

2023 ANNUAL  
CONFERENCE



# Legislative, CLV and Caselaw Update

- Lisa Kontz, Child Support Division Head, Dakota County Attorney's Office
- Patrick M. Hest, Assistant Director, Human Services Division, Ramsey County Attorney's Office

# Minnesota Legislative Session 2023

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# Medical Support

Effective January 1, 2025



- “Health care coverage” now includes public health care coverage.
- Public health coverage (MA) is presumed appropriate. If the child is enrolled in MA, the court does not need to determine whether private coverage is available.
- Obligors earning less than 200% of the federal poverty level must not be ordered to contribute to public health care coverage.

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.41

# Medical Support

Effective January 1, 2025



- Definition of **affordability**: private coverage is presumed affordable if the cost to cover the child(ren) does not exceed 5% of the parents' combined PICS.
- The court may also consider high deductibles and the cost to enroll the parent if the parent must enroll themselves to access coverage for the child.

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.41

# Medical Support

Effective January 1, 2025



- Suspension of medical support obligation in any month party ordered to carry does not provide coverage.
- Previously could only remove an offset. Now also applies when basic support obligor is medical support obligor.

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.41



# Potential Income

Effective January 1, 2025

- Not considered voluntarily unemployed or underemployed if receive:
  - General Assistance
  - SSI
- No potential income imputed to recipients of state-funded MFIP

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.32



# Minimum support

Effective January 1, 2025



Minimum support obligation  
does not apply to recipients of:

- General Assistance
- SSI
- TANF
- State-funded MFIP



Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.42, subd. 3

# Derivative Benefits

Effective January 1, 2025



Derivative benefits shall be subtracted from Obligor's PICS *before* subtracting the self-support reserve.

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.42, subd. 1



# Derivative Benefits

Effective January 1, 2025



Regular or lump sum derivative benefits *may* be used to satisfy arrears

- Motion
- Arrears accrued during benefit period
- Derivative benefit not considered in guidelines calculation of prior order

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.31

# Derivative Benefits

Effective January 1, 2025



Monthly derivative benefit in excess of support obligation *must not* be treated as arrearage or future payment.

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.34

# Driver's License Suspension

Effective January 1, 2023



Administrative authority  
to end suspension  
process or reinstate  
(suppress)



Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.65

# Driver's License Suspension

Effective January 1, 2023



- Full monthly payment received
- IW notice sent
- Partial payments + substantial intent to comply
- Obligor receives public assistance
- Motion to modify or review due to changes in Obligor's circumstances
- Interstate enforcement
- Incarcerated or treatment (current or six months after)
- Temporarily or permanently disabled and unable to pay
- Need DL to work
- Other (suspension not appropriate)

# Driver's License Suspension

Effective January 1, 2023



- Presence of a listed circumstance does not prevent proceeding with suspension
- May not administratively reinstate court ordered suspension

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.65

# Driver's License Suspension



## Policy clarification:

- Public assistance receipt by obligor
  - MFIP, GA or SSI = must suppress
  - MA/Child Care = may suppress
- Incarceration/treatment = must suppress
- In all other situations, look at the specific facts of the case balanced against the statutory factors and requirements, to determine if suppression is appropriate.

DHS-SIR Message #7133

8-10-23



# Driver's License Suspension

Effective January 1, 2023



The court has discretion to not suspend if:

- Suspension unlikely to induce payment or
- Suspension is an inappropriate remedy because it would have direct harmful effects on obligor or joint child

May consider list of circumstances (prior slide)

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.65



# Driver's License Suspension

Effective **January 1, 2026**



- Additional suspension criteria:
  - Obligor's mailing address known to the public authority
  - Obligor has a valid driver's license
- PRISM will not select for remedy if these criteria do not exist

Laws of Minnesota 2023, Chapter 70, Article 14  
Minn. Stat. §518A.65

# Other



- Quadrennial Review is back
- Systems Modernization/Re-factoring funding
- Department of Children, Youth and Families
  - Child Support Division joining new department
  - Target date July 2024
  - Minnesota Management and Budget Implementation Office: [www.mn.gov/mmb/dcyf-implementation/](https://www.mn.gov/mmb/dcyf-implementation/)

# Other



- Diversionary Work Program (DWP) ending March 1, 2026
- Six Month MFIP/GA Budgeting effective March 1, 2025
- Paid Family and Medical Leave (benefits begin in 2026)



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# General Rules Update

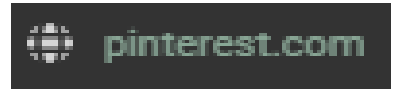
Effective November 22, 2023

# Remote Hearings

## Rule 2



- Appropriate clothing
- No eating, gum chewing, vaping
- No unnecessary background noise
- Stationary location
- Do not engage in distracting activities
- Clarify that formalities to stand for judge/oath is only when physically present



# Expedited Process Rules

## Motion to Change Venue

- Do not need to be scheduled for hearing
- May proceed by default if no hearing requested
- Rules 353.01 and 363.01

# Expedited Process Rules

- Witness list for witnesses other than agency employee or party served and filed 7 days prior to hearing. Rule 361.01
- Exhibits exchanged at provided to court at least 7 days before hearing. Rules 364.04. and 364.09
- Separate Affidavits of default and non-military status for each party. Rule 363.02



# Expedited Process Rules

- Need motion and court order to subpoena witnesses or for production of documents. Rule 361.03
- Attorneys must review and sign all pleadings (including clerical error motions). Rule 369.02

# Expedited Process Rules

- Establishment and Paternity actions must include a motion
- Must state specific relief being requested
- Rules 370 and 371



# Expedited Process Rules

- Paternity pleadings must include all required elements:
  - Adjudication
  - Child's name
  - Legal and Physical Custody
  - Parenting time
  - Ongoing and past child support
- Rule 371.02 (also Minn. Stat. 257.66)

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# Comprehensive Legal Vision (CLV) Update

[DHS-SIR](#)[Appeals](#)[ISDS-SMRT](#)[MAXIS](#)[MEC<sup>2</sup>](#)[MMIS/METS](#)[PRISM](#)[SMI](#)[SSAM](#)[SSIS](#)[Help](#)

# Comprehensive Legal Vision

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## Child Support Comprehensive Legal Vision Project

A Comprehensive Legal Vision Project was created to bring child support professionals together to attempt to solve some of the most difficult child support legal issues facing the child support community. An Executive Committee was established to oversee this project. The Executive Committee is currently composed of Michele Schreifels (DHS-CSD), and MCAA Representatives, Barbara McFadden, Kanabec County Attorney and Lisa Kontz, Child Support Division Enforcement Head, Dakota County Attorney's Office.

This CLV project has been ongoing since 2014 and has been making great progress on the many issues submitted from workers, supervisors and attorneys statewide. There are four work groups: Court, Enforcement, Guidelines and Medical, described in more detail below. Each group is assigned a list of issues and then the group meets to discuss the issues and formulate a recommendation to submit to the Executive Committee. Many recommendations have been approved but there is continued work being done on the remaining issues, as well as new issues.

Some of the ideas are in our Legislative Parking lot. The four groups and the Executive Committee are reviewing them to determine if and who will bring these ideas to the Legislature. There has been a great deal of effort and commitment by the members of the work groups. All are to be commended. As the Executive Committee has said, many of the issues and recommendations helped foster passage of some of the legislative bills. The work of the groups has had an impact on state policy as well.

If you are interested in joining a Committee, please email Lisa Kontz at [Lisa.Kontz@co.dakota.us](mailto:Lisa.Kontz@co.dakota.us).

### Submit a New Issue to CLV

If you have a new, legal-related child support issue that you would like to submit to the CLV, please complete the attached form and email it to a CLV co-chair. This document is used by anyone to submit a new, legal-related child support issue to the CLV groups.

 [Form - New Issue Submission to CLV.version 2.docx](#)



- List of Groups and Members
- Form to submit new issues
- Minutes and Agendas
- List of Approved Recommendations

# Court Group

- Chairs Jill Olson and Autumn Nelson
- Recent Recommendation:
  - Custody Order Required in NPA Caretaker cases
- Currently Working On:
  - Finalizing state policy edits for PA Reimb. only and CHIPS order impact
  - Subsequent Marriage
  - Certificate of Adjudication or Filing Court Order with MDH
  - Childcare assistance cooperation and basic support

# Enforcement Group



- Chairs: Jessica Raymond and Jennifer Cooklock
- Recent Recommendation: Arrears Only
  - Stipulation Template
  - AMPP Review
  - NPA arrears forgiveness
  - Arrears only modification
- Currently Working on: Lump Sum Distribution issues (e.g. contempt)



# Guidelines Group



- Chairs: Lori Hoff and Cathy Miller
- Recent Recommendation: Tribal Best Practices
  - Contact Info
  - Requirements
  - Service
  - IW
  - Per Capita/Other Benefits
- Currently Working on: Multiple Family/Multiple Cases



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# MFSRC Case Law Update

Oct. 2022 – Sept. 2023



Patrick M. Hest

Assistant Director - Human Services Legal Division

Ramsey County Attorney's Office





# Special Thanks

Tristian Wienke

Ramsey County Paralegal

Thomas Carter

Ramsey County Paralegal

Marcelo A. Neblett

Asst. Ramsey County Attorney

Karen Wangler

Asst. Dakota County Attorney

Charles Weber

Asst. Hennepin County Attorney

Jen Cooklock

Asst. Carver County Attorney

# Nelson v. Nelson

A22-0077 - 983 N.W.2d 923 (Minn. Ct. App. 2022)

- Precedential opinion regarding Parenting Time Orders and Child Support Calculations

## Nelson v. Nelson: The Issue

- When calculating the parenting-expense adjustment as part of the determination of a child support obligation, should the court consider the amount of parenting time being exercised or the court ordered amount?

# Nelson v. Nelson: The Facts

- Mother and Father were married in 1997 and share two joint children born in 2006 and 2008
- Mother petitioned for dissolution 21 years after their marriage in the fall of 2018
- Stipulated agreement reached where Mother would have 208 overnights and Father would have the remaining 157 nights



## Nelson v. Nelson: More Facts

- The stipulated agreement also required Father to pay \$734.00 in basic child support
- Father quickly stopped exercising his parenting time within four months of the dissolution
- Mother moved quickly to modify the support obligation but not the parenting time

# Nelson v. Nelson: Arguments

## **Mother**

- No overnights in 9 months
- There's been a substantial change and support should be ordered without the parenting-expense adjustment

## **Father**

- The court order is what is currently in place and the DC should rely on that exclusively

# Nelson v. Nelson: DC Rulings

- 1<sup>st</sup> Ruling – New support ordered at \$1,582.00
  - Father moved for amended findings
- 2<sup>nd</sup> Ruling – Mother's motion was denied
  - Mother appealed arguing the DC erred by relying on the court ordered amounts of parenting time rather than what was actually being exercised by Father

# Nelson v. Nelson: CoA Analysis

## Relevant statute:

Minn. Stat. § 518A.36, subd. 1(a). - “For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year *according to a court order* averaged over a two-year period.” *Id.* (emphasis added)

## Analysis:

There’s no dispute there is a difference between the court ordered PT and what’s being exercised  
However, the plain language of the statute and several other statutes and previous opinions lead to one logical conclusion

# Nelson v. Nelson: Holding

- The Court of Appeals acknowledged Mother's policy arguments regarding parents wishing to just receive enough support to care for their child(ren) appropriately
- The Court of Appeals found the language of the statute *unambiguous*
- The Court of Appeals found the DC properly denied Mother's motion and its decision was affirmed

# Alstrin vs. Alstrin & Carver County

A22-0247 - 2022 WL 17086766 (Minn.Ct.App. 2022)

- Key background facts:
  - Parents married in 2005, had three children, and divorced in 2012
  - Mother has sole physical custody, but parents share legal custody and parenting time was established
  - Three relevant orders, 2019 support order, 2020 parenting time adjustment, and 2021 support order (filed in 2022)
  - 2021 order stemmed from father losing his job and moving to modify support
  - Father is appealing two provisions from the 2021 order

# Alstrin v. Alstrin: 2021 Order

- Mother would begin covering children on her health insurance plan.
- Father's child-support will cover three periods:
  - Support amount will remain the same as ordered by the 2019 child-support order (\$1,704.00 per month), adjusting only the medical support obligation, for his 17-week severance period
  - For the three months post-severance Father was unemployed, support is reduced to \$197.00 per month (\$127.00 for basic support and \$70.00 for medical support)
  - Starting October 2021, Father's support increases to \$979.00 per month (\$865.00 in basic support, \$114.00 for medical support)
  - Father's child support will "revert back to the previously ordered amount" once Father's monthly income returned to the level on which the 2019 child-support order was based

# Alstrin v. Alstrin: Two Issues

- Support amount for the period covering Father's severance pay from his prior employer
- The “revert back” provision once Father attains prior income level from 2019



# Alstrin v. Alstrin: Holding # 1

- The DC abused its discretion by declining to modify Father's child support obligation during the period he was unemployed but receiving severance pay
- A DC abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record. citing Woolsey v. Woolsey, 975 N.W.2d 502, 506 (Minn. 2022)

## Alstrin v. Alstrin: Errors

- Conditions were met to modify the order and were not rebutted
- The order was not modified using the support guidelines from Minn. Stat. §§ 518A.34-36
- The DC did not consider the adjusted parenting time amount
- The support guidelines determine Father's support for this period to be \$1,366.00, markedly lower than the \$1,704.00 per month from the prior order
- DC made no other findings of fact to support a deviation from the guidelines

## Alstrin v. Alstrin: Holding #2

- The DC abused its discretion when it included a “revert back” provision
  - The 2020 stipulation which adjusted parenting time does not prevent the court from considering that adjustment in a new calculation of support. The parenting time adjustment did not affect the existing support order only at that time
  - Using the new parenting time schedule results in a lower monthly support amount than what was ordered by the “revert back” provision
  - The DC cannot know all factors for a future support order. It cannot know the exact future incomes of both parents, any future changes to parenting time, the cost of insurance (if available), or any other substantial changes in circumstances

# McMullen v. McMullen

A22-0499 - 2023 WL 1770124 (Minn. Ct. App. 2023)

- Background:
  - Parties were married in 1996 and wife petitioned for dissolution in Jan. 2020
  - Parties jointly owned four businesses and both initially requested ownership interests in the businesses
  - Husband changed his mind and sold his share of the business to Wife for \$1,858,000.00
    - Husband also agreed to a 2-year non-compete clause in the buyout agreement and that he would not interfere with the businesses, take any clients or employees from the businesses, and not to disparage Wife in connection with the businesses

# McMullen v. McMullen: Facts

- Father was ordered to pay support in the amount of \$1,677.00 per month to Mother
  - The DC recognized that the support obligation rested on information that was no longer correct due to the buyout of Husband by Wife from the businesses and the parties were allowed to submit updated evidence regarding their incomes within 60 days to be reviewed de novo

# McMullen v. McMullen: Issues

- Father appealed, arguing:
  - DC clearly erred when calculating the parties' gross incomes
  - DC miscalculated child support
- Court of Appeals affirmed the DC's holdings

# McMullen v. McMullen: Holdings pt. 1

- DC determination falls under a “clear-error review” and evidence is viewed in the light most favorable to the district court’s findings and there is no review of evidence and the record.
  - *In re Civ. Commitment of Kenney*, 963 N.W.2d, 214, 222 (Minn. 2021) and *Vangsness v. Vangsness*, 607 N.W.2d 468 472-75 (Minn. App. 2000)
- Minn. Stat. § 518A.29(a) (2022)
  - When calculating a party’s gross income, the district court “shall” include the party’s salaries, wages, self-employment, and potential income.
- Minn. Stat. § 518A.32, subd. 2(1) (2022)
  - Determination may be based on “probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earning level in the community.”

## McMullen v. McMullen: Holdings pt. 2

- Father's withdrawal of his request for business ownership interests and agreement to buyout caused the DC to rely on paystubs and 2020 business distributions to calculate gross incomes
  - Father's income was calculated at \$599,200.00 while Mother's was determined to be \$651,800.00
  - The DC could rely on past incomes from the businesses, especially since Father was "healthy, able-bodied, and has strong experience in many different areas"
  - Both parties were also allowed to submit updated income evidence
    - A party cannot complain about a DC's failure to make findings of fact when one of the reasons it failed to do so was that it was not presented with the evidence necessary for it to address the question



## McMullen v. McMullen: Holdings pt. 3

- The DC has broad discretion to provide for the support of the parties' children
- Abuse of that discretion is if it's findings of fact are unsupported by the record, if it improperly applies the law, or if it resolves the question in a manner contrary to logic and the facts on record
  - Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn. 1984) & Woolsey v Woolsey, 975 N.W.2d 502, 506 (Minn. 2022)
- The DC used the guidelines when computing income and the support obligations. Any errors in those calculations were minor and do not warrant reversal

# Kangas v. Kangas & Peacock

A22-0399 - 2023 WL 2638238 (Minn.Ct.App. 2023)

- Facts:
  - M.V.K. was born after the marriage between Joel and Jennifer Kangas ended
  - Jennifer and Jordan Peacock engaged in an affair while Jennifer was married to Joel. The affair ended during Jennifer's pregnancy. Peacock was aware that he could be the father
  - Jennifer's pregnancy was challenging, and M.V.K. was born prematurely. Joel resided with Jennifer and provided care for M.V.K. and subsequently was also present for "infant milestones"
  - COVID-19 disrupted proceedings and Peacock's participation

## Kangas & Peacock: Facts #2

- In July 2021, the DC:
  - Adjudicated Joel Kangas as M.V.K.'s legal father
  - Ordered birth record be updated to reflect Peacock as her biological father
  - Ordered the Kangas' make M.V.K. available for visits with Peacock and his family

# Kangas & Peacock: Issues

- Peacock appealed:
  - The DC erred in ruling that Joel has a paternity presumption due to GT results showing that Peacock is the biological father
  - The DC erred in adjudicating Joel M.V.K.'s legal father
- Joel Kangas cross appealed:
  - The DC erred in ordering M.V.K.'s birth record be updated to add Peacock as biological father.
  - The DC erred in granting visitation time between Peacock and M.V.K.

# Kangas & Peacock: Holdings pt. 1

- Minn. Stat. § 257.55, subd. 1(a).
  - he and the child's biological mother are or have been married to each other and the child is born during the marriage or within 280 days after the marriage is terminated...
- The DC did not err in finding that Joel Kangas had a paternity of presumption
  - M.V.K. was born less than 280 after the dissolution of the Kangas' marriage

## Kangas & Peacock: Holdings pt. 2

- GT results establishing biological paternity is a factor but is not conclusive when there are competing presumptions
- Minn. Stat. § 257.55, subd. 2 states that when there are competing paternity presumptions, “the weightier considerations of policy and logic” control how legal paternity is established
- GT results do not exclude someone else from being legally adjudicated the father
  - Caselaw supports this as well. *In re Application of J.M.M.*, 937 N.W.2d 743, 750 (Minn. 2020), *County of Dakota v Blackwell*, 809 N.W.2d 226 (Minn. App. 2011)

## Kangas & Peacock: Holdings pt. 3

- Did the DC err in adjudicating Kangas the legal father of M.V.K.?
- No
  - The DC's findings of fact support adjudicating Joel Kangas the legal father of M.V.K.
  - The DC did consider the biological claim to fatherhood from Peacock, but it also considered other relevant factors in a fair manner when making their decision

## Kangas & Peacock: Holdings pt. 4

- The DC ordered M.V.K.'s birth certificate be updated to reflect Peacock as the birth father
- Minn. Stat. § 257.66, subd. 2 states the birth record shall be updated if the order contravenes the current birth record
  - Kangas was already listed as the father on the birth record
  - Kangas was adjudicated the legal father
  - No update to the birth record is required so DC's order is remanded on this issue



# Kangas & Peacock: Holdings pt. 5

- Under the MPA, custody and parenting time cannot be settled until paternity has been established
- Paternity was established, and it wasn't Peacock
  - Peacock is “a legal stranger” to M.V.K.
  - Peacock did not cite any legal authority allowing a legal stranger to have custodial rights
  - Nor does Peacock satisfy the criteria for third-party visitation and this question was not taken up by the DC

# Versabeau v. Mekonnen

A21-1519 - 2023 WL 2638002 (Minn.Ct.App. 2023)

- Facts:
  - May 2021 J&D awarded sole legal and sole physical custody to Mother and ordered basic support in the amount of \$1,206.00 per month and an additional \$823.00 per month for childcare support

# Versabeau v. Mekonnen: Issues

- Father argues:
  - DC erred in granting sole legal and sole physical custody to Mother and largely adopting her proposed parenting time schedule
  - DC erred when calculating basic support and childcare support.
- DC's have broad discretion when awarding custody and determining a parenting-time schedule
  - *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019), *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017).

# Versabeau v. Mekonnen: Holding # 1

- Appeal must show DC's determinations are clearly erroneous.
  - The DC utilized the 12 best-interest factors set forth by Minn. Stat. § 518.17, subd. 1.
  - There were no blatant errors made by the DC
- Did the DC calculate basic support incorrectly?
  - Father argued the DC didn't consider \$14,564.00 as his gross monthly income when calculating support
  - The support guidelines worksheet shows DC did use that figure
  - No error made

## Versabeau v. Mekonnen: Holding #2

- Did the DC calculate childcare support incorrectly?
  - Father argued he overpaid and Mother underpaid their respective portions of the childcare bills for Nov.-Dec. 2020 and Jan. 2021
- Mother countered that this wasn't brought up at trial, and Father didn't seek any amendments to the Jan. 26, 2021 order
  - Since this issue wasn't brought before the DC, there was no error in not addressing it as part of childcare support calculations

# Rzeczkowski v. Borrero: Issues

A22-0954 - 2023 WL 2762442 (Minn.Ct.App. 2023)

- Issues:
  - Did the DC err in determining Father is not entitled to temporary spousal maintenance?
  - Did the DC incorrectly calculate gross incomes when determining basic support?

# Rzeczkowski v. Borrero: Facts pt. 1

- Parties married in 2011, had twins in 2015, and divorced in 2022.
- During the marriage:
  - Mother consistently worked and provided for the family
  - Father worked intermittently while pursuing a dream job
- During proceedings:
  - Mother was self-employed as a consultant
  - Father was unemployed

## Rzeczkowski v. Borrero: Facts pt. 2

- 2020 temporary order required both parties ordered to engage in a good faith job search
  - There was concern that Father was “freeriding”
- 2022 J&D:
  - Parties ordered to share custody with equal parenting time
  - Mother ordered to pay basic support of \$241.00 per month



## Rzeczkowski v. Borrero: Issues pt. 1

- Father argued he was entitled to temporary spousal maintenance and that the DC abused its discretion by not applying Minn. Stat. § 518.552, subd. 2
- However, Minn. Stat. § 518.552, subd. 2 only applies when a party cannot meet their basic needs through employment
- DC found that Father could meet his needs through employment, therefore the DC did not abuse its discretion by denying spousal maintenance

## Rzeczkowski v. Borrero: Issues pt. 2

- Father argued Mother's income was deflated while his was inflated by DC when calculating support
  - DC used Mother's 2020 income (\$189,724.00); Father contended DC should have used her 2021 income instead (\$350,920.00)
    - 2021 figure was based on Mother's testimony and documents prepared by her, and not based on tax documents
    - Since Mother has been self-employed, her income will vary year-by-year
    - \$350,920.00 is an outlier among her recent earnings
- There was no abuse of discretion by DC when calculating Mother's income

## Rzeczkowski v. Borrero: Issues pt. 3

- Father was determined to be voluntarily unemployed
- Father's income was calculated to be \$8,333.00 per month based on:
  - Elite educational background
  - Earnings from his last full-time employment (\$130,000 during 2018)
  - Vocational coach expert who estimated that Father could easily obtain a position earning \$100,000-\$125,000 per year
  - The current job market for the area
- These findings of fact fit with the statutory requirements of Minn. Stat. § 518A.32, so there was no abuse of discretion

# Floyd v. Floyd: Issues

A22-1148 - 2023 WL 3443466 (Minn.Ct.App. 2023)

- Issues:
  - Did DC err in terminating a spousal maintenance agreement due to the remarriage of the party receiving the maintenance?
  - Did DC abuse its discretion in applying an upward deviation to the child support order?

## Floyd v. Floyd: Facts pt. 1

- Parties married 2000; filed for dissolution in 2018; DC entered a stipulated J&D in Nov. 2019
- Mother remarried July 2021
- Father stopped paying spousal maintenance Dec. 2021
- Mother served Father with COLA notice Jan. 2022
  - Father responded with a motion to deny COLA, arguing that spousal maintenance terminated upon Mother's re-marriage

## Floyd v. Floyd: Facts pt. 2

- Mother responded with a motion to modify child support if the spousal maintenance was terminated
- DC ruling:
  - Terminated spousal maintenance
  - Increased Father's child support to \$4,377.00 per month

# Floyd v. Floyd: Issues

- Mother:
  - DC erred in terminating the spousal maintenance
    - Did the parties waive their right to termination in the J&D?
    - Did the DC err in not applying a clerical correction per Minn. R. Civ. P. 60.01?
- Father:
  - DC abused its discretion in applying an upward deviation from the support guidelines

# Floyd v. Floyd: Holdings pt. 1

- Minn. Stat. § 518A.39, subd. 3 (2022) states that a spousal maintenance obligation “is terminated upon...the remarriage of the party receiving maintenance.”
  - A waiver of this statutory right must be explicitly affirmed in the J&D and may not be inferred
  - A *Karon* waiver does not necessarily include a waiver of the right to terminate spousal maintenance
- The language of the J&D is clear and it does not affirmatively waive the right to termination



## Floyd v. Floyd: Holdings pt. 2

- Minn. R. Civ. P. 60.01 does not apply as there is no clerical error
  - If it was an error by the parties to omit the waiver, then that error was an error in the expression of the intent of the parties and not a clerical error

## Floyd v. Floyd: Holdings pt. 3

- Obligation was set at \$4,377.00 per month (\$2,377.00 per the guidelines, plus an extra \$2,000.00 month)
- The DC justified the upward deviation upon:
  - The standard of living the parties would have had if they had remained married
  - The disparity in the parties' earnings
  - The financial resources of the parties
- There are no clear and obvious errors as the upward deviation was tied to the needs of the children and the statutory factors governing deviations from the guidelines

## Floyd v. Floyd: Holdings pt. 4

- Court unaware of authority compelling a conclusion that any award above a finding of need is necessarily an abuse of discretion requiring reversal
- The children's standard of living would be negatively impacted without the upward deviation
- It's unlikely that itemizing the household expenses to identify those only pertaining to the children would yield a significantly different amount than what the DC found

# Traugott v. Traugott: Issue

A22-1446 - 2023 WL 3701366 (Minn.Ct.App. 2023)

- Issue:
  - Did the DC abuse its discretion when it awarded costs and attorney's fees to Mother after Father's motion to find Mother in civil contempt failed?

# Traugott v. Traugott: Facts pt. 1

- Parties married in 1995, separated in 2015, and divorced in 2017
  - Parties continued to litigate the issues of parenting time, child support, and other matters
  - Parties have filed multiple contempt motions
- A temp order issued Nov. 2020 limited Father's parenting time
  - Based on the DC's finding that it was in the best interests of the children to have limited and supervised contact with father

## Traugott v. Traugott: Facts pt. 2

- Both parents ordered to complete a coparenting course, attend individual therapy with a coparenting specialist, and sign releases allowing their therapists and the children's therapists to receive information from the other parent
  - Father also ordered to engage in family therapy with the minor children under the direction of his and the children's therapists
- Father filed a motion March 2021 to find Mother in civil contempt, alleging that Mother violated the Nov. 2020 order
  - Father alleged that Mother had not begun therapy, had not provided the release of information, and refused to allow the children to attend family therapy

# Traugott v. Traugott: Facts pt. 3

- DC held a hearing in May 2021
  - Mother began individual therapy and provided the release
  - She understood that family therapy did not start until all therapists agreed children were ready
  - DC confirmed this was the correct understanding
  - DC found insufficient evidence to find mother in civil contempt
- Mother subsequently filed an affidavit for costs and fees for the DC's consideration
  - DC awarded costs and attorney's fees to mother

# Traugott v. Traugott: Issues

- Father appealed
- Court of Appeals construed Father's appeal to include both the May 2021 and June 2021 orders, however, the June 2021 order appeal was dismissed as premature
- Father filed new notice of appeal for the June order in Oct. 2022 as the judgment for the award of costs and attorney's fees was entered on Sept. 30, 2022



# Traugott v. Traugott: Holdings pt. 1

- Minn. Stat. § 549.211 & Minn. R. Civ. P. 11
  - Allow for DC to impose sanctions in civil actions upon a party who signs, files, submits, or later advocates a written motion that is presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation
- Awards of costs and attorney's fees is reviewed for abuse of discretion
  - *Johnson v. Johnson*, 726 N.W.2d 516, 518-519 (Minn. App. 2007)
  - *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011)
  - *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022)

## Traugott v. Traugott: Holdings pt. 2

- The purpose of sanctions is only future deterrence, it is not for punishment or cost-shifting
  - Wolf v. Oestreich, 956 N.W.2d 248, 256 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021)
- The DC found that Father did not have a good-faith reason for the contempt
  - The DC correctly identified the legal standard and basis to support its decision
  - The amount awarded to Mother (\$1,796.00) is “relatively modest” and is therefore sufficient to deter repetition

## Traugott v. Traugott: Holdings pt. 3

- Father did not raise any new objections or arguments as to why the DC abused its discretion, and the Court of Appeals will not reweigh evidence when reviewing for clear error
  - *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021)
- DC's award of costs and attorney's fees is affirmed

# Cass v. Cen: Issues

A22-0538 - 2023 WL 3939488 (Minn.Ct.App. 2023)

- Key Issues-
  - Whether Wife had competent counsel;
  - Whether negotiations were sufficiently detailed; and
  - Did DC need to ask Wife whether she considered the terms of the stipulation fair and equitable?

# Cass v. Cen: Facts pt. 1

## **WIFE**

- Wife moves from MN to NC in 2014 after 4 years of marriage.
- Number of health issues including sensitivity to electromagnetic frequencies and allergies to plastic and nickel.

## **HUSBAND**

- Gastroenterologist
- Purchases a home for Wife and retirement in 2015 in NC
- Husband visits Wife multiple times after home purchase
- Husband files for divorce in 2017

## Cass v. Cen: Facts pt. 2

- Because of Wife's health issues, she motioned the court to place case on inactive status.
- Husband requested a denial of that motion asked the court to appoint Wife a GAL to assist with discovery which the court grants
- Wife eventually hires an attorney, and the GAL is then dismissed
- GAL is reappointed months later because the court deemed it necessary to move the dissolution forward and to ensure Wife understood the legal process

## Cass v. Cen: Facts pt. 3

- The GAL Report:
  - Wife is highly intelligent and capable of understanding the component parts of the marital estate and was observed asking complex questions to experts she talked to
  - Wife seemed to be the cause of the delay in providing the financial and other documents to her lawyer
  - There were some concerns about Wife's anxiety around environmental sensitivities and health which continued to pose a barrier to engaging in the divorce process productively

## Cass v. Cen: Facts pt. 4

- A two day trial occurs after the GAL report is received and reviewed
- The parties held similar positions on asset division on the second day of trial. They reached a stipulation and Wife agreed to pay off the mortgage of the NC home
- There would also be a \$100,000 payment made by Husband and 6 more consecutive \$10,000 payments in return Wife waived her claim to spousal maintenance
- All confirmed on the record



## Cass v. Cen: Facts pt. 5

- Two days after the trial, Wife sends a letter to the court saying she was pressured to agree to a settlement
- Three days later, Wife sends another letter saying she was sick from gadolinium poisoning during the agreement
- Wife filed a motion at that time or shortly thereafter
  - DC signed the proposed J&D filed by Husband regardless of the motion
- Wife appealed the stipulation being signed because she deserved to be heard and the Court of Appeals agreed and remanded the case
  - Wife's motion was heard and denied. Wife appealed again

## Cass v. Cen: Issues

- Wife argues that the stipulation was improvidently made and in equity and good conscience ought not to stand because:
  - She was not represented by competent counsel;
  - Extensive and detailed negotiations did not occur, and
  - The DC did not ask whether she understood the terms of the stipulation and considered them fair and equitable

# Cass v. Cen: Holdings pt. 1

- Wife contends clear error by the district court.
- The DC found that wife understood the nature of the agreement and her current statements were not credible

- Court of Appeals sided with the DC
- The record supports Wife understood the agreement, she was highly intelligent, and her counsel clearly walked her through her rights and waivers

## Cass v. Cen: Holdings pt. 2

- Wife contends that the DC clearly erred when it determined that the parties' negotiations—which included several mediations and two moderated settlement conferences—were extensive and detailed because the bottom-line figure showing Wife what she would actually be receiving was nowhere to be found
- Wife's attorney waived this argument twice during her motion to vacate the stipulated agreement. He clearly states "Yes. . . We're not making an issue of that," when asked by the DC
  - *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that a reviewing court only considers issues presented to and considered by the DC)

## Cass v. Cen: Holdings pt. 3

- Wife urges the Court of Appeals to conclude that the DC clearly erred because the DC did not ask whether she considered the terms to be fair and equitable
- First, while Wife is not a native English speaker, the undisputed evidence shows that she is highly proficient in the English language. Before moving to the US, she taught English at University level
- Second, Wife's lack-of-capacity argument is belied by a record that shows she affirmed multiple times in her own words and through counsel that despite her "reaction" to gadolinium she was prepared to participate and understood the proceedings
- Third, Wife's contention that the GAL was appointed "due to concerns about her mental capacity," is directly contradicted by the record

# Jacobson v. Vukosavoic: Issues

A22-0998 - 2023 WL 3445151 (Minn.Ct.App. 2023 )

- Dissolution proceeding. Issues of the appeal:
  - Did the DC err by denying the Wife's motion to dismiss?
  - Did the DC err by denying the Wife's motion challenging venue?
  - Did the DC err by denying Wife's motion seeking conduct-based attorney's fees?
- DC's decisions were affirmed

# Jacobson v. Vukosavoic: Facts pt. 1

- Court of Appeals based the facts on Husband's petition for dissolution and affidavits filed in response to Wife's motion
- The parties had a whirlwind romance
  - Began dating in early 2021 and married on May 20, 2021
- Husband owned two residential properties
  - One in Lindstrom, MN and the other in Naples, FL prior to marriage
- Wife, born outside US and not a citizen yet, insisted Husband make her a joint owner of the properties to improve her citizenship candidacy after talking to her immigration attorney
  - Husband promptly executed warranty deeds for these properties

## Jacobson v. Vukosavoic: Facts pt. 2

- Wife visited MN twice: 8 days in May 2021 and 3 days in June 2021
- In September 2021, the relationship fell apart
- Husband discovered Wife was engaged to another man while dating him
  - That man had also conveyed property to Wife with quit-claim deeds in early 2021
  - The former fiancé filed suit on March 24, 2021 alleging Wife engaged in fraud and undue influence over him
- A third man also conveyed property to Wife with a quit-claim deed in Dec. 2020.
  - The same Florida attorney was used for all three quit-claim deeds



## Jacobson v. Vukosavoic: Facts pt. 3

- Husband returned to MN and began planning a divorce
- Wife remained in FL at the now jointly owned Naples home
  - Husband lost out on rental income from the split
  - Husband made all mortgage and utility payments for both properties
- Husband initially filed for divorce in Collier County, FL
  - Voluntarily withdrew as he did not satisfy FL's residency requirement.

# Jacobson v. Vukosavoic: Facts pt. 4

- Husband's first attempt to divorce in MN filed in Nov. 2021
  - Dismissed after Wife's motion
  - Neither party satisfied the 180-day residency requirement
    - Minn. Stat. § 518.07, subd. 1(1) (2022)
  - DC granted Wife's motion for conduct-based attorney's fees
- Second attempt filed in March 2022
  - Wife moved to dismiss for lack of personal jurisdiction, improper venue, and for a second award of attorney's fees
  - DC denied wife's motions
  - Wife appealed

# Jacobson v. Vukosavoic: Holding #1a

- Minn. Stat. § 543.19, subd. 1 allows for personal jurisdiction over a nonresident if one of four prerequisites is met
  - Owning real property in MN is one
- Statute is broad enough to satisfy the Due Process Clause of the 14<sup>th</sup> Amendment to the US Constitution
  - The state usually looks to federal caselaw in personal jurisdiction questions
  - Minimum contacts
    - Nonresidents must engage in activities which would create a reasonable expectation they would be brought into court here

# Jacobson v. Vukosavoic: Holding #1b

- If defendant challenges personal jurisdiction
  - Burden is on the plaintiff / petitioner to show minimum contacts
    - Bandemer v. Ford Motor Co., 931 N.W.2d 744, 749 (Minn. 2019) & Juelich v. Yamazaki Mazak Optonics Corp., 682 N.W.2d 565, 569-70 (Minn. 2004)
  - Allegations in the complaint are assumed to be true
    - Rilley v. MoneyMutual, LLC, 884 N.W.2d 321, 237 (Minn. 2016)
- Court reviews *de novo* when a party appeals personal jurisdiction
  - Must determine that plaintiff / petitioner made a prima facie showing
    - Rilley at 326

# Jacobson v. Vukosavoic: Holding #1c

- Personal Jurisdiction exists. Parties' arguments are based on the satisfaction of minimum contacts
  - DC only looked at the statutory issue of property ownership
  - Minnesota Courts consider 5 factors: (1) Quantity of contacts; (2) Nature & quality of the contacts; (3) Connection of the cause of action with the contacts; (4) MN's interest in providing a forum for resolution; and (5) Convenience of the parties
- The first three are “primary factors” which determine if minimum contacts exist
  - *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983)
- The last two are “secondary factors”, which determine if “the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice”
  - *Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978)

# Jacobson v. Vukosavoic: Holding #1 d



- **Quantity:**
  - Wife owns property
  - Wife visited twice
  - Wife has a “meaningful contact” with MN
- **Nature and Quality:**
  - Wife urged Husband to make her a joint owner of the MN property
  - 8-day visit added nature and quality of ties to state
- **Connection:**
  - The MN property “is likely to be a significant issue” to be resolved in the action
  - This supports personal jurisdiction
- **MN’s interest in providing a forum:**
  - Strong interest in providing for resolving disputes about possession of property within its borders
  - MN Husband’s state of residence prior to marriage
  - Thus, MN has an interest in providing a forum
- **Convenience:**
  - The issue of convenience is neutral due to the ownership of property in both MN and FL
- **Summary:**
  - Four out of five support personal jurisdiction
  - Therefore there was no error by the DC

# Jacobson v. Vukosavoic: Holding #1e

- As this decision was based on the record of Wife's motion to dismiss, at which stage we must assume Husband's allegations are true
- Wife is not barred to litigate the issue of personal-jurisdiction again at trial, at which point Husband will be required to prove the facts necessary to establish personal jurisdiction

# Jacobson v. Vukosavoic: Holding #2a

- Wife's argument based on Minn. Stat. § 518.09 (2022) which states that a “proceeding for dissolution” shall be “venued in the county where either spouse resides”
  - Change of venue by consent of the parties, if an impartial hearing cannot be had, or when the convenience of the parties or the ends of justice would be promoted by the change
  - Party moving for a change of venue bears the burden of demonstrating cause for change
- Venue change appeals are reviewed for abuse of discretion
  - *Toughill v. Toughill*, 609 N.W.2d 634, 642 (Minn. App. 2000)
- Wife's appeal argues only that she not be required to appear in a MN Court. She asks proceedings move to Collier County, FL



# Jacobson v. Vukosavoic: Holding #2b

- Wife cites no authority:
  - That § 518.09 allows for the dismissal of a dissolution action related to venue
  - That § 518.09 allows for the transfer of a MN dissolution action to another state as opposed to another MN county
  - The Court of Appeals is unaware of any authority that would allow such a decision
- Wife does not provide any “exceptional reasons” why she is more inconvenienced by the action taking place in MN than Husband would be in FL
- Wife has not show that a fair hearing is unavailable in Chisago County, MN
- Thus there was no abuse of discretion by the DC

# Jacobson v. Vukosavoic: Holding #3a

- The DC may award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding
  - Minn. Stat. § 518.14, subd. 1 (2022), *Szarzynski v. Szarzynsky*, 732 N.W.2d 285, 295 (Minn. App. 2007); *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001)
  - The moving party has the burden to show the other party has met that condition
  - Determination is based on if the behavior contributed to the expense of the litigation *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991)
- Reviews are for abuse of discretion

# Jacobson v. Vukosavoic: Holding #3b

- Wife contends Husband unreasonably increased the length or expense of proceedings by commencing a total of 3 actions, the first 2 of which were improperly filed
  - Wife already awarded conduct-based attorney's fees from the prior MN action
- Wife does not contend Husband acted unreasonably in filing this action and in resisting the motion to dismiss
- There was no abuse of discretion by the DC

# Knutsen v. Knutsen: Issues

A22-0616 - 2022 WL 17748086 (Minn.Ct.App. 2022)

- Issues are:
  - Priority of jurisdiction and
  - Appropriateness of conduct-based attorney's fees awards
- Affirmed in part, reversed in part, and remanded

# Knutsen v. Knutsen: Facts pt. 1

- Husband and Wife married in Ramsey County and had 3 children
  - They resided mostly in Minnesota for the duration of the marriage
- Wife and children moved to OK in 2016
- Husband filed for divorce in 2021
  - He submitted his petition in Oklahoma
- 26 days later, Wife petitioned for divorce in MN
- Prior to the DC hearing, the couple's youngest child turned 18 years old

## Knutsen v. Knutsen: Facts pt. 2

- The DC dismissed the Wife's petition on three grounds and awarded Husband conduct-based attorney's fees:
  - It determined the first-to-file rule applied, so the husband's action in OK had priority over the wife's MN action
  - It determined the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and Uniform Interstate Family Support Act (UIFSA) denied Minnesota jurisdiction
  - The "unjustifiable conduct" provision in the UCCJEA meant the DC should decline wife's petition as she evaded service for the OK petition and engaged in forum-shopping
- Wife appealed all parts of the DC decision

# Knutsen v. Knutsen: Holding pt. 1

- Wife made 6 arguments as to why the DC's ruling was incorrect
- Appeals court did not address all her arguments, but ruled the DC abused its discretion when it ruled against Wife using the first-file-rule
  - First-to-file rule is meant to be a flexible tool, and the DC should consider judicial economy, comity between the courts, cost to and convenience for the parties, and the possibility of multiple outcomes. *Medtronic, Inc. v. Advanced Bionics Corp*, 630 N.W.2d 438, 448-49 (Minn. App. 2001)
  - When applying, the DC must be guided by which action will provide the parties with the most comprehensive solution. *Minnesota Mut. Life Ins. v. Anderson*, 410 N.W.2d 80, 82 (Minn. App. 1987)
- The DC failed to analyze which venue, OK or MN, would provide the most comprehensive solution to the issue.
- The DC was correct not having jurisdiction over the issues of child custody and child support
  - The youngest child turning 18 meant the UCCJEA no longer applied to the case
  - It incorrectly applied the first-to-file precedent from *Schmidt v. Schmidt* 436 N.W.2d 99, 103 to the entire matter, failing to recognize *Schmidt* no longer applied due to the child emancipating

## Knutsen v. Knutsen: Holding pt. 2

- Attorney's fees appeals are reviewed for an abuse of discretion
- Attorney's fees only awarded if party unreasonably contributes to the length or expense of the proceeding Minn.Stat. § 518.14, subd. 1
- The DC court did abuse its discretion in this case
  - The DC misread the ruling regarding forum-shopping from *Reed v. University of North Dakota*, 543 N.W.2d 106, 108-109 (Minn. App. 1996)
  - That ruling did not hold that a party, by forum shopping, engaged in misconduct
- Wife's actions did not contribute to the length and expense of the MN petition



# Knutsen v. Knutsen: Holding pt. 3

- Wife argued that the DC incorrectly decided it's jurisdiction over child support
- Minn.Stat. § 518C.204(a) is the relevant statute:
  - Three conditions that must be met:
    - Petition or comparable pleading filed before the expiration of the time allowed in the other state for a responsive pleading challenging the other state's jurisdiction
    - The contesting party timely challenges jurisdiction in the other state
    - Minnesota is the child's "home state"
- The Court of Appeals is satisfied that husband's OK pleading is comparable to a petition seeking child support in MN.
  - OK courts must decide child support, like MN courts, when resolving a divorce case involving a minor child. See Okla. Stat. tit. 43, § 112(A)(1) (2022) and Minn. Stat. § 518A.38, subd. 1 (2022)

## Knutsen v. Knutsen: Holding pt. 4

- We offer no opinion as to how an Oklahoma court might decide whether and to what extent child support is available...We only say that the DC appropriately refused to exercise jurisdiction to decide the issue of child support in light of [husband]'s comparable pleading for child support in OK, even if an OK child-support order may be unlikely given [child]'s age

# Knutsen v. Knutsen: Final Note

- Husband moved to strike portions of Wife's reply brief and to supplement the record with documents purportedly filed in OK
- Both requests were denied
  - Husband misread Minnesota Rule of Civil Appellate Procedure 110.5
    - Rule 110.5 “limited to correction of the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it.”  
W. World Ins. Co. v. Anothan, Inc., 391 N.W.2d 70, 72 (Minn.App. 1986)
  - Husband's materials don't fit that rule

# That's a Gold Foiled Wrap, Folks!!

- Thank you for attending this session
- Please get your evaluations in before you leave
- Have a safe drive home!