CASE LAW AND STATUTORY UPDATE

February 9, 2012 through March 13, 2013

Presented at the Eastern Regional Interstate State Child Support Association Training Conference and Exposition, Orlando, Florida, May 19-23, 2013

Prepared by:

David L. Morris
Senior Deputy Prosecutor
Marion County Prosecutor's Office
Child Support Division
251 E. Ohio Street, Suite 700
Indianapolis, IN 46204
David.Morris@indy.gov

TABLE OF CONTENTS

Special thanks to Elodie Meuser of the Mediation Option, LLC and Julie Fred, Deputy Prosecuting Attorney, Marion County, Indiana, for their painstaking review of this memorandum

I. FEDERAL LEGISLATION AND POLICY

A. Federal Legislation -

1. Sequestration Transparency Act of 2012 - H.R. 5872 (112th) (P. L. 112–155) - provides for automatic cuts to certain federal expenditures.
   http://www.govtrack.us/congress/bills/112/hr5872/text

2. OMB Report Pursuant to the Sequestration Transparency Act of 2012 -

   a. OMB determined that the child support enforcement (CSE) program would NOT be subject to the cuts. CSE joins other entitlements such as Medicaid, SNAP, IV-E, TANF, and SSI as programs protected from the cuts which will occur on January 2, 2013 if no agreement is reached on an alternative.

   b. http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf

B. Code of Federal Regulations -

1. 45 CFR § 301.1 - revised as of October 1, 2011 (*see* 77 FR 59339), in § 301.1 definitions for "Agent of a Child" and "Attorney of a Child" are added to read as follows:

   a. Agent of a Child means a caretaker relative having custody of or responsibility for the child.

   b. Attorney of a Child means a licensed lawyer who has entered into an attorney-client relationship with either the child or the child's resident parent to provide legal representation to the child or resident parent related to establishment of paternity, or the establishment, modification, or enforcement of child support. An attorney-client relationship imposes an ethical and fiduciary duty upon the attorney to represent the client's best interests under applicable rules of professional responsibility.

C. Federal Policy -

1. Admin. for Children & Families Fiscal Year 2013 Budget Proposals - Child Support Enforcement (+$7 million in FY 2013 and $1.8 billion over ten years)
   http://www.acf.hhs.gov/sites/default/files/assets/ExecutiveSummary.pdf

   a. The FY 2013 request includes a Child Support and Fatherhood Initiative that will bolster states' efforts to direct more of the support collected to children and integrate parenting plan arrangements in the support order establishment process.

b. The request also includes proposals to improve collections and increase program efficiency and effectiveness.

2. ACF - Payments to States for Child Support Enforcement and Family Support Programs - http://www.acf.hhs.gov/sites/default/files/assets/MandatoryProgramsFY2013.pdf

   a. FY 2013 Request – The $3.867 billion FY 2013 request for Child Support Enforcement and Family Support Programs reflects current law of $3.856 billion adjusted by +11 million. The proposal assumes Congressional action on several legislative proposals, including a new Child Support and Fatherhood Initiative. The proposal promotes strong families and responsible fatherhood by ensuring that children benefit when parents pay support, promoting access and visitation, and improving enforcement tools. This proposal also includes funding to encourage states to pass through child support payments to families. Lastly, the proposal requires states to establish access and visitation arrangements to promote parental engagement in children's lives.

   b. Ensuring Children Benefit When Parents Pay Support - $1.371 billion over ten years to encourage states to pass through current child support collections to TANF families, rather than retaining payments for cost recovery. States would no longer be required to reimburse the federal government for any part of current child support payments that the state distributes to the family and would allow states to discontinue assigning child support payments to the state when a family is receiving TANF assistance.

      (1) The proposal requires child support payments made on behalf of children in Foster Care to be used in the best interest of the child, rather than as general revenue for the state ($303 million over 10 years).

      (2) It also prohibits the use of child support to repay Medicaid costs associated with giving birth—a practice retained by only a handful of states ($80 million over 10 years). Recovery of this debt from noncustodial parents can discourage the participation of pregnant women in Medicaid, discourage fathers' attachment to the formal labor market, and reduce child support payments to the family.

   c. Promoting Access and Visitation - The budget provides $580 million over ten years to support increased access and visitation services and integrates these services into the core child support program. The proposal also requires states to establish access and visitation responsibilities in all initial child support orders.

d. Enforcement and Establishment - Proposals aimed at improving collections and program efficiency -

(1) Mandate data comparisons with insurance claims, payments, settlements and awards;

(2) Require employers to report lump sum payment for intercept;

(3) Closing a loophole to allow garnishment of longshoremen's benefits;

(4) Improving the processes for freezing and seizing assets in multistate financial institutions;

(5) Providing tribal child support programs with access to the Federal Parent Locator Service and other enforcement tools and grant programs currently available to state child support programs, as well as sustained support for model tribal computer systems;

(6) Modifying the threshold at which states become subject to performance penalty based upon their paternity establishment percentage to better reflect state performance;

(7) Requiring each state's use of procedures to review and adjust child support debt owed to the state, and to discourage accumulation of unpaid child support debt during incarceration;

(8) Revising Title IV-D to consolidate and clarify various data matching, safeguarding and disclosure authorities; and

(9) Requiring states to pass UIFSA 2008, a model uniform state law, to ensure efficient international case processing as required by the Hague Child Support Treaty.

3. NCSEA Policy Statements - http://www.ncsea.org/advocacy-public-policy/ncsea-board-resolutions-policy-statements/

a. Setting Current Support Based on Ability to Pay - As a general rule, child support guidelines and orders should reflect actual income of parents and be changed proactively to ensure current support orders reflect current circumstances of the parents and to encourage regular child support payments. http://www.ncsea.org/documents/Ability_to_Pay-final.pdf

b. Improved Collection Tools - NCSEA supports amendments to federal law and regulation that expand and improve the effectiveness of existing child support collection tools, add new collection tools, and improve access to information. http://www.ncsea.org/documents/Collection-tools-final.pdf

c. Collaboration with the Workforce Investment Act - The Child Support program and the WIA should be required to collaborate so that unemployed noncustodial parents would receive services designed to enhance employability and secure employment, ultimately resulting in the payment of child support. http://www.ncsea.org/documents/Workforce-Development-Collaboration-final.pdf

II. CASE LAW - FEBRUARY 9, 2012 THROUGH MARCH 13, 2013[1]

A. Arrears -

1. Agreements to Waive Arrearage - A magistrate erroneously abated the arrearage owed by a divorced obligor after finding that his ex-wife was equitably estopped from seeking them because she had agreed to accept a lesser amount than what was required by their child support order, the Colorado Court of Appeals held. The appellate court acknowledged that equitable estoppel may allow relief from accrued arrears in very limited circumstances, such as concealment of a child or uncompleted adoption proceedings. Neither was applicable in this case. Moreover, the court explained that a party claiming estoppel "must demonstrate both reasonable and detrimental reliance on the other party's acts or representations and lack of knowledge or convenient means of knowing the facts." But nothing in the record suggested that he relied on the mother's agreement or was unable to file a modification request. *In re Beatty and Turner*, 279 P.3d 1225 (Colo.Ct.App. 2012), 38 FLR 1326.

2. Arrears Accruing under Pendente Lite Order - A divorce court should not have relied on a 1958 case in discharging a husband's unpaid child support that had accrued under its interlocutory order, where more recent statutory changes have limited a court's authority to vacate past due support, the Kansas Supreme Court ruled. *In re Brown*, 291 P.3d 55 (Kan. 2012), 39 FLR 1009.

[1] Primary citations are to the West National Reporter System where available. West's National Reporter System is a set of reporters that divides the 50 states and the District of Columbia into seven regions: Atlantic, North Eastern, North Western, Pacific, South Eastern, South Western, and Southern. The National Reporter System covers the appellate courts of all the states and the District of Columbia. The federal reporters published by West are also part of the National Reporter System.

Secondary citations are to the Family Law Reporter (FLR) where available. The FLR is a publication of the Bureau of National Affairs, Inc (BNA), a wholly-owned subsidiary of Bloomberg L.P., a leading source of legal, regulatory and business information for professionals.

a. Both the divorce court and the appellate court cited *Edwards v. Edwards*, 324 P.2d 150 (Kan. 1958), for the proposition that installments of temporary support pendente lite do not become a final judgment on their due date, and are subject to review and modification. The appellate court thus reasoned that because the divorce court's temporary support order did not mature into a judgment, it was not precluded from discharging the accrued arrearage.

b. Reversing, the high court noted that in the decades following *Edwards* there had been substantial statutory amendments that impacted its rationale. These included: (1) altering the power to vacate an interlocutory support order; (2) enacting provisions related only to ex parte orders; (3) limiting the retroactivity of modifications; (4) allowing garnishment and other enforcement procedures if temporary support is not paid; and (5) requiring service and an opportunity to be heard before such enforcement mechanisms can be used. "Collectively, these amendments significantly alter the statutory framework for interlocutory child support orders as compared to the statutes in place at the time of the Edwards opinion," it noted, adding that they "generally obliterate" and "weaken" the grounds relied upon in *Edwards*. Accordingly, the trial court could not vitiate the husband's child support arrearage.

3. Retroactive Termination of Support - A trial court erred in granting a delinquent obligor's petition to terminate his support obligation in light of his mental disability, which he contended rendered him unable to pay the arrears that had accumulated under the support order, the Tennessee Court of Appeals held. The appellate court pointed out that Tennessee law provides that a child support order is not subject to modification as to the period before the action to modify is filed. Moreover, equitable defenses "may not be employed to eliminate such arrearages, as Tennessee law does not allow the outright retroactive termination of child support arrearages which have accrued as a result of valid court orders." *State ex rel. Letner v. Carriger*, slip op. No. E2011-01853-COA-R3-CV (Tenn.Ct.App. 8/20/12), 38 FLR 1504. For a full discussion of this case, *see* Modification*State ex rel. Letner v. Carriger*, this outline.

4. Divisible vs. Non-Divisible Orders - A trial court erred when, in calculating the arrears owed by a divorced father, it found that the support award entered for his two children was unallocated, Florida's First District Court of Appeal ruled. *Gilbert v. Cole*, — So.3d — (Fla.Dist.Ct.App. 5/18/12), 2012 WL 1758986, 38 FLR 1348.

a. The child support award in his divorce decree required the father to pay $3,500 per month as long as the mother was the "primary residential parent for two children who have not become 18" or were otherwise emancipated. It also provided that if a child turned 18 while still in high school, "support shall continue as to such child" until the child graduated. By the time Father filed his modification request in November 2010,

the oldest child had become emancipated in 2009 and Father had fallen into arrears. The trial court held that the child support order for the two children was unallocated (in gross). Thus, it said, Father owed the in gross support amount until he had filed his modification petition in 2010.

b. Reversing, the appellate court found the divorce decree sufficiently succinct to create an allocated (per child) with each child to receive half of the amount until the child is emancipated. The court explained that "[a]lthough the decree awards a single monthly sum for both children, it also provides that Appellant's support obligation ends with each child's respective emancipation.

5. Effect of Marriage / Reconciliation -

a. A divorce court erred in crediting a father's child support obligation with the amount he had paid during his marriage to his child's mother under a prior order that was entered before they wed, the Ohio Court of Appeals, Ninth District, held. *Kish v. Kish*, slip op. No. 12CA010185 (Ohio Ct.App. 11/26/12), 39 FLR 1045.

(1) After the child's birth in 2001 while the parties were not married, Father was ordered to pay child support. He continued to do so — by payment into Mother's bank account — even after the parties married in 2005 in order to reap certain benefits. In particular, the parties believed it would affect the amount of child support that Husband's former wife could seek from Husband if she ever filed for it. Further, due to the arrangement, Wife was able to take advantage of reduced daycare rates owing to the fact that the State subsidized day care costs based upon Wife's single income. The child support order entered in the paternity case ended in July 2008 when Husband successfully moved to terminate it. The order terminating Husband's obligation was retroactive to the date of the parties' marriage. Between February 14, 2005 (the date of the marriage), and July 18, 2008 (the date of termination), Husband had paid Wife $19,696.89 in child support.

(2) In 2009, the mother filed for divorce. The father was awarded visitation and ordered to pay child support, as well as $4,000 in arrears arising from his noncompliance with temporary orders. The decree made no mention of the prior support obligation. In 2011, the father filed a Rule 60(B) motion for relief from judgment, asking the court to vacate the arrearage order and to incorporate the prior support obligation into its judgment. The trial court granted the motion, adopting the prior obligation into the divorce decree to reflect a child support credit of $19,696 to the father. The mother appealed.

(3) Reversing, the appellate court noted that the trial court had specifically found that "by not including mention of the order in the Divorce Decree the parties committed fraud upon this Court," but it had nevertheless granted the father's motion for relief. "Because Husband exhibited a disregard for the judicial system through his conduct, he was not entitled to relief, " the appellate court said, pointing out that he "engaged in wrongdoing to reap a potential benefit and then later asked the court to afford him relief on the basis of his wrongdoing." Consequently, it held, the trial court abused its discretion by granting the motion.

b. A couple's marriage following their child's birth nullified a child support order entered in a prior paternity action, and the father thus should not have been required to pay arrears under it after they separated, the California Court of Appeal, Fourth District, held. Addressing the issue for the first time, the court refused to distinguish the case from those finding that divorced parents who remarry are no longer subject to a support order issued by the divorce court. The court opined that "when parents of a child born-out-of-wedlock marry each other, the child custody and future support provisions of the paternity judgment are nullified and replaced by the law governing the rights and obligations of married parents to their child." *Wilson v. Bodine*, 143 Cal.Rptr.3d 803 (Cal.Ct.App. 2012), 38 FLR 1440.

c. A father who stopped paying child support after he and his ex-wife reconciled is not liable for arrears that accrued during the four years they lived together with their children before separating again, where she had complete access to the joint bank account into which he regularly deposited his paychecks, the Tennessee Court of Appeals ruled. The appellate court also held that she was not entitled to reimbursement for the children's health insurance premiums, even though it was the father's responsibility to furnish such insurance. In addition, the court said she could not recover retroactive support for the child born to the parties during the period of reconciliation. *Estes v. Estes*, slip op. No. M2010-01243-COA-R3-CV (Tenn.Ct.App. 4/16/12), 38 FLR 1293.

(1) Observing that the father put more money in a joint account each month than he was required to pay, the appellate court said that "[i]mportant to our decision are the facts that the parties and their children lived together as a family and paid expenses from a joint account. Mother agreed to and participated in this arrangement, and it would be inequitable to award Mother past child support under these circumstances."

(2) By the same token, the court decided that it was also inequitable to require the father to reimburse the mother for the premiums deducted from her paychecks after the parties switched the children from the father's higher-premium health

plan to hers. Again stressing that the father deposited 100% of his income into the joint account throughout the reconciliation period, it pointed out that the mother "was capable of writing herself a check from the parties' joint account for the amount of premiums she paid for the children's insurance at any time" during the parties' period of cohabitation.

(3) Finally, the trial court did not err in refusing to award Mother retroactive support for a third child born between the parties whom the father supported during their period of cohabitation. Notwithstanding the guidelines' requirement of retroactive support back to the date of the child's birth, the appellate court held that this provision was applicable only where the obligated parent had failed to pay support, which was not the case here.

6. Nonconforming Payments - A mother's petition for retroactive child support covering the period between when she and her husband separated and their divorce was properly denied, where he had covered the monthly loan payments on her car during that time in lieu of paying support, the Tennessee Court of Appeals held. Affirming the trial court's order allowing the father a credit, the court found that by accepting the father's proposal to pay her car note, the mother had acquiesced in such arrangement in lieu of support. In addition, the appellate court pointed out that the mother testified that if she had received the money from the father during that time as child support, she "would have used the same money to make the same payments." Accordingly, the court asserted that to "hold that these payments did not constitute child support would be to elevate form over substance." Also noting that the father's car payments exceeded his later child support obligation by $39 per month, the court observed that he "has paid $2,106 more than he was required to pay in child support. We agree with the trial court that it would have been inappropriate to require [him] to pay an additional $628 per month in retroactive support." *Carroll v. Carroll*, slip op. No. M2012-00111-COA-R3CV (Tenn.Ct.App. 1/30/13), 39 FLR 1154.

7. Overpayments - A trial court did not abuse its discretion in awarding a divorced obligor $10,828 for his overpayment of child care expenses, even though he had waited eight years to seek modification of his support obligation, the Kentucky Court of Appeals held. *Nosarzewski v. Nosarzewski*, 375 S.W.3d 820 (Ky.Ct.App. 2012), 38 FLR 1493.

   a. In 1999, Father was ordered to pay $453 per month in support for his one-year-old child; that amount included $270 in child care expenses. In 2003, he sought a reduction in support, claiming that Mother's child care expenses had been significantly reduced. After reviewing financial and other documents, the county attorney advised Father that he did not meet the statutory requirements for a modification. Father continued to pay the higher amount until 2011, seeking

reimbursement of the overpayment for the $10,828 in child care expenses Mother never incurred. The trial court granted Father's request, and Mother appealed, claiming that Father's request was barred by the doctrine of laches.

b. The appellate court affirmed the reimbursement order, saying that "[w]hile we understand Mother's frustration, the trial court was in the best position to judge the credibility of witnesses and determine the weight of the evidence." It noted that Father testified that he had been advised in 2003 that he was ineligible for a reduction, and both he and the mother testified that they did not understand how the child care expenses factored into the support calculation. Father also explained that he did not know he could seek reimbursement until he retained counsel in 2011. Under these facts, the trial court did not abuse its discretion by rejecting Mother's laches defense. In so holding, the court noted that the overpayment constituted judicial error as the decrease in expenses should have been addressed in 2003, when Father first moved to modify his order on account of those reduced expenses.

8. Prepayment of Child Support -

a. A trial court abused its discretion by providing a divorced father a credit against his future child support obligation for the excess support he had voluntarily paid in the past, Florida's First District Court of Appeal held. Finding it undisputed that the father's additional payments were made voluntarily, the appellate court said that although he claimed that the payments were intended to build up a "buffer" in the child support depository in case he became unemployed or injured, it was undisputed that he never told the former wife that the payments were intended to be an advance on his future child support. Further noting that the trial court found that it would be an undue hardship on the mother and children to require reimbursement of the overpayment because "the money is [not] sitting anywhere to be spent now" and the children "cannot presently benefit from the prior overpayment," the court decided that under these circumstances, it was an abuse of discretion for the trial court to award the former husband a credit against his future child support obligation for the excess support he voluntarily paid in the past. *Mayfield v. Mayfield*, 103 So.3d 968 (Fla.Dist.Ct.App. 2012), 39 FLR 1092.

b. A divorce court did not abuse its discretion in failing to order a man to pay child support arrears representing the difference between the sum he voluntarily paid his estranged wife during and after his military deployment and the amount of support he was ordered to pay in their divorce decree, the South Dakota Supreme Court held. *Huffaker v. Huffaker*, 823 N.W.2d 787 (S.D. 2012), 39 FLR 1057.

(1) Considering the mother's appeal, the high court rejected her reliance on SDCL 25-7-6.1, which provides that "[u]ntil established by a court order, the minimum child support obligation of a parent who fails to furnish … support for his child, following a continued absence from the home, is … the amount shown in the support guidelines, commencing on the first day of the absence. … '[C]ontinued absence from home' means that the parent [ ] is physically absent [for at least 30 consecutive days] and that the nature of the absence constitutes family dissociation."

(2) Pointing out that the father paid $1,000 per month until granted a divorce, the court also noted that while living on-base due to his military employment, the mother had no rent or utility bills, and that he had forfeited military food and housing allowances he would have otherwise received. By paying the mother $1,000 a month as child support and providing housing for her and the children, the father did not fail to furnish support per the statute. In rebuffing the mother's claim that his conduct satisfied the "continued absent from home" provision, the court said that although he was physically absent during the deployment, the absence did not constitute a "family dissociation" because he was fulfilling his military obligation. Finding that when the father returned, he continued to provide financial support to the children and had visitation with them, the court held that the statute "is not applicable in this case," and therefore the trial court did not abuse its discretion in denying the arrearage request.

9. Setoff of Mutual Obligations - A trial court did not abuse its discretion in denying a divorced custodial father's motion to allow him to setoff his spousal support arrearage against his ex-wife's child support arrearage, the North Dakota Supreme Court ruled. Noting that the "equitable remedy of setoff 'will be exercised to promote substantial justice and rests largely in the sound discretion of the court,'" the high court said that it "will not reverse a decision founded upon equitable principles absent an abuse of discretion based upon arbitrary, unreasonable, or unconscionable acts." The court observed that other jurisdictions are split over whether awards of spousal support and child support may be offset, and have also reached divergent results when considering whether other spousal debts may be offset against support arrearages. "Under the circumstances, and considering the lack of any clear precedent on the issue, the district court did not act arbitrarily, unreasonably or unconscionably. We therefore conclude that the court did not abuse its discretion," the court declared. *Jordet v. Jordet*, 823 N.W.2d 512 (N.D. 2012), 39 FLR 1019.

10. Standing - Child's Right to Collect Arrearage - An adult woman lacked standing to sue her mother for past-due child support, where the underlying support order had been entered in favor of the daughter's custodial grandmother, who had filed an action to

collect arrears, the Missouri Court of Appeals, Southern District, ruled. The court explained that generally, the party awarded custody and denoted for accepting child support payments is the injured party with a legally cognizable interest when the noncustodial parent failed to pay support. In this case, the child had failed to intervene in the action when she had a right to do so, and thus had no cognizable interest. Accordingly, the trial court's award of the arrearage to the daughter was erroneous. *Higginbotham v. Higginbotham*, 362 S.W.3d 34 (Mo.Ct.App. 2012), 38 FLR 1261.[2]

B. Bankruptcy -

1. Domestic Support Obligation Defined -

a. Amounts a father paid to a custodial mother while her child was in foster care are nondischargeable as a domestic support obligation as defined by 11 U.S.C. § 101(14A), the Bankruptcy Court of the District of Nebraska held. A state court had ordered the mother to refund the father's overpayment back to the State, which had expended funds on the child's behalf while the child was in foster care. The mother sought to discharge the debt in bankruptcy. Agreeing with the State, the mother's debt was a nondischargeable domestic support obligation. *In re Hernandez*, slip op. No. BK12–40770–TJM (Bkrtcy.D.Neb. 11/8/12).

b. A man's $41,581.79 overpayment of child support to his wife constituted a nondischargeable domestic support obligation under 11 U.S.C. § 101(14A), the Bankruptcy Court of the Northen District of Georgia ruled. Accordingly, the woman's objection to the man's claim in her bankruptcy case was properly denied. *In re Knott*, 482 B.R. 852 (N.D. Georgia, Atlanta Div. 2012).

c. A man's overpayment of alimony to his former wife, which was reduced to a judgment debt in state court, was not a domestic support obligation and thus was not exempt from discharge under 11 U.S.C. 523(a)(5) [domestic support obligation], the United States Bankruptcy Appellate Panel of the Tenth Circuit held. The court explained that it found insufficient evidence that the debt was paid to the ex-wife for her support. The court held, however, that the debt was nondischargeable under § 523(a)(15) [debt to a spouse, former spouse, or child of the debtor and not of the kind described in (a)(5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record. . .] *In re Taylor*, 478 B.R. 419 (B.A.P. 10th Cir. 2012).

[2]The trial court issued an amended order after the Missouri Court of Appeals acquired jurisdiction but before it had issued its mandate. The trial court's amended order was therefore void. *Higginbotham v. Higginbotham*, 384 S.W.3d 316 (Mo.Ct.App. 2012.

d. A man's obligation in his divorce decree to make monthly payments to his ex-wife to compensate her for half of their total debt that she paid off in their joint bankruptcy filing during their marriage is a domestic support obligation entitled to priority status in his post-dissolution Chapter 13 proceeding, the U.S. Bankruptcy Court for the Eastern District of Kentucky held. *In re Fitch*, Bankr. E.D. Ky., No. 12-21191-tnw, 1/25/13), 39 FLR 1151.

(1) In addressing whether the debt was a domestic support obligation as defined by 11 U.S.C. § 101(14A) and thus entitled to priority under § 507, the court looked to *Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103, 9 FLR 2671 (6th Cir. 1983). Under *Calhoun*, the first question a bankruptcy court should ask is whether the state court or the parties to the divorce intended to create an obligation to provide support, the court said. If so, it explained, the bankruptcy court must then determine whether the debt has "the effect of providing the support necessary to ensure the daily needs of the former spouse and any children of the marriage are satisfied."

(2) Answering both questions in the affirmative, the District Court found that the divorce decree was a judgment entered by a state court with the clear intention to create a support obligation based on the financial disparity between the parties. In addition, the Wife's funding of the parties' Chapter 13 plan without Husband's assistance left her at a financial disadvantage at the time of the divorce and unable to sustain an "even meager lifestyle" without support from Husband.

2. Dischargeability of Legal Fees -

a. A debtor's motion to reopen his Chapter 7 bankruptcy to discharge legal fees relating to his divorce proceeding was denied by the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. The court found that the question of whether the legal fees should be considered "domestic support obligations" and therefore not dischargeable was better suited for the state court. The court said that while it had jurisdiction to determine the dischargeability of the debt, the state court had concurrent jurisdiction to determine the dischargeability of debts for alimony or support or those debts incurred in connection with divorce or support. Choosing to abstain from deciding the question, it pointed out that bankruptcy courts have broad discretion to abstain from exercising their jurisdiction to adjudicate claims and that "family law in particular is a domain from which federal courts will often abstain." *In re Lemoine*, slip op. No. 12-bk-11152 (SR) (Bankr. E.D. Pa. 11/26/12), 39 FLR 1080.

b. Attorneys' fees incurred by a Chapter 7 debtor's ex-wife in their divorce action are a domestic support obligation entitled to priority under Bankruptcy Code Section

507(a)(1)(A), the U.S. Bankruptcy Court for the Eastern District of Kentucky held. The court rejected a bankruptcy trustee's argument that debts owed to third-party attorneys are not DSOs as defined by § 101(14A), and that nothing in divorce court's order that the debtor pay the fees characterized them as such. *In re Micek,* 473 B.R. 185 (Bankr. E.D. Ky. 2012), 38 FLR 1407.

3. Effect of Confirmed Chapter 13 Plan; Grounds for Dismissal - A debtor's ex-wife was bound by the terms of the his Ch. 13 plan even though the plan provided for less than full payment of the debtor's child support debt, the bankruptcy Court for the Middle District of Florida held. Thus where the debtor made his payments as the plan required, dismissal was inappropriate under 11 U.S.C. § 1307. The court also found that: (1) the debtor's successful completion of payments under the plan would discharge only those payments made under the plan and not any payments remaining unpaid; (2) to the extent the debtor had any ongoing postpetition domestic support obligations, the automatic stay did not apply to prevent the ex-wife from seeking to enforce these postpetition obligations; (3) any obligation of the debtor as to the property settlement award entered by state divorce court was dischargeable; and (4) the support arrearage did not represent a domestic support obligation that "first became payable" after petition date, within meaning of dismissal provision. *In re Hutchens*, 480 B.R. 374 (Bankr. M.D. Fla. 2012).

   a. Erroneous plan - The mother moved to dismiss her ex-husband's case on the basis that the confirmed plan failed to account for the full amount of his child support arrearage. Rejecting the mother's argument, the court acknowledged that absent express agreement by the creditor, § 507 priority claims must be paid in full during the course of the plan. However, it said, once the plan had been confirmed, it was *res judicata* on the debtor and all creditors — even if the plan was in violation of the Bankruptcy Code. (Although Mother initially objected to confirmation, the plan was finally confirmed with Mother's agreement to take less than her full priority claim).

      (1) In so holding, the court clarified that "§ 1322(a)(2) requires that 'a plan shall provide for full payment, in deferred cash payments, of all claims entitled to priority under § 507,' unless the holder of a particular claim agrees to a different treatment of such claim. In order to agree to a different treatment, 'the claim-holder must make an express affirmation of consent. Merely failing to object to a proposed Chapter 13 plan, which does not provide for full payment of a priority claim, does not constitute express affirmation." *Id.* (citations omitted).

      (2) The court went on to explain that to the extent that the debtor has any ongoing postpetition domestic support obligations, the confirmed plan does not, and could not affect those obligations. If the debtor fails to pay postpetition domestic

support, "the automatic stay will not apply; Janet is free to immediately petition the New Hampshire court for recovery of the obligation through withholdings of income from the debtor that exceed the monthly payments set forth under the plan by means of wage garnishments or other methods of collection, or by requiring that the debtor pay the ongoing obligation from property whether or not it is property of the estate. *See In re Burnett,* [646 F.3d 575, 583 (8th Cir.2011)]."

b. Failure to pay amount required by state court - Mother had also sought relief in state court for the debtor's failure to pay the amount the state court required him to pay toward the arrears. The court agreed with the debtor in finding that because Debtor had paid as the plan required, Mother could not seek relief in the state court; as before, she was bound by the terms of the confirmed plan. "Janet is bound by the terms of the confirmed plan and that even though the automatic stay does not prohibit her from pursuing collection against the debtor in New Hampshire state court [such as income withholding or attaching property that is not property of the estate], those activities are barred by the terms of the confirmation order. Janet must wait for the bankruptcy case to be closed or dismissed before she may attempt to collect the projected unpaid prepetition domestic support obligation [] and any interest that accrues [] under New Hampshire law." *Id.* at 385.

c. Failure to pay medical support - Mother also sought to dismiss the debtor's bankruptcy case because he had failed to provide medical support as required by the state court order. The court rejected this argument, saying that the debtor had made many payments that exceeded the monthly required amount, and that the excess was sufficient for Mother to pay the medical support ordered under the state court order. *Id.*

d. Failure to pay postpetition support - Mother also sought to dismiss the debtor's bankruptcy case on grounds that he had failed to pay postpetition child support. Rejecting Mother's request, the court acknowledged that § 1307(c)(11) allows for dismissal or conversion upon "failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition." Under the facts of this case, however, Mother's claim was inappropriate. She had sought dismissal for the debtor's failure to pay the arrearage that had accrued *before* the debtor had filed his Ch. 13 petition, not for those payments that had first come due after he had filed his petition. Said the court, "As suggested by a leading Chapter 13 treatise, support obligations that are due and have not been paid prior to the petition date do not first become payable after the petition date for purposes of § 1307(c)(11). Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 540. 1, at ¶ 8, Sec. Rev. Mar. 29, 2006, www. Ch 13 online. com."

4. Effect of Discharge Injunction -

   a. A bankruptcy court's determination, made pursuant to a Chapter 13 debtor's objection to a claim for a nondischargeable student loan debt, was entitled to res judicata effect, thus precluding the claimant from pursuing post-bankruptcy collection of the unpaid loan, the Bankruptcy Appellate Panel of the First Circuit held. The court opined that by filing an objection to the proof of claim for amounts allegedly owing on her student loans, the bankruptcy court was vested to determine not just the amount of the claim, but the amount of the obligation itself. *In re Hann*, 476 B.R. 344 (B.A.P. 1st Cir. 2012).

   b. The Florida Department of Revenue did not violate a debtor's Chapter 13 discharge injunction by pursuing unpaid child support after the bankruptcy case had closed, the United States Court of Appeals for the Eleventh Circuit ruled. Neither res judicata nor collateral estoppel precluded the state's post-bankruptcy collection efforts, as the discharge injunction could not discharge a nondischargeable debt. The discharge injunction merely precluded the Department and other domestic support creditors from relitigating whether the nondischargeable obligation should be paid as part of bankruptcy plan. The Department could therefore pursue post-bankruptcy collection of past due amount of $180,000. In support of its decision, the court cited *In re Diaz*, 647 F.3d 1073 (C.A. 11th Cir. 2011), which had stated that "if a creditor holds a child-support debt, then whether the bankruptcy court disallows all, part, or even none of that creditor's claim has no bearing on whether any portion of the debt is discharged—no part of a child-support debt is "dischargeable under *any* circumstances" in a Chapter 13 case." *In re Davis*, 481 Fed.Appx. 492, 2012 WL 2039914 (C.A.11 (Fla. 6/6/12)).

C. Contempt -

1. Notice - A father should not have been held in contempt for failing to pay child support pursuant to a final decree of annulment, where there is no evidence that he ever received notice of the decree, the Virginia Court of Appeals ruled. However, the court added, the failure to provide the father with notice of the proposed entry of the decree does not render it void *ab initio*, because the trial court retained personal jurisdiction over the father based on his "answer." Thus on remand, the trial court was at liberty to consider the child support order as valid when determining whether to hold the father in contempt. The trial court also erred in crediting the father's tuition payments against his child support order, where the order never contemplated payment of one obligation as a credit against the other. *Zedan v. Westheim*, 729 S.E.2d 785 (Va.Ct.App. 2012), 38 FLR 1480.

2. Right to Counsel -

a. Due process does not require the state to provide an indigent obligor with appointed counsel in a civil contempt proceeding for nonpayment of support, even when incarceration is one of the possible penalties, the Wyoming Supreme Court decided. The high court held that counsel was not required even where the state had counsel, because Wyoming has sufficient substitute safeguards in place to protect indigent obligors against the possibility of wrongful incarceration. *State v. Currier*, 295 P.3d 837 (Wyo. 2013), 39 FLR 1162.

(1) In so holding, the court observed that the United States Supreme Court held in *Turner v. Rogers*, 131 S.Ct. 2507 (2011), that due process does not require counsel where appropriate alterative methods exist to ensure fairness in civil contempt proceedings. Such appropriate safeguards outlined in *Turner* include: (1) notice to obligor that ability to pay is a critical issue; (2) use of forms to elicit relevant financial information; (3) opportunity for obligor to respond to questions about his financial status; and (4) an express finding by the court that the obligor has the ability to pay.

(2) The alterative measures employed by the Wyoming court in this case complied with due process, the high court said. In Wyoming child support enforcement matters, the defendant is (1) informed by the petition and the judge that the burden is on the state to show willful nonpayment, (2) provided with a form on which to set out current income, asset, and liability information, and (3) given an opportunity to explain the failure to pay. These procedures give a pro se obligor a full opportunity to present a defense on the ability to pay, the court said.

b. A trial court erred when, during a state-initiated civil contempt action against an indigent obligor in which incarceration was possible, it denied his request for appointed counsel, the Ohio Court of Appeals, Second District, decided. *Crain v. Crain*, slip op. No. 2011-CA-92 (Oh.Ct.App. 12/28/12), 39 FLR 1117.

(1) In rejecting the obligor's request for counsel, the trial court explained that the Supreme Court's opinion in *Turner v Rogers*, 131 S.Ct. 2507 (2011), held that obligors facing jail time in civil contempt proceedings are not entitled to court appointed counsel. After the hearing, the court found the obligor in contempt and issued 30-day suspended sentence.

(2) Reversing, the appellate court opined that while *Turner* does not categorically require appointed counsel in contempt proceedings, neither does it categorically deny such right. Instead, it explained, "a court must determine whether there are

procedural safeguards in place that adequately protect the obligor. There was no such determination in this case. The magistrate's denial of counsel was, therefore, error." In addition, the court observed that unlike the facts in *Turner*, where the parties appeared pro se, the obligor here faced a state child support enforcement agency. It was this situation that was *Turner* declined to address, which was another "indication that the magistrate's reliance upon *Turner* was misplaced." In Ohio, the court explained, "one can infer [from the applicable statutes] that the General Assembly prefers that indigent obligors have representation." Finally, the court noted that Ohio courts have held that counsel is required in contempt proceedings on child support arrearages.

c. An indigent obligor whose jail sentence for civil contempt due to nonpayment of support was suspended on the condition that he pay current support and arrears did not have a right to appointed counsel at a later hearing, in which the suspended sentence was imposed because of his noncompliance with the purge conditions, the Ohio Supreme Court held. Explaining that the purge hearing retained the civil nature of the original contempt proceeding, even though it resulted in jail time, the court thus rejected the claim of the obligor (who had an attorney at the original proceeding) that the hearing was a criminal proceeding in which he had a constitutional right to appointed counsel. *Liming v. Damos*, 979 N.E.2d 297 (Ohio 2012), 39 FLR 1006, *reh'g denied*, 978 N.E.2d 196 (Ohio 2012).

(1) Finding that the original contempt proceeding here was undoubtedly civil in nature, the high court considered the father's claim that the mixed sanction imposed at the purge hearing was a hybrid of civil and criminal contempt. It pointed out that a "purge hearing is not a new contempt proceeding but a conclusion of the original contempt hearing, because its purpose is to determine whether the contemnor has satisfied the purge conditions." It went on to explain that while it was true that the father could no longer purge the 10-day jail sentence, "this was not a new sentence or a new punishment."

(2) In addressing the father's due process rights under the federal constitution, the court noted that the U.S. Supreme Court recently confronted a similar issue in *Turner v. Rogers*, 131 S.Ct. 2507 (2011), which declined to extend the right to counsel broadly to indigent persons facing incarceration in civil contempt hearings, and instead concluded that several procedural safeguards could provide a noncustodial parent with due process rights in a hearing to determine whether he had the ability to pay child support. The court noted, however, that *Turner* did not answer the precise issue here because it involved an initial contempt proceeding rather than a purge hearing. Nevertheless, the court held that because the father's release from incarceration was contingent upon his payment of the

purge amount, the proceeding remained civil in nature. Accordingly, there was no constitutional requirement for appointed counsel under the Sixth or Fourteenth Amendment.

3. Seek-Work Order for Unauthorized Alien - An unemployed father was properly found in contempt for not paying child support and ordered jailed when he failed to purge the contempt by applying for work, the Minnesota Court of Appeals held. In rejecting the alien father's argument that the purge condition was invalid because federal immigration laws bar employers from hiring him, the court pointed out that they do not preclude him from looking for work. *Zaldivar v. Rodriguez*, 819 N.W.2d 187 (Minn.Ct.App. 2012), 38 FLR 1454.

   a. The majority acknowledged that the father was "correct insofar as he states that, under the federal Immigration Reform and Control Act of 1986 ('IRCA'), it is unlawful for an employer to employ an unauthorized alien. 8 U.S.C. § 1324a(a) (2006)," and that employers who knowingly violate this may face both civil fines and criminal prosecution. "But the same types of sanctions do not apply to an unauthorized alien who seeks or obtains employment in the United States. An unauthorized alien who works in the United States without authorization may be subject to criminal prosecution only if he or she knowingly uses forged, counterfeit, altered, or falsely-made documents to obtain employment," it pointed out, citing § 1324c(a) and 18 U.S.C. § 1546. "Thus," the court reasoned, "as a practical matter, an unauthorized alien can work in the United States without risk of criminal punishment, even if such employment is inconsistent with an employer's restrictions under federal immigration law."

   b. Judge Terri J. Stoneburner concurred specially. While agreeing with the contempt finding because the father had access to funds from which to pay support, she would hold that a trial court "abuses its discretion by requiring, as a contempt-purge condition, that a person who cannot legally work in the United States document that the person is applying for work that cannot be legally offered." Stoneburner said that requiring the father to apply for jobs implies "at worse" that the trial court expects employers to violate federal law by hiring an illegal immigrant and, "[a]t the very least," wastes an employer's time in processing an application that cannot legally lead to employment. The judiciary, she declared, "should not create such an implication and should not waste the time of employers in a futile exercise."

D. Criminal - State -

1. Impossibility Defense - While a delinquent obligor's inability to pay is not a defense to a charge of felony nonsupport, he or she may proffer the common-law defense of

impossibility, the Michigan Supreme Court held. Addressing the issue for the first time, the court determined that the state felony nonsupport statute establishes a strict liability offense, and it clarified an intermediate court case that barred use of inability to pay as a defense to that crime. It also said that to successfully raise an impossibility defense, a defendant must have done everything possible to provide for the subject child and have arranged his or her finances in a way that prioritizes the parental support obligation. *People v. Likine*, 823 N.W.2d 50 (Mich. 2012), 38 FLR 1478.

a. The high court opined that while "a strict-liability crime includes no *mens rea* element, *the actus reus*, or wrongful act, remains an element of the crime." In addition, the court noted that at common-law, a defendant could defend on the basis that an act was committed involuntarily. "The common thread running through these 'involuntariness' defenses is that the act does not occur under the defendant's control, and thus the defendant was powerless to prevent its occurrence and cannot be held criminally liable for the act," the court observed. Recognizing that MCL 750.165 criminalizes an omission or failure to act, it noted that "[a]t common law, an established defense to a crime of omission is impossibility," the "counterpart" to the involuntariness defense for affirmative acts. It further noted that the defense of impossibility must be based on something outside the defendant's control, and that Michigan common law "has long recognized impossibility as a defense to crimes of omission."

b. Three justices dissented. They endorsed the inability to pay defense, and suggested that the impossibility defense was "problematic" and "newly minted." Noting that 49 other states and the District of Columbia provide the defense of inability to pay or consider the ability to pay as an element of the crime of criminal nonsupport, the dissenters contended that the impossible-to-pay defense creates a nearly insurmountable barrier to successfully defending felony nonsupport charges, will prove grossly unjust in its application and is fundamentally unconstitutional.

2. Nonmonetary Support - A provision of a state statute criminalizing the failure to provide "care and support" to a child refers to court-ordered support, and does not contemplate nonmonetary care, the Minnesota Court of Appeals held. Relying on legislative history in construing what it found to be an ambiguous provision, the court rejected the interpretation proposed by a delinquent obligor under which he could adduce evidence of having provided nonmonetary care (such as companionship) to his children as a defense, as well as one asserted by the state, whereby a parent could be convicted for the failure to provide either monetary or nonmonetary support. *State v. Nelson*, 823 N.W.2d 908 (Minn.Ct.App. 2012), 39 FLR 1075.

3. Restitution -

   a. A trial court that found a delinquent child support obligor guilty of felony nonsupport properly ruled that the mother of his now-adult children was the "victim" for purposes of a criminal restitution order, the Indiana Supreme Court held. In so holding, the high court disagreed with the Court of Appeals below, which held the children to be the victim of criminal nonsupport, not the former custodial parent. *Sickels v. State*, 982 N.E.2d 1010 (Ind. 2013), 39 FLR 1188.

      (1) The high court acknowledged that the right to child support lies exclusively with the child, with the custodial parent holding the payments in trust for the child's benefits. It pointed out, however, that in the civil context, arrears are usually payable to the custodial parent after a child is emancipated, and are considered compensation for assuming the obligor's share of costs in raising the child.

      (2) The court opined that in a civil case, a custodial parent whose children are now emancipated is entitled to a presumption that he or she expended his or her own funds to offset any deficit caused by missing child support payments. It went on to say that it saw no reason to limit this presumption to only civil cases, and explained that "it logically follows that a custodial parent who is presumed to have expended his or her own funds would also be presumed to have suffered an 'injury, harm or loss' as a direct result of a noncustodial parent's failure to support his dependent children."

      (3) The court added however, that a custodial parent whose children are now emancipated is not the only possible victim, but that parent is entitled to a presumption that he or she suffered as a direct result of the obligor's nonpayment.

   b. A man who pleaded guilty to murder was properly ordered to pay his victim's monthly court-ordered child support payments as restitution, the Washington Court of Appeals, Division One, held. Affirming the trial court, the appellate court relied on *State v. Young*, 818 P.2d 1374 (Wash. Ct. App. 1991) in holding that a child support order was a "loss of property" under the restitution statute. It further opined that the issue was not whether the victim's duty to pay support was property, but rather "whether his children's corresponding right to receive support is property. … [T]he issue is whether a judgment requiring monthly child support payments is 'property' for purposes of the restitution provision." The court further noted that *Young* held that because a child support order constitutes a loss of property, a court has the authority to order a criminal defendant to pay restitution for future child support payments. *State v. Cosgaya-Alvarez*, 291 P.3d 939 (Wash.Ct.App. 2013), 39 FLR 1130.

E. Dependency Exemption -

1. Requirement of Child's Citizenship - In order to qualify as a dependent for a parent's taxable year, a child must be a U.S. citizen or resident at some time during such year, the U.S. Tax Court held in upholding the validity of income tax regulations. The court said that to allow petitioner's dependency exemption deductions with accompanying credits for children who failed to meet the citizenship test under Treasury Regulation Section 1.152-2(a)(1) would be violative of Congress' expressed preference in the Internal Revenue Code for a system of annual accounting. *Carlebach v. Commissioner*, 139 T.C. No. 1 (U.S. Tax Ct. 2012), 38 FLR 1443.

F. Emancipation -

1. Adult Disabled Child -

   a. A trial court's order requiring a divorced father to pay his ex-wife monthly "living expense assistance" for their disabled adult daughter was a proper award of post-minority support, the Alabama Court of Civil Appeals decided. While the appellate court could discern from the record why the trial court would label the support "living expense assistance," (although it suspected that such designation would avoid loss of Social Security benefits), the substance of the order — post majority support for a disabled adult child — was entirely appropriate under Alabama law. The court noted that the custodial mother had filed her request for post-majority support one month before the child reached majority, it did not specify that this fact was dispositive. *Ruberti v. Ruberti*, — So.3d — (Ala.Civ.App. 1/18/13), 2013 WL 203528, 39 FLR 1141.

   b. A divorce court did not lose jurisdiction to make a support order on behalf of a couple's disabled adult son after the child support provided for in their dissolution agreement lapsed, the Ohio Court of Appeals, 11th District, held. *In re Palcisco*, slip op. No. 2012-T-0031 (Oh.Ct.App. 12/24/12), 39 FLR 1104.

      (1) The parties' son was eight years old when they divorced in 1999. The father was ordered to pay support, with the court having "continuing jurisdiction over child support." In 2009, it approved the county support enforcement agency's administrative order under which support terminated when the son finished high school or turned 19, whichever occurred first. In January 2011, the custodial mother petitioned the court to "reestablish" support because the son was physically disabled and support had terminated in December 2010. Stating that it retained jurisdiction, the court found that although the son was over the age of majority, he was not emancipated, as a result of his disability. The father appealed the subsequently entered support order.

(2) The appellate court looked to Ohio Rev. Code § 3119.86(A), which provides that support imposed pursuant to court order "shall continue" beyond a child's 18th birthday if he or she is mentally or physically disabled and incapable of supporting or maintaining himself or herself. Recognizing that under § 3119.86(B) administrative support orders must terminate when the child turns 19, it noted the father's reliance on subsection (A)'s phrase "shall continue" in arguing that because support had terminated on the son's 19th birthday, there was no order to "continue," and subsection (A) did not grant a court whose jurisdiction had terminated pursuant to subsection (B) the ability to "claim power anew."

(3) Deciding the matter as one of first impression, the court considered cases addressing the situation in which a disabled child reached the age of majority before the parents divorced. Such cases are similar to this one, it explained, because no support order was in place to be continued post-majority. In light of those cases, the court said, there was no impediment to a court exercising support jurisdiction over a disabled adult child despite the lack of a support order during the child's minority.

c. A divorced couple's 27-year-old severely disabled son is "principally dependent" upon his mother for support, despite the financial assistance he receives from the government, and a trial court thus erred in granting the father's motion to terminate his support obligation, the Maine Supreme Judicial Court ruled. The high court observed that the child would be unable to support himself without the mother's support, and that the child's need for lifelong care were known to the parents at the time of divorce. Thus the child remained "principally dependent" upon his mother for support and should not have been emancipated. *Weston v. Weston*, 40 A.3d 934 (Me. 2012), 38 FLR 1285.

2. Change of Emancipation Statute vs Boilerplate Language - A trial court abused its discretion in finding that a provision in a couple's divorce decree directing that child support would continue until their child turned 21 trumped a later statutory amendment changing the presumptive age for termination of support from 21 to 19, the Indiana Court of Appeals held. *Turner v. Turner*, — N.E.2d — (Ind.Ct.App. 2/28/13), 39 FLR 1201.

a. When the child turned 19 in 2012, the father petitioned to terminate his support obligation under the 2000 divorce decree in light of Ind. Code § 31-16-6-6, which effective July 1, 2012, decreased the age for termination to 19. While recognizing that the language in the decree was most likely "boilerplate" and reflected the law in 2000, the trial court said that the decree was nevertheless controlling. The father appealed, arguing that his support obligation terminated as a matter of law on July 1, 2012.

b. Reversing, the appellate court observed that the court has no discretion to extend support beyond that which is provided by the Indiana statute. It went on to explain:

> Indeed, the language used by the trial court in the decree, which tracks most of the situations that would trigger the termination of child support, makes clear that the trial court took its lead from the legislature and followed the existing law at the time of the decree regarding the duration that Father would be required to pay child support for Son. However, the trial court ignored the changes in the law regarding the termination of child support. The trial court's failure to follow the law as set forth by our legislature was an abuse of discretion.

3. Effect of Emancipation -

a. A trial court did not err in denying a man's motion to modify his $10,000 per month child support obligation after his ex-wife's parental responsibilities had ended, the Montana Supreme Court decided. The parties' 2006 property settlement agreement, which was incorporated into their divorce, required the husband to pay $10,000 "for life." At the time, the parties' youngest child was nine years old. When two of the parties' children became emancipated, the husband moved to reduce his obligation. Affirming the trial court's denial of the husband's motion, the high court held that it was the parties' intention to require husband to pay the wife for life, not just during the children's minority. This was true regardless of the label used by the parties to describe the obligation. *Simpson v. Simpson*, 294 P.3d 1212 (Mont. 2013), 39 FLR 1165.

b. A divorced obligor should not have been held in contempt for reducing his court-ordered support payments when two of his three children became emancipated, the New Hampshire Supreme Court held. *In re Nicholson*, 53 A.3d 535 (N.H. 2012), 38 FLR 1505.

(1) The parents' decree-incorporated agreement stated that support "shall continue until the children reach the age of 18 or graduate [ ] from high school, which ever shall occur last" and would "terminate when the youngest child" is emancipated. In finding that the father could not unilaterally reduce his support payments after each child's emancipation, the trial court pointed out that the agreement provided that the payments "shall be recalculated in accordance with the guidelines whenever there is a change in the number of children for whom support is ordered, effective the date of the change." The court determined that "at no time was there a recalculation of support" or a request for modification. It found the father in arrears, and calculated the amount due without making adjustments for the emancipation of the two older children. The father appealed, arguing that the

calculation should have accounted for the two children's emancipation, even though neither party had obtained an order reducing the support payments.

(2) Reversing and remanding for recalculation, the high court said the question was "whether the terms of the divorce decree and controlling statute mandate a retrospective recalculation of support." Noting that the version of the support statute in effect at the time of the parties' 2000 divorce stated that "[u]nless the court … specifies differently," the amount of support ordered would remain unchanged until all children were emancipated (N.H. RSA 458:35-c (1992)), it thus looked to the parties' decree to determine if the divorce court "specified differently." Focusing on the provision stating that support would be recalculated whenever there was "a change in the number of children … effective the date of the change," the court determined that "pursuant to [this] plain language … in calculating the support arrearage, the trial court was obligated to retrospectively recalculate child support as of the dates upon which each of the two older children became emancipated. That the parties failed to obtain a court order modifying the support obligation when each child's status changed is of no consequence; RSA 458:35-c permits the trial court's order to specify differently, and it did so."

4. Grounds for Emancipation -

a. Failure to Attend School - A judge should look, when ascertaining if a child "is enrolled" in college for purposes of state emancipation law, not only to whether the child is officially registered at the institution, but also to whether he or she is attending classes there in good faith or intends to do so in the foreseeable future, the Indiana Supreme Court ruled. Construing a statute that deals with emancipation and the termination of child support, the court said that the definition of the statutory phrase "is enrolled" promulgated in a 2004 appellate court opinion—which required only that the child be accepted by the school and registered there—was too broad, because it permits a child to avoid emancipation by enrolling in college classes indefinitely without ever intending to attend them. In this case, although the child was technically "enrolled" in a community college, she had dropped out of school after only two weeks, and remained out of school for over four months. Accordingly, the trial court did not err in emancipating her. *Hirsch v. Oliver*, 970 N.E.2d 651 (Ind. 2012), 38 FLR 1428.

b. Self Sufficiency - Birth of Child - A trial court did not err in terminating a divorced father's support obligation for his daughter after she gave birth to a nonmarital child at age 19, the Indiana Court of Appeals held. After graduating from high school, the girl had worked at a nursing home and attended community college. She quit her job

and stopped attending classes when she became pregnant, and the father moved to emancipate her after she refused to see him. The girl testified that she lived with her mother, did not pay rent, that her college tuition was covered in full by financial aid, and that she had asked the child's father to only provide diapers "because I don't need anything else."Under these facts, the trial court did not err in finding the child emancipated. The court also held that the state's new emancipation age of 19 (lowered from 21, effective July 1, 2012) did not apply before the new law's effective date. In other words, if a child was l9 prior to July 1, 2012, a noncustodial parent was not entitled to reduce his arrearage or seek a refund for any amounts owed or paid between the child's 19th birthday and the amended statute's effective date. *Sexton v. Sexton*, 970 N.E.2d 707 (Ind.Ct.App. 2012), 38 FLR 1385.

5. Standing to Seek Post-Majority Support - The New Mexico Emancipation of Minors Act allows an emancipated child of sixteen to seek support from her mother even after the emancipation, the New Mexico Supreme Court ruled. The minor child left home to escape violence at the hands of her mother's boyfriend, and sought emancipation in order to obtain medical insurance, access report cards, apply for a driver's license and open a bank account. Such was consistent with the Act's provision that a child may be emancipated "for one or more purposes." *Diamond v. Diamond*, 283 P.3d 260 (N.M. 2012), 38 FLR 1429.

   a. The trial court ordered the child's mother to pay current and retroactive support following the child's emancipation. The appellate court reversed, holding that that the law did not permit an emancipated minor to collect child support. It reasoned that "a minor cannot be 'managing his own affairs'," a prerequisite to emancipation under the Act, "if he is receiving financial and other support from his parents." The daughter sought certiorari in the state supreme court.

   b. The high court observed that the governing statute provides that an emancipated minor shall be considered as being over the age of majority for "one or more" purposes, including, among other things, medical and dental care, the right to sue and be sued, the ability to enter into binding contracts, and the right to support by his parents. Saying that "one or more" does not mean "all", the high court opined that it was thus possible for a child to be emancipated for some purposes but not others. Such a determination is a trial court's sound discretion.

G. Guidelines -

1. Duty of Support -

a. Adult Disabled Child - *See also* Emancipation/Adult Disabled Child, this outline.

(1) The Montgomery Circuit Court did not err in allowing a custodial mother to modify her support obligation for the parties' adult disabled child, even though the mother filed her petition eight months after the child became emancipated by operation of law, the Indiana Court of Appeals held in an unpublished decision. *In re Paternity of B.H. v. B.B.*, slip op. No. 54A01–1208–JP–340 (Ind.Ct.App. 2/7/13) (unpublished).

(a) Prior to the child's emancipation, the trial court established paternity in the noncustodial father and required him to pay support. The child's disability was known to both parents during the child's minority. When the child reached his 21st birthday, the father ceased paying child support.[3] Eight months later, the custodial mother filed her petition to modify support. Father objected, claiming that the child became emancipated by operation of law on his 21st birthday, and the mother could not thereafter seek support. The trial court rejected the father's argument, saying:

> Indiana does not require that the issue of incapacitation be raised prior to a child's 21st birthday. However, the onset of the incapacity must occur prior to the child's 21st birthday. The parent seeking termination of child support has the burden to prove the child's age. Thereafter, the burden of proof shifts to the parent who opposes the termination of child support to prove that the adult child is incapacitated. *Liddy v. Liddy*, 881 N.E.2d 62, 67 (Ind.Ct.App. 2008)."

Slip op. at 2. The court modified the father's support obligation, and he appealed.

(b) Affirming the trial court, the appellate court held that prior appellate decisions supported the father's continued duty of support. These cases held that the purpose of the governing statute is to require that parents provide protection and support for the welfare of their children until the children reach the specified age or no longer require such care and support. *Hirsch v.*

[3] P.L.111-2012, § 2, effective July 1, 2012, amended IC § 31-16-6-6 to reduce the age of emancipation from twenty-one to nineteen.

Oliver, 970 N.E.2d 651, 655 (Ind.2012); *Dunson v. Dunson*, 769 N.E.2d 1120, 1124 (Ind.2002) (quotations omitted).

(c) The appellate court also held that, under the circumstances, laches did not bar the mother's modification petition. The court emphasized that the child was in fact unable to provide for his own support and the father was aware of it long before the child's 21st birthday.

(2) A divorce court is not barred from ordering support for a disabled child whose parents dissolve their marriage after he or she attains the age of majority, the Ohio Court of Appeals, 12th District, ruled. *Donohoo v. Donohoo*, slip op. No. CA2011-11-080 (Oh.Ct.App. 9/10/12), 38 FLR 1540.

(a) The court's holding came in a case in which a couple had divorced when their disabled son was 22 years old. Relying on *Castle v. Castle*, 473 N.E.2d 803 (Ohio 1984) (parents have ongoing moral and legal duty to support disabled adult child), the trial court ordered the father to pay support indefinitely. He appealed, arguing that it lacked jurisdiction to enter a support award because the son was over age 18 at the time of the parties' divorce.

(b) Affirming the support award, the appellate court noted that *Castle* has been codified in Ohio Rev. Code 3119.86, which provides that the duty of support "imposed pursuant to a child support order shall continue beyond the child's eighteenth birthday" if the child is disabled and incapable of being self-supporting.

(c) The court recognized that the 10th District, in *Geygan v. Geygan*, 973 N.E.2d 276 (Oh.Ct.App. 2012), held that a support order for a disabled child must be in place during the child's minority for a court to be able to order post-majority support. It said, however, that "[w]e disagree with the Tenth District. Contrary to *Geygan*'s strict textual analysis, we do not read anything in R.C. 3119.86 that prohibits a domestic relations court from ordering child support for a disabled child after the child turns 18. The statute merely codifies the Ohio Supreme Court's decision that the moral and legal obligation to support disabled children does not stop simply because the disabled child turns 18 …. Nor do we believe that the statute was written in such a way as to create two distinct classes of disabled children. [] Hinging a disabled person's entitlement to support, regardless of the need, upon the timing of the divorce makes no sense," the court declared.

(d) Thus determining that the statute does not foreclose the possibility that a court could order support for a disabled child who has reached majority at the time of his or her parents' divorce, it said that the trial court's implementation of the statute in this case "appears to us to be in compliance with Ohio Supreme Court policy as set forth in *Castle*." Adding that the "only qualifier" is that the child must not be able to support him/herself because of the disability, the court went on to find that the child here was incapable of supporting or maintaining himself. Therefore, it concluded, the trial court had proper jurisdiction to order the father to pay support.

b. Appropriate Payee - An obligor whose teenage daughter moved out of her custodial mother's home and into a homeless shelter may not redirect his support payments from the mother to the shelter, the Utah Supreme Court ruled. *Hansen v. Hansen*, 270 P.3d 531 (Utah 2012), 38 FLR 1185.

(1) In rejecting the father's argument that the payments should follow the child, the court clarified the statutory standard for the redirection of child support payments. It explained that the controlling factor is "'physical custody' of the child under the law," with only the person or entity with such custody being entitled to support.

(2) The high court acknowledged that Utah Code § 78B-12-108(1) provides that support is "for the use and benefit of the child and shall follow the child." However, the court observed that although the daughter no longer lived with the custodial mother, she continued to provide for the girl's primary care, including the purchase of clothing, payment of school fees, and transportation for dental, medical, and therapy appointments. Under such circumstances, the trial court properly denied Father's request to redirect payments to the shelter.

c. Assisted Reproduction -

(1) A trial court properly rejected the claims of a biological mother that her former paramour, with whom she had executed a co-parenting agreement, lacked standing to enforce the parenting time provisions of that agreement, the Kansas Supreme court ruled. *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013).

(a) The biological mother claimed that because her former partner was not the child's biological parent, she had no basis upon which to enforce the agreement. Rejecting this argument, the high court explained as follows:

> [W]hat [the biological mother] overlooks is the fact that she exercised her due process right to decide upon the care, custody, and control of her children and asserted her preference as a parent when she entered into the coparenting agreement with [the former paramour]. If a parent has a constitutional right to make the decisions regarding the care, custody, and control of his or her children, free of government interference, then that parent should have the right to enter into a coparenting agreement to share custody with another without having the government interfere by nullifying that agreement, so long as it is in the best interests of the children.

(b) Editor's comment - presumably, the biological mother may bring a an action for child support against her former paramour.

(2) A trial court did not err in ordering a divorcing husband to pay support for the two children his wife conceived during their marriage via artificial insemination procedures she performed at home using sperm donated by an acquaintance, the Indiana Court of Appeals ruled. *Engelking v. Engelking*, 982 N.E.2d 326 (Ind.Ct.App. 2013), 39 FLR 1130.

(a) The appellate court noted that the state divorce statute defines "child of the marriage" as including children "born or adopted" during the marriage. Further noting that it has analogized an artificially conceived child to an adopted child for purposes of the statute, it observed that *Levin v. Levin*, 645 N.E.2d 601, 604 (Ind. 1999), agreed with that analogy and held that "as in the case of adoption, where the husband and wife knowingly and voluntarily consent to artificial insemination, the resulting child is a child of the marriage."

(b) The court then turned to the father's contention that the evidence was insufficient to support a conclusion that he knowingly and voluntarily consented to the mother's artificial inseminations. In rebuffing this contention, it pointed to the mother's testimony that the father knew of the artificial inseminations that led to the conception of both children, helped her conduct research, discussed the procedure with the sperm donor and his wife, and consented to both inseminations. Finding that the father was asking the appellate court to disregard the mother's testimony and credit his testimony rebutting her statements, the court asserted that "[a]ssigning credibility is not our function and we reject Father's invitation to do so. The trial court's findings are supported by Mother's testimony, and the findings support the trial court's ultimate conclusion that each child was a child of the marriage."

(3) The issue of whether an agreement regarding "traditional surrogacy" and adoption of a child is enforceable was certified to the Wisconsin Supreme Court by that state's Court of Appeals, District IV on Aug. 9, 2012. The high court on September 27, 2012 granted the petition to certify. The case involves a surrogacy arrangement where during the biological mother's pregnancy, she changed her mind and refused to honor her promise to surrender the child to the prospective adoptive parents upon the child's birth. *In re F.T.R. (Rosecky v. Schissel)*, slip op. No. 2011AP2166 (Wis.Ct.App. 8/9/12, *certification granted*, 822 N.W.2d 883 (Wis. 2012), 38 FLR 1482.

(4) A trial court erred in concluding that it lacked statutory authority to declare a woman's maternity of a child created from her egg and her husband's sperm but born to a gestational carrier, the Maine Supreme Judicial Court decided. *Nolan v. LaBree*, 52 A.3d 923 (Me. 2012), 38 FLR 1325.

(a) Even though neither the carrier nor her husband is genetically related to the child, their names were listed on the birth certificate. On the day of the child's birth, the genetic parents petitioned for a court order declaring that they were the child's parents (they intended to submit the judgment of parentage to the state with a request to correct the child's birth certificate). The judge declared the father's paternity, but declined to declare the woman's maternity on the ground that there was no statutory authority for such a determination. Instead, it declared her to be the child's de facto mother.

(b) Reversing, the high court explained that a governing statute allows a trial court to determine "parentage." Given the statute's use of this gender-neutral term, the Legislature clearly did not intend to foreclose a court's determination of a mother's maternity. Accordingly, the high court reversed the trial court's order to the contrary.

(5) A divorce court did not err in holding that a man was the legal father — and liable for support — of twins born to his wife via artificial insemination with donor eggs and sperm following their separation, the Massachusetts Appeals Court held. *Okoli v. Okoli*, 963 N.E.2d 730 (Mass.App.Ct. 2012), 38 FLR 1237.

(a) The parties in 2001 signed an agreement in which Husband consented to Wife's fertility treatments and she agreed to hold him harmless for the support of any resulting child. When the fertility clinic refused to perform the IVF given the promise not to seek support, Wife presented Husband another form without the limiting language but orally promised not to seek support from him. Because Wife threatened to withhold her consent for his U.S. visa

application, Husband signed the agreement. In 2006, Wife sought — and the trial court ordered — Husband to pay support for the twins created as a result of the IVF. Husband appealed, arguing that his "limited consent" to her fertility treatments did not satisfy the requirements of Mass. Gen. Law c. 46, § 4B. That statute provides that a "child born to a married woman as a result of artificial insemination with the consent of her husband, shall be considered the legitimate child of the mother and such husband."

(b) Considering the man's argument, the appellate court held that by signing the agreement, Husband consented to creating a child. Looking to cases from its state and beyond, the court said that subjective intent to become a parent was not required, only consent to create a child. Accordingly, the man was liable for child support.

(c) The court rejected the man's allegation of coercion, saying the issue had not been properly briefed. In a separate opinion, *Okoli v. Okoli*, 963 N.E.2d 737 (Mass.App.Ct. 2012), the court held that Husband's separate tort claim against the wife alleging fraud and deceit, based on her utilization of the IVF clinic's consent form when he had not read the full form, should not have been dismissed on collateral estoppel grounds. However, it ruled, the fraud claim "can only continue to the extent the husband can allege damages independent of his child support obligations."

(6) When an unmarried couple decide to have a child together via assisted conception using their own egg and sperm, voluntarily execute a paternity acknowledgment naming the "sperm donor" as the child's legal father, and enter into a custody agreement, the donor should be allowed to establish his parental rights as to the child under state parentage law, the Virginia Supreme Court decided. The court thus affirmed the intermediate court's holding that the state assisted conception statute — which provides that a sperm donor is not the parent of an artificially conceived child unless he is married to the mother — did not bar the donor's parentage action following the termination of the couple's relationship. Moreover, such a holding does not violate the mother's equal protection rights or her due process rights in the care custody and control of her child. *L.F. v. Breit*, 736 S.E.2d 711 (Va. 2013), 39 FLR 1112 (affirming *Breit v. Mason*, 718 S.E.2d 482, 489, 38 FLR 1111 (Va.Ct.App. 2011), 38 FLR 1111).

d. Parentage Actions -

(1) A trial court properly found that a woman's former same-sex partner is a second parent to the child adopted by the woman during their relationship, because the

partner is entitled to the presumption of parentage under the state's Uniform Parentage Act, the California Court of Appeal, Fourth District, decided. The court thus rejected the argument that the partner could not be deemed a second parent because the mother obtained her parental status through a single parent adoption. In so holding, the court extended the holding of *Elisa B. v. Superior Court*, 33 Cal. Rptr. 3d 46 (Cal. 2005), which recognized a woman as the presumed second mother of twins born to her same-sex partner via artificial insemination. The court explained that it is now well established that a child raised in a same-sex relationship may have two mothers, public policy favors a child having two parents rather than one. *L.M. v. M.G.*, 145 Cal.Rptr.3d 97 (Cal.Ct.App. 2012), 38 FLR 1463.

(2) A woman has standing to pursue joint custody of the child adopted by her former same-sex partner during their relationship, where she qualifies as the child's "natural mother" under the Uniform Parentage Act because she held the child out as her own, the New Mexico Supreme Court decided. Addressing the issue for the first time, the court joined other jurisdictions in ruling that the UPA's criteria for establishing a presumption that a man is a "natural" parent applies to women. "In our view," the court asserted, "it is against public policy to deny parental rights and responsibilities based solely on the sex of either or both of the parents. The better view is to recognize that the child's best interests are served when intending parents physically, emotionally, and financially support the child from the time the child comes into their lives. This is especially true when both parents are able and willing to care for the child." *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012), 38 FLR 1379 (reversing 37 FLR 1063).

(3) A mother was properly awarded summary judgment in her former same-sex partner's action for parental status or custody rights regarding her child, who was born via artificial insemination during their relationship, the Ohio Court of Appeals, 11th District, held. In her complaint, the partner sought to be designated as a legal parent or be granted the status of "shared parent," or be awarded rights of contact and companionship. Adopting the magistrate's recommendation that "the complaint ought to be dismissed," the trial court granted summary judgment to the mother. The partner appealed, arguing that a genuine issue of material fact existed regarding the child's best interests. Affirming, the appellate court held that even though a mother's former same-sex partner had acted as a primary caregiver for the two children the mother adopted during their relationship and the three she conceived through assisted conception, the partner had no legally recognized rights with regard to the children and was not within the "narrow class of persons who are statutorily defined as parents for purposes of entering a sharing parenting agreement." *In re L.B.*, slip op. No. 2011-L-117 (Oh.Ct.App. 5/29/12), 38 FLR 1375.

e. Stepchildren - A divorcing man should not have been ordered to pay child support for his stepchild, even though the child's biological father's parental rights had been terminated in connection with the man's plan to adopt the child (which never occurred), the Tennessee Court of Appeals held. In ordering the man to pay child support, the divorce court said he stood *in loco parentis* to the child because he had successfully petitioned to terminate the father's rights, and thus he "assumed the position as a father, having caused that vacancy." The man, who was also ordered to pay support for the parties' marital child, appealed the support award. Finding that the case presented a novel issue, the court pointed out that Tennessee does not provide for the imposition of a child support obligation upon an individual unless that person has a duty to support his or her natural or adopted child. Thus, it explained, although, as a result of the man's refusal to proceed with the adoption, the child was left without a father, the trial court erred in imposing a statutory support obligation upon him. *Braun v. Braun*, slip op. No. E2012-00823-COA-R3-CV (Tenn.Ct.App. 10/2/12), 38 FLR 1576.

f. Termination of Parental Rights - A divorced father whose contact with his child was severely limited by a court because of his physical and verbal abuse was still required to pay child support, the Pennsylvania Superior Court held. *Kimock v. Jones*, 47 A.3d 850 (Pa.Super.Ct. 2012), 6/19/12, 38 FLR 1406.

(1) The court's order provided for Father to have visitation only at Mother's complete discretion. Such restriction, the court said, was tantamount to terminating Father's rights. Accordingly, he remained obligated to pay child support. The court observed that custody cases and involuntary termination cases under the state's Adoption Act "are markedly different in both purpose and procedure." It also noted that the "obligation to support one's child does not depend on a parent's custodial rights." Additionally noting that "the amount of time a parent spends with his child has no bearing on the parent's obligation to provide child support," it asserted that "[l]ikewise, a parent cannot use the amount of time he spends with his child as a method of reducing his support obligation at the expense of the child."

(2) Finally, the court observed that the restrictive custody order did not constitute a material and substantial change warranting a termination of Father's support obligation. Essentially, the court said, Father used his own egregious behavior and Child's reactive condition to try to end his support obligation. Saying that to grant his request to terminate support "would offend the goals of [the] child support law and reward Father for destroying his relationship with child," the court concluded that "Father cannot use his own misconduct and its ramifications to escape his absolute duty to support Child. … Likewise, Child's refusal to

maintain contact with Father does not relieve Father of his support obligation, under these facts."

2. High-Income Obligors - A divorce court did not abuse its discretion in ordering a father whose annual income is $2.1 million and assets total $60 million to pay "base" child support of $2,815 per month for his two children, the South Dakota Supreme Court decided. *Schieffer v. Schieffer*, 826 N.W.2d 627 (S.D. 2013), 39 FLR 1141.

   a. The parties were awarded joint custody of the children (ages two and four), and physical custody was split 50/50. The mother had requested $25,000 per month in child support, with $9,200 of that amount to provide for the children's needs and standard of living, and the remainder to cover treatment and therapy costs associated with the older child's Down syndrome. In addition to awarding "base" support, the trial court directed the father to pay for the children's health insurance as well as 95% of their uncovered medical expenses and private school tuition, along with 95% of the expenses attributable to the older child's special needs. In addition, the father was not given an abatement or cross-credit on his support obligation, even though the children will be living with him 50% of the time.

   b. Agreeing with the trial court that support in excess of the guideline amount was unwarranted, the high court noted that support was calculated at the top of the guideline schedule for two children and accounted for their "actual needs [food, clothing, transportation, housing] and standard of living." It observed that as to the standard of living, the court found that the children would not be living an "opulent or excessive lifestyle" while in the father's custody because he "values fiscal discipline," and that it was the mother who "would be the driving force behind setting a standard of living that is inconsistent with the guideline amounts."

   c. The court also noted that the mother did not show that the children's standard of living would "dramatically decrease" if she did not receive $25,000 in month support. It pointed out that she "has substantial assets of her own," as she received $5 million in the divorce and her net monthly income (including the "base" amount of support) would be over $9,000. In addition, the court stressed that because the father was more financially conservative than the mother, both parents would maintain reasonably equivalent standards of living and thus the children will not experience disproportionate standards between the two homes.

   d. Two justices dissented, arguing that "the test is not whether the high-income payer chooses to live a frugal lifestyle" but rather "to determine the standard of living the children would have enjoyed had it not been for the divorce."

3. Income -

a. Business Income -

(1) Compensation for Non-Compete Clause - Money paid to a divorced man for a non-competition agreement in the sale of his business should be included in his income in deciding whether to modify his spousal support obligation, but excluded for purposes of his child support obligation, the Ohio Court of Appeals, 12th District, ruled. Considering the wife's appeal, the court noted that the state child support statute's definition of "gross income" does not include nonrecurring or unsustainable income or cash flow items. However, it pointed out, the statute dealing with spousal support does not limit the sources from which income may be derived or the characteristics of income that may be considered for purposes of determining an appropriate award. Thus, after reviewing the statutes applicable to each type of support obligation, the court concluded that the trial court abused its discretion in failing to consider the noncompete payment for purposes of determining whether to modify spousal support. "The legislature chose to address income differently for the spousal and child support obligations and we are obliged to follow that mandate," the court explained. *Brandner v. Brandner*, 973 N.E.2d 330 (Oh.Ct.App. 2012), 38 FLR 1432.

(2) Self-Employed Obligor - A trial court erred in equating the gross income of a self-employed child support obligor's business with his gross income for purposes of calculating his support obligation, the New Hampshire Supreme Court explained. *In re Woolsey*, 55 A.3d 977 (N.H. 2012), 39 FLR 1010.

(a) The divorced obligor is a self-employed truck driver who applies approximately half of his trucking business's gross income to its expenses, taking the remainder as his personal income. However, the trial court attributed the business's entire gross income to him for support purposes. He appealed.

(b) The high court noted that in pertinent part, the support statute defines gross income to mean "all income from any source … including self-employment income [and] business profits." The court agreed with the obligor that the business profits includable under the statute must be net of expenses because the very definition of the word "profit" necessitates that in order to calculate profits one must remove the expenses from the gross business income. The court opined that in using the term "profits," the legislature contemplated the deduction of business expenses from business income. Such accords with the view of other jurisdictions, it said. The court held, however, that to be

deductible for purposes of determining self-employment income under the support statute, the business expenses must be "actually incurred and paid," and "reasonable and necessary" for producing income. Saying that it is for the trial judge to determine whether claimed expenses meet such criteria, the high court remanded the case.

(3) Subchapter S Corporation - A subchapter S corporation's pass-through distributions, in the nature of retained earnings given to a shareholder and then transferred to another entity, do not constitute income to the shareholder for child support purposes, the Minnesota Court of Appeals decided. Along with this "close question of first impression," the court also held that distributions from a sub S corporation to a shareholder, solely for the shareholder's payment of his or her share of the corporate tax liability in retained earnings, are ordinary and necessary business expenses rather than the shareholder's income for calculating child support. *Haefele v. Haefele*, 814 N.W.2d 65 (Minn.Ct.App. 2012), 38 FLR 1337.

b. Capital Gains - A trial court abused its discretion when, in excluding from income for support purposes capital gains received by an obligor, it failed to make specific written findings for deviating from the support guidelines, the Massachusetts Appeals Court held. The noncustodial father had petitioned to modify his support obligation by excluding the capital gains from his overall investment income. He explained that gains were actually principal withdrawals — not income — from the liquidation of certain investments that he was forced to undertake in order to meet his existing support payments. Thus, he argued, including the gains as income amounted to "double dipping." The trial court's order noted that Father's motion "is allowed and judgment shall be amended accordingly." Mother appealed. Reversing, the appellate court held that there exists a rebuttable presumption that capital gains represent a source of income for child support purposes. Because the trial court's record was devoid of any reason not to deviate from the guidelines, remand for findings was warranted. *Wasson v. Wasson*, 965 N.E.2d 882 (Mass.App.Ct. 2012), 38 FLR 1285.

c. Employer-Provided Benefits - A divorce court erred when, in determining a husband's child support obligation, it included in his gross income money his employer pays him to reimburse the cost of his family health insurance premiums, the Georgia Supreme Court held. *Hendry v. Hendry*, 734 S.E.2d 46 (Ga. 2012), 39 FLR 1021.

(1) The parties' children are covered by the insurance, and the employer pays the father $935 per month to reimburse the same amount he pays from a checking account for the premiums. The employer identifies the reimbursement as a

benefit, not as salary. The child support statute defines gross income as including fringe benefits of employment that "significantly reduce personal living expenses," but excluding "employee benefits … including, but not limited to, employer paid portions of health insurance premiums." OCGA § 19-6-15(f)(1)(C). In contesting the husband's appeal, the wife contended that the reimbursement did not qualify as "employer paid portions" because the husband, not the employer, pays the insurer.

(2) Pointing out that "subsection (f)(1)(C) … does not stand alone," the high court explained that it must be read with other sections of the support statute that state when a parent (not his or her employer) bears the cost of a child's health insurance, the trial court should adjust the support obligation to reflect such payment. Emphasizing that the statute does not allow an adjustment for payments made by an employer and not deducted from the parent's wages, it said that "we understand 'employer paid,' as that term is used in subsection (f)(1)(C), to refer most naturally to premium costs borne by the employer." The court added that it found no evidence here that if the father did not pay the premiums, he would still receive the reimbursement from his employer or be able to redirect the amount of the reimbursement to his ordinary living expenses. "In these circumstances, the premiums that he remits to insurer, and for which he is reimbursed by his employer, are in reality employer paid health insurance premiums. Accordingly, the trial court erred."

d. Proceeds from Insurance Settlements - A trial court did not err when, in determining a father's child support obligation for children of his first marriage, it included as income the $500,000 in life insurance proceeds he received when his second wife died, the New Hampshire Supreme Court declared. *In re LaRocque*, 53 A.3d 615 (N.H. 2012), 38 FLR 1516.

(1) Affirming the trial court, the high court observed that "[l]ife insurance proceeds are neither specifically included in the statutory definition of gross income, nor expressly excluded." Citing *In re Fulton*, 910 A.2d 1180 (N.H. 2006), the court determined that the non-exclusive list of income sources contained in the statute share two characteristics—all involve "payment in the form of money" and "are all things to which the recipient, generally speaking, has a legally enforceable right and which the provider has a legal obligation to give." The court found that in including the insurance proceeds, the trial court had reasoned that "there appears to be little difference between an insurance contract and an annuity or trust income, both of which are included within the definition …. Life insurance is also utilized for investment purposes and proceeds characterized as investment income are included in the definition." Agreeing, the supreme court emphasized

that the "statutory definition of gross income is broad; it is not limited to wages and wage equivalents [ ] and it encompasses both earned and unearned income [ ]. Gross income also included nonrecurring income."

(2) The court recognized that the proceeds here were not paid via installments or periodic annuity-type distributions, but said the "mere fact that the proceeds in this case were paid in a lump sum is insufficient to justify excluding them from the definition of gross income. For the same reasons we explained in [*In re Taylor*, 904 A.2d 619 (N.H. 2006)], with regard to personal injury settlements, it would not make sense for two similarly situated child support obligors who both receive life insurance proceeds to have substantially different child support obligations based merely upon the means by which they receive the proceeds."

e. Retirement Contributions - A divorce court did not err in determining that$1,700 the husband voluntarily contributed to his 401(k) account each month should be included in his income for purposes of determining his child support obligation, the Indiana Court of Appeals decided. In his appeal, the husband contended that the trial court failed to weigh the standard of living the child would have enjoyed if the marriage had not dissolved, pointing out that the 401(k) contributions never funded the marital standard of living. Rejecting his argument, the appellate court acknowledged that the guidelines direct consideration of the standard of living. However, it explained, "that standard is measured by the parent's weekly gross income for purposes of determining child support, and it is not the parent's prerogative to decrease the amount of weekly gross income for determining child support by his decision to invest part of the income."*Nikolayev v. Nikolayev*, — N.E.2d — (Ind.Ct.App. 2/28/13), 39 FLR 1200.

f. Social Security -

(1) Deferred Social Security Income - Social security benefits that a father chose not to receive at age 64, instead waiting to receive higher payments when he turns 66, were improperly imputed to him as income for child support purposes, the Michigan Court of Appeals held. However, noting that the father had initially begun receiving benefits, but had reversed his election upon learning that his ex-wife was receiving dependent benefits for their son, the court said that on remand, the trial judge might still be able to impute income if it found that the father's decision was driven by non-economic motivations. *Clarke v. Clarke*, 823 N.W.2d 318 (Mich.Ct.App. 2012), 38 FLR 1416.

(a) The court explained that if a parent "would receive the same social security benefit regardless of when he or she elected to receive the distributions, and

absent some other compelling reason, then the decision to defer the payment may properly be characterized as a voluntary reduction in income. But, if the evidence shows that a parent would receive a larger benefit if he or she decided to defer payment until a later time, and again absent any evidence suggesting a contrary motivation, then such a decision could properly be characterized as a prudent investment strategy."

(b) The court went on, however, to note that the instant case "is unusual for two reasons. First, plaintiff did not merely elect to receive his early benefits. Instead, he elected and received them and then changed his mind and returned all benefits several months later. Second, the trial court made no finding as to why plaintiff accepted and then declined his election, instead indicating that he did so 'for whatever reason.' Hence, this is not a simple case where the evidence points to a decision based solely on electing to forego [sic] early retirement benefits so that a larger monthly benefit can be recouped later." Rather, it said, there was some evidence that the father's change of heart may have been motivated by another reason—the mother's receipt of the child dependent benefit.

(c) "Accordingly," the court concluded, "we remand to the trial court to determine the reason(s) why plaintiff chose not to continue with his election, the answer to which will determine whether imputation of the social security retirement benefits as income should occur. If the trial court finds that plaintiff was motivated by an economically driven investment strategy, then it should conclude that plaintiff does not have the unexercised ability to earn income." (It noted that even if the mother's receipt of the benefits was the reason behind the father's decision, "it could still be considered a prudent investment strategy given the short duration that the dependent benefits would be paid. The trial court is best-suited to decide this fact based issue.")

(2) Retirement Benefits Paid to the Child - A father who reached retirement age after entry of a child support order is entitled to a credit against his support payments for Social Security dependent benefits received by his child, the Alabama Court of Civil Appeals decided. Addressing the issue for the first time, the court went on to hold that the judge below exceeded the discretion afforded courts in cases in which parents' joint income exceeds the support schedule by disallowing the credit on the ground that among other things, the obligor's monthly income is over $100,000. *Adams v. Adams*, — So.3d — (Ala.Civ.App. 4-20/12), 2012 WL 1371374, 38 FLR 1303.

(a) Noting that it had held that an obligor (or estate) is entitled to a credit for Social Security dependent benefits a child receives on account of the obligor's disability or death where such payments constitute "a substitute income source," the court determined that it had never confronted the issue presented here. It found that other jurisdictions have split over it, with a majority of states holding that an obligor is entitled as a matter of law, to a credit for dependent benefits irrespective of whether they are paid on account of the obligor's death, disability, or retirement (*see In re Belger*, 654 N.W.2d 902 (Iowa 2002)).

(b) Further finding that there are two minority views regarding a credit for dependent retirement benefits, the court observed that some states have adopted a case-by-case approach, leaving the matter to the trial court's discretion (*see Thompson v. Thompson*, 868 N.E.2d 862 (Ind.Ct.App. 2007)), while others find a rebuttable presumption favoring a credit (*see Clark v. Clark*, 134 P.3d 625 (Haw.Ct.App. 2006)). Turning to the case at bar, the appellate court opined that no "blanket rule" should apply, and that the decision whether to grant the credit was within a trial court's discretion. It is "settled law in Alabama" that when the parties' combined income exceeds the uppermost limit of the guidelines, the determination of support is within the trial court's discretion, the court said.

(3) Survivor Benefits Paid to the Child - A trial court erred when, in determining a noncustodial father's child support obligation, it included in Mother's income Social Security survivor benefits paid to her children on account of the death of Mother's subsequent husband, the Indiana Court of Appeals ruled. The appellate court observed that the purpose of the children's survivor benefits here is to replace income lost by the death of Mother's husband. Including the children's survivor benefits in Mother's weekly gross income, the court said, would result in a windfall to Father. Accordingly, the trial court erred when it included the survivor benefits received by the children due to their stepfather's death in the calculation of Mother's weekly gross income. *Martinez v. Deeter*, 968 N.E.2d 799 (Ind.Ct.App. 2012), 38 FLR 1415.

(a) The court observed that Guideline 3(A)(1) expressly exempt from income "survivor benefits received by or for other children residing in either parent's home" The commentary to Guideline 3(A) provides: "survivor benefits paid to or for the benefit of their children are not included." Noting the difference between the Guideline language and that of the commentary, the court held that survivor benefits paid to the child do not constitute income to the parent.

(b) The court observed, however, that after the custodial mother's new husband had died, she switched the children from disability dependent benefits the children received from her disability to survivor benefits arising from the new husband's death. To the extent the children would have received SSD dependent benefits had Mother not made the switch, those benefits were still attributable to Mother as her income.

g. Withdrawals from Savings Account - Money that an unemployed father regularly withdraws from a savings account to cover his living expenses may not be included in the calculation of his net income in setting child support, the Illinois Supreme Court held. Reversing the trial court, which had held Father's withdrawals to be income, the high court said that while the state support statute provides a definition of "net income"—the total of all income from all sources minus certain deductions—it does not separately define "income." Citing *In re Rogers*, 820 N.E.2d 386 (Ill. 2004), the court explained that "income" is defined by its plain and ordinary meaning of that term, which is generally defined as something that is incremental, a gain, benefit, and form of payment. *In re McGrath*, 970 N.E.2d 12 (Ill. 2012) (reversing 37 FLR 1505), 38 FLR 1372. Said the court:

> Money that a person withdraws from a savings account simply does not fit into any of these definitions. The money in the account already belongs to the account owner, and simply withdrawing it does not represent a gain or benefit to the owner. The money is not coming in as an increment or addition, and the account owner is not "receiving" the money because it already belongs to him.
>
> The appellate court's analysis went off track when it stated that "there are no provisions in the Act excluding Martin's monthly withdrawals from the definition of 'net income'" for it is the term "income" *itself* that excludes respondent's savings account withdrawals. The appellate court should not have been looking for savings account withdrawals in the statutory deductions from income, because those withdrawals were not income in the first place.

(citations omitted, emphasis in original).

4. Support Calculations -

a. Child Care Expenses - A trial court properly ordered a noncustodial parent to pay for his ex-wife to hire a babysitter for their children when he does not exercise his scheduled visitation, so that she may have some time off from caring for them, the Kentucky Court of Appeals ruled. *McIntosh v. Landrum*, 377 S.W.3d 574 (Ky.Ct.App. 2012), 38 FLR 1505.

(1) In this case, the trial court granted Father parenting time every Wednesday and every other weekend. Subsequent to the divorce, Father took a job in the United Arab Emirates (and later in Texas), thus requiring Mother to care for the children 24/7. Mother, who works outside the home, hired a babysitter to watch the children, one of whom is autistic and needs special attention. She asked that Father pay 100% of any child-care costs — designated as respite care — that she incurs when he does not exercise his parenting time, and the trial court so ordered. Father appealed, arguing that respite care is not authorized under state law.

(2) Affirming, the appellate court noted that the trial court specifically stated that it was not increasing the father's support payments, and characterized its award of respite care as something similar to work-related child-care. Finding that the mother sometimes incurs child-care costs when she is not at work due to her son's disability and need for supervision, and that she pays for this care herself, the court emphasized that when the father does not exercise his parenting time, "an extra burden" is put on the mother, "one not contemplated by the parties' separation agreement. When [the father] exercises his parenting time, [the mother] has time for herself, to 'recharge her batteries'." Thus finding that the court did not abuse its discretion in ordering the respite care reimbursement, it stressed that the mother incurs such costs "during times when she should not have to," and that the expenses are only incurred when the father does not exercise his visitation and the mother "chooses to hire someone to care for the children during the weekend."

b. Credit for Prior Child - A divorce court properly denied the husband's request to deduct from his income — for purposes of calculating his child support obligation — not only the actual amount he pays in support for the two children from his prior marriage, but also a hypothetical 27% of his income that caring for those children would cost him if they lived with him full-time, the Alaska Supreme Court ruled. *Gorton v. Mann*, 281 P.3d 81 (Alaska 2012), 38 FLR 1456.

(1) Alaska Civ. R. 90.3 provides that child support is to be calculated as a specific percentage of a non-custodial parent's total income minus certain deductions, which include "(C) child support [ ] payments arising from prior relationships which are required by other court or administrative proceedings and actually paid," and "(D) child support for children from prior relationships living with the parent." In his appeal, the father argued that he was entitled to deductions under both subsections (C) and (D).

(2) Agreeing with the trial court that the father was only entitled to the deduction provided by subsection (C) for the court-ordered amount actually paid to support the children from his prior marriage, the court explained that subsection (D) "provides for a deduction based on an assumption that the child from the prior relationship is living with the parent full time" and permits the parent to deduct the amount necessary to raise and care for that child even though no child support payments to the other parent have been ordered. Asserting that the "Rule does not contemplate allowing a parent to apply deductions for both (C) and (D)," it noted that under the father's shared custody arrangement with his first wife, his child support payments to her are already reduced in consideration of the expenses he incurs while caring for their two children 50% of the time. Allowing him "to deduct the hypothetical 27% [which the father said reflected a combination of subsections (C) and (D)] he would have to pay to support his older children if they lived with him full time would artificially inflate the deduction for his child care expenses and would fail to take into account the savings in support he provides to his children that result from [his first wife's] own contribution to the children's support" when they are in her custody.

c. Credit for Subsequent Child - A trial court properly denied a father a deduction, in calculating his support obligation for his nonmarital child, for the support that he pays for another child who was born two months after the subject child, the Alaska Supreme Court ruled. Alaska law does not allow a deduction for children born after the child for whom support is presently sought. (Rule 90.3(a)(1)(D) defines a parent's adjusted annual income as "total income from all sources minus … child support for children from prior relationships living with the parent ….") The father nevertheless requested a deduction on grounds that he was residing with his son, and his relationship with the boy's mother commenced prior to his relationship with the subject child's mother. Rejecting this argument and affirming the trial court, the high court said the father's duty to the other child commenced when the child was born, not when the child was conceived. Thus, the other child was a subsequently-born child for whom the father was not entitled to a deduction. *Coleman v. McCullough*, 290 P.3d 413 (Alaska 2012), 39 FLR 1082.

d. Health Insurance - A trial court erred when, in setting a noncustodial father's child support obligation, it refused to require him to pay his proportionate share of the total health insurance premiums paid by the father's ex-wife, even though the premiums covered not only the parties' children but several other people as well, the Alabama Court of Civil Appeals ruled. Reversing the trial court, the appellate court held that the guidelines contemplate that the health insurance premiums may cover other people. Thus the total cost of the premium should have been included, including that portion allocable to the ex-wife's new husband, his mother, and his own child. *Fuller v. Fuller*, 93 So.3d 961 (Ala.Civ.App. 2012), 38 FLR 1280.

e. Income of Guardian vs. Parent - An administrative law judge calculating a father's support obligation for his nonmarital child erred by using the income of the child's caregiver — the maternal grandmother — instead of the income of the child's custodial mother, Florida's First District Court of Appeal ruled in a per curiam opinion. Reversing the trial court, the appellate court pointed out that the applicable support statute requires each parent to furnish a financial affidavit; "[i]n contrast, caregivers are not required to provide a financial affidavit [ ]. The statute requires that the Department use the parent's [sic] affidavits, along with other information available to the Department, when calculating the child support obligation owed by the parent from whom support is sought …. Thus, it is evident that the income of the parent—not the income of the caregiver—is to be used," the court asserted. Also noting that the legislature's expressed intent in the support statutes is "that children should be supported by the resources of their parents," it concluded that "the clear statutory directives demonstrate that it is the income of the non-obligor parent that should be used when determining the child support obligation for the obligor parent, not the income of the caregiver." *Department of Revenue ex rel. Roberson v. Chaney*, 90 So.3d 883 (Fla.Dist.Ct.App. 2012), 38 FLR 1385.

f. Joint Physical Custody - While it is within a trial court's discretion to order child support when parents share physical custody of their child, such an award may not be used to equalize their incomes, the Massachusetts Supreme Judicial Court ruled. Explaining that income equalization is inconsistent with principles underlying support orders, the court also noted that the trial judge below did not find that the subject child's reasonable needs were not being met in the absence of such an order, where both parents enjoyed comparable standards of living and had incomes exceeding the levels to which the support guidelines presumptively applied. *M.C. v. T.K.*, 973 N.E.2d 130 (Mass. 2012), 38 FLR 1488.

(1) The trial court decided that child support should be ordered "on the premise that each home will have an equal amount of income for the benefit of the child." It thus required the father to pay the mother $454 per week, an amount that, when deducted from his gross income and added to hers, effectively equalized their net incomes. The court said the support award was intended to "place both parties in an equal financial situation regarding their net income." The father appealed.

(2) Reversing and remanding, the high court held that although a trial court has discretion in fashioning an appropriate child support award, it cannot proceed from a mechanistic approach designed to equalize the parties' incomes. The court pointed out that the principles set out in the state's child support guidelines are consistent with the American Law Institute's Principles of Family Dissolution: Analysis and Recommendations § 3 (2002). The ALI Principles, the court said,

"posit that attempts to equalize income … would invade the higher-income parent's reasonable interest in benefitting from the fruits of his or her labor" and would "impose all the economic costs of family dissolution on the [higher-income] parent," while holding the other parent harmless from such costs. Thus, the court continued, one of the objectives subsumed in the goal of fairness to the nonresidential parent, is that he or she "in no event be required to fully share his [or her] earnings … for the purpose of equalizing household standards of living. *Id.* at § 3.04 comment k." The court added that concerns about the effects of income equalization will be greater still where parents have similar standards of living and share physical custody."

5. Life Insurance Orders -

   a. A trial court did not err in terminating a divorced father's obligation to maintain life insurance for the benefit of his children, as required in his decree-incorporated separation agreement, because he could no longer afford it, the Connecticut Appellate Court held. The mother argued that the trial court lacked subject-matter jurisdiction to modify the life insurance provision because it was part of the parties' property division, and thus not modifiable. Affirming the trial courts order, the appellate court found that with regard to the life insurance provision, the dissolution decree was somewhat ambiguous. Given this ambiguity, the trial court's finding that the provision encompassed support, not property, was not clearly erroneous, saying that "the obligation to maintain insurance is clearly for the benefit of the children for their well-being and support. [] [W]e cannot discern, and the plaintiff has not suggested, any purpose other than child support that the parties in this case might have intended [the life insurance provision] to serve." *Sagalyn v. Pederson*, 60 A.3d 367 (Conn.Ct.App. 2013), 39 FLR 1176.

   b. A divorce court did not err when, after ordering a husband to maintain a life insurance policy with his wife and their children as named beneficiaries, it directed that in the event of his death, his estate was to continue to pay his child support obligation temporarily, in the event of any delay in the disbursement of the insurance proceedings, the Georgia Supreme Court held. In rejecting the obligor's claim that his estate could not make support payments upon his death, the court pointed out that a court has discretion to require a parent to provide life insurance for the support of minor children (OCGA § 19-6-34). Going on to find that in this case, the apparent purpose of the directive was to ensure that the parties' minor children continue to receive support payments until the proceeds of the $500,000 life insurance policy were disbursed, the court said that "[w]e are unaware of any authority that would prevent Husband's estate from temporarily paying child support as a stop-gap measure in the event there is a delay in the payment of life insurance proceeds and

Husband has not proffered such authority." *Jarvis v. Jarvis*, 733 S.E.2d 747 (Ga. 2012), 39 FLR 1009.

c. A divorce court erred in ordering a father to cooperate with his wife in her efforts to obtain insurance on his life to secure his support obligation, over his objection, the Kansas Supreme Court held. Such an order, the court explained, is contrary to public policy, as expressed in a state law providing that an insurable interest does not exist if a person whose life is insured makes a written request for the termination or nonrenewal of the policy. *Hall v. Hall*, 286 P.3d 210 (Kan. 2012) (reversing 36 FLR 1225), 38 FLR 1574.

(1) In ordering Father to comply with Mother's initiative in acquiring life insurance on him, the trial court explained that "if the child were to lose [the father's] financial assistance, it would seriously affect his support and education," and that since the mother was willing to pay for it, the father should help her to secure insurance on his life. The state court of appeals affirmed.

(2) Reversing, the high court agreed with Father that under the governing statute, an insurable interest ceases when an insured under a life insurance policy requests the insurer to terminate or nonrenew it. This provided him an absolute right to terminate any policy on his life, and an order depriving him of such right is against public policy.

6. Mandatory Trust Account - A trial court erred when, in modifying a noncustodial father's child support obligation, it *sua sponte* ordered a custodial mother to place monetary gifts the child received from her grandmother into a trust account, the Tennessee Court of Appeals ruled. The trial court had issued its order under the view that "whenever children have money on deposit, parents tend to want to use that money to pay things that really, as a parent, they should be paying." Reversing, the appellate court noted that the mother had placed these monetary gifts (totaling $66,000) into interest bearing accounts and had otherwise managed the child's finances well. In addition, Mother's modification request asked only to increase Father's child support obligation and school contribution. Moreover, Father never made any allegation that such a trust was necessary or desirable or introduce any evidence along these lines. The court acknowledged that Tenn. Code Ann. § 34-1-102(a) provides that funds held by a guardian for a child "shall not be expended to relieve or minimize the obligation of the parent [ ] to support the child." But there was no evidence in this case that she had done anything but comply with the law. Accordingly, the trial court erred in *sua sponte* ordering Mother to open a trust account. *Carter v. Carter*, slip op. No. M2012-00342-COA-R3-CV (Tenn.Ct.App. 12/28/12), 39 FLR 1118.

7. College Expenses -

   a. Ambiguous Orders - A 1992 decree-incorporated marital settlement in which a 10-month-old child's divorcing parents agreed to equally pay the cost of his "college tuition, books, supplies and any and all other related expenses," and to jointly purchase a Florida prepaid college plan for him, contains a latent ambiguity requiring remand to consider parole evidence, Florida's Third District Court of Appeal decided. The decree, for example, failed to address the child's attendance at a private out-of-state university or the duration of the obligation to pay such expenses. Accordingly, the case was remanded back to the trial court to determine the parties' intentions. *Riera v. Riera*, 86 So.3d 1163 (Fla.Dist.Ct.App. 2012), 38 FLR 1309.

   b. Applicability of Child Support Guidelines - Child support guidelines should not be used in making support calculations for college students living away from home, the New Jersey Superior Court, Appellate Division, held. Explaining that the student's needs and abilities should be analyzed, along with the parents' financial situation, the court said that judges must apply the factors set out in the state child support statute instead. On remand, the trial court was directed to employ the correct law. *Jacoby v. Jacoby*, 47 A.3d 40 (N.J.Super.Ct.App.Div. 2012), 38 FLR 1427.

      (1) The guidelines, the court said, are intended to apply to children who are less than 18 years old or still attending high school, citing New Jersey Court Rules. In contrast, when determining whether continued financial support for children attending college and/or parental contributions to college education are appropriate, the court shall consider relevant case law and statutes.

      (2) The court explained that "[t]he computation of child support cannot be made in a vacuum as there is a close relationship between college cost and support: the higher the child support order the less money remains available to contribute to college expenses. It also may be more appropriate for a parent to provide direct payments to the student for some of the child's support needs rather than to the other parent. The fact sensitive nature of each of these determinations explains why the Guidelines are ill-suited to make such a support calculation."

   c. Appropriate College Expenses -

      (1) A divorced father who had agreed to pay his children's college expenses—"including, but not limited to, room, board, fees, books, tuition, wardrobe, maintenance and travel"—was properly held in contempt for failing to pay one child's cell phone and travel costs, the Ohio Court of Appeals, First District, decided. In so holding, the appellate court opined that the definition of

college expenses in the parties' decree-incorporated separation agreement "goes beyond expenses directly related to a college education and includes such items as 'wardrobe' and 'maintenance'." Thus finding that the agreement clearly envisioned that the father would pay certain expenses regardless of the fact that they would be incurred whether the children were in college or not, it said the trial court's decision to hold the father in contempt for failing to pay the cell phone expenses was not an abuse of discretion. The court remanded, however, to recalculate the proper rate for travel expenses in accordance with IRS rules. *Randall v. Randall*, slip op. No. C-120264 (Ohio Ct.App. 3/1/13), 39 FLR 1214.

(2) A mother whose divorce decree obligated her to pay a portion of her child's college expenses should not have been held in contempt for refusing to pay for flight lessons associated with the girl's aviation-related major, the Mississippi Supreme Court held. *Zweber v. Zweber*, 102 So.3d 1098 (Miss. 2012), 39 FLR 1103.

(a) The decree required the parents to pay their daughter's college expenses for "meals, tuition, books and room." She enrolled in the university's commercial aviation program, which requires a number of flight-training courses offered outside the school. The cost of these additional courses ($55,000 over four years) is not included in the school's tuition. In his contempt petition, the father argued that the daughter's college expenses included the fees for private flying lessons she received prior to starting school. The trial court agreed, finding that the lessons "were necessary for her college degree." The appellate court affirmed and stated "it does make sense that a student would have to learn to fly before he or she could graduate from the commercial aviation program."

(b) Asserting that "[t]his was error," the state supreme court pointed out that the divorce decree unambiguously limits "all costs" to the average costs of meals, tuition, books, and room. "Nothing in the order suggests that the costs were intended to include private flying lessons taken prior to or during Lindsey's first year of college. … The judgment's provision for college expenses could not have been more clear: meals, tuition, books and room would be the extent of the parents' obligation," the court emphasized. It further stated that although the Court of Appeals observed that flying lessons were required for Lindsey's major, flying lessons were not included in the final judgment of divorce.

(3) A trial court did not err in ordering a divorced couple to share the cost of off-campus flights that their son incurred while pursuing aeronautical studies, the

New York Supreme Court, Appellate Division, Third Department, held. *Costa-Daley v. Daley*, 954 N.Y.S.2d 265 (N.Y.App.Div. 2012), 39 FLR 1045.

(a) Appealing the trial court's award, mother contended that the cost of certain off-campus flights should not have been considered as "reasonable college education expenses," which the agreement defined as including "tuition, room and board, registration fees, required books, academic fees, reasonable recreation expenses . . . spending allowance, tutorial assistance, laboratory equipment and supplies, and appropriate transpiration [sic] costs . . . between the child's primary residence and the school." The mother submitted an affidavit from the child alleging that the flights were not part of the university's curriculum and that he did not obtain proper approval from the school in order to receive any college credit for them, but the father provided documentation from the school that a student pursuing a flight minor (as the child did) was permitted to complete flight training off campus.

(b) Rejecting the mother's argument, the court held that the additional flight hours would count toward the child's degree. Said the court, "[w]hile the father may have been unduly lax in monitoring the flight expenses incurred by the child and in verifying that they were directly school related, the record as a whole reveals that the parties were generally supportive of the child's pursuit of a career in aviation." Accordingly, the trial court did not err in ordering the couple to pay those expenses.

d. Contempt - Ability to Pay - A divorced mother's petition to find her ex-husband in contempt for noncompliance with a provision of their decree-incorporated stipulation in which they agreed to contribute to their children's college expenses "to the extent each party is financially able" should not have been dismissed on the ground that the provision lacked specificity, the New Hampshire Supreme Court ruled. The court opined that because the parties' divorce decree ordered them to contribute to their children's college expenses in a "specific proportion," *i.e.*, "to the extent each party is financially able" after deducting financial aid and the child's own savings, the trial court has authority to enforce it. *In re Poulin and Wall*, 53 A.3d 522 (N.H. 2012), 38 FLR 1480.

e. Duty to Pay College Expenses -

(1) A divorced mother's request that her ex-husband contribute to their child's college expenses per their stipulated decree was properly denied where the daughter had sufficient funds to pay for school after the mother co-signed for a private student loan, the Iowa Court of Appeals held. Pointing out that the mother would only

become obligated to pay after a default, the court stated that "[t]his asset is not a financial resource of [the parents]; the co-signature requirement does not go so far as to constitute an offer for them to assume loans. The loan money was thus an asset of the child which eliminated the parents' responsibility for college expenses." *In re Geisinger*, 825 N.W.2d 328 (Table) (Ia.Ct.App. 2012) (unpublished), 39 FLR 1033.

(2) A divorced mother is not barred from retroactively seeking to enforce a provision of her decree-incorporated marital settlement agreement that affirmatively assigned to her and her husband responsibility to pay for their daughter's college and postgraduate expenses, but did not set out a method for determining each party's contribution, the Illinois Appellate Court, Second District, held. The fact that each parent's allocation was not expressly stated in the agreement did not obviate the parent's responsibility to pay them. The trial court therefore erred in dismissing the mother's request to enforce the agreement on grounds that she was asking the court to retroactively modify the father's obligation. Remand was necessary to determine each parent's allocable share. *In re Koenig*, 969 N.E.2d 462 (Ill.App.Ct. 2012), 38 FLR 1325.

(3) A divorced father who has only $86 left after paying his monthly bills and living expenses should not have been required to pay the statutory maximum (one-third) of his daughter's college expenses, the Iowa Supreme Court ruled. However, also finding "good cause" under the state's postsecondary education support statute to require some contribution from the father, the court said he must pay a "modest" subsidy to the daughter to help defray her expenses. *In re Marriage of Vaughan*, 812 N.W.2d 688 (Iowa 2012), 38 FLR 1304.

(4) A statutory provision allowing a court to order post-majority support in dissolution cases does not offend equal protection under the 14th Amendment. The court held that requiring a parent to pay, as an incident of child support, for post-secondary education is rationally related to the state's interests in ensuring that its youth are educated such that they can become more productive members of society. In so holding, the court expressly overruled its previous decision to the contrary in *Webb v. Sowell* , 692 S.E.2d 543 (S.C. 2010). *McLeod v. Starnes* , 723 S.E.2d 198 (S.C. 2012), 38 FLR 1231. The United States Supreme Court denied certiorari.

H. Income Withholding -

1. Constitutionality - A trial court properly rejected a delinquent child support obligor's attempt to restrain his employer from withholding a portion of his income on the ground

that the garnishment process is an unconstitutional taking of his wages without due process, the Arkansas Supreme Court ruled. The obligor argued that the UIFSA process provisions were unconstitutional insofar as he had no means by which to contest an out-of-state income withholding order. Rejecting this argument, the high court said that the obligor's challenge "is premised on a faulty interpretation of the applicable statutes," the court pointed out that UIFSA "clearly provides a mechanism" for an obligor to contest the validity of a foreign income withholding order (see Ark. Code § 9-17-506 (out-of-state order may be contested "in the same manner as if the order had been issued by a tribunal of this state")). Moreover, the court noted that the obligor had an opportunity to be heard when his initial support order was determined. Accordingly, the obligor was not denied his 14th Amendment rights or those afforded under the Arkansas constitution. *Schultz v. Butterball*, — S.W.3d — (Ark. 4/19/12), 2012 WL 1353541, 38 FLR 1296.

2. Failure to Comply with Withholding Requirements - A woman's complaint seeking to recover court-ordered child support amounts that her ex-husband's employer allegedly should have withheld from his paychecks was properly dismissed because her notice of withholding was not strictly compliant with the state's Income Withholding for Support Act, the Illinois Appellate Court, Second District, held. Among other omissions, the woman failed to include the children's Social Security numbers in the withholding notice. Noting that the governing statutes require such information, the trial court did not err in dismissing the woman's petition. *Schultz v. Performance Lighting, Inc.*, — N.E.2d — (Ill.App.Ct. 2/5/13), 2013 WL 428636, 39 FLR 1165.

I. IV-D -

1. Standing of IV-D Agency - A state IV-D agency lacks standing to seek modification of a child support order where neither parent nor child receives public assistance and was not asked to provide enforcement services, Florida's First District Court of Appeal ruled. The state had filed a modification on grounds that the noncustodial father was eligible for child support services after he had voluntarily dismissed his own modification petition. The trial court dismissed the state's motion and it appealed. *Department of Revenue v. McLeod*, 96 So.3d 443 (Fla.Dist.Ct.App. 2012).

    a. Affirming, the appellate court opined that the Florida Department of Revenue does not have standing to seek a modification of child support on behalf of a noncustodial parent obligated to pay support, unless either party or the child is receiving public assistance, or when the obligor has failed to make support payments and DOR is called upon by the custodial parent to assist in enforcing a child support order.

b. The state argued that because Father's support order required him to pay through the state disbursement unit, the IV-D agency had standing to file its modification petition; in fact, it argued, federal law required it. Rejecting this argument, the court noted that under federal law "a non-custodial parent may seek DOR's assistance to modify a child support order, but only 'with respect to a support order being enforced' under Title IV-D." Here, neither party had opened a IV-D case.

J. Jurisdiction -

1. Affidavit of Support Payments - Federal Abstention - The U.S. District Court for the District of Maryland held that it had jurisdiction over a Jordanian woman's request for a declaratory judgment against her estranged American husband. The woman asked that the court declare that payments she received from him pursuant to the Affidavit of Support he had signed in sponsoring her immigration were not subject to levy for support of their child. However, the court dismissed her complaint under the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). The court held that the determination of child support is an ongoing coercive state action and best suited for state court. *Al-Mansour v. Shraim*, slip op. No. 1:11-cv-02939-CCB (D.Md. 3/21/12), 38 FLR 1274.

2. Foreign Diplomat's "Marital Relationship" in State - The fact that a Turkish diplomat's overseas assignments precluded him from living full-time with his wife in Washington does not mean that he was not "living in a marital relationship within the state" as required for personal jurisdiction under the long-arm statute, the Washington Court of Appeals, Division One, decided. Construing that provision of the statute for the first time, the court thus held that the state court in which the wife filed for divorce properly exercised jurisdiction over the husband, who had challenged its authority on the ground that he was not a state resident. *Oytan v. David-Oytan*, 288 P.3d 57 (Wash.Ct.App. 2012), 39 FLR 1016.

   a. The statute, RCW 4.28.185, provides in part that "any person who meets certain criteria, whether or not a citizen or resident of this state," submits to the state's jurisdiction by living in a marital relationship within this state not withstanding subsequent departure from the state … so long as the petitioning party has continued to reside in this state. Husband claimed that because he was never a state resident and the limited contacts necessary for jurisdiction were not established, jurisdiction lay only in Turkey, where his divorce action was pending. (He conceded that the trial court had jurisdiction to enter the divorce decree and parenting plan, but not to divide the marital assets/liabilities and order child support.)

   b. Affirming, the appellate court observed that prior to the parties' divorce, Husband, who was then working in Turkey, helped the family move and establish a new home

in Washington. He enrolled the child in a local school, naming himself as head of the household and the primary contact (using the Washington home's telephone number and address). He was actively involved in the child's education and activities, and returned to Washington whenever he was not working. In addition, the husband looked into business opportunities and real estate investments around Seattle, saying that "[w]e decided to stay in the area." Under these facts, the trial court did not err in finding that Husband was "living in a marital relationship within this state" for purposes of Washington's exercise of long-arm jurisdiction over him.

c. Moreover, Husband established minimum contacts with Washington sufficient to comport with due process. See *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). The court observed that Husband agreed with his wife to move to Washington; that while working abroad, he regularly returned to the marital home in Washington and maintained frequent contact with the wife; he participated in family decisionmaking; he was active at the child's school; he received correspondence at a local post office box; and listed the Washington address on his U.S. passport (he and the wife are dual citizens of Turkey and the U.S.). The court also found that the parties jointly registered and insured their car in Washington and filed joint tax returns using the Washington address. Noting that Husband helped maintain the family household, the court observed that he additionally received medical care in Washington under the wife's family health insurance plan.

3. Significant Connection - Due Process - A New Jersey divorce court may reasonably exercise personal jurisdiction over a nonresident husband without running afoul of his due process rights or notions of fair play and substantial justice, where he previously lived in the state with his wife and their children, the New Jersey Superior Court, Appellate Division, decided. In thus holding that the lower court erred in dismissing the wife's divorce action for lack of personal jurisdiction over the Singapore-based husband, the appellate division also rebuffed findings that it lacked subject-matter jurisdiction and was an inconvenient forum. *Tatham v. Tatham*, slip op. No. A-4592-11T1 (N.J. Super.Ct.App.Div. 2/27/13), 39 FLR 1196.

a. The appellate court observed that: (1) the husband voluntarily entered New Jersey and resided there for 13 months with his family; (2) that he and his wife rented a home in New Jersey; and (3) that the husband opened bank accounts in New Jersey; (4) he had purchased a motor vehicle that remained in New Jersey, and obtained a state drivers license; (5) the husband provided $300,000 for the wife's business venture in New Jersey and had sent her $20,000 per month since their separation in 2008, along with $1,000 a month for the daughters' incidental expenses; and (6) he had regularly visited the daughters, who are domiciled in New Jersey. Under these facts, the husband had sufficient minimum contacts with New Jersey.

b. The appellate court also rejected the husband's argument that the divorce proceedings should be heard in Australia, as both he and the wife were Australian citizens. The court held that such a proceeding would be inconvenient for both parties, as the wife resides in New Jersey and the husband in Singapore. Finally, the court ruled that New Jersey matrimonial courts had subject matter jurisdiction to enter dissolutions involving non-residents.

K. License Suspension -

1. Reinstatement Plan - A delinquent obligor's proposal to pay one-half of his income toward his court-ordered support obligation is sufficient to warrant reinstatement of his driving privileges, which had been suspended due to his nonpayment of support, the Indiana Court of Appeals decided. *Mertz v. Mertz*, 971 N.E.2d 189 (Ind.Ct.App. 2012), *trans. denied*), 38 FLR 1456.

   a. The trial court suspended the divorced father's driving privileges in 2008 pursuant to Ind. Code § 31-16-12-7. He later moved for reinstatement under § 31-16-12-11, which allows such if the obligor "(1) … pays the child support arrearage in full; or (2) an income withholding order … is implemented and a payment plan to pay the arrearage is established." The obligor reported that income withholding orders had been issued, and that he would pay one-half of his $575 weekly income toward child support, educational expenses, and his $100,000 arrearage. The trial court concluded that he had a plan to repay the arrears and granted the motion. The mother appealed, arguing that only a plan reasonably calculated to remedy the arrearage in full should be considered sufficient. (After payment of his current child and college support obligations, the obligor would be paying $140 toward the arrearage per week.)

   b. The appellate court stated that the governing statute, IC § 31-16-12-11 "is clear and unambiguous. It requires that an obligor establish 'a payment plan to pay the arrearage.' It does not impose any constraints upon the plan. We therefore conclude that the sufficiency of a plan … is best determined by a trial court. … Here, the court concluded that Father's plan to pay one-half his income toward his obligation was sufficient, and we agree." The court pointed out that if the obligor is able to drive, the obligor will more likely continue to meet his support obligation, and such accorded with sound public policy. "Our goal should be to ensure that an obligor meets his or her obligation and at times, the courts hold the key to incentivize — rather than discourage — continued employment to meet those obligations," the court explained.

   c. Judge Robb dissented, arguing that the correct interpretation of "a payment plan" is a plan that will pay the arrearage in full, "not simply pay toward or pay down the arrearage." Pointing out that the obligor was not proposing to pay 50% of his income

toward the arrearage, Judge Robb observed that his plan "will barely make a dent in the arrearage."

L. Litigation -

1. Appeals - Direct vs. Discretionary Appeal - A father's challenge to a child support order issued in a custody case should be made by way of a direct, rather than discretionary, appeal, the Georgia Court of Appeals decided. *Collins v. Davis*, 733 S.E.2d 798 (Ga.Ct.App. 2012), 39 FLR 1033.

   a. Raising this issue of first impression *sua sponte*, the appellate court explained that there was no right to a direct appeal in any domestic relations or custody case prior to 2007, at which time OCGA § 5-6-34 was amended to provide that direct appeals may be taken from "[a]ll judgments or orders in child custody cases." The court noted that matters concerning child support fall into the "domestic relations" category and thus still require an application for discretionary appeal. It asked, however, whether the right to a direct appeal in a custody cases applies when a party appeals only the support awarded in an order that also involves custody.

   b. Saying that "[t]his is not an easy question to answer," the court focused on the fact that the "clear and unambiguous words of [§ 5-6-34(11)] quite plainly permit a direct appeal from '[a]ll judgments or orders in child custody cases.' … Accordingly," it reasoned, "while the appeal in this case strictly deals with the child support award, this award was rendered in a child custody case and was directly appealable." Explaining that the underlying subject matter generally controls over the relief sought in determining the proper procedure to follow to appeal, the court thus held that the father was entitled to a direct appeal in this case.

2. Ineffective Assistance of Counsel - A trial court did not err in denying a husband's request for a new divorce trial based on his post-trial claim of ineffective assistance of counsel, because there is no right to counsel in dissolution proceedings, the California Court of Appeal, First District, held. Explaining that ineffective assistance claims have no place in contested divorce proceedings, the court found the husband's argument frivolous. *Campi v. Campi*, 152 Cal.Rptr.3d 179 (Cal.Ct.App. 2013), 39 FLR 1163.

M. Modification -

1. Basis for Modification -

   a. Change of Custody - A trial court erred in finding that it could retroactively modify a divorced father's child support obligation — after his child had left the custodial

mother's home and moved in with him — only if the parents had a written agreement concerning their change in the child's physical care, the Colorado Court of Appeals ruled. Observing that under Colo. Rev. Stat. §14-10-122(1) a modification of child support is generally effective only as of the date of filing the motion to modify, the court noted that § 14-10-122(5) provides that "when a mutually agreed upon change of physical care occurs, the provisions for child support of the obligor under the existing child support order … will be modified as of the date when physical care was changed." This statute, the appellate court held, does not require a written agreement, and the trial court erroneously read into the statute such a requirement. *In re Paige*, 282 P.3d 506 (Colo.Ct.App. 2012), 38 FLR 1338.

b. Reduced Earnings Due to Criminal Conviction -

(1) A trial court did not err by reducing a father's child support obligation on account of his diminished earning capacity resulting in part from his criminal conviction, the Arkansas Court of Appeals ruled. *Bendinelli v. Bendinelli*, slip op. No. CA11-665 (Ark.Ct.App. 2/8/12), 38 FLR 1213.

(a) The father plead guilty to sexual offenses that required him to register as a sex offender. When he subsequently had difficulty finding work, he filed a petition to reduce his support order. Mother objected, saying his criminal actions were voluntary conduct for which he should not be rewarded with a support reduction. The trial court reduced Father's support obligation to $44 per week from $1,008 per month ($233 per week). Mother appealed.

(b) Affirming, the appellate court acknowledged that if earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity. It further noted that one who suffers a reduction in income by his own voluntary conduct by engaging in criminal behavior cannot obtain a reduction in child support. The court added, however, the trial court retains discretion in such matters. Moreover, while the father's sexual offenses "can obviously be categorized as voluntary," the appellate court explained, "that does not end the discussion. There was certainly no evidence that he committed them for the purpose of reducing his child-support obligation. Moreover, he testified about his unsuccessful efforts to find employment and his reliance upon family members to provide him with, essentially, odd jobs." The trial court did not, therefore, abuse its discretion in reducing Father's support obligation.

(2) The Indiana Supreme Court vacated its orders granting transfer in two cases, each of which involve an obligor's request to modify support on account of his

criminal conviction and resulting incarceration for criminal nonsupport. The high court's order let stand two decisions allowing an obligor to seek a support modification notwithstanding his criminal conviction and resulting incarceration for criminal nonsupport. *Douglas v. State*, 954 N.E.2d 1090 (Ind.Ct.App. 2011), 37 FLR 1595, and *Nunley v. Nunley,* 955 N.E.2d 824 (Ind.Ct.App. 2011).

(a) In both cases, the trial court concluded that a father incarcerated *for felony nonsupport* may not successfully claim that the reduction in his income resulting from his imprisonment is a change in circumstances warranting a downward modification of the underlying support obligation. And in both cases, the appellate court reversed.

(b) In *Douglas*, the appellate court took note of the general rule set out by the state supreme court in *Clark v. Clark*, 902 N.E.2d 813 (Ind.2009), which held that, generally, an obligor's incarceration may form the basis for modifying support. Its holding was predicated on the belief that "although criminal activity undoubtedly reflects a voluntary choice, it is 'not quite the same' as voluntarily refusing to work because '[t]he choice to commit a crime is so far removed from the decision to avoid child support obligations that it is inappropriate to consider them as identical.'"

(c) Refusing to carve out an exception to the general rule articulated in *Clark*, the appellate court opined that most incarcerated obligors are unable to pay support at pre-incarceration levels, and such is equally true regardless of the crime for which the obligor is imprisoned. It therefore concluded that incarceration for nonsupport does not amount to voluntary unemployment for the purposes of the Support Guidelines, noting that "the child support system is not meant to serve the same punitive purposes as our criminal statutes."

(d) The appellate court, relying on *Douglas*, issued a similar opinion in a case decided the same day. *Nunley v. Nunley,* 955 N.E.2d 824 (Ind.Ct.App. 2011). On January 27, 2012, the Indiana Supreme Court granted transfer in both *Douglas* and *Nunley*, but on June 29, 2012 vacated its transfer orders, leaving the published appellate opinions intact.

2. Timing of Change in Circumstances - The change in circumstances required for modification of a child support order must exist at the time of the modification hearing, the Nebraska Court of Appeals held in *per curiam* opinion. *Collins v. Collins*, 808 N.W.2d 905 (Neb.Ct.App. 2012), 38 FLR 1201.

a. In this case, the noncustodial mother had been ordered to pay no support at the time of her divorce because of her limited work availability. When she became employed, the state filed its petition to modify her support obligation. By the time of the hearing, however, Mother was again unemployed. The trial court found that because Mother was employed when the state filed its petition to modify, a change of circumstances warranting a modification existed. (Even though Mother's earned $630 per week in her previous job, the trial court imputed only minimum wage income to her). Mother appealed, arguing that because she was again unemployed by the time of the hearing, the trial court erred in imputing income to her.

b. Addressing the question of when the change in circumstances must exist, the appellate court selected the time of the modification trial for two reasons. "First, because the court's decision to modify child support must be based upon the evidence presented in support of the complaint to modify. Second, because the change in circumstances cannot be temporary."

c. Judge William B. Cassel dissented, contending that it was not necessary to decide whether the change must exist at the time of filing or trial because here, "a material change of circumstances existed at both points in time," where, he said, the mother's earning capacity was at least at minimum-wage level at both times.

3. Retroactive Modification -

a. A trial court was not authorized to retroactively increase a child support order after finding that the obligor had deliberately understated his income in a prior modification action, the Tennessee Court of Appeals held. Citing the statutory bar against retroactive modification, the court distinguished this case from the state supreme court's decision a month earlier that a man whose ex-wife had misrepresented his paternity of the child born during their marriage was entitled to damages equaling the support he had paid before discovering her deceit. *In re Christopher A.D.*, slip op. No. M2010-01385-COA-R3-JV (Tenn.Ct.App. 11/20/12), 39 FLR 1040.

(1) The appellate court agreed with Father that Tenn. Code Ann. § 36-5-101(f)(1) clearly prohibits retroactive modification of an existing child support as to any time period prior to the date that the petition for modification is filed and notice is given to the opposing party. Moreover, there exists no exception to this rule that would have allowed such a retroactive modification.

(2) The court acknowledged the state supreme court's decision in *Hodge v. Craig*, Tenn., No. M2009-00930-SC-R11-CV, 10/1/12), 38 FLR 1571, which held that

a man who discovered that his ex-wife had misled him regarding his paternity of the child born after they married may recover as damages for her intentional misrepresentation an amount equal to the court-ordered child support he had paid her after their divorce. *Hodge*, the court said, involved a claim for damages arising from misrepresentation of a man's paternity. In contrast, the instant case involves misrepresentation of income within the context of a support modification proceeding. To allow a support order to be subject to challenge based on equitable defenses such as fraud would defeat the purpose of the statutory prohibition, the court said.

b. A trial court erred in granting a delinquent obligor's petition to terminate his support obligation in light of his mental disability, which he contended rendered him unable to pay the arrears that had accumulated under the support order, the Tennessee Court of Appeals held. *State ex rel. Letner v. Carriger*, slip op. No. E2011-01853-COA-R3-CV (Tenn.Ct.App. 8/20/12), 38 FLR 1504.

(1) The divorced obligor was ordered to pay support in 1994. Thereafter, a number of contempt actions were filed due to his nonpayment; in his defense, the obligor contended his mental disability precluded him from obtaining regular employment, and thus he was unable to comply with the support order. In 2006, his children reached the age of emancipation, and his support obligation was restricted to his accumulated arrears — which in 2005 had been determined to total over $32,000. From 2005 to 2010, the obligor unsuccessfully attempted to secure disability benefits. In 2011, he successfully moved to terminate his support obligation on the basis of his disability. The state appealed, arguing that the trial court's ruling improperly resulted in the retroactive modification of the obligor's arrearage.

(2) Agreeing with the state, the appellate court pointed out that Tennessee law provides that a child support order is not subject to modification as to the period before the action to modify is filed. Although attempting to enforce Father's arrearage may well be an exercise in futility, the court said, this does not mean the trial court has the authority to retroactively modify a child support order prior to the date upon which the petition to modify is filed. Moreover, equitable defenses "may not be employed to eliminate such arrearages." Also noting that Father never appealed a 2005 judgment establishing his arrearage, the court added that while the obligor's "ailments may preclude him from being found in contempt or effectively prevent collection of his child support arrearages, Tennessee law does not allow the outright retroactive termination of child support arrearages which have accrued as a result of valid court orders."

c. The existing child support obligation of a parent who ultimately wins a reduction due to unemployment does not continue to accrue while the modification proceeding is pending, the Georgia Court of Appeals held. Such was the result notwithstanding the Georgia Supreme Court's opinion in *Galvin v. Galvin*, 702 S.E.2d 155 (Ga. 2010). *Morgan v. Bunzendahl*, 729 S.E.2d 476 (Ga.Ct.App. 2012), 38 FLR 1409.

(1) In *Galvin*, the high court held that under the governing statutes, a downward modification of child support cannot be retroactive, but that child support due before entry of the modification order that has not been paid due to the loss in income does not accrue to the extent that the obligation is based on the parent's income from employment from which he or she has been terminated.

(2) The Supreme Court's analysis in *Galvin*, however, was inapplicable in this case, the appellate court said. Where only modification is sought, the modification statute "is inapplicable because the trial court determines only how much the petitioner will owe each month from that day forward. The court does not determine in a modification petition whether and how much the petitioner is in arrears on his child support payments. In contrast, the trial court calculates past-due child support when it considers a contempt petition, and under [the statute], the child support obligation of a parent facing involuntary adversity 'shall not accrue' from the date of service of the modification petition." The court in *Galvin* did not address "the amount of arrearage a non-custodial parent would accrue under the statute after having been found to suffer an involuntary loss of income." The court thus concluded that the statute "applies in this case to foreclose the accrual of that portion of child support attributable to his involuntary loss of income," and that the trial court erred in holding that the father's obligation continued to accrue at the same rate after the mother was served.

(3) The court added that because it concurred in the judgment only, its decision today was not binding on the trial courts; the state supreme court was well advised to consider the matter.

4. Agreements to Preclude Modification -

a. A motion to reduce a now-retired divorced father's support obligation should have been dismissed, where his decree-incorporated separation agreement revealed an intent not to be bound by the state support modification statute, the Oklahoma Supreme Court held. *Scungio v. Scungio*, 291 P.3d 616 (Okla. 2012), 39 FLR 1010.

(1) The agreement provides that because the father's emotional abuse of the parties' adopted special needs children had exacerbated their condition, he "has an even greater responsibility to support them." It sets out a formula that requires him to pay more support than is mandated under the state guidelines, and states that support will not be modified except upon the parties' written consent. It further provides that the agreement is to be construed in accordance with Oklahoma law, and includes the support modification statute in the list of such laws. The supreme court granted review of the trial court's denial of the mother's motion to dismiss the state's modification petition. (The father is in arrears, and the children receive state child support services.)

(2) The high court reversed. It observed that the order was ambiguous (it contained a non-modification clause, but also stated it was to be construed in accordance with Oklahoma law — which allows for modifications). However, the court said, the ambiguity was easily resolved under the facts and circumstances of this case. Explaining that the agreement shows an intent to meet the children's special needs, it found that the parties "clearly and expressly" contemplated a plan by which the mother would obtain sole custody and the father would assume financial responsibility beyond the guidelines that would continue into the children's majority. Further finding that the agreement contemplated the father's retirement and provided for such event, the court said that the circumstances and text of the agreement demonstrated a "clearly expressed intent to be free from the statutory strictures of the child support modification provisions." It thus directed the trial court to deny the modification petition.

b. An unallocated support order may be modified upon a change in custody even though the parties' decree-incorporated agreement provides that the order is nonmodifiable, the Connecticut Supreme Court held. In so ruling, the court relied on a statute providing for the suspension of child support when custody is transferred to the obligor. It also emphasized that parents may not contractually limit a child's right to support. *Tomlinson v. Tomlinson*, 46 A.3d 112 (Conn. 2012), 38 FLR 1403.

(1) The parties' 2005 divorce decree-incorporated settlement required Father to pay Mother unallocated alimony and child support for the parties' two children until June 30, 2008 or the wife's death or remarriage, whichever occurred first. The decree further provided that "[t]he unallocated periodic [alimony] and child support shall be [nonmodifiable] in amount and term of payments except as noted above. . ." In 2007, the parties stipulated to transfer physical custody of both children to Father. He then moved to reduce his obligation to Mother because the children no longer resided with her. The trial court agreed, and Mother appealed. The appellate court reversed, holding that the agreement expressly prohibited modification of the unallocated order.

(2) Reversing the appellate court, the high court recognized that in certain cases, a nonmodification provision restricts "the trial court's power to modify alimony or support even when a substantial change in circumstances or a substantial deviation from the child support guidelines has occurred." However, the court said, the conclusion to be drawn from competing statutes is that "in cases such as the present one, in which primary physical custody is transferred from the party receiving the unallocated payments to the party making the payments, a nonmodification provision does not prevent the modification of the unallocated order in an amount attributable to child support."

c. A divorced couple's court-approved stipulation that the husband could not seek to reduce his child support payments for a fixed period of time is enforceable, the Wisconsin Supreme Court decided. Addressing a question certified by the state court of appeals as to whether stipulations establishing unmodifiable, limited-duration floors on child support are contrary to public policy, the supreme court said the agreement here was not, because the trial court retained its equitable power to consider circumstances that the parties did not foresee when they entered into it. In so holding, the court explained that a central component in determining whether an unmodifiable child support floor is enforceable is the duration of the provision. Thus, a child support obligation that is indefinitely unmodifiable will likely violate public policy. A durational limit, however, will not necessary save a child support stipulation if it interferes with a court's ability to make orders in the best interests of the child. *May v. May*, 813 N.W.2d 179 (Wis. 2012), 38 FLR 1267.

d. A trial court erred by nullifying Phoenix Suns' head coach Alvin Gentry's court-approved support agreement with his nonmarital child's mother, Florida's Third District Court of Appeal ruled. The parties' 1999 agreement provided that child support was not to be modified unless the father's income went above or below certain thresholds. Despite not exceeding these thresholds, Mother filed in 2010 for a support modification. The trial court found the agreement's limiting language void for public policy and increased Father's support obligation. Father appealed. Reversing, the appellate court found that Florida law does not, as a matter of public policy, preclude support agreements between parents. Saying that the trial court should have enforced it according to its terms, it found that in entering the court-approved agreement, the parties had considered the child's current and prospective needs, and possible changes in Father's income. *Gentry v. Morgan*, 83 So.3d 924 (Fla.Dist.Ct.App. 2012), 38 FLR 1238.

N. Paternity -

1. Competing Presumptions or Adjudications -

   a. A trial court properly considered an acknowledged father's petition to establish his status as a nonmarital child's de facto parent following an adjudication of the biological father's paternity based on genetic testing, the Washington Court of Appeals, Division One, ruled. Rejecting the argument that the common-law de facto parent doctrine did not apply because the Uniform Parentage Act addressed the remedy available to the acknowledged father, the court pointed out that the version of the UPA in effect when he filed his action provided no such remedy, because once a biological father has challenged the paternity of an acknowledged father (as was done here), the trial court could not hold a hearing to consider the child's best interests. Under the amended version of the Act, it observed, a judge may now deny genetic testing to disprove the paternity of an acknowledged father if doing so is in the child's best interest. *In re M.J.M.*, 294 P.3d 746 (Wash.Ct.App. 2013), 39 FLR 1149.

   b. A trial court that had found that two men were vested with the presumption of paternity — one because he had taken the subject child into his home and the other because he was the biological father whose efforts to assert his parentage had been foiled by the child's mother — properly concluded that the biological father's presumption controlled, the California Court of Appeal, Second District, decided. In so holding, the appellate court observed that the mother's conduct had frustrated the biological father's qualification as a presumed father under the Uniform Parentage Act. It therefore rejected the mother's arguments that the biological father lacked standing and that the trial court erred in setting aside the voluntary declaration of paternity of the other presumed father, who had resided with the child and openly held the child out as his own. *J.R. v. D.P.*, 150 Cal.Rptr.3d 882 (Cal.Ct.App. 2012), 39 FLR 1123.

   c. A divorce court erred in denying a wife's request that her husband be ordered to pay support for her child from a prior relationship, where such duty arose under Texas presumption of paternity statutes, the South Dakota Supreme Court decided. Agreeing with the mother that the trial court erred in concluding that the husband was not the child's presumed father under Texas law, the court pointed out that Tex. Fam. Code § 160.204 creates a rebuttable presumption of paternity when the parties marry after the birth of a child and the man voluntarily asserts paternity in a record filed with the bureau of vital statistics or is voluntarily named as father on the child's birth certificate. Emphasizing that there is no requirement that the putative father be the biological father in order to assert paternity, the court said that the statutory

requirements were satisfied here. Moreover, the court added, the man held himself out to be the child's father and thus remained obligated to support the child. *DeBoer v. DeBoer*, 822 N.W.2d 730 (S.D. 2012), 38 FLR 1611.

d. A trial court erred in denying a man's request for genetic testing in his action to establish his divorcing wife's ex-paramour as the biological father of one of the now-adult children born during their marriage, the New Jersey Supreme Court held. Addressing for the first time the standard that a presumed father must meet to compel such testing in a parentage action, the high court stepped away from a 1991 appellate division case that required a petitioner to show that testing was in the subject child's best interests. It explained that this standard does not take into account the Parentage Act's mandate that in such cases good cause must be shown why testing should not occur. Declaring that "the central question is what requirements must be met to allow for genetic testing to rebut a presumption of paternity in a parentage contest," the court said the "issue here is how does [the husband] prove that [Child] is the biological son of another man when [he] is presumed to be [Child's]'s father[?]" Under the Parentage Act, the court explained, "once the reasonable-possibility threshold of paternity or nonpaternity has been crossed, the default position is genetic testing." *D.W. v. R.W.*, 52 A.3d 1043 (N.J. 2012), 38 FLR 1584.

e. A divorce court erred in impliedly determining that a man was the father of a child born to his wife shortly after their 2006 wedding and ordering him to pay support for the child, where the wife admitted that DNA testing established his nonpaternity, the Alabama Court of Civil Appeals held. The appellate court observed that Alabama statutes allow a husband to rebut his presumption of paternity by clear and convincing evidence. The DNA evidence — and the Wife's acknowledgment that the child was not her husband's — constituted such clear and convincing evidence. Thus, the trial court's order requiring him to pay support for this child was erroneous. *D.J.G. v. F.E.G.*, 91 So.3d 69 (Ala.Civ.App. 2012), 38 FLR 1237.

f. A trial court did not err in vacating a judgment declaring a man to be the father of a child born to a now-deceased married woman and dismissing his claim that the child was dependent, the Alabama Court of Civil Appeals held. *B.B. v. M.N.*, 90 So.3d 194 (Ala.Ct.Civ.App. 2012), 38 FLR 1213.

(1) The child was born in 2006 while the mother was married. In 2007, the man filed a paternity action to have himself declared the father of the child, serving the mother, but not her husband, who did not receive notice of — or appear in — the action. DNA testing showed the man to be the child's father and the trial court entered a judgment finding him to be the child's biological parent. The child remained with the mother and her husband until the mother's death in 2008, three

days after which the husband moved to set aside the judgment. The trial court granted the husband's motion, and the putative father appealed.

(2) Affirming, the appellate court held that under the governing statutes, the husband was the presumed father. Further, there was no evidence to suggest that the husband had failed to persist in such presumption. Under the facts of this case, the trial court did not err in finding that the husband had standing to set aside the judgment and in the trial court's order doing so.

g. Evidence that a man was not likely to be the father of a child born outside of wedlock, by itself, did not preclude him from demonstrating that he was the child's presumed father, the Alabama Supreme Court ruled. In the context of a custody proceeding, an Alabama juvenile court found that because the man was incarcerated at the time that the child was conceived and the mother was five months pregnant at the time of his release, he could not be the child's biological father. Accordingly, the juvenile court ruled that he was not the presumed father, and granted the mother's petition for genetic testing. On review, the Supreme Court noted the statutory presumption of paternity, and held that the legislature did not intend for biology to prevent a presumption of paternity. The Court ruled that the man would be the child's presumed father if he demonstrated that he received the child into his home, openly held the child out as his natural child, and established a significant parental relationship by providing emotional and financial support for the child. On remand, the juvenile court was directed to determine whether the man had presented sufficient evidence to establish his status notwithstanding his apparent lack of biological connection with the child. If the man made such a showing, the order for genetic testing must be vacated; if the man failed to make such a showing, the order for genetic testing was proper. *Ex parte T.J.*, 89 So.3d 744 (Alabama 2012), 38 FLR 1202.

2. Genetic Testing -

a. Right to Choose DNA Testing Facility - A judgment of paternity was properly entered against a man based on his failure to comply with an order to submit to a DNA paternity test at a county contracted lab, the California Court of Appeal, Fourth District, decided. *San Diego County v. Mason*, 147 Cal.Rptr.3d 135 (Cal.Ct.App. 2012), 38 FLR 1543.

(1) The man claimed that his right to privacy gave him the right to control who could take his DNA sample and what they could do with it. The county responded that it had an interest in using — and was statutorily required to use — its contracted facility to ensure that the proper chain of custody and procedures were in place.

The court agreed with the county and entered a paternity judgment against the man when he refused to undergo testing at the county facility. He appealed.

(2) Affirming, the trial court recognized that because it contains personal information, people have a strong privacy interest in controlling the use of their DNA. Such interest, however, is not absolute. Emphasizing that by denying paternity and requesting a paternity test, the man consented to the taking and limited analysis of his DNA, the court pointed out that even if a private laboratory conducted the tests, the results — including the man's genetic information — would necessarily be made available to the county. Moreover, although the contracted lab might violate privacy laws, so might a private lab, the court noted.

b. Best Interest Standard - A man who claims to be the father of a child conceived by a woman during her marriage but born after her divorce does not have an unconditional right to genetic testing to determine the child's paternity, the Maryland Court of Appeals decided. Confronting this fact situation for the first time, the court determined that the outcome was controlled by the paternity provisions of the state code's probate article rather than the analogous provisions of the family law article, and that the child's best interests thus governed whether testing should be ordered. *Mulligan v. Corbett*, 45 A.3d 243 (Md. 2012) (reversing 37 FLR 1261), 38 FLR 1356.

3. Estoppel and Res Judicata -

a. Estoppel -

(1) A trial court did not err in rejecting a man's argument that the doctrine of paternity by estoppel bars a mother's claim that he is the parent of her nonmarital infant, where she had previously identified his own father as the child's other parent, the Pennsylvania Superior Court held. *V.E. v. W.M.*, 54 A.3d 368 (Pa.Super.Ct. 2012), 38 FLR 1565.

(a) The man had objected to the mother's petition for child support and the court's order for genetic testing on the ground that his father, W.M., Sr., was the child's biological father. He argued that the mother had, "by her conduct, accepted [W.M., Sr.] as the father of her minor child," that W.M., Sr. had signed the child's birth certificate, and that W.M., Sr. "accepted the minor child as his own by holding it out [to be his] and/or supporting the child." The court determined that in light of the child's infancy (the child was nine days old when the mother filed the petition, and four months old when the

court entered its order) there was no time for the mother's conduct to have become an issue, and thus the defense of paternity by estoppel was inapplicable.

(b) Affirming, the Superior Court explained that the focus of the paternity by estoppel doctrine was inapplicable in this case. Concurring with the trial court "that as a matter of law, 'it is impossible for a four month old child to suffer any damaging trauma from the performance of genetic testing … as there has been an insufficient amount of time for any bonding to have occurred between any father and child'," the court added that "given that our rules of court direct the courts to enter an order for genetic testing for a child born out of wedlock, genetic testing is appropriate here."

(2) The common-law doctrine of paternity by estoppel should be applied to bar a mother's husband from denying his paternity of a child born during their marriage only if doing so is in the child's best interests, the Pennsylvania Supreme Court, Middle District, ruled. While thus confirming the doctrine's continued viability in the state, the court emphasized that it retains its "greatest force" where there is an intact family. *K.E.M. v. P.C.S.*, 38 A.3d 798 (Pa. 2012), 38 FLR 1207.

(a) In this case, genetic testing confirmed that the mother's husband was not the child's biological father. The husband, however, continued to raise the child as his own. When Mother's relationship with her paramour, whom she alleged to be the child's biological father, ended, Mother filed a paternity action against him. The paramour moved to dismiss, arguing that the child's birth to a still intact marriage established the husband as the child's biological father. The trial court agreed. It also held that the husband's acceptance of the child, in accordance with Mother's wishes, precluded Mother's request to establish the child's paternity in the paramour.

(b) While acknowledging the continuing viability of paternity by estoppel as a general proposition, the high court opined that such should operate only where it is shown that employing estoppel will serve the child's best interests. In this case, the court said, "[t]he abstract possibility that the marital unit might be saved, in these circumstances, is not, in our view, a strong reason supporting the dismissal of the claim for support. All things being equal …, we conclude that the responsibility for fatherhood should lie with the biological father."

b. Res Judicata -

(1) A provision in a default divorce decree stating that one child had been born during the parties' marriage was not an adjudication of the husband's paternity, and thus the trial judge was not precluded from later vacating the decree and holding that no child resulted from the marriage, the Utah Court of Appeals ruled. The court rejected an appeal by a man who argued that even though he had been established as the child's biological father in a separate proceeding, the trial court lacked the authority to set aside the divorce decree finding the husband to be the child's father. (DNA testing showed that the child was not the husband's child.) *Reller v. Reller*, 291 P.3d 813 (Ut.Ct.App. 2012), 39 FLR 1029.

(a) The court acknowledged that Utah's Uniform Parentage Act, Utah Code Ann. § 78B-15-607(1)(a), states that: "If the question of paternity has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact." However, the court asserted, "perfunctorily reciting in a default divorce decree that there was one child resulting from the marriage does not elevate the question of paternity to one that 'the tribunal addresses' for purpose of the statute so as to estop the parties from raising the issue again."

(b) In so holding, the court pointed out that § 78B-15-617(1) provides: "The paternity of a child having a presumed, declarant, or adjudicated father may be disproved only by admissible results of genetic testing …." Thus, the court held, the trial court was not precluded from revisiting the issue of parentage in the divorce proceeding.

(2) A woman's paternity action against a deceased man's estate was properly dismissed on *res judicata* grounds where her mother's prior bastardy complaint against him had been dismissed with prejudice, the Arkansas Court of Appeals, Division III, held. Affirming the dismissal, the appellate court determined that the case was governed by *Department of Human Services v. Seamster*, 820 S.W.2d 298, 299 (Ark.Ct.App. 1991), which held that there was "no doubt that a [mother's unsuccessful 1978 bastardy] action was brought on behalf of the child," and thus served as a *res judicata* bar to the state's subsequent paternity action on the child's behalf. Finding the facts in *Seamster* analogous to those in this case, the court held that the trial court below did not err in dismissing the woman's paternity action. Although *Seamster* involved a claim for support while the mother here only sought a claim on the estate, such difference did not obviate the fact that both involved the same legal right, *i.e.*, the establishment of paternity.

Mathis v. Estate of McSpadden, slip op. No. CA12-259 (Ark.Ct.App. 10/24/12), 38 FLR 1613.

(3) A provision in a couple's divorce decree stating that the husband was not the father of the wife's then unborn child is void as against public policy and does not bar the state's later action to establish his paternity and for reimbursement of welfare benefits paid to the child, the Tennessee Court of Appeals ruled. *State ex rel. Kimbrough v. Hales*, slip op. No. E2011-02539-COA-R3-CV (Tenn.Ct.App. 7/25/12), 38 FLR 1459.

(a) The state provided Mother welfare benefits for 15 years, after which she admitted that, despite her dissolution decree, her former husband was indeed her child's father. The state then moved to establish paternity in her former husband. DNA testing later confirmed him as the child's biological father. Nevertheless, the trial court granted the man's motion to dismiss the state's action, holding that the mother had violated public policy by giving false testimony and thus had unclean hands.

(b) Reversing, the appellate court found that the provision in the dissolution decree specifying that the husband was not the child's father was void as against the public policy, as the law prohibits relieving a parent of his duty of support. In addition, the trial court erred in applying the unclean hands doctrine, where although the mother's statement in the divorce action was inconsistent with her present statement as to the husband's paternity, it made no finding "that her ostensibly false initial statement was made 'wilfully' or knowingly."

4. Retroactive Child Support - A trial court did not abuse its discretion in denying a mother's request that her children's adjudicated father be ordered to pay child support retroactive to their births, the Ohio Court of Appeals, 12th District, held. The court noted that the governing statute provides that a court shall not require a parent to pay retroactive support if the child was over the age of three when the parentage action was filed and the alleged father had no reason to know of his paternity prior to that time. Had the legislature intended a different result, it could have so stated. In this case, one of the children was born within three years of Father's parentage action. However, the court noted, Mother's husband assumed full responsibility for the children, and Mother's actions often kept the child away from Father. Under the unique circumstances of the case, the trial court did not abuse its discretion in denying Mother's request for support prior to the time Father filed his parentage action. *Shonebarger v. Nelson*, slip op. No. CA2011-04-032 (Oh.Ct.App. 1/30/12), 38 FLR 1190.

5. Setting Aside Paternity -

a. Paternity Affidavits -

(1) A trial court erred in failing to order genetic testing in a man's action to terminate his parent-child relationship with his former paramour's daughter, the Texas Court of Appeals, First District, decided. *In re C.E.*, — S.W.3d — (Tex.Ct. App. 10/4/12), 2012 WL 4717882, 38 FLR 1603.

(a) Six years after the man signed a birth certificate acknowledging paternity of a child, the man noticed " a lot of differences" between himself and the child, "in facial features and stuff like that." The court denied his request to set aside his child support order and disestablish his paternity, and he appealed.

(b) Reversing, the appellate court noted that Family Code § 161.005(f) requires a court to hold a pretrial hearing to determine whether the father has established a "meritorious prima facie case for termination of the parent-child relationship." Pointing out that the "prima facie standard requires only the minimum quantum of evidence necessary to support a rational inference that the alleged fact is true," it explained that "to make a prima facie case for genetic testing, [the man] had to present evidence sufficient to support an inference that a misrepresentation caused him to believe that he was [the child's] father."

(c) The court recognized that his petition did not point to any particular misrepresentation, but it determined that "circumstantial evidence adduced at the pretrial hearing supports the allegations in his petition." That evidence, it said, showed that the mother may have misrepresented his paternity in naming him the father on the birth certificate and the child support proceeding, and that the man acknowledged paternity based on those representations without undergoing paternity testing. His verified petition alleging that a misrepresentation caused him to believe he was the child's father coupled with circumstantial evidence that a misrepresentation as to paternity was made, constitutes a prima facie case for genetic testing under § 161.005(c), the court concluded.

(2) A judge properly vacated a voluntary acknowledgment of parentage executed by a married mother and her paramour, even though after the mother's death, her husband signed an affidavit denying his paternity of the subject child, the Massachusetts Supreme Judicial Court decided. Affirming the trial court, the high court held that because the mother was married at the time of the child's birth and

the husband had not executed an affidavit denying his paternity during the mother's lifetime, the voluntary acknowledgment of paternity had no legal effect. The paramour's only legal recourse was to file a new complaint in equity, the court said. *D.H. v. R.R.*, 964 N.E.2d 950 (Mass. 2012), 38 FLR 1275.

(3) A juvenile court erred in denying an adjudicated dependent child's motion for a judgment of nonpaternity as to a man who claims to be his father, the Oregon Court of Appeals held. In this case, the mother and her paramour signed a paternity affidavit, but executed an old form which was dated incorrectly. The trial court, unaware the paternity affidavit execution was invalid, denied the child's request to find nonpaternity as to the paramour. (A social services agency filed a reunification petition for the Mother and her ex-husband, who it claimed was the presumed father). Finding that the trial court incorrectly found that paternity had been established in the paramour, it failed to evaluate the motion under the operative statute. Remand was therefore warranted. *Department of Human Services v. J.B.*, 273 P.3d 196 (Or.Ct.App 2012), 38 FLR 1190.

b. Paternity Judgments -

(1) A nonmarital child's biological father should not have been allowed to intervene in a paternity action a decade after another man had been adjudicated as her father, the Nebraska Supreme Court held in a per curiam opinion. *Jeffrey B. v. Amy L.*, 814 N.W.2d 737 (Neb. 2012), 38 FLR 1375.

(a) The mother had a sexual relationship with both men at the time she had become pregnant. However, the father was unaware of her pregnancy when he moved out of state. Thereafter, she spoke to his coworkers, one of whom told the father that he suspected she was pregnant. The father never considered the possibility that the child might be his, and never contacted the mother. The child was born December 1999. The other man obtained a paternity decree in 2001 and was ordered to pay child support. In 2006 the child was placed in his custody after being removed from the mother's home by social services. In 2009, the mother decided that the child looked like the father and contacted him. After genetic testing established his paternity, the father intervened in the paternity action and moved to set aside the 2001 decree. The trial court granted his motion in 2011 and awarded him custody, with the mother and the other man receiving visitation. All three appealed.

(b) The high court found that the father was not entitled to intervene as a matter of right because such is not allowed after judgment. Moreover, it said, the trial court exceeded its equitable power in setting aside the judgment under

the facts of this case. The father could have discovered the pregnancy with reasonable diligence in time to intervene in the action establishing another man as the child's father. Because the father slept on his rights, he should not have been permitted some ten years later to intervene and set aside that judgment.

(2) A trial court erred in refusing to set aside an agreed judgment of paternity where the man later determined that he was not the child's biological father and he had not established a relationship with the child, the New Mexico Court of Appeals decided. Reversing the trial court, the appellate court said that "question before us is whether the circumstances of this case are of such an extraordinary nature as to relieve [the man] from child support; and, if so, whether [he] should nevertheless be denied relief because his conduct (his early stipulation and passive pursuit of paternity testing) may have resulted in undue prejudice to [the Human Services Department] or harm to Child." The court went on to explain that the change from a mistaken admission of paternity to proof of non-paternity qualifies as an extraordinary change of circumstances sufficient to permit relief from a child support obligation and the accrued arrearage. The court also determined that HSD had not demonstrated harm to the child, having failed to show that the child had not received adequate support in the past or would not in the future. "In balancing whether [the man] instead of HSD should provide the support, we come down on [his] side." *State ex rel Human Services Department v. Rawls*, 279 P.3d 766 (N.M.Ct.App. 2012), 38 FLR 1284.

6. Standing -

a. A trial court erred in failing to grant a mother's motion to dismiss a man's paternity action, filed in contemplation of an adoption proceeding, where the man had failed to register with the putative father registry nor had established paternity by executing an affidavit, the Indiana Court of appeals decided. The putative father claimed that because the mother had disclosed his identity to the adoption attorney, he was exempt from the time requirements in signing the registry or in filing a paternity action. The appellate court rejected this argument, saying that under the governing statutes for the registry requirements not to apply, the mother must disclose *both* the identity and address of the putative father. Because she had not disclosed his address, the registry provisions applied. Accordingly, the man's failure to protect his rights to object to an adoption had been impliedly and irrevocably waived. *In re G.W.*, — N.E.2d — (Ind.Ct.App. 2/27/13), 39 FLR 1203.

b. A man's petition to establish his parentage of a woman's nonmarital child was properly dismissed for lack of standing pursuant to a statute that bars such an action

when parentage has been previously established, the Vermont Supreme Court held. Finding that a parentage order had been entered in connection with the state's prior child support action against the mother's cohabitant, the court acknowledged that the man was not a party to that action. It determined, however, that his failure to assert his paternity earlier meant that he did not have a constitutionally protected parental interest. *Columbia v. Lawton*, — A.3d — (Vt. 1/18/13), 2013 WL 198963, 39 FLR 1136.

(1) The high court observed that putative father claimed that 15 Vt. Stat. Ann. § 302(a) prohibits a second parentage action after paternity has already been established. Rejecting the putative father's argument that § 302 should not be read to permit a "race to the courthouse" by alleged fathers, the court explained that "the Legislature has cast its lot on the side of finality and protection of established parent-child relationships. [] Whatever the interests of the presumed father in ascertaining the genetic 'truth' of a child's origins, they remain subsidiary to the interests of the state, the family, and the child in maintaining the continuity, financial support, and psychological security of an established parent-child relationship." Moreover, the court noted, "the Legislature's restriction on multiple parentage actions reduces the risk of conflicting parentage orders involving the same minor child."

(2) The court also rejected the putative father's constitutional attack, noting that the U.S. Supreme Court has recognized in *Lehr v. Robinson*, 463 U.S. 248, 9 FLR 3077 (1983) that due process protection of parental rights requires a showing of a commitment to parental responsibilities. Observing that the putative father here never attempted to take responsibility for this child until more than two years after the child's birth, the court did "not find this to be a close case." Finally, the court noted that its decision had no impact on the question whether the child might someday independently institute an action against a putative father.

c. A mother's parental rights should not have been involuntarily terminated to facilitate her estranged husband's adoption of the adjudicated dependent child who was born during their marriage but fathered by another man, the New Jersey Superior Court, Appellate Division, ruled. In considering for the first time the issue of legal fatherhood in the context of a termination case, the court focused on the fact that the husband — who desires to retain custody and parent the child — is the child's legal and psychological father. Thus, the court decided that it was not necessary to extinguish the mother's rights in order for him to maintain a parental relationship with the child, where such was in the child's best interests. *New Jersey Division of Youth and Family Services v. D.S.H.*, 40 A.3d 734 (N.J.Super.Ct.App.Div. 2012), 38 FLR 1282.

d. The Kosciusko Circuit Court did not err in granting an ex-husband's motion for relief from judgment under Ind. Trial Rule 60(B) to establish himself as the father of a child born to his ex-wife during their marriage, the Indiana Court of Appeals ruled. *In re Marriage of K.Z. and M.H.*, 961 N.E.2d 1023 (Ind.Ct.App. 2012), 38 FLR 1202.

(1) The final dissolution decree, issued while the wife was pregnant, provided that "[t]here were no children born during the marriage. Petitioner is now pregnant." After the child was born, the husband moved to set aside the judgment to establish himself as the child's father. The trial court so ordered. Wife appealed, arguing that there was no evidence of husband's paternity. *Id.* at 1024.

(2) The appellate court held that the fact of husband's paternity was never in dispute, from the original petition to a hearing in which Wife did not disclaim husband's paternity of the child. Thus the trial court did not abuse its discretion in granting Husband's motion for relief from judgment by "modifying" the dissolution decree to reflect the birth of the child born to the parties of the marriage. This was especially so in light of the statutory presumption of a husband's paternity of a child born within 300 days after the marriage is terminated by death, annulment or dissolution. IC § 31-14-7-1(1). *Id.* at 1025-26.

e. The public policy of Georgia did not allow a biological father of a child born to a mother who was married to another person to assert an opportunity to develop a relationship with the child. Therefore, a trial court could deny the biological father's petition to legitimize the child. The biological father and the mother had engaged in adulterous conduct that resulted in a presumptively legitimate child being born within an existing family, and the mother brought the child to secret meetings with the biological father. Until the affair between them was discovered, they knowingly and fraudulently concealed the biological father's involvement in the child's life from the mother's husband. The biological father took no steps to claim the child as his own until almost five years after the child's conception, and only after the surreptitious contact with the child was cut off. In the meantime, the husband and the child had formed deep familial and psychological bonds. *Matthews v. Dukes*, 726 S.E.2d 95 (Ga.Ct.App. 2012).[4]

[4] I*n Brine v. Shipp*, 729 S.E.2d 393 (Ga. 2012), the Georgia Supreme Court held that superior courts lack subject matter jurisdiction to terminate a legal father's rights. That right is vested only in the juvenile courts. Thus to the extent a biological father seeks by establishing his own paternity to terminate a legal father's status, the superior courts, which commonly issue dissolution decrees, are not empowered to enter such judgments. To the extent that *Matthews v. Dukes* may be read to potentially allow a superior court such authority, it is overruled. *Id.* at 396-97.

7. Statute of Limitation - A trial court erred when, in dismissing a married mother's petition to establish the paternity of her child, it applied the two-year statute of limitation for petitions to disestablish paternity, the Illinois Appellate Court, Second District, ruled. *In re G.M.*, 977 N.E.2d 791 (Ill.App.Ct. 2012), 38 FLR 1250.

   a. The mother had become pregnant after having sexual intercourse with her husband and another man, E.M.B. Before the child's second birthday, Mother filed a petition to establish paternity in E.M.B., and also served her husband as a putative father. E.M.B. moved to dismiss, arguing that more than two years had expired since Mother knew that he might be the child's father. The trial court dismissed Mother's petition, holding that the heart of Mother's action was to disprove her husband's paternity, not to actually establish paternity in E.M.B.

   b. The appellate court reversed. It noted that the Illinois Parentage Act provides two distinct causes of action: Those to establish paternity, which must be filed no later than the child's 20th birthday, and those to disestablish paternity, which must be filed within two years after the petitioner learns "relevant facts" tending to disestablish paternity. The appellate court opined that it was clear Mother's petition sought to establish paternity in E.M.B., and thus her action was governed by the longer statute of limitation.

   c. Also noting that the petition asked the court to declare the nonexistence of the husband's paternity, the court said that to hold that this request would turn a paternity action into a nonpaternity action would effectively read the paternity provision — and its more liberal limitations period — out of the statute. This was so given the Act's purpose of protecting opportunities of children to seek support from their parents. The court conceded that this reading of the statute might create a "somewhat anomalous situation" under which a petitioner may pursue a paternity action against a biological father while the statute of limitations has expired on a putative father's right to file a nonpaternity action, but said that the "apparent policy reason for this dichotomy is to protect the minor's rights."

8. Torts -

   a. Fraudulent Misrepresentation -

      (1) A trial court erred in dismissing a man's case against a mother for fraudulently misrepresenting to him that he was her child's biological father, the Iowa Supreme Court ruled. The court acknowledged that Iowa statutes do not speak to the issue, but the man's actions were consistent with traditional concepts of common law fraud and there was no prevailing public policy reason against allowing such a cause of action. *Dier v. Peters*, 815 N.W.2d 1 (Iowa 2012).

(a) The child was born February 10, 2009. The mother knew that Dier was not the child's biological father, but nonetheless told Dier that he was. Based on the mother's representations, Dier provided financial support for the mother and the child. Dier later filed a petition seeking custody. After Mother received the report of the child custody evaluator, she was afraid she would not get custody of the child and requested a paternity test. That test (and a subsequent one) excluded Dier as the biological father. Father then filed his action for fraudulent misrepresentation. The trial court dismissed the action, saying the Iowa Legislature had not authorized a cause of action for "paternity fraud."

(b) Reversing, the high court opined that what the man was claiming was not an entirely new creation called "paternity fraud," but instead a common law action for fraud, which is a well-recognized civil wrong. After detailing the elements of an action for fraud, the court said that on remand, if he can prove his case, he is entitled to relief.

(2) A man who discovered that his ex-wife had misled him regarding his paternity of the child born after they married may recover as damages for her intentional misrepresentation an amount equal to the court-ordered child support he had paid her after their divorce, the Tennessee Supreme Court ruled. Finding that the man's claim was encompassed by the existing common-law tort action, the court reversed the appellate court's ruling that damages based on his post-divorce support payments was an improper retroactive modification of his child support obligation. *Hodge v. Craig*, 382 S.W.3d 325 (Tenn. 2012), 38 FLR 1571 (reversing 36 FLR 1589).

(a) Upon the husband's petition for review, the state supreme court addressed two issues: whether he could maintain a case for misrepresentation, and whether the award of damages based on the child support he had paid after the divorce was an improper modification under the support statute.

(b) As to the first issue, the court opined that misrepresentations to a prospective spouse that he is an unborn child's biological father go to the essence of the marital relationship. "Accordingly, and in light of the historically broad reach of common-law actions for intentional misrepresentation, we have determined that the public policy of this state, reflected in the Constitution and statutes does not prevent the former spouse of a child's mother from pursuing common-law damage claims based on her intentional misrepresentations regarding the identity of the child's biological father." The court noted that one jurisdiction has allowed such an action against the child's biological father. *See R.A.C. v. P.J.S.*, 927 A.2d 97 (N.J. 2007).

(c) Next addressing damages, the high court disagreed with the appellate court that awarding the husband damages on his common-law intentional misrepresentation claim in the amount of child support he had paid constituted a prohibited retroactive modification of support. Pointing out that when the 2009 judgment was entered, the husband no longer had a legally enforceable obligation to pay support for the child, it also noted that no arrears were owed under the original support order. The court found that as a victim of the wife's intentional misrepresentations, the husband was entitled to recover the pecuniary loss he suffered as a result of his justifiable reliance on her representations that he was the child's biological father and that no one else could be. (The court noted that if, in a case such as this, the plaintiff does owe past due support, the trial court must offset the damages judgment by the amount of arrears owed.)

b. Mental Anguish - A man's tort action against his now former wife's paramour for damages caused by the mental anguish of discovering their extramarital affair and learning that he was not the biological father of the child born during his marriage — along with a request to recoup his financial support of the child — was properly dismissed, the Ohio Court of Appeals, Eighth District, held. *Newman v. Weinman*, — N.E.2d — (Oh.Ct.App. 8/2/12), 2012 WL 3133616, 38 FLR 1471.

(1) The appellate court said that the man's claim for mental anguish resulting from discovery of the affair was barred by Ohio Rev. Code 2305.29, which abolished amatory actions and "provides a complete defense to the actions of alienation of affections and criminal conversation." It rejected his argument that the facts here "fall squarely within the intentional tort of emotional distress," saying that all the proof necessary to support his action, "however characterized, stems from [the wife's] adulterous relationship with [the paramour]."

(2) Next addressing the man's request for reimbursement of the money he paid to support the child for the first 11 years of the boy's life prior to learning of his true paternity (at which point the man filed for divorce), the court pointed out that *Weinman v. Larsh*, 448 N.E.2d 1384 (Ohio 1983), makes clear that there is "no statutory basis or common-law right for the maintenance of his action." It rejected his reliance on a post-*Weinman* statute providing that if a parent neglects to support his or her child, any other person who in good faith provides the child with necessaries may recover the value of such from the parent (R.C. 3101.03(D)). The statute contemplates recovery by a person other than a parent, but a child born during a marriage is presumed to be the husband's child, the court explained, finding that during the relevant period the man was the child's father by law "and, thus, was himself under a duty, as a parent, to support the child."

c. Wrongful Life - A health clinic is not liable to a woman for the costs of raising the healthy child she conceived after it gave her prenatal vitamins instead of birth control pills, the Wisconsin Court of Appeals, District II, ruled January 30, 2013 in an unpublished opinion. *Nell v. Froedtert & Community Health*, slip op. No. 2012AP1556 (Wis.Ct.App. 1/30/13), 39 FLR 1155.

(1) Affirming the clinic's motion for summary judgment on the mother's claim for the cost of raising her child until age 18, the appellate court explained that allowing such a claim would be too likely to open the way for fraudulent claims. The court stressed that this case is not about permanently avoiding conception (as in negligent sterilization cases) but only in "temporarily avoiding" it. Explaining that "claims of inadequate directions, wrong pills, or any ineffectiveness of the chosen contraception method provide too many avenues for a parent to invent an intent to prevent pregnancy or any possibility of change of mind or attitude." The court went on to say that "whether the alleged intent to avoid the pregnancy is prior to conception or during an ongoing pregnancy, the public policy concern with fraud, given the potential size of the damage award, is the same."

(2) Although granting the clinic's motion for summary judgment on the mother's claim for the cost of raising her child until age 18, the appellate court left open the possibility of the clinic's liability for *the mother's* pain and suffering, loss of earning capacity, and postpartum depression due to the clinic's negligence. The court cautioned, however, even if the mother proves causal negligence, public policy could still preclude recovery. It declined, however, to directly address that question but instead remanded the case to the trial court for further proceedings.

O. Social Security -

1. Dependent Benefits - Credit Against Current Support Obligation - A trial court erred in crediting a divorced father's child support obligation with the dependent benefit his daughter receives based upon his Social Security retirement account, the Maine Supreme Judicial Court held. Reversing the trial court, the high court pointed out that 19-A M.R.S. § 2107 authorizes a credit only for Social Security dependent benefits derived from a parent's disability and not from a parent's retirement. Disagreeing with the trial court that a parent's retirement is sufficiently equivalent to a disability to fall within the credit authorized by § 2107, the court observed that "[w]e have previously recognized, albeit in a different context, that 'retirement benefits do not fill the same role as disability benefits, but represent a form of entitlement deriving from the employee's years of work'." In contrast, "disability benefits generally constitute compensation for personal injury that impairs earning capacity." Reading § 2107 to apply to retirement accounts would render superfluous § 2107's reference to dependent benefits based on a disability.

Emphasizing that the father was not disabled but retired due to a downturn in the building industry and to provide the dependent benefit to his daughter, the court said he was not entitled to a credit for such benefit. *Wong v. Hawk*, 55 A.3d 425 (Me. 2012), 39 FLR 1020.

2. Dependent Benefits - Credit Against Arrears -

   a. A father was entitled to a credit against his child support arrearage for a lump-sum SSDI payment received by his son based on the father's disability, the Kansas Court of Appeals held. Addressing the father's appeal, the court noted that the Kansas appellate court, along with the majority of other courts in the country which have considered this issue, has recently held that lump-sum SSDI benefits for back benefits received by Mother on behalf of her minor child because of Father's disability may be credited toward Father's child support arrearage that accumulated during the months covered by the lump-sum payments. *See In re Marriage of Hohmann* [274 P.3d 27 (Kan.Ct.App. 2012)]." *Taber v. Taber*, 280 P.3d 234 (Kan.Ct.App. 2012), 38 FLR 1420.

   b. A lump-sum Social Security dependent benefit paid to a divorced obligor's children because of his disability may be credited against the support arrears that accrued during the period covered by the lump-sum payment, but any excess money must be treated as a gift to the children, the Kansas Court of Appeals decided. In addressing this issue of first impression, the court found that a majority of other jurisdictions allow a credit against an obligor's arrearage for such lump-sum payments. *See e.g.*, *Anderson v. Anderson*, 955 N.E.2d 236 (Ind.Ct.App. 2011); *Swaney v. State*, 256 P.3d 514 (Wyo. 2011); and *Grant County v. Koser*, 809 N.W.2d 237 (Minn.Ct.App. 2012). The court noted, however, that in most of those states the lump-sum payment is only applied as a credit for the specific period during which the obligor becomes eligible for Social Security benefits but has yet to receive them. Thus, any arrears that accumulated before the obligor's eligibility may not be reduced by the lump-sum payment. Such a view is consistent with Kansas law, the court said. The appellate court thus affirmed the lower court's decision to apply the lump-sum Social Security dependency benefit paid to a disabled obligor's children to his arrearage for the dates covered by the payment. *In re Hohmann*, 274 P.3d 27 (Kan.Ct.App. 2012), 38 FLR 1261.

3. Posthumous Children - Assisted Reproduction - Entitlement to Benefits -

   a. Twins conceived by a woman shortly after her husband's death using his cyrogenically preserved sperm cannot inherit as his "children" under Michigan's intestacy laws, the Michigan Supreme Court said. The court's ruling was made in

response to a question certified to it by a federal court considering the woman's challenge to the Social Security Administration's denial of survivor benefits to the twins, on the ground that they were not the decedent's "children" under state law. In so ruling, it joined several other jurisdictions that have responded similarly to such questions. *Mattison v. Social Security Commissioner*, 825 N.W.2d 566 (Mich. 2012), 39 FLR 1087.

b. A child conceived after her biological father's death through an assisted conception procedure using his preserved sperm cannot inherit as his issue under state intestacy law, the Nebraska Supreme Court ruled. The court was replying to a certified question from the U.S. District Court for the District of Nebraska raised in connection with a mother's application for Social Security survivor benefits for her child, whom she conceived through intrauterine insemination using her dead husband's cryopreserved sperm. *Amen v. Astrue*, 822 N.W.2d 419 (Neb. 2012), 39 FLR 1047.

c. A signed agreement to donate preserved sperm to the donor's wife in the event of his death is insufficient to constitute "consent in a record" to being the "parent" of a child conceived by artificial means after the donor's death under Utah intestacy law, the Utah Supreme Court held. The ruling came in response to a question certified to it by a federal district court in connection with a widow's request for Social Security benefits for the child she conceived with her husband's frozen sperm following his death while domiciled in Utah. The high court opined that the "agreement leaving preserved frozen semen to the deceased donor's wife does not, without more, confer on the donor the status of parent for purpose of social security benefits." *Burns v. Astrue*, 289 P.3d 551 (Utah 2012), 38 FLR 1589.

d. Children of a deceased insured wage earner and his spouse, who were conceived through in vitro fertilization after the wage earner's death, were not entitled to surviving child's insurance benefits under the Social Security Act, where they did not qualify for inheritance from the wage earner under Florida's intestacy law or satisfy any of the statutory alternatives to that requirement, the U.S. Supreme Court decided. *Astrue v. Capato ex rel. B.N.C.* 132 S.Ct. 2021 (2012), 38 FLR 1351 (reversing 37 FLR 1111).

(1) The excerpt from the syllabus of the Supreme Court's opinion is as follows:

(a) Congress amended the Act in 1939 to provide that, as relevant here, "[e]very child (as defined in section 416(e) of this title)" of a deceased insured individual "shall be entitled to a child's insurance benefit." § 402(d). Section 416(e), in turn, defines "child" to mean: "(1) the child or legally adopted

child of an individual, (2) a stepchild [under certain circumstances], and (3) ... the grandchild or stepgrandchild of an individual or his spouse [under certain conditions]."

(b) Unlike § 416(e)(2) and (3), § 416(e)(1) lacks any elaboration of the conditions under which a child qualifies for benefits. Section 416(h)(2)(A), however, further addresses the term "child," providing: "In determining whether an applicant is the child or parent of [an] insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply the intestacy law of the insured individual's domiciliary State."

(c) An applicant who does not meet § 416(h)(2)(A)'s intestacy-law criterion may nonetheless qualify for benefits under other criteria set forth in § 416(h)(2)(B) and (h)(3), but respondent does not claim eligibility under those other criteria.[5]

(2) In so holding, the Court resolved a split among various federal courts. *See Schafer v. Astrue*, 641 F.3d 49 (C.A. 4th Cir.2011) (a child born to a woman by in vitro fertilization with her husband's sperm seven years after his death is not his surviving child for purposes of entitlement to Social Security survivorship benefits); *Beeler v. Astrue*, 561 F.3d 954 (C.A. 8th Cir. 2011), *cert. denied*, 132 S.Ct. 2679 (Mem) U.S. (2012) (a child conceived by means of artificial insemination after her insured father's death was not a "child" within the meaning of the Social Security Act, and thus was not eligible for child insurance benefits; the SSA was required to apply the state law that would be applied in determining the devolution of intestate personal property); *Finley v. Astrue*, 601 F.Supp.2d 1092 (E.D. Ark. 2009) (the SSA did not err in denying claims for mother's insurance benefits and child's insurance benefits to a child whose birth resulted from his mother's decision to implant, more than a year after his father's death, embryos that she and the father had created via in vitro fertilization and had frozen; the child was not allowed to inherit under Arkansas state law); *Gillett-Netting v. Barnhart*, 371 F.3d 593 (C.A. 9th Cir. 2004) (child may receive

[5] An applicant for child benefits who does not meet § 416(h)(2)(A)'s intestacy-law criterion may nonetheless qualify for benefits under one of several other criteria the Act prescribes. First, an applicant who "is a son or daughter" of an insured individual, but is not determined to be a "child" under the intestacy-law provision, nevertheless ranks as a "child" if the insured and the other parent went through a marriage ceremony that would have been valid but for certain legal impediments. § 416(h)(2)(B). Further, an applicant is deemed a "child" if, before death, the insured acknowledged in writing that the applicant is his or her son or daughter, or if the insured had been decreed by a court to be the father or mother of the applicant, or had been ordered to pay child support. § 416(h)(3)(C)(i). In addition, an applicant may gain "child" status upon proof that the insured individual was the applicant's parent and "was living with or contributing to the support of the applicant" when the insured individual died. § 416(h)(3)(C)(ii).

such benefits where the biological parent's identity is not disputed). *See also Amen v. Astrue*, (D. Neb., No. 4:10CV3216, 11/14/11), 38 FLR 1044 (the right of a child conceived by a woman shortly after her husband's death using his cryogenically preserved sperm to receive Social Security benefits as his surviving child will depend on whether the child would be able to inherit from him under Nebraska intestacy law).

P. Statutes of Limitation -

1. Change of Statute - Retroactive Application - A trial court properly ruled that a woman's action to collect child support ordered in her 1965 divorce decree was time-barred, because a 1997 statute removing time constraints on the collection of support judgments was not retroactive, the Tennessee Court of Appeals held. *Collins v. Estate of Collins*, slip op. No. E2012-00079-COA-R3-CV (Tenn.Ct.App. 11/19/12), 39 FLR 1045.

   a. The mother had filed an action in 1970 attempting to collect support under the decree, but the case was dismissed because her ex-husband could not be found. In 2011, she filed an action against his estate to collect arrears totalling $1.6 million, alleging that he had died owning assets valued at $400,000. She also stated that their youngest child had graduated from high school in 1979. The trial court granted the estate's motion for summary judgment, finding that the action "was barred by the applicable statute of limitations as of 1989." The mother appealed, contending that a 1997 statute, Tenn. Code Ann. § 36-5-103(g) (judgments for child support are "enforceable without limitation as to time"), should be applied retroactively so that the 10-year statute of limitations contained in § 28-3-110(2) would not apply here.

   b. Affirming, the appellate court acknowledged prior decisions holding that "child support orders are not subject to a statute of limitations." However, in the instant action, all of the relevant events had transpired before the legislature enacted § 36-5-103(g). Accordingly, the court held, the trial court did not err in finding the mother's claim against the father's estate time-barred.

Q. Surname of Child -

1. Best Interest Standard -

   a. A trial court erred in granting a request to change the surname of a nonmarital child from the surname of his mother to that of his father, the Ohio Supreme Court held. *D.W. v. T.L.*, — N.E.2d — (Ohio 12/6/12) (reversing 37 FLR 1602), 2012 WL 6199253, 39 FLR 1068.

(1) The high court observed that in *Bobo v. Jewell*, 528 N.E.2d 180, 14 FLR 1584 (Ohio 1988), "[w]e cautioned … that courts in unmarried-parent situations should not give greater weight 'to a father's interest in having a child bear the paternal surname,' because this preference fails to consider that the mother in this situation has 'at least an equal interest in having the child bear the maternal surname' and therefore is inherently discriminatory." It noted that its prior rulings "require that a parent (in this case the father) who seeks to alter the status quo by changing the child's surname bears the burden of presenting sufficient evidence to affirmatively demonstrate that the change is in the child's best interest." It went on to state that "we must agree with the contention of the mother that the general import of the father's testimony was that the change of name should be granted on the basis of the father's own wishes and interests and not, as the law requires, on the best interests of the child."

(2) The court noted that one of the reasons given by the trial court supporting the decision to allow the name change was that if either parent marries, the father is far less likely to change his surname than the mother. The court acknowledged that while it was not an inaccurate observation that a woman who marries often takes her spouse's surname, "this generic consideration … cannot be a valid factor supporting a name change in a specific case like the one before us." The trial court "placed too much emphasis on the father's interest in having the child bear the paternal surname," it concluded, adding that its decision "at least in part was improperly founded on gender-based conventions and stereotypes."

b. In an action to change a child's surname, neither parent should benefit from a presumption regarding their choice of names, the New Hampshire Supreme Court ruled. The court thus refused to adopt a presumption articulated by the New Jersey Supreme Court (*see Gubernat v. Deremer*, 567 A.2d 856 (N.J. 1995)) that the name chosen by the custodial parent is in the child's best interest. Applying such a presumption could result in bias in favor of maternal surnames, the court said. In addition, it added that all facts and circumstances relevant to the child's best interests should be considered. However, it refused to articulate what factors a court must employ, saying that doing so would not serve a child's best interests any better than entrusting a trial court's broad discretion to such matters. "In accord with the majority of courts from other jurisdictions, we conclude that no parent should benefit from a presumption in child naming disputes," it declared, citing *In re A.C.S.*, 171 P.3d 1148, 34 FLR 1070 (Alaska 2007). *In re Goudreau*, 55 A.3d 1008 (N.H. 2012), 39 FLR 1011.

c. A trial court did not err in changing a woman's son's surname to that of his father, the Georgia Court of Appeals held. *Brittingham v. Dattilio*, 731 S.E.2d 784 (Ga.Ct.App. 2012), 38 FLR 1517.

(1) At trial, Father testified that his 4-year old son had told him he wanted to be "just like daddy" and that he wanted "to be a Dattilio." The mother raised no procedural objections to the court's jurisdiction but instead testified that she had seen the child use Father's last name and that it was upsetting to him to be so confused about his last name. The trial court granted the name change. Mother appealed, arguing that the trial court had failed to comply with procedural requirements of the name-change statute because Father did not obtain her consent, did not verify his counterclaim and did not properly serve her with a copy of his pleading. Affirming the trial court, the appellate court observed that Mother failed to raise any procedural objections at trial. Had she done so, she might have prevailed, but her failure to object constitutes waiver, the court said. In addition, the trial court had evidence before it that changing the child's name was in the child's best interests, including Father's testimony and Mother's admission that the child had used the father's surname and needed finality on the subject.

(2) Concurring specially, Judge William M. Ray wrote to "point out a shortcoming in existing law that might be addressed by the General Assembly, namely that there may be situations in which the best interests of the child are not served by requiring the consent of both parents to a child's name change." Had the mother raised her procedural objections prior to the final hearing, he observed, "she may very well have prevailed. It is that fact that should cause concern; that is, that a parent who might have a compelling reason to change the name of his or her child, and that it might be in the best interest of the child to do so, could not succeed without first obtaining the written permission of the other parent, as required pursuant to OCGA §19-12-1(c). One can think of many instances where the non-moving parent might unreasonably withhold consent, even when the best interest of the child suggests a name change should occur. One such example might be when a father has been convicted of a crime against his child and the mother then wishes to seek a name change to remove the father's name from that of the child."

2. Failure to Follow Required Procedures - A father's failure to follow statutorily required procedures in requesting that his child's surname be changed to his own deprived the chancery court of jurisdiction to order the name change. Accordingly, because the father had failed to follow such procedures, *i.e*, naming the State Board of Health as a party respondent, it was not necessary for the appellate court to decide whether the chancery court erred in finding that the man had waived his rights to change the child's name once he had agreed to use the mother's surname on the child's birth certificate. *Powell v. Crawley*, 106 So.3d 864 (Miss.Ct.App. 2013), 39 FLR 1143.

3. Hyphenated Surname - A paternity court did not abuse its discretion in denying a mother's request to change her nonmarital child's surname from the father's alone to a hyphenated combination of both parents' names, the Missouri Court of Appeals, Eastern District, held. *M.R.H. v. J.N.P.*, 385 S.W.3d 494 (Mo.Ct.App. 2012), 38 FLR 1530.

   a. The parents had agreed that the child would be given the father's surname at birth and that the mother would similarly adopt his surname once they married. However, they ended their relationship shortly after the child was born in July 2009. The father petitioned for a declaration of paternity a few months later, and the mother requested that the child's surname be modified to include both parties' names, contending that such would be in the child's best interests. She appealed the denial of her request.

   b. Observing that a trial court "has wide discretion when analyzing requested changes to a child's surname during paternity actions," the court noted, and rejected, the mother's request to adopt the more restrictive standard of review (narrow discretion) utilized under the state name change statute. "It is well established that the inherent differences between a name change brought in a paternity action and a name change brought pursuant to [Mo. Rev. Stat.] Section 527.270 … warrants we give the trial court wider discretion … in a paternity action," it explained. Going on to say that in Missouri, "no legal presumption exists for a child born out of wedlock to bear a particular parent's surname," and that the parent seeking a name change must prove that it is in the child's best interests, the court said that testimony "that merely expresses a parent's underlying motivation for a change … will not suffice as [best interest] evidence."

   c. The mother's testimony that difficulties "might occur" and "possible confusion" might arise with the hyphenated name did not suffice to meet the mother's burden of showing that her name change request was in the child's best interests. The court pointed out that it was "unclear whether the focus of her concern was the embarrassment that Child might experience, or simply her own frustrations and difficulties. That distinction is worth noting because the difficulties experienced by a parent as a result of the child's surname do not necessarily affect what is in the best interests of the child."

4. Obligor's Failure to Pay Support - A custodial father's petition to change his nonmarital child's surname to his own should not have been denied on the ground that he had not proved that the child's mother — who objected to the change — had failed to pay child support, the Louisiana Court of Appeal, Fourth Circuit, held. The father's uncontroverted testimony was that the noncustodial mother had never paid any support. Mother testified only that she had never been ordered to pay support. Finding that Father had met his burden of showing that Mother had failed to pay any support for the requisite three-year

period, it remanded back to the trial court to enter the name change in accordance with Father's request. *Leard v. Schenker*, 87 So.3d 270 (La.Ct.App. 2012), 38 FLR 1262.

5. Presumption - A trial court erred in rejecting a divorced custodial mother's motion to change the surname of the parties' child from that of the father to a combination of both parents' names, where it failed to apply the presumption that her choice of name was in the child's best interest, the New Jersey Superior Court, Appellate Division, decided. The court observed that the state supreme court's decisions in *Gubernat v. Deremer*, 657 A.2d 856, 21 FLR 1343 (N.J. 1995) and *Ronan v. Adely*, 861 A.2d 822, 31 FLR 1095 (N.J. 2004), held that when parents are not raising a child together, a "strong presumption" applies in the favor of the name choice made by the primary caretaker parent. Departing from other appellate decisions which have applied these cases only to nonmarital children, the court held that no such distinction is warranted. Under the facts of the present case, the trial court must presume that the mother's choice of surname was in the child's best interest because she has been the child's primary caregiver, and the father must bear the burden of rebutting the presumption. *Holst-Knudsen v. Mikisch*, 39 A.3d 222 (N.J.Super.Ct.App.Div. 2012), 38 FLR 1238.

6. Standing — Permanent Resident Alien - The statutory right to obtain a legal name change is not limited to United States citizens, the New Jersey Superior Court, Appellate Division, ruled in a case in which a father petitioned to change his minor daughter's first name. Both he and the child are lawful permanent resident aliens. Dismissing the application because the child was "not a U.S. citizen," the trial court distinguished *In re Pirlamarla*, 504 A.2d 1238 (N.J. Super. Ct. Law Div. 1985), which held that New Jersey's name change statute applies to permanent residents as well as citizens, on the ground it was a "pre-9/11 case." The court decided that what it referred to as the federal "Immigration and Naturalization Control Act" preempted state law on the issue of name changes, and that for security reasons, the "Country needs to identify who [is] here under the names that they have." Reversing, the appellate court pointed out that "[b]y its terms, the [name change] statute permits applications by 'any person' and does not limit relief to citizens." N.J. Stat. Ann. 2A:52-1. Moreover, the court found that there exists no federal statute or regulation prohibiting a permanent resident alien from obtaining a name change or prohibiting state courts from granting such relief. *In re Zhan*, 37 A.3d 521 (N.J.Super.Ct.App.Div. 2012), 38 FLR 1202.

7. Use of Stepfather's Surname - A father's petition to change the surname of his son from that of the child's mother's husband to his own was properly denied, the Ohio Court of Appeals, Second District, ruled. Affirming the trial court, the appellate court observed that the trial court had made the following conclusions of law: "(1) The child's relationship with each parent is very positive, and keeping the current name or changing the name will not improve or diminish his relationship with either parent. (2) The child's family unit is with his mother and step-father [and he is comfortable with the stepfather's]

name and relationship. (3) The best interest of the child will be served at this time by keeping his [current] name." Under these facts, the trial court did not abuse its discretion in denying the father's petition. *In re J.A.K.*, slip op. No. 11CA0068 (Oh.Ct.App. 7/27/12), 38 FLR 1470.

R. UIFSA -

1. Duration of Support -

a. A trial court erred in determining that the Uniform Interstate Family Support Act compels the conclusion that Massachusetts law governs the duration of a divorced father's obligation under his Florida child support order, the Massachusetts Appellate Court held. The appellate court observed that Florida's emancipation age was a non-modifiable aspect of the parties' Florida divorce. Accordingly, the parties' move from Florida to Massachusetts, while it permitted the parties there to modify the child support obligation, did not grant Massachusetts unrestricted authority to apply its substantive law as to the duration of support. *Freddo v. Freddo*, — N.E.2d — (Mass.App.Ct. 2/26/13), 39 FLR 1200.

b. A Virginia trial court did not err in finding that a North Carolina child support order was subject to the duration term of a previous New York order, the Virginia Court of Appeals held. *Moncrief v. Division of Child Support Enforcement ex rel. Joyner*, 732 S.E.2d 714 (Va.Ct.App. 2012), 38 FLR 1590.

(1) The parties' 1994 New York divorce decree incorporated their agreement that the father would pay support until their child turned 21; it also stated that they could seek modification in any court of competent jurisdiction. After the divorce, the father moved to Virginia and the custodial mother and child relocated to North Carolina. In 1995, Mother registered the New York order in North Carolina and in 1997 obtained a modification of support. North Carolina's modification order provided that "[a]ll provisions of previous [o]rders not modified herein shall remain in full force and effect." The order made no specific reference to the duration of support. In 2011, The Virginia IV-D agency sought to register in Virginia the North Carolina order. The Virginia trial court held that the North Carolina modification did not affect the duration of support established by the New York order, and that Father's child support obligation continued until the child's 21st birthday.

(2) Father appealed, arguing that because North Carolina in 1997 modified the New York order, North Carolina's age of emancipation controlled. Rejecting the man's argument, the Virginia Court of appeals held that since North Carolina modified New York's child support order, the amount entered by the North Carolina court

remained enforceable. The court also found, however, that the North Carolina order did not modify the duration of support established under the original New York order.

2. Income Withholding - A trial court properly rejected a delinquent child support obligor's attempt to restrain his employer from withholding a portion of his income on the ground that the garnishment process is an unconstitutional taking of his wages without due process, the Arkansas Supreme Court ruled. The obligor argued that the UIFSA process provisions were unconstitutional insofar as he had no means by which to contest an out-of-state income withholding order. Rejecting this argument, the high court said that the obligor's challenge "is premised on a faulty interpretation of the applicable statutes." The court pointed out that UIFSA "clearly provides a mechanism" for an obligor to contest the validity of a foreign income withholding order (see Ark. Code § 9-17-506 (out-of-state order may be contested "in the same manner as if the order had been issued by a tribunal of this state")). Moreover, the court noted that the obligor had an opportunity to be heard when his initial support order was determined. Accordingly, the obligor was not denied his 14th Amendment rights or those afforded under the Arkansas constitution. *Schultz v. Butterball*, — S.W.3d — (Ark. 4/19/12), 2012 WL 1353541, 38 FLR 1296.

3. Immunity from Suits - The limited immunity provided to petitioners by the Uniform Interstate Family Support Act to seek enforcement of a support order without submitting to personal jurisdiction "in another proceeding" does not apply if such other proceeding involves support claims by the other party, the Vermont Supreme Court decided. The court thus held that a Vermont court in which a nonresident father sought to enforce his Oklahoma child support order against his children's mother should not have dismissed, for lack of personal jurisdiction, her action to enforce a Georgia support order against him. The case involved each party's attempt to enforce child support arrearages that had accrued under previous orders for the their now-emancipated children. *OCS ex rel Pappas v. O'Brien*, — A.3d — (Vt. No. 2010-398, 3/1/13), 2013 WL 765359, 39 FLR 1207.

   a. The high court opined that "the UIFSA immunity provision does not operate to prevent personal jurisdiction over a claim of outstanding child support between the same parties." (*See In re Haddad*, 93 P.3d 617 (Colo.Ct.App. 2004); *Largent v. Largent*, 192 P.3d 130 (Wyo. 2008)).

   b. Moreover, the court said, where the only issue was arrears, "it is in everyone's interest to resolve all related claims in one proceeding in one location," as the avoidance of conflicting orders entered by multiple courts is one of UIFSA's underlying purposes. The court thus remanded for consideration of the merits of the mother's claims regarding the Georgia order.

4. Jurisdiction to Establish Paternity and Support - An Alabama trial court erred in failing to grant a Louisiana man's request to dismiss a mother's request for paternity, custody and child support for lack of personal jurisdiction, the Alabama Court of Civil Appeals ruled. *Ex parte W.C.R.*, 98 So.3d 1144 (Ala.Civ.App. 2012), 38 FLR 1410.

   a. In his motion, the man contended that he had no contacts with Alabama and had never been to the state. Moreover, he noted, he was served with the complaint in Louisiana. The trial court, however, determined that it had personal jurisdiction pursuant to the Uniform Interstate Family Support Act, Ala. Code § 30-3A-201. That section allows a court to exercise jurisdiction over a nonresident — for purposes of establishing paternity and support — if doing so is "consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction."

   b. Reversing, the appellate court found the record is devoid of evidence of any contacts that the alleged father may have with Alabama to suggest that he had sufficient minimum contacts with Alabama or should reasonably anticipate being haled into court in Alabama. Accordingly, the trial court's refusal to grant the man's request to dismiss the mother's action was improper.

5. Jurisdiction to Enforce Support Order -

   a. International Orders - Comity - A Michigan trial court did not err in enforcing a Quebec child support order against a Michigan resident under principles of international comity after registration of the order had been denied because Quebec and the United States do not have a reciprocity agreement, the Michigan Court of Appeals ruled. *Gaudreau v. Kelly*, 826 N.W.2d 164 (Mich.Ct.App. 2012), 38 FLR 1602.

      (1) Although Quebec is not a "reciprocating state" as defined in UIFSA, the trial court nevertheless determined it had jurisdiction to enforce the foreign order on grounds of international comity. Affirming the trial court, the appellate court noted the factors set out in *Dart v. Dart*, 597 N.W.2d 82 (Mich. 1999) (taken from *Hilton v. Guyot*, 159 U.S. 113 (1895)), to determine whether a court should give full effect to a judgment of a foreign country based on comity:

> [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court[] or in the system

> of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.
>
> . . .
>
> When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court having jurisdiction of the cause and of the parties, and upon due allegations and proofs and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law and by the comity of our own country it should not be given full credit and effect.

(2) Finding that the factors articulated above had been satisfied, the appellate court found no error in the trial court's enforcement of the Quebec order.

b. Lack of Valid Order - A trial court erred in finding that it had jurisdiction to enforce the child support provisions of a divorced couple's separation agreement, where the Canadian certificate of divorce into which it found the agreement had been incorporated was not a support order as required by the Uniform Interstate Family Support Act, the Indiana Court of Appeals ruled. *Zivot v. London*, 981 N.E.2d 129 (Ind.Ct.App. 2012), 39 FLR 1104.

(1) The father (who now lives in Georgia) abided by the agreement's support provisions (along with a later handwritten Minutes of Settlement modifying those provisions) until the mother and children moved to Indiana, at which time he unilaterally began paying support in an amount set by the Indiana Child Support Guidelines that was substantially lower. The mother then obtained an order from an Indiana trial court registering the Canadian certificate of divorce, settlement agreement, and minutes of settlement, and enforcing the father's support obligation as set forth therein. (The trial court found that the settlement agreement was incorporated into the certificate of divorce, even though nothing on the face of either document referenced the other.)

(2) Considering the father's appeal, the appellate court said that the mother's attempt to enforce a foreign child support order failed because under UIFSA a court only has jurisdiction to enforce a registered support order, which it defines as "a judgment, a decree, or an order" (Ind. Code § 31-18-1-24). It pointed out that the 2006 Certificate of Divorce issued by the Superior Court of Justice in Ontario, "merely shows the identities of the parties to the dissolution action, that the parties' marriage was dissolved, and the effective date of the dissolution of the marriage. It was not signed by a judge, magistrate, or other official with authority to preside over dissolution proceedings. Rather, it was signed only by the clerk of the court in Ontario and is dated eleven months after the parties' marriage was dissolved and ten months after the dissolution became effective. From the face of the document, we cannot conclude that the Certificate of Divorce is a judgment, decree, or order of a court. Thus the trial court erred when it registered the Certificate of Divorce as an order from another state."

(3) Without a registered order from another state, the trial court lacked jurisdiction to enter an order enforcing child support obligations against Father. Also finding that the trial court erred when it ruled that the support obligation set out in the minutes of settlement was enforceable under Indiana contract law, it said that "an out-of-court agreement regarding support [ ] is not enforceable unless it is first approved by the trial court with jurisdiction or merged into an order of that court." Thus, the lower court did not have jurisdiction to enforce such a contract, especially where another court has exercised jurisdiction over the parties' dissolution.

6. Jurisdiction to Modify Support -

a. Change in Circumstances Required; Redirecting Payments - An Ohio trial court did not err by refusing to modify a registered Illinois support order that the parties had agreed to only three months earlier, the Ohio Court of Appeals, Third District, ruled. Upholding the trial court's enforcement of the Illinois order, the appellate court observed that the modification motion — in which the obligor claimed his payments would be lower under the Ohio guidelines — suggested forum-shopping. The court also noted that it has consistently held that modification of an agreed-to support order must be based upon a substantial change in circumstances, or else the modification would render the agreement "moot and meaningless." The court went on to explain that a change of residence from one state to another des not itself constitute a change of circumstances warranting a modification. Finally, the court held that its order requiring that the father now make his payments through the Ohio Child Support Enforcement Agency did not modify the Illinois order. The court explained that the payment order was "a minor administrative type of change and is not a substantive

modification of the existing child support order that would constitute a basis for Ohio to assume complete jurisdiction over the matter." *Parrick v. Parrick*, slip op. No. 5-12-12 (Oh.Ct.App. 2/11/13), 39 FLR 1173.

b. FFCCSO - Federal Preemption - The federal Full Faith and Credit for Child Support Orders Act does not preempt a provision of the Uniform Interstate Family Support Act requiring that a petitioner seeking modification of a child support order issued by another state be a nonresident of the forum state, the Indiana Court of Appeals held. The court observed that it had previously held in *Basileh v. Alghusain*, 912 N.E.2d 814 (Ind. 2009) that federal law did not preempt UIFSA under similar circumstances. *Jackson v. Holiness*, 961 N.E.2d 48 (Ind.Ct.App. 2012), 38 FLR 1188.

(1) The parties' 1996 Nevada divorce decree required Father to pay $363 per month in child support. Thereafter, Father moved to Maryland, and Mother to Indiana. Upon Mother's request, Maryland modified Father's obligation to $500 per month in 2004. In 2009, while Father remained in Maryland, Mother filed in Indiana her request to modify Father's child support obligation. The trial court dismissed Mother's petition and she appealed.

(2) Affirming, the appellate court observed that IC § 31-18-5-11(a)(1) requires the movant for a modification be a nonresident of the state in which the modification is sought unless the parties have consented otherwise. Since no consents were filed in Maryland, that state retained continuing exclusive jurisdiction to modify support under UIFSA.

(3) Moreover, the court noted, the state supreme court had previously held that the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B — which does not require nonresidency as a condition precedent to requesting a modification — did not preempt Indiana's UIFSA statute. *See Basileh v. Alghusain*, 912 N.E.2d 814 (Ind. 2009). To the contrary, there is no indication in the FFCCSOA of any intent to preempt UIFSA and Congress mandated that all states adopt the uniform act. These facts strongly mitigate against a construction of FFCCSOA that would impliedly preempt UIFSA, the court said.

c. Registration Required - An Arizona court's modification of the child support provisions of a Massachusetts divorce judgment is void, because the judgment had not been properly registered, the Arizona Court of Appeals, Division One, ruled. Addressing the issue for the first time, the court explained that compliance with the Uniform Interstate Family Support Act's registration requirements is necessary to bestow subject-matter jurisdiction on the new forum. Any other result, it said, would

give rise to competing orders. *Glover v. Glover*, 289 P.3d 12 (Ariz.Ct.App. 2012), 39 FLR 1027.

(1) The appellate court held that Arizona law and the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B, require registration as a condition precedent to Arizona's modification of another state's child support order. The father argued that UIFSA's registration requirements are permissive, in that A.R.S. § 25-1302(A) provides that a support order "may" (rather than "shall") be registered in Arizona in the manner set forth in the Act. Claiming that lawmakers intended to allow parties to use alternative means, the father contended that because he filed the Massachusetts judgment in compliance with Arizona's Revised Uniform Enforcement of Foreign Judgments Act, it was properly before the superior court for enforcement and modification. The appellate court rejected this contention, saying that "if we adopted Father's interpretation … parties would be able to bypass the notice provisions of AUIFSA."

(2) The court went on to say that failure to properly register the order in accordance with Arizona's UIFSA law deprived its superior courts of jurisdiction to modify the Massachusetts order. "Unless the foreign child support order is registered," the court explained, "the issuing state retains exclusive jurisdiction, which means another state lacks jurisdiction to modify the order unless it is registered and other prerequisites are satisfied. Our interpretation of § 25-1313 preserves this 'one-order' system carefully put into place by UIFSA and FFCCSOA." The court noted that its ruling was consistent with decisions from other states. *See In re S.R.S.*, 756 N.W.2d 123 (Minn.Ct.App. 2008), and *Auclair v. Bolderson*, 775 N.Y.S.2d 121 (N.Y. App. Div. 2004). *But see Schneider v. Almgren*, 268 P.3d 215 (Wash. 2011), and *Kendall v. Kendall*, 340 S.W.3d 483 (Tex.Ct.App. 2011).

d. Residence vs. Domicile - A trial court erred in finding that it had continuing exclusive jurisdiction over a child support order it had issued in 1995, based on the claim of the custodial mother (who lives in Hong Kong) that she was still domiciled in Kansas, that state's Court of Appeals held. Explaining that the parties' (or child's) residency, rather than domicile, is paramount in determining whether an issuing state retains jurisdiction to modify an order under the Uniform Interstate Family Support Act, the court said that because the mother and child reside in Hong Kong, and the father resides in Missouri, the trial court had lost its jurisdiction. *State ex rel SRS v. Ketzel*, 275 P.3d 923 (Kan.Ct.App. 2012), 38 FLR 1320.[6]

[6]Compare *In re Amezquita and Archuleta*, 124 Cal. Rptr. 2d 887 (Cal.Ct.App. 2002), and *Kean v. Marshall*, 669 S.E.2d 463 (Ga.Ct.App. 2008) (holding that domicile, not residency, controls in UIFSA continuing exclusive jurisdiction cases where the party "resides"in the forum state while in the military but maintains a domicile elsewhere).

e. Spousal Support - The Uniform Interstate Family Support Act's provision governing jurisdiction over modification of spousal support supplants a general *forum non conveniens* statute, the Virginia Court of Appeals ruled. The court opined that UIFSA's specific provision regarding a forum's retention of continuing exclusive jurisdiction controls over the general *forum non conveniens* statute. Thus, given UIFSA's requirement that the issuing state retains continuing exclusive jurisdiction "throughout the entire existence of the support obligation," the trial court erred in holding that it lacked jurisdiction to modify its own spousal support obligation after the parties had both moved from Virginia to Louisiana. *O'Neil v. O'Neil*, 724 S.E.2d 247 (Va.Ct.App. 2012), 38 FLR 1324.

III. NEWS OF THE WILD, WACKY AND JUST PLAIN INTERESTING

A. Dog custody battle costs NYC man more than $60,000. 5/14/12.

1. New York — A New York City man has spent more than $60,000 in lawyers' fees trying to win custody of his dog after his ex-girlfriend took the pooch to California. Thirty-four-year-old Craig Dershowitz told the New York Post that he's gone through his life savings but it's worth it. Dershowitz considers his dog, Knuckles, his "son."

2. http://www.pressherald.com/news/Dog-custody-battle-costs-NYC-man-more-than-60000-.html

B. Man with 30 kids can't pay child support. 5/17/12.

1. Knoxville, TN — Desmond Hatchett is pleading with the state of Tennessee to help him pay for child support. With 30 kids, who could afford to pay child support? Yes, 30 children by 11 different "baby mamas." Desmond explained how it all happened, well you know what we mean, "I had four kids in the same year. Twice." The children range in age from toddlers to 14 years old. He was last in court in 2009, at which time he had 21 children. That means he's had at least 9 more children in the last 3 years. Hatchett only has a minimum wage job, which means some of the moms receive as little as… $1.49 a month.

2. http://fox2now.com/2012/05/17/man-with-30-kids-cant-pay-child-support/

C. Woman who sent child back to Russia ordered to pay $150K, monthly child support. 5/18/12.

1. Tennessee - A former Shelbyville woman who sent her adopted son back to Moscow two years ago was ordered Thursday to make monthly child support payments and pay damages in the case. Torry Hansen was ordered by Circuit Court Judge Lee Russell to

pay damages of $150,206 for breach of contract, legal fees and back child support for Artyom Saveliev, plus an additional $1,000 per month of child support starting June 1 until he turns 18.

2. http://www.t-g.com/story/1850664.html

D. Man divorces wife, cats after overcrowding in marital bed. 5/28/12.

1. A woman has been divorced in Israel after she chose her 550 cats over her husband, who was apparently not fond of the felines. An unnamed Jewish man divorced his wife in Israel's Rabbinical Court after he charged that his wife had invited such a large number of cats to live in the home, that he himself felt pushed out of it. "The husband, apparently not a cat lover, told the Rabbinical Court in Beersheba that he was unable to sleep in his bedroom because the surface of the marital bed was constantly covered with cats who refused to lie on the floor," Time of Israel reported. Aside from interfering with his marital bed, the cats also interrupted meal times and deprived the man of food.

2. http://global.christianpost.com/news/man-divorces-wife-cats-after-overcrowding-in-marital-bed-video-75636/

E. Doctor required to pay child support after botching abortion. 5/28/12.

1. In Majorca, Spain, a woman went to get an abortion in April 2010, when she was eight weeks pregnant and it was legal to do so. However, the abortion failed, which the unnamed woman was not told. She came back to the clinic three months later seeking another abortion because she thought she was pregnant again. However, an ultrasound revealed the woman was five months pregnant and she was refused an abortion because it was over the legal time limit, in Spain, of 14 weeks, according to the Daily Telegraph. She later gave birth to a boy. Now, Judge Jose Perez Martinez has ordered the doctor, and the private clinic where he works, to pay the woman $187,770 in damages for the negligence. On top of that, Judge Martinez ordered the doctor to personally pay monthly child support of $1,224 until the child turns 26.

2. http://www.opposingviews.com/i/health/parenting/new-moms/doctor-required-pay-child-support-after-botching-abortion

F. Michigan Gov. signs bills to extend biological dads' rights. 6/13/12.

1. Lansing — Gov. Rick Snyder has signed bills that give biological fathers some rights to their children, even if the mothers were married to other men at the time of a child's birth. The previous 1956 law presumed that a woman's husband is the father of her

children, making the husband responsible for their support and denying parental rights to the biological father. Lawmakers recently passed four bills extending rights to biological fathers.

2. http://detroit.cbslocal.com/2012/06/13/gov-signs-bills-to-extend-biological-dads-rights/

G. Child custody: obese father claims he's losing custody battle because of his weight. 6/20/12.

1. Are obese parents unfit for child custody? A single father from Ottawa, Canada claims that his weight stands between him and his two children, CTV National News reported Wednesday. The 38-year-old, 360-pound man is fighting to gain custody of his sons, ages 5 and 6. The boys have reportedly been in foster care since last year, when the man's ex-wife was hospitalized for a mental breakdown and a suspected overdose. The unidenitifed man, who said he hasn't seen his children for over a year, says he's locked in a custody battle with the Royal Ottawa Hospital's family court clinic, which conducts court-ordered assessments to see if parents are fit for child custody. A doctor at the clinic voiced concern that the man's obesity could hinder his ability to care for the boys, the news program reported.

2. http://www.huffingtonpost.com/2012/06/20/child-custody-obese-fathe_n_1613946.html

H. Husband suing ex-wife over 1,200-pair shoe collection. 6/25/12.

1. A man is suing his ex-wife because he says she kept him in the dark about her extensive shoe collection, and that it should have been part of their divorce settlement. Daniel Shak, a hedge fund manager in New York, claims Beth Shak never told him about her stockpile of designer heels when they divorced three years ago. Shak alleges she kept the 1,200 pairs of shoes in a secret room, and now he wants his ex to pay him for his portion of the shoes.
2. http://abcnews.go.com/blogs/headlines/2012/06/husband-suing-ex-wife-over-1200-pair-shoe-collection/

I. Louisiana gay dad raises child, but he's powerless as partner skips town with boy. 7/17/12

1. For nearly seven years, Dale Liuzza raised his son as the caregiving parent in a gay relationship. The boy was conceived through a surrogate, a donor egg and a mixture of sperm from both his dads. But when the men's relationship fell apart, his partner determined he was the biological father and took the boy out of state to Texas and eventually to Washington State. Louisiana does not recognize same-sex marriage or second-parent adoption, so Liuzza was left with no legal parental rights.

2. http://abcnews.go.com/Health/sex-families-risk-patchwork-state-parenting-laws/story?id=16788341

J. Husband 'raped to death' by five wives because he was paying too much attention to the sixth. 7/24/12.

1. A man died as he was allegedly being forced to satisfy his many wives' demands for sex in Ogbadibo, Nigeria. A wealthy businessman—and husband of six—has died after allegedly being forced into a marathon sex session with his 'jealous' wives. Nigerian Uroko Onoja was having sex with the youngest of his spouses when the remaining five are reported to have set upon him with knives and sticks - and demanded that he have sex with each of them too. Mr. Onoja went on to have intercourse with four of his wives in succession, but "stopped breathing" as the fifth was making her way to the bed in Ogbadibo, according to Nigeria's Daily Post.

2. http://www.dailymail.co.uk/news/article-2178201/Uroko-Onoja-death-Husband-raped-death-5-wives-paying-attention-sixth.html

K. South Carolina still lacks child-support enforcement system. Network, two decades late, may cost taxpayers $116M. 8/22/12.

1. Columbia — When the state Department of Social Services first began working on a computer system to automate its child-support enforcement efforts, Bill Clinton was in the White House and gas was $1.05 a gallon. The federal government had ordered South Carolina to have the system in place as a result of a federal law passed by Congress in 1988. Today, 24 years after the law was passed, the system isn't yet in place and it may cost more than $116 million by the time it's expected to start next summer. South Carolina is the only state not to have its automated system running, officials say.

2. http://www.greenvilleonline.com/article/20120822/NEWS/308220055/State-still-lacks-child-support-enforcement-system?odyssey=tab%7Cmostpopular%7Ctext%7CNEWS&nclick_check=1

L. Delaware's Division of Child Support offers free DNA testing. 9/18/12.

1. Delaware's Division of Child Support Enforcement is offering free DNA testing weekdays through Sept. 28 at its offices statewide.

2. http://www.scsuntimes.com/article/20120918/NEWS/309189989

M. Ex-judge faces charges for lying to child support referee to free mistress. 9/24/12.

1. Ex-judge Richard Baumgartner allegedly lied to child support referee to free his mistress. With his pill-supplying mistress behind bars, one of Knox County's most prominent judges dialed up the man responsible for her incarceration and spun a web of lies to set her free, newly-revealed court records allege.

2. http://www.knoxnews.com/news/2012/sep/24/ex-judge-allegedly-lied-to-child-support-referee/

N. Government chases dad over 1c debt. 10/7/12.

1. Queensland, Australia — A Caloundra father-of-three feels guilty that taxpayers' money has been wasted by the Federal Government in a 10-month quest to chase an outstanding debt he has of just one cent. Orhan Dilbaz went to the Caloundra Post Office in November last year to settle a Child Support Agency invoice of $4954.21. He paid with cash, so the amount was rounded down by one cent and he paid only $4954.20. Since then, however, he has received nine monthly letters asking that he clear that remaining unpaid debt. The cost of postage alone, even with government bulk mail discounts, would easily cover the tiny debt many times over. "When I received the first letter, it said I owed that one cent, I called them straight away. The lady told me, 'It's computer generated, don't worry'," Mr. Dilbaz said. "But now I have nine letters. Someone has to worry." Mr. Dilbaz said he was prepared to pay $1 to the agency to clear the remaining debt and stop the letters.

2. http://www.sunshinecoastdaily.com.au/news/govt-pursues-father-for-1c-no-kidding-he-received-/1572504/

O. Photos of deadbeat dads on pizza boxes in Russia. 10/19/12.

1. Moscow — Fathers who don't pay their child support could find their faces printed on pizza boxes, said a top Russian court official. Russia already publishes photos of deadbeat dads on billboards, on banners, in the media and on the Internet, Itar-Tass reported Friday. The idea of adding the images to pizza boxes arose during a recent meeting of bailiffs, said Chief Russian Bailiff Artur Parfenchikov. Such a proposal is within the law, he said.

2. http://www.upi.com/Top_News/World-News/2012/10/19/Pizza-boxes-may-show-face-of-deadbeat-dads/UPI-25891350659636/?spt=hs&or=tn

P. Deputies find wanted Johnston man hiding in dishwasher. 10/31/12.

1. Wendell, N.C. — A Johnston County man wanted on a child support violation was arrested last week after deputies found him hiding in a dishwasher, authorities said Wednesday.

2. http://www.wral.com/deputies-find-wanted-johnston-man-hiding-in-dishwasher/11723517/

Q. $50,000 collected in child support from a man who fathered more than five children with four different women. 11/29/12.

1. Peru, Indiana — Miami County prosecutors have collected nearly $50,000 in unpaid child support from a Miami County man who fathered more than five children with four different woman. Officials said it's the largest single collection of back support ever reported in the county. After sifting through the man's tax records, prosecutor's discovered he inherited more than $50,000 from an estate in California. Prosecutor's placed a lien on the money over a year ago.

2. http://kokomotribune.com/local/x983012463/-50-000-collected-in-child-support

R. Man says he didn't pay child support to save motorcycle. 12/4/12.

1. Havre de Grace, Md — Jack Lyons, Jr. said after his father died, officials came to collect $63,000 he inherited. After Havre de Grace resident Jack Lyons sent a check to Harford County for $63,000 in child support last month, he said he was stunned to read a press release from the Harford County State's Attorney's Office stating that he sold his house to prevent his Harley from being taken. "That's all a bunch of BS," Lyons said of the idea that he sold the house to keep his bike. "I wasn't selling the house to keep my Harley. My son's coming first."
2. http://havredegrace.patch.com/articles/hdg-man-says-he-didn-t-pay-child-support-to-save-motorcycle

3. related story: Harford man pays back child support to keep 'hog,' prosecutor says. http://www.baltimoresun.com/explore/harford/news/ph-ag-child-support-1205-20121201,0,7583706.story

S. Lawyer takes child-support practice on the road. 12/24/12.

1. Miami, Fl. — Chantale Suttle makes a living representing dads wrongly accused of not paying child support. She handles teen dads' cases for free. Her clients know her as "the

child support lady with the cool truck." Chantale Suttle thinks that's a pretty good description of her and her months-old business, DADvocacy.

2. http://www.miamiherald.com/2012/12/24/3155532/lawyer-takes-child-support-practice.html

T. One partner's sex change throws snag into proceedings, raises questions about marriage. 1/1/13.

1. Phoenix — An Arizona man who garnered national media attention for giving birth to three children after having a sex-change operation has hit a snag in his divorce proceedings that could prevent him from having his marriage legally dissolved. A judge is questioning whether the state's same-sex marriage ban bars him from ending Thomas and Nancy Beatie's union — or even recognizing its validity. Thomas Beatie (known as "The Pregnant Man") was born a woman and underwent a sex change but retained female reproductive organs and gave birth to three children.

2. http://www.trivalleycentral.com/casa_grande_dispatch/arizona_news/divorce-case-confused/article_19524c72-5506-11e2-aa2f-0019bb2963f4.html

U. State trying to make sperm donor pay child support. 1/2/13.

1. Topeka, Kan. — A Kansas man who donated sperm to a lesbian couple after answering an online (Craigslist) ad is fighting the state's efforts to suddenly force him to pay child support for the now 3-year-old girl, arguing that he and the women signed an agreement waiving all of his parental rights. The case hinges on the fact that no doctors were used for the artificial insemination. The state argues that because William Marotta didn't work through a clinic or doctor, as required by state law, he can be held responsible for about $6,000 that the child's biological mother received through public assistance - as well as future child support.

2. http://www.huffingtonpost.com/2013/01/02/william-marotta_n_2395412.html

V. Los Angeles — California appeals court overturns rape conviction. 1/3/13.

1. A California appeals court overturned the rape conviction of Julio Morales, a man who authorities say pretended to be a sleeping woman's boyfriend before initiating intercourse, ruling that an arcane law from 1872 doesn't protect unmarried women in such cases."Has the man committed rape? Because of historical anomalies in the law and the statutory definition of rape, the answer is no, even though, if the woman had been married and the man had impersonated her husband, the answer would be yes," Judge Thomas L. Willhite Jr. wrote in the court's decision.

2. http://www.huffingtonpost.com/2013/01/03/california-appeals-court-_n_2406167.html

W. Oxygen defends 'All My Babies' Mamas' special, outraged viewers want it canceled. 1/4/13.

1. Oxygen is under fire for a yet unaired one-hour special about Atlanta rapper Shawty Lo and his 10 "baby mamas," but the network exclusively tells RadarOnline.com they stand behind their project and it's not stereotypical or demeaning to any one demographic. A press release distributed by Oxygen in December about All My Babies' Mamas touted the reality special as a look into Shawty Lo's life and the complications of having 11 children with 10 different women – but people were quickly outraged and New York's Sabrina Lamb started a petition on Change.org in an effort to boycott the show because she said it "demeans black children, mothers and dads!" Because the project is still in development, an air date has yet to be determined.

2. http://radaronline.com/exclusives/2013/01/oxygen-defends-all-my-babies-mamas-special-viewers-want-show-canceled/

X. Octomom back on welfare. 1/6/13.

1. It's only been five months since Octomom got off welfare, but TMZ has learned the honeymoon's over for your tax dollars -- because she's back on government assistance. Sources close to Octo tell TMZ, Nadya Suleman signed up for welfare again this week after her October rehab bills devoured most of her savings. We're told the mother of 14 will be getting $1,800 a month for food, $1,000 for emergency cash, as well as Medi-Cal benefits to help with mental heath and dental issues.

2. http://www.tmz.com/2013/01/06/octomom-welfare-nadya-suleman/

Y. Child support clerk embezzles cash to fund pottery business. 1/16/13.

1. Cherokee County, S.C. —A former deputy clerk in the child support section of the Cherokee County Clerk of Court's office will go to prison for embezzlement. Evidence presented in court showed Melanie D. Sparks, 40, stole child support payments and used the money for personal use and to fund an online business that sold pottery. Sparks was sentenced to eight months imprisonment followed by eight months of home confinement and ordered her to pay restitution.

2. http://www.wyff4.com/news/local-news/spartanburg-cherokee-news/Child-support-clerk-embezzles-cash-to-fund-pottery-business/-/9324158/18149766/-/bug5es/-/index.html

Z. Wisconsin man in child support case ordered not to have more children. 1/17/13.

1. Shell Lake - A northwestern Wisconsin judge has ordered a man not to have any more children until he catches up on past due child support payments. Washburn County Circuit Judge Eugene Harrington also told the man, John Butler, that within three minutes of meeting any female he must tell her that he's a convicted felon and has unpaid child support. The Duluth News Tribune said Butler, 28, earlier pleaded guilty to felony charges of failing to pay support for more than 120 days in 2011. The sentence is similar to one handed down in Racine County by Circuit Judge Tim Boyle. Last month, Boyle sentenced Corey Curtis not to have a 10th child until he could afford to take care of his nine children. But Boyle's order didn't include the twist of notifying women of a criminal past.

2. http://www.jsonline.com/news/wisconsin/wisconsin-man-in-child-support-case-ordered-not-to-have-more-children-iu8dv2q-187285401.html

AA. Judge orders man owing $96k in child support to stop having kids. 1/28/13.

1. Watch out, deadbeat dads. A judge in Elyria, Ohio has ordered a father of four to stop having kids after racking up nearly $100,000 in child support payments.

2. http://newsfeed.time.com/2013/01/28/judge-orders-man-owing-96k-in-child-support-to-stop-having-kids/

BB. Police: Man says selling drugs was to help pay child support. 2/7/13.

1. Chillicothe, OH — A man who fled police and was taken down by a police dog Tuesday reportedly said he was trying to sell drugs to pay his child support.

2. http://www.chillicothegazette.com/article/20130206/NEWS01/302060037/Police-Man-says-selling-drugs-help-pay-child-support?gcheck=1

CC. Man behind $6K in child support had $13K on him when arrested after big casino win, police say. 2/7/13.

1. Madison, Wis. - A man $6,000 behind in child support payments was arrested Wednesday night after deputies learned he won $10,000 at a Madison casino, the Dane County Sheriff's Office reported in a news release.

2. http://host.madison.com/news/local/crime_and_courts/man-behind-k-in-child-support-had-k-on-him/article_e2926526-7140-11e2-b9c4-0019bb2963f4.html

DD. Judge orders prosecutors to pay defendant's costs for pursuing "reprehensible" child-support claim. 2/8/13.

1. Falsely accused by his ex-wife, after a bitter divorce, of being behind in his child-support obligations by more than $3,500, Tony Schehtman was prosecuted for months and had his passport confiscated, restricting his business travel. But last month he won a measure of vindication when a South Florida judge issued a scathing sanctions order. In addition to ordering Schehtman's ex-wife to pay him $7,645 in legal fees, Miami-Dade Circuit Judge Pedro Echarte also required prosecutors to do the same, calling the "pointless litigation," which proceeded for months after the defendant proved that he was not delinquent, "reprehensible" and "irresponsible," reports the Miami Herald.

2. http://www.abajournal.com/news/article/judge_orders_prosecutors_to_pay_defendants_costs_for_pursuing_reprehensible/

EE. Florida court allows listing three parents in the birth certificate of a child. 2/13/13.

1. After two years of legal battle, a lesbian couple and a gay sperm donor from Miami have settled their differences and Miami-Dade Circuit Judge Antonio Marin included the name of all three as parents in the birth certificate of the 23-month-old girl child.

2. http://www.jdjournal.com/2013/02/08/florida-court-allows-listing-three-parents-in-the-birth-certificate-of-a-child/#

FF. Mississippi considers privatized child support enforcement. 2/19/13.

1. The Mississippi House of Representatives passed a bill last week that would allow the state to privatize its child support enforcement functions. If the bill becomes law, the state could become the first to fully privatize enforcement. Some lawmakers are skeptical, suggesting that the privatization measure is intended to funnel money to politically connected firms, with one representative calling the proposal "a greased pig." The private system would likely work on a contingency basis, with contractors taking a percentage of the money they collect, although it is still unclear if they would receive state money as well.

2. http://blogs.lawyers.com/2013/02/mississippi-privatized-child-support/

GG. Facebook money pics bust dad for allegedly dodging child support. 3/22/13.

1. Facebook helped the Milwaukee County District Attorney's office charge a wayward father for failing to pay child support. Christopher Robinson, 23, is facing three felony

counts of failure to support his 3-year-old child, according to a complaint filed with the criminal division of the Wisconsin Circuit Court. The complaint indicates that for three years, Robinson never made any of the required $150 monthly child support payments. But pictures that Robinson posted to Facebook that show him posing with cash and bottles of liquor helped the district attorney's office build a case against him.

2. http://gma.yahoo.com/facebook-money-pics-bust-dad-allegedly-dodging-child-133200171--abc-news-topstories.html

3. Related story: Facebook braggart charged with felony nonsupport. 12/10/12.

    a. A Facebook page with flashy photos of a Wisconsin man who appears to be living in the lap of luxury is being used as evidence in felony child support case, according to a WISN report.

    b. http://www.youtube.com/watch?v=8SeGBKVXQoY