F A M I L Y S U P P O R T

F O R U M

The Official Newsletter of the Illinois Family Support Enforcement Association

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About Half of Custodial Parents Got Full Child Support Payments in 2001, Census Bureau Reports

Washington, D.C. (December 2, 2003): A new report from the U.S. Census Bureau issued in October, 2003, showed that about 45 percent of custodial parents due child support payments received the full amount in 2001. The proportion did not change between 1997 and 2001, but was up from 37 percent in 1993. Of those who received the full amount, the average received was $5,800, regardless of whether the recipients were mothers or fathers.

While the proportion of custodial parents who received only "some" of the payments due was unchanged from 1999 through 2001, at 29 percent, it is down from 39 percent in 1993. This drop since 1993 in parents receiving some support roughly mirrors the increase in the percent of those receiving the full amount.

The report, ***Custodial Mothers and Fathers and Their Child Support: 2001***, publication No. P60-225, said an estimated 13.4 million parents had custody of 21.5 million children under age 21 whose other parent lived elsewhere. About 5-in-6 were mothers — a proportion that has not changed since 1994.

About 8 million custodial parents — 6-in-10 — had some type of support agreement or award for their children.

Other highlights from the report:

- Custodial mothers increased their full-time, year-round employment from 41 percent to 52 percent between 1993 and 2001, and their poverty rate fell from 37 percent to 25 percent. A ratio of 3-in-4 custodial mothers were not married in 2001.

- The proportion of custodial mothers taking part in federal public assistance programs fell sharply — from 26 percent receiving Aid to Families with Dependent Children (AFDC) in 1993 to 6 percent receiving Temporary Assistance to Needy Families (TANF) in 2001. TANF replaced AFDC as part of the 1996 Welfare Reform Act.

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Newsletter Editor
Pamela Compton
509 South 6th Street
Springfield, IL 62701
Ph: 217-782-1961 Fax: 217-524-4608
e-mail: aidd5252@mail.idpa.state.il.us

Assistant / Assignment Editor
Christa Fuller
Tele. (312) 803-7361; fax (312) 803-0872
e-mail: christafuller@maximus.com

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From the I D P A . . .

. . . ILLINOIS IV-D UPDATE

KIDS System Fully Certified by Federal Office

On December 5, 2003 IDPA received official notification from Sherri Z. Heller, Commissioner of the Office of Child Support Enforcement that full certification had been granted to Illinois Key Information Delivery System (KIDS). Dr. Heller "commend(ed) the State of Illinois on its efforts to achieve full PRWORA certification." The efforts of Nancy Johnston, former Deputy for Field Operations in DCSE and now retired, and Jim Howard, KIDS Project Manager for IDPA's Office of Information Systems, were specially noted in Dr. Heller's letter. In addition, Dr. Heller is expected to travel to Illinois in April to present a certification plaque to Director Barry S. Maram and IV-D Administrator Lonnie J. Nasatir.

Other KIDS news includes the implementation of "GUI KIDS" for IDPA staff and partner staff that utilize the IDPA network. The new KIDS "front end" was demonstrated to attendees during the Fall 2003 conference. Implementation has been a great success and IDPA staff are very enthusiastic about the new look for KIDS.

IDPA-DCSE recent implementation of the Delinquent Parents website, covered in depth in this issue of the *Forum*, has been a very successful special collections initiative. Other special collections efforts implemented in recent years continue to also be successful. For example, the Passport Denial program recently collected $89,000 for an Illinois family.

As reported in the April 2003 "Illinois IV-D Update", business process re-engineering is a priority for DCSE. As you know, we have implemented our integrated voice response system for the centralized Call Center and are now expanding and enhancing the technology based on customer and partner suggestions. The Call Center is now handling an average of 140,000 calls per month in the Call Center.

DCSE's new Intake process is very near implementation. This process will classify cases according to the data elements necessary for successful order establishment and will triage cases for appointment scheduling based on that classification. Cases that do not meet the criteria for appointment scheduling will receive intensive locate efforts. The new Intake process also enhances and expands the "mail interview" process in which custodial parents are offered the opportunity to provide information that would usually be obtained during an in-person interview by mail, reducing the number of times a custodial parent must travel to our office during work hours.

As you know, all of the efforts of the IV-D program are intended to lead to one outcome – collections for families. Whether we are gathering data for the location of an NCP or employer, conducting an interview, creating a legal action referral or administrative order, or seeking enforcement of an order already in place, our goal is ultimately to collect support. We have come a long way in meeting our goals over the past year, and are confident in our ability to meet our goals in 2004.

From the Courthouse . . .
. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Anyone who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

Direct links to slip opinions of these and other recent decisions are maintained on IFSEA's web site, www.illinoisfamilysupport.org, soon after they are released.

by Thomas P. Sweeney

"Best Interests" Hearing Not Authorized Prior to DNA Tests, Paternity Finding

J.S.A. vs. W.H., 343 Ill. App. 3d 217, 797 N.E. 2d 705 (3rd Dist., 8/19/03), reversed dismissal of a parentage petition based on a best interests determination made prior to DNA tests.

J.S.A and W.H are attorneys who shared an office -- plus a five-year, extra-marital sexual relationship. When their relationship ended J.S.A. petitioned to establish his parentage of W.T.H. born to W.H. during their relationship, but while she was married to W.C.H.. Apparently a DNA test conducted before he filed his petition confirmed his paternity, but he requested DNA tests in the paternity action. W.H. and her husband, as co-defendants, objected, and requested a "best interest" hearing to determine if it was in the best interests of the child to order DNA tests. Following that hearing the Court held it was not in the child's best interests, and dismissed the parentage action. J.S.A. appeals.

Reversed. Despite any presumption that W.H.'s husband is the child's father, J.S.A. has standing to bring an action to declare his parentage. Section 11 of the Parentage Act requires that DNA tests be ordered if either party requests them. And while the best interests of the child "must generally guide the court," and a determination of parentage may not always be in the child's best interests, under the Parentage Act a court does not have the power to consider the best interest of the child before allowing DNA testing to proceed. "The Act itself does not explicitly provide for a best interest hearing at any time during the proceedings. If parentage determinations are to be made under the best interest standard, the legislature must amend the Act to provide for a best interest hearing. The law, as it exists today, fails to protect the child's best interests in parentage determinations."

Separate, concurring opinions emphasized that, if paternity is determined the court is "charged with the responsibility" to decide other issues which surround paternity, including custody and visitation, with the child's best interest being of paramount concern. "It thus appears that, although the legislature mandated that the determination of paternity be made without consideration of the best interest of the child, his best interest is of the highest concern in deciding how, or if, that paternity should be exercised."

Paternity Established Through Voluntary Acknowledgment Can Be Challenged Under § 7 (b-5); Supreme Court to Review

People ex rel. Public Aid v. Smith, 343 Ill. App. 3d 208, 797 N.E. 2d 172 (2nd Dist., 9/19/03), reversed dismissal of petition to establish non-existence of adjudicated paternity under § 7 (b-5) of the Parentage Act.

Kendra Smith was born in October, 1997. Within days Romiel Smith signed a voluntary acknowledgment of paternity, and six months later was ordered to pay support. Four years later, after obtaining a motherless DNA test result excluding his paternity, Romiel petitioned to terminate the child support, and subsequently an amended complaint under §7 (b-5) of the Parentage Act to establish the non-existence of his parentage of Kendra. IDPA moved to dismiss the § 7 (b-5) petition, asserting that once the 60-day period for rescission of the voluntary acknowledgment had passed the paternity determination could only be challenged on the basis of fraud, duress or mistake pursuant to a § 2-1401 petition. The trial court dismissed Romiel's § 7 (b-5) complaint on that basis, and Romiel appealed.

The Appellate Court reversed. § 7 (b-5) creates a new cause of action, permitting a man adjudicated to be the father of a child based on a presumption under § 5 of the Act to challenge that determination if he has DNA results excluding his paternity. The voluntary acknowledgment, if not rescinded within 60 days, establishes a paternity adjudication pursuant to the

presumption in § 5 (a)(3) of the Act. With the DNA results required, Romiel satisfies the requirements to challenge the paternity adjudication under § 7 (b-5).

The Court rejected IDPA's argument that § 6 (d) mandates a showing of fraud, duress or mistake of fact pursuant to a § 2-1401 petition. § 7 (b-5), added by later amendment to the Act, created an exception to that requirement if DNA results excluded paternity. "We agree that the current language in section 6(d) is confusing, and we hope the legislature would consider amending this language to eliminate the confusion."

(On December 3, 2003, the Supreme Court granted leave to appeal this decision (No. 97120.)

Portion of Workers Comp Settlement Awarded as Marital Property is Not Income for Support Determination

In Re Marriage of Schacht, 343 Ill. App. 3d 348 797 N.E. 2d 236 (2nd Dist., 9/19/03), vacated and remanded denial of support reduction when workers' compensation award was reduced by marital property award.

At the time of the parties' divorce Alan had a workers' compensation claim pending, and was receiving temporary total disability (TTD) benefits of $1,493.36 per month. Based on that income he was ordered to pay child support of $477.88 per month plus $111.18 per month for the children's health insurance. Following the first of several appeals Alan received the workers' comp settlement, from which the court awarded 30% to Erin as marital property and ordered another 20% to be put in trust toward the children's future education. By this time Alan's workers' comp proceeds had been exhausted, he was not working and received only a small Social Security Disability benefit. Alan petitioned to reduce his child support. The court reduced it only to the extent one of the children had reached her majority, but otherwise denied further reduction, apparently continuing to attribute to Alan income from the workers' comp settlement in addition to Social Security. Alan appeals, again.

The Appellate Court agrees with Alan, "although for slightly different reasons, and therefore vacate and remand." The child support ordered was calculated from the full amount of the worker's comp settlement, but half of it had been awarded to Erin as marital property. Thus half of it had been "double counted" when included as income in the support calculation. This was improper.

Commenting on the trial court's apparent intent to encourage Alan to find a job, the Appellate Court noted: "[a] court may impute income to a party in calculating child support if it finds he is voluntarily unemployed or underemployed . . .[but] if the trial court deviates from the guideline amounts set out in the statute . . . it must make express findings."

Court Must Apply Guidelines in Support Modification or Explain Basis for Deviation

Anderson v. Heckman, 343 Ill. App. 3d 449, 797 N.E. 2d 1108 (4th Dist., 9/30/03), reversed denial of an increase in child support and remanded with directions.

In January, 2001, Jason's support obligation was reduced to $25.50 per week, based on income of $256.80 every two weeks from unemployment compensation. In June, 2001, IDPA petitioned for an increase, presenting evidence that Jason was then employed by the Macon County Sheriff's office with a net income of $590.72 every two weeks – a 130% increase in income (with a $1,300+ payment due November 30th under terms of a collective bargaining agreement). The trial court, without explanation, denied the modification. In denying IDPA's motion to reconsider the trial court stated that in denying the modification it was not required to adhere to statutory guidelines, and was not required to state its reasons for doing so. IDPA appeals.

Reversed and remanded with directions. The "clear language of the statute mandates" the trial court to follow section 505 guidelines and either award support consistent with those guidelines or make a finding that application of the guidelines was inappropriate. "Clearly" the court erred by finding the guidelines did not apply, and its refusal to apply the guidelines or state its reasons for deviating from the guidelines was an abuse of discretion. The increase in Jason's income was clearly a substantial change in circumstances, and application of the guidelines to the increased income results in an order far more than 20% inconsistent with the existing order. Reversed and remanded with directions to modify consistent with §§ 505 and 510.

Paternity Finding as Sanction for Failure to Comply with DNA Testing Improper Without Finding That "Rights of Others and Interest of Justice Require"

In Re Devon M., 344 Ill. App. 3d 503, 801 N.E. 2d 128 (1st Dist., Nos. 1-02-0138, 1-02-0897, 1-02-1271 Cons., 11/24/03), reversed paternity findings imposed in three cases as sanctions against parties who failed to comply with orders for DNA testing.

In each of the cases consolidated on appeal petitions for wardship of the respective children had been filed by DCFS under the juvenile Court Act. In two of the cases the mother identified the probable father of the child, and in the third the probable father was somehow named in the petition following the death of the mother. In each case the court ordered the named father to submit to DNA testing to determine parentage, and in each case he did not comply (though the alleged father in the third case claimed paternity). Over the objection of the Cook County Public Guardian, representing each of the children, and the State's Attorney's office, the court in each case found §11 of the Parentage Act applicable, and entered a finding of paternity against the respective alleged fathers by default. The Public Guardian, joined by the State's Attorney, appeals (with the father defaulted in the third case opposing reversal).

Reversed in all three cases. § 11 (a) authorizes the

court to "resolve the question of paternity against " any party who refuses to submit to DNA tests, or enforce the order, "if the rights of others and the interests of justice require." In each there was no evidence that finding paternity against these alleged fathers was in the best interests of the child or others, and in each case the Public Guardian as their representative and the State's Attorney prosecuting the cases had pointed out how such rulings could be detrimental to the children. The records in each case show no interests served by the findings of paternity, and the court made no findings of any benefits to follow from the judgments. "Because the Parentage Act restricts the court's power to determine paternity as a sanction to those cases in which 'the rights of others and the interests of justice . . . require' such a finding . . . we hold that the trial court abused its discretion by entering the findings of paternity here."

Support Exceeding Shown Needs Not Improper Where Obligor's Income is High, Parties' Finances Disproportionate

In Re Keon C., 344 Ill. App. 3d 1137, 800 N.E. 2d 1257 (4th Dist., 12/10/03), affirmed an award of child support in excess of the child's shown needs, award of medical coverage and attorney's fees.

Keon C. was born in February, 2000. At the time his mother, Jamie, and father, Keon Clark (Keon Sr.) were living together, and Keon Sr. was playing professional basketball for the Denver Nuggets. After they separated Jamie petitioned to establish parentage, and for support, medical coverage and attorney's fees. Keon Sr. admitted paternity, and in August, 2001, was ordered to pay temporary support of $3,000 per month and all of Keon Jr's. medical expenses.

A hearing on all issues was held in October, 2002. At that time Jamie was 25 years old, living in Indianapolis with Keon Jr. and another older child. She was employed part time while attending school, with a monthly net income of $731.64 and expenses of $4,220.97, but testified she spent "maybe" $1,000 per month on Keon Jr.. Keon Sr. had a monthly net income of $58,404.75 and expenses of $16,264.32 (including the $3,000 in temporary child support). He had earned $1.4 million in 2001, his income had increased 10 to 20% in 2002, and that beginning November 1, 2002, he would begin earning $4.5 million playing for the Sacramento Kings. Based on his 2001 income, the parties calculated 20% support to be between $12,900 and $13,900 per month.

The court ordered Keon Sr. to pay permanent child support of $8,500 per month, retroactive to March 1, 2001, to provide health insurance coverage and pay all uncovered medical expenses, and pay arrearages of $125,000 within 30 days. The court later ordered Keon Sr. to pay all of Jamie's attorney's fees. Keon Sr., appeals, asserting the court did not deviate enough from guidelines in ordering support exceeding Keon Jr.'s shown needs, providing a windfall to Jamie and her older child.

Affirmed, though amended to clarify the date when payments were due. "[H]ere, petitioner's net monthly income of $731.64 is nominal compared to respondent's approximate net income of $58,404 and clearly could not be considered sufficient to provide the reasonable needs of Keon C. taking into account his lifestyle before the parties separated and the lifestyle Keon C. would have enjoyed had the parties not separated. A child is not expected to have to live at a minimal level of comfort while the noncustodial parent is living a life of luxury." "[W]hen one parent earns a disproportionately greater income than the other, that parent clearly should bear a larger share of the support. [Citation] The record shows that the financial resources of respondent are considerable, and the trial court could infer that they are more than ample to meet his needs. [Citation] . . . Given respondent's considerable income, the trial court was entitled to infer that respondent's son would have enjoyed a high standard of living had the parties not separated."

The disparate incomes of the parties also justified Keon Sr. being required to pay all medical expenses not covered by insurance and all of Jamie's attorney's fees.

(It was not a good week for Keon Sr. The day after the Appellate Court issued its opinion in this matter his father was convicted of first-degree murder by a Vermilion County jury.)

Despite Discharge of Rule, Attorney's Fees Award is Required for Enforcement Absent Just Cause Finding

In Re Marriage of Berto, 344 Ill. App. 3d 705, 800 N.E. 2d 550 (2nd Dist., 11/17/03), affirmed denial of interest on an arrearage in unallocated child support and maintenance, but reversed denial of attorney's fees in connection with the enforcement action.

In 1999 Douglas, with an income of $1.3 million, was ordered to pay unallocated child support and maintenance of $23,500 per month. In 2001 he petitioned twice for reduction, claiming changes in his employment would reduce his income by half. When he unilaterally reduced a month's payment by $10,000, Colleen filed a contempt petition. Douglas' reduction petition was "non-suited" at his request, and he tendered the entire $30,000 then owed in court when the hearing was held. The Court declined to find Douglas in contempt, discharged the rule, denied Colleen's request for interest and denied her request for attorney's fees for lack of jurisdiction. Colleen appeals.

Affirmed on the contempt and interest issues, but reversed on the denial of attorney's fees. Since the arrearages had been satisfied there was nothing left to coerce by a finding of contempt. And awarding interest on a dissolution judgment, "other than a judgment for child support," is discretionary. While the child support due would accrue interest, here the order was for unallocated child support and maintenance, and the

Court was not presented with a way to determine what part of the sums due were child support. There was no abuse of discretion in denying interest.

The Court's finding it lacked jurisdiction to award attorney's fees was error. Colleen's fee petition was timely filed. But more importantly, under § 508(b) of the IMDMA an award of attorney's fees and costs is mandatory in enforcement proceedings upon a court finding a failure to pay was without cause or justification. The Court is to use its discretion to determine if noncompliance is justifiable. "A finding of contempt is sufficient to require an award of fees under section 508(b), but such a finding is not necessary. . . . The party that fails to comply with an order hears the burden of proving that compelling cause or justification for the noncompliance exists." Here the trial Court refused to make any finding whether Douglas' non-payment was justified, but the record did not show that it was. Dismissal of Colleen's petition for attorney's fees was reversed and remanded to determine the amount to be assessed.

Employer May be Liable for Income Improperly Withheld from Employee

Giles v. General Motors Corp., 344 Ill. App. 3d 1191, ___ N.E. 2d ____ (5th Dist., No. 5-02-0709, 12/18/03), reversed dismissal of tort claims against an employer for income withheld after the termination date.

General Motors was withholding child support from its employee pursuant to a Notice to Withhold. Despite the date provided in the notice when withholding should terminate, and subsequent demands from the employee and his attorney, GM continued to withhold for 2-1/2 years after the termination date. The employee sued GM for negligence, breach of contract and conversion, seeking refund of sums improperly withheld, interest, costs and punitive damages on the negligence and conversion claims. GM moved to dismiss, arguing its actions were mandated by law and in good faith reliance on court order and that its liability was limited to remedies specified in the Income Withholding Act which does not permit punitive damages. GM also offered a settlement of $15,113.11, amounting to the wages withheld plus the $200 fine authorized by that act. The trial court granted GM's motion to dismiss, with prejudice, and ordered GM to tender the judgment offered. The employee appeals.

Reversed and remanded. The Withholding Act imposes two duties on an employer – to withhold and pay. The remedies and penalty provisions only remedy and penalize a payor's breach of these *specific* duties. This complaint does not claim a violation of those duties, so the Withholding Act does not control what GM did after the duty to withhold terminated. The negligence count alleged willful and wanton disregard of the employee's rights which could justify punitive damages. GM's argument that it was acting in good faith and under authority of court orders clearly ignored the fact that the termination date was on the face of the order and subsequent orders of the court.

Annual Gifts and Loans May be Income For Purposes of Support Determination

In Re Marriage of Rogers, 345 Ill. App. 3d 77, ___ N.E.2d ____ (1st Dist., No. 1-02-3785, 12/31/03), affirmed an increased support order based on income including "gifts and loans."

In modifying a support order from $250 per month to $1,000 per month, the trial court found Mr. Rogers' annual income of $61,000 included $46,000 in gifts and loans from his parents for which he had no tax liability. He appeals the inclusion of that income.

Affirmed. Since the record provided did not show how the trial court determined the nature of the $46,000 the Appellate Court had to assume its characterization as "gifts and loans" was proper. There is a rebuttable presumption that all income is income for purposes of support calculation, and neither gifts nor loans are included in exclusions allowed under § 505. Not discussed in this short decision is the argument that income should be limited to "periodic payment" as defined in the Income Withholding Act.

(On March 24, 2004, the Supreme Court granted leave to appeal this decision (No. 97833).)

Administrative Rule Restricting Evidence of Ownership of Account Subject to Lien Violates Due Process

Highsmith v. Dept of Public Aid, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (2nd Dist., No. 2-03-0065, 1/21/04), affirmed reversal of an IDPA administrative decision denying a challenge to the department's lien on a joint investment account.

Derrick Highsmith owed child support. IDPA placed a lien on an investment account held in the names of Frederick Highsmith (Derrick's father) and Derrick as joint owners. Frederick filed an administrative appeal, presenting limited documentation in the form of a statement of the account and tax returns for himself and Derrick. He testified that the account was established when Derrick was a child to provide for his education, that Frederick and not Derrick paid taxes on income from the account, and that Derrick essentially had nothing to do with the account. The department concluded that the *documentary evidence* provided did not establish that Frederick was the sole owner of the account, so the department could enforce its lien against the full amount of the account. Frederick appeals.

Reversed. IDPA argued that its administrative rule governing challenges to its lien against jointly owned property provides that the burden is on the joint owner to prove his share *only* through documentary evidence, and that here the documentary evidence was insufficient. IDPA acknowledged that the general rule of law is that a creditor does not have the automatic right to garnish the funds of a debtor on deposit in a joint account, but argued that "because the Department

has been given wide-ranging powers to collect child support, it should not be treated like an ordinary judgment creditor." If the Department was claiming an absolute right to all the funds in a joint account on which it has a lien, the court "emphatically disagrees." The applicable statute is clear the lien is only on the legal *and equitable* interests of the person who owes support. Thus the distinction between the legal right to withdraw from the account and the "reality" of ownership is significant.

Considering both the documents provided and Frederick's testimony, he met his burden to show his ownership of the account. To the extent the Department's rule limited evidence to documentary evidence, that rule is too restrictive and denies due process. The seriousness of the error justifies "relaxation" of the rule that the due process argument was waived when not presented in the administrative process.

Portion of Student Loan Payments May be Deducted from Income for Support Calculation

Roper v. Johns, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (5th Dist., No. 5-02-0778, 1/28/04), affirmed denial of a full deduction from income of student loan payments, but reversed and remanded the calculation of the portion allowed.

When Jeffrey was a junior in college he was ordered to pay minimal child support in this paternity case. Following graduation in 1997, he started law school and later enrolled in a combined law/MBA program, taking four rather than three years to complete. Upon graduation from that program in 2001 he took a job with Deloite and Touche, earning $75,000 per year.

Alyson sought an increase in child support. Jeffrey argued that monthly payments of $2,100 towards student loans (then totaling $180,000) should be deducted from his income as payments toward debts reasonable and necessary for the production of income. Reasoning that most of the benefit of his higher education would be realized after the child attained majority, the Court ruled that only a portion of the student loan payment would be deducted. For the period from June, 2001 until the date of hearing in August, 2002, the court deducted $375 per month of the student loan payments, finding Jeff's income for support purposes to be $2,014.56 bi-weekly, and ordered support of $403 bi-weekly consistent with guidelines. Jeff appeals.

On appeal, Jeff argues that by allowing any credit the trial Court had concluded the student loan was a reasonable and necessary expense for production of income. Therefore it should have allowed the entire loan payment. The Appellate Court disagrees. Citing authorities from other states and policy considerations it concluded that courts must have flexibility to find student loan debts partially deductible.

Here the Court accepted that the loans were "necessary" to enhance Jeff's income, but not "reasonable" in its entirety. He could have worked while going to law school on a part time basis, gone to a school with lower costs, or could have worked to bring down his undergraduate loan debt before starting law school. "Secondly, we agree with the trial court that the amount of debt incurred was excessive in relation to the extent to which Jeff's income was enhanced."

The trial court must have some discretion to evaluate the reasonableness of such debts. In doing so it is appropriate to consider the benefit to the child and the responsibility of the parent to contribute to his support. "An expenditure that might be reasonable for a student who does not have the responsibility of a young child may not be reasonable for a parent. We seriously question whether any custodial parent would have felt free to remain a full-time student for eight years."

To arrive at the portion to allow as a deduction, the trial court calculated the loan balance, if spread over a 40-year career, would average $375 per month. The Appellate Court found this to be a reasonable approach. But the court should have included not only the principal of the loans due but also the interest to be paid. Based just on the documentation Jeff produced, his interest on the various loans, if paid on time, would increase the debt to a total of $308,783.98. Spreading this over 40 years, the average cost which should be deducted in determining child support comes to $7,719.60 per year or $296.90 bi-weekly. On remand the trial court is to recalculate Jeff's support due during the periods when he had loan payments due to reflect this deduction.

Prison Inmate Properly Ordered to Pay Child Support From Non-Marital Assets

In Re Marriage of Hari, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (4th Dist., No. 4-03-0382, 2/3/04), reversed refusal to order child support paid from assets of a prison inmate.

In January, 2002, Lisa petitioned for divorce from David, and for custody of and support for their two children. Within a few months David was in jail for the first degree murder of Lisa's boyfriend and her attempted murder, for which he was subsequently convicted and sentenced to the Department of Corrections. In April, 2002, the Court ordered temporary child support of $197 bi-weekly to be paid from David's funds then being held by his attorney. But when the Court entered the final judgment of dissolution in January, 2003, it reserved child support, and on reconsideration, held it had no discretion to order David to use non-marital funds to secure payment of child support. Lisa appeals.

Reversed and remanded. Incarceration of the non-custodial parent does not automatically relieve him of the obligation to support his child. And the Court does have discretion to order support from an incarcerated parent taking into account the assets of the parent, the reasons for and length of incarceration and the possibility of work release. Under the circumstances the court

should have exercised its discretion to order support. And § 503(g) specifically authorizes the court to set aside a portion of non-marital assets in a separate fund for the support of children when the obligor is "unwilling or unable to make child support payments."

Modification Requires Substantial Change Since Last Ruling on Support

In Re Marriage of Armstrong, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (4th Dist., no.4-03-0510, 3/4/04), affirmed denial of a petition to reduce child support.

Pursuant to a 1997 settlement agreement, David was ordered to pay $1,250 per month in child support for the parties' three children. His gross income then was greater than $90,000. In July, 1999, an agreed order was entered increasing support to $1,603 per month. A financial affidavit filed at that time showed his net income as $5,208 per month.

In April, 2000, David sought modification. He testified he had voluntarily left his $90,000 a year job to work at a new company, where he expected an annual gross income of $60,000, but with opportunities for greater growth and income. His petition was denied, the court finding his change in employment was not made in good faith. He did not appeal that order.

In September, 2002, David filed another reduction petition, saying he had been involuntarily terminated from the latest job. When the matter was heard in May, 2003, evidence indicated his gross income from new employment would be approximately $66,661 per year. After taking the matter under advisement the Court denied the reduction, finding no substantial change in circumstances since the May, 2000 denial of his previous petition. David appeals.

Affirmed. If David was trying to argue a substantial change since the original 1997 order, he was wrong. "The issue on a petition for modification of child support is whether there has been a material [i.e., substantial] change in the circumstances of the parties since the previous order." The Court considered the correct time frame and did not err in finding no changed circumstances justifying modification.

Supreme Court: UIFSA Does Not Bar Illinois Court's Jurisdiction to Enforce Support Order After All Parties Leave the State

Zaabel v. Konetski, ___ Ill. 2d ___, ___ N.E. 2d ____ (No. 96581, 3/11/04), denied an original petition for prohibition against proceedings to enforce provisions of a child support order.

In their 1986 DuPage County divorce, Jerry was ordered to pay certain extraordinary medical expenses for the children, and each party was to pay toward the children's college expenses. Doris and the children moved to Iowa, and Jerry moved to Arizona. In 2001 an agreed order was entered requiring Jerry to pay $7,000 for medical expenses and $750 per semester toward college expenses of one of the children

In February, 2003, Doris filed a contempt petition for payment of past due extraordinary medical expenses, contribution toward college expenses for both children, confirmation of a life insurance policy and attorney's fees. After his motion to dismiss for want of jurisdiction was denied in the Circuit Court he filed a petition with the Supreme Court for a writ of prohibition against the circuit court proceedings.

Writ denied. First, Jerry failed to meet his burden to show that he is without any other adequate remedy, such as through the normal appellate process. Nevertheless the Court addressed his jurisdictional argument to provide guidance on the issue raised.

Jerry argues that § 205 of UIFSA deprives the circuit court of subject matted jurisdiction. Section 205 (a) provides that the Illinois court has continuing, exclusive jurisdiction over a child support order "(1) as long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or (2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction." The Court concluded this section is ambiguous with regard to whether continuing exclusive jurisdiction is lost in the circumstances of this case, where all relevant persons reside outside Illinois but not all parties have filed consent to jurisdiction elsewhere.

But regardless of the ambiguity of § 205 (a), it is clear the drafters of UIFSA intended it only to apply to jurisdiction to *modify* support, not jurisdiction to *enforce* an order. "We conclude that section 205(a) of the Act does not apply to the circuit court's jurisdiction to enforce its support order." Since Jerry has not even attempted to establish that Doris' petition is seeking modification he has not established that the circuit court lacks subject matter jurisdiction, and his writ is denied.

(Cont'd from page 1)

- As of April 2002, about 63 percent of custodial mothers and 39 percent of custodial fathers had child support agreed on or awarded to them.

- About two-thirds of custodial parents did not contact the government for child support assistance. However, this does not mean they are not receiving child support.

- About 5.9 million custodial parents did not have a legal child support agreement. When asked why, 33 percent of the reasons mentioned by custodial parents had to do with not feeling the need to make the child support relationship a legal one, and 26 percent of the reasons cited had to do with feeling that the other parent was already providing what he or she could.

- About 6-in-10 of the 7.9 million child support agreements in 2001 had health insurance provisions for the children.

The data were collected from April supplements to the Current Population Survey, cosponsored by the Census Bureau and the Department of Health and Human Services' Office of Child Support Enforcement. Statistics from sample surveys are subject to sampling and nonsampling error.

The report is available on the Census Bureau web site at http://www.census.gov/prod/2003pubs/p60-225.pdf.

Source: U.S. Census Bureau | Public Information Office | (301) 763-3030
http://www.census.gov/Press-Release/www/releases/archives/families_households/001575.html

(Submitted by Thomas P. Sweeney)

Governor Unveils "Deadbeat" Parent Web Site

Administration cracks down on child support scofflaws

Web site one piece of overall plan to reform Illinois' Child Support system

SPRINGFIELD: Launching a high tech weapon against parents who shirk their child support obligations, the Illinois Department of Public Aid's Division of Child Support Enforcement on November 24, 2003, unveiled a Web site featuring photos of the state's worst "deadbeats."

The new Web site – located at www.ilchildsupport.com/deadbeats – is intended to shine a spotlight on deadbeat parents who abandon their kids and refuse to pay their fair share for their children's upbringing. It is also meant to have a powerful deterrent effect on parents who may be eligible but not yet included on the Web site.

"The Blagojevich Administration is sending a clear message to parents who think they can thumb their noses at the law and hide in the shadows," said Public Aid Director Barry S. Maram. "We are going to expose them to the light of day."

The new Web site – the most visible element of the Blagojevich administration's sweeping efforts to overhaul and reinvigorate the state's Child Support Enforcement system -- can be listed with other achievements this year including the roll out of a state-of-the art customer service phone system and a revamping of the intake process. The agency has also recorded sharp increases in the percentages of support orders enforced and current collections received. The Illinois Department of Public Aid has also successfully turned over operation of the State Disbursement Unit to a private contractor, ACS State and Local Solutions, which processes over 500,000 child support checks each month while saving the state $9 million a year.

The deadbeat Web site, which was authorized by state law, will feature photos of the state's most egregious delinquent parents, some of whom owe over $85,000.

To be eligible for inclusion on the site, a delinquent parent must owe more than $5,000 in past due child support based on an Illinois court or administrative order.

In addition, the department requires that the custodial parent in the case must agree to have the case publicized.

"This is just one more enforcement tool the department can now use to enforce compliance with child support obligations," said Child Support Enforcement Administrator Lonnie Nasatir. "We think shame can be a powerful motivating force."

The Department is also publicizing the cases in the hope that members of the public who may have information about income or property owned by the delinquent parents will contact officials via the Web site.

The agency uses a number of tools to recover unpaid child support, including: intercepting state and federal tax refunds; suspending Illinois professional licenses; placing liens on real and

personal property; collaborating with the Illinois Department of Revenue and private collection agencies; and reporting the debt to credit reporting agencies.

Following are some of the Division of Child Support Enforcement's (DCSE) notable achievements in the first year of the Blagojevich Administration:

- In line with Governor Blagojevich's pledge to reform and renew state government, DCSE is re-inventing the way it does business: Customer Service phone lines have been consolidated into a centralized call center offering answers to the most frequently asked questions 7 days a week, 24 hours a day, via an automated voice response system; also, the intake process is being revised so that new cases are being handled more efficiently.

- DCSE recorded impressive statistical improvements, with an 8.1 percent increase in the percentage of current collections, from 39.1 percent in federal fiscal year 2002 to 47 percent in 2003; and a 5.9 percent gain in the percentage of support orders enforced, from 40.8 percent to 46.7 percent.

- DCSE successfully turned over operation of the State Disbursement Unit (SDU) to an outside vendor this summer, saving the state $9 million a year, and avoiding the problems that surrounded the initial implementation of the SDU in 1999. A high tech call-in center at the SDU gives customers access to payment and other information about their case through a 24-hour-a-day automated voice response system. If they need to speak to a live operator, the waiting time is less than one minute.

- DCSE's Community Outreach program has won praise for its innovative approach to solving the problems of clients. The initiatives include: a federally-funded Access and Visitation project; participation in a federally-funded project to help former prisoners re-integrate with their families; outreach to parents at WIC and Headstart Centers; training for hospitals in helping parents voluntarily establish parentage; and services to help non-custodial parents find employment or obtain other vital support programs.

- In recent weeks, the Division has collaborated with representatives from the armed forces, the Attorney General, the Lt. Governor, and private attorneys to take a burden off the backs of military reservists. The task force devised procedures to modify the child support orders based on the reduced military income for approximately 2,000 military reservists in Illinois. Illinois is one of the first states in the nation to identify and solve this problem.

The Department of Public Aid (IDPA) is the agency responsible for the state's Medicaid programs, which include KidCare, FamilyCare and SeniorCare. The agency also oversees the Division of Child Support Enforcement, which is responsible for helping parents establish paternity and obtain child support orders.

Fifteenth Annual IFSEA Members' Meeting and Annual Conference Recap

The Illinois Family Support Enforcement Association's 15th Annual Member's Meeting and Annual Conference on Support Enforcement was held October 19-21, 2003 in East Peoria, Illinois. The Conference, held at the Stony Creek Inn, drew approximately 150 attendees.

The Conference opened with Honorable Harry Bulkeley, Circuit Judge from Galesburg, who delivered an insightful talk about the judicial process to approximately 100 members at Sunday night's dinner. Monday morning, IFSEA Members received a special treat—Attorney General Lisa Madigan arrived and delivered the Attorney General Update.

This year's agenda was filled with interesting plenary sessions and workshops. Some favorites were Military Support Issues, Bankruptcy Issues, Certification of IV-D Staff and Interstate Issues. Several attendees complimented the organization and content of the agenda.

At the Annual Members Meeting, the following members were elected to the IFSEA Board of Directors for the 2003-2005 term:

- From Region 1: James Ryan and Norris Stevenson
- From Region 2: Jeffrey McKinley, Lawrence Nelson, Yvette Perez-Trevino, and Nancy Schuster-Waites
- From Region 3: Cheryl Drda, Mary Manning, Thomas Vaught and Christine Kovach

IFSEA 2002-2003 President Yvette Perez-Trevino appointed Yehuda Lebovits and Daun Perino as At Large Directors to serve a one-year term.

The Board of Director's Meeting was held following the close of the conference. The following officers were elected for 2003-2004: President, Scott Michalec; First Vice-President, Christa Fuller; Second Vice-President, Christine Kovach; Treasurer, James Ryan; and Secretary, Pamela Compton. Plans were discussed for the next conference which will be held October 17 – 19, 2004 in Matteson, Illinois. A meeting was also set for early June, 2004 to discuss legislative proposals for next year. Members who wish to participate in the meeting should contact Christine Kovach, 2nd Vice President and Chair of the Legislative Committee, by email or by sending her a note.

Overall, the 2003 IFSEA Annual Conference was a success that was enjoyed by all attendees. Scott Michalec, President of IFSEA, attributed this success to the valuable team that helped him. "I'd like to thank everyone who helped, plan prepare and run the conference. Especially my legal assistant, Erin Hoffman, and everyone else from my office."

(Submitted by Christa Ballew)

2004 IFSEA Conference

The 16th Annual IFSEA Members' Meeting and Conference will take place October 17 –19, 2004 at the Holiday Inn in Matteson, IL. Many exciting things are being planned for this year's event. More details will be announced in the next *FORUM.*

ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
Application for Membership / Address Correction

Please: [ ] accept my application for membership in IFSEA. [ ] correct my address as noted below.

[ ] Regular membership - please enclose $20.00 annual dues.
[ ] Subscription membership - please enclose $20.00 annual fee.
[ ] Affiliate membership - (dues to be determined by Directors upon acceptance).

Applicant's Name:
_____

Position/Title:
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Is this a [ ] New Application [ ] Renewal [ ] Address Correction ONLY?
Please return with dues to: IFSEA, P. O. Box 370, Tolono, IL 61880-0370

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