**FAMILY LAW SECTION**

**JANUARY 21, 2022 CLE LUNCHEON**

**"Judicial Round Table on**

**Maintenance and Child Support in 2022 "**

**Panel:**

District Court Judge - Andrew Baum – 18th JD

District Court Magistrate - Angela Boykins – 2nd JD

District Court Judge - Deborah Grohs – 4th JD

District Court Judge - Sean Finn – 17th JD

Moderated by Cynthia Ciancio, Esq.

Special thanks for Ret. Hon. Angela Arkin for assisting with putting together the round table!

**CLE**: Applied for 2 General credits

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**SCENARIO 1**

**Initial Divorce** **Facts**: 8-year Marriage. Each party received their separate property (H had approx. 1M and W had approx. 500k and each party received a variety of assets worth about 1M each, however W received approx. 5% more than H. The court did not indicate why it allocated more property to W. The court ordered 50/50 PT awarded for the 2 children (5 and 6 yoa.)

**Income of Wife/Mother**: M is a physician earning $240k/yr, however she was only working 35 hours per week and could earn closer to $300k/yr if she worked 40 hours per week.

**Income of Husband/Father**: F was self-employed with surprisingly straight forward bookkeeping and tax records showing he earned between $400-$450k per year for the 3 years leading up to the divorce. However, because of COVID, at the time of the POH, he claimed he had lost most of his major clients and that his company was in jeopardy of going out of business. He claimed his income for that year was half what it had previously been, and he was not confident the business would survive. He claimed he was looking for other work. H was also highly educated from an Ivy League school.

**Expenses**: The parties had a reasonable lifestyle, nothing extra-ordinary. However, on their SFS’s each party claimed they needed approx. $20k-$25k/mo to pay their listed expenses.

**Child Support Facts**: There were no private school costs, however each party needed and incurred work-related childcare. These expenses ranged from $2200-3500 per mo depending on who the provider was. M was using non-licensed care providers who were used during the marriage. F was intending to use licensed care providers once the divorce entered. F’s providers would cost at the higher end of the spectrum. F’s company was paying $2500 per mo for the children’s portion of health insurance. M could provide insurance for a lot less through her large health industry company, but there was no evidence presented of the cost. F argued his plan was the standard during the marriage and that it was premium coverage, but there was no evidence of this either.

**Panel Questions**:

* ***Would you order maintenance****?*
* *If yes, how would you calculate it?*
* *Would you apply the guideline formula for amount?*
* *Would you apply the guideline formula for term?*
* *How do you get past the “threshold” question (i.e., that W, the receiving spouse, “needed” maintenance to support her “reasonable needs”? And that H had the ability to pay?)*
* ***Would you order child support****?*
* *If yes, how would you calculate it?*
* *Assume each party’s income was $20k per mo, would you use the guidelines?*
* *Would you extrapolate? Or stop at the cap?*

**Actual POH**: The Court found the parties’ incomes were basically equal at about $20k per mo each, gross, and it did not award maintenance. The Court ordered F to pay approx. $1200 per mo in child support, but this was seemingly in part because the Court did not give any childcare credit to him, thinking that M paid all of it, nor did it give any credit to F for the health insurance costs that his company paid.

**Modification Proceeding**. F is appealing the POH for a variety of alleged errors (not getting credit for some of his separate property, the award of an additional 5% in assets to M without any findings, and the child support calculation. Additionally, F filed a motion to modify child support, asking the court to include his actual expenses in the child support calculation, and that it award him child support. He now incurs $3500 per mo for childcare and $2500 per mo for health insurance, which the company still pays but he can prove. M’s childcare expenses are $1800 per mo and she can cover the children on her health care plan for $500 per mo.

**Panel Questions**:

* *Can you modify child support while the case is pending on appeal?*
* *Would you grant a modification?*
* *How would you calculate child support?*
* *Would you give Father credit for his health insurance expense that was unknown at the time of the POH but now can be shown to be $2500 per mo, even though M can cover them for $500 per mo?*
* *How does the fact that F’s company pays for the health insurance expense factor into the analysis?*
* *Would you give Father credit for his higher childcare expenses?*
* *How does the fact that one parent uses “licensed” care providers factor in to the decision, if at all?*
* *Any other thoughts?*

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**SCENARIO 2**

**Initial Divorce Facts:** The parties have been married 18 years. Husband/Father has been unemployed for at least the last 10 years of the marriage, but Mother, who works full-time has been the “primary parent” to the children. H has had some mental health challenges but is not diagnosed with any specific disorder. H has been known to use substances and/or alcohol and he’s claimed he’s been suicidal, causing him to be hospitalized a couple of times for a couple of weeks. H is now doing better; he has a new girlfriend and he’s no longer suicidal. He’s working at his “mushroom farm,” but it is a new business, and he says he’s not making any money at all. Each party will receive approx. $800k in assets from the divorce, if divided equally. Wife/Mother is a W2 wage earner making $12k per month. The children are 10 and 12 yoa and will live primarily with M, by agreement, with F having 2 overnights per week.

**Panel Questions:**

**Would you order maintenance?**

* *If so, how would you calculate it?*
* *Would you use the guideline formula for the amount? And the term?*
* *How would you handle H’s income? Remember, H has not worked for years, but he does have a bachelor’s degree.*

**Would you order child support?**

* If so, how would you calculate it?
* How would you allocate child related expenses, whatever they are?

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**SCENARIO 3**

**Initial APR:** Father and Mother met and got pregnant within 3 months of their first date. They never married. The moved in together but split up when the baby was 3 months old. At the time of the split, M left the condo the parties were renting together, leaving F to pay the $3500 per month in rent for the remainder of the one-year lease and all the other expenses. M also refused to allow F any regular PT and it cost F over 200k in legal fees to litigate parenting time issues, and to fight ultimately to get 50/50 PT with the baby. It was a very contentious custody matter where the court was forced to break up the temporary hearings into approx. 6-7 court dates spanning over 6-7 months. F was awarded 50/50 PT. M requested removal/relocation to the east coast, but she took that off the table after the CFI recommended F be the primary parent if M maintained she was moving. M also incurred a lot in attorney fees, but not as much as F.

**Party Income Facts**: M was unemployed. She claimed she did not have to work because of the statutory exception (child under 24 months.) F was a self-employed commercial realtor who had recently been terminated from his employment. He was involved in a legal dispute with his former employer and that matter settled and the employer agreed to pay F a lump sum of $350k in the year the APR matter was going to hearing. Prior to that, the evidence was that F’s income varied ($50, $100k, and $150k for the 3 prior years.) He had only recently started out in the commercial real estate development industry. One of the claims F had against the company was their failure to properly pay him commissions over the 3 previous years, and he testified that the lump sum settlement was his back pay. Because F’s legal matter with the company settled, he technically was not terminated, it was an agreed upon “separation.” F choose to go into business for himself after the separation form his former employment and his new start-up company was not making any money at all. In fact, it was losing money because he was having to put his own money into the company in order to invest in the commercial properties along-side his investors. Now having 50/50 parenting time, F also claimed he should not be imputed income because he too was caring for the child who was under 24-months. M’s income was shown on tax records to vary quite a bit, but the year prior to the baby she earned ($50k, $90k, and $100k the 3 prior years as a consultant/coach.) M is now frequently posting on social media, she claims to be a “best-selling author” (she has a book for sale on Amazon, but she’s not shown any actual income from the sale of the book.) At the time of the temporary APR hearing the Court accepted F’s offer to pay $600 per mo as the order of the Court. Now the baby is 2.5 years old and the parties are set for a modification hearing. What should the court do for child support? F pays the health insurance for the child through his business at a cost of approx. $500 per mo. F incurs approx.. $1,000 per mo in work-related childcare costs. M does not incur any of these costs and her SFS shows she only spends a couple hundred dollars per mo on child expenses. M is saying that she’s a social media “influencer” and F is still saying his company is not making any money. However, F did have a liquidation event from one of his investments, where he received a one-time payment of $500k for the sale of real estate.

**Questions for Panel**:

**How would you handle child support (both pre- and post-decree?)**

* *Would you impute income to either party when the child was under 24 months?*
* *What about once both parties had 50/50 PT with the child?*
* *Does the fact that the relationship was very short factor into the analysis?*
* *If the combined income is above the cap, how would the court consider the standard of living the child would have enjoyed had the parties not split (considering that they only lived together for a few months and split when the baby was 3 months old?)*
* *How would you handle the issue of F’s one-time settlement income from his former employer, that paid him for 3 years’ worth of back commissions (according to F), but where the actual settlement agreement did not specify what the payment was for?)*
* *How would you handle the issue of un/under employment for Mother? Both at pre-decree and post-decree time frames? Post-decree the child was no longer under 24 months and that’s when M became more active as a social-media influencer?*
* *Does the fact that F paid 200k in legal fees to get to 50/50 PT and M’s insertion and then her deletion of a removal/relocation request factor into the child support decision at all?*
* *What would you do with regard to F’s income? He is arguing that his decision to go into business for himself will eventually result in more income, and that it is a “good faith career choice.?”*
* *Would you average either party’s prior income?*

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**SCENARIO 4**

**Initial Divorce Facts:** The parties have been married 25 years. Husband/Father works in the family business earning $500,000 per year. Wife/Mother has been a stay-at-home for most of the marriage but dabbles as an interior decorator and has her own business with a nice website. She’s earned very little income from this job. M has a bachelor’s degree, and a vocational evaluation expert says she can earn between $35-$45k per yr. The parties have agreed to settle property and kid issues: H will keep the multi-million-dollar home with a loan and his interests in the family businesses, and his parents are loaning him $3.5M to buy W out of her share of those assets. Wife’s $3.5M payment is in cash. The PT is 50/50 and the children are 14 and 16 yoa. H’s family business carries the insurance for the children at a cost of $500 per mo.

**Panel Questions**:

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* *If yes, how would you calculate it?*
* *Would you apply the guideline formula for amount?*
* *Would you apply the guideline formula for term?*
* *How do you get past the “threshold” question (i.e., that W, the receiving spouse, “needed” maintenance to support her “reasonable needs”? And that H had the ability to pay?)*
* ***Would you order child support****?*
* *If yes, how would you calculate it?*
* *Would you extrapolate? Or stop at the cap?*
* *How would you split child related expenses?*

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**LOW INCOME AND CLEAR GUIDELINES CASES**

*Any thoughts/ideas you want to share about cases that clearly fall withing the guidelines or where there is low income?*