputation of income was not supported in the record before it.</p>	<p>Timeliness of motion for review. <i>De novo</i> review in district court. Transcript of CSM hearing. Inadequate findings by CSM.</p>
<p><u>Tipler v. Edson</u>, (unpub.) A05-1518, filed May 23, 2006 (Minn. App. 2006) [Anoka County, Intervenor, by BAFL]. CSM did not abuse discretion by refusing to hear issue of calculation of arrears filed less than 10 days before scheduled hearing, particularly when obligor knew hearing date 11 months in advance.</p>	<p>Time limit for filing responsive motions. Abuse of discretion.</p>
<p><u>In Re the Marriage of Wheeler v. Wheeler</u>, (Unpub.), A06-569, Filed September 5, 2006 (Minn. App. 2006): CP failed to inform CSM of boarding school expenses at the time of a hearing of motion to modify support and only weeks later attempted to move the <i>district</i> court to divide the boarding school expenses and was denied. CP later brought same motion before the CSM and CSM denied motion on res judicata grounds. CP insisted district court's ruling was "referring the matter back to the CSM." Court of Appeals upheld the decision of CSM indicating the matter was res judicata and stating "finding that a party failed to raise an issue at the appropriate time equates to a finding of waiver, not to a remand of the issue." <i>citing</i> <u>Graham v. Itasca County Planning Comm'n</u>, 601 N.W.2d 461, 468 (Minn. App. 1999).</p>	<p>EX PRO PROCEDURE: Motion to mod. that has been denied by the district ct. is res judicata before the CSM when there has been no change in circumstances.</p>
<p><u>In re the Marriage of: Leah Grace Staquet v. Paul John Staquet</u>, (Unpub.), A07-0493, filed April 1, 2008 (Minn. App. 2008): Obligor originally brought a motion to modify before a district court judge, asserting stress from his dissolution prevented him from working as a pilot. Obligor produced no medical documentation of disability, but provided pay stubs showing the amount of disability he was receiving. The district court judge denied the modification, finding obligor did not meet his burden of proof to show he was not voluntarily unemployed or underemployed. Less than 2 months later, appellant obligor sought modification before a CSM, presenting the same documentation and testimony. The CSM reduced appellant's support. The Court of Appeals held the CSM abused discretion by effectively overruling the district court without additional evidence of obligor's disability.</p>	<p>CSM abuse of discretion by overruling district court's decision.</p>

<p><u>Kammueler v. Kammueler</u>, 672 NW 2d 594 (Minn. App. 2003): The Rational basis test applies to equal protection challenges of the child-support statute. Because child support obligations are premised on the child's right and need to be supported by its parents, there is no fundamental right of a parent to have a child-support obligation based solely on the amount of time the parent spends with the child. (Cites <u>Walker v. Walker</u>, 574 NW 2d 761(Minn. App.1998))</p>	<p>No Fundamen-tal Right to Base C/S on % of PT</p>
<p><u>Kammueler v. Kammueler</u>, 672 NW 2d 594 (Minn. App. 2003): Minn. Stat. § 518.54, subd. 8 and Minn. Stat. § 518.003 meet the three-pronged rational basis test. (1) There is a genuine and substantial distinction between custodial and non-custodial parents, rather than an arbitrary definition. The definition meets the traditional pattern, and both statutes allow for the classifications to be overcome. (2) The classification in § 518.54, subd. 8 is relevant to the purpose of the law, that the child receive adequate support. The presumption that the parent not living with the child should be responsible for the "external" contributions is rebuttable. (3) It is a legitimate interest of the government to promote the welfare of its children.</p>	<p>Distinction Between CP & NCP Not Unconstitu-tional</p>
<p><u>Kilpatrick v. Kilpatrick</u>, 673 NW 2d 578 (Minn. App. 2004): A county has standing to make a motion to modify child support and is a "real party in interest" in a IV-D case where there has been an assignment of support. Minn. Stat. § 518.551, subd. 9(b)(2002), and intervention is not required.</p>	<p>County has Standing/ Party Status in PA Case</p>
<p><u>Rettke and Estate of Rettke v. Rettke, f/k/a Krueger</u>, 696 NW 2d 846 (Minn. App. 2005): When a party to a pending marriage dissolution dies, the dissolution proceeding is over. Quote: "You can't divorce a dead person." Further, the court could not enter judgment enforcing a property settlement between the parties, when the settlement had never been incorporated into the MTA and approved by the court before the death of one of the parties. Surviving spouse cannot both take a share from the mediated dissolution settlement as if the dissolution had gone through, and also take a share of husband's estate as a surviving spouse.</p>	<p>Effect of Death of Party to Action Prior to Adjudication</p>
<p><u>Askar vs. Sharif</u>, (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): The County challenges the district court's affirmance of a CSM's decision to reinstate respondent's driver's license. Because the county acquiesced in the CSM's decision to reinstate the obligor's drivers license, the county has waived its arguments on appeal that the CSM had no authority to do so. Additionally, the County argues that the procedure violated the county's due process rights. Because the county is a legislatively created body, it cannot be deprived of due process rights because counties have no such rights.</p>	<p>County has no due process rights</p>

I.D.1.-Generally

<p><u>Block v. Holmberg</u>, (Unpub.), A04-942, F & C, filed 1-18-05 (Minn. App. 2005): Questions of subject matter jurisdiction are reviewed <i>de novo</i>. Citing <u>Johnson v. Murray</u>, 648 NW 2d 664, 670 (Minn. 2002).</p>	<p><i>De Novo</i> Review</p>
<p><u>Block v. Holmberg</u>, (Unpub.), A04-942, F & C, filed 1-18-05 (Minn. App. 2005): Because the matter of subject matter jurisdiction goes to a court's authority to preside over a matter, an appellant may raise the lack of subject matter jurisdiction for the first time on appeal. Citing <u>Cochrane v. Tudor Oaks Condo</u>, 529 NW 2d 429, 432 (Minn. App. 1995), <i>rev. den.</i> (Minn. May 31, 1995).</p>	<p>Subject matter jurisdiction may be raised</p>
<p><u>Hoppe v. Hoppe</u>, (Unpub.), A04-1279, F & C, filed 3-22-05 (Minn. App. 2005): The district court has jurisdiction to hear modification motions that are brought in connection with ongoing civil contempt proceedings on IV-D cases.</p>	<p>District court has jurisd. to hear a MTM in a IV-D contempt case</p>
<p><u>Alissa Christine Beardsley v. Dante Antonio Garcia, Jr.</u>, A06-922, Hennepin County, filed May 22, 2007 (Minn. App. 2007): The district court has both subject matter jurisdiction and statutory authority to issue a domestic abuse OFP granting temporary supervised parenting time with the parties' child to respondent whose paternity has been acknowledged by the parties in a ROP. (Citing <u>In re Custody of Child of Williams v. Carlson</u>, 701 N.W.2d 274, 282 (Minn. App. 2005) holding that if ROP was never properly vacated, it continues to have the force and effect of a judgment or order that the father named in the ROP is the adjudicated father.) The OFP statute does not distinguish between adoptive, biological, adjudicated or married fathers.</p>	<p>Court may order temporary parenting time to ROP father in OFP proceeding</p>
<p><u>Perry vs. Perry, n/k/a Hall-Dayle</u>, A07-0981, F&C, filed May 20, 2008 (Minn. App. 2008): A district court/CSM has jurisdiction over a motion to modify support during the pendency of the appeal of a previous child support order if the motion is properly grounded on changed circumstances and where the motion is supplemental and collateral to the issue on appeal. A party must be able to request modification when circumstances change to avoid the statutory bar on retroactive modification. However, in the interest of judicial economy, the district court also has discretion to stay or defer its decision until after the appeal is determined.</p>	<p>While an appeal is pending, the district court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment.</p>

I.D.3.-Subject Matter Jurisdiction

<p><u>Huntsman v. Huntsman, County of Washington, Intervenor</u>, A06-1064, Filed June 26, 2007 (Minn. App. 2007): The court rejected Obligor’s argument that failure to issue a pre-withholding notice prior to implementing income withholding violated his due process rights. The court noted that the Obligor indeed was provided with notice of income withholding procedures along with his dissolution judgment. Moreover, the court found that neither state nor federal law requires an obligor be given pre-withholding notice prior to the implementation and administration of income withholding procedures because income withholding is an administrative action that the public authority may take without the necessity of obtaining an order from any judicial or administrative tribunal. The court further found that “support orders” include orders for spousal maintenance and income withholding procedures apply with equal force for spousal maintenance support orders.</p>	<p>INCOME WITHHOLDING Income withholding is administrative in nature</p>
<p><u>Eben f/k/a Brouillette vs. Brouillette</u>, (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The CSM did not err in denying the submission of new evidence after the close of the record; the parties cannot submit new evidence after the close of the hearing unless requested by the CSM with written or oral notice to the parties.</p>	<p>No new evidence after close of record unless requested by CSM.</p>
<p><u>Krznarich vs Freeman</u>, (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The court did not err in denying appellant’s motion to add to the record and submit new evidence in support of amended findings and a new trial. New evidence may be submitted only if it is material and could not have been found with reasonable diligence and produced at the original trial.</p>	<p>No new evidence after close of record unless requested by CSM.</p>

<p><u>Gramling v. Memorial Blood Center</u>, 601 NW 2d 457 (Minn. App. 1999): Child sued St. Louis County because court did not pursue paternity in 1979 after an erroneous blood test exclusion. Court properly granted summary judgment in favor of the county because no attorney-client relationship existed between the child's mother and the county. The assignment of support did not create an attorney-client relationship, and the mother did not seek legal advice from the county. The (1979) paternity statute did not create an affirmative duty for the county to conclusively establish paternity. A parent has no cause of action under that statute against a county that has declined to pursue the establishment of paternity.</p>	<p>Neither Paternity Statute nor PA Assignment Provide Basis for Child/ Parent to Hold County Liable for Failure to Establish Paternity</p>
<p><u>Cooper v. Parrish</u>, 203 F.3d 937 (6th Cir. 2000): A prosecutor functioning in an enforcement role as an advocate for the state in a civil proceeding (in this case bringing civil forfeiture complaints) is entitled to absolute prosecutorial immunity in an action under 42 U.S.C. § 1983. However, prosecutor can only claim qualified (good faith) immunity when swearing to the truth of the factual allegations in a complaint since the prosecutor does not exercise his professional judgment or act as an advocate in that role; testifying about facts is the function of the witness, not the lawyer.</p>	<p>Prosecutorial Immunity in § 1983 Action</p>
<p><u>In re Conservatorship of Riebel</u>, 625 NW 2d 480 (Minn. 2001): A power of attorney does not authorize a non-lawyer to sign pleadings on behalf of another person or to represent principal in court proceedings, since doing so would constitute the unauthorized practice of law, and violate the Constitutional separation of powers. The language at Minn. Stat. § 523.24 allowing the attorney-in-fact to "prosecute before any court... any claim" cannot be interpreted in such a way as to render the statute unconstitutional. It is the province of the court to decide who is qualified to practice law, not the legislature. What Minn. Stat. § 523.24, subd. 10 (1) does is to allow the person with a power of attorney to act on behalf of a client in an attorney-client relationship. Thus, the attorney-in-fact may consult with and hire an attorney-at-law on behalf of the principal.</p>	<p>Power of Attorney Limitations: It is the Unauthorized Practice of Law for a Non-Attorney Attorney-in-fact to Sign Pleadings or Represent the Principal in Court</p>
<p><u>In Re the Marriage of Renard v. Renard</u>, (Unpub.), A05-2573, Filed 2/13/07 (Minn. App. 2007): Court did not abuse its discretion by denying obligor's motion for a continuance to obtain counsel where he had three prior attorneys, contributed to withdrawal of counsel and delayed the proceedings. There is no constitutional or statutory right to counsel in a dissolution proceeding.</p>	<p>CONTINUANCE FOR COUNSEL</p>
<p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008): There was no error where the lower court declined appellant's representation by a non-attorney agent (acting under POA) where appellant was able to competently engage in the hearing on his own.</p>	<p>Power of Atty Limits</p>

<p><u>Doll and Stearns County v. Barnell; Strandmark and County of Anoka v. Starr</u>, 693 NW 2d 455 (Minn. App. 2005), rev. den. (Minn. 6-14-05): There is a rational basis for Minnesota's child support guidelines: The legislature may determine to maximize child support, and to recognize the care a custodian provides, without placing a dollar value on it, in assessing a presumptive level of need for children. (In other words, the custodial parent's income does not have to be factored into the presumptive formula for the guidelines to be constitutional). Further the guidelines permit attention to the unique circumstances of each case.</p>	<p>Rational basis for Minnesota's child support guidelines</p>
<p><u>Doll and Stearns County v. Barnell; Strandmark and County of Anoka v. Starr</u>, 693 NW 2d 455 (Minn. App. 2005), rev. den. (Minn. 6-14-05): Minnesota's child support guidelines do not violate the due process clause of the United States Constitution; they are not unreasonable, arbitrary or capricious, and they bear a rational relation to the public purpose they seek to promote. The legislative history of Minnesota's guidelines indicates that the Legislature has endeavored to tailor the guidelines to render fair and reasonable child-support amounts, and the cost of rearing has been part of that formula. The legislature has factored in the many variables involved in the debate as to what amount of award is "adequate" to support a child, and has allowed deviations from the guidelines, with the paramount consideration being the best interests of the child.</p>	<p>Minnesota's guidelines do not violate due process</p>
<p><u>Doll and Stearns County v. Barnell; Strandmark and County of Anoka v. Starr</u>, 693 NW 2d 455 (Minn. App. 2005), rev. den. (Minn. 6-14-05): Minnesota guidelines do not violate or conflict with the mandates of federal law. The guidelines satisfy all federal child-support requirements, including a consideration of the economic data on the cost of raising children. Further, a conflict with federal law would not be significant for preemption purposes; the state would simply be ineligible for incentive payments under the federal scheme. Where there is no federal preemption of state law, there is no violation of the supremacy clause of the U.S. Constitution.</p>	<p>Minnesota's guidelines do not violate the supremacy clause-there is no federal preemption of state law.</p>
<p><u>In re the Marriage of Jeremy James Zander v. Melinda Alice Zander</u>; A05-2094, Filed 8/22/06 (Minn.App. 2006); rev. denied November 14, 2006: Even though the Mdewakanton Sioux Tribal Domestic Relations Code specifically states that all per capita payments are non-marital property belonging to the tribal member, the district court concluded that Minnesota law governs the dissolution and where the Tribal Code is inconsistent with Minnesota law, the Code does not apply. This case was distinguished from <i>Kucera v. Kucera</i>, 275 Minn. 252, 146 N.W. 2d 181. Dissent would have characterized the per capita payments as akin to a "gift" and held that since issue of first impression, the tribe should have had an opportunity to make an appearance because a provision of its code was at issue in the majority opinion.</p>	<p>Indian Law, subject matter jurisdiction.</p>
<p><u>H.T.S. vs. R.B.L.</u>, (Unpub.), A07-0561, filed December 11, 2007 (Minn. App. 2007): The decision whether to reopen the record based on a claim of surprise rests within the district court's discretion. Denial did not violate due process. Decision governed by caselaw and rules 60 and 59 of the Minn. R. Civ. Proc.</p>	<p>Claim of surprise. Failure to reopen record not a violation of due process.</p>
<p><u>Krznarich vs Freeman</u>, (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The fact that the judge did not read the motions filed by the parties until after the hearing did not deprive the parties of a fair hearing, and does not merit a new trial.</p>	<p>Due process not violated where judge did not read motions before the hearing.</p>
<p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued he was denied due process as a pro se litigant when CSM failed to sua sponte grant him a continuance or leave the record open for submission of documents. Court of Appeals held no abuse of discretion to fail to grant relief that obligor did <u>not</u> request, noting the obligor has the initial burden of proof and pro se litigants are held to the same standard as attorneys.</p>	<p>No due process violation when court fails to order something not requested by pro se litigant.</p>

<p><u>In re the Matter of: County of Carver ex rel Lori J. Schuman vs. Daniel L. Revsbech</u>, (Unpub.), A07-0442, filed April 22, 2008 (Minn. App. 2008): Appellant father appeals order determining medical and child care arrears existed. The Court of Appeals affirmed, stating (1) it was not an abuse of discretion to interpret language in a prior order concluding that the prior order modified only basic support arrearages, and not medical or childcare support arrearages. (2) Appellant argues that the arrearages merged into the subsequent order which recalculated appellant's basic support arrearages, but did not address medical or childcare arrearages. The court rejected the argument noting the order was not temporary as defined by Minn. Stat. § 518.131 nor is it a temporary alimony order. Finally, the issue was established after full litigation of the claim, in which Appellant had counsel and presented arguments and facts. As such, Appellant was not denied due process.</p>	<p>Medical and childcare arrears did not merge with district court's recalculation of basic support arrears.</p>
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<p><u>Powers, f/k/a/ Duncan v. Duncan</u>, (Unpub.), A04-19, F & C, filed 10-5-04 (Minn. App. 2004): CSM's finding that the child lives with friends and not with CP is an inadequate basis to absolve NCP of the obligation to pay child support. The fact that a child does not live with the person awarded physical custody does not necessarily relieve the obligor from having to pay support. See. Minn. Stat. § 518.17, Subd.3&4.</p>	<p>Child Lives with Friends</p>
<p><u>In re the Marriage of Joseph M. Kemp v. Sara N. Kemp, n/k/a Sara N. Lipetzky</u>, (unpub.), A05-2039, (Redwood County), filed 8/22/06 (Minn. App. 2006): Dissolution stipulation stated that in lieu of child support, the parties agreed that each would provide the basic needs of the children while the children were in his/her care. Other expenses were divided with father paying 60% and mother 40%. Two years later, father motioned to modify based on the mother's increased income and the father's inability to meet his and the children's monthly expenses. District court granted motion and ordered guideline support. Mother asserts court did not give proper weight to the stipulation. Court held the basic right of minor children to support may not be affected by any agreement between the parents or third persons.</p>	<p>Stipulations.</p>
<p><u>In re the Marriage of Arneson v. Meggitt</u>, (Unpub.), A06-1437, Filed October 30, 2007 (Minn. App. 2007), Dakota County: The district court did not err when it extended the obligor's child support obligation one year beyond that which was stipulated to by the parties in their J&D when the child of the parties had fallen behind in school due to behavioral and academic issues and his graduation date was subsequently delayed one year. Stipulated child support judgments are not contracts that bind the court, and the court may reset child support because of the important public policy favoring the nonbargainable interests of the child. See <i>Swanson v. Swanson</i>, 372 N.W.2d 420, 423 (Minn. App. 1985).</p>	<p>Court has broad discretion to modify child support even in the face of a stipulation when modification benefits the best interests of the child.</p>
<p><u>Lubich n/k/a Miller vs. Lubich</u>, (Unpub.), F & C, A07-1159, filed March 4, 2008 (Minn. App. 2008): Appellant non-custodial father challenges denial of his motion to require respondent/custodial parent to pay child support for parties' sole remaining minor child who resides with him. Appellant argued that the district court misapplied the law and abused its discretion by not making findings to overcome the presumption that respondent was not a child support obligor (Minn. Stat. §518A.26, subd. 14) and impose a child support obligation on her because the child lives primarily with him. The district court found that appellant owes respondent many thousands in arrears and even though appellant's support obligation had previously been reduced he had not significantly reduced his arrears. The Court of Appeals distinguished this case from both <i>Rumney</i> [sic] and <i>Tweeton</i> because neither of those cases involved an obligor with significant arrears. The district court's refusal to require respondent to pay support was affirmed.</p>	<p>Establishing child support against parent who has custody by court order.</p>
<p><u>Williams v. Williams</u>, (Unpub.), A06-1918, filed 4/8/08 (Minn. App. 2008): Appellant father appeals from the district court's order increasing child support. The original order granted the parties joint custody and set no support obligation for either parent. The order required mother to pay for the child's clothing and health insurance expenses and required father to pay for camp and extracurricular activities. The district court implied, but never made findings, establishing the prior order as unreasonable based on public policy because no specified dollar amount of child support was ordered. The Court of Appeals held the public policy concern in favor of a specified dollar amount is not triggered in this case as the dissolution does not assign child support on a percentage basis. Therefore, there is no presumption on this basis alone that the support is unreasonable or unfair. The Court of Appeals remands.</p>	<p>Public policy argument for a set dollar amount of child support does not apply when no support is ordered by either parent.</p>
<p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Appellant argues that, because the child is not longer living with respondent (but with a third party), respondent should also be responsible for child support. The individual with court-appointed custody is presumptively not the obligor for child support purposes. <i>Bender v. Bender</i>, 671 N.W.2d 602, 607 (Minn. App. 2003). However, where the child begins to reside with a third party, there is presumably a change in circumstances that would support a recalculation of child support.</p>	<p>Support owed to third parties</p>
<p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Appellant asserts that someone over 18 years of age, who is capable of self-support, should be required to support himself. The child support order clearly sets forth the conditions that would terminate the child support obligation. It does not matter that the child is capable of supporting himself; child support obligations cannot be terminated on this basis.</p>	<p>Termination of child support not warranted solely because child able to support himself.</p>

II.A.1.-Obligation to Support

II.B. - RECEIPT OF PUBLIC ASSISTANCE

II.B.1. - Generally

Minn. Stat. § 518.551, Subd. 5(a) - requires petitioner in a dissolution, parentage or custody action to notify the public authority of the proceedings if either party is receiving assistance. Subd. 6 - provides that if court finds notice was not given, child support must be set according to guidelines; Minn. Stat. § 518.551, Subd. 5 (1998) - requires notice to public authority of a pending dissolution whenever public assistance is issued. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA), 42 U.S.C., Pub. L. No. 104-193, 110 Stat. 2105 (1996) <u>replaced</u> 42 U.S.C. 601-617 - Title IV-A of the Social Security Act - AFDC.	
<u>Steffes v. Minnesota Department of Public Welfare</u> , 309 NW 2d 314 (Minn. 1981): Child eligible to receive AFDC benefits when natural father resides in home but has been discharged for liability for support by means of court approved lump sum settlement.	Lump Sum Settlements
<u>State, ex rel. Meneley v. Meneley</u> , 398 NW 2d 28 (Minn. App. 1986): Counties should be cautious in their documentation and proof of receipt of public assistance and have a current affidavit available at the time of the court hearing.	Affidavit Needed at Hearing
<u>Maskrey v. Maskrey</u> , 380 NW 2d 598 (Minn. App. 1986): Trial court erred in enjoining father from applying for AFDC for child until he obtained order granting him legal custody as the county is required to furnish AFDC if the child is in need and the parent with whom the child resides, regardless of legal custody, is unable to provide for those needs.	AFDC Eligibility
<u>Huston v. Huston</u> , 412 NW 2d 344 (Minn. App. 1987): Trial court improperly assumed that former wife would continue to receive AFDC after an increase in child support where child support exceeded amount of AFDC grant, making her ineligible.	Eligibility
<u>Todd v. Norman</u> , U.S. Ct. App. 8th Cir. 3-12-88: Social Security disability benefits are not "child support payments" that may be disregarded in calculating AFDC eligibility levels.	Social Security Disability not Child Support
<u>Holmgren v. State of Minnesota Department of Human Services, et al</u> , (Unpub.), C1-90-2566, F & C, filed 5-21-91 (Minn. App. 1991): The court of appeals upheld the decision of the Commissioner of Human Services to reduce the AFDC grant of a mother who refused to cooperate in establishing paternity because the agency explicitly based its determination on other factors in addition to blood test results.	Non-Cooperation by AFDC Recipient
<u>State of Minnesota v. Conteres</u> , (Unpub.), C6-95-1514, F & C, filed 10-6-95 (Minn. App. 1995): Amount of civil restitution ordered against mother who wrongfully obtained assistance should be the amount of the overpayment minus court-ordered support actually <u>paid</u> by AP for that period (as opposed to court-ordered obligation of AP). If ultimately county obtains an overage, it can be handled in same manner as other excess collections.	Amount of Restitution for Welfare Theft
<u>Renee v. Department of Public Welfare</u> , 702 A. 2d 575 (Pa. 1997): States are given broad discretion to administer their welfare programs and deferential review is accorded their implementation.	State's implementation of welfare programs
<u>Kilpatrick v. Kilpatrick</u> , 673 NW 2d 578 (Minn. App. 2004): A county has standing to make a motion to modify child support and is a "real party in interest" in a IV-D case where there has been an assignment of support. Minn. Stat. § 518.551, subd. 9(b)(2002), and intervention is not required	County has Standing/ Party Status in PA Case
<u>Holt and County of Becker v. Holt</u> , (Unpub.), A03-1795, filed 7-20-04 (Minn. App. 2004): CSO statements made in affidavit and in testimony regarding the amount of public assistance expended in the case based on information obtained from the state child support computer system was admissible under the public records exception to the hearsay rule. Minn. R. Evid. 803(8).	CSO Affidavit re: Amount of PA is Admissible as a Public Record

<p><u>Austin, et al v. Goodno, Commissioner of Human Services</u>, (Unpub.), AO4-759, F&C, filed 12-28-04 (Minn. App. 2004): Minn. Ct. App. Laws 2003 amendment to Minn. Stat. § 256J.37 reduced MFIP benefits when a parent of child receives SSI benefits, up to \$50 of rent assistance is to be counted as unearned income in the calculation of the MFIP grant, and the earned income level at which households lose MFIP eligibility went from 120% and 115% of the federal poverty guidelines. Effective date of statute was to be 7/1/03. Plaintiffs obtained an injunction preventing implementation of amendments until DHS obtained USDA approval. USDA approval was granted 7/16/03. DHS now wants to be able to recoup “overpayments” made in July, 2003. Court of appeals ruled DHS could not recoup the monies because under federal law, prior approval is necessary before DHS may implement statutory amendments that affect MFIP; subsequent approval does not have retroactive affect.</p>	<p>Prior Approval from Feds for Statutory Changes in MFIP Eligibility is Required before DHS Implements Statute</p>
<p><u>Hare, f/k/a Parker vs. Grewe</u>, (Unpub.), A07-0850, F&C, filed May 20, 2008 (Minn. App. 2008): District court/CSM has discretion to deny continuance when requesting party had sufficient notice and time to hire an attorney and prepare for hearing, and was therefore not prejudiced.</p>	<p>Discretion to deny continuance.</p>

<p><u>Hall v. Hall</u>, (Unpub.), A04-2055, F & C, filed 6-28-05, (Minn. App. 2005): CSM properly excluded from obligor's income an average of \$170 per week deducted from his wages and escrowed by his union for vacation and sick time. The court of appeals ruled that because the vacation and sick time deduction is not actually income received by the obligor, but is escrowed into an account to supplement income only when obligor takes vacation or sick time, it should not be included as part of net income. Even though 518.551 subd. 5(b)(2004) does not specify whether such sums are deductible, the definition of income is based on money <i>available</i> to the obligor, and these sums are not available. Cites <u>Lenz v. Wergin</u>, 408 NW 2d 873,876 (Minn. App. 1987) and <u>Dinwiddie</u>, 379 NW 2d 227,229 (Minn. App. 1985).</p>	<p>Money taken from Obligor's Pay and Escrowed into an Account to be Used for Vacation and Sick Leave, is not Available to Obligor, thus not Income for Child Support.</p>
<p><u>In re: Horace D. Allen v. Nikki Thompson</u>, (Unpub.), A04-2225, filed 8-30-2005 (Minn. App. 2005): Parties agreed in their divorce decree that (1) the petitioner's (obligor's) income should increase when he completes his MBA and (2) that support would automatically increase effective July 1, 2004, unless petitioner demonstrates his income has not increased significantly despite best efforts to secure appropriate employment. Prior to the automatic increase, obligor filed a motion to keep child support at the original level (without the increase) based upon evidence of a new medical condition which limited his employment opportunities, as well as evidence that his earnings had not increased as anticipated. CSM found that obligor proved his medical condition (speech limitations), but had not proved that his income had not increased significantly based upon obligor's evidence of a single paycheck. CSM expected obligor to produce his 2003 tax return, but never requested this production. The appellate court found obligor's paycheck to be "credible evidence" that his income had not increased and found that the CSM abused her discretion in failing to grant the requested relief.</p>	<p>Obligor provided credible evidence of income</p>
<p><u>In re the Marriage of Sigfrid vs. Sigfrid</u>, (Unpub.), A05-353, F&C, filed January 17, 2006 (Minn. App. 2006): Even through the court erred in calculating obligor's net income for 2002, because his net income still exceeded the max under the guidelines, the child support award was appropriate. Further because the court ordered support according to the guidelines, the court's findings concerning obligor's income were sufficient and no further findings were necessary.</p>	<p>Award of child support based on maximum net income under the guidelines supported by facts.</p>
<p><u>In Re the Marriage of Dee Henderson vs. Gregory Duane Dittrich</u>, A05-1696, Washington County, filed 7/11/06 (Minn. App. 2006): Both the mother and the father agree that the court cannot consider the income of the mother's husband when setting child support for this child.</p>	<p>Child support obligation-should not consider stepparent income when setting support.</p>
<p><u>In Re the Marriage of Liveringhouse v. Liveringhouse</u>, (Unpub.), A05-2531, Filed 12/5/06 (Minn. App. 2006): The court affirmed the district court's determination of an obligor's net income despite an absence of itemized deductions. The court noted that without the record and no other evidence indicating error, it could only presume that the district court found no deductions to be appropriate. <i>Citing Custom Farm Servs., Inc. v. Collins</i>, 306 Minn 571, 572, 238 N.W.2d 608, 609 (1976) (an appellate court cannot presume error). The court noted that it is the obligor's burden to supply evidence substantiating his challenge of the district court's decision.</p>	<p>INCOME: Determination of net income will stand absent evidence to the contrary.</p>
<p><u>In re the Marriage of: Erickson v Erickson</u>, (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): District court reduced NCP's child support based on average income in 2005, but omitted consideration of increased income in 1st quarter of 2006. Because NCP's income fluctuated, this was not an abuse of discretion.</p>	<p>Omission of Recent Income Not Abuse of Discretion</p>
<p><u>Weiss vs. Weiss</u>, (Unpub.), A06-2433, filed December 24, 2007 (Minn. App. 2007): It was not unreasonable for the court to determine appellant's income based on an income-averaging method where appellant failed to put forth sufficient evidence of his net monthly income.</p>	<p>Income-averaging method appropriate where there is fluctuation in the industry and insufficient evidence provided to the court.</p>

II.D.1.-Generally

II.D.2. - Evidence of Income and Expenses / Failure to Document (See also II.O.10.)	
Minn. Stat. § 518.551, Subd. 5b(a) and (b) - sets out documentation of income parties are required to provide; Subd. 5b(c) - "credible" evidence court may use to determine income if parent does not appear.	
<u>Hertz v. Hertz</u> , 229 NW 2d 42 (Minn. 1975): Corporate profit less capital retained for necessary business purposes is a proper source of a child support obligor's income.	Business Income
<u>Ferguson v. Ferguson</u> , 357 NW 2d 104 (Minn. App. 1984): Court may consider past earnings to determine whether income for particular year cannot be relied on.	Past Earnings
<u>County of Isanti v. Formhals</u> , 358 NW 2d 703 (Minn. App. 1984): One who does not comply with order to produce documentation of income cannot allege error in income calculation.	Failure to Document
<u>Larson v. Larson</u> (Laurel v. Loren), 370 NW 2d 40 (Minn. App. 1985): If necessary to construct net income figure for guidelines, court should appoint an expert and apportion costs to parties according to ability to pay.	Experts
<u>Otte v. Otte</u> , 368 NW 2d 293 (Minn. App. 1985): Expert testimony should be used in computing self-employed farmer's income; taxable income is not always the same as net income.	Farmer
<u>Coady v. Jurek</u> , 366 NW 2d 715 (Minn. App. 1985): Court can consider "cash flow" in addition to "paper income" to determine net income.	Cash Flow
<u>Taflin v. Taflin</u> , 366 NW 2d 315, 319 (Minn. App. 1985): Where obligor had an opportunity to submit evidence of his expenses but failed to enter any credible evidence, he will not be heard to complain on appeal.	Evidence of Expenses
<u>Taflin v. Taflin</u> , 366 NW 2d 315 (Minn. App. 1985): Obligor cannot complain when financial information produced by obligor had significant omissions.	Omissions in Provided Information
<u>Vitalis v. Vitalis</u> , 363 NW 2d 57, 59 (Minn. App. 1985): Where a noncustodial parent's lifestyle is not commensurate with the stated taxable income, cash flow or gross receipts may be appropriately used to determine income for purposes of child support.	Cash Flow or Gross Receipts
<u>Sundell v. Sundell</u> , 396 NW 2d 89 (Minn. App. 1986): Sufficient basis in record for findings on income of obligor to justify modification although obligor failed to produce documentation or testimony disclosing number of hours worked or hourly wage.	Estimate Income
<u>Schelmeske v. Veit</u> , 390 NW 2d 309 (Minn. App. 1986): No abuse of discretion to reject taxable income when obligor is in the business of buying and selling real estate, and to rely on deposits into obligor's personal checking account to obtain a more accurate representation of gross income.	Bank Deposits
<u>Sundell v. Sundell</u> , 396 NW 2d 89 (Minn. App. 1986): No error for court to estimate income and expenses when the obligor fails to produce records or answer questions; if obligor wanted court to have accurate figures, he could have furnished them.	Estimate Income
<u>Johnson v. Fritz</u> , 406 NW 2d 614 (Minn. App. 1987): Court could consider lifestyle of father, a sole business owner, where income figures offered by him were inconsistent with that lifestyle.	Lifestyle of Obligor
<u>County of Ramsey v. Shir</u> , 403 NW 2d 714 (Minn. App. 1987): Father cannot complain about calculation when he failed to provide copy of his tax return; on remand, court may recalculate.	Failure to Document
<u>Marx v. Marx</u> , 409 NW 2d 526 (Minn. App. 1987): Court properly rejected taxable income, which showed consistent losses, and estimated income by taking wages and interest less 25% for taxes and other deductions.	Reject Taxable Income - Estimate
<u>Spooner v. Spooner</u> , 410 NW 2d 412 (Minn. App. 1987): Failure to submit financial information in a proper fashion to the trial court justifies adverse inference.	Failure to Provide Information
<u>Vaughan v. Putrah</u> , 412 NW 2d 412 (Minn. App. 1987): Mother's assertion that father enjoyed fruits of good income such as purchase of motor vehicle and other items as well as two vacations was not sufficient to establish that trial court was clearly erroneous in determining that father's income had dropped.	Purchases
<u>Pavlasek v. Pavlasek</u> , 415 NW 2d 42 (Minn. App. 1987): No abuse of discretion by trial court in determining husband's net income based on pay stubs for the first six months of the year despite his contention that they did not reflect his post-dissolution tax liabilities.	Paystubs
<u>County of Ramsey v. Shir</u> , 403 NW 2d 714 (Minn. App. 1987): Where obligor has failed to produce adequate documentation of his income, court has wide latitude in determining income.	Failure to Document
<u>Finch v. Marusich</u> , 457 NW 2d 767 (Minn. App. 1990): Judge may disregard a party's unverified schedule of expenses.	Schedule of Expenses

II.D.2.-Evidence of Income and Expenses/Failure to Document

<u>Hamlin v. Hamlin</u> , (Unpub.), C7-95-596, F & C, filed 10-31-95 (Minn. App. 1995): Where obligee failed to produce checkbook registers, check and pay stubs demanded in obligor's request for production of documents, appellate court found that, nevertheless, ALJ made findings required by statute and the fact that she did not have the checkbook registers, etc. did not warrant reversal.	Failure to Produce Requested Records
<u>Jackson v. Jackson</u> , (Unpub.), C1-96-488, F & C, filed 10-15-96 (Minn. App. 1996): If obligor's monthly income is difficult to determine, his lifestyle maybe considered in estimating his income. (Citing <u>Marx</u> , 409 NW 2d 526, 529 (Minn. App. 1987).)	Consideration of Lifestyle
<u>State of Minnesota, by its agent, County of Anoka o/b/o Dahl v. Gjerde</u> , (Unpub.), C0-96-840, F & C, filed 11-19-96 (Minn. App. 1996): ALJ's findings related to value of obligor's in-kind payments, including value of home provided by his parents, upheld where obligor failed to disclose financial documentation requested by ALJ nor did he provide evidence at the hearing of the actual value of the payments.	Failure to Document In-Kind Payments
<u>Lingbeck v. Block</u> , (Unpub.), C8-96-1136, F & C, filed 12-31-96 (Minn. App. 1996): Because obligor failed to provide his tax returns ten days prior to the pre-hearing conference pursuant to Minn. Stat. § 518.551, Subd. 5b(a), it was proper for trial court to refuse to consider his tax returns in determining the outcome of his motion to modify. Even though he testified about the tax returns, custodial parent did not consent to having the documents treated as if they had been timely filed; her attorney objected to introduction of the tax returns, and the tax returns were not introduced.	Failure to Timely File
<u>Eisenschenk n/k/a Weeks v. Sanford</u> , (Unpub.), C4-97-740, C5-97-1167, F & C, filed 11-25-97 (Minn. App. 1997): ALJ properly modified child support based upon a gross income calculation based solely on annual bank deposits where the obligor refused to provide other documentation of income or to testify regarding his financial situation or income.	Bank Deposits
<u>Guyer v. Guyer</u> , 587 NW 2d 856, (Minn. App. 1999): Where parties stipulated that obligor pay 25% of his bonus as child support, and where obligor could not predict whether he would receive a bonus each year, it was proper for court to order that obligor disclose his corporate financial records for three years to the other party. Controlling statute was § 518.17, subd. 3(a)(3)(1998), which requires a just determination of support and not § 518.551, subd. 5b (1998), which provides for various methods of determining income.	Disclosure Required of Corporate Financial Records
<u>Elias and County of Olmsted v. Suhr</u> , (Unpub.), C5-98-1745, F & C, filed 4-13-99 (Minn. App. 1999): Where county did not provide the ALJ financial information on the relative caretaker and the child, thereby "precluding the ALJ from addressing the costs of raising the child and the tax dependency questions," ALJ did not err in awarding non-custodial parent the dependency exemption and in deviating downward from the guidelines.	Burden on County to Provide Financial Info on CP and Child
<u>Mills v. Anderson</u> , (Unpub.), C2-98-1248, F & C, filed 2-22-99 (Minn. App. 1999): Where obligor supplied nine months of check stubs, it was error for court to set support based on higher claimed income in a car loan application, absent a finding that obligor was purposely underemployed or had supplemental income.	Car Loan Application
<u>Rasinski v. Schoepke</u> , (Unpub.), C4-99-774, F & C, filed 1-11-2000 (Minn. App. 2000): Where father owns a service station and is self-employed as an auto mechanic, but provided ALJ with only limited financial documentation, it was proper for ALJ to calculate earning capacity based on the Minnesota Salary Survey.	Salary Survey to Impute Income
<u>Larson v. Pavicic</u> , (Unpub.), C1-99-1476, F & C, filed 5-16-00 (Minn. App. 2000): Even though ALJ properly faulted the quality of the evidence submitted, it was error for ALJ to disallow <u>all</u> claimed business expenses since the obligor must have incurred at least some expenses in the production of his income. Reversed and remanded for a redetermination of income.	Cannot Disallow <u>all</u> Claimed Expenses
<u>Salinas v. Salinas</u> , (Unpub.), C2-00-1042, F & C, filed 1-9-2001 (Minn. App. 2001): In modification proceeding, it was not sufficient to base child support on gross income in two-year-old Judgment and Decree even though father's affidavit said his net income was almost exactly the same as it was at the time of dissolution. Must base support on current income.	Based on Current Income
<u>Traxler v. Traxler</u> , (Unpub.), C6-00-1495, F & C, filed 3-6-2001 (Minn. App. 2001): Child support must be calculated based on current net income. Minn. Stat. § 518.64, Subd. 2(c)(i). CSM erred by using a 1998 stipulated income amount as current income in a case that was heard in 2000, even though obligor testified that he has always made approximately what he is making now.	Must Determine Current Income

II.D.2.-Evidence of Income and Expenses/Failure to Document

<p><u>Clark v. Clark</u>, (Unpub.), C4-02-141, F & C, filed 7-30-02 (Minn. App. 2002): The court had personal jurisdiction over a non-resident party when she appeared by telephone in the expedited process hearing.</p>	<p>Appearance by Telephone</p>
<p><u>Walswick-Boutwell v. Boutwell</u>, 663 NW 2d 20 (Minn. App. 2003): It was proper for the court to award a portion of obligor's PERA disability annuity to obligee as marital property, and, at the same time, treat obligor's remaining portion of the annuity as income for purposes of calculating child support. Cites <u>Swanson v. Swanson</u>, 583 NW 2d 15, 18 (Minn. App. 1998) and <u>Watson v. Watson</u>, 379 NW 2d 588, 591 (Minn. App. 1985). Distinguishes <u>Kruschel</u>, 419 NW 2d 119 (Minn. App. 1988).</p>	<p>PERA Disability Benefits Both Marital Property and Income for Support</p>
<p><u>State of Minnesota ex rel. Kandiyohi County Family Services, v. Elmahdy</u>, (Unpub.), C3-02-2091, filed 7-29-03 (Minn. App. 2003): Where an obligor who owned his own business sought a decrease in his child support obligation based on a decline in his income, the district court properly allowed bank records into evidence demonstrating that he deposited more than \$90,000 in the year he alleged decreased income, and properly considered the equity in NCP's home to support denial of MTM.</p>	<p>Bank Deposits</p>
<p><u>Zaghloul v. Elashri</u>, (Unpub.), A04-321, F & C, filed 8-24-04 (Minn. App. 2004): When the court made a determination of obligor's income different than income reported on his tax returns, basing the determination on statements he had made to others regarding his income, evidence that he had transferred funds to business associates, and his lifestyle, Minn. Stat. § 518.551, Subd. 5b(e), requiring support to be set at 150% of the minimum wage did not apply, since that provision only applies where there is insufficient information to determine actual income.</p>	<p>The 150% Standard is N/A if the Court is able to Determine Income Based on the Evidence Before it.</p>
<p><u>Zaghloul v. Elashri</u>, (Unpub.), A04-321, F & C, filed 8-24-04 (Minn. App. 2004): When the court "imputed" obligor's <u>actual</u> income to be in an amount significantly greater than income reported on tax returns, and there was no finding of voluntary unemployment or under employment, the word, "imputed" was used according to its common meaning, and not as defined at Minn. Stat. § 518.551, Subd. 5b(d). Thus, the court was not required to determine obligor's earning capacity using the factors listed in that subdivision.</p>	<p>Determination of Actual Income Requires Consideration of Different Factors than Determination of Earning Capacity</p>
<p><u>Lohmann and Kopeska v. Alpha II Mortgage</u>, (Unpub.), A04-608, F & C, filed 1-18-05 (Minn. App. 2005): Husband was employed by (non party) Alpha II, and there was a dispute as to whether he was also part owner. Despite confidentiality stipulation that would seal the file to maintain confidentiality of the Alpha II business information, husband did not respond to discovery requests regarding relationship to Alpha II. Wife subpoenaed officer of Alpha II, requesting Alpha documents regarding husband's ownership interest. Alpha sought a protective order to quash the subpoena duces tecum, because Alpha II is not a party to the dissolution. The district court did not abuse its discretion in refusing to quash the subpoena after balancing the need of the party to inspect the documents against the burden or harm on the person subpoenaed.</p>	<p>Subpoena duces tecum of other party's employer was proper, even though not a party.</p>
<p><u>In re: the Matter of K. A. Murphy v. Daniel Miller</u>, (Unpub.), A05-151, filed 8-2-2005 (Minn. App. 2005): The district court did not err in denying obligor's motion to reduce support where the court could not readily determine obligor's self-employment income, but had evidence to conclude that obligor had "more than sufficient resources" to pay his current child support obligation, since almost all of obligor's living and household expenses were paid by his business before determining his adjusted gross monthly income.</p>	<p>Obligor's living and household expenses paid by business</p>

II.D.2.-Evidence of Income and Expenses/Failure to Document

<p><u>Rachele Gunter v. Steven Gunter</u>, (Unpub.), A04-2114, filed 12-6-2005 (Minn. App. 2005): Failure to allow deduction for medical insurance premium was not error where the obligor provided evidence of the rate, but no evidence that the premium had been paid. However, the district court erred in imputing summer income (three months) to the obligor, who worked during the school year (nine months) where the record did not support the court's inference that part-time summer jobs would pay an amount comparable to what the obligor earns during the school year.</p>	<p>Verification of payment required before allowing medical insurance deduction. Seasonal employment must be considered when imputing off-season income</p>
<p><u>Labarre vs. Kane</u>, (Unpub.), A05-496, F&C, filed January 3, 2006 (Minn. App. 2006): Court did not error in finding self-employed obligor's reported income was inaccurate based on lifestyle and cash flow of his bank accounts. However, the court failed to make findings on (1) children's needs and (2) appellant's total ability to pay, and failed to allocate the available resources between the two children. The magistrate further erred in its calculation by not properly deducting paid state and federal income taxes, and its failure to consider the legitimacy of business deductions and obligor's subsequent support obligation. Case remanded for recalculation of appellant's income for child support purposes.</p>	<p>Insufficient findings to increase support of self-employed obligor</p>
<p><u>Hilliker v. Miller</u>, (unpub.) A05-1538, filed May 9, 2006 (Minn. App. 2006). District court acted within its discretion in finding NCP was half-owner of the Chatterbox Pub with his wife, even though wife was the nominal owner, and attributing half the pub's income to him for calculation of child support.</p>	<p>Attribution of income from shared business despite legal ownership by spouse.</p>
<p><u>Flagstad v. Green</u>, (unpub.) A05-1305, filed May 23, 2006, (Minn. App. 2006). Reversing district court decision to increase NCP's child support obligation from \$450 to \$1,743/mo., Ct. App. noted that district court may find income tax returns unreliable, but district court's reliance on two loan applications was clearly erroneous without considering business expenses and without evidence of substantial cash flow, lifestyle, or other concrete evidence of available resources. Absent clear evidence of actual income, child support may be based on earning capacity. Award of attorney's fees, for dilation of proceedings, was also reversed. Remanded for further proceedings.</p>	<p>Self-employment. Income tax returns. Earning capacity. "Concrete evidence." Attorney's fees.</p>
<p><u>Tipler v. Edson</u>, (unpub.) A05-1518, filed May 23, 2006 (Minn. App. 2006) [Anoka County, Intervenor, by BAFL]. Although income from voluntary overtime must be excluded in the calculation of income for child support, it is the obligor's burden to prove overtime is voluntary. Inclusion of overtime by the CSM and district court finding that obligor did not meet burden was not clearly erroneous when obligor's proof was bare assertion that it was voluntary under "working agreement with union," and no such clause appeared in agreement reviewed by court. When income fluctuates, income averaging "more accurately measures income" and use of five-year period was not clearly erroneous nor abuse of discretion.</p>	<p>Overtime. Burden of Proof. Income averaging (five years).</p>
<p><u>Pennington County and Hutchinson v. Matthew</u>, (Unpub.), A05-1467, filed May 30, 2006 (Minn. App. 2006): Appellate court found that determining an appropriate level of support by relying upon an obligor's earning capacity and earnings history (i.e., considering prior tax returns where obligor worked excess hours – approx. 90-100 hours per week) was appropriate where the court found it "impracticable" to determine obligor's actual income. The District Court did not err in refusing to accept obligor's testimony of his current self-employment earnings where obligor's supporting documentation and evidence was either lacking or "tenuous."</p>	<p>If "impracticable" to determine obligor's actual self-employment income, court can appropriately rely upon the obligor's earning capacity and earnings history even if average includes excess hours (above 40 per week) worked in prior years.</p>

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<p><u>In Re the Marriage of Giese v. Giese</u>, (Unpub.) A05-949, filed June 20, 2006 (Minn. App. 2006): Court found that the district court did not show bias in rejecting an obligor's income and expense figures when the court found the obligor was not credible and the figures the obligor provided were inconsistent with other evidence.</p>	<p>Determination of income not erroneous when it excluded evidence submitted by Obligor that was not credible.</p>
<p><u>Aitkin County Health and Human Services and James v. Smith</u>, (Unpub.) A05-2114, Filed September 12, 2006 (Minn. App. 2006): The Court held the district court erred when it (1) considered capital gains that were one-time payouts as "ongoing" income of the Obligor; (2) used the self-employed Obligor's expenses as a basis for determining his actual income without first making a finding that the Obligor was underemployed; and (3) calculated past support based on the income figure which was unsupported by the record. Reversed and remanded.</p>	<p>INCOME: use of expenses as basis for self-employed Obligor's income requires a finding that Obligor is voluntarily underemployed</p>
<p><u>In Re the Marriage of Morter v. Morter</u>, (Unpub.), A05-2476, Filed September 19, 2006 (Minn. App. 2006): The district court did not err when it imputed income to a self-employed Obligor based on a previous (in 2000) determination of his income of \$11,922 per month that the Obligor did not contest, when the court found the Obligor lacked credibility and failed to supply credible evidence of earnings. The Obligor claimed a personal income of only \$47,764 per year, but was found to be concealing his true income by running his corporation in his current wife's name. Because this proceeding was an establishment of support subsequent to a reservation of support after a change in custody, the modification statute requiring change in circumstances does not apply.</p>	<p>INCOME: a previously stipulated income may be considered the current income of a self-employed Obligor when the Obligor's evidence of current income is not credible.</p>
<p><u>In Re the Marriage of Martin v. Martin</u>, (Unpub.), A06-300, Filed December 5, 2006 (Minn. App. 2006): The court affirmed the district court's denial of obligor's motion to modify child support based on the obligor's refusal to provide tax returns or other information regarding his income. Though Minn. Stat. § 518.551 does not mandate the production of income tax returns, CSM is justified in requiring them where a sizeable decrease in income is alleged and there is little supporting evidence to determine the obligor's actual income.</p>	<p>INCOME: Tax returns are not statutorily required as proof of income but court may require them where other income information is lacking.</p>
<p><u>Bauerly v. Bauerly</u>, (Unpub.), A06-557, Filed April 10, 2007 (Minn. App. 2007): The court reversed and remanded the district court's income findings and child support calculation. The district court calculated obligor's income based on old evidence despite evidence of obligor's current income provided by obligor at trial. The appellate court reversed, citing <u>Thomas v. Thomas</u>, 407 N.W.2d 124, 127 (Minn. App. 1987); <u>Merrick v. Merrick</u>, 440 N.W.2d 142, 146 (Minn. App. 1989), stating that child support must be calculated based on <i>current</i> income figures. The court remanded for a new calculation or findings explaining why the court didn't base support on the evidence provided by the obligor or an explanation of why the current evidence would not be appropriate.</p>	<p>INCOME: Most current income must be used for the purposes of calculating support or findings must explain why current income is not appropriate.</p>
<p><u>County of Nicollet v. Jacquelyn Ann Pollock, n/k/a Jacquelyn Ann Miller, Jerry Joseph Duwenhoegger</u>, (Unpub.), A06-875, Nicollet County, filed May 22, 2007 (Minn. App. 2007): Appeal from the District Court's order affirming the CSM's order requiring prisoner to pay child support while he is incarcerated. CSM found appellant was earning an income of \$60 per month while in prison and could afford an obligation of \$30 per month. Prison income may be used to determine child support and earning \$60 per month was a substantial change in earnings from \$0. (Citing <u>Johnson v. O'Neill</u>, 461 N.W.2d 507, 508 (Minn. App. 1990).</p>	<p>Prison income may be used to determine child support. Earnings of \$60 per month was "substantial change" from \$0.</p>

II.D.2.-Evidence of Income and Expenses/Failure to Document

<p><u>Tammy Jo Arkell, n/k/a Arkell-Lund v. Richard Donald Wieber and Sterns county, Intervenor</u>, (Unpub.), A06-1008, Stearns County, filed June 5, 2007 (Minn. App. 2007): Order increased appellant-father's child support from \$368.00 to \$713.00 per month. Appellant argues the magistrate failed to consider his subsequently born children and that he rebutted the presumption that the then existing child support award was unreasonable and unfair. This court affirms the lower court, holding that appellant's claim that his expenses outweighed his income did not mean he was automatically entitled to a deviation in support. Additionally, appellant failed to provide financial statements prior to the hearing and failed to attribute household expenses to his subsequently born children so that their expense could be determined.</p>	<p>Appellant father not entitled to deviation based on needs of subsequently born children when father failed to provide financial statements. Deviation is not automatic even though expenses may exceed income.</p>
<p><u>In re the Marriage of Gerald Ernest Jeschke, petitioner, Appellant, vs. Kirsten Jean Libby, Respondent</u>, (Unpub.), A06-1359, Ramsey County, filed July 31, 2007 (Minn. App. 2007): Appellant employed by company in which his wife has an ownership interest; wife testified she had sole authority to determine the payment of salaries. Appellant received two checks per month of \$6,250 each until Respondent motioned for increase in child support, after which checks ceased. Upon respondent's motion, district court increased child support. Appellant argues the record does not support the imputation of income to him. The court need not determine income solely on paystubs (<i>citing Minn. Stat. §518.551, subd. 5b (2006)</i>), and may consider "employer statements", "statement of receipts and expenses if self-employed" and "other documents evidencing income received." Court cannot conclude the district court imputed or estimated appellant's income. Findings indicate the appellant was entitled to continued paychecks; he continued to be fully employed by the company and the expectation was that he would eventually receive the compensation.</p>	<p>The court is not required to rely solely on paychecks to determine income; may also consider employer statements, statements of receipts and expenses if self-employed, and other documents evidencing income received.</p>
<p><u>In re the Marriage of Jennifer Marie Gran, f/k/a Jennifer Marie-Gran Barkley, petitioner, Respondent, vs. Craig William Barkley, Appellant</u>, (Unpub.), A06-1887, Scott County, filed July 31, 2007 (Minn. App. 2007): Appellant self-employed in his own business. Did not prepare tax returns for 1999-2004 until 2005 and had not paid taxes for those years. Appeals the calculation of his income for child-support. District court has broad discretion to consider other evidence, such as cash flow and the lifestyle of a sole business owner, in determining appellant's net monthly income. Appellant argues district court should have based its calculation on his 2005 tax return. Appellant did not make this evidence available to the court at the time of the trial, and the court was not required to have the record reopened for submission.</p>	<p>District court has broad discretion to consider other evidence, such as cash flow and the lifestyle of a sole business owner, in determining appellant's net monthly income, and is not required to reopen the record for submission of additional income evidence.</p>
<p><u>In re the Marriage of Jennifer Marie Gran, f/k/a Jennifer Marie-Gran Barkley, petitioner, Respondent, vs. Craig William Barkley, Appellant</u>, (Unpub.), A06-1887, Scott County, filed July 31, 2007 (Minn. App. 2007): Self-employed appellant argues district court should have deducted his payments for child support arrearages for another child, for his own medical insurance, and for the children's medical insurance. Based on appellant's record of unpaid taxes for 1999 to 2004 and unrecorded cash receipts, the district court had to deduce appellant's monthly income from the best material available, and did not abuse its discretion.</p>	<p>Not an abuse of discretion for court to base calculation of income upon self-employed obligor's business register or taking obligor's lifestyle into consideration where it is the best material available to the court.</p>
<p><u>Eben f/k/a Brouillette vs. Brouillette</u>, (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The CSM did not err in denying the submission of new evidence after the close of the record; the parties cannot submit new evidence after the close of the hearing unless requested by the CSM with written or oral notice to the parties.</p>	<p>No new evidence after close of record unless requested by CSM.</p>

II.D.2.-Evidence of Income and Expenses/Failure to Document

<p><u>Krznarich vs Freeman.</u> (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The court did not err in denying appellant's motion to add to the record and submit new evidence in support of amended findings and a new trial. New evidence may be submitted only if it is material and could not have been found with reasonable diligence and produced at the original trial.</p>	<p>No new evidence after close of record unless requested by CSM.</p>
<p><u>Samantha Jane Gemberling vs. Karl Hampton,</u> (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008): The CSM did not error in finding that appellant failed to meet his burden of proof regarding a change in his income in that the CSM found and the record demonstrates appellant provided incomplete information and his tax returns omitted pertinent schedules regarding his income.</p>	<p>Change in circumstances burden not met where incomplete tax returns submitted as proof of change.</p>
<p><u>Baudhuin vs. Baudhuin,</u> (Unpub.), F & C,A07-0156, filed March 11, 2008 (Minn. App. 2008): Appellant petitioner argues the district court erred by denying her motion for increase in maintenance, discharging alleged child support arrears, and awarding respondent attorney's fees based on appellant's conduct, among other issues. Court of Appeals finds no error; appellant effectively prevented the district court from resolving the issue of maintenance in her favor and properly addressing the Court of Appeals' instructions on a prior remand by her failure to produce properly discoverable information regarding her financial circumstances and her student (law school) status. The district court acted within its discretion in setting child support, based on the failure of both parties to timely submit evidence of financial situations for the court to properly determine child support. The court ordered each party, based on the conduct of each individually, to pay attorney's fees to the other of \$10,000 each. No abuse of discretion.</p>	<p>No error where conduct of parties effectively prevented the court from resolving the issues of maintenance and child support.</p>
<p><u>Jennifer Gwen Loveland v. Francis Joseph Brosnan,</u> (Unpub.), A07-0388, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court's order denying his motion to modify his child support. The CSM found that appellant had failed to provide sufficient or reliable information regarding his income. Obligor's ability to maintain a lifestyle incurring over \$6,000 in monthly expenses while on an unpaid medical leave for over 1 ½ years cut against his claim that his reduced earnings prevented him from making child support payments. Obligor failed to submit any information regarding his future employment prospect at his previous employer. Additionally, the documents submitted by obligor called into question his actual current income. No abuse of discretion.</p>	<p>Moving party has burden to demonstrate his earning capacity is diminished, his financial situation has deteriorated, or that he has made a good faith effort to seek reinstatement of re-employment.</p>
<p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler,</u> (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued for a decrease in support alleging his income substantially decreased since the dissolution. CSM denied because obligor failed to demonstrate that he is not voluntarily underemployed. Court of Appeals affirmed, citing obligor had the burden to show why he did not pursue work in the field he had experience and why he pursued another career.</p>	<p>Obligor has burden of demonstrating reduced income is not voluntary underemployment</p>

II.D.2.-Evidence of Income and Expenses/Failure to Document

<p><u>Schwagel, vs. Ward</u>, (Unpub.), A06-1812, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant/obligor appeals from district court's orders establishing child support and denying his subsequent motion to modify child support. Appellant argues that district court improperly included his VA disability benefits in his income citing 38 U.S.C. §5301(a)(1) which states that disability payments 'shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary'. Citing the U.S. Supreme Court decision, <i>Rose v. Rose</i>, 481 U.S. 619, 107 S.Ct. 2029 (1987), the Court of Appeals rejected this argument because 'Congress clearly intended veterans' disability benefits to be used, in part, for the support of veterans' dependents.' §[5301(a)(1)] does not extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support'. District court affirmed.</p>	<p>VA disability benefits are income available for child support.</p>
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II.D.3.-Obligor's Receipt of Government/Disability Benefits

<p><u>In re the Marriage of Jennifer Marie Gran, f/k/a Jennifer Marie-Gran Barkley, petitioner, Respondent, vs. Craig William Barkley, Appellant</u>, (Unpub.), A06-1887, Scott County, filed July 31, 2007 (Minn. App. 2007): Appellant self-employed in his own business. Did not prepare tax returns for 1999-2004 until 2005 and had not paid taxes for those years. Appeals the calculation of his income for child-support. District court has broad discretion to consider other evidence, such as cash flow and the lifestyle of a sole business owner, in determining appellant's net monthly income. Appellant argues district court should have based its calculation on his 2005 tax return. Appellant did not make this evidence available to the court at the time of the trial, and the court was not required to have the record reopened for submission.</p>	<p>District court has broad discretion to consider other evidence, such as cash flow and the lifestyle of a sole business owner, in determining appellant's net monthly income, and is not required to reopen the record for submission of additional income evidence.</p>
<p><u>In re the Marriage of Jennifer Marie Gran, f/k/a Jennifer Marie-Gran Barkley, petitioner, Respondent, vs. Craig William Barkley, Appellant</u>, (Unpub.), A06-1887, Scott County, filed July 31, 2007 (Minn. App. 2007): Self-employed appellant argues district court should have deducted his payments for child support arrearages for another child, for his own medical insurance, and for the children's medical insurance. Based on appellant's record of unpaid taxes for 1999 to 2004 and unrecorded cash receipts, the district court had to deduce appellant's monthly income from the best material available, and did not abuse its discretion.</p>	<p>Not an abuse of discretion for court to base calculation of income upon self-employed obligor's business register or taking obligor's lifestyle into consideration where it is the best material available to the court.</p>
<p><u>In re the Marriage of: Scott Thomas Frampton, petitioner, Appellant, vs. Leicha Chenoa Garcia-Frampton, Respondent, and County of Washington, Intervenor.</u>, (Unpub.), A06-1616, Washington County, filed August 7, 2007 (Minn. App. 2007): Where the obligor is self-employed, the obligor's income is equal to gross receipts less ordinary and necessary expenses. The order setting self-employed obligor's child support must include specific findings as to obligor's gross income or ordinary and necessary business expenditures.</p>	<p>Order setting self-employed obligor's child support must include specific findings as to obligor's gross income or ordinary and necessary business expenditures.</p>
<p><u>Crow Wing County Social Services and Buranen v. Buranen</u>, (Unpub.), A06-2105, Filed August 14, 2007 (Minn. App. 2007): District court erred when it failed to consider obligor's change in status from employee of a business to owner of the business, and whether obligor unjustifiably self-limited his earnings or earning capacity. Because CSM's order made no findings regarding the income and expenses of the self-employed obligor, the Court of Appeals was unable to conduct appellate review (<i>See Putz v. Putz</i>, 645 N.W.2d 343, 353-54 (Minn. 2002), and remanded for reconsideration of obligor's income, particularly regarding the income and expenses related to his business.</p>	<p>INCOME: Change in obligor status from employee to business owner and effect on income must be addressed in findings.</p>
<p><u>Reuter vs. Reuter</u>, (Unpub.), A07-0338, F&C, filed 5/20/08 (Minn. App. 2008): The district court's computation of net income should properly take into account depreciation deductions for dairy cows, farm buildings and farm equipment when calculating the appellant's child support obligation. A self-employed obligor's income is equal to gross receipts minus ordinary and necessary expenses. Minn. Stat. § 518A.30 (2006). This amount does not include amounts allowed by the IRS for accelerated-depreciation expenses, investment credits or other business expenses. However, total disregard of depreciation is reversible error. <i>Citing Stevens County Social Serv. Dep't ex rel. Banken v. Banken</i>, 403 N.W.2d 293, 297 (Minn. App. 1987). The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation.</p>	<p>The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation.</p>

II.D.4.-Self-Employment/Business Expenses

<p>IRMO: <i>Miller v. Alexander-Miller</i>, (Unpub.), A05-287, filed 10-19-2005 (Minn. App. 2005): In a <i>de novo</i> review of child support, the district court correctly determined obligor's net income and did not abuse its discretion by including "in-kind" payments made by obligor's law firm for car expenses, credit card charges, cell phone, medical insurance, and other miscellaneous expense reimbursements.</p>	<p>No abuse of discretion by including "in-kind" payments by obligor's law firm</p>
<p>In Re the Marriage of Patrick John Nickleson vs. Kelly Jane Nickleson, A05-1725, Washington County, filed 7/18/06 (Minn. App. 2006): Patrick Nickleson challenges the court's method of calculating his child support obligation. Nickleson is self-employed. Pursuant to Minn. Stat., income is gross receipts, less ordinary and necessary expenses. However, the courts may use a cash flow method to calculate income if the obligor's reported income is not a true representation of his income. He paid his personal expenses, including his child support payments and his life insurance premiums, through his business account. He owned two restaurant franchises and claimed he earned \$3,308.00 a month; whereas, in his mortgage application, he stated his gross monthly income was \$9,500.00. His accountant then stated that the \$9,945.00 represented advances from a line of credit and that his actual gross monthly income was \$4,926.00. Due to these inconsistencies, the court properly determined that a cash flow method better captured his income. The record support the district court's calculation of Nikleson's income.</p>	<p>Using cash flow to calculate child support is appropriate.</p>
<p>In re the Marriage of Viele v. Viele, (Unpub.), A07-212, filed October 9, 2007 (Minn. App. 2007), Wright County: The trial court may impute income to an obligor based on any in-kind payments he receives that reduce living expenses and where the actual income of the obligor is difficult to calculate. However, despite evidence that showed the obligor actively tried to hide his actual income earned in order to qualify for public medical coverage and where the obligor received direct cash payments and also received payments from a family business paying his automobile insurance, gas, oil, repairs, and the monthly payments, the imputation of income will <i>not</i> stand where specific findings regarding calculation of income are not present in the order.</p>	<p>In-kind benefits that reduce an obligor's cost of living expenses can be considered for the purposes of imputing income, but specific findings are necessary.</p>

II.D.5-Non-Cash/In-Kind Income

<p><u>In re the Marriage of Carole V. Marx, petitioner, Respondent vs. Robert B. Marx, Appellant, and County of Anoka, intervenor, Respondent</u>, (Unpub.), A06-1678, Anoka County, filed July 31, 2007 (Minn. App. 2007): Appellant argues that he is entitled to retroactive modification for the period he was incarcerated. Even where an obligor is incarcerated and may establish they have no ability to pay child support while incarcerated, a prisoner-obligor who has significant assets but no significant living expenses may continue with his same obligation while incarcerated. (<i>citing Kuronen v. Kuronen</i>, 499 N.W.2d 51, 53-54 (Minn. App. 1993)).</p>	<p>A prisoner-obligor who has significant assets but no significant living expenses may continue with his same obligation while incarcerated with no present ability to earn income.</p>
<p><u>Lewis, vs. Lewis</u>, (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Respondent husband argued district court erred by including his call pay as income available for support because it is not a periodic or dependable source of income. The record shows that call pay has been regular and dependable in the past and supports the district court's decision to include average call pay as income. Court of Appeals affirmed.</p>	<p>On-call pay included in monthly income available for support where it has been regular and dependable.</p>
<p><u>In re the Marriage of: Erickson v Erickson</u>, (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): In determining NCP's income, district court did not abuse discretion by disregarding NCP's bonus-earning potential, especially when the court required he pay a percentage of bonuses as additional support.</p>	<p>Omission of Bonus Potential Not Abuse of Discretion</p>
<p><u>Weiss vs. Weiss</u>, (Unpub.), A06-2433, filed December 24, 2007 (Minn. App. 2007): The court did not err in including appellant's overtime pay in calculating child support where the court found that prior calculations included the overtime pay and appellant failed to demonstrate a statutory exception applied.</p>	<p>Overtime may be included where included in establishing support and no change in circumstances has been shown.</p>

II.D.6.-Other Source of Income

<p><u>Derek Dennis Ussatis v. Nikki Jo Johnson Ussatis</u>, (Unpub.), A06-1473, Dakota County, filed June 12, 2007 (Minn. App. 2007): Parties stipulated to support of \$630.00 per month in MTA. Subsequently, appellant quit his employment, started his own business and moved for reduction. Court denied, as termination at prior employment was voluntary, and imputed income to appellant based on prior employment. Court found that deviation was not appropriate, as there was no evidence this temporary loss of income would lead to a greater certainty of increased earnings later. Affirmed.</p>	<p>Appropriate to impute income where voluntary separation from employment caused diminished income and obligor was unable to show increased earnings likely in the future.</p>
<p><u>In re the Marriage of Linda Louise Sarvey v. Robert Hieu Sarvey</u>, (Unpub.), A06-1525, Hennepin County, filed June 19, 2007 (Minn. App. 2007): Appellant-husband challenges the J&D, arguing district court abused its discretion in distribution of marital property, award of spousal maintenance, child support, life insurance provisions and award of attorneys fees to respondent. The court properly relied on financial documentation of the parties and found that appellant voluntarily changed employment and self limited his income. Respondent's decreased household expenses stem from appellant's failure to pay support, and therefore should not be seen as the normal level of lifestyle maintained during the marriage. Appellant is not entitled to proceeds from marital property where respondent sold property to provide for basic necessities due to appellant's nonsupport.</p>	<p>Bad faith is not required to impute income to an obligor.</p>
<p><u>Kawlewski v. Arvig</u>, Wadena County, Intervenor, A06-1255, Filed June 26, 2007 (Minn. App. 2007): The Court of Appeals found that the district court erred when it imputed to Obligor \$500 per month in additional income that could be earned from "rental property," when Obligor has never rented the house and when CSM did not make a finding that Obligor was underemployed or self-limiting his income warranting imputation of additional income. The Court of Appeals remanded for re-calculation of Obligor's income.</p>	<p>INCOME: improper to impute income without evidence of voluntary underemployment or self-limitation of income</p>
<p><u>In Re the Marriage of Butt v. Schmidt</u>, A06-1015, Filed July 24, 2007 (Minn. App. 2007): The Court of Appeals upheld the decision of the district court refusing to impute income to the Obligee. The Court noted that the initial burden of establishing Obligee's underemployment fell on the Obligor because the Obligor made the allegation of underemployment. <i>See Geske v. Marcolina</i>, 624 N.W.2d 813, 818 (Minn. App. 2001). Because there was insufficient evidence to demonstrate the Obligee was underemployed, the burden of disputing underemployment never shifted to the Obligee.</p>	<p>IMPUTED INCOME: the burden of proving voluntary underemployment is on the party alleging voluntary underemployment</p>
<p><u>In re the Marriage of Gerald Ernest Jeschke, petitioner, Appellant, vs. Kirsten Jean Libby, Respondent</u>, (Unpub.), A06-1359, Ramsey County, filed July 31, 2007 (Minn. App. 2007): Appellant employed by company in which his wife has an ownership interest; wife testified she had sole authority to determine the payment of salaries. Appellant received two checks per month of \$6,250 each until Respondent motioned for increase in child support, after which checks ceased. Upon respondent's motion, district court increased child support. Appellant argues the record does not support the imputation of income to him. The court need not determine income solely on paystubs (<i>citing Minn. Stat. §518.551, subd. 5b (2006)</i>), and may consider "employer statements", "statement of receipts and expenses if self-employed" and "other documents evidencing income received." Court cannot conclude the district court imputed or estimated appellant's income. Findings indicate the appellant was entitled to continued paychecks; he continued to be fully employed by the company and the expectation was that he would eventually receive the compensation.</p>	<p>The court is not required to rely solely on paychecks to determine income; may also consider employer statements, statements of receipts and expenses if self-employed, and other documents evidencing income received.</p>
<p><u>In re the Marriage of: Erickson v Erickson</u>, (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): NCP moved to Duluth, to be nearer children, after losing high-paid employment in Colorado. NCP moved district court to reduce support. District court did not abuse discretion by deeming his move a "bona fide career change" and refusing to impute higher income available in other places.</p>	<p>Bona Fide Career Change--Move to be Near Children</p>

II.D.7.-Earning Cap/Vol Unemp/Under Empl/Imput Income

<p><u>County of Nicollet o/b/o Stevenson vs. Machau</u>, (Unpub.), A06-2345, F & C, filed March 4, 2008 (Minn. App. 2008): Appellant father challenges an order finding him to be voluntarily unemployed and requiring him to seek employment. Appellant argued at the hearing before the CSM that he was previously employed as a truck driver, but had been unemployed since his DL was suspended for non payment of child support. Since then, he had been home schooling his subsequent child and that child's half-siblings and was a full time homemaker with no income. The CSM found appellant was voluntarily unemployed, ordered appellant to do a job search, and ordered a \$150 per month payback on arrears. No abuse of discretion; the evidence supports the CSM's findings.</p>	<p>Finding of voluntary unemployment and order to seek work</p>
<p><u>Martin vs. Martin</u>, (Unpub.), F & C, A07-591, filed March 25, 2008 (Minn. App. 2008): In this joint physical custody case, the district court granted appellant's motion to reduce his child support obligation based on his decreased income, but did not impute income to respondent. Respondent was working 20 hours per week and produced no evidence that she was unable to work full time; however, the district court determined that based on her receipt of medical assistance for the children, imputing income to her was not appropriate. The Court of Appeals affirmed.</p>	<p>No imputation of Income to Parent on MA</p>
<p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008): The District Court, in a joint physical custody case, declined to establish any income for mother (obligee) citing there was "scant evidence" to find mother voluntarily unemployed or underemployed. Father (obligor) appeals, arguing that mother has the burden of showing her employment is not voluntary. The Supreme Court stated that lack of information was not a proper basis to decline to impute income to mother. Minn. Stat. § 518.551, subd. 5b(a) requires each party to produce their own income information. Second, Minn. Stat. § 518.551, subd. 5b(e) provides a mechanism for the court to impute income if the court lacks sufficient information. It also provides for when income shall not be imputed to a party. Absent such evidence, the statute directs the court to presume that each party is capable of full time employment, which pays at least 150% of the minimum wage. Considering these statutory provisions, and because the respondent failed to provide sufficient income information to the district court, the district court abused its discretion by not attributing income to the mother (obligee) for purposes of computing child support.</p>	<p>It is error to fail to impute income when there is insufficient information regarding a party's employability.</p>
<p><u>Hare, f/k/a Parker vs. Grewe</u>, (Unpub.), A07-0850, F&C, filed 5/20/08 (Minn. App. 2008): The court did not error in setting past support by determining obligor's income using information obtained from the Minnesota State Wage Match, where no other income information for that time period was submitted to the court.</p>	<p>Obligor's past earning ability may be determined by using the Minnesota State Wage Match.</p>
<p><u>Staupe vs. Staupe</u>, (Unpub.), A07-0900, filed June 10, 2008 (Minn. App. 2008): Whether to impute income to a child support obligor is discretionary with the court. The court is justified in imputing income to an obligor where the weight of the evidence showed that the impracticability of determining the obligor's actual net income because the obligor 1) failed to be forthcoming about his financial circumstances throughout the proceedings and 2) appeared to have continued earning supplemental, self-employment income.</p>	<p>Imputing income to self employed obligors.</p>

II.D.7.-Earning Cap/Vol Unemp/Under Empl/Imput Income

<p><u>Berg v. D.D.M.</u>, 603 NW 2d 361 (Minn. App. 1999): A child's receipt of social security survivor's benefits should be credited against the duty of the deceased obligor's estate to make support payments after death of the obligor.</p>	<p>Social Security Survivor's Benefits Credit Against Child Support</p>
<p><u>Frisch v. Solchaga</u>, (Unpub.), C4-99-1083, F & C, filed 1-11-1999 (Minn. App. 2000): Minn. Stat. § 518.551, Subd. 5(1)(1998) and <u>Holmberg</u> did not prohibit a court from ordering past child support in a paternity case, even though the child received an insurance benefit, because the time period in question was prior to the 8-1-98 effective date of the statute.</p>	<p>No Credit for Social Security Prior to 8-1-98</p>
<p><u>Strandberg v. Strandberg</u>, 664 NW2d 887 (Minn App. 2003): In determining the child support obligation for a child who receives a state adoption subsidy, the subsidy is a resource of the child and should be considered. Minn. Stat. § 518.551, subd. 5(c)(1), (2) (2002). "We do not hold that the adoption subsidy should be treated as a mandatory offset to child support or an automatic reduction of the guideline amount. * * * Rather, the treatment of the adoption subsidy and whether the subsidy affects the support obligation depends on the needs of the child and the financial circumstances of the obligor and obligee."</p>	<p>State Adoption Subsidy</p>
<p><u>Gillett-Netting v. Barnhart</u>, 371 F.3d 593, 9th Cir (Ariz. June 9, 2004): Twins conceived through artificial insemination after their father's death are qualified to receive Social Security death benefits.</p>	<p>Children Artificially Conceived after Death of Father Qualify for SS Benefit</p>
<p><u>Gatfield v. Gatfield</u>, 682 NW 2d 632 (Minn. App. 2004): Although the U.S. Supreme Court in <u>Mansell v. Mansell</u>, 490 U.S. 581 (1989) ruled that the Uniformed Services Former Spouse's Protection Act, 10 USC 1408 does not subject VA disability benefits to a property claim by a spouse, this ruling does not deprive state courts of jurisdiction to enforce provisions of a dissolution judgment that were stipulated to by the husband, making a share of those benefits available to the spouse.</p>	<p>Stipulation Awarding Veteran's Disability Benefits in Property Settlement Enforceable</p>
<p><u>In Re the Marriage of Renard v. Renard</u>, (Unpub.), A05-2573, Filed February 13, 2007 (Minn. App. 2007): The court found the district court erred when it issued an order requiring obligor to pay a ongoing child support plus an upward deviation of \$300 for a child with special needs based on an alleged excess in obligor's income, where (1) the child received fed. benefits of \$250 per month, and (2) the income of the obligor actually resulted in a deficit after subtracting child support and spousal maintenance. The court found the district court's order to be inconsistent with its findings and reversed and remanded this issue.</p>	<p>DEVIATION: upward deviation may be inappropriate when it would place obligor in deficit and the minor child receives federal benefits based on special needs (severe autism).</p>
<p><u>Lynch, vs. Lynch, and County of Mower, Intervenor</u>, (Unpub.), A07-763, filed June 3, 2008 (Minn. App. 2008): Where an employee of the federal government receives a "territorial cost of living allowance" because they live in a remote area with a relatively high cost of living, such allowance should not be considered in determining that party's child support obligation. Although the territorial allowance is within the statutory definition of income, the nature of the territorial allowance requires a downward deviation from the guidelines, as the allowance does not increase the obligor's income, but merely places him in the same financial position he would occupy if he were living in Minnesota, where the cost of living is lower than in Alaska.</p>	<p>Territorial cost of living allowance should not be included in gross income when calculating child support.</p>

II.E.2.-Government Benefits

<p><u>Doll and Stearns County v. Barnell; Strandmark and County of Anoka v. Starr</u>, 693 NW 2d 455 (Minn. App. 2005), rev. den. (Minn. 6-14-05): Minnesota’s child support guidelines do not violate the due process clause of the United States Constitution; they are not unreasonable, arbitrary or capricious, and they bear a rational relation to the public purpose they seek to promote. The legislative history of Minnesota’s guidelines indicates that the Legislature has endeavored to tailor the guidelines to render fair and reasonable child-support amounts, and the cost of rearing has been part of that formula. The legislature has factored in the many variables involved in the debate as to what amount of award is “adequate” to support a child, and has allowed deviations from the guidelines, with the paramount consideration being the best interests of the child.</p>	<p>Minnesota’s guidelines do not violate due process</p>
<p><u>Doll and Stearns County v. Barnell; Strandmark and County of Anoka v. Starr</u>, 693 NW 2d 455 (Minn. App. 2005), rev. den. (Minn. 6-14-05): Minnesota guidelines do not violate or conflict with the mandates of federal law. The guidelines satisfy all federal child-support requirements, including a consideration of the economic data on the cost of raising children. Further, a conflict with federal law would not be significant for preemption purposes; the state would simply be ineligible for incentive payments under the federal scheme. Where there is no federal preemption of state law, there is no violation of the supremacy clause of the U.S. Constitution.</p>	<p>Minnesota’s guidelines do not violate the supremacy clause—there is no federal preemption of state law.</p>
<p><u>Olson v. Jax</u>, (Unpub.), A06-27, Filed December 19, 2006 (Minn. App. 2006): The court upheld the district court’s award of child support based on the net income cap of the child support guidelines. The district court appropriately considered obligor’s cash flow and lifestyle. The court refused to deviate downward based on obligor’s allegation that the statutorily provided amt. of child support exceeds the child’s needs and would subsequently benefit the obligee. The court cited <u>State v. Hall</u>, 418 N.W.2d 187, 190 (Minn. App. 1988), and <u>Thompson v. Newman</u>, 383 N.W.2d 713, 716 (Minn. App. 1986), in finding that the child is entitled to benefit from both parent’s income.</p>	<p>GUIDELINES: Support set based on income cap. No downward deviation for “improved lifestyle” of child.</p>
<p><u>Martin vs. Martin</u>, (Unpub.), F & C, A07-591, filed March 25, 2008 (Minn. App. 2008): Appellant argued that the court should have calculated support under the new income share guidelines. Because appellant’s motion was filed before January 1, 2007, the district court was correct in using the old guidelines to calculate child support. Affirmed.</p>	<p>Application of old guidelines v. new guidelines</p>

II.F.1.-Generally

<p><u>Zaghloul v. Elashri</u>, (Unpub.), A04-321, F & C, filed 8-24-04 (Minn. App. 2004): The court, in determining net income for the calculation of child support must deduct from gross income the taxes that would be owed on that income, whether or not the taxes have actually been paid. Citing <u>Marx v. Marx</u>, 409 NW 2d 526,529 (Minn. App. 1987) and <u>Looyen v. Martinson</u>, 390 NW 2d 465,468 (Minn. App. 1986).</p>	<p>Must Deduct Taxes Owed, even if not Paid</p>
<p><u>County of Pine and Page v. Edens</u>, (Unpub.), A04-1598, F & C, filed 03-29-05 (Minn. App. 2005): A child support order that is being paid for subsequent- (later born) children is not deductible from income when computing child support for an older child. Further, additional payments owed for past-due support are not deductible from income when computing child support. In this modification case, CP of the older child agreed to partial credit for the child support owed the younger children, and based on the agreement, court upheld CSM order giving partial credit for the prior obligation.</p>	<p>Deduction for child support being paid does not include arrears payments or support order for younger child</p>
<p><u>Hall v. Hall</u>, (Unpub.), A04-2055, F & C, filed 6-28-05, (Minn. App. 2005): CSM properly excluded from obligor's income an average of \$170 per week deducted from his wages and escrowed by his union for vacation and sick time. The court of appeals ruled that because the vacation and sick time deduction is not actually income received by the obligor, but is escrowed into an account to supplement income only when obligor takes vacation or sick time, it should not be included as part of net income. Even though 518.551 subd. 5(b)(2004) does not specify whether such sums are deductible, the definition of income is based on money <i>available</i> to the obligor, and these sums are not available. Cites <u>Lenz v. Wergin</u>, 408 NW 2d 873,876 (Minn. App. 1987) and <u>Dinwiddie</u>, 379 NW 2d 227,229 (Minn. App. 1985).</p>	<p>Money taken from Obligor's Pay and Escrowed into an Account to be Used for Vacation and Sick Leave, is not Available to Obligor, thus not Income for Child Support.</p>
<p><u>In Re the Marriage of Marentic v. Marentic</u>, (Unpub.) A05-1769, filed June 20, 2006 (Minn. App. 2006): The Court found that though the district court ordered Obligor to provide insurance coverage, the court failed to make findings regarding which parent would pay the insurance premium and remanded this issue for findings consistent with Minnesota Statutes.</p>	<p>Findings stating who will pay insurance premiums must be made when one party is ordered to provide insurance coverage.</p>
<p><u>In Re the Marriage of Liveringhouse v. Liveringhouse</u>, (Unpub.), A05-2531, Filed 12/5/06 (Minn. App. 2006): The court affirmed the district court's determination of an obligor's net income despite an absence of itemized deductions. The court noted that without the record and no other evidence indicating error, it could only presume that the district court found no deductions to be appropriate. Citing <u>Custom Farm Servs., Inc. v. Collins</u>, 306 Minn 571, 572, 238 N.W.2d 608, 609 (1976) (an appellate court cannot presume error). The court noted that it is the obligor's burden to supply evidence substantiating his challenge of the district court's decision.</p>	<p>INCOME: Determination of net income will stand absent evidence to the contrary.</p>
<p><u>Lewis, vs. Lewis</u>, (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Respondent husband argues district court erred in concluding his pension plan is entirely employer-funded, and denying him a deduction for his contribution to an additional 401(k) when calculating his income. The record does not support the district court's conclusion. Reversed and remanded for determination of the provisions of the retirement plan, and whether respondent's income and ability to pay support should be reduced by a reasonable pension deduction.</p>	<p>Respondent may be eligible for deduction in income for reasonable contribution to pension.</p>
<p><u>Weiss vs. Weiss</u>, (Unpub.), A06-2433, filed December 24, 2007 (Minn. App. 2007): The court did not err in including appellant's overtime pay in calculating child support where the court found that prior calculations included the overtime pay and appellant failed to demonstrate a statutory exception applied.</p>	<p>Overtime may be included where included in establishing support and no change in circumstances has been shown.</p>
<p><u>In the Marriage of: Lynae Dana Nahring v. Curtis Norman Nahring</u>, (Unpub.), A07-0102, filed February 19, 2008 (Minn. App. 2008): Father appeals from the lower court's decision allowing mother's 13.5% deduction for retirement savings when calculating child support and spousal maintenance. Lower court failed to address whether deduction is a contribution within the meaning of § 518.551, subd. 5(b) and if so, whether it is reasonable. Reversed and remanded for findings.</p>	<p>13.5% Deduction for retirement savings</p>

II.F.2.-Deductions from Income

<p><u>Reuter vs. Reuter</u>, (Unpub.), A07-0338, F&C, filed 5/20/08 (Minn. App. 2008): The district court's computation of net income should properly take into account depreciation deductions for dairy cows, farm buildings and farm equipment when calculating the appellant's child support obligation. A self-employed obligor's income is equal to gross receipts minus ordinary and necessary expenses. Minn. Stat. § 518A.30 (2006). This amount does not include amounts allowed by the IRS for accelerated-depreciation expenses, investment credits or other business expenses. However, total disregard of depreciation is reversible error. <i>Citing Stevens County Social Serv. Dep't ex rel. Banken v. Banken</i>, 403 N.W.2d 293, 297 (Minn. App. 1987). The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation.</p>	<p>The court may not disregard depreciation absent evidence that the obligor has no corresponding replacement costs in his farming operation.</p>
<p><u>Lynch, vs. Lynch, and County of Mower, Intervenor</u>, (Unpub.), A07-763, filed June 3, 2008 (Minn. App. 2008): Where an employee of the federal government receives a "territorial cost of living allowance" because they live in a remote area with a relatively high cost of living, such allowance should not be considered in determining that party's child support obligation. Although the territorial allowance is within the statutory definition of income, the nature of the territorial allowance requires a downward deviation from the guidelines, as the allowance does not increase the obligor's income, but merely places him in the same financial position he would occupy if he were living in Minnesota, where the cost of living is lower than in Alaska.</p>	<p>Territorial cost of living allowance should not be included in gross income when calculating child support.</p>

II.F.2.-Deductions from Income

<p><u>Frank-Bretwisch vs. Ryan</u>, (Unpub.), A06-1864, filed December 4, 2007, (Minn. App. 2007): The lower court's denial to modify support required specific findings where the order sought to be modified was the result of a stipulation with a significant downward deviation in support, and where the court noted grave concerns regarding adequacy of the support at the time of the parties' original stipulation.</p>	<p>Deviation from guidelines requires sufficient findings.</p>
<p><u>In re the Marriage of Brenda Lee Stifel v. Daniel Charles Stifel</u>, (Unpub.), A07-0198, filed April 1, 2008 (Minn. App. 2008): Appellant obligor appeals order setting support at 39% of appellant's income, including his commission and annual draw. Appellant argues that, because the support award is a fixed percentage of his entire income, it is possible the award will exceed the statutory cap of \$7,360 per month. The district court made no findings to support an upward deviation. Because the district failed to make findings to support an upward deviation, and obligee agreed at oral argument that a cap on the monthly income is appropriate, this court modified the child support to impose a cap at 39% of the maximum monthly income as provided in the guidelines.</p>	<p>Abuse of discretion where child support set at percentage of appellant's income could result in an upward deviation to the statutory cap, and no findings were made to support deviation.</p>
<p><u>Wagner vs. Mehle, III</u>, (Unpub.), A07-0677, F&C, filed April 29, 2008 (Minn. App. 2008): The County appealed from the district court's setting of respondent-father's various child support obligations at amounts below that called for by the guidelines. Where the child support recipient has assigned her right to receive support to the public agency, the obligor's support obligation may be set below the guideline amount "only" if the court "specifically" finds that the failure to deviate downward from guidelines would impose an "extreme hardship" on the obligor, not "an undue hardship" as stated here. For the court to deviate, the court must specifically address the criteria in Minn. Stat. § 518.551, subd. 5(c) [note: this is an "old guidelines" case, filed in 2006] and how the deviation serves the best interests of the child. Here, the trial court did not make the proper findings explaining its deviation from the guideline amount either as to ongoing or past support.</p>	<p>Deviation from guidelines requires specific findings</p>
<p><u>David Roger Williams v. Margaret Mary Williams</u>, (Unpub.), A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court's order increasing child support to a level exceeding the guidelines amount in an attempt to equalize the parties' standards of living. Although the court is directed to take into consideration the standard of living the child would have enjoyed had the marriage not been dissolved, equalizing income may not be a basis to deviate when calculating child support. Without evidence that the child requires more support from the higher-income parent, disparity in the income of the parents does not justify a deviation from the <i>Hortis/Valento</i> formula.</p>	<p>Equalizing income of the parties is not enough to deviate from guidelines without additional findings.</p>
<p><u>Buzzell vs. Buzzell</u>, (Unpub.), A07-1096, filed June 10, 2008 (Minn. App. 2008): The court abused its discretion in ordering respondent to pay the cost of the children's sport activities in lieu of child support. The costs associated with the sporting activities are not fixed and requiring said payments would likely require regular, ongoing negotiations and cooperation between the parties, who have demonstrated an inability to cooperate. Additionally, the payment of support is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation. § 518.68, subd. 2.4(a) (2004).</p>	<p>Ordering payment of children's sporting activities in lieu of child support and abuse of discretion.</p>

II.F.3.-Deviations

<p><u>Lubich n/k/a Miller vs. Lubich</u>, (Unpub.), F & C, A07-1159, filed March 4, 2008 (Minn. App. 2008): Appellant non-custodial father challenges denial of his motion to require respondent/custodial parent to pay child support for parties' sole remaining minor child who resides with him. Appellant argued that the district court misapplied the law and abused its discretion by not making findings to overcome the presumption that respondent was not a child support obligor (Minn. Stat. §518A.26, subd. 14) and impose a child support obligation on her because the child lives primarily with him. The district court found that appellant owes respondent many thousands in arrears and even though appellant's support obligation had previously been reduced he had not significantly reduced his arrears. The Court of Appeals distinguished this case from both <i>Rumney</i> [sic] and <i>Tweeton</i> because neither of those cases involved an obligor with significant arrears. The district court's refusal to require respondent to pay support was affirmed.</p>	<p>Establishing child support against parent who has custody by court order.</p>
<p><u>Martin vs. Martin</u>, (Unpub.), F & C, A07-591, filed March 25, 2008 (Minn. App. 2008): In this joint physical custody case, the district court granted appellant's motion to reduce his child support obligation based on his decreased income, but did not impute income to respondent. Respondent was working 20 hours per week and produced no evidence that she was unable to work full time; however, the district court determined that based on her receipt of medical assistance for the children, imputing income to her was not appropriate. The Court of Appeals affirmed.</p>	<p>No imputation of Income to Parent on MA</p>
<p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor challenges the denial of his motion to decrease his support, originally set in the parties' dissolution, with parenting time 50/50. The obligor argues the court erred by failing to deem his child support satisfied while he provided a residence for the child. The Court of Appeals upheld the CSM decision noting the change in the amount of parenting time was insignificant and did not support a modification of the stipulated child support.</p>	<p>No change of circumstances supporting modification.</p>
<p><u>Wagner vs. Mehle, III</u>, (Unpub.), A07-0677, F&C, filed April 29, 2008 (Minn. App. 2008): The County appealed from the district court's setting of respondent-father's various child support obligations at amounts below that called for by the guidelines. Where the child support recipient has assigned her right to receive support to the public agency, the obligor's support obligation may be set below the guideline amount "only" if the court "specifically" finds that the failure to deviate downward from guidelines would impose an "extreme hardship" on the obligor, not "an undue hardship" as stated here. For the court to deviate, the court must specifically address the criteria in Minn. Stat. § 518.551, subd. 5(c) [note: this is an "old guidelines" case, filed in 2006] and how the deviation serves the best interests of the child. Here, the trial court did not make the proper findings explaining its deviation from the guideline amount either as to ongoing or past support.</p>	<p>Deviation from guidelines requires specific findings</p>
<p><u>Sperling vs. Sperling</u>, (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): Appellant mother challenged the district court's order reducing respondent father's child support. Respondent argued decreased income. The court reduced father's monthly obligation based solely on "finding" that father had "furnished salary information". The court failed to make findings under the guideline statute, did not consider whether a deviation from the guidelines might be appropriate in light of mother's assertions of increased need, or whether father should have anticipated and planned for the potential downturn in his earnings. Additionally, father continues to maintain his lifestyle despite the asserted decreased earnings. The record is inadequate to permit appellate review without specific findings related to the statutory factors.</p>	<p>Deviations from guidelines must make specific findings related to the statutory factors.</p>

II.F.5.-Shared Custody/Joint Custody

<p><u>In re the Marriage of Jeffrey J. Pierson v. Janell H. Johnson and Dakota County, intervenor</u>, (Unpub.), A06-603, Dakota County, filed January 23, 2007 (Minn. App. 2007): Appellant appeals district court's decision determining respondent owed arrears for the period from December 2002 to the date of the order, but finding arrears were not proven for the period prior to December 2002. Because the magistrate failed to make adequate findings to support its conclusion that respondent owed no support prior to December 2002, court of appeals reverses and remands.</p>	<p>The district court's order setting child support and arrears must contain sufficient findings to support the conclusions.</p>
<p><u>In the Matter of: Gayle Cardinal, Petitioner, Respondent, vs. Paul G. Cardinal, Appellant</u>, (Unpub.), A06-1307, Ramsey County, filed June 5, 2007 (Minn. App. 2007): OFP against appellant issued and evidentiary hearing scheduled for issues of custody, parenting time, support and maintenance. This court finds effective review of the district court's exercise of discretion is possible only when it issues sufficiently detailed findings to demonstrate its consideration of all relevant factors. The order does not include a finding of appellant's net income or analysis of his ability to pay the amounts ordered. Reverse and remand the order as it regards child support and maintenance for additional findings.</p>	<p>Findings required in OFP for c/s and maintenance.</p>
<p><u>Tammy Jo Arkell, n/k/a Arkell-Lund v. Richard Donald Wieber and Sterns county, Intervenor</u>, (Unpub.), A06-1008, Stearns County, filed June 5, 2007 (Minn. App. 2007): Order increased appellant-father's child support from \$368.00 to \$713.00 per month. This court affirms the lower court, holding that appellant's claim that his expenses outweighed his income did not mean he was automatically entitled to a deviation in support. Specific findings were not required.</p>	<p>Specific findings not required when no deviation.</p>
<p><u>In re the Marriage of Viele v. Viele</u>, (Unpub.), A07-212, filed October 9, 2007 (Minn. App. 2007), Wright County: The trial court may impute income to an obligor based on any in-kind payments he receives that reduce living expenses and where the actual income of the obligor is difficult to calculate. However, despite evidence that showed the obligor actively tried to hide his actual income earned in order to qualify for public medical coverage and where the obligor received direct cash payments and also received payments from a family business paying his automobile insurance, gas, oil, repairs, and the monthly payments, the imputation of income will <i>not</i> stand where specific findings regarding calculation of income are not present in the order.</p>	<p>In-kind benefits that reduce an obligor's cost of living expenses can be considered for the purposes of imputing income, but specific findings are necessary.</p>
<p><u>Frank-Bretwisch vs. Ryan</u>, (Unpub.), A06-1864, filed December 4, 2007, (Minn. App. 2007): The lower court's denial to modify support required specific findings where the order sought to be modified was the result of a stipulation with a significant downward deviation in support, and where the court noted grave concerns regarding adequacy of the support at the time of the parties' original stipulation.</p>	<p>Deviation from guidelines requires sufficient findings.</p>
<p><u>Krznarich vs Freeman</u>, (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The court appropriately considered appellant's ability to pay child support by taking into consideration her financial situation, respondent's financial situation, and Minn. Stat. §518.55 (2004).</p>	<p>Court considered appropriate factors in determining ability to pay.</p>
<p><u>Hare, f/k/a Parker vs. Grewe</u>, (Unpub.), A07-0850, F&C, filed May 20, 2008 (Minn. App. 2008): Where the obligor submitted an employment verification from his current employer stating straight commission basis pay, the court may reject the statement, but must make findings. Absent findings of a failure of proof or lack of credibility, the court abuses its' discretion in imputing income where other information is available.</p>	<p>The court may not ignore income information and impute income without making appropriate findings.</p>
<p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008): A district court is not required to make findings where the interested party fails to meet his burden to produce evidence on the issue. <i>Farrar v. Farrar</i>, 383 N.W.2d 436, 440 (Minn. App. 1986).</p>	<p>No findings required where interested party doesn't meet burden.</p>

II.F.6.-Findings Required

<p><u>In re the Marriage of Brenda Lee Stifel v. Daniel Charles Stifel</u>, (Unpub.), A07-0198, filed April 1, 2008 (Minn. App. 2008): Appellant obligor appeals order setting support at 39% of appellant's income, including his commission and annual draw. Appellant argues that, because the support award is a fixed percentage of his entire income, it is possible the award will exceed the statutory cap of \$7,360 per month. The district court made no findings to support an upward deviation. Because the district failed to make findings to support an upward deviation, and obligee agreed at oral argument that a cap on the monthly income is appropriate, this court modified the child support to impose a cap at 39% of the maximum monthly income as provided in the guidelines.</p>	<p>Abuse of discretion where child support set at percentage of appellant's income could result in an upward deviation to the statutory cap, and no findings were made to support deviation.</p>
<p><u>Martin vs. Martin</u>, (Unpub.), A07-1295, filed June 17, 2008 (Minn. App. 2008): The reviewing court is not required to reverse merely because the district court could have provided more detail. Despite lack of explicit findings regarding appellant's income, the district court's determination was appropriate where supported by the record.</p>	<p>Explicit findings not required where decision is supported by the record.</p>

II.F.6.-Findings Required

<p><u>Jarvela v. Burke</u>, 678 NW 2d 68 (Minn. App. 2004) A03-1232, filed 4-20-04: An extension in the child support obligation beyond the normal age of majority is an “increase” in the support obligation under Minn. Stat. § 518.551, subd.5f, since, by definition, “increase” includes something becoming greater in duration. Thus the court erred when it indefinitely extended the obligor’s support obligation at its current level based upon a finding that the child was incapable of self-support due to a physical or mental condition” without considering the needs of obligor’s subsequent children</p>	<p>Durational Extension Requires Consideration of Subsequent Children</p>
<p><u>Jarvela v. Burke</u>, 678 NW 2d 68 (Minn. App. 2004) A03-1232, filed 4-20-04: Since a person incapable of self-support remains a child under Minn. Stat. § 518.54, the child support guidelines are presumptive in orders for “children” over the age 18, just as for children under the age of 18.</p>	<p>Guidelines Apply</p>
<p><u>Jarvela v. Burke</u>, 678 NW 2d 68 (Minn. App. 2004) A03-1232, filed 4-20-04: Extending child support indefinitely does not deny the obligor equal protection of laws governing the obligation of a married couple for a disabled adult child. Married and unmarried parents with disabled children are not similarly situated.</p>	<p>Constitutional</p>
<p><u>Jarvela v. Burke</u>, 678 NW 2d 68 (Minn. App. 2004) A03-1232, filed 4-20-04: Even though a prior order did not extend child support beyond the child’s 18th birthday, a court may later extend the duration of the order for a disabled child who is incapable of self-support. The doctrines of <i>res judicata</i> and Collateral Estoppel do not apply to modification of support orders. Citing <u>Bjordahl v. Bjordahl</u>, 308 NW 2d 817, 819 (Minn. 1981) and <u>Atwood v. Atwood</u>, 91 NW 2d 728, 734 (Minn. 1958).</p>	<p>Res Judicata N/A to Modification of Support Order</p>
<p><u>Maki v. Hansen</u>, 694 NW 2d 78 (Minn. App. 2005): A request for continued child support based on disability does not have to be made before the child reaches the age of 18 (or age 20 if the child is in secondary school) since the individual is still a child under Minn. Stat. § 518.54, subd. 2 if by reason of mental or physical condition he is incapable of self-support.</p>	<p>Motion to extend support based on disability may be raised after age 18/20</p>
<p><u>In re the Marriage of: Barbara Jean Jucick, f/k/a Barbara Jean Jucick-Kleinman vs. James Michael Kleinman</u>, (Unpub.), A06-1209, Hennepin County, filed May 15, 2007 (Minn. App. 2007): Under §518.54, subd. 2 (2004), District court properly found that 18-year-old child whose illness required her to use a wheelchair and depend on others for her most basic needs should be deemed a child for purposes of support.</p>	<p>Determination of entitlement to support based on disability upheld.</p>
<p><u>In re the Marriage of Weeks v. Weeks</u>, (Unpub.), A06-2147, filed October 2, 2007 (Minn. App. 2007) Wright County: The court ordered that confusing language in the dissolution be amended to indicate that the obligor’s support obligations for the parties’ minor child with disabilities, would only terminate if the child became self-supporting.</p>	<p>Support terminates only when child becomes self-supporting</p>

II.G.3.-Continued Disability

<p><u>County of Anoka ex rel Hassan v. Roba</u>, 690 NW 2d 322, (Minn. App. 2004) A04-168, filed 11-30-04: In a Minn. Stat. § 256.87 action against child’s mother to pay support in a PA relative caretaker case brought under Minn. Stat. § 256.87, the CSM included the standard “age 18, or age 20, if still in secondary school” language for the duration of the obligation. The appellate court, noting that the definition of “minor child” under Minn. Stat. § 256J.08, subd. 60 has a different standard, e.g. age 18, or up to age 19 if still in secondary school, believed it was “unclear” whether the CSM would have authority to continue child support payments beyond age 19 in a PA reimbursement action, and remanded to give the obligor the opportunity to challenge the receipt of assistance and her duty to support beyond age 19. [Ed. Note: ? if a definition in Chapter 256J should apply to Chapter 256. Also, there is some thought among some county attorneys that Minn. Stat. § 256.87, subd. 3 (continuing support after PA) should not apply if the requirements of Minn. Stat. § 256.87, subd. 5 have not been met—e.g. the “obligee” needs to either be the court-ordered custodian, or be able to prove that the child is in his/her physical custody with the consent of the legal CP].</p>	<p>Continuing Child Support in Question in § 256.87 PA Case, once Child is 19 and still in School and no longer a “Minor Child” Under § 256J, but is still a Minor Child Under § 518.</p>
<p><u>Feist v. Feist</u>, (Unpub.), A04-669, F&C, filed 12-14-04 (Minn. App. 2004): In 1993, parties stipulated in MTA that child support would continue until younger child was 22, graduated from college, married or was otherwise emancipated. When younger child turned 18, NCP brought MTM and asked for support to end according to statute at age 18. District court denied motion and appeals court agreed. Even though statutory age of majority was age 18 or secondary school graduation, both at the time of the J&D and now, the MTA was enforceable. Parties can agree to bind themselves to obligations that exceed obligations the court could otherwise impose on them, and absent a change of circumstances, court will not relieve a party of the stipulated obligation. Citing <u>Claybaugh</u> 312 NW 2d 447, 449 (Minn. 1981) and <u>Gatfield</u>, 682 NW 2d 632,637 (Minn. App. 2004), <i>rev. den</i> (Minn. Sept. 29, 2004).</p>	<p>Stipulation to Obligation in Excess of what Court could Otherwise Order will be Enforced and not Modified w/o Substantial Change</p>
<p><u>Orendorf v. Orendorf</u>, A05-639 (Polk County): No abuse of discretion to extend child support through the child’s graduation rather than the child’s 18th birthday. Obligee had the child repeat eighth grade because the child had done poorly despite an individual educational plan and was young compared to her classmates. Appellant argued that there should be no obligation to pay for this extended year because Appellant was not consulted about the decision. Court of Appeals affirmed the magistrate’s decision because the orders transferring custody and establishing support are open-ended, with no specific end date (Minn. Stat. § 518.54, subd. 2 governs), and the magistrate’s decision is supported by both the record facts and the law.</p>	<p>Child support extended past 18th birthday to graduation.</p>
<p><u>In re the Marriage of Arneson v. Meggitt</u>, (Unpub.), A06-1437, Filed October 30, 2007 (Minn. App. 2007), Dakota County: The district court did not err when it extended the obligor’s child support obligation one year beyond that which was stipulated to by the parties in their J&D when the child of the parties had fallen behind in school due to behavioral and academic issues and his graduation date was subsequently delayed one year. Stipulated child support judgments are not contracts that bind the court, and the court may reset child support because of the important public policy favoring the nonbargainable interests of the child. See <u>Swanson v. Swanson</u>, 372 N.W.2d 420, 423 (Minn. App. 1985).</p>	<p>Court has broad discretion to modify child support even in the face of a stipulation when modification benefits the best interests of the child.</p>
<p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Where, as in here, the child discontinues attending school prior to reaching his 18th birthday, and reenrolls before reaching his 18th birthday, he is not emancipated upon his 18th birthday because he was still attending secondary school at the time.</p>	<p>Emancipation</p>
<p><u>Gilbertson vs. Graff and County of Clay, Intervenor</u>, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties. <i>In re Fiihr</i>, 184 N.W.2d 22, 25 (1971). The critical factor in emancipation is whether the parent relinquished control and authority over the child’s actions and the degree of severance of the parent-child relationship. <i>Cummins v. Redman</i>, 251 N.W.2d 343, 345 (1977). Because the court did not clearly err in finding the child was not emancipated, it was not an abuse of the CSM’s discretion to leave appellant’s child support obligation in place.</p>	<p>Emancipation factors; child support</p>

II.G.4.-Generally

<p>Gilbertson vs. Graff and County of Clay, Intervenor, (Unpub.), A07-2236, filed June 24, 2008 (Minn. App. 2008): Appellant asserts that someone over 18 years of age, who is capable of self-support, should be required to support himself. The child support order clearly sets forth the conditions that would terminate the child support obligation. It does not matter that the child is capable of supporting himself; child support obligations cannot be terminated on this basis.</p>	<p>Termination of child support not warranted solely because child able to support himself.</p>
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<p><u>Hagen v. Odland</u>, (Unpub.), C6-97-1890, F & C, filed 4-28-98 (Minn. App. 1998): If obligor has not had an increase in income since the last COLA adjustment, the court is not permitted to allow the current COLA adjustment based upon obligor's ability to fulfill the adjusted obligation based on income increases that occurred prior to the last COLA adjustment.</p>	<p>Substantial Income Increase Prior to last COLA does not Support Current COLA</p>
<p><u>Stageberg v. Stageberg Erickson</u>, (Unpub.), C8-97-2006, F & C, filed 5-5-98 (Minn. App. 1998): Even if obligor's income in the most recent year (1996) was lower than his income at the time the court last reviewed his income (1992) (when the court had denied the COLA), it was proper for the court to grant a COLA in 1997 based on average earnings for the years 1992-1996, which were sufficiently greater than his 1989-1991 earnings so as to support the five-year COLA adjustment (citing <i>Veit v. Veit</i>).</p>	<p>Where Obligor's Annual Income Fluctuates, Proper to Average Income since last COLA</p>
<p><u>Schmidt v. Schmidt</u>, (Unpub.), C5-02-49, F & C, filed 7-2-02 (Minn. App. 2002): Where J & D required that support be paid "pursuant to guidelines" on the first \$85,000.00 of obligor's net income, and also provided for COLA adjustments, a later court correctly rejected obligor's argument that a COLA should not be implemented because the guidelines formula in the J & D already provided for increases in his support as his income increased.</p>	<p>Formula for Automatic Adjustment in Support in J & D Does not Replace COLA</p>
<p><u>Schmidt v. Schmidt</u>, (Unpub.), C5-02-49, F & C, filed 7-2-02 (Minn. App. 2002): Where J & D required that support be paid "pursuant to guidelines" on the first \$85,000.00 of obligor's income, CSM erred by increasing the \$85,000.00 salary cap by the 7.9% COLA, so that in the future the obligor would pay guidelines up to \$91,715.00 in income. The more appropriate vehicle to adjust the salary cap would be a motion to modify under Minn. Stat. § 518.64.</p>	<p>COLA Does Not Increase Salary Cap in J & D</p>
<p><u>In re the Marriage of Li-Kuehne v. Kuehne</u>, (Unpub.), A05-2398, Filed 9/19/06 (Minn. App. 2006): The district court erred in denying Obligee's 2005 request for cost-of-living adjustment to maintenance, on the basis that the dissolution decree provided, "[d]uring the period of March 1, 2003 through August 31, 2009 the issue of spousal maintenance shall not be modifiable and the Court is without jurisdiction to modify spousal maintenance." The Court of Appeals reversed and remanded finding that a COLA is not a modification and as required by section 518.68, the statutory notice regarding COLAs was attached to the judgment and decree at Appendix A and states that "maintenance may be adjusted every two years based upon a change in the cost of living." The court noted that the parties had agreed to a <i>Karon</i> waiver, but stated that a <i>Karon</i> waiver cannot be read to preclude "adjustments" under section 518.641, since a motion for modification is not the same as a request for a COLA. <i>McClenahan</i>, 461 N.W.2d at 511.</p>	<p>COLA: <i>Karon</i> waiver does not preclude COLA action.</p>
<p><u>Li-Kuehne vs. Kuehne</u>, (Unpub.), A07-807, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant argues district court abused its discretion in including a COLA to a step reduction in his maintenance obligation. The J&D of the parties provided the court was without jurisdiction to modify maintenance during the period of March 1, 2003 to August 31, 2009. (Appellant was to pay \$12,500 per month from March 1, 2003 to August 31, 2006 and \$10,000 per month from September 1, 2006 to August 31, 2009). This court previously reversed and remanded the issue of the application of COLA to maintenance to the district court, holding that there is nothing in the record to support the district court's denial of COLA under any of the exceptions listed in Minn. Stat. §518.641. On remand, the district court held that the Court of Appeals did not limit the COLA to the first maintenance amount, and applied COLA to the step-down amount. Appellant argues the change in maintenance acts as a step decrease that already reflects a decrease in the cost of living. The Court of Appeals held that their prior decision regarding the COLA issue is <i>res judicata</i>, precluding re-litigation of the issue.</p>	<p>COLA applies to spousal maintenance even where J&D provides court is without jurisdiction to modify spousal maintenance award.</p>
<p><u>Grachek vs. Grachek</u>, (Unpub.), A07-1226, filed June 17, 2008 (Minn. App. 2008): Parties' agreement to waive the right to receive a cost of living adjustment to a spousal maintenance award must be expressed in the dissolution judgment in clear and express language. Where the waiver does not specifically express the intent of the parties to waive the COLA, an obligee has the right to seek a COLA.</p>	<p>COLA for spousal maintenance</p>

<p><u>In re the Marriage of: Chaharsooghi v. Eftekhari</u>; Minn. Ct. App. Unpub. (A05-2259): Joint physical custody case. Appellant-husband appealed denial of his modification motion. Dissolution required appellant to pay child support, pay all premiums for the children’s medical insurance, all uninsured or unreimbursed medical and dental expenses for R.E. and ½ of O.E.’s expenses, all expenses for tutoring both children through Sylvan Learning Center, and apportion the costs for extracurricular, recreational or other activities the children participate in if the parties agree to the participation. The child R. E. ultimately was sent out of state to a boarding school. Appellant had agreed to fully bear the costs and respondent reluctantly agreed to send the child to the school. Appellant moved to reduce his support obligation and modify the decree such that the parties would be responsible of ½ of the extraordinary expenses of both minor children. The child support magistrate denied the motion finding appellant failed to proof a substantial change in circumstances, and the district court affirmed. The appellate court held that while the parties were not aware of the child’s “recently diagnosed” nonverbal learning disability at the time of the dissolution, they were generally aware that the child is a special needs child and were cognizant of the financial issues concerning the child’s disabilities. Special concurrence held that expenses were known to both parents at time of dissolution, and current expenses, though significant, did not constitute a change in circumstances that makes the child support obligation unreasonable or unfair.</p>	<p>extraordinary educational and medical expenses</p>
<p><u>In re the Marriage of Eric Thomas Amundson v. Rachel Louise Amundson</u>, (Unpub.), A06-514, Chisago County, filed January 23, 2007 (Minn. App. 2007): The district court erred in the calculation of appellants monthly net income, the calculation of arrears, and did not make specific findings regarding the children’s health insurance. The issues are remanded for reconsideration by the district court. The district court must order the party with the better dependant health-insurance coverage available on a group basis or through an employer or union to name the minor as beneficiaries. (Citing Minn. Stat. §518.171, subd. 1(a)(2) (2004).</p>	<p>Court must order the party with the better dependant health insurance to carry the dependants.</p>
<p><u>In re the Marriage of: Thomas Caroll Rubey v. Valerie Ann Vannett</u>, (Unpub.), A05-310, filed May 15, 2007 (Minn. App. 2007): The district court ordered appellant to pay the child’s entire medical insurance costs. Court of Appeals held even where the insurance costs are minimal, the district court must follow §518.551, subd. 5, which requires that both parties be responsible for paying the child’s health care costs in proportion to their net incomes.</p>	<p>Even where medical costs for child minimal, court must require both parties to contribute to the costs.</p>
<p><u>Lewis vs. Lewis</u>, (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Respondent husband challenges the district court’s findings that appellant does not have the ability to contribute to any uninsured medical expenses for the minor children of the parties. Because the record supports the district’s decision, the Court of Appeals affirmed.</p>	<p>Uninsured medical expenses contribution.</p>
<p><u>Sperling vs. Sperling</u>, (Unpub.), A07-980, F&C, filed April 29, 2008 (Minn. App. 2008): Father ordered to provide medical in J&D. Moves for modification. Mother asserts that because of an increased medical deductible of \$5000, the coverage father has obtained is not “the same or comparable” to the insurance provided during the marriage. Father is to provide insurance coverage, and the decree does not permit him to shift a significant cost of coverage to mother.</p>	<p>Medical insurance- new coverage requiring \$5000 deductible not “comparable”.</p>

II.J.-Medical Support

<p><u>Thomas John Szarzynski v. Therese Elizabeth Szarzynski</u>, A06-882, Hennepin County, filed May 22, 2007 (Minn. App. 2007): <i>Hopp v. Hopp</i> requirements apply to contempt for failure to pay spousal maintenance. Attorney fees are available to spouse who did not receive maintenance payments and resorted to contempt. “Surprise” of contemnor’s attorney was cured by scheduling second day of testimony.</p>	<p>Contempt for non-payment of spousal maintenance.</p>
<p><u>In re the Marriage of: Steven John Stoltman, petitioner, Appellant, vs. Marilyn Jane Stoltman, Respondent.</u>, (Unpub.), A06-1829, Hennepin County, filed August 14, 2007 (Minn. App. 2007): District court supported an order of confinement for contempt determining contemnor had ability to satisfy purge conditions set at time of confinement. This determination was based on the lifestyle of husband; however, the finding was based on the income of husband’s current spouse, rather than husband’s income. Husband correctly argues that his current spouse is not responsible for his support obligation to respondent. There is insufficient evidence in the record to show that husband has had the ability to satisfy the financial purge condition.</p>	<p>Contempt purge – ability to pay</p>
<p><u>County of Anoka ex rel Alena M. Hubacher vs. Dian M. Davis</u>, (Unpub.), A07-61, filed January 15, 2008 (Minn. App. 2008): The district court did not abuse its discretion by denying the county’s motion for contempt where the court included findings indicating they did not find respondent to be deliberately and contumaciously ignoring the court’s order; that the threat of confinement would not likely improve his compliance; and that the respondent may be wholly unable to perform.</p>	<p>No abuse in denying county’s contempt motion where court found finding contempt was not likely to improve compliance, etc.</p>

<p><u>In re the Marriage of: Steven John Stoltman, petitioner, Appellant, vs. Marilyn Jane Stoltman, Respondent.</u>, (Unpub.), A06-1829, Hennepin County, filed August 14, 2007 (Minn. App. 2007): Appeal from district court order finding appellant in contempt for failing to pay child support and respondent's attorney fees. The district court is required to make findings regarding the basis for conduct-based fees in order to permit meaningful appellate review (<i>citing Kronick v. Kronick</i>, 482 N.W.2d 533, 536 (Minn. App. 1992) and such a record has not been provided. This court cannot infer from the record wife's need or husband's ability to pay her attorney fees, and there is no support in the record for an award of conduct-based fees at this time; therefore the district court is reversed.</p>	<p>Record must provide basis for need-based or conduct-based award of attorney fees.</p>
<p><u>In re the Marriage of: Loren Helen Faibisch, petitioner, Appellant, vs. Manuel Esguerra, Respondent.</u>, (Unpub.), A06-1751, Ramsey County, filed August 21, 2007 (Minn. App. 2007): Appellant motion for attorney fees denied. Appellant failed to identify whether she sought need based or conduct based fees. Respondent's inability to pay precluded award of need-based fees. An award of conduct based fees inappropriate as, although respondent's motion was unsuccessful, it was based on a legitimate argument.</p>	<p>Denial of attorney fees where motion was based on legitimate argument and opposing party had no ability to pay need based support.</p>
<p><u>Schneider vs. Schneider and County of Anoka, Intervenor</u>, (Unpub.), A06-1788, F & C, filed August 28, 2007 (Minn. App. 2007): In February 2006, Respondent was served with notice of hearing and intent to suspend drivers license. At February 2006 hearing, CSM temporarily denied the county's request pending an April 2006 review hearing. At the review hearing, county indicated that contrary to the order, Respondent's license had been suspended in error. CSM imposed fine of \$150 against the county to reimburse Respondent for reasonable costs incurred as a result of the county's wrongful suspension of the driver's license. District court affirmed. Court of Appeals reversed finding that "the record contains no evidence regarding costs incurred by Respondent as a result of the suspension of his driver's license and the incurrence of costs by Respondent was the stated reason for imposing the fine..." The Court did not address the county's argument that the district court did not have the inherent authority to impose the fine.</p>	<p>Record does not support imposing fine on county for erroneously suspending obligor's driver's license.</p>
<p><u>In re the Marriage of Viele v. Viele</u>, (Unpub.), A07-212, filed October 9, 2007 (Minn. App. 2007), Wright County: Where the district court made specific findings that the husband and his family actively avoided disclosure of financial information and made the proceedings protracted and diffidult beyond that which is inherent in these matters, while also causing wife to incur substantial legal fees, the award of conduct-based attorney's fees will be upheld based on sufficient findings. Because the award was based on husband's conduct, consideration of wife's need was unnecessary.</p>	<p>Conduct based attorney's fees will be upheld where specific findings are made and regardless of need.</p>
<p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette</u>, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008): Husband appeals district court's award of sanctions. Wife's motion did not establish facts showing appellant violated terms of settlement agreement; therefore, district court had no basis for imposing the sanctions. Sanctions award reversed.</p>	<p>Award of sanctions reversed – no factual basis</p>
<p><u>In re the Marriage of: Debra Christine Brunette, n/k/a Debra Christine Klein vs. Scott David Brunette</u>, (Unpub.), A07-0685, filed February 5, 2008 (Minn. App. 2008): Husband appeals district court's award of conduct based attorney's fees as wife failed to document the amount of the fees as required by Minn. R. Gen. Pract. 119. Appellate court determined that the documentation requirement is not designed to inhibit district court's discretion but to streamline process. If court is familiar with case history and parties' financial information, it may waive the requirements of Rule 119.</p>	<p>Attorney Fees Rule 119 requirement to document amount is waivable</p>

II.M.6.-Attorneys Fees/Costs/Service Fees

<p><u>Baudhuin vs. Baudhuin</u>, (Unpub.), F & C,A07-0156, filed March 11, 2008 (Minn. App. 2008): Appellant petitioner argues the district court erred by denying her motion for increase in maintenance, discharging alleged child support arrears, and awarding respondent attorney's fees based on appellant's conduct, among other issues. Court of Appeals finds no error; appellant effectively prevented the district court from resolving the issue of maintenance in her favor and properly addressing the Court of Appeals' instructions on a prior remand by her failure to produce properly discoverable information regarding her financial circumstances and her student (law school) status. The district court acted within its discretion in setting child support, based on the failure of both parties to timely submit evidence of financial situations for the court to properly determine child support. The court ordered each party, based on the conduct of each individually, to pay attorney's fees to the other of \$10,000 each. No abuse of discretion.</p>	<p>No error where conduct of parties effectively prevented the court from resolving the issues of maintenance and child support.</p>
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II.N.4. - Lack of Notice

<p><u>In Re the Marriage of Tinsley v. Tinsley</u>, 427 NW 2d 739 (Minn. App. 1988): Notice of the dissolution decree is not a pre-requisite to the entry of judgment for child support arrearages accrued under the decree when the obligor had notice of dissolution action and failed to answer, thereby resulting in a default judgment and decree. The court noted that Minn. Stat. § 548.091 also does not require notice of the dissolution decree as a pre-requisite to entry of judgment.</p>	<p>Notice not Required</p>
<p><u>Bell v. Bell</u>, (Unpub.), AO3-2055, filed 7-13-04 (Minn. App. 2004): The district court improperly converted attorney’s fees to a child support judgment under Minn. Stat. § 518.14, subd. 2(e) (2002) where the party did not provide the formal notice required by the statute Minn. Stat. § 518.14, subd. 2(c) (2002). Even if the notice provided to appellant were sufficient, the court of appeals noted that it is not clear that the district court had the authority in 2003 to convert the 1991 and 1996 fee awards to child support.</p>	<p>To Convert Attorney’s Fees to Child Support Judgment Requires Statutory Notice</p>
<p><u>Ogg v. Ogg</u>, (Unpub.), A04-517, F&C, filed 11-30-04 (Minn. App. 2004): Obligor requested adjustment of his arrears at an ex pro hearing. CSM directed child support office to conduct and file an account review, and serve it on the parties. Parties had 15 days to file a motion for judicial review, or the county’s determination would be final. Subsequent district court decision that arrears were final, as determined by the county, because neither party had filed a motion within 15 days of the accounting, as required in CSM order, was upheld by the court of appeals.</p>	<p>IVD Arrears Accounting Final if Party didn’t serve Motion to Contest, as Required by CSM Order.</p>
<p><u>County of Freeborn v. Walker</u>, (Unpub.), A07-375, filed April 8, 2008 (Minn. App. 2008): The county served a person identified by a social security number and name located in California with a paternity action. That person failed to appear or answer and a paternity order was entered by default. Subsequently, the county intercepted tax refunds and began income withholding against appellant, a person with the same or similar name and social security number. Appellant objected, argued he wasn’t served with any paternity action, indicated he was a victim of identity theft, and was later excluded as the biological father of the child through genetic testing. The district court order required the county to reimburse appellant for child support collected from him and distributed to obligee. The county appealed. The Court of Appeals held that the undisputed lack of proper service renders the resulting judgments void. Restitution is equitable in nature and there is no abuse of discretion to order the county to reimburse the monies. Finally, the court rejected the argument that the funds should be recouped from mother citing (1) that the funds are disbursed does not absolve the county from having to reimburse Appellant if the facts warrant repayment. (2) A series of mistakes by the county resulted in the void judgments. (3) an innocent child support payor should not sue an innocent mother on public assistance to attempt to recover funds incorrectly procured from the payor as a result of void judgments. This is not in the best interest of the child for whom the child support system was created.</p>	<p>County ordered to reimburse defendant past child support collected based on default adjudication, where service on defendant was defective.</p>
<p><u>Askar vs. Sharif</u>, (Unpub.), A07-897, filed June 3, 2008 (Minn. App. 2008): Under certain circumstances, as in this case, allowing the CSM to reinstate an obligor’s driver’s license sua sponte is consistent with the intent of § 518A.65 and with the legislative policy underlying the child support statutes.</p>	<p>Reinstatement of drivers license</p>

<p><u>County of Nicollet v. Jacquelyn Ann Pollock, n/k/a Jacquelyn Ann Miller, Jerry Joseph Duwenhoegger</u>, (Unpub.), A06-875, Nicollet County, filed May 22, 2007 (Minn. App. 2007): Appeal from the District Court's order affirming the CSM's order requiring prisoner to pay child support while he is incarcerated. CSM found appellant was earning an income of \$60 per month while in prison and could afford an obligation of \$30 per month. Prison income may be used to determine child support and earning \$60 per month was a substantial change in earnings from \$0. (Citing <u>Johnson v. O'Neill</u>, 461 N.W.2d 507, 508 (Minn. App. 1990).</p>	<p>Prison income may be used to determine child support. Earnings of \$60 per month was "substantial change" from \$0.</p>
<p><u>In re the Marriage of Gail P. Bender, f/k/a Gail Papermaster v. Alan Paul Bender</u>, (Unpub.), A06-1072, Hennepin County, filed 6/19/07 (Minn. App. 2007): The court found the stipulation of the parties did not extend to the income of the parties in 2002 and 2004; therefore, father was required to support his motion with sufficient evidence of a change in circumstances, which he failed to do. Even if the change in parenting time was significant, father failed to demonstrate how this change significantly increased his monthly expenses.</p>	<p>A party bringing a motion to modify has the burden to demonstrate a change in circumstances that renders the existing order unreasonable or unfair.</p>
<p><u>Stevermer vs. Stevermeyer</u>, (Unpub.), A07-594, F & C, filed September 4, 2007 (Minn. App. 2007): Dissolution of parties reserved child support from Wife to allow her to obtain additional education and establish employment. The timeframe for reservation (May 2004 to September 2008) exceeded the estimated length of time (1 year) Wife would need to complete her education and allowed time for her to establish employment. Husband argues Wife is now working, and based on the change in circumstances, child support should be established. Court of Appeals affirmed ruling that the district court properly denied Husband's motion to establish support and properly construed the agreement of the parties.</p>	<p>Where J&D reserved support obligation for specific unexpired period upon agreement of the parties, court did not abuse discretion in denying Husband's motion to establish support.</p>
<p><u>In Re the Marriage of Conlin v. Conlin</u>, A06-1978 (Unpub.), Filed September 25, 2007 (Minn. Ct. App. 2007): District court abused its discretion in failing to modify child support. The district court found that the obligor had a larger increase in income than obligee and therefore the prior order was not unreasonable or unfair. The Court of Appeals concluded that the substantial change in income for both parties along with the fact that obligor had been paying guidelines child support for 10 years despite the fact that the parties had joint custody warranted the modification based on a substantial change in circumstances. Reversed and remanded.</p>	<p>Modification is unreasonable and unfair when income increases, subsequent children are born and obligor had been paying guidelines support despite joint physical custody.</p>
<p><u>In re the Marriage of Weeks v. Weeks</u>, (Unpub.), A06-2147, filed October 2, 2007 (Minn. App. 2007) Wright County: Appellant sought to modify child support after having stipulated to a child support amount lower than guidelines in the original dissolution. The court ruled the obligation was not unreasonable or unfair because, while the obligor formerly paid child support at a reduced rate due to a contribution to child care costs, the obligor currently paid TEFRA medical contribution instead of child care costs and the combined obligation was only slightly less than the guidelines support amount.</p>	<p>Where parties stipulate to a deviation in child support in J&D, the order must be shown to be unreasonable and unfair to modify.</p>
<p><u>Weiss vs. Weiss</u>, (Unpub.), A06-2433, filed December 24, 2007 (Minn. App. 2007): The court did not err in including appellant's overtime pay in calculating child support where the court found that prior calculations included the overtime pay and appellant failed to demonstrate a statutory exception applied.</p>	<p>Overtime may be included where included in establishing support and no change in circumstances has been shown.</p>

II.O.1.-Substantial Change

<p><u>Samantha Jane Gemberling vs. Karl Hampton</u>, (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008): A party does not meet §518.551 requirements in showing a change in circumstances simply because a temporary order is set pending a review hearing. The purpose of the review hearing was for the parties to provide financial information to clarify their financial situations.</p>	<p>Temporary order with review does not in itself mean the change in circumstances burden has been met.</p>
<p><u>In re the Marriage of Mark William Carroll v. Desiree Lucille Boeltl</u>, (Unpub.), A07-1349, filed January 2, 2008 (Minn. App. 2008): Appellant mother argues that the court abused its discretion by ordering child support where there was no child support ordered under the dissolution and petitioner father has not demonstrated a change in circumstances from the dissolution. Court held that there was a change of circumstances making modification appropriate where the court changed parenting time from joint custody to sole with parenting time provisions, and appellant's income had increased by more than 20%.</p>	<p>Modification requirements met where prior order reserved, custody arrangement has changed, and obligor's income has increased by more than 20%.</p>
<p><u>In re the Marriage of: Leah Grace Staquet v. Paul John Staquet</u>, (Unpub.), A07-0493, filed April 1, 2008 (Minn. App. 2008): Obligor originally brought a motion to modify before a district court judge, asserting stress from his dissolution prevented him from working as a pilot. Obligor produced no medical documentation of disability, but provided pay stubs showing the amount of disability he was receiving. The district court judge denied the modification, finding obligor did not meet his burden of proof to show he was not voluntarily unemployed or underemployed. Less than 2 months later, appellant obligor sought modification before a CSM, presenting the same documentation and testimony. The CSM reduced appellant's support. The Court of Appeals held the CSM abused discretion by effectively overruling the district court without additional evidence of obligor's disability.</p>	<p>CSM abuse of discretion by overruling district court's decision.</p>
<p><u>David Roger Williams v. Margaret Mary Williams</u>, (Unpub.), A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant obligor challenges decision to modify based on termination of obligor's \$1500 mortgage payment. The Court of Appeals remanded because the findings of the original decree are silent as to obligor's expenses and no basis is stated by the District Court comparing the current expenses against the prior expenses, thus the findings do not support a change in circumstances. Furthermore, the District Court never expressly found that the original support obligation is unreasonable or unfair.</p>	<p>Order not unreasonable or unfair if a large expense terminates, but no findings as to prior expenses compared to current expenses.</p>

II.O.1.-Substantial Change

II.O.2. - Application of Guidelines

<u>Kluge v. Kluge</u> , 358 NW 2d 485 (Minn. App. 1984): Once threshold of Minn. Stat. § 518.64 met, statutory guidelines apply to child support modification.	Threshold to Apply
<u>Hadrava v. Hadrava</u> , 357 NW 2d 376 (Minn. App. 1984): If substantial change in circumstances shown on any one of the grounds in Minn. Stat. § 518.64, court must apply guidelines in determining child support.	Mandatory
<u>Kehr v. Kehr</u> , 375 NW 2d 88 (Minn. App. 1985): Once party proves grounds for modification, trial court must address question of whether original support terms are unreasonable and unfair; guidelines applicable unless findings made justifying deviation.	Grounds
<u>Fifield v. Fifield</u> , 360 NW 2d 673 (Minn. App. 1985): Court will not undermine stipulation by application of guidelines upon motion for modification where parties knowingly and voluntarily deviated from guidelines in original stipulation.	Original Order Stipulated
<u>Fairburn v. Fairburn</u> , 373 NW 2d 609 (Minn. App. 1985): Child support guidelines apply to age 18 in modification of a pre-June 1, 1973 decree.	Only to Age 18
<u>Swanson v. Swanson</u> (Patricia v. Roy), 372 NW 2d 420 (Minn. App. 1985): Guidelines apply to modification though original Judgment and Decree occurred before their effective date.	Pre-Guidelines J & D
<u>Santoro v. Ramsey</u> , 366 NW 2d 698 (Minn. App. 1985): Must establish substantial change in justifying modification before guidelines can be applied.	Substantial Change
<u>Kujawa v. Kujawa</u> , 397 NW 2d 445 (Minn. App. 1986): Use of child support guidelines to modify amount of child support for children between 18 and 21 is within the trial court's discretion.	Age of Majority
<u>Moylan v. Moylan</u> , 384 NW 2d 859 (Minn. 1986): The child support guidelines must be considered by the court in all modification proceedings.	Mandatory
<u>Danielson v. Danielson</u> , 393 NW 2d 405 (Minn. App. 1986): Increase by applying guidelines without required findings was error.	Increase - Findings
<u>In Re the Marriage of Ruth Schmieg v. Steven Schmieg</u> , (Unpub.), C4-93-1524, F & C, filed 3-22-94 (Minn. App. 1994): If statutory presumption (50/20%) of unfairness is not met, court must make finding of unfairness before modifying order.	50/20 not met
<u>Weitzel-Green v. Green</u> , (Unpub.), C7-01-754, CX-01-1185, F & C, filed 11-6-01 (Minn. App. 2001): Where, in a joint physical custody case, obligor agreed to an upward deviation from the guidelines at the time of the J & D, paying much more than what would have been required under <u>Hortis-Valento</u> , and where original stipulation had a reasonable basis to bypass <u>Hortis-Valento</u> , in considering motion to modify, the district court is not bound by <u>Hortis-Valento</u> , but can consider it as a factor in setting support.	Use Application of <u>Hortis-Valento</u> in Modification Where not Applied in Original Order
<u>Bormann v. Bormann</u> , 644 NW 2d 478 (Minn. App. 2002): In a joint custody case where <u>Hortis/Valento</u> was applied and mother sought an increase in father's support, and where the parties stipulated to a substantial increase in father's income, mother's failure to provide information as to her own income was an inadequate basis upon which to conclude that mother failed to provide that father's support obligation was unreasonable and unfair. However, mother may need to provide her income information in order to apply the <u>Hortis</u> formula and determine a net support amount.	In Joint Custody Case, Increase in Father's Income Sufficient to Prove Prior Order "Unreasonable and Unfair"
<u>In Re the Marriage of Matey v. Matey</u> , (Unpub.) A05-1917, filed June 20, 2006 (Minn. App. 2006): The Court held that findings are not required explaining why a court will <i>not</i> deviate from guidelines unless the Obligor submits evidence showing his inability to pay at guidelines.	Findings NOT required when court refuses to deviate from guidelines support.
<u>In Re the Marriage of Bender v. Bernhard</u> , (Unpub.), A05-1545, filed June 20, 2006 (Minn. App. 2006): Upheld a district court decision that ordered guidelines child support for a child with documented special needs. The Court was unwilling to reverse <u>McNulty v. McNulty</u> , 495 N.W.2d 471 (Minn. App. 1993), <i>review denied</i> (Minn. Apr. 12, 1993), noting that that case was a unique situation where the Ct. of Appeals affirmed a presumptively incorrect above guidelines obligation, whereas this case would require the Court to reverse a presumptively correct guidelines obligation.	No reversal of guidelines support amount on the basis that the child has special needs.

II.O.2.-Application of Guidelines

<p><u>Schwagel vs. Ward, (Unpub.)</u>, A06-1812, F & C, filed September 11, 2007 (Minn. App. 2007): Changes to child support laws effective January 1, 2007, do not apply in this case because the parties filed their motions before January 1, 2007.</p>	<p>Guideline changes do not apply to child support motions filed prior to January 1, 2007.</p>
<p><u>David Roger Williams v. Margaret Mary Williams, (Unpub.)</u>, A06-1918, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court's order increasing child support to a level exceeding the guidelines amount in an attempt to equalize the parties' standards of living. Although the court is directed to take into consideration the standard of living the child would have enjoyed had the marriage not been dissolved, equalizing income may not be a basis to deviate when calculating child support. Without evidence that the child requires more support from the higher-income parent, disparity in the income of the parents does not justify a deviation from the <i>Hortis/Valento</i> formula.</p>	<p>Equalizing income of the parties is not enough to deviate from guidelines without additional findings.</p>

<p><u>Michaels v. Michaels</u>, (Unpub.), A05-295, filed 11-8-2005 (Minn. App. 2005): Appellate court upheld the district court (and CSM) decision finding an obligor “underemployed” and imputing income consistent with a management position where the obligor had been laid off from Greyhound, was unemployed for a period and did not pursue temporary work, and settled for a position as a reserve flight attendant working approximately 70 hours per month. The court found that obligor failed to demonstrate that his underemployment would lead to an increase in income or that his current employment was a bona fide career change.</p>	<p>Imputation of income affirmed</p>
<p><u>In Re the Marriage of Giese v. Giese</u>, (Unpub.) A05-949, filed June 20, 2006 (Minn. App. 2006): The court found that the obligor was voluntarily underemployed because he chose to work in an entirely different field than the field he’d worked in for 18 years and because an entry level position in his prior career field would pay more than the current position.</p>	<p>Obligor found underemployed when he voluntarily chose position in different field despite career history and earning potential.</p>
<p><u>In Re the Marriage of Hoppe v. Hoppe, County of Anoka, Intervenor</u>, (Unpub.), A06-98, Filed January 30, 2007 (Minn. App. 2007): The court affirmed the district court’s finding that obligor was voluntarily underemployed because he continued to operate his own business as his only means of income and the business consistently lost money. The court found that obligor’s choice to become self-employed had a negative impact on his children. The district court found obligor was not credible in his testimony, that he willfully withheld information about his income, and there was little documented evidence of obligor’s actual income.</p>	<p>MODIFICATION Voluntarily underemployed. Failing as self-employed business owner.</p>
<p><u>In re the Marriage of Linda Louise Sarvey v. Robert Hieu Sarvey</u>, (Unpub.), A06-1525, Hennepin County, filed June 19, 2007 (Minn. App. 2007): Appellant-husband challenges the J&D, arguing district court abused its discretion in distribution of marital property, award of spousal maintenance, child support, life insurance provisions and award of attorneys fees to respondent. The court properly relied on financial documentation of the parties and found that appellant voluntarily changed employment and self limited his income. Respondent’s decreased household expenses stem from appellant’s failure to pay support, and therefore should not be seen as the normal level of lifestyle maintained during the marriage. Appellant is not entitled to proceeds from marital property where respondent sold property to provide for basic necessities due to appellant’s nonsupport.</p>	<p>Change of employment and self-limited income.</p>
<p><u>Jennifer Gwen Loveland v. Francis Joseph Brosnan</u>, (Unpub.), A07-0388, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court’s order denying his motion to modify his child support. The CSM found that appellant had failed to provide sufficient or reliable information regarding his income. Obligor’s ability to maintain a lifestyle incurring over \$6,000 in monthly expenses while on an unpaid medical leave for over 1 ½ years cut against his claim that his reduced earnings prevented him from making child support payments. Obligor failed to submit any information regarding his future employment prospect at his previous employer. Additionally, the documents submitted by obligor called into question his actual current income. No abuse of discretion.</p>	<p>Moving party has burden to demonstrate his earning capacity is diminished, his financial situation has deteriorated, or that he has made a good faith effort to seek reinstatement of re-employment.</p>
<p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued for a decrease in support alleging his income substantially decreased since the dissolution. CSM denied because obligor failed to demonstrate that he is not voluntarily underemployed. Court of Appeals affirmed, citing obligor had the burden to show why he did not pursue work in the field he had experience and why he pursued another career.</p>	<p>Obligor has burden of demonstrating reduced income is not voluntary underemployment</p>

II.O.3.-Self-Limitation of Income/Career Changes

II.O.5. - Decreased Income

<p><u>Fuller v. Glover</u>, 414 NW 2d 222 (Minn. App. 1987): Former husband's loss of income resulting from termination of employment was not substantial change in circumstances so as to justify downward modification of husband's child support obligation, where husband continued to enjoy substantial wealth and comfortable life style, particularly as compared to that of former wife and minor child.</p>	Income Loss but Fancy Lifestyle
<p><u>Romig v. Palodichuk</u>, (Unpub.), C8-96-1556, F & C, filed 2-18-97 (Minn. App. 1997): Court's findings that obligor (1) currently earned a minimal income and (2) his voluntary termination of his past employment to start his own business resulted in a decrease in earnings, do not constitute a finding of voluntary employment or under employment. Decrease in earnings does not, by itself, implicate the imputed income provision of Minn. Stat. § 518.551, Subd. 5b(d).</p>	Decrease in Income not Sufficient to Impute Income
<p><u>Robbins vs. Robbins, n/k/a Blowers</u>, (Unpub.), A06-2124, filed November 27, 2007 (Minn. App. 2007): The lower court did not err in relying upon credible testimony of the respondent in determining that the respondent's work hours decreased, even though respondent did not provide documentary support of that fact.</p>	Credible testimony sufficient to establish changed circumstance

<p><u>O'Donnell v. O'Donnell</u>, 678 NW2d 471 (Minn. App. 2004): Increased expenses that are ordinary and foreseeable at the time the parties enter into the MTA (even where the MTA included a downward deviation from guidelines) are insufficient to support an increase in support (in this case to guidelines level) 5 months after the divorce, particularly where (1) both parties were represented by counsel, (2) the parent had opportunity to assess child's expenses before the divorce, (3) there is no fraud, mistake or duress, and (4) the best interests of the children do not necessitate a change and will not be adversely affected by a continuation of the support terms of the original judgment.</p>	<p>Ordinary and Foreseeable Increase in Expenses</p>
<p><u>O'Donnell v. O'Donnell</u>, 678 NW2d 471 (Minn. App. 2004): Where J&D did not provide for expenses of an emancipated child, cost of college education was not an increased expense of obligor justifying a finding of change of circumstances and increase of child support. See <u>Tibbetts</u>, 398 NW 2d 16, 19 (Minn. App. 1986).</p>	<p>College Tuition</p>
<p><u>In re the Marriage of: Chaharsooghi v. Eftekhari</u>; Minn. Ct. App. Unpublished. (A05-2259): Joint physical custody case. Appellant-husband appealed denial of his modification motion. Dissolution required appellant to pay child support, pay all premiums for the children's medical insurance, all uninsured or unreimbursed medical and dental expenses for R.E. and ½ of O.E.'s expenses, all expenses for tutoring both children through Sylvan Learning Center, and apportion the costs for extracurricular, recreational or other activities the children participate in if the parties agree to the participation. The child R. E. ultimately was sent out of state to a boarding school. Appellant had agreed to fully bear the costs and respondent reluctantly agreed to send the child to the school. Appellant moved to reduce his support obligation and modify the decree such that the parties would be responsible of ½ of the extraordinary expenses of both minor children. The child support magistrate denied the motion finding appellant failed to proof a substantial change in circumstances, and the district court affirmed. The appellate court held that while the parties were not aware of the child's "recently diagnosed" nonverbal learning disability at the time of the dissolution, they were generally aware that the child is a special needs child and were cognizant of the financial issues concerning the child's disabilities. Special concurrence held that expenses were known to both parents at time of dissolution, and current expenses, though significant, did not constitute a change in circumstances that makes the child support obligation unreasonable or unfair.</p>	<p>special needs child</p>
<p><u>Arneson v. Meggitt</u>, (Unpub.), A06-1437, filed 10/30/07 (Minn. App. 2007): Following CSM's denial of NCP's motion to decrease, CP requested review by district court and extension of child support beyond date previously stipulated by parties, because child's high school graduation was delayed. District court approved extension and NCP appealed. Court of Appeals affirmed, holding child's best interests trump parties' prior stipulation, and citing <u>Tammen v. Tammen</u> and <u>Swanson v. Swanson</u>.</p>	<p>Extension of Support Contrary to Prior Stipulation</p>

II.O.6.-Needs/Resources of Child

<p><u>In re the Marriage of: Erickson v Erickson</u>, (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): Court of Appeals remanded issue of “retroactive modification” of child support arrears to district court because \$5,900 credit granted by the district court, based on NCP’s payment in that amount, exceeded the amount of child support arrears owed. Further, district court’s refusal to reduce spousal maintenance arrears was inconsistent with decision to reduce child support arrears. [EDITOR’S NOTE: This is clearly an issue of <i>satisfaction</i>, not retroactive modification, because it is based upon obligor’s payment and discharge of obligation, not based on change in ability to pay.]</p>	<p>“Retroactive Modification” Inconsistent with Arrears</p>
<p><u>Robbins vs. Robbins, n/k/a Blowers</u>, (Unpub.), A06-2124, filed November 27, 2007 (Minn. App. 2007): The district court acted within its discretion in forgiving child support arrears that accrued under a temporary order where the decision was well-reasoned, supported by facts, and intended as an offset against a reciprocal unpaid debt of the obligee. Dist. Crt. also did not err in failing to award retroactive child support back to the date of the parties’ separation where the parties’ situation was carefully weighed by the court, and the court made specific findings of obligor’s limited means to pay retroactive support compared to obligee’s stable financial situation.</p>	<p>Forgiveness of arrears permissible if supported by facts. Retroactive modification. (518.64 and 518A.39)</p>
<p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008): Appellant argues that the district court erred in failing to modify his child support obligation retroactive to the date of the parties’ MTA. The Court of Appeals held that appellant waived his right to raise this issue because he failed to raise it in the district court. The Supreme Court affirmed. Additionally, the Court noted that even if it was not waived, the claim lacks merit as there was a temporary child support order in place. Appellant could have moved to amend or vacate the temporary order anytime before the court entered its final decree. However, Minn. Stat. § 518.64, subd. 2(d) (2004) limits the period of retroactive application to the period during which a motion for modification is pending. Appellant made no motions to modify any time before the final decree was issued. Therefore, the temporary order cannot be modified, as upon entry of the final decree, the temporary order was no longer in effect.</p>	<p>Modification of temporary child support; retroactivity</p>
<p><u>Schirmer vs. Guidarelli, f/k/a Schirmer</u>, (Unpub.), A07-1021, filed May 27, 2008 (Minn. App. 2008): Although generally a modification may be made retroactive only to the date of service of the motion, an exception may be made when, as here, the court finds that the party seeking modification is a recipient of public assistance. Minn. Stat. §518.64, subd. 2(d)(2).</p>	<p>Retroactive modification where recipient of public assistance.</p>

II.O.9.-Retroactive Modification

II.O.10. - Failure to Produce Income Data (See also Part II.D.2.)	
<u>Sundell v. Sundell</u> , 396 NW 2d 89 (Minn. App. 1986): Sufficient basis in record for findings on income of obligor to justify modification although obligor failed to produce documentation or testimony disclosing number of hours worked or hourly wage.	Sufficient Basis to Modify
<u>Levine v. Levine</u> , 401 NW 2d 132 (Minn. App. 1987): Lack of candor of father, failure to document income thoroughly, and voluntary partial reduction in working hours formed part of court's basis in denying reduction of support.	Denial of Reduction
<u>Tuthill v. Tuthill</u> , 399 NW 2d 230, 232 (Minn. App. 1987): When a party seeking modification provides inadequate documentation, the court will not speculate and the party cannot complain if the court refuses to modify the decree.	Inadequate Documentation
<u>In Re the Marriage of Johnson and Johnson</u> , 533 NW 2d 859 (Minn. App. 1995): Where divorce decree required obligor to produce paystubs and tax returns and he refused to do so, even after obligee's repeated oral requests, there was a basis for a finding of material misrepresentation (which includes concealing or not disclosing facts that one has a duty to disclose) and met the requirement for retroactive upward modification under Minn. Stat. § 518.64, Subd. 2(c).	Failure to Produce Income Data Equals Material Misrepresentation
<u>Pangborn v. Pangborn</u> , (Unpub.), C9-97-1317, F & C, filed 2-10-98 (Minn App. 1998): It is not unfair to impose retroactively an increased child support obligation based on imputed income (in this case retroactive to six years earlier when obligor quit her full-time job) where her fraud on the court and continuing failure to provide income information precluded obligee from seeking increase early.	Retroactive Imputation where there has been a Fraud on the Court
<u>Cunningham and Olmsted County v. Salata</u> , (Unpub.), C4-97-1838, F & C, filed 4-7-98 (Minn. App. 1998): (Asst. Co. Atty Julie Voigt) Obligor refused to provide ALJ with evidence of his debts and support was initially established based on available information. Less than a year later, obligor sought to modify his support amount in district court, based in part, on debts that existed, but which he failed to disclose at time of initial order. Court of appeals ruled court may not consider debts that were due at time of ALJ hearing, but may consider debts that become due subsequent to the ALJ hearing.	Cannot Obtain Modification in Later Proceeding Based on Evidence Failed to Provide in Earlier Proceeding
<u>Bowers and County of Anoka v. Vizenor</u> , (Unpub.), C0-98-440, F & C, filed 10-6-98 (Minn. App. 1998): Where ALJ continued a final determination to a review hearing, ordering the obligor to provide medical evidence to support his claims that he is unable to work, and obligor did not produce the evidence, it was proper for ALJ to disregard obligor's claim of incapacity and to impute income.	No Medical Evidence Provided
<u>Eben f/n/a Brouillette vs. Brouillette</u> , (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The CSM did not abuse it's discretion by denying modification of the amount of child support arrears owed by appellant father to respondent mother where the only evidence appellant offered was his testimony, which the CSM did not find credible.	No error in denying motion to modify where only evidence offered was testimony not found credible.
<u>Weiss vs. Weiss</u> , (Unpub.), A06-2433, filed December 24, 2007 (Minn. App. 2007): The district court's failure to make findings as to appellant's current net monthly income did not constitute an abuse of discretion where appellant provided the court with insufficient information and respondent provided more credible information.	No error where court relied on credible testimony of respondent, and appellant provided insufficient documentation.
<u>Samantha Jane Gemberling vs. Karl Hampton</u> , (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008): The CSM did not error in finding that appellant failed to meet his burden of proof regarding a change in his income in that the CSM found and the record demonstrates appellant provided incomplete information and his tax returns omitted pertinent schedules regarding his income.	Change in circumstances burden not met where incomplete tax returns submitted as proof of change.

II.O.10.-Failure to Produce Income Data

<p><u>Jennifer Gwen Loveland v. Francis Joseph Brosnan</u>, (Unpub.), A07-0388, filed April 8, 2008 (Minn. App. 2008): Appellant obligor appeals from the district court's order denying his motion to modify his child support. The CSM found that appellant had failed to provide sufficient or reliable information regarding his income. Obligor's ability to maintain a lifestyle incurring over \$6,000 in monthly expenses while on an unpaid medical leave for over 1 ½ years cut against his claim that his reduced earnings prevented him from making child support payments. Obligor failed to submit any information regarding his future employment prospect at his previous employer. Additionally, the documents submitted by obligor called into question his actual current income. No abuse of discretion.</p>	<p>Moving party has burden to demonstrate his earning capacity is diminished, his financial situation has deteriorated, or that he has made a good faith effort to seek reinstatement of re-employment.</p>
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<p><u>In Re the Marriage of Wheeler v. Wheeler</u>, (Unpub.), A06-569, Filed 9/5/06 (Minn. App. 2006): CP failed to inform CSM of boarding school expenses at the time of a hearing of motion to modify support and only weeks later attempted to move the <i>district</i> court to divide the boarding school expenses and was denied. CP later brought same motion before the CSM and CSM denied motion on res judicata grounds. CP insisted district court's ruling was "referring the matter back to the CSM." Court of Appeals upheld the decision of CSM indicating the matter was res judicata and stating "finding that a party failed to raise an issue at the appropriate time equates to a finding of waiver, not to a remand of the issue." <i>citing Graham v. Itasca County Planning Comm'n</i>, 601 N.W.2d 461, 468 (Minn. App. 1999).</p>	<p>EX PRO PROCEDURE: Motion to mod. that has been denied by the district ct. is res judicata before the CSM when there has been no change in circumstances.</p>
<p><u>Fischer v. Fischer</u>, A06-1656, Filed July 24, 2007 (Minn. App. 2007): The district court erred when it suspended Obligor's spousal maintenance obligation but still allowed arrearages to accrue during the suspension period. The Court of Appeals reversed, finding that the order allowing arrearages to accrue during the time the spousal maintenance obligation is suspended is inconsistent and erroneous as a matter of law. Since a suspension of an obligation means there is no obligation to be paid, arrearages cannot accrue during a suspension.</p>	<p>ARREARS: arrears cannot accrue during time in which an obligation is suspended</p>
<p><u>In re the Marriage of: Loren Helen Faibisch, petitioner, Appellant, vs. Manuel Esguerra, Respondent.</u>, (Unpub.), A06-1751, Ramsey County, filed August 21, 2007 (Minn. App. 2007): Appellant argues the district court should have held an evidentiary hearing on her motion to modify. Noncontempt family motions are decided without an evidentiary hearing unless otherwise ordered by the court for good cause (<i>citing Minn. R. Gen. Pract. 303.03(d)</i>). No evidentiary hearing was requested by either party.</p>	<p>Noncontempt family motions are decided without an evidentiary hearing unless otherwise ordered by the court for good cause.</p>
<p><u>In re the Marriage of Arneson v. Meggitt</u>, (Unpub.), A06-1437, Filed October 30, 2007 (Minn. App. 2007), Dakota County: The district court did not err when it extended the obligor's child support obligation one year beyond that which was stipulated to by the parties in their J&D when the child of the parties had fallen behind in school due to behavioral and academic issues and his graduation date was subsequently delayed one year. Stipulated child support judgments are not contracts that bind the court, and the court may reset child support because of the important public policy favoring the nonbargainable interests of the child. See <i>Swanson v. Swanson</i>, 372 N.W.2d 420, 423 (Minn. App. 1985).</p>	<p>Court has broad discretion to modify child support even in the face of a stipulation when modification benefits the best interests of the child.</p>
<p><u>Eben f/k/a Brouillette vs. Brouillette</u>, (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The CSM did not abuse its discretion by denying modification of the amount of child support arrears owed by appellant father to respondent mother where the only evidence appellant offered was his testimony, which the CSM did not find credible.</p>	<p>No error in denying motion to modify where only evidence offered was testimony not found credible.</p>
<p><u>Samantha Jane Gemberling vs. Karl Hampton</u>, (Unpub.), A07-0074, filed January 15, 2008 (Minn. App. 2008): A party does not meet §518.551 requirements in showing a change in circumstances simply because a temporary order is set pending a review hearing. The purpose of the review hearing was for the parties to provide financial information to clarify their financial situations.</p>	<p>Temporary order with review does not in itself mean the change in circumstances burden has been met.</p>
<p><u>In re the Marriage of Thomas Eugene Broome v. Sandra Marie Wedmann, f/k/a Sandra Marie Broome, f/k/a Sandra Marie Lambrecht</u>, (Unpub.), A06-2368, filed 1/22/08 (Minn. App. 2008): Appellant father argues the child support magistrate abused discretion by departing from the guidelines in opting not to apply the Hortis/Valento formula when modifying father's obligation. The CSM's deviation from the guidelines must be reversed because, except for addressing the parties' earnings, the CSM failed to make the findings required by Minn. Stat. § 518.551, subd. 5(i).</p>	<p>Deviations from guidelines require findings under Minn. Stat. § 518.551, subd. 5(i).</p>
<p><u>Carlene Yvonne Nistler v. Terrance Roger Nistler</u>, (Unpub.), A07-0793, filed April 1, 2008 (Minn. App. 2008): Appellant obligor argued he was denied due process as a pro se litigant when CSM failed to sua sponte grant him a continuance or leave the record open for submission of documents. Court of Appeals held no abuse of discretion to fail to grant relief that obligor did <u>not</u> request, noting the obligor has the initial burden of proof and pro se litigants are held to the same standard as attorneys.</p>	<p>No due process violation when court fails to order something not requested by pro se litigant.</p>

<p><u>In re the Marriage of: Neisen, f/k/a Thompson, f/k/a LaRowe and Thompson,</u> (Unpub.), A03-1616, filed 6-15-04 (Minn. App. 2004): Obligor claimed that he had satisfied his support obligation because pursuant to an extra-judicial agreement between the parties, he had physical custody of the children for a longer period of time than the joint-physical-custody arrangement contemplated. Where the parties' agreement was not approved by the court, the obligor's claim can prevail only if the court makes findings that the agreement was (1) contractually sound and (2) otherwise fair and reasonable. <u>Kielley v. Kielley</u>, 674 NW 2d 770, 776-77 (Minn. App. 2004).</p>	<p>§ 518.57, subd. 3 may apply where Parties Agreed out of Court to Change from Sole to Joint Physical Custody</p>
<p><u>In re the Marriage of: Neisen, f/k/a Thompson, f/k/a LaRowe and Thompson,</u> (Unpub.), A03-1616, filed 6-15-04 (Minn. App. 2004): <u>Karypis v. Karypis</u>, 458 NW 2d 129, 131 (Minn. App. 1990) <i>review denied</i> (Minn. Sept. 14, 1990) which applied the satisfaction of support principle only to sole custody cases was superceded by Minn. Stat. § 518.57, subd. 3 (2002), which does not limit the application to sole custody cases.</p>	<p>§ 518.57, subd. 3 not Limited to Sole Custody Cases.</p>
<p><u>Powers, f/k/a/ Duncan v. Duncan,</u> (Unpub.), A04-19, F & C, filed 10-5-04 (Minn. App. 2004): CSM's finding that the child lives with friends and not with CP is an inadequate basis to absolve NCP of the obligation to pay child support. The fact that a child does not live with the person awarded physical custody does not necessarily relieve the obligor from having to pay support. See. Minn. Stat. § 518.17, Subd.3&4.</p>	<p>Child Lives with Friends</p>
<p><u>Tan v. Seeman,</u> (Unpub.), A04-482, F & C, filed 10-12-04 (Minn. App. 2004): Child moved from Dad's home to Mom's home, and Dad consented to change of custody. Mom sought retroactive support to the date the child moved in with her. Minn. Stat. § 518.57, Subd. 3 does not provide a basis for a retroactive <i>establishment</i> of support where child had moved into former NCP's home. In this case, the court found that the former NCP (Mom) was not an "obligor" under Minn. Stat. § 518.57 or § 518.54, Subd. 8, since the she had not been ordered to pay support when the child was with the other parent (Dad).</p>	<p>Minn. Stat. § 518.57 Does not Provide a Remedy for Retroactive Establishment of Support When Child Moves into NCP's Home</p>
<p><u>In re: Horak v. Horak,</u> (Unpub.), A04-2260, filed 10-11-2005 (Minn. App. 2005): Generally, retroactive modification of a child support order is permissible as of the date that the motion to modify was served on the opposing party. However, enforcing retroactive modification of support to the date of the change in physical custody (from sole physical custody to split custody) is not an abuse of discretion when the parties stipulated to such retroactivity.</p>	<p>Retroactive modification allowed by stipulation when change of custody</p>
<p><u>In re the Marriage of Carole V. Marx, petitioner, Respondent vs. Robert B. Marx, Appellant, and County of Anoka, intervenor, Respondent,</u> (Unpub.), A06-1678, Anoka County, filed July 31, 2007 (Minn. App. 2007): J&D of the parties provided Respondent could deduct from her monthly installments owed to Appellant under a contract for deed any sum that Appellant failed to pay Respondent as child support. Appellant argues district court erred by not giving him an offset in his child-support arrearage against the payments Respondent failed to make on the installment after he executed an assignment of the contract for deed to a bank. This Court finds the terms of the J&D did not confer a mutual setoff. Additionally, Appellant maintained no interest in the payments owed by Respondent after he assigned his interest to the bank. Therefore Appellant is not entitled to an offset.</p>	<p>Court is not required to offset child support arrearage obligation of obligor against amounts owed by obligee under a contract for deed.</p>
<p><u>Lewis vs. Lewis,</u> (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Respondent husband argues the district court abused its discretion by finding him in arrears by \$9,915.21 for his maintenance obligation. Record reflects respondent began making full support payments, as well as paying several bills appellant failed to pay, in order to preserve the marital property. Without seeking modification of the order, respondent deducted those payments from the support obligations owed under the order. Under these facts, respondent is entitled to a credit against his arrears.</p>	<p>Credit against arrears.</p>
<p><u>In re the Marriage of Viele v. Viele,</u> (Unpub.), A07-212, filed October 9, 2007 (Minn. App. 2007), Wright County: The court held that the district court was not required to apply an offset of monies paid for bills during the dissolution proceedings to support arrearages of the obligor. A calculation of an obligor's arrears includes only the amounts that the obligor has failed to pay after being court ordered to do so.</p>	<p>Arrears not required to be offset by bills paid prior to the support order.</p>

II.P.2.-Defenses/Set-Offs/Satisfaction by Integration Into NCP's Home

<p><u>Lubich n/k/a Miller vs. Lubich</u>, (Unpub.), F & C, A07-1159, filed March 4, 2008 (Minn. App. 2008): Appellant/non-custodial parent argues expenses he incurred while children were living with him should have been offset against his support arrears. Court of Appeals held that such an offset would be tantamount to a <i>de facto</i> retroactive modification of support. Citing Minn. Stat. §518A.39(e), the Court of Appeals ruled that appellant is entitled to reduction of arrears for only the period after he served his motion to modify.</p>	<p>Offset to arrears only during period when motion to modify is pending.</p>
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II.P.3. - Generally	
Minn. Stat. § 518.6195 - collection of arrears and past pregnancy and confinement expenses.	
<u>Kinsella v. Kinsella</u> , 181 NW 2d 764 (N.D. 1970): The parties remarriage to each other does not nullify child support arrearages that accrued from the time between entry of the divorce decree and remarriage. (See also: <u>Root v. Root</u> , 774 SW 2d 521 (Mo. Ct. App. 1989). <u>But see</u> a different outcome in <u>Ringstrom v. Ringstrom</u> , 428 NE 2d 743 (1981).)	Remarriage Does not Extinguish Arrears
<u>Weinand v. Weinand</u> , 175 NW 2d 506 (Minn. 1970): In independent action brought by mother for accrued arrearages, it was immaterial whether father was able to pay in first instance and despite such inability mother was entitled to judgment for accrued payments.	In Action for Judgment, Ability Irrelevant
<u>Barth v. Barth</u> , 356 NW 2d 743 (Minn. App. 1984): No finding of ability to pay required for judgment for support arrears.	Action for Judgment
<u>March v. Crockarell</u> , (Unpub.), C1-00-1260, F & C, filed 2/6/01 (Minn. App. 2001): The provision of Minn. Stat. § 548.091, Subd. 1a providing that interest accrues on arrears from the date the unpaid amount is due applies to all arrears, including arrears that accrued prior to the effective date of the statute. The earlier version of the statute (1992) which required a docketed judgment has no relevance to an action commenced after the effective date of the amended statute.	Calculation of Interest
<u>In Re the Matter of Washington v. Anderson</u> , A05-2338, filed October 24, 2006 (Minn. App. 2006): The district court erred when it retroactively increased appellant's support obligation and, simultaneously, deemed the amount due for the period covered by the retroactive increase to be unpaid arrears and awarded judgment in favor of the respondent for those "arrears." Because no amount of "past support" was contained in the support order of the parties and because it was unclear whether the court set payment terms for "past support," no "arrears" existed as defined by Minn. Stat. 518.54 subd. 13 (2004). Therefore, Court reversed the award to respondent of the judgment for "arrearages."	Arrears do not exist where a retroactive modification is granted and no "past support" is owed.
<u>In re the Marriage of Jeffrey J. Pierson v. Janell H. Johnson and Dakota County, intervenor</u> , (Unpub.), A06-603, Dakota County, filed January 23, 2007 (Minn. App. 2007): Extrajudicial agreements between the parties may do not necessarily relieve the obligor of the obligation to pay.	Separate agreements between the parties may not relieve the obligor of their support obligation.
<u>Fischer v. Fischer</u> , A06-1656, Filed July 24, 2007 (Minn. App. 2007): The district court erred in ordering automatic re-instatement of prior obligations when the Obligor lost his long-term employment and there was no evidence that he would be able to earn the same pay when returning to the workforce. The Court of Appeals found that auto-reinstatement of the child support and spousal maintenance obligations was inappropriate because the court could not know what the income of the Obligor would be when he returned to work and re-instatement with an amount inconsistent with income would not conform with Child Support Guidelines.	AUTO-REINSTATEMENT: auto-reinstatement of a prior order is inappropriate where the prospective earning ability of the Obligor is unknown
<u>In re the Marriage of Carole V. Marx, petitioner, Respondent vs. Robert B. Marx, Appellant, and County of Anoka, intervenor, Respondent</u> , (Unpub.), A06-1678, Anoka County, filed July 31, 2007 (Minn. App. 2007): Appellant contends he waited 8 years after his release from incarceration to move to modify because he believed his child support obligation had terminated with the emancipation of his child, and no arrears action had been brought. Emancipation does not avoid accrued child support arrearages. M.S. § 518.6195(a) provides that the same remedies to collect ongoing support are available to collect arrearages.	Emancipation does not avoid accrued child support arrearages.
<u>Carroll v. Boeltl</u> , (Unpub.), A07-1349, filed 1/2/08 (Minn. App. 2008): Appellant mother argues the court abused its discretion to order judgment for her for the amount of her overpayment of past child support. Minn. Stat. 518A.52(1) requires overpayments to first be applied to reduce any arrears, then (2) used to reduce obligor's future child support payments. The lower court abused its discretion only in that the court reduced the future child support to \$0 until the overpayment was eliminated; the statute requires the reduction of future child support be limited to 20% of the obligor's child support obligation. Therefore, obligor's child support of \$590 should be reduced to \$472 per month until the overpayment has been fully credited.	Overpayment of child support; first apply to arrears, then reduce current obligation by no more than 20% until overpayment eliminated.

<p><u>Kast vs. Kast</u>, (Unpub.), A07-1567, F & C, filed March 4, 2008 (Minn. App. 2008): Because the district court's calculation of appellant's child support arrears is supported by sufficient evidence in the record and is authorized by Minn. Stat. §518.131, subd. 9(b), it is not an abuse of discretion. Affirmed.</p>	<p>Child support arrears</p>
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<p><u>Maschoff v. Leiding</u>, 696 NW 2d 834 (Minn. App. 2005): In joint physical custody case, where support order provided that “the parties have agreed that based on the relatively even income of the parents and the relatively equal parenting access, neither party shall pay support to the other” the parties are not considered to have waived support, and the support is not a reservation under <u>Aumock</u>. Rather, the support order is deemed an application of <u>Hortis/Valento</u>, establishing support at \$00.00.</p>	<p>“Neither Party Pays Support” in Joint Custody Case Interpreted as Setting Support at \$00.00.</p>
<p><u>McSherry v. Schmidt</u>, (unpub.) A05-1229, A05-1562, filed May 16, 2006 (Minn. App. 2006). On 3-29-02 CSM ordered NCP to maintain insurance or pay \$50/m. medical child support to reimburse MA, and reserved issues of ongoing and past child support. CP/respdt. filed for dissolution on 5-6-03. Trial court awarded CP child support retroactive to March 2002. Ct. App. held that in dissolution child support can be retroactive only to commencement of proceeding and changed effective date to May 2003.</p>	<p>In dissolution child support can be retroactive only to commencement of action. Prior reservation in 256.87 action not considered.</p>
<p><u>In Re the Marriage of Morter v. Morter</u>, (Unpub.), A05-2476, Filed September 19, 2006 (Minn. App. 2006): The district court did not err when it imputed income to a self-employed Obligor based on a previous (in 2000) determination of his income of \$11,922 per month that the Obligor did not contest, when the court found the Obligor lacked credibility and failed to supply credible evidence of earnings. The Obligor claimed a personal income of only \$47,764 per year, but was found to be concealing his true income by running his corporation in his current wife’s name. Because this proceeding was an establishment of support subsequent to a reservation of support after a change in custody, the modification statute requiring change in circumstances does not apply.</p>	<p>INCOME: a previously stipulated income may be considered the current income of a self-employed Obligor when the Obligor’s evidence of current income is not credible.</p>
<p><u>Stevermer vs. Stevermeyer</u>, (Unpub.), A07-594, F & C, filed September 4, 2007 (Minn. App. 2007): Dissolution of parties reserved child support from Wife to allow her to obtain additional education and establish employment. The timeframe for reservation (May 2004 to September 2008) exceeded the estimated length of time (1 year) Wife would need to complete her education and allowed time for her to establish employment. Husband argues Wife is now working, and based on the change in circumstances, child support should be established. Court of Appeals affirmed ruling that the district court properly denied Husband’s motion to establish support and properly construed the agreement of the parties.</p>	<p>Where J&D reserved support obligation for specific unexpired period upon agreement of the parties, court did not abuse discretion in denying Husband’s motion to establish support.</p>
<p><u>Buzzell vs. Buzzell</u>, (Unpub.), A07-1096, filed June 10, 2008 (Minn. App. 2008): Appellant argues that the district court abused its discretion by reserving the issue of child support. The appellant’s gross yearly income averaged \$463,893.88 while the respondent obligor’s yearly gross income averaged \$82,858. Based on this and other factors, the court concluded it was in the best interests of the children to reserve support at this time. The findings of the court are supported by the record and its decision to reserve child support is reasonable under the circumstances.</p>	<p>Child support reservation appropriate where in the best interests of the children.</p>

II.S.-Reservation of Child Support

III.F. - EVIDENCE	
III.F.1. - Generally	
Minn. Stat. § 257.63.	
<u>State v. Brathovde</u> , 81 Minn. 501, 84 NW 340 (1900): Improper for prosecutor to call attention of jury to resemblance between child of immature age and the defendant.	Resemblance
<u>State v. Cotter</u> , 167 Minn. 263, 209 NW 4 (1926): General reputation of mother as to chastity and morality is inadmissible as affecting her credibility.	Reputation
<u>State v. Nelson</u> , 221 Minn. 569, 22 NW 2d 681 (1946): Where defendant denied having intercourse with plaintiff at any time and plaintiff testified to one act of intercourse and denied any other, plaintiff not entitled to have jury consider defendant's testimony concerning opportunity at different time and place.	Opportunity
<u>State, ex rel. Dombrowski v. Moser</u> , 334 NW 2d 878 (Wis. 1983): A paternity defendant's request for inspection of the mother's AFDC records falls within statutory exceptions to the general confidentiality of such records. However, the records will be released only if the defendant presents an affidavit stating the grounds for belief that there is information in the AFDC records which is necessary to his defense and the trial court conducts an in camera review of the records and determines that there is information necessary to the defense.	AFDC File
<u>Vaughn v. Love</u> , 347 NW 2d 818 (Minn. App. 1984): No abuse of discretion in refusing to allow video deposition of Dr. Polesky in unrelated case to be shown at trial.	Video Disposition
<u>State of Minnesota, ex rel. Pula v. Beehler</u> , 364 NW 2d 860 (Minn. App. 1985): Plaintiff waived any claim of error by failure to object to evidence at trial on basis of surprise.	Waiver
<u>State of Minnesota, ex rel. Pula v. Beehler</u> , 364 NW 2d 860 (Minn. App. 1985): Defendant's testimony of plaintiff's admission of her sexual intercourse not long before date of conception, if considered credible, is sufficient to support jury's verdict of non-paternity.	Relevance
<u>Frieson v. Pahkala</u> , 653 NW 2d 199 (Minn. App. 2002): Where child was born on October 28, 1998, conception probably occurred in mid to late January 1998. Thus, December 28, 1997, the date of sexual intercourse, was <u>not</u> within the possible conception period (footnote 1).	Month Before <u>Not</u> Within Conception Period
<u>Eben f/k/a Brouillette vs. Brouillette</u> , (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The CSM did not err in denying the submission of new evidence after the close of the record; the parties cannot submit new evidence after the close of the hearing unless requested by the CSM with written or oral notice to the parties.	No new evidence after close of record unless requested by CSM.
<u>Krznarich vs Freeman</u> , (Unpub.), A07-993, filed December 18, 2007 (Minn. App. 2007): The court did not err in denying appellant's motion to add to the record and submit new evidence in support of amended findings and a new trial. New evidence may be submitted only if it is material and could not have been found with reasonable diligence and produced at the original trial.	No new evidence after close of record unless requested by CSM.

<p><u>Maestas v. Koeke</u>, (Unpub.), CX-03-123, filed 7-22-03 (Minn. App. 2003): Court did not err in denying motion to vacate default judgment brought six months after adjudication where party's allegations of a meritorious defense and her reasons for not responding to the complaint were unsupported; however, appellate court remanded to district court to order genetic testing to be performed within 90 days, the procedure used in <u>Wessels v. Swanson</u>, 289 NW 2d at 470.</p>	<p>Genetic Tests Ordered Even Though Proper to Deny Vacation of Default Judgment</p>
<p><u>County of Los Angeles v. Navarro</u>, Cal. Ct. App., 2nd District, Division 8, B15516, filed 6-30-04: AF in this paternity case was served by abode service in 1996, defaulted, and 5 years later filed a motion to set aside the judgment because he recently had been excluded by genetic tests. Under the Cal. Rules of Civil Procedure, six months are allowed for setting aside a judgment. He could not have the judgment vacated based on extrinsic fraud, because the mother's mere assertion that he was the father was not enough to establish extrinsic fraud. The court of appeals ruled that technically, the father could not be relieved from the judgment, particularly if the law is read with an emphasis on the public interest in the finality of judgments. However, in a scathing opinion, the court ruled that the judgment should nevertheless be vacated, because the policy of fair enforcement of support orders, enunciated by the California legislature in the Child Support Enforcement Fairness Act of 2000, declaring the need for prompt correction of errors by the support enforcement agency where the wrong obligor has been identified, is more important than the finality of judgments. In a footnote, the court noted that the doctrine of finality carries more weight in a case where there is a long-standing parental relationship, since in that case the child's psychological well being is at stake. But this AF had never had a relationship with the boys, and the dispute was over money.</p>	<p>Public Policy Favoring Fair Enforcement of Support Orders Overrides Policy Favoring Finality of Default Judgments (California)</p>
<p><u>Northland Temporaries vs. Anthony Turpin, et al.</u>, A06-2201, filed February 5, 2008 (Minn. App. 2008): District court denied appellant's motion to vacate a default judgment. Reversed and remanded as district court's determination of <i>Hinz</i> factors based partially on mistake of fact and error of law. Dicta indicates that a lay person's failure to answer in some circumstances may not be unreasonable. Remand is appropriate where erroneous decision below is based on factual error as it is within the province of the district court to resolve factual disputes in testimony and affidavits and to determine whether excuse is reasonable.</p> <p><i>Hinz</i> and <i>Finden</i> do not limit the district court's discretion to grant rule 60.02 relief. They limit discretion to deny relief. Satisfaction of all four <i>Hinz</i> factors is not required for district court to grant relief. Cannot deny relief if all four factors met. Must show a meritorious claim or reasonable defense on the merits.</p>	<p>Rule 60.02 relief does not require all four <i>Hinz</i> factors be fully met</p> <p>Mistake of Fact</p> <p>Error of Law</p>

III.G.6.-Default/Vacation of Default Judgment

<p><u>County of Freeborn v. Walker</u>, (Unpub.), A07-375, filed April 8, 2008 (Minn. App. 2008): The county served a person identified by a social security number and name located in California with a paternity action. That person failed to appear or answer and a paternity order was entered by default. Subsequently, the county intercepted tax refunds and began income withholding against appellant, a person with the same or similar name and social security number. Appellant objected, argued he wasn't served with any paternity action, indicated he was a victim of identity theft, and was later excluded as the biological father of the child through genetic testing. The district court order required the county to reimburse appellant for child support collected from him and distributed to obligee. The county appealed. The Court of Appeals held that the undisputed lack of proper service renders the resulting judgments void. Restitution is equitable in nature and there is no abuse of discretion to order the county to reimburse the monies. Finally, the court rejected the argument that the funds should be recouped from mother citing (1) that the funds are disbursed does not absolve the county from having to reimburse Appellant if the facts warrant repayment. (2) A series of mistakes by the county resulted in the void judgments. (3) an innocent child support payor should not sue an innocent mother on public assistance to attempt to recover funds incorrectly procured from the payor as a result of void judgments. This is not in the best interest of the child for whom the child support system was created.</p>	<p>County ordered to reimburse defendant past child support collected based on default adjudication, where service on defendant was defective.</p>
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<p><u>Turner and Ramsey County v. Suggs</u>, 653 NW 2d 458 (Minn. App. 2002): A man adjudicated the father of a child in a paternity proceeding may bring a motion either under Minn. R. Civ. P. 60.02 or under Minn. Stat. § 518.145, subd. 2, to vacate the adjudication.</p>	<p>Motion Under 60.02 or § 518.145</p>
<p><u>Turner and Ramsey County v. Suggs</u>, 653 NW 2d 458 (Minn. App. 2002): Where the custodial parent signed an affidavit stating that the defendant was the only possible father of her child, and testified to the same fact at the paternity hearing, and later genetic tests proved non-paternity, the fact that defendant stipulated to paternity and waived genetic testing at the time paternity was adjudicated does not prevent him from later bringing a motion to vacate the paternity adjudication under Minn. R. Civ. P. 60.02 (c) based on fraud, or under Minn. R. Civ. P. 60.02 (b) based on newly discovered evidence that "due diligence" would not have discovered in time to seek a new trial.</p>	<p>Vacation Following Stipulation Based on Fraud</p>
<p><u>Turner and Ramsey County v. Suggs</u>, 653 NW 2d 458 (Minn. App. 2002): When determining whether to vacate a paternity adjudication under Minn. R. Civ. P. 60.02, the district court shall not consider the child's best interests.</p>	<p>Best Interests of Child N/A</p>
<p><u>County of Freeborn v. Walker</u>, (Unpub.), A07-375, filed April 8, 2008 (Minn. App. 2008): The county served a person identified by a social security number and name located in California with a paternity action. That person failed to appear or answer and a paternity order was entered by default. Subsequently, the county intercepted tax refunds and began income withholding against appellant, a person with the same or similar name and social security number. Appellant objected, argued he wasn't served with any paternity action, indicated he was a victim of identity theft, and was later excluded as the biological father of the child through genetic testing. The district court order required the county to reimburse appellant for child support collected from him and distributed to obligee. The county appealed. The Court of Appeals held that the undisputed lack of proper service renders the resulting judgments void. Restitution is equitable in nature and there is no abuse of discretion to order the county to reimburse the monies. Finally, the court rejected the argument that the funds should be recouped from mother citing (1) that the funds are disbursed does not absolve the county from having to reimburse Appellant if the facts warrant repayment. (2) A series of mistakes by the county resulted in the void judgments. (3) an innocent child support payor should not sue an innocent mother on public assistance to attempt to recover funds incorrectly procured from the payor as a result of void judgments. This is not in the best interest of the child for whom the child support system was created.</p>	<p>County ordered to reimburse defendant past child support collected based on default adjudication, where service on defendant was defective.</p>

III.G.9.-Vacation of Judgment/JNOV/New Trial

III.H. - JUDGMENT OR ORDER

III.H.1. - Generally

Minn. Stat. § 257.66.

<p><u>Spaeth v. Warren</u>, 478 NW 2d 319 (Minn. App. 1991): Paternity adjudication need <u>not</u> include finding of "best interests" analysis under Minn. Stat. § 257.51-.74 (1990).</p>	Findings on Best Interest
<p><u>County of Carver and Arney v. Delbow</u>, (Unpub.), C3-96-301, F & C, filed 8-20-96 (Minn. App. 1996): District court order requiring father to pay \$1,436.00 in trial costs, including the cost of bringing mother to Minnesota to testify upheld. Minn. Stat. § 257.69, Subd. 2, does not require court to consider a party's ability to pay before ordering payment of costs.</p>	Reimbursement of Trial Costs
<p><u>In re: Estate of James A. Palmer, Deceased</u>, (Unpub.), C7-02-182, F & C, filed 3-20-03 (Minn. 2003): The Parentage Act is not the exclusive means of determining parentage for purposes of intestate succession under Minn. Stat. § 524.2-114 (2002). Parentage for purposes of intestate succession may also be established by clear and convincing evidence.</p>	Paternity Adjudication Not Required for Inheritance
<p><u>In re the Matter of: County of Carver ex rel Lori J. Schuman vs. Daniel L. Revsbech</u>, (Unpub.), A07-0442, filed April 22, 2008 (Minn. App. 2008): Appellant father appeals order determining medical and child care arrears existed. The Court of Appeals affirmed, stating (1) it was not an abuse of discretion to interpret language in a prior order concluding that the prior order modified only basic support arrearages, and not medical or childcare support arrearages. (2) Appellant argues that the arrearages merged into the subsequent order which recalculated appellant's basic support arrearages, but did not address medical or childcare arrearages. The court rejected the argument noting the order was not temporary as defined by Minn. Stat. § 518.131 nor is it a temporary alimony order. Finally, the issue was established after full litigation of the claim, in which Appellant had counsel and presented arguments and facts. As such, Appellant was not denied due process.</p>	Medical and childcare arrears did not merge with district court's recalculation of basic support arrears.

<p><u>Frisch v. Solchaga</u>, (Unpub.), C4-99-1083, F & C, filed 1-11-1999 (Minn. App. 2000): Minn. Stat. § 518.551, Subd. 5(1)(1998) and <u>Holmberg</u> did not prohibit a court from ordering past child support in a paternity case, even though the child received an insurance benefit, because the time period in question was prior to the 8-1-98 effective date of the statute.</p>	<p>No Credit for Social Security Prior to 8-1-98</p>
<p><u>Visser v. Scoles</u>, (Unpub.), C3-01-1240, F & C, filed 5-31-02 (Minn. App. 2002): In a paternity action, the court may deviate from the guidelines in awarding back child support for a child over the age of five if the obligor first learned of the child's existence within one year of the action for child support. Minn. Stat. § 257.66, subd. 4(1). (Note: decision does not give date the action was commenced; rather it gives the date custodial parent completed the affidavit of paternity.)</p>	<p>Past Support for Child Over Five</p>
<p><u>Storm v. Siwek</u>, (Unpub.), C4-03-280, filed 7-8-03 (Minn. App. 2003): It is in the discretion of the court whether it is "just" to order retroactive medical support under Minn. Stat. § 257.66, subd. 4.</p>	<p>Retroactive Medical Support</p>
<p><u>Reyes v. Rivera</u>, A05-2202, (Minn. Ct. App. September 26, 2006): The trial court did not abuse its discretion in denying father's motion to hold mother in contempt and granting mother's motion to move the parties' child out of state, with an adjustment in father's parenting time. Mother was awarded sole physical custody of the parties' child and father was awarded parenting time. Mother temporarily took the child to CA with father's permission. The child remained in phone contact with father while out of state. Mother's husband got a job in AZ and mother motioned to move the child out of state. Moving was presumed to be in the child's best interests. Father's allegations of school absences, child abuse and the mother's mental health issues were not supported by credible evidence and father ultimately failed to show that the removal of residence would endanger the health and welfare of the child or constituted an attempt by mother to interfere with father's parenting time.</p>	<p>Moving child out-of-state</p>
<p><u>Schizzano v. Schizzano</u>, A006-113, (Minn. Ct. App. September 26, 2006): The district court found that father purchased a drug-masking drink for his 16 year old son who is on probation and subject to random drug testing yet the district court did not restrict parenting time. The Court of Appeals reversed and remanded because § 518.175 requires the court to restrict parenting time when the court finds the exercise of parenting time endangers the child or impairs the child's emotional development.</p>	<p>Restriction in parenting time mandated when endangerment is found</p>
<p><u>In re the Marriage of Mark William Carroll v. Desiree Lucille Boeltl</u>, (Unpub.), A07-1349, filed January 2, 2008 (Minn. App. 2008): Appellant mother argues the court abused its discretion to order judgment for her for the amount of her overpayment of past child support. Minn. Stat. 518A.52(1) requires overpayments to first be applied to reduce any arrears, then (2) used to reduce obligor's future child support payments. The lower court abused its discretion only in that the court reduced the future child support to \$0 until the overpayment was eliminated; the statute requires the reduction of future child support be limited to 20% of the obligor's child support obligation. Therefore, obligor's child support of \$590 should be reduced to \$472 per month until the overpayment has been fully credited.</p>	<p>Overpayment of child support; first apply to arrears, then reduce current obligation by no more than 20% until overpayment eliminated.</p>

III.H.3-Financial Provisions/Obligations

III.H.5. - Custody and Visitation (See also Part IV.A.)

<p>Minn. Stat. § 257.541; Minn. Stat. § 518.17 - sets out the factors to consider in determining the "best interests of the child". Minn. Stat. § 518.17, Subd. 2 - states the rebuttable presumption that joint legal custody is in the best interests of the child, and also sets out the factors the court must consider when either joint legal or joint physical custody is sought. (Ed.Note: In may of our paternity cases, a review of the relevant factors will serve to rebut the presumption in favor of joint legal custody.); Minn. Stat. §§ 257.541; 257.75 - custody and parenting time in ROP cases.</p>	
<p><u>Lehr v. Robertson</u>, 463 U.S. 248, 103 S.Ct. 2985 (1983): Unmarried father had not supported and had rarely seen his child. "When an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in the personal contact with his child acquires substantial protection under the due process clause. But the mere existence of a biological link does not merit equivalent constitutional protection."</p>	<p>Contact with Child not Constitutionally Protected</p>
<p><u>Morey v. Peppin</u>, 375 NW 2d 19 (Minn. 1985): If there has been a declaration of parentage under Chapter 257.34 and adjudication of paternity, then Minn. Stat. § 518.17 and § 518.175 apply to custody and visitation, but if there is no declaration of parentage, then an adjudicated father must commence separate custody proceeding under Minn. Stat. § 518.156, and modification standard applies. (Ed.Note: Under a ROP, father must commence separate custody proceeding under Minn. Stat. § 518.156, Subd. 1(a)(2).)</p>	<p>Modification Standard if no DOP</p>
<p><u>Ozenna v. Parmelee</u>, 377 NW 2d 483 (Minn. App. 1985): Trial court in paternity action may properly consider issue of custody and visitation; factors upon which custody is to be decided in paternity action are found in Minn. Stat. § 518.17.</p>	<p>Factors to Consider</p>
<p><u>Knutson and Ramsey County v. Primeau</u>, 371 NW 2d 582 (Minn. App. 1985): Minn. Stat. § 518.18 standard for modification of custody applied to father's custody motion despite absence of custody determination in paternity action concerning first child and absence of litigation to support custody determination in paternity action concerning second child.</p>	<p>Custody Modification Standard Applied</p>
<p><u>Itasca County Social Services, ex rel. Hall v. David</u>, 379 NW 2d 700 (Minn. App. 1986): Minn. Stat. § 518.18 governing modification of custody orders applies to father's motion to obtain custody of child from mother, although the custody and support judgment was entered without findings based on a stipulation to paternity.</p>	<p>Modification</p>
<p><u>In Re the Welfare of B.E.N., Stein v. Timmons</u>, 392 NW 2d 736 (Minn. App. 1986): Custody determination in paternity action is governed by same criteria as in dissolution action including the primary parent provisions in <u>Pikula</u>; award of custody to mother with past deficiencies in care for child was proper where mother has matured in her relationship with child and her present husband.</p>	<p>Same Criteria for Custody Decision in Paternity and Divorce</p>
<p><u>Psyck v. Wojtyskiak</u>, 400 NW 2d (Minn. App. 1987): Common law in effect in 1974 gave mother custody at date of voluntary adjudication. Minn. Stat. § 518.18(d) standard for modification of custody applies to father's custody motion even though custody was not previously decided.</p>	<p>Custody Modification Standard Applied</p>
<p><u>Simone v. Simone</u>, (Unpub.), C1-90-1482, F & C, filed 1-15-91 (Minn. App. 1991): Alleged father's attempt to intervene in a child custody case (maternal grandparents were seeking custody and alleged father wanted visitation rights) was denied because paternity had not been acknowledged or adjudicated.</p>	<p>Paternity not Acknowledged or Adjudicated</p>
<p><u>Rogge v. Rogge</u>, 509 NW 2d 163,165 (Minn. App. 1993), <i>rev.den.</i> (Minn. 1-28-94): rebuttable presumption that joint legal or physical custody is <u>not</u> in the best interests of the child if domestic abuse has occurred.</p>	<p>Joint Custody not in Best Interest if Domestic Abuse</p>
<p><u>State of Minnesota, County of St. Louis and Hagedorn v. White</u>, (Unpub.), C8-93-2188, F&C, filed 3-29-94 (Minn. App. 1994): Where paternity order does not address custody, and parties live continuously together for 10 years with child, in father's action for custody, custody to mother in original paternity order cannot be implied. Therefore, best interest standard rather than endangerment standard applies.</p>	<p>Custody to Mother not Implied</p>
<p><u>Petersen v. Gruber</u>, (Unpub.), CX-94-2218, F&C, filed 2-28-95 (Minn. App. 1995): Placement of child with mother in connection with a child protection case did not constitute an initial award of custody under Minn. Stat. § 518.17. Therefore, action for custody by the father of a child born outside of marriage was properly determined under the "best interests" standard of Minn. Stat. § 518.17, as an initial determination rather than the "endangerment" standard under Minn. Stat. § 518.17 required for a change in custody.</p>	<p>Effect of Child Protection Order</p>

<p><u>Nelson v. Nelson</u>, (Unpub.), CX-96-280, F&C, filed 8/27/96 (Minn. App. 1996): During pendency of child support contempt proceedings where father continued to tell children that their mother was trying to get the judge to throw him in jail after judge had warned him to discontinue making these remarks because they were harmful to the children, it was a proper sanction for the court to limit father's visitation rights.</p>	<p>Limitation of Visitation Due to Harmful Remarks</p>
<p><u>Sokolowski v. Sokolowski</u>, (Unpub.), CX-99-1881, F&C, filed 4-18-00 (Minn App. 2000): Father of child may not bring a custody action under Minn. Stat. § 518.156, subd. 1(a)(1998) until paternity has been legally established (by J&D, under parentage act or with a ROP).</p>	<p>Must First Establish Paternity</p>
<p><u>Shields v. Frankenfield</u>, (Unpub.), C4-99-1696, F&C, filed 3-28-00 (Minn. App. 2000): Court did not err in ordering below guidelines past support in a paternity case, where obligor has subsequent children born prior to the paternity action, and there was insufficient information on the child's needs in the paternity action (child was 15 when paternity action was commenced).</p>	<p>Subsequent Children born prior to Paternity Action</p>
<p><u>Johnson v. Murray</u>, (Unpub.) C7-01-480, F&C, filed 8-7-01 (Minn. App. 2001): Alleged father brought child to Minnesota and commenced paternity and custody action. Though court had jurisdiction over paternity under Chapter 257 the court did not have jurisdiction to address custody since requirements of UCCJA not met. (Ed. Note: The court of appeals did not address the issue of whether custody can be determined under the paternity statute.)</p>	<p>Applicability of UCCJA to Custody Jurisdiction in Paternity Case</p>
<p><u>Pederson v. Freismuth and C.J.P.</u>, (Unpub.), C1-01-801, F&C, file 11-20-01 (Minn. App. 2001): Pederson petitioned the court for an adjudication of paternity and an award of custody. He was the presumed father based on Minn. Stat. § 257.55, Subd. (1)(d) but was excluded by genetic tests. Court of appeals affirmed district court order that outright awarded custody to the mother, not analyzing Peterson's request for custody. Court of appeals ruled that Minn. Stat. § 257.541 only allows a biological parents to petition for custody in a parentage proceeding. Ed. note: This decision seems contrary to decision in <u>Wisto v. Overby</u>, requiring the court to weigh conflicting presumptions when determining custodial or visitation rights.</p>	<p>Only Biological Parent can Petition for Custody in a Parentage Proceeding</p>
<p><u>In Re: the Paternity, Custody and Support of L.A.Q.</u>, (Unpub.), C7-01-1306, F&C, filed 4-9-02 (Minn. App. 2002): Where father signs a ROP, and brings a custody action, the proceeding is treated as an initial determination of custody under Minn. Stat. § 257.541, Subd. 3 (2000). <u>Morey v. Peppin</u>, 375 NW 2d 19 (Minn. 1985) does not control because it predated the effective date of Minn. Stat. § 257.541, and because <u>Morey</u> involved a man who waited two years (versus two months in this case) to seek custody.</p>	<p>Initial Determination of custody Where ROP is Signed</p>
<p><u>In Re: the Paternity, Custody and Support of L.A.Q.</u>, (Unpub.), C7-01-1306, F&C, filed 4-9-02 (Minn. App. 2002): A temporary award of custody to mother and referral for a custody evaluation is not an initial determination of custody, and thus, the hearing to adjudicate permanent custody is still an initial determination and the modification standard does not apply.</p>	<p>Temporary Custody</p>
<p><u>Rutz v. Rutz</u>, 644 NW 2d 489 (Minn. App. 2002): A designated "method of dispute resolution" is a necessary component of a "parenting plan" under Minn. Stat. § 518.1705 (2000), and a judgment which lacks such a method does not create a parenting plan.</p>	<p>Parenting Plan Must Include Method of Dispute Resolution</p>
<p><u>Horsman v. Horsman</u>, (Unpub.), C5-02-2254, filed 6-17-03, (Minn. App. 2003): Physical custodian has the exclusive authority to choose a daycare provider. Daycare is not education, therefore decisions regarding who should provide daycare for a child are not decisions in which a joint legal custodial has an equal right to participate.</p>	<p>Joint Legal Custodian Cannot Decide Daycare Placement</p>
<p><u>Huft v. Huft</u>, (Unpub.), C8-02-1986, filed 7-8-03 (Minn. App., 2003): There is not statutory basis for a conditional "modified" joint legal custody that changes automatically to "full"-joint legal custody after certain conditions are met. Joint legal means equal, so court cannot grant one party "tie-breaking" authority, or set conditions for one party that are not set for the other under joint legal. Court should have awarded sole legal.</p>	<p>Joint Legal</p>
<p><u>Maestas v. Koeke</u>, (Unpub.), CX-03-123, filed 7-22-03 (Minn. App. 2003): Where man who had cared for child was adjudicated father by default and granted custody based on best interests of the child standard, and six months later, mother challenges the adjudication, claiming the CP is not the biological father, appellate court ordered genetic tests. If CP is not the biological father, the court would be required to re-evaluate its custody award in light of a different standard – where a non-parent seeks custody, the presumption favoring biological parents must be overcome "only by evidence of extraordinary circumstances of a grave and weighty nature showing that the best interest of the child is that the biological parent be denied custody."</p>	<p>Man Who Acts as Father but not Biological Dad Must Overcome Custody Presumption Favoring Biological Parent</p>

III.H.5.-Custody and Visitation

<p><u>Dunham v. McCollough</u> (Unpub.), A-03-1574, filed 4-27-04 (Minn. App. 2004): Custody dispute over 7-year-old child between maternal aunt and bio. father. Child born to unmarried mother. Lived with mother and bio. father for 18 months after birth, then with mother to age of 3. From age 3 to hearing, child lived with maternal aunt, with consent of bio. mother. Little contact with bio. Dad after age 18 mos. Court properly applied standard in <i>In re Custody of N.A.R.</i>, 649 NW 2d 166 (Minn. 2002) favoring biological parent. When custody is sought by third party, the presumption favoring bio. parent must be overcome only by evidence of extraordinary circumstances of a grave and weighty nature that it is in the best interests of the child that bio. parent be denied custody. The best-interest factors set forth in Minn. Stat. §§ 257.025 and 518.17, do not adequately protect the right of a parent to raise his or her child when the custody dispute is with a third party.</p>	<p>Custody Presumption to Biological Parent</p>
<p><u>Maschoff v. Leiding</u>, 696 NW 2d 834 (Minn. App. 2005): Whether custody is sole or joint must be addressed in court order, so that the appropriate method of calculating child support can be identified.</p>	<p>Court Order Must State if Custody is Joint or Sole to Calculate Child Support.</p>
<p><u>Stanley v. Moening</u>, (Unpub.), A04-1667. F & C, filed 5-24-05 (Minn. App. 2005): The paternity statute directs the district court to use the best-interest factors under sections 518.17 and 518.175 to determine custody and parenting time once paternity has been established. The appellate court rejected the argument that custody determinations in parentage actions, where the parties have not cohabited during their relationship, should be treated differently than other custody cases. Though a joint physical custody award is reversible when the parties are unable to cooperate and communicate, <i>Wopata v. Wopata</i>, 498 NW 2d 478,483 (Minn. App. 1993), the court in this case found that the parties were able to communicate.</p>	<p>Joint Physical Custody Upheld in Paternity Case where Parties never Resided Together, over Objection of the Mother.</p>
<p><u>Hilliker v. Miller</u>, (unpub.) A05-1538, filed May 9, 2006 (Minn. App. 2006). Mother and four amici (all of them agencies that serve sexual violence victims) argued that father in paternity action should not be granted liberal P.T. because conception was result of nonconsensual sexual assault. Ct. App. held that district court had adequate evidence to support its decision: both parties testified they got intoxicated at bar and neither could remember sexual contact; there was evidence that father was dedicated to welfare of child. However, the appointment of a P.T. expeditor was reversed upon bare assertion that C.P. was victim of domestic abuse at hands of other party, per plain meaning of statute.</p>	<p>Evidence supported parenting-time despite claim that conception was result of sexual assault. Mere claim of domestic abuse defeats appointment of Parenting-Time expeditor.</p>
<p><u>Jewison vs. Jewison</u>, A05-2172, Waseca County, filed 7/3/06 (Minn. App. 2006): The district court did not abuse its discretion in modifying the parties' obligations for parenting time, transportation, or by requiring Jewison to pay conduct-based attorney fees. The district court did not abuse its discretion by modifying the parenting time to require Jewison to take on additional responsibility for the transportation of the children. The travel time will permit more direct parent-child interaction and encourage both parents to attend the children's activities.</p>	<p>Parenting time</p>
<p><u>In Re the Matter of Elijah Jesse Miller vs. Tiffany Leah Berens</u>, A05-1791, St. Louis County, filed 7/11/06 (Minn. App. 2006): The district court did not abuse its discretion in awarding joint physical custody of the child to the parties. Berens appealed, alleging that the facts do not support an award of joint physical custody because she and Miller have great difficulty in communicating. The record supports the district court's findings on the best interests of the child and on the joint custody statutory factors. However, the court determined after listening to the guardian ad litem's testimony that the parties are able to communicate and are able to resolve their disputes. Both parents are willing to use a parenting expeditor or mediator to resolve problems and it would be detrimental to the child if only one parent were to have sole physical authority over her because she has had the benefit of both parents actively involved in her life. The record supports the district court's findings and its findings will not be reversed.</p>	<p>Joint physical custody award</p>

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<p><u>In Re the Marriage of Dee Henderson vs. Gregory Duane Dittrich</u>, A05-1696, Washington County, filed 7/11/006 (Minn. App. 2006): While the mother was incarcerated, the father was awarded sole temporary legal custody of the child. The district court's award of sole physical custody to the child's father is appropriate where the mother of the child is going to be incarcerated for a long term. The court improperly modified legal custody from the mother to the father because the father could not satisfy the requirements of Minn. Stat. § 518.18.</p>	<p>Sole physical and legal custody to dad where mom was incarcerated</p>
<p><u>In Re the Marriage of Dee Henderson vs. Gregory Duane Dittrich</u>, A05-1696, Washington County, filed 7/11/06 (Minn. App. 2006): Where father was awarded sole temporary physical custody during mother's incarceration, the court ordered the child to have liberal access to his stepfather and sibling who are living in the mother's home. Visitation is discretionary with the court and is awarded to the extent it is in the child's best interests. It was appropriate for the court to award the stepfather visitation with the child even though he was not a party to the action because the child has lived with the stepfather since 1995 and has been integrated into that home.</p>	<p>Stepfather visitation</p>
<p><u>Daniel Frank Ostrander vs. Shannon Marie Ostrander</u>, A05-1703, St. Louis County, filed 7/18/06 (Minn. App. 2006): The court of appeals ruled that the district court had properly changed physical custody of the parties' three children to the father because the mother had moved out of state and had allowed the three children to live with their father during the time period that she was living out of state. The children had spent the entire 2003-2004 and the 2004-2005 school years living with their father in Minnesota. A change in circumstances had occurred and it was in the children's' best interests to be in the sole physical custody of their father, given their enrollment in the Nashwauk school system for two years and given their participation in many extracurricular activities associated with their friends in Nashwauk. The district court did not abuse its discretion by not interviewing the children to ascertain their custody preferences. The decision to interview the children or not is a discretionary choice with the court.</p>	<p>Change in physical custody to dad OK.</p>
<p><u>In the Matter of the Welfare of the Child of S.B. and D.W., Parents</u>, A05-2386, Hennepin County, filed 7/18/06 (Minn. App. 2006): The court of appeals reversed a district court decision awarding the grandmother custody of her minor grandchild. The child was a badly neglected and special needs six-year-old. The court of appeals found there is not clear and convincing evidence that permanent placement with the grandmother is appropriate. There is insufficient evidence that she has the particular parenting skills that are necessary to parent a special-needs child.</p>	<p>Award of physical custody to grandmother reversed.</p>
<p><u>In Re the Marriage of Katherine M. Goodyear-PeKarna vs. Matthew Dewitt PeKarna</u> (Unpub.), A05-2366, A06-292, Carver County: The district court did not err in granting father sole legal and physical custody of the parties' children because the mother had alienated the father from the lives of the children to a level of it being emotionally harmful to the children's well-being. The children are clearly better adjusted to school since living with the father. The parties showed a complete inability to cooperate with each other in rearing the children. The district court did not abuse its discretion in failing to order an evidentiary hearing on whether the parties had made post-judgment attempts to alienated the children's affections when none of the alleged conduct constituted endangerment.</p>	<p>Child custody</p>
<p><u>In re the Marriage of: Hennek v. Hennek</u>; Minn. Ct. App. Unpublished. (A05-1957): Case provides a good discussion of legal custody. Appellant father asserts findings insufficient where court simply asserted child should go to school in district where mother resides. Where court determines issue of legal custody, it must make detailed findings on the best interests factors listed at 518.17, subd. 1(a). Father alleged court impermissibly based decision on gender. Appeal court held father presented no evidence to support "this serious charge" and none in record. Appeals court declined to presume court decision based on improper bias and urged counsel to do same. Case was remanded for findings.</p>	<p>Legal Custody, location of child's school when parties share physical custody, appellant father alleged gender bias was basis of court's decision</p>

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<p><u>Carey v. Carey</u>, A006-440 (Minn. Ct. App. October 3, 2006): The district court did not abuse its discretion in awarding father sole physical custody of the parties' child and awarding mother limited parenting time. The district court made findings on each of the statutory best-interest factors enumerated in Minn. Stat. §518.17. Father could provide the child with more stability. During the past few years, mother had resided in four different residences. In addition, mother indicated her intent to move to Iowa in the near future. Father remained in the marital home in Duluth where the child was in school. The child had a stronger relationships with the paternal grandparents than she did with the maternal grandparents.</p>	<p>Award of sole physical custody to father due to stability he provided for minor child</p>
<p><u>McBride v. McBride</u>, A05-2086 (Minn. Ct. App. 10/3/06): The district court did not abuse its discretion in awarding sole physical custody of the parties' minor child to father. The evidence supports the findings and the findings support the award of custody. Specifically, the court found that (1) the father lived in the martial home and would keep the child in her current school; (2) the best-interest factor regarding religion favored father because mother is not affiliated with a church while father attends a church; (3) mother's greater earnings and employment capacity are of limited weight in a custody decision. In addition, the district court was aware of the alleged defects in the father's custody report and was exclusively responsible for determining the report's weight and credibility—a determination the court declined to disturb.</p>	<p>Evidence supports the findings and findings support award of sole custody</p>
<p><u>Orsello v. Orsello</u> A06-573, A05-2429 (Minn. Ct. App. October 3, 2006): The provision in 2003 order which made father's visitation with his teenage children contingent on the children's approval was retained in the subsequent order and was found to be an insubstantial modification of father's parenting time rather than a restriction on his parenting time. Prior to the 2003 order, father's parenting time was already supervised and father had only seen the children once in the preceding 6 years. Because it wasn't considered a restriction on parenting time, no endangerment findings were necessary. In addition, because the provision was an insubstantial modification, similar to a clarification, the district court did not need to support the provision with best-interest findings.</p>	<p>Insubstantial modification of parenting time v. parenting time restriction</p>
<p><u>Alissa Christine Beardsley v. Dante Antonio Garcia, Jr.</u>, A06-922, Hennepin County, filed May 22, 2007 (Minn. App. 2007): The district court has both subject matter jurisdiction and statutory authority to issue a domestic abuse OFP granting temporary supervised parenting time with the parties' child to respondent whose paternity has been acknowledged by the parties in a ROP. (Citing In re Custody of Child of Williams v. Carlson, 701 N.W.2d 274, 282 (Minn. App. 2005) holding that if ROP was never properly vacated, it continues to have the force and effect of a judgment or order that the father named in the ROP is the adjudicated father.) The OFP statute does not distinguish between adoptive, biological, adjudicated or married fathers.</p>	<p>Court may order temporary parenting time to ROP father in OFP proceeding</p>
<p><u>Stevermer vs. Stevermer</u>, (Unpub.), A07-669, F & C, filed September 4, 2007 (Minn. App. 2007): Wife's motion to modify custody and parenting time denied by district court. Dissolution of parties included provision whereby parties agreed to submit custody and parenting time issues to mediation. The Court of Appeals reversed district court's denial of Wife's motions, as the district court erred by failing to require the parties to first engage in mediation before motioning the court.. In addition, the Court of Appeals ruled that OFP issued 1 ½ years prior to dissolution is not a barrier to mediation because no OFPs have been issued since, and Wife/Appellant does not claim she or the child have suffered any physical or bodily harm, or that she fears for her or the child's safety.</p>	<p>District court erred in not first enforcing mediation provision in J&D before ruling on motions. Prior OFP not a barrier to enforcing mediation provision in J&D.</p>

III.H.5.-Custody and Visitation

III.K. - TEMPORARY SUPPORT ORDER

Minn. Stat. § 257.62, Subd. 5(a).	
<u>County of Steele and Machacek v. Voss</u> , 361 NW 2d 861 (Minn. 1985): Minn. Stat. § 257.62, Subd. 5 (temporary support pending paternity establishment after blood testing) is constitutional.	Constitutional
<u>County of Steele and Machacek v. Voss</u> , 361 NW 2d 861 (Minn. 1985): Support monies paid into court should ordinarily be deposited in interest-bearing account.	Deposits with Court
<u>Franzen and County of Anoka v. Borders</u> , 521 NW 2d 626 (Minn. App. 1994): The district court need not find a substantial change in circumstances to issue a final support obligation that exceeds an existing temporary support obligation.	Effect of Temporary Support Order on Final Child Support Obligation
<u>Wayne Alan Butt v. Eleanor Anna Schmidt</u> , (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008): Appellant argues that the district court erred in failing to modify his child support obligation retroactive to the date of the parties' MTA. The Court of Appeals held that appellant waived his right to raise this issue because he failed to raise it in the district court. The Supreme Court affirmed. Additionally, the Court noted that even if it was not waived, the claim lacks merit as there was a temporary child support order in place. Appellant could have moved to amend or vacate the temporary order anytime before the court entered its final decree. However, Minn. Stat. § 518.64, subd. 2(d) (2004) limits the period of retroactive application to the period during which a motion for modification is pending. Appellant made no motions to modify any time before the final decree was issued. Therefore, the temporary order cannot be modified, as upon entry of the final decree, the temporary order was no longer in effect.	Modification of temporary child support; retroactivity

<p><u>In re the Marriage of Eric Thomas Amundson v. Rachel Louise Amundson</u>, (Unpub.), A06-514, Chisago County, filed January 23, 2007 (Minn. App. 2007): Decree in 2000 awarded sole physical custody to respondent and ordered appellant to pay support. Extrajudicial agreement of the parties in April 2002, although never affirmed by the court, modified the custody to joint, with child support ceasing on May 31, 2002. Respondent brought a motion to increase support, an award of both dependency tax exemptions and an order requiring appellant to pay one half of the medical and dental expenses in October 2005. The district court held the extrajudicial custodial arrangement of the parties had been breached and abandoned when the children lived solely with appellant for a period of less than one year, then returned to respondent's home for the past 2 ½ years. A breach of an agreement occurs when one party fails to perform without legal justification a substantial part of the agreement or contract. (Citing <u>Estate of Reidel by Mirick v. Life Care Ret. Cmty., Inc.</u>, 505 N.W.2d 78, 81 (Minn. App. 1993). District court did not err in concluding the agreement was breached and abandoned, and therefore unenforceable.</p>	<p>When the court finds an extrajudicial agreement of the parties is breached or abandoned, the court is not required to enforce the terms of the agreement.</p>
<p><u>Kinley, n/k/a Peck vs. Kinley</u>, (Unpub.), A06-865, F & C, filed September 4, 2007 (Minn. App. 2007): Appellant appeals from the district court's denial of his motion to amend a prior order. The prior order required appellant refrain from "discussing inappropriate religious stories whenever the children do not want to do so....". The object of the order is not to restrict appellant's first amendment rights, but rather intended to protect the respondent's sole legal right to determine the children's upbringing, including religious training. However, without sufficient findings in support of the restriction and by failing to place sufficient limits on the scope and duration of the restrictions, the order impermissibly burdens appellant's right to free exercise of religion.</p> <p>Appellant also argues the district court's injunction prohibiting him from reading Bible stories is unconstitutional, and impedes on his 1st amendment right of free speech. Protecting children from bitter disputes over religion is essential to their mental and emotional well-being and such protection has been legislatively created through Minn. Stat. 518.003, subd. 3(a). However, although the order serves a compelling interest, it is not narrowly tailored to fulfill that interest. On remand, the district court must make specific findings before placing limitations on appellant's communications with the children. The findings must indicate that appellant's conduct or speech: 1) threatens respondent's right to determine the children's upbringing; 2) poses risk of harm to the children; or 3) forces the children to take part in any religious practice that a) is intended to influence the religious thinking or beliefs of the children; b) is meant to criticize the children respondent's parenting on religious grounds, or c) is unwanted by the children. The limitations must be narrowly tailored. Reversed and remanded.</p>	<p>Constitutionality of restrictions on discussion of religion by parent without legal custody.</p>
<p><u>Kast vs. Kast</u>, (Unpub.), A07-1567, F & C, filed March 4, 2008 (Minn. App. 2008): Because the record indicates that the district court performed the statutorily-mandated best-interests analysis and the district court's findings supporting its conclusions are sufficiently detailed, the Court of Appeals held that the district court was within its discretion in awarding respondent/mother sole physical custody of the parties' children. Affirmed.</p>	<p>Custody</p>

IV.A.-Custody and Visitation/Effect on Support Obligation

<p><u>In re the Marriage of: Essam El-Dean Hassan Ahmed, petitioner, Appellant, vs. Eman Bakry Haroun, Respondent.</u>, (Unpub.), A06-1773, Dakota County, filed July 31, 2007 (Minn. App. 2007): Oral stipulation in dissolution proceeding. Written order included a reservation of maintenance that was not included in the oral stipulation. Where the parties in a dissolution have reached a stipulation, the court cannot impose conditions to which the parties did not stipulate and thereby deprive the parties of their day in court. A decree that is silent as to spousal maintenance cannot thereafter modify the decree to award spousal maintenance. A decree that reserves spousal maintenance can be modified.</p>	<p>Spousal Maintenance – modification</p>
<p><u>In re the Marriage of: Loren Helen Faibisch, petitioner, Appellant, vs. Manuel Esguerra, Respondent.</u>, (Unpub.), A06-1751, Ramsey County, filed August 21, 2007 (Minn. App. 2007): J&D reserved spousal maintenance. Appellant moved for permanent spousal maintenance of \$750 per month. District court ordered \$150 in temporary support. Whether to modify maintenance is discretionary with the district court. Appellant argues the district court failed to fully consider her health and job-loss in addressing her ability to support herself. Appellant inadequately documented her assertions about her job loss, employment search, amount of aid she was eligible for, and the resulting decrease in her income.</p>	<p>Modification of maintenance is discretionary with the district court. Appellant inadequately documented her assertions as to why the court should modify and award support.</p>
<p><u>Li-Kuehne vs. Kuehne</u>, (Unpub.), A07-807, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant argues district court abused its discretion in including a COLA to a step reduction in his maintenance obligation. The J&D of the parties provided the court was without jurisdiction to modify maintenance during the period of March 1, 2003 to August 31, 2009. (Appellant was to pay \$12,500 per month from March 1, 2003 to August 31, 2006 and \$10,000 per month from September 1, 2006 to August 31, 2009). This court previously reversed and remanded the issue of the application of COLA to maintenance to the district court, holding that there is nothing in the record to support the district court’s denial of COLA under any of the exceptions listed in Minn. Stat. §518.641. On remand, the district court held that the Court of Appeals did not limit the COLA to the first maintenance amount, and applied COLA to the step-down amount. Appellant argues the change in maintenance acts as a step decrease that already reflects a decrease in the cost of living. The Court of Appeals held that their prior decision regarding the COLA issue is <i>res judicata</i>, precluding re-litigation of the issue.</p>	<p>COLA applies to spousal maintenance even where J&D provides court is without jurisdiction to modify spousal maintenance award.</p>
<p><u>Lewis vs. Lewis</u>, (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant wife appeals from district court order granting her temporary spousal maintenance. Appellant argues maintenance should be permanent as it is uncertain whether she will become self-supporting, and she did not receive substantial amounts of marital property. The Court of Appeals disagreed. Although appellant was a homemaker for most of the parties’ 19 year marriage, she has an undergraduate degree and teaching license, as well as experience working as a teacher. Additionally, her ability to become self-supporting by 2009 is not dependant on her receipt of substantial amounts of marital property. Appellant may move to extend the temporary award if necessary in the future.</p>	<p>Temporary vs permanent spousal maintenance</p>
<p><u>Lewis, vs. Lewis</u>, (Unpub.), A06-2236, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant argues that the district court abused its discretion by imposing an automatic step reduction in her spousal maintenance award and by imputing full time income to her starting in 2007. Because the parties agreed that appellant would not work full time until 2009, when youngest child graduates from high school, and the court found the parties’ agreement reasonable, the district court abused its discretion. The Court of Appeals reversed the trial court’s decision regarding an automatic step reduction.</p>	<p>Step reduction in spousal maintenance award reversed where parties’ agreed appellant would not work full time until 2009.</p>
<p><u>In re the Marriage of: Erickson v Erickson</u>, (Unpub.), A06-2061, filed 11/20/07 (Minn. App. 2007): District court did not abuse discretion when it reduced spousal maintenance based on former husband’s decreased income and former wife’s increased earning capacity.</p>	<p>Discretion to Reduce Maintenance Based on Substantial Change of Circumstances</p>

IV.B.-Maintenance

<p><u>Holmes v. Holmes</u>, (Unpub.), A06-1897, filed December 24, 2007 (Minn. App. 2007): The court did not err in requiring appellant to keep or obtain life insurance in an amount not less than his projected future child-support and spousal-maintenance obligations even though the issues of child support and maintenance were reserved, as the policy was already in effect and the court was merely requiring appellant to maintain the status quo established during the marriage.</p>	<p>No error in requiring life insurance policy remain in place even where child support & maintenance issues reserved.</p>
<p>In the Marriage of: <u>Lynae Dana Nahring v. Curtis Norman Nahring</u>, (Unpub.), A07-0102, filed February 19, 2008 (Minn. App. 2008): Father appeals from the decision of the lower to court setting spousal maintenance. The lower court made insufficient findings when setting spousal maintenance without considering and balancing requisite statutory factors.</p>	<p>Spousal maintenance Findings required.</p>
<p>In re the Marriage of <u>Brenda Lee Stifel v. Daniel Charles Stifel</u>, (Unpub.), A07-0198, filed April 1, 2008 (Minn. App. 2008): Appellant obligor appeals the order of the district court asserting the court made erroneous findings with regard to his ability to pay and respondent's needs. Court of Appeals affirmed, noting obligor's living expenses were not credible in that it failed to quantify contributions by obligor's live-in companion. Obligor's budget was speculative and duplicative. Also, obligee was a stay-at-home parent for 19 years, has physical custody of the parties' four children, works part-time and is taking college courses, and does not have the ability to contribute more toward her monthly expenses.</p>	<p>No abuse of discretion to order spousal maintenance where traditional homemaker needs the maintenance and other spouse can provide.</p>
<p><u>Wayne Alan Butt v. Eleanor Anna Schmidt</u>, (747 NW 2d 566, 2008), A06-1015, filed April 17, 2008 (Minn. S.C. 2008): The Court of Appeals erred by authorizing the district court to modify spousal maintenance on remand. The parties' Judgment and Decree contractually waived the parties' rights to modify maintenance, divested the court of jurisdiction over maintenance and affirmation of disclosure, fairness, and consideration were included in the MTA.</p>	<p>Court of Appeals erred in authorizing a modification of maintenance after a <i>Karon</i> waiver consistent with Minn. Stat. § 518551, subd. 5 (2006)</p>

IV.B.-Maintenance

<p><u>County of St. Louis o/b/o Rimolde v. Tinker</u>, 601 NW 2d 468 (Minn. App. 1999), C0-99-853, F & C, filed 11-2-99: Decision to award a dependency exemption to NCP is within the trial court's discretion. The court can order the CP to sign a waiver that would allow the NCP the exemption. Absent a waiver under 26 USCA § 152(e)(2)(A),(B)(Supp. 1999), the CP gets the exemption.</p>	<p>Ordering CP to Sign Waiver</p>
<p><u>Rogers v. Rogers</u>, 622 NW 2d 813, (Minn. 2001): The district court <u>may</u> award a tax exemption to a non-custodial parent who does not pay support, based upon an evaluation of the relative income of the parties, and the interests of the children. <u>Reverses</u> Court of Appeals, 606 NW 2d 724 (Minn. App. 2000).</p>	<p>To NCP Who Pays No Support</p>
<p><u>Soderbeck, f/k/a Olsen v. Olsen</u>, (Unpub.), C4-01-985, F & C, filed 12-18-01 (Minn. App. 2001): Obligor was to receive the tax exception if he had certain amounts of income and was sufficiently current in his child support. The court gave him the tax exemption as the obligee failed to provide sufficient information that he had arrearages.</p>	<p>Burden on Obligee to Show Arrearages to Keep Exemption.</p>
<p><u>Ludwigson v. Ludwigson</u>, 642 NW 2d 441 (Minn. App. 2002): Where J & D provided that CP would be entitled to tax exemption when she became employed, CSM in subsequent modification proceeding did not abuse its discretion when the CSM interpreted the J & D to require CP to earn a minimum of \$1,500.00 per month in order to qualify for the exemption.</p>	<p>CSM can Interpret Minimum Requirements for Tax Exemption</p>
<p><u>In re the Marriage of: Neisen, f/k/a Thompson, f/k/a LaRowe and Thompson</u>, (Unpub.), A03-1616, filed 6-15-04 (Minn. App. 2004): Although modification of the allocation of the income tax dependency exemption must be modified in accordance with Minn. Stat. § 518.64 (2002). (<u>Biscoe v. Biscoe</u>, 443 NW 2d 221, 224 (Minn. App. 1989), there is no requirement that a party filing a motion to modify the income tax dependency exemption must also file a motion to modify child support.</p>	<p>§ 518.64 Applies to Mod. of IRS Dependency Exemption</p>
<p><u>Graff n/k/a Sidwell v. Graff</u>, (Unpub.), A05-1024, F&C, filed 3-21-06 (Minn. App. 2006): The trial court's 1997 order awarded Respondent/Non-Custodial Parent the right to claim the child as a dependent for tax purposes for 1996 and all future years if Respondent was current in his support obligation. It was undisputed that Respondent remained current in his obligation. However, because the 1997 order also contained a provision that Respondent "request Appellant [Custodial Parent] 's waiver of the exemption on a yearly basis" by providing Appellant with the IRS waiver form for her signature each year, Appellant argued that this additional provision gave her the right to deny or grant the Respondent's request to claim the child as a tax dependent on an annual basis. Noting that the purpose of the IRS waiver form is simply to notify the IRS of the allocation of the dependency exemption not to determine the allocation, the Court of Appeals upheld the trial court's decision to order the Appellant to execute waiver forms for the years 1997 through 2004 and to reimburse Respondent's assessed IRS penalties for failure to file a waiver with his tax returns.</p>	<p>Award of dependency exemption contingent on payment of support is binding if obligor pays</p>
<p><u>In re the Marriage of: Chaignot v. Chapin</u>; Minn. Ct. App. Unpub. (A05-1966). Respondent argues that the federal child-dependency tax exemption should have been ordered to him exclusively (rather than alternating) because the child resides with him more. Although the Internal Revenue Code provides that the primary custodial parent is entitled to claim the child for tax purposes, the code does not preclude state district courts from allocating tax exemptions to a noncustodial parent incident to a determination of custody. Affirmed in part, reversed in part, and remanded.</p>	<p>Tax dependency exemption.</p>
<p><u>Hall vs. Hall</u>, (Unpub.), A07-116, filed December 18, 2007 (Minn. App. 2007): The court did not err in finding that "federal law presumptively awards the...tax exemptions to the custodial parent" and appellant "has not demonstrated...justification...to depart from the presumption". The district court's decision must be in the best interests of the child, and there is no error in this case.</p>	<p>Tax exemption allocation within trial court's discretion.</p>

IV.C.-Tax Deduction

<p><u>Buzzell vs. Buzzell</u>, (Unpub.), A07-1096, filed 6/10/08 (Minn. App. 2008): Federal tax law presumes that, upon dissolution of a marriage, the parent with primary custody of a child is entitled to claim the child as a dependant for tax purposes. See 26 U.S.C. § 152(a), (c), (e) (2000). However, this presumption does not preclude courts from allocating tax dependency exemptions to a noncustodial parent if the court determines it is in the best interests of the child. The court may also consider the relative resources of the parties and the financial benefits that will accrue from such a transfer. <i>Crosby v. Crosby</i>, 587 N.W.2d 292, 298 (Minn. App. 1998).</p>	<p>Tax exemptions for dependents (may award to non custodial parent)</p>
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IV.D. - OTHER

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<u>Young v. Young</u> , 356 NW 2d 823 (Minn. App. 1984): Divorced parent cannot change child's name even for informal occasions without consent of other parent or resort to 259.10 - .11.	Name Change
<u>In re: Estate of James A. Palmer, Deceased</u> , (Unpub.), C7-02-182, F & C, filed 3-20-03 (Minn. 2003): The Parentage Act is not the exclusive means of determining parentage for purposes of intestate succession under Minn. Stat. § 524.2-114 (2002). Parentage for purposes of intestate succession may also be established by clear and convincing evidence.	Paternity Adjudication Not Required for Inheritance
<u>In Re the Marriage of Marissa Ethel Rosenblum vs. Kenneth Samuel Rosenblum</u> (Unpub.), A05-1366, Dakota County, filed 6/27/06: The issue is whether the appellant's overpayments reflected on the parties' 2003 tax returns are properly characterized as refunds rather than as payments of appellant's estimated 2004 first quarter tax liabilities. If the overpayments are tax refunds, the respondent is entitled to one-half. There is no evidence that shows that the overpayments were refunds. The evidence supports the conclusion that the overpayments were payments of the estimated 2004 tax liabilities. The Court of Appeals decision reversed the lower court's decision that the funds represented a tax refund.	Tax liabilities of divorce
<u>In Re the Marriage of Katherine M. Goodyear-PeKarna vs. Matthew Dewitt PeKarna</u> (Unpub.), A05-2366, A06-292, Carver County: The district court did not abuse its discretion in making its property division. Awarding the custodial parent use and occupancy of the home was not an abuse of discretion. The court did not abuse its discretion in dividing the parties' Wells Fargo account nor in denying her claim for reimbursement of extraordinary expenses associated with the children.	property division issues
<u>In re the Marriage of Jeremy James Zander v. Melinda Alice Zander</u> ; A05-2094, Filed 8/22/06 (Minn.App. 2006); rev. denied November 14, 2006: Even though the Mdewakanton Sioux Tribal Domestic Relations Code specifically states that all per capita payments are non-marital property belonging to the tribal member, the district court concluded that Minnesota law governs the dissolution and where the Tribal Code is inconsistent with Minnesota law, the Code does not apply. This case was distinguished from <i>Kucera v. Kucera</i> , 275 Minn. 252, 146 N.W. 2d 181. Dissent would have characterized the per capita payments as akin to a "gift" and held that since issue of first impression, the tribe should have had an opportunity to make an appearance because a provision of its code was at issue in the majority opinion.	Indian Law, subject matter jurisdiction.
<u>In re the Marriage of Branz v. Branz</u> , (Unpub.), A05-2222. Filed Sept. 19, 2006 (Minn. App. 2006): District court has discretion in ordering obligor to maintain life insurance as security for child support and maintenance. On remand, district court was directed to reconsider this issue in connection with permanent maintenance only.	Life Insurance as security for support.
<u>In re the Marriage of Reed v. Albaaj</u> , A05-1858, filed October 24, 2006 (Minn. App. 2006): A member of the armed forces who is incarcerated for crimes committed while in active duty is not in "military service" for the purposes of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501-596 (Supp. III 2003), and is therefore not entitled to the protection of the SCRA when a civil proceeding is initiated during the servicemember's incarceration.	Incarcerated member of the military NOT afforded protection under Service-members Civil Relief Act because NOT in "military service"
<u>In Re the Matter of Washington v. Anderson</u> , A05-2338, filed October 24, 2006 (Minn. App. 2006): Appellant challenged a district court order that set support retroactively despite the judge's assertion from the bench that the issue of retroactivity would not be addressed. The Court of Appeals affirmed, finding a written ruling that is inconsistent with statements made from the bench is not assumed to be a mistake. Rather, the Court assumes the district court reevaluated the suitability of its prior statements and declines to give statements from the bench any preclusive effect on the final order. However, the Court also found that statements from the bench indicating that appellant was abusing the court process by withholding information could be considered findings of fact tantamount to the conclusion that appellant was materially misrepresenting his income. See Minn. R. Civ. P. 52.01 (statements from the bench can be treated as findings of fact).	Statements from the bench considered findings of fact if consistent with the order but not binding if contradictory to the final order

<p><u>In Re the Marriage of Liveringhouse v. Liveringhouse</u>, (Unpub.), A05-2531, Filed December 5, 2006 (Minn. App. 2006): The court affirmed the requirement by NCP to maintain life insurance to secure his child support obligation based on <u>Emerick ex rel. Howley v. Sanchez</u>, 547 N.W.2d 109, 112 (Minn. App. 1996), and on the findings of the district court that specified NCP may adjust his life insurance upon the emancipation of each child.</p>	<p>LIFE INSURANCE: Obligor may be required to maintain life insurance to secure child support obligation.</p>
<p><u>In re the Marriage of Eric Thomas Amundson v. Rachel Louise Amundson</u>, (Unpub.), A06-514, Chisago County, filed January 23, 2007 (Minn. App. 2007): The court was not required to enforce the dispute resolution provision in the decree because this dispute involves issues of child support and physical custody, whereas the dispute resolution provision was applicable to issues arising regarding joint legal custody.</p>	<p>Enforceability of dispute resolution provision in a divorce decree.</p>
<p><u>Melany Marie Gold, individually and OBO her children, petitioner, Respondent v. Justin Everett Larsen, Appellant</u>, (Unpub.), A06-665, Freeborn County, filed 3/13/07 (Minn. App. 2007): Appellant argues the OFP lacked sufficient evidentiary support to extend the OFP for the children, as the court only found respondent Gold to have reasonable fear from him, not the children. Court held that the previous OFP relied heavy on testimony regarding appellant's physical and psychological abuse of the children, and this evidence was sufficient to extend the order for the children.</p>	<p>Where previously OFP issued for petition and children, subsequent may also include children even where court only makes findings as to the petitioner.</p>
<p><u>Melany Marie Gold, individually and OBO her children, petitioner, Respondent v. Justin Everett Larsen, Appellant</u>, (Unpub.), A06-665, Freeborn County, filed 3/13/07 (Minn. App. 2007): Based on the GAL's report, it was not an abuse of discretion to deny appellant even supervised parenting time where the court had sufficient evidence to issue an OFP against appellant.</p>	<p>Not an abuse of discretion to deny supervised parenting time where supported by GAL's report.</p>
<p><u>State of Minnesota, Respondent v. Timothy Dale Corbin, Appellant</u>, (Unpub.), A05-2514, Benton County, filed 3/20/07 (Minn. App. 2007): Court issued OFP barring appellant from having any contact with his ex-wife and their children. Appellant charged with one count of violating the OFP under Minn. Stat. § 518B.01, subd. 14(a)(d)(1) (2004). Tried and convicted as felony as appellant had already been convicted four times of violating OFP. Appellant argues there was insufficient evidence to support jury's verdict. Court holds that after examining the evidence in the light most favorable to the jury's verdict, find there was sufficient evidence that appellant violated the no-contact provision of the OFP. Appellant also argues due process violation. Court finds appellant did not raise this argument at district court, cites no relevant authority or factual basis to support his arguments, and the record shows appellant was given the opportunity to be heard at each stage of the OFP proceedings. Affirmed conviction.</p>	<p>After examining the evidence in light most favorable to the jury's verdict, finds there was sufficient evidence to support conviction. No due process violations.</p>
<p><u>State of Minnesota, Respondent, vs. David Stuart McMurlyn, Appellant</u>, A06-1027, Nicollet County, filed August 21, 2007 (Minn. App. 2007): Appellant convicted of felony harassment. Appeals arguing the phone calls he made to victim while an OFP was in effect do not support a conviction because they did not establish harassment that was intended or likely to cause fear. Statute requires the actor exhibit conduct that he "knows or has reason to know would cause the victim...to feel terrorized or to fear bodily harm..." Intent of appellant to terrorize or cause fear not required. General intent requires that the actor engaged intentionally in specific conduct. Specific intent requires that the actor acted with the intent to produce a specific result.</p>	<p>Intent of appellant to terrorize or cause fear not required for conviction of felony harassment. Requires showing of general intent, not specific intent.</p>

<p><u>Li-Kuehne vs. Kuehne</u>, (Unpub.), A07-807, F & C, filed September 11, 2007 (Minn. App. 2007): Appellant argues district court abused its discretion in requiring him to pay private school tuition for the parties' child. J&D requires appellant to be responsible for private school tuition until child completes 8th grade, and thereafter if the parties agree. J&D is silent as to what happens if parties disagree. District court found continuing private school was in the best interests of the child and appellant has the financial ability to pay the additional tuition. The Court of Appeals held that the trial court had not abused its discretion and affirmed.</p>	<p>Court may order Appellant to continue paying child's private school tuition where it is in the child's best interests and the Appellant is found to have the financial ability to pay.</p>
<p><u>Eben f/n/a Brouillette vs. Brouillette</u>, (Unpub.), A06-2181, filed December 11, 2007, (Minn. App. 2007): The doctrine of laches does not apply to collection of child support.</p>	<p>Laches does not apply to collection of child support.</p>
<p><u>Holmes v. Holmes</u>, (Unpub.), A06-1897, filed December 24, 2007 (Minn. App. 2007): The court did not err in requiring appellant to keep or obtain life insurance in an amount not less than his projected future child-support and spousal-maintenance obligations even though the issues of child support and maintenance were reserved, as the policy was already in effect and the court was merely requiring appellant to maintain the status quo established during the marriage.</p>	<p>No error in requiring life insurance policy remain in place even where child support & maintenance issues reserved.</p>
<p><u>In the Matter of: Afra Bragg obo minor children vs. Johnny Hudson</u>, (Unpub.), A06-2431, filed December 31, 2007 (Minn. App. 2008): While it was appropriate for the court to allow respondent to invoke his 5th amendment right in an OFP where the party fears possible criminal prosecution, the district court erred in prohibiting appellant's counsel from arguing that an adverse inference could be taken from respondent invoking his 5th amendment right.</p>	<p>OFP</p>
<p><u>Svendsen and o/b/o M.S-S., v. Strange</u>, (Unpub.), A07-166, F & C, filed February 26, 2008 (Minn. App. 2008): Court of Appeals affirmed issuance of an OFP because testimony in the record supported the district court's factual finding that Strange intended to cause fear in Svendsen. In addition, Minn. Stat. §578B.01, subd. 6(a) establishes that a finding of abuse of a non-child victim [Svendsen] is sufficient to allow the district court to restrict parenting time [with M.S-S.].</p>	<p>OFP</p>
<p><u>Goldman f/k/a Greenwood vs. Greenwood</u>, 748 N.W.2d 279 (Minn. 2008): Mother filed post-decree motion to remove child to New York State. The district court denied her motion without an evidentiary hearing. The court of Appeals, 725 N.W.2d 747, reversed and remanded. The Supreme Court ruled: (1) the locale restriction in the district court's initial custody order was valid; (2) in this case because of the wording of the initial custody order, the modification of child custody statute (Minn. Stat. §518.18(d)) rather than the statute pertaining to a custodial parent's removal of child to another state (Minn. Stat. §518.175, subd. 3) governed the mother's motion to move the child to New York; and, (3) the district court did not abuse its discretion in refusing to grant mother's request for an evidentiary hearing on the removal issue. The Supreme Court reversed the Court of Appeals.</p>	<p>Removal of Child</p>
<p><u>Rotter vs. Hansen</u>, (Unpub.), A06-2315, F&C, filed May 20, 2008 (Minn. App. 2008): To obtain an initial OFP, the petition must allege the existence of "domestic abuse", but Minnesota law sets forth less stringent requirements for granting a second OFP after an earlier order has expired. The court may grant new order upon a showing that: 1) a prior or existing OFP has been violated; 2) the party seeking the OFP is reasonably in fear of physical harm from the opposing party; 3) the opposing party has engaged in acts of harassment or stalking; or 4) the opposing party is incarcerated and about to be released, or has recently been released from incarceration.</p>	<p>The requirements for granting a subsequent OFP are less stringent.</p>

IV.D.-Other