

Domestic Relations

Child Support: Two Points of View

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“Child Support”!!!! There are few phrases within the context of a divorce proceeding which invoke more passion and emotion. The party receiving the child support commonly believes that the amount that is ordered by the court is wholly inadequate to provide for the basic needs of the children. The meager sums, which may or may not be collected by the Friend of the Court, will never be sufficient to cover the additional things that all children need or want including cello lessons, those new gym shoes that are so expensive, and the incidental cost of health care for the children. The payers of the support amount, on the other hand, frequently feel that the amounts determined to be paid are never used for the benefit of the children and really constitute alimony for the former spouse. Insult is added to injury when the court will demand automatic deduction from your paycheck although you have never missed a payment of any obligation, including child support.

As a fundamental proposition, child support is designed to allocate between a child’s parents the financial responsibility for providing for the needs of the child. Ideally it should be based upon the actual needs of the child and the relative ability of both of the child’s parents to pay for the support of the child. The amount of support ordered by the court to be paid by one party to another is not intended to, nor should it, pay the whole cost of providing for the child. An appropriately established child support level should take into consideration the payer’s ability to pay and

Child Support (cont'd)

the obligation of the custodial parent to participate in the financial responsibilities of rearing the child.

Michigan law has recently turned to the power of the computer in assisting in the determination of the child support awards by the court. The legislature has commanded that the circuit court determine the appropriate level of child support by utilization of the "Michigan Child Support Guidelines." These computer assisted guidelines utilize a series of charts or grids based upon the demographic information available as to the cost of rearing a child. Injected into the formula is the gross (then net) income of both of the parties to arrive at a location on the correct grid which will set the level of child support to be paid by one party to the other. These guidelines also allow for many additional factors including the excess cost of exercising visitation, the relative time that the children spend with the respective parents, second jobs and bonus income, self employed persons and parents who have the ability to work and earn money but who have chosen not to work, among other things. The Legislature has commanded that the level of child support determined by the proper application of the guidelines shall be the support amount unless compelling circumstances suggest otherwise.

In addition to determining child support, the Guidelines also take into consideration the costs of child care for children until the beginning of the school year after the child's 12th birthday. The Family Court will consider the child care expenses of both of the parents for the child and will allocate the cost of the child between both the parties, keeping in mind that a portion of the child support already ordered considers child care costs.

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After the court has determined the appropriate level of child support and child care (an amount nearly no one will agree with) the court will enter an order requiring that the child support ordered will be taken directly out of the paycheck of the payer. The law provides that this will occur in every case no matter what the payer's history of payment record or financial responsibility is.

Once the court order has been entered the enforcement activity of the Friend of the Court may be instituted to seek to collect the ordered support. The success of the Friend of the Court in collecting support depends on who you talk to. The parent receiving the support probably feels that insufficient resources are expended and not enough is being done to collect from that "deadbeat." The party ordered to pay more than likely believes that the court is unfeeling and lacks understanding for the inability to pay the ordered amounts. What is clear is that the court is vested with substantial authority to jail someone who has the apparent ability to pay the support but who does not. The order to jail has a remarkable effect on the sudden appearance of funds to pay the back support.

Indeed, there are many misconceptions about the issue of child support, its determination, collection and enforcement. It is a subject about which the payers and the recipients are reminded of "weekly."