



ERICSA

1963-2023

A GEM 60 YEARS
IN THE MAKING

Savannah

60TH ANNUAL TRAINING CONFERENCE & EXPOSITION

MONDAY, MAY 22 - FRIDAY, MAY 26, 2023

2023 Intergovernmental Case Law Update

Ethan C. McKinney, JD

Child Support Enforcement Leader

Amazon Web Services – State & Local Government, HHS



In this session, we will discuss recent appellate decisions from around the country related to the Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Act (FFCCSOA). We will focus on cases where one tribunal is enforcing or modifying another tribunal's order. We will also review any case that has broad application across the IV-D program and review new or pending legislation to highlight national trends. Written materials will provide a comprehensive review of related decisions issued within the past year.



Case Law Update

- Cases reviewed from March 2022 to March 2023 for April materials Deadline.



In re Marriage of Hart (Cal. App. 2022).

- Parties were married and have 2 children born in Australia.
- Father filed for Divorce in CA and at all times relevant to the appeal has lived in CA and mom and the children lived in Australia.
- In 2007, the CA court dissolved the marriage, found Australia to be the home state for the children, ordered dad to pay spousal and child support of \$14K per month and deferred custody issues to the Australian court, later reduced by agreement to \$5,000 per child = \$10K per month.
- In 2019, mom filed a request for production of income alleging that dad unilaterally reduced payments.
- Father refused and alleged that Australia now was the proper court with jurisdiction over child support.



In re Marriage of Hart, cntd.

- Father argued that after he and mother could not reach an agreement he filed for assistance with the Australian Child Support Agency and that they had determined a new support order of \$2,240 AUD per month.
- Mother responded that CA retained jurisdiction as dad lived there continuously since the divorce and she was never served in AU of any new support action.
- The CA family court agreed, ordered the \$5,000 per month in CSUP plus private school tuition and \$50,000 in attorney fees.
- Under UIFSA – the issuing state retains exclusive jurisdiction as long as one of the parties resides in the issuing state.
- Lastly, the AU order is not controlling and enforceable.



Sewell v Walker, 278 A.3d 1175 (D.C. 2022)

- Parties have one child – CSUP ordered in D.C.
- In 2018, Mom moved to modify the order. She and the child now lived in MD. Dad moved to dismiss for lack of jurisdiction as he also now lives in MD.
- Mom objected arguing that even if he did now live in Maryland, he consented to D.C. retaining jurisdiction in 2016 on a prior modification so that should still be in effect. She also argued equitable estoppel as Dad had claimed to be a D.C. resident earlier.



Sewell v Walker, cntd.

- Under UIFSA the parties could have correctly consented to jurisdiction in 2016, however this is a new modification proceeding and they would have to offer a new consent.
- Estoppel is not a way for a court to acquire subject-matter jurisdiction. However, since a person can waive jurisdiction a court could consider that person be estopped from denying jurisdiction.
- So it was remanded just on that issue.



Wood v. Wood, (Ind. App. 2002)

- Memorandum Decision – do not cite.
- Dad, an IN resident, petitioned IN to modify his MI child support order using IN law. The court relied on the portion of IN code that requires courts to use the issuing state law when deciding “duration” and applied MI law.
- Dad appealed arguing he wasn’t just arguing duration he was arguing modification.
- MI divorce and CSUP order, Dad then moves to IN, mom moved to KY.



Wood v. Wood, cntd.

- Mom filed in Clark Cnty. IN to register the case for enforcement. Father asked for the order to be modified and the parties filed a mediated agreement for both. The question was to apply IN or MI law.
- The Court found that MI law should apply since only one party lived in IN. Dad appealed.
- On appeal the Court reviewed UIFSA and FFCSOA to determine: on the issue of modifying the support order, the court should have applied IN law.



McCray v. Jones, (3rd Cir. 2022)

- Ivey McCray sued various individuals over the collection of child support that she owed.
- McCray owed arrears to Jones that had been reduced to an arrears judgment that was sent to Essex County NJ for enforcement.
- Essex County sent the order to Alameda County, CA for enforcement and they started a \$100/month offset from her social security retirement. Essex county also did a tax offset from McCray's fed tax return in 2018 and in 2020 from her stimulus check.



McCray v. Jones, cntd.

- After she got notice of the stimulus intercept, she sent several letters to “all defendants” requesting the return of her funds. After she got no response she sued various defendants including the Director of Essex County Child Support.
- She alleged a due process violation, a violation of UIFSA, 14th amendment claim for Essex County continuing to enforce after assigning to CA, a claim under the SSA for certifying the Director as a beneficiary and a claim for seizing her stimulus check.
- The case was dismissed for failure to state a claim v the defendants as well as for failure to provide any legal basis for proceeding under UIFSA, the SSA or NJ law.



State v. Lannelongue (La. App. 2023).

- Child was born in Spain. The parents were married in NV but had physically separated before the child's birth.
- In 2016, mother filed a custody and support proceeding in Spain. She is a resident and domiciliary of Malaga, Spain.
- Spanish court issued an order for custody and child support.
- In 2019, mother began the process of registering the order for enforcement in Jefferson Parish, Louisiana where father lived. Father objected.



State v. Lannelongue, cntd.

- Father alleged the first he knew of the order was when Orleans Parish contacted him and that he is not fluent in Spanish. He questioned the child's paternity and argued that he was denied due process.
- The parties appeared on the registration issue and mother elected to institute a child support obligation based on La guidelines.
- The state requested DNA testing and filed a rule for child support in case the hearing officer denied registration of the Spanish order.



State v. Lannelongue, cntd.

- DNA confirmed paternity, support ordered, and the Spanish order was denied registration b/c dad was never served and given minimum due process in Spain.
- Dad objected to the La order on the grounds the court didn't have subject matter jurisdiction.
- The court denied his objection, and mom agreed not to seek to enforce the Spanish order.
- On appeal, the court found – the court had declined registration, mom was not a resident and was asking La court to establish a support order as there was not to be enforced within the state. This was correct and dad's appeal was denied. The Hague Convention would allow this case to be treated the same as UIFSA case.



Alevy v. Herz, (N.Y. Sup. Ct. 2023)

- Father w/ custody petitioned to relocate, mom filed for contempt v. dad and also to reevaluate support.
- Petition to relocate was granted, and mom's contempt action was properly denied.
- Court imputed mother at \$37,800 annual income based on her level of education, past earning potential of \$60,000, her actual earned income of \$18,900 in 2018 for part time work and her evasiveness about her finances.
- The court found the imputation was proper but that the 3 step process was not followed: calculating the combined parental income up to statutory cap, allocating the resulting amount on a pro rata basis, and articulating any reasons for deviation from the CSSA guidelines.



In re Marriage of Finley, (Iowa App. 2023).

- Dad appealed custody, physical care and child support from their divorce decree.
- Dad is a disabled military veteran and receives disability benefits and rental income from his roommate. His annual income is \$70K.
- Mom is a CNA but did not work during the marriage, instead she was paid by the VA to be Dad's caregiver. She has stomach and hip issues that have affected her ability to work. She testified she makes \$750/month cleaning houses in AZ.



In re Marriage of Finley, cntd.

- Dad asked that Mom's income be imputed at minimum wage and the court did so in its calculations.
- Due to DV issues and father not following the recommendations of the child's counselor mom was given custody and the court set parenting time and support arguing mom was voluntarily underemployed due to her professional certificates.
- The Court declined to impute income to mom. Mom testified she might be able to work full time minimum wage but her medical issues affected her ability to work and she was pending for a disability determination.
- The Court declining to impute an simply using mom's actual income was appropriate.



Burns v. Burns, (Mo. App. 2023).

- Mom was ordered to remove dad from the mortgage obligation for the marital home and Dad was ordered to pay \$500/mo spousal and \$363/mo child support.
- Neither party complied with these orders and each filed a request to find the other in contempt. Following the hearing, the court denied both contempt motions but entered a judgement for child support and spousal arrears of \$9,628.00.
- Dad moved to vacate the judgment which was denied, so he then appealed.



Burns v. Burns, cntd.

- Dad asserted the court erred by ordering him to pay arrears while denying the motion for contempt and by basing the award on exhibits that weren't admitted into evidence. However, that second point was not in his motion to vacate so it wasn't considered on appeal.
- The court found mom's failure to refinance the marital home was not willful, wanton or contumacious and found that husband had a good faith belief he was current in child support based on the records from the MO Dept. of Child Services website. However, the court did find he was in fact in arrears and reduced that to judgment.
- Husband is right that the court generally lacks authority to grant relief beyond what was requested. However, in this case, mom did also ask for the court to grant an award for arrearages. The court read her petition to ask for two things, the arrears to be enforced and for a contempt finding, the court can deny part while approving part.



Stooksbury v. Varney, (Tenn. App. 2023).

- This arises out of a paternity acknowledgment case in Knox County, TN. In addition to support and BE, dad was ordered to pay his share of fees to Dr. McCoy for a psychological evaluation.
- Both Dr. McCoy and Mom filed contempt actions against father for failure to pay. Court found father in contempt, determined his arrears and awarded mother attorney fees.
- Father appealed – alleging the court lacked SMJ, erred on attorney fees and erred in setting the arrearage payment.
- Mom contends she filed in Knox County, Dad asserts she filed in Union County. Regardless her filings were erroneously sent to Union County and somehow her petition was assigned both a Knox County docket number and a Union County docket number.



Stooksbury v. Varney, cntd.

- By special interchange order Judge Edmonson in Union County was ordered to hear the post-trial matter filed by Dr. McCoy.
- Dad filed his answers to both contempt actions in Union County.
- All parties were before Judge Edmonson for hearing on all issues. He entered an order noting the special interchange order and found father had paid nothing to BE, attorney fees, or child support except for one payment right before the hearing date. He deferred the arrears finding for mother's attorney to submit an affidavit. The order continuing the matter bore a Knox County caption but a Union County docket number.
- The court issued the orders again Knox County caption/Union county docket number but on this date realized the mistake and issued a corrective order to clarify the record that this was a Knox County case with Knox County docket number and that he was hearing it by interchange in Knox County.



Stooksbury v. Varney, cntd.

- Father filed a Rule 60 motion to set aside all orders alleging that Union County did not have jurisdiction and Knox County never relinquished jurisdiction.
- Mother filed another contempt action as father was still not paying, this time in Knox County, with a Knox file stamp but captioned Union County.
- Father filed to modify the support order and at some point Judge Wolfenbarger (Grainger County) was assigned to replace Judge Edmondson.
- Father was found in contempt as to all actions \$85K in arrears, CSUP \$540/mo plus \$1,000/mo OOR



Stooksbury v. Varney, cntd.

- On appeal – a court's use of its contempt power is within its sound discretion and will be reviewed under an abuse of discretion standard.
- On SMJ – when a judge is sitting by interchange he has the same powers and jurisdiction of the judge whose place he is acting in. Judge Edmonson and Wolfenbarger are acting as Knox County judges even though their actual appointments are Union and Grainger County.
- Clerical errors while confusing in this case do not deprive the court of SMJ.
- On the arrearage payment, father alleged, CSUP + OOR + Atty Fees exceeded 50% of his income per TN code. However, he did not raise this at the trial court level so the court found it was waived.



Cumberland Cnty. Children & Youth v. Smith (Pa. Super. Ct. 2023)

- Father in this case appeals the judgment of sentence imposed after the court found him guilty of indirect criminal contempt for failing to appear at a child support hearing.
- CYS filed a support action against Smith and served him personally via hand delivery. The record is silent on whether he attended.
- At that hearing, CSUP was set including an OOR. Order also include a requirement to update address within 7 days and anyone who doesn't may be judged in contempt.
- CYS later filed a civil contempt petition for failure to pay child support. Smith FTA'd. It was reset and he FTA'd again. The court issued a bench warrant for his arrest, it was executed and he was arrested.



Cumberland Cnty. Children & Youth v. Smith (Pa. Super. Ct. 2023)

- CYS filed a petition for indirect criminal contempt based on Smith's failure to appear for the second hearing.
- CYS presented payment history to show no payments and proof that Smith's address on record was where the service was sent along with a PV for that address and that Smith never notified CYS to change his address.
- Smith was found in contempt for failure to pay and willfully failing to appear for the hearing. The court found that the notice was mailed to him at the address he provided the court. He was sentenced to 3-6 months' imprisonment on indirect criminal contempt and a consecutive 12 months' probation for civil contempt.
- Smith appealed.



Cumberland Cnty. Children & Youth v. Smith (Pa. Super. Ct. 2023)

- On appeal – did CYS show beyond a reasonable doubt that Smith had received notice and willfully defied the court order to appear.
 - CYS presented in of he had contacted DRS at lease once before. DRS mailed the order to the address on file for him and CYS presented evidence that the postmaster verified this mailing address was active. This was sufficient to prove he knew of the order and willfully failed to come to court.
- He also argued imposing incarceration was an abuse of discretion because the court could have used less sever sanctions because this was the first proceeding for failure to pay. The court has discretion to use any sanction at its disposal, and there is no requirement for the court to use the least possible confinement. Smith also alleged a lack of due process since the criminal contempt was filed the same day he was arrested so he couldn't prepare, however he didn't raise this at the initial hearing or ask for a continuance so it was waived.



V.L.-P v. S.R.D., 2023 PA Super 2 (Pa. Super. Ct. 2023).

- M and D were engaged in an “on-again, off-again” relationship.
- Both parties agree they engaged in sexual intercourse on February 3, 2008, which was Super Bowl Sunday.
- M denied she had sex with anyone else during the 2 months before and after the Super Bowl.



V.L.-P v. S.R.D, cntd.

- When M became pregnant she told D and he attended some doctors appointments and expressed excitement about being a father. At no time did M ever tell him that anyone else could possibly be the father.
- In 2008, D was at the hospital when M gave birth and she assured him he was the only possible father and he signed the acknowledgment of paternity and the child took his last name.
- For 12 years D and his family embraced the child as part of their family.



V.L.-P v. S.R.D, cntd.

- In 2020, D and his wife KD became involved with Ancestry.com. They presented DNA to Ancestry and both D and his wife professed surprise when the child was not mentioned as part of their family tree. The child's profile did not match them or anyone else in the family.
- Prior to April 2020 dad was paying \$400 per month in CSUP voluntarily but in May, 2020 he stopped paying but reported it was due to COVID driven unemployment and not Ancestry.com. In fact he didn't believe the results and between May and September expanded his custody time to a 50/50 split with mom and did not mention or question paternity.



V.L.-P v. S.R.D, cntd.

- With the return to school custody changed back and father still was not paying so mom filed a complaint for CSUP in November 2020.
- After Thanksgiving Dad confronted her about the Ancestry.com results and said “Had you not sued me for support, I would have taken that to my grave.”
- After the parties relationship deteriorated and D stopped communicating with the child as well. At some point telling her that she might not be his child.



V.L.-P v. S.R.D, cntd.

- D presented a witness who he met through Ancestry.com who testified that M spent a lot of time with her brother and they who talked about being engaged in February 2008. D also heard a rumor that mom had chlamydia, the witness and her family suffered from a connective tissue disease and he thought child might too and asked mom to do a DNA test which she refused.
- D asked the court for genetic testing. The court made both parties file briefs on the issue. The court issued a 16 page ruling and ordered a GAL to intervene to determine if disestablishment was in the child's best interests.



V.L.-P v. S.R.D, cntd.

- The GAL met with both parties and the child. The focus was to remain on the child but that was challenging with D as he remained myopically focused on fraud and his own victim-hood.
- The child was hurt that her relationship with her father had changed so dramatically and was suffering emotional pain.
- The GAL determined it was not in the child's best interest to disestablish paternity.
- After this court held a thorough evidentiary hearing, the court found it was not in the child's best interest to order genetic testing and reinstituted child support payments that were previously ordered held in escrow.



V.L.-P v. S.R.D, cntd.

- On Appeal, the appellate court has a lengthy discussion of paternity by estoppel, the child's best interests and rescinding an acknowledgement for fraud.
- Based on the testimony of the witness that mother had a relationship with her brother, the Ancestry.com information that child may have a familial relationship with the other alleged father and that mother may have reason to lie, i.e. the other man is a convicted sex offender, the Court found that in order for dad to not be a victim of fraud, the court should order DNA testing and the case was remanded for that to be done.



Estate of Sents v. Dellinger (Pa. Super. Ct. 2022).

- Child (AS) was born to mother December 2019 and mother had been in a relationship with Decedent.
- At the time of the birth he signed an Acknowledgment of Paternity and never challenged it.
- When AS was 5 mo's old, Decedent committed suicide.
- His parents representing the Estate filed a complaint against Mother and her former boyfriend alleging mother fraudulently induced Decedent to sign it.
- Also his parents allege they did DNA testing with the child that shows they were not related so the Decedent could not be the child's father.



Estate of Sents v. Dellinger, cntd.

- Mother consented to doing a DNA test with the child and her former boyfriend and it showed that he was not the father. The court dismissed him from the case.
- At a hearing, the Grandparents tried to introduce their out of court test, but the court found it to be highly dubious. On its face it had disclaimers about its accuracy and the grandparents failed to use the laboratory's identification protocols or laboratory-selected collection facility.
- Mother believed the child was Decedent's but did agree to the DNA testing for her ex because she believed the court would have awarded it. She also told Decedent while he was alive that based on the conception date she believed it was his and not her former boyfriends.
- The court found no fraud, mistake or duress and dismissed the Estate's complaint.



Estate of Sents v. Dellinger, cntd.

- On appeal the court found that DNA test results were properly excluded as untrustworthy.
- Mother was consistent that the only possible fathers for this child were Decedent and her ex who was excluded by DNA testing.
- At the time of his death, Decedent was the child's legal father by virtue of the acknowledgment and the Estate did not produce convincing evidence of fraud to rescind the affidavit, nor did Decedent seek to rescind it while he was alive.



Ex Parte Sperry (Ala. Civ. App. 2022).

- Parties were divorced in AZ in 2017. Dad now lives in Autauga County, AL and mom lives in ND.
- Father filed for a custody and CSUP modification in AL and served mom in ND. Mom filed a limited appearance to dismiss the modification action and object to AL court having personal jurisdiction over her. The trial court denied her motion. Mom filed a writ of mandamus.
- Father alleged b/c the children have been AL residents for a year and b/c the AZ court relinquished jurisdiction under the UCCJEA this gives the court jurisdiction to modify custody.
- Mother argues that AL court does not have personal jurisdiction over her under the AL long-arm rule, i.e. sufficient minimum contacts.



Ex Parte Sperry, cntd.

- The only minimum contact father alleged in his petition is that mother was arrested in Montgomery in 2022 in connection with a criminal matter. There is no suggestion that the criminal matter is in anyway related to the modification action.
- Because there is nothing to indicate mother should reasonably expect to be haled into court here, father's assertion of jurisdiction for the custody portion fails.
- As for the CSUP portion, the court looked to UIFSA and found that AL may modify the order if neither party or children live in the issuing state and the moving party is not a resident of AL. Here, since dad is the moving party and a resident of AL the court does not have jurisdiction to modify child support either



Gyger v. Clement, 2022 NCCOA 922 (N.C. App. 2022).

- This is the second appeal in an international case between Eve Gyger (Switzerland) and Quinin Clement (NC).
- The trial court for the second time and despite the admission of new evidence, denied the motion to register the foreign support order on the basis the foreign tribunal lacked personal jurisdiction over father.
- Prior action was dismissed as the Court found father did not receive proper notice of the Swiss proceedings where the order was entered by default.



Gyger v. Clement, cntd.

- In *Gyger I*, the Supreme Court found that a notarized affidavit submitted to the trial court by Mother was admissible and remanded for further proceedings based on that.
- Even after admitting that affidavit the court still denied registration, finding again that there is no evidence in the record that Switzerland has personal jurisdiction over father nor was he provided appropriate due process. In a similar case, the NC Supreme Court has held that personal jurisdiction does not exist where a defendant's connection to the forum is caused by the actions of the custodial parent.
- Here the only connections to Switzerland that father has were several 1-2 week visits to see mom and the children. He otherwise has no contacts to Switzerland.



Belt v. Chambers, (MD. App. 2022)

- M and D are the parents of one daughter born in 1996. In June, 2005, shortly before he was convicted of an unrelated crime, father ceased making child support payments, his unpaid obligations accrued from then until 2014 when his daughter turned 18. He was released from prison in 2017 with \$70,000 in arrears.
- In 2018, father filed a pro se motion to modify child support and asked the court to reduce or void his arrears from the time he was in prison with no income.
- The court denied his motion and father appealed.



Belt v. Chambers, cntd.

- During the time of father's appeal, the Court issued a decision in Damon v. Robles, holding that § 12-104.1 of the FL, Maryland Code effective 10/1/12 operated to automatically prevent arrears from accruing during incarceration with no requirement to file a modification.
- In that ruling the court also clarified that child support due between the date of the order and 10/1/12 had "vested" and the right of those payments could not be taken away.
- Accordingly, the Anne Arundel Child Support Office sent dad a letter letting him know that in accordance with the *Damon* order all arrears after 10/1/12 were administratively suspended and his arrears were reduced.
- For these reasons, the court reversed the circuit court order in part as it agreed that his incarceration related arrears prior to 10/1/12 were vested and could not be reduced.



Hock v. Soles, 197 N.E. 3d 55(Ohio App. 2022).

- The parties were married in 2001 and have 3 children. They were divorced in 2013 and the decree incorporated their separation agreement and shared parenting plan. Dad was ordered to pay \$518.24/month in CSUP and \$1,000/mo spousal for 4 years.
- Shortly after that, they agreed to change custody to dad and mom was ordered to pay him \$325 in child support which was deducted from the spousal he was paying her.
- In 2017, they changed custody back to mom, she would resume getting the \$600 SSD derivative benefit for the kids from her disability and they agreed to deviate downward off the worksheet for dad to pay \$100/month in CSUP.



Hock v. Soles, cntd.

- In 2021, mother requested an administrative review from the CSUP agency and after this, they filed a petition to modify.
- The oldest child lived with father and the other two had been spending much of the four months before the hearing with the father.
- The court found split custody with the oldest with dad and the worksheet produced a support order that changed by 10% from the existing order. The magistrate was also ordering mother to transfer the portion of the SSD derivative for the older child to dad.
- The court then deviated downward 50% off the worksheet in favor of father and referenced the time the children spent with father but tempered by the parties difference in income. After taking into account all factors father was ordered to pay \$438.21/mo in CSUP.
- Father objected to the change and argued that since the prior order was a deviation, the 10% change wasn't enough. He argued that mother should also have to prove a substantial change in circumstances from the reasons for the original deviation.



Hock v. Soles, cntd.

- The court found father was confusing two separate provisions of the law – a substantial change in circumstances of the parents being one test, but the other that a 10% change in the support order also warrants a modification. Not at issue here but the third in OH is that the support order is no longer meeting the medical needs of a child.
- Each is an independent basis for modification.



Miller v. Miller, 409 Mont. 29, 511 P. 3d 307 (Mont. 2022).

- Erin and Jason were married in 2013 and resided together in Missoula for the next 3 years. They have 2 children. During their marriage neither earned an annual income, instead they lived on \$140,000-\$160,000 in annual payments provided by Jason's dad Chris. They also lived rent-free in their marital home also owned by Chris.
- Jason filed for divorce in 2015 and after a brief reconciliation they permanently separated in 2016.
- Neither parent earns income.



Miller v. Miller, cntd.

- Mom is a full-time caregiver for the children. Prior to the marriage she worked several different minimum wage jobs but hasn't worked since 2012. She is a part-time student in sonography and plans to return to work in 2022 when the youngest child reaches school age. She lives in a home her parents own and pays them \$1,088 in rent + utilities.
- Dad lives rent-free still in the home Chris owns. He is not employed and has no significant work history. His self-reported occupation is a "filmmaker" but that has not produced any significant or sustained income. He has no disabilities but he does have 7 children with 5 different women. For his entire adult life he's lived on cash payments from his father, who also covers his credit card bill and provides other cash as needed.
- Chris testified that his monthly payments to Jason were between \$9,000-\$11,000 per month as of 2019 a reduction from what he was paying when the parties were married.



Miller v. Miller, cntd.

- In 2016, the court ordered Jason to pay \$560/mo for two children based on D's order for his other child and imputing him at \$30,000 in annual income.
- Mom moved to increase this amount to \$2,350/mo but the court denied it and kept it at the \$560/mo for the next 4 years and the parties divorce trial.
- The court held that Chris' payments to Jason were "gift income" and would not base his income on them. However, the court did enter a new support order of \$1,800/mo (\$900 per child) to reach this figure the court used the prospective rental income for the home Jason lived in (\$57,600) and minimum wage \$18,200 as his earnings.
- Erin also had petitioned for retroactive support which the court denied because Chris found Erin a free place to live during the retroactive period and gifted Erin's parents \$175,000 down payment for a new house where Erin now lives, he also gave Erin direct cash payments.
- Erin appealed on two issues – 1. the court erred in treating the payments Chris gives Jason as "gift income" and not including them for CSUP purposes and 2. that they abused their discretion in not ordering the modification retroactively.



Miller v. Miller, cntd.

- In MT, income for child support = actual income, imputed income, or any combination thereof that fairly reflects a parent's resources for child support.
 - *Actual Income*: "expressly includes a parent's 'economic benefit from whatever source derived [including, subject to exceptions] ... income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, draws or advances against wages or salaries, interest, trust income, annuities, [and] royalties,' along with several other categories of income"
 - *Imputed Income*: "income not actually earned by a parent, but which is attributed to the parent" based on the parent's "recent work and earnings history ... occupational, educational, and professional qualifications ... [and] existing job opportunities and associated earning levels in the community[,]" amongst several other factors. Admin. R. M. 37.62.106(2)(a)–(d) further states "it is appropriate to impute income to a parent ... when the parent" is: (a) unemployed, (b) underemployed, (c) fails to produce sufficient proof of income, (d) has an unknown employment status, or (e) is a student. *Miller v. Miller*, 409 Mont. 29, 511 P.3d 307 (Mont. 2022)
- Notably "gift" doesn't appear anywhere so in the *Paschen* case the court previously found that gifts of cash are not income for CSUP purposes.



Miller v. Miller, cntd.

- There was a time when “gifts and prizes” were included in the income definition for child support purposes and they were removed in 1992 and have not been reintroduced.
- This case is very similar to the Paschen case where paternal grandmother was giving her son annual gifts of a \$100,000. The court deemed gifts that are wholly dependent on the goodwill of another person are not to be included as income and this is consistent with the guidelines revision. Finally, even though these gifts have been routinely and consistently given the court can still not treat them as income.
- It was not error to deny mother's request to include them.
- Lastly, on retroactivity, since paternal grandfather gave mother gifts that would have been sufficiently equal to any retroactive support award as ordered it was not an abuse of discretion to deny mother's request.



Tohono O'Odham Nation v. Fridlund-Horne, 79 Arizona Case Digest 10, 517 P. 3d 58 (Ariz. App. 2022).

- Mother is a member of the Tohono O'Odham Nation "Nation", a federally recognized Indian tribe. The Nation's land stretches across portions of southern Arizona. Mother lives in AZ but not on tribal lands. The child is an Indian child subject to the Indian Child Welfare Act ("ICWA").
- Within days of the child's birth, Mother petitioned the court to terminate her parental rights to facilitate an adoption by a non-Indian adoptive placement Mother selected.
- Mother alleges she informed the putative father and he stated he would appear and consent to the adoption, however he failed to appear so mother formally served him.
- On the same day the superior court terminated the parent's rights, father filed a petition to establish paternity in the Nation's tribal court. For some reason he withdrew his petition.
- The Nation moved to intervene in superior court and asked the court to vacate the termination order. After oral argument the superior court denied both requests and the Nation appealed.



Tohono O'Odham Nation v. Fridlund-Horne, cntd.

- The issue on appeal, does the Nation have a right to notice and intervention in a voluntary parental termination proceeding.
- The ICWA was enacted in congress due to an alarmingly high percentage of Indian families being broken up by the removal of children who were then placed with “non-Indian foster and adoptive homes.”
- The act is clear that a child’s tribe must be notified in an involuntary proceeding for termination of parental rights. However, it is silent on when a parent voluntarily terminates their rights.



Tohono O'Odham Nation v. Fridlund-Horne, cntd.

- There is split authority nationally on whether the ICWA requires tribal notice in voluntary parental termination proceedings.
- However, in AZ neither the Nation's right to notice nor it's right to intervene is limited to involuntary termination proceedings. Notice shall be given to the tribe of the Indian child (as defined in ICWA).
- If the legislature wanted to limit it to involuntary only, it could have.
- AZ law also requires the notice inform the tribe of it's right to intervene.
- Because the Nation was not provided notice, nor was it allowed to intervene the TPR is vacated, the Nation's motion to intervene is granted and this case has been remanded for further hearings.



Statutory Update and Legislative Trends

- Nation-Wide: 50 states and territories & 925 bills in some level of activity.
- Removing Custody and Visitation: 50 states and territories & 697 bills in some level of activity.
- Looking at what has been actually passed – 20 states have enacted 68 new bills around child support and another 11 states and 36 bills are pending Governor's signatures.



Enacted Bills of Note

- Arkansas – 2023 AR S 128 – amended the State Police Retirement act to allow for a court to **order garnishment of the monthly benefit of a retirant who is willfully refusing or failing to support his or her minor dependent children in violation of a court order.**
- Arkansas – 2023 AR S 312 – amended the period for filing a paternity up to **18 for the parents but for the child anytime.** Also adds a definition for an “acknowledged father”.
- Arkansas – 2023 AR S 562 – amends incarceration for non-payment statute to require **“willfulness”** before incarceration.



Enacted Bills of Note

- District of Columbia – 2023 DC B 93 – Creates a Uniform Family Law Arbitration Act to offer efficient alternatives for the resolution of family law disputes.
- Idaho – 2023 ID H 264 – Enacted a gestational agreements act to facilitate the use of gestational agreements and clarify the parentage of children born under the terms of those agreements, i.e. **the “intended” parent(s) shall be the parent(s) of any child conceived through assisted reproduction and born under the agreement.**



Enacted Bills of Note

- Kentucky – 2023 KY S 48 – Moving the Child Support program from the Department of Income Support to the Office of the Attorney General.
- Kentucky – 2023 KY S 268 – “Melanie’s Law” - Child Support after DUI. **If a defendant is convicted of a DUI causing death or total disability of a parent or guardian then the sentencing court may order the defendant to pay restitution in the form of financial support until the child turns 18 or 19 if they are still in HS.**
 - In determining the amount the court will look at the financial needs of the child, financial needs of the surviving parent or guardian, **standard of living the child was accustomed**, physical and emotional condition of the child, child’s physical and legal custody and reasonable care expenses of the surviving parent.
 - Payable to the clerk.
 - Defendant has 1 year from release to begin payments. Obligation continues until all arrears are paid in full.
 - The surviving parent or guardian may bring a civil action and a judgment in civil court shall terminate the restitution in this court.
 - The **amount of the restitution judgement shall be offset by any amount of the civil judgment paid by the defendant’s insurance for lost wages or permanent impairment of the power to work.**



Enacted Bills of Note

- Mississippi – 2023 MS S 2082 – The court **may not consider incarceration as intentional or voluntary unemployment** or underemployment for establishing or modifying child support.
- Mississippi – 2023 MS S 2634 – Adds “willfully” to the felony non-support statute as well as make the age limit up to 21.
 - Adds defenses if the child gets married, joins the military, is sentenced to 2+ years for a felony, discontinued school at 18 unless disabled, establishes independent living with full-time employment before 21 or cohabits with a person without the permission of the parent obligated to pay support.



Enacted Bills of Note

- New Mexico – 2023 NM S 223 – Child Support Guidelines, establishes a new child support guideline schedule and rules around adopting new guidelines.
- New Mexico – 2023 NM S 224 – Health Insurance – **allows parents to satisfy their obligation to provide health insurance by enrolling the child(ren) for Medicaid.**



Enacted Bills of Note

- South Dakota – 2023 SD S 75 – Birth Expenses – provides that mother and father are **jointly and severally liable for pregnancy, prenatal, labor and delivery and postpartum costs associated with the child.**
- Utah – 2023 UT S 51 – Holidays – Parenting time – adds **Juneteenth National Freedom Day to the schedule of holidays for parenting time.**
- Utah – 2023 UT S 229 – Requires child support orders to include health insurance orders and provisions for how court is to consider them.



Enacted Bills of Note

- Virginia – 2022 VA S 1314 – Birth expenses – **father to cover proportional share of mother's birth expenses.** Any amount either parent already paid of the total to be credited.
- Wyoming – 2023 WY H 19 – Indian Child Welfare Task Force – 1 prosecuting attorney, 1 private attorney, 2 from Eastern Shoshone business council, 2 from Northern Arapaho business council, 2 from house of representatives, 2 from senate tasked **to study the federal Indian Child Welfare Act, other states, national experts and develop legislative recommendations to incorporate protections.**
- Wyoming – 2023 Wy S 94 – **Codifies the federal Indian Child Welfare Act as statute in WY.**



Bills Sent to Governors

- Georgia – 2023 GA H 120 – Driver's License – allows for a restricted a license in certain cases – **amended to add child support suspensions as an area where a person can apply for a limited permit.**
- Georgia – 2023 GA S 135 – Genetic Testing – includes some updates to **requirements around accrediting and admissibility of results.**
- Hawaii – 2023 HI S 406 – Grandparent's Visitation – may file for visitation rights if the **petitioner's child that is the parent of the child in question is otherwise unable to exercise parenting time due to incarceration or death.**



Bills Sent to Governors

- Indiana – 2023 IN S 265 – TANF – Adds **TANF eligibility to a woman who is pregnant at the time they apply and otherwise meets the income requirements.**
- Indiana – 2023 IN S 1009 – Birth Expenses – **expanded to include “other necessary and reasonable expenses”, postpartum expenses and postnatal care.**
- Maryland – 2023 MD S 71 – Worker’s Comp – Allows for **25% of the net recovery** of the debtor from a personal injury or workers comp claim to be **seized for child support**



Bills Sent to Governors

- Maryland – 2023 MD H 526 – Transfers all operations and employees from the Child Support Unit for the State's Attorney Office for St. Mary's County to the Child Support Administration of the Department of Human Services.
- Montana – 2023 MT H 339 – **Reasonable childhood independence – statute that it doesn't violate a duty of care to let children do independent activities, walking, run, bicycle or use public transit to go to school, play outside, stay in a car for 15 minutes as long as its not hot, etc....**
- Montana – 2023 MT H 684 – Vaccines – **may not use a parent or child's vaccination status in an action for custody, parental rights, visitation or child support.**



Bills Sent to Governors

- Tennessee – 2023 TN H 163 – TPR – makes it a ground to terminate parental rights if for the **past 4 months the parent has not visited, supported or made reasonable payments of support.**
- Tennessee – 2023 TN S 331 – **Parentage fraud** – seeks to establish a person as a biological parent with the intent to deprive the person of property or to prevent the actual biological parent from exercising parental rights and the person knows or should know the person is not the child's biological parent. Does not apply if the child is the product of rape, is in the process of being adopted or the victim of the offense was the defendant's spouse at the time.



Bills Sent to Governors

- Washington – 2023 WA H 1262 – **Lump Sum Reporting System** – Establishes a lump sum reporting system and provisions for issuing lump sum IWOs.



Other Trends

- TX S 590 and TX H 604 – Child Support Back to Date of Conception – Pending.
- AZ H 2652 – Extends TANF to a woman who is pregnant – Pending.
- IL S 84, IN H 1536 – Gambling and child support intercepts – Pending.
- CT H 5342, SD S 136 – Presumption of joint custody – Failed.
- FL S 1292, IN H 1296, KS H 2356, MO H 185, NH H 185, NY A, 3671, NC S 576, OR S 315, SC S 540 & TN H 620 – Presumption of equal time – Pending.



Other Trends

- MD H 326 – Exemption to DL suspension if below 300% of the poverty level. – Failed
- MS H 1210 – Suspension of DL for commercial license – Failed.
- ND S 2219, OK H 2833, SC H 3210 – Suspension of DL for CSUP - Pending
- MS H 1490, ND H 1308 – Suspension of recreational license – Failed.
- SC H 3210, TN S 893, TN H 930 – Remove Driver's license from licenses that can be revoked for CSUP. - Pending.



Other Trends

- IL H 3404, KS S 182, NY A 1776, OK H 1003, - Would require a DUI causing death defendant to provide restitution as support for a child of the decedent. Pending.
- MS H 554, VA S 1288 – Similar laws that Failed.



Resource for State Bills

- National Conference of State Legislatures – Child Support and Family Law Legislation Database
- <https://www.ncsl.org/human-services/child-support-and-family-law-legislation-database>



Contact Information

Ethan McKinney, JD
Child Support Enforcement Leader
[AWS – State & Local Government, HHS](#)
ethmck@amazon.com
574-876-9488

