CHILD SUPPORT LAW IN OKLAHOMA

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§ 1. SCOPE, LIMITATIONS & ORGANIZATION.

A. Introduction. At its core, only two statutes are required to be understood in setting either original or modification child support in Oklahoma: 43 O.S. §118 (the Child Support Guidelines statute) and 43 O.S. §119 (the Child Support Guideline Schedule). As is noted in §8, no "official" Child Support Computation Form exists under 43 O.S. §120. See §9 for the text of the foregoing and other principal statutes.

B. Limitations. Even though this paper attempts to identify all principal issues associated with child support computation, it does not attempt to present all case law authorities which may exist as to all of the various child support issues. Of course, case law development as to various child support computation issues is an ongoing process – neither this paper nor any like it are a substitute for your own independent research.

C. Scope, Organization & Index. This paper does not fully develop all child support issues – the focus is the computation methodology and principal child support issues other than particular issues presented which are unique to cases involving the Department of Human Services. That said, many other child support "legal" issues are also covered, as follows (click links to move to topics):

Most Oklahoma appellate decisions cited herein are decisions by the Oklahoma Court of Civil Appeals. If a COCA decision cited herein has been "Approved For Publication by the Supreme Court", it will be noted in the particular case's footnote.[1]

§ 2. FOCUS OF PAPER.

A primary focus in the federalization of family law has been the establishment and collection of child support. For the most part, gone are the days of "per head" bartering between the parties over what's to be paid. Since 1987, guidelines have been in place with the following predictable results: Child support awards are for the most part higher, uniform in amount and consistent, i.e. the non-custodial parent, regardless of sex, will pay support. This paper discusses the current child support guidelines in Oklahoma, the procedure used to calculate support and most every other issue that attorneys can "lawyer" to the court.

§ 3. THE PRIMARY COMPUTATION STATUTES.

A. History. Oklahoma's initial child support guidelines were issued by the Oklahoma Supreme Court as a Court Rule and became effective September 30, 1987. See ***Manzanares v. Manzanares*** for that history.[2] Those guidelines were replaced by the Legislature's versions, the first of which became effective on June 20, 1988. The initial codification was in Title 12, Civil Procedure, 12 O.S. §1277.7 (guidelines) and 12 O.S. §1277.8 (the computation table). Like most other divorce/custody/support statutes, the statutes were renumbered in 1989 to their current location in Title 43. Although the Legislature adopted minor changes from 1988 through 1998, the changes were relatively minor and the computation table remained the same.

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[1] COCA published decisions are accorded "persuasive" value, unless an opinion bears the notation "Approved for publication by the Supreme Court", in which case "precedential" value is accorded the opinion. 12 O.S., Appendix 1, Oklahoma Supreme Court Rule 1.200(c)(2).

[2] *Manzanares v. Manzanares*, 1989 OK 24, 769, 769 P.2d 156.

However, in 1999, in legislation sponsored by the Oklahoma Department of Human Services and adopted by the Legislature, far more substantive changes became effective on November 1, 1999. The §119 Schedule was totally rewritten. Generally, the Schedule's amounts increased at most income levels, but not all. And, while the 1988 Schedule "topped out" at $10,000 monthly combined parental income amount, the 1999 Schedule added amounts through $15,000 a month. But, as affects computation methodology, totally new computation factors were added to the in §118 mix: The computation method used for more than a decade would continue to be used ***unless*** (1) the custodial parent was entitled to the federal earned income credit and/or (2) child care tax credit, and/or (3) the non-custodial parent's annual visitation nights with the child/children was greater than ninety-two (92) nights, a circumstance described as "shared parenting". For each such event, specific additional computation steps were required to be made – none of which were clearly stated in the new statute – i.e., the statute was so poorly drafted that the computation methodology associated with each such possible variance was the subject of heated statewide consternation. Another new feature of the 1999 law was the manner in which it treated the obligee's work/school related child care expense: (1) An annual (not monthly) amount would be figured, and (2) as part of "base support", the obligor would pay 1/12th of that amount as part of base support, regardless of whether the amount of child care expense increased, decreased, or stopped entirely. Changes were made to §120 which required the Court Administrator's Office to publish an "official" Child Support Computation Form – the form that it received from the Oklahoma Department of Human Services.

Reaction to the 1999 legislation amongst bench and bar was not tepid. Some judges flatly refused to apply the §118 changes. Issues were raised in various individual cases challenging the poorly written legislative text. And, the Oklahoma Bar Association adopted as part of its 2000 legislative program a proposed bill which was initially written and sponsored by the OBA Family Law Section. Among other things, the proposed legislation would have done away with 1999's special treatment and computation for (1) earned income credit, (2) child care tax deduction, and (3) shared parenting, even though the trial judge would have had the discretionary ability to adjust child support for larger than typical amounts of visitation. In the end, the Legislature did eliminate the changes concerning (1) and (2) but not (3). However, to qualify for "shared parenting" computation, the child support obligor's annual visitation nights with the child/children was increased from 1999's ninety-three (93) threshold to one-hundred twenty-one (121). The annualized child care expense was dumped and the amount is no longer part of "base support."[3] Now, as was true before 1999, child care expense (and, in the 2000 legislation, such expense of either parent, not just the obligee) floats as actual amounts of child care expense are incurred. Additionally, §120 was amended to eliminate an "official" computation form being published by anyone, including the Department of Human Services. Two 2000 bills were actually passed,

[3] The Oklahoma Department of Human Services, Child Support Enforcement, may view the point differently. However, this author is unaware of other professionals sharing that possible perspective.

one in the regular and another in a special Legislative Session. Each bill passed with an emergency clause and was effective when signed by the Governor. For more detail about all this, see "What's The Deal on Child Support Guidelines Circa 2000?" at **http://www.dougloudenback.com** in the "Miscellaneous" Family Law Resources area.

B. Theoretical Approach. All Oklahoma child support guideline versions have embraced the "income shares" model of determining child support.[4] Generally, the "income shares" approach means that (a) children should be the least to be affected by the economic consequences of divorce, meaning that they should be supported as much as possible in a manner commensurate with their parents' income level after divorce much as they were before divorce; (b) families at different income levels tend to spend varying amounts directly or indirectly for the support of their children; and (c) parent's should contribute to the support of their children in a manner which is proportionate to each parent's percentage of combined parental income. Putting theory into practice, a "Child Support Schedule" (43 O.S. §119) shows the amounts of direct and indirect support that families at particular family income levels are presumed to spend on their children and, as is explained in the Child Support Guidelines statute (43 O.S. §118), the child support "obligor" would ordinarily be required to pay his/her proportionate share of the §119 amount as "base support". The same approach is applied to actual health insurance premiums attributable to the children and to work/school related child care expenses of either parent, even though child care expenses are no longer part of "base support".[5]

§ 4. HOW TO DO A BASIC CHILD SUPPORT COMPUTATION. This section avoids disputed issues and merely illustrates the method used to compute child support after any such issues have been resolved. Here, "shared parenting" is not considered – unless a shared parenting situation exists, that computation is unnecessary. For the Shared Parenting Computation Method, **see §5**, below.

[4] See ***McKee v. McKee***, 1991 OK CIV APP 116, 820 P.2d 1362 which discusses the approach as well as the federal mandate to adopt child support guidelines. Also, see the Supreme Court's more recent discussion in ***Kerby v. Kerby***, 2002 OK 91, ¶7, 60 P.3d 1038.

[5] See Note 3, above. Strictly speaking, "base support" is the obligor's share of the amount in the §119 Child Support Schedule and an up or down adjustment for his/her share of the health insurance premium(s) attributable to the child/children. And, note that 1999's §118 included the obligee's work/school related child care expense as part of "base support", but that such inclusion was abandoned in the 2000 legislation amending §118. In the current law, child care expense of either parent is proportionately divided.

Six (6) core elements exist in the basic computation process. Identity: (1) the obligor;[6] (2) the number of children, up to six;[7] (3) each party's monthly gross income;[8] (4) whether any statutory adjustments are applicable to a party's monthly gross income;[9] (5) the health insurance premiums being paid by either party for a child's health insurance, if any;[10] and (6) the work/school related child care expenses of either party.[11] These elements enable child support computation in its simplest form and a basic child support computation can be fairly simply accomplished.

To illustrate this computation, let's do a an exemplary computation: Assume these "givens": (1) the mother is the "obligee" and the father is the "obligor"; (2) the parties have two minor children; (3) the father's gross monthly income is $3,640 and the mother's gross monthly income is $5,035; (4) the father is paying $200 monthly child support in another case but no "adjustments" are present for the mother's income; (5) the father is maintaining health insurance for the children at a cost of $75 per month; and (6) the mother is paying work related child care expense of $350.

Step 1: Determine each parent's adjusted gross income and add the numbers together to arrive at monthly parental income:

Father's Gross Income:	$ 3,640	
Less Other Child Support He Pays:	(200)	
Father's Adjusted Income:	3,440	$3,440
Mother's Adjusted Gross Income:	5,035	5,035
Combined Parental Monthly Gross Income:		$ 8,475

[6] §118.D.: "For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee."

[7] See §119 – the vertical column for six children reads, "Six Children or More." However, text at the end of the Schedule reads, "C. If there are more than six children, the child support shall be that amount computed for six children and an additional amount determined by the court."

[8] §118.E.2.a.(1): "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section." While the statute does not specifically say that "gross income" is pre-tax income, that is the plain meaning of the statute and the statute makes no "exclusions" from "gross income" of any tax liability which may be due on "gross income".

[9] Here, "statutory adjustments" means deductions specifically identified in §118 which may reduce a party's "gross" income to an "adjusted" gross income: child support or support alimony being paid in other cases – see §118.E.2.b.(1) and §118.E.5 for child support; see §118.E.5. concerning support alimony; and see §118.E.7. concerning discretionary deductions for divorce-related marital debt.

[10] See §118.E.11: "a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation."

[11] See §118.E.13.

Step 2: Go to the §119 Child Support Schedule to determine the amount that both parents' combined support to the children would be for $8,475 combined monthly income. An excerpt from that table looks like this:

If Combined Gross Monthly Income Is Equal to or Above	Number of children 1	2	3	4	5	6
8,450	938	1,351	1,583	1,749	1,896	2,029
8,500	**943**	**1,357**	**1,590**	**1,757**	**1,905**	**2,038**
8,550	949	1,363	1,597	1,765	1,913	2,047
8,600	**954**	**1,369**	**1,605**	**1,773**	**1,922**	**2,057**
8,650	959	1,375	1,612	1,781	1,931	2,066

Note that combined parental income is greater than $8,450 but is less than $8,500. So, $8,450 identifies the correct row. On that row, **$1,351** is identified as the amount of support that **both** parents would be expected to contribute for two children.

Step 3: Determine each parent's percentage of the combined parental income

Father's Income	÷	Parental Income	=	Father's % of Combined Income
3,440	÷	8,475	=	0.406 (41% or 40.6%)

Mother's Income	÷	Parental Income	=	Mother's % of Combined Income
5,035	÷	8,475	=	0.594 (59% or 59.4%)

Step 4: Multiple the Schedule Amount x the father's (obligor's) percentage

Schedule Amount	x	Father's %	=	Preliminary Base Support
$ 1,351	x	0.406	=	$548.51

Step 5: Adjust preliminary base support for health insurance cost

In this example, the father is paying all of the health insurance cost for the children to a 3rd party, probably through his employer. That cost is $75 a month. His "share" of that expense is $30.45 ($75 x 0.406). The mother's share is $44.55 ($75 x 0.594). Since the father is already paying both his and the mother's share of health insurance cost to a 3rd party, he should receive a credit against his child support. So, add the father's base support, the father's share of the insurance premium, and subtract the amount he is paying for the insurance:

Father's Base Support	+ Father's Ins Share	- Ins Prem Paid	= Adjusted Base Spt
$ 548.51	+ 30.45	- 75.00	= $ 503.96

NOTE: If, in this example, the mother is paying the $75 health insurance premium, she would be paying both her share and the father's share of the premium to a 3rd party. In that event, the father's share of the premium ($30.45) would be *added* to the

father's base child support obligation to the mother, resulting in an adjusted base child support to the mother of $578.96.[12]

PRACTICE TIP: Health insurance paid by either party for children insurance counts. All such health insurance premiums should be computed and prorated. Add the premiums and determine the obligor's share, and use the same formula shown above.

Step 6: Determine the amount of the father's child care expense

Note that an annualized child care expense divided by 12 months to arrive at a monthly amount, and which monthly amount was then added to and became a part of "base support", only existed between November 1, 1999, and June 6, 2000, at which time §118 was amended to dump this trash.[13] Now, as was true before November 1, 1999, child care expense "floats" based upon the actual expense.[14]

Father's %	x	Current Child Care Expense	=	Father's Child Care
0.406	x	$ 350	=	$ 142.10

PRACTICE TIP: Under the 2000 statutes, if either party incurs work/school child care expense, it counts. Be sure to calculate child care expense for both parents, not only the custodial parent, and prorate the total amounts. Child Support software makes this an easy thing to do.

Step 7: Add base support and child care expense share

This results in the "bottom line" financial obligation the father is required to pay to the mother unless/until child care expense changes. If/when it does, the child care share should be recomputed as shown in Step 6.

Father's Base Support	+	Father's Child Care Share	=	Monthly
$ 503.96	+	142.10	=	$646.06

[12] §118.E.11: "b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium. c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;".

[13] Here, the author exercises his license and prerogative, as this document's author, to express his personal opinion. The author's personal opinion does not necessarily represent the viewpoint of the OBA Family Law Section, which may not express such an opinion absent approval by the OBA Board of Governors.

[14] Compare the current §118.E.13 with 1999's §118.B.13, a portion of the latter of which read: "a. Child care expenses ***shall be added to the base child support obligation***. Child care expenses are actual costs incurred on behalf of a child to allow a ***custodial parent*** to: (1) be employed, (2) seek employment, or (3) attend school or training to enhance employment income." That text was removed in §118's 2000 revision. Also, see the current §118.E.13.c, requiring timely documentation concerning change in child care cost.

§ 5. HOW TO DO A SHARED PARENTING COMPUTATION.

A. Shared Parenting Time. The term means that, "each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year."[15] So, if under the visitation order, the child support obligor has between 121 and 244 visitation nights, shared parenting computations should occur.[16] The statute does not explain any method to be used in calculating the number of visitation nights. It does not state the consequence, if any, if visitation nights awarded to a party are not exercised. Although the theoretical underpinning of the shared parenting adjustment is that the visiting parent will incur greater expense in caring for the children,[17] the statute makes no requirement that such additional expense be incurred by the visiting parent.

PRACTICE TIP: For Shared Parenting Orders, consider including in your court order language addressing the expectations that the non-custodial parent will exercise the specified visitation and/or will share in the costs of child rearing, over and above child support requirements, and addressing the prospects of the order being modified if such events do not occur.

The shared parenting computation only affects an obligor's initial base support (i.e., base support before it is adjusted for health insurance computations). The obligor pays the same percentage of health insurance and child care expense as was shown in **§4, Steps 5 and 6**. And, note that *the shared parenting calculation will have far greater impact on base support if the obligor has less income than the obligee*. See the comparative differences in the **Step 7 example**, below.

B. Computing Nights. To determine whether the shared parenting computations are appropriate, it must be determined whether the number of visitation nights under a particular visitation order exceeds 120 nights per year. As noted above, the statute provides no method for computing nights, and, in practice, such computation is no science and may not even be an art. For example, using the present Oklahoma County Standard Visitation Schedule, which, among other things, provides for alternating three-night regular weekend visitation (Friday, Saturday, Sunday nights), over a two year period using "real" calendar times can produce a *6.5 night variance solely depending upon the particular weekend chosen to start the alternating weekend visitation cycle!* So, even using a two year average based on "real" calendar times may very well produce an arbitrary, if not misleading, computation of visitation nights. A

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[15] §118.E.10.a.

[16] Under §118.E.10.a., such computation does not appear to be discretionary: "In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation **shall be adjusted**."

[17] S. Ray L. Weaver, "Shared Parenting – A New Element for the Child Support Formula in Oklahoma", Vol. 14, No. 2, *Oklahoma Family Law Journal* (June 1999, p. 5).

one-year computation method can produce even more arbitrary and misleading results. A possible solution to such an arbitrary approach may be to use "generic" calendar months instead of "real" ones – i.e., a mathematical formula which does not use "real" calendars except to the extent that certain months always contain a certain number of days (and, even February can be averaged over a four year cycle).[18] In any event, computation of visitation nights is not as simple as computing the specific visitation periods for which provision is made in a visitation order. Under all visitation orders of which I am aware, both parents have certain specified holidays, typically on an odd/even year rotating cycle. That fact, combined with the fact that holiday and summer visitation will produce overlap with alternating weekend visitation, renders any simplistic "count the visitation nights" under the order approach wholly inaccurate. For example, a two consecutive week visitation in June may very well overlap Father's Day weekend, as well as some portion of an alternating weekend visitation period. And, even though the Father might be entitled to alternating weekend visitation, if that visitation falls during Mother's Day weekend, one to three days of the father's alternating weekend visitation may be lost. What's the solution to this computation quagmire (aside from getting rid of the statute altogether)? None is known to this writer, other than what's been said about using a "generic month" approach – and that method isn't perfect, either.

PRACTICE TIP: If "real time" calendar months are used to calculate shared parenting nights, be wary. NEVER trust only one year calendars and two year calendars aren't much better. "Real time" calendars are not indicative of variations in visitation cycles which occur over time and the cyclical variance that occurs during that time, especially if only one or two years is "looked at". And, when using "real time" calendars, be aware of the impact on visitation nights of the particular weekend that the alternating weekend cycle begins.

C. Doing The Computations. Assuming that a specific number of visitation nights is determined, and knowing the already stated "givens" for doing the child support computation which were described in §4, above, you are then ready to compute the adjustment for shared parenting under §118.E.10, subsections b through f. In the following steps, the same data used in §4 is used – the father is the obligor; 2 children; the father's adjusted gross income is $3,440 and the mother's is $5,035. To that, we add shared parenting nights at 130 nights a year.

Step 1: Do the basic computation described in **§4, above**. You must determine the ordinary combined support amount (the number in §119's Child Support Schedule) and the obligor's ordinary "base" support before doing the shared parenting computations. From that, we know that the combined support form

[18] The "generic" approach is Grande Macros to compute shared parenting nights since this author thinks that it eliminates problems such as the particular weekend that commences an alternating weekend visitation cycle and minimizes other arbitrary factors, as well.

§119's Child Support Schedule is $1,351 and that the father's base support, **before** adjustment for health insurance, is $548.51.

Step 2: Multiply the combined support amount by 1.5. The result is called the "adjusted combined child support obligation", ACCSO for short. §118.E.10.b.

Combined Schedule Amount	x	1.5	=	ACCSO
$1,351	x	1.5	=	$2,026.50

Step 3: Determine each parent's share of the ACCSO amount from Step 2 by multiplying the ACCSO amount by each parent's percentage of income. §118.E.10.c.

ACCSO	x	Father's %	=	FR ACCSO	ACCSO	x	Mother's %	=	MR ACCSO
$2,026.50	x	0.406	=	$ 822.76	$2,026.50	x	0.594	=	$1,203.74

Step 4: Determine each parent's annual percentage of nights. §118.E.10.d.(1).

FR's Nights	÷	365	=	FR's Night %	MR's Nights	÷	365	=	MR's Nights %
130	÷	365	=	0.356	235	÷	365	=	0.644

Step 5: Multiply each parent's ACCSO share by the other parent's % of nights. §118.E.10.d.(2). This produces the adjusted amount that each parent would pay to the other as "base support".

FR ACCSO	x	MR's Nights	=	FR #	MR ACCSO	x	FR's Nights	=	MR #
$8.224.76	x	0.644	=	$529.86	$1,203.74	x	0.356	=	$428.53

Step 6: Subtract the obligor's Step 5 amount less the obligee's Step 5 amount. §118.E.10.d.(3). Under the current statute (but not so under the 1999 statute), the obligee cannot wind up owing the obligor base child support, regardless of the following:

Obligor's Step 5 Amount	-	Obligee's Step 5 Amount	=	SP Base Support
$529.86	-	428.53	=	$101.33

Step 7: Compare the obligor's regular base support with the result in Step 6. Use the smaller amount for the Obligor's base support. §118.E.10.e. The amount cannot be less than zero. §118.E.10.f. Using the exemplar facts contained in both §4 and §5, since the base support computed in §4, Step 4 ($548.51) is greater than the amount computed at Step 6, above ($101.33), the Father's preliminary base child support becomes **$101.33** instead of **$548.51 – 18.57%** of what it was before shared parenting!

As was noted in §5.A, the shared parenting calculation has a much greater impact upon base support if the obligor has less income than the obligee. Without showing computation detail, if the parental incomes shown in the above example are reversed (the obligor's adjusted gross income is $5,035 and the obligee's is $3,440), the father's shared parenting base support would be reduced from **$802.49** to **$482.31** – **60.1%** of what it was before shared parenting.

PRACTICE TIP: If the non-custodial parent's income is less than the custodial parent's, be aware that non-custodial parent has much more to gain, and the custodial parent has much more to lose in a shared parenting calculation.

Step 8: The shared parenting computation does not affect distribution of health insurance cost of child care cost. Complete computation for these items as shown in **§4, Steps 5 through 7**, but substituting the obligor's regular base support number with the number resulting from the above steps. Those final steps are not duplicated here.

§ 6. COMPUTATION AVOIDANCE. Well, maybe that's a misstatement – the computations have to be done either by you manually or for you using someone's Oklahoma Child Support Computation software. This writer is aware of three (3) "programs" which do all of the above automatically (§4 and §5) so that you don't have to stretch your brain cells unnecessarily. Two cost money, but the least expensive is free! Tulsa County Judge Charles Hogshead has ingenuously designed an Internet resource in which you just enter raw data, such as has been described above, and an on-line computation is performed and a Child Support Computation Form is ready to print for your case. The Internet link is shown below. And, the two commercial software programs which do all of this for you are described as well.

A. Judge Charles Hogshead's Internet Site. A part of Tulsa County's Families In Transition (FIT) website, anyone can enter core child support data and get an immediate on-line computation result as well as a Child Support Computation Form which is immediately printable on-line.

Web Address: **http://216.247.165.133/FIT/CODE/ASP/ChildSupportAgreement.htm**

Advantages: 100% free; not software dependent but works behind the scenes during your Internet connection; fast

Disadvantages: Internet connection required for use; no shared parenting nights assistant to help compute shared parenting nights – you must determine the shared parenting nights manually; computations are limited to the 2000 statutory version; other than child support computation, no other family law documents are produced by the program

Cost: Free

B. William Redak's Custom Legal Software Site. Bill Redak's excellent Oklahoma Child Support Software can be accessed, reviewed, and ordered at:

Web Address: **http://www.legalmath.com/oklahomachildsupport/index.htm**

Advantages: The main advantage to Bill's program is that it is a "stand alone" program and does require, or work within, any word processing or other software.

Disadvantages: The Child Support Computation Forms are not easily editable in your word processing software; no shared parenting nights assistance is included – you must determine the shared parenting nights manually; computations are limited to the 2000 statutory version; other than child support computation, no other family law documents are produced by the program.

Cost: $160

C. Doug Loudenback's Grande Macros. For use in WordPerfect 8.0 and higher, it includes Child Support Computation and all related child support forms and can be accessed, reviewed and/or ordered at the following Internet address:

Web Address: **http://www.dougloudenback.com/grande1.htm**

Advantages: Makes scores of family law documents, appellate court documents, discovery, civil pleadings, etc., in addition to Child Support Computations and related forms, such as the Court Administrator's forms, income assignment forms, and many others; assists in the computation of shared parenting nights based on a "generic" month approach – select the alternating weekend visitation pattern (if any), any midweek overnight visitation the holidays for each parent, and the summer visitation, and an estimated number of visitation overnights will be computed, together will available reports concerning the same; all reports and forms are completely editable in WordPerfect

Disadvantages: Not a stand-alone program and requires WordPerfect for Windows 8.0, 9.0, 10.0, 11.0, or 12.0; will not work with any other word processing software, such as Microsoft Word.

Cost: $145 or $150 for new purchasers, less for recently upgrading licensees

Child Support Computation Only – Cost to Judges: Free – downloadable by judges at **http://www.dougloudenback.com/judge.htm**

§ 7. CHILD SUPPORT ISSUES.

In this section, the "Guidelines" means 43 O.S. §118 and §119.

A. Duty To Order Support. In addition to the Guidelines, it must also be kept in mind that a Court has a duty to set child support under 43 O.S. §112. Note this language from ***Bailey v. Bailey***: [19]

> ¶4 The fact that the decree was originally silent as to child support is of no consequence. We have described imposing child support obligations as a "statutory duty", *Jones v. Jones*, 402 P.2d 272, 274 (Okla. 1965), and explained that the authority of the trial court to impose an obligation of supporting minor children "either at the time of or after judgment, in a divorce," arose from 12 O.S.Supp. 1974 §1277 , now codified at 43 O.S. §112. *LeCrone v. LeCrone*, 596 P.2d 1262, 1264 (Okla. 1979). Similarly, in *Wade v. Wade*, 570 P.2d 337 (Okla. 1977) we stated that "the trial court must provide for the support of minor children and it is an abuse of discretion to do otherwise." Id. 570 P.2d at 339. * * *

State Dept. of Human Services ex rel. K.A.G. v. T.D.G. [20] makes crystal clear that an agreement between parents (in this case, never married parents) which would waive child support is void and unenforceable. Similarly, see ***Hensley v. Hensley***.[21]

And, see ***Anderson v. Anderson*** (reversing a trial court's *sua sponte* order establishing joint custody and its order that no support be paid by the mother, and, on

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[19] *Bailey v. Bailey*, 1994 OK 6, 867 P.2d 1267.

[20] *State Dept. of Human Services ex rel. K.A.G. v. T.D.G.*, 1993 OK 126, 861 P.2d 990.

[21] *Hensley v. Hensley*, 2000 OK CIV APP 34, 1 P.3d 446.

remand, directing that support be set per the Guidelines).[22] But, compare *Anderson* with ***Miles v. Young*** [23] where the father was awarded custody in a paternity action but the trial court ordered no support until the mother became employed:

> ¶35 Lastly, Miles asserts Young should have been ordered by the trial court to pay child support. In its order, the trial court found Young unable to pay child support because she was unemployed, but ordered her to notify Miles and the court when she became employed so a child support computation could be made under statutory guidelines.
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> ¶36 Miles cites several legal authorities, only one of which is of apparent application under the facts here - 43 O.S. §118. Section 118, which sets out our child support guidelines, provides for deviation from the guidelines when ordering support would be "unjust, inequitable, unreasonable or inappropriate". Under the circumstances of this case, we do not find deviation is improper.

And, the issue of child support need not be specifically plead in a child custody pleading to support a valid child support order entered in the case, even upon the default of the responding party. ***State ex rel. Huffman v. Robertson***. [24]

B. Presumptive Amount of Support. Unless parties represented by counsel have agreed to a different disposition (§118.A.; ***Thrash v. Thrash*** [25]), child support calculated by the Guidelines is presumed to be the correct amount of child support to be awarded and a rebuttable presumption exists to that effect. §118.A.; ***Lockhart v. Lockhart***. [26] The Guidelines establish both the presumed needs of the children and the parties' ability to pay. ***Archer v. Archer***. [27]

The child support table establishes the financial needs of children based on their parent's ability to pay. ***Kerby v. Kerby***. [28]

The amount of support requested in a pleading is apparently not a limitation on the ability of the Court to enter a higher amount, even if the judgment is obtained by

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[22] *Anderson v. Anderson,* 1990 OK CIV APP 23, ¶12, 791 P.2d 116.

[23] *Miles v. Young*, 1991 OK CIV APP 101, ¶s 35 - 38, 818 P.2d 1258.

[24] *State ex rel. Huffman v. Robertson*, 1993 OK CIV APP 71, ¶18, 853 P.2d 249.

[25] *Thrash v. Thrash*, 1991 OK 32, ¶7, 809 P.2d 665.

[26] *Lockhart v. Lockhart*, 1996 OK CIV APP 56, ¶s 5-6, 919 P.2d 454.

[27] *Archer v. Archer*, 1991 OK CIV APP 28, ¶9, 813 P.2d 1059, approved by Supreme Court for publication. See Note 1, *infra*.

[28] *Kerby v. Kerby*, 2002 OK 91, ¶7, 60 P.3d 1038.

publication. In ***Read v. Read*** [29] the wife filed for divorce and served the husband by publication after a due-diligent search for him. The divorce was granted and Husband was ordered to pay $403.20 per month in child support. Over six years later Wife commenced a contempt proceeding. Husband filed a petition to vacate the divorce decree, which was denied. The matter was appealed and the trial court was affirmed.

The wife filed a second contempt application, the source of the instant appeal. The husband attempted a second "whack" at vacating the decree asserting that the divorce petition requested child support in a lesser amount, hence the trial court could only have awarded child support for the wife's requested amount. The Court disagreed, stating:

> By force of statute, child support – its award and amount – is always within the issues framed by a divorce petition where the parties have minor children. The appropriate amount of support is left to the sound judicial discretion of the trial judge. That discretion cannot be abridged by external restraints such as an agreement between the parties. Similarly, the trial court's discretion is not limited by the amount of child support requested in a divorce petition's prayer for relief.

C. Deviation From Guidelines. A Court may deviate from the child support indicated by the Guidelines "if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved." §118.B. And, deviation from the amount computed can be agreeably accomplished if both parties are represented by counsel. §118.A. If the Court does deviate from the Guidelines amount of child support, specific findings of fact supporting such action are required to be made. §118.B.

1. Statutory Impermissible Reasons To Deviate: Step-children (§118.C.) and later born children for whom support is ordered (§118.E.20).

2. Statutory Possible Reasons To Deviate: Support obligations of either parent as to other children of a parent in his/her custody. See §118.C.; ***Thomason v. Sears*** (deviation of the mother's support because of a child born out of wedlock in her custody);[30] ***State ex rel. Dept. of Human Services on Behalf of Snellings v. Strohmeyer***, (but, even though such children may be considered, deviation should occur only if the support amount is "unjust, inequitable, unreasonable or inappropriate under the circumstances").[31]

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[29] *Read v. Read*, 2001 OK 87, 57 P.3d 561.

[30] *Thomason v. Sears*,1998 OK CIV APP 66, ¶s 5, 7-8, 957 P.2d 144.

[31] *State ex rel. Dept. of Human Services on Behalf of Snellings v. Strohmeyer*, 1995 OK CIV APP 157, ¶10, 925 P.2d 77 1995.

In ***Nero v. Nero*** [32] the father obligor argued that support he was ordered to pay for a child born during marriage (but before the divorce decree was entered which contained the appealed-from child support order) should be deducted from his gross income in determining his final gross monthly income. While the record did not reflect that he was actually paying the same, the appellate court's order denying his position seems to say that even if he were paying the same, his position "* * * arguably violates the spirit, if not the letter, of §118(E)(20)."

3. Non-statutory Possible Reasons To Deviate: Possibly private school expense (***Lockhart v. Lockhart*** [33] – an upward deviation to include private school expense was reversed under the facts of the case and where the mother failed to rebut the presumption of correctness of the child support amount produced by the guidelines, but the court noted that such a deviation may be "appropriate in another case."); paternity action (***Department of Human Services v. Glasby*** [34] – trial court's individual and collective considerations of the obligor's age, that 10 years had passed before the obligor knew of a paternity claim, the ages of obligor's other children, and other factors, was reversed as not falling within the statutory bases for deviation).

D. Gross Income Determination. Determination of gross monthly income is simple when both parents are employees – read their earning statements and figure the monthly amount based on what you see. Unfortunately, it's not always so simple. This section reflects upon §118.E.2., §118.E.3, and §118.E.4.

1. Issue of Law. Whether income is properly included in gross income for purposes of determining child support is a "question of law". ***Thomas v. Thomas***;[35] ***Dye v. White***.[36] But, see the discussion of *Fitzgerald v. Sharum*, *infra*, in *Personal Business Income*, below, where the trial court's exclusion of certain personal items paid by the father's wholly owned business was said to be within the trial court's discretion. In ***Earnheart v. Earnheart***, [37] the trial court's failure to use the correct number for the mother's uncontroverted income was reversed. Also, see ***Nero v. Nero*** [38] discussed in note C., above.

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[32] *Nero v. Nero*, 2002 OK CIV APP 64, ¶15 - ¶16, 48 P.3d 127.

[33] *Lockhart v. Lockhart*, 1996 OK CIV APP 56, ¶s 4-12, 919 P.2d 454.

[34] *Department of Human Services v. Glasby*, 1993 OK CIV APP 126, ¶10, 858 P.2d 1291.

[35] *Thomas v. Thomas*, 1996 OK CIV APP 151, 932 P.2d 54.

[36] *Dye v. White,* 1999 OK CIV APP 20, ¶1, 976 P.2d 1286.

[37] *Earnheart v. Earnheart*, 1999 OK CIV APP 42, ¶2, 979 P.2d 761.

[38] *Nero v. Nero*, 2002 OK CIV APP 64.

2. Adjusted Gross Income. If a parent is paying child support and/or support alimony in *another* case, the same should be deducted from that parent's preliminary gross income to arrive at that parent's adjusted gross income. And, in a child support order associated with a contemporaneous divorce judgment, the Court may similarly deduct an amount for the same from the parent who is paying such debts, and, in such event, a prospective upward support order may be made. §118.E.6. ***Lincoln v. Lincoln***[39] held that..."child support obligations, based on the Oklahoma Child Support Guidelines as presently written, must be calculated without consideration of any contemporaneous support alimony award."

3. Optional Methods To Determine Gross Income. The Court may use which ever of the following methods are "most equitable": (a) "All earned and passive monthly income" – presumably that means current income; (b) "All passive income and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable"; (c) "the average of the gross monthly income for the time actually employed during the previous three (3) years"; or (d) "the minimum wage paid for a forty-hour work week." §118.E.4.a. See ***Asal v. Asal***.[40] Or, instead, if equitable, the Court may impute income to a parent of "the amount a person having comparable education, training and experience could reasonably expect to earn." §118.E.4.b. However, If a parent is permanently physically or mentally handicapped, actual monthly gross income must be used. §118.E.4.c. Incarceration is not tantamount to such types of incapacity and imputation of minimum wage income is appropriate in such cases. ***State ex rel. Jones v. Baggett***.[41] In *Baggett*, supra, the Court spoke broadly concerning imputation of income (as well as about the absence of evidence to reflect the mother's income):

> ¶23 Specifically in relation to child support matters, it has been recognized that, when an able-bodied parent is voluntarily unemployed or underemployed, and, thus, has no income or a reduced income, it is proper to attribute to that individual for child support purposes either an actual monthly income based on the minimum wage or an income based on what the person could earn. See *Asal v. Asal*, 1998 OK CIV APP 54, 960 P.2d 849; *Andersen v. Fellers*, 1998 OK CIV APP 53, 960 P.2d 851, 853-854. Such recognition is nothing more than acknowledgment that equity will normally not favor reduction of a child support obligation where the parent's financial condition is due to his/her fault, or voluntary wastage or dissipation of his/her talents and assets. *Noddin v. Noddin*, 123 N. H. 73, 455 A. 2d 1051, 1053 (1983).
> * * *

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[39] *Lincoln v. Lincoln*, 1992 OK CIV APP 124, ¶11, 840 P.2d 41.

[40] *Asal v. Asal*, 1998 OK CIV APP 54, ¶8, 960 P.2d 849.

[41] *Jones v. Baggett*, 1999 OK 68, ¶20, 990 P.2d 235.

> ¶27 We hold, therefore, the trial court's determination to attribute to appellant the minimum wage for a 40 hour work-week for the purpose of figuring his child support obligation was not error under our statutes. Based on the stipulations of the parties, it was proper for the trial court to decide such course was the most equitable of the alternatives provided in §118(B)(4), and the trial court was not required to deviate from the statutory child support guidelines merely because appellant was incarcerated which brought about his present financial circumstances.
> * * *
> ¶28 As noted in PART II, FACTS AND PROCEDURAL HISTORY, the trial court set appellant's child support obligation at $109 per month even though no evidence or stipulations were submitted concerning the gross monthly income of mother. As also noted in PART II, the transcript of the May in-court proceeding shows the trial court was verbally informed by DHS's counsel that the AFDC case had closed in December 1995, i.e. apparently that mother was no longer receiving AFDC payments. The record simply does not reveal whether or not mother was working after the AFDC payments ended, or what income, if any, she had after such time.
>
> ¶29 Without evidence of the monthly gross income of mother it was impossible for the trial court to accurately determine the support obligation of appellant because the Guidelines base the support obligation of the non-custodial parent on a formula which takes into account the combined income of both parents. Although it might be appropriate to attribute minimum wage to an unemployed mother for the purpose of determining a father's child support obligation [*State ex rel. Dept. of Human Services on Behalf of Snellings v. Strohmeyer*, 1995 OK CIV APP 157, 925 P.2d 77] here there was no evidence that mother was unemployed or without an income such that attribution to her of the minimum wage was appropriate under §118(B)(4). Thus, there was insufficient evidence presented to the trial court to sustain a judgment setting father's continuing/future child support obligation at $109 per month, and just as with the AFDC reimbursement award, the future support obligation must be reversed and remanded for further proceedings.

4. Receipts Which Are Excluded. Benefits received from means-tested public assistance (e.g., Temporary Assistance For Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled), and child support received in other cases are not counted as part of a party's gross income. §118.E.2.b. Principal payments being made on the sale of inherited property have

been excluded from gross income as a matter of law, even though any interest income from such sales were held to be included. ***Thomas v. Thomas***.[42]

5. Receipts Which Are Included. "Earned" and "passive" income is part of gross income and includes: (a) Earned – income received from labor or sales, including but not limited to: salaries, wages, commissions, bonuses and severance pay; (b) Passive – all other income but not limited to dividends, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes and royalties. §118.E.2.a. While interest payments received on the sale of inherited property are included, payments of principal are not. See *Thomas v. Thomas*, *supra*. Spousal support received is not mentioned as being included. See ***Lincoln v. Lincoln***.[43] As to social security and/or disability benefits, see ***Wilson v. Stenwall*** [44] (social security payments upon retirement are part of gross income) and ***Nazworth v. Nazworth*** [45] (social security disability payments are part of gross income). The inclusion of VA disability benefits as part of gross income for computation purposes has been upheld against the claim that the same were protected under federal law. ***Dye v. White***.[46] While the same result obtained in ***Nero v. Nero***, [47] Judge Jones' dissenting opinion makes it clear that the Oklahoma Supreme Court has not so ruled. As to whether veterans' disability compensation can be considered as part of the obligor's income for computation purposes, and expressing his disagreement with *Dye v. White*, he states:

> ¶2 Military disability payments are designated to compensate a former serviceman or woman for permanent injuries inflicted while the officer or enlisted person is serving his country. It is compensation for presumably permanent partial or total loss of bodily function received in the armed services. In no way is it income in the ordinary sense. It is not enough that a totally disabled veteran share his social security income with his children? The jurisprudence of this state need not leave veterans so destitute. They deserve better.

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[42] *Thomas v. Thomas*, 1996 OK CIV APP 151, 932 P.2d 54. The relevant portion of §118.B. in effect at the time of this decision read, "2. Gross income includes income from any source, except as excluded in this act, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, **gifts** and prizes."

[43] *Lincoln v. Lincoln*, 1992 OK CIV APP 124, ¶11, 840 P.2d 41.

[44] *Wilson v. Stenwall*, 1992 OK CIV APP 34, ¶11, 868 P.2d 1317.

[45] *Nazworth v. Nazworth*, 1996 OK CIV APP 134, 931 P.2d 86.

[46] *Dye v. White*, 1999 OK CIV APP 20, 976 P.2d 1086.

[47] *Nero v. Nero*, 2002 OK CIV APP 64, 48 P.3d 127.

In ***In re M.B. and A.B.***,[48] the father's personal injury settlement resulting from severe burn injuries from an oil well fire occurring in 1984 was considered. The settlement involved both monthly payments ($2,768 at the time of trial) and lump sum payments in February 1996 ($150,000), February 2001 ($300,000) and February 2011 ($350,000). The trial court's 1997 decision prorated the 1996 payment over a five year period ($30,000 per year) when it determined his income for child support purposes. The father's argument that the personal injury settlement should not have been included in the manner fashioned by the trial court was rejected (he claimed that his incarceration since 1992 should be considered in some fashion – the opinion isn't clear about what the father's argument was in this regard and the father failed to brief the issue).

6. Personal Business Income. For self-employment, rent, royalties, proprietorships, partnerships and closely held corporations, see §118.E.3. Generally, for such income, gross income is defined as "gross receipts minus ordinary and necessary expenses required for self-employment or business operations." §118.E.3.a. Amounts what a Court determines to be "inappropriate" for purposes of calculating child support should not be included as a necessary expense. §118.E.3.b. For example (and presumably), that would include depreciation claimed for income tax purposes. The Court "shall carefully review" such income and expenses "to determine an appropriate level of gross income available to the parent to satisfy a child support obligation" (§118.E.3.c.) and, "A determination of business income for tax purposes shall not control . . .". §118.E.3.d. "Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;". §118.E.3.e. Concerning FICA tax, an amount equivalent to an employer's contribution should be deducted from self-employment income. §118.E.3.d. and ***Fitzgerald v. Sharum***.[49] As to "inexplicable dramatic drop" in the self-employment income of the father after a temporary support order had been entered, and imputation of his income amount before the drop occurred, see ***Anderson v. Fellers***.[50] *Fitzgerald v. Sharum*, supra, affirmed a trial court's decision as being within the trial court's discretion not to attribute various items which the father's wholly owned business paid for him, including payments his corporation made for his withholding (income) tax, state withholding (income) tax, social security tax, retained earnings at the end of the year, payments on the pickup truck used by the him, insurance payments on the pickup, the father's personal telephone bill, meals, checks written for cash, the tag for the pickup,

[48] *In re M.B. and A.B.*, 1998 OK CIV APP 35, 956 P.2d 171.

[49] *Fitzgerald v. Sharum*, 1993 OK CIV APP 118, 857 P.2d 92.

[50] *Anderson v. Fellers*, 1998 OK CIV APP 53, ¶s 3 - 8, 960 P.2d 851.

certain of his clothing, and an answering machine for his home. In ***Minnich v. Minnich***, [51] where the mother was a commissioned salesperson, the trial court allowed a 17.2% reduction of the mother's income for various expenses, meals, entertainment and automobile depreciation. The Court noted,

> ¶9 * * * We see no error in deducting business expenses from gross income. However, the reasonableness of deducting the cost of vacations is questionable. On remand, the reasonableness of all deductions from gross commissions must be determined, and Appellee's correct income must be used in calculating child support.
>
> ¶10 In determining reasonableness of deducting a business expense from gross income for the purpose of determining income for child support purposes, the court should consider the benefit, if any, to the party. For example, taking a business expense deduction for use of an automobile in business, for tax purposes, may well be an indirect benefit to that party because less income tax will be paid and, possibly, it may result in that party not being required to purchase and maintain another automobile for personal use. This is just one example of the careful review required by §118(B)(3).

7. Foreign Currencies. One topic not covered in the Guidelines is how to deal with foreign currency exchange rates. The issue was passingly, but not importantly, considered in ***Nero v. Nero***. [52] But, if you have a case involving that issue, the case may be helpful in seeing what not to do.

E. Joint Custody. Beginning with the 1999 version of §118, the term "joint custody" is not to be found in §118, presumably due to the novelty introduced with the 1999 version of §118 – shared parenting. Solely for historical purposes, it is noted that the pre-1999 version of §118 specifically referenced joint custody arrangements.[53] While "joint custody" is not mentioned, the text of §118.E.8., in its specific reference to sole custody, might have some implied meaning in that regard: "In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support". Since the statute is explicit in

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[51] *Minnich v. Minnich*, 1995 OK CIV APP 60, ¶s 9 - 10, 898 P.2d 2056.

[52] *Nero v. Nero*, 2002 OK CIV APP 64, ¶17 - ¶18, 48 P.3d 127.

[53] Before 1999's revision, §118.B.16 read, "16. If the district or administrative court adopts a joint custody plan meeting the requirements of Section 109 of this title, the plan must provide for the support of the child equivalent to the amount of combined support the child would otherwise receive under these guidelines. The district or administrative court shall have the authority, however, to accept a plan which allocates the payment of actual expenses of the children, rather than designating one custodial parent the 'obligor' and one the 'obligee', if the district or administrative court finds the payments allocated to each respective parent are substantially equivalent to the amount of the child support obligation of the parent under these guidelines;"

what must be done when a sole custody order is entered, might that mean that something else is possible when that is not the case?

F. Split Custody. "Split custody" means that each parent has custody of one or more of the children. In such events, separate computations are made for each parent and the amounts are offset against each other. "The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation". §118.E.12. Note: costs of health insurance should be divided consistently when doing comparative computations.

G. Shared Parenting. Although no published decisions have yet discussed "shared parenting", several unpublished decisions have. While unpublished opinions may not be cited as authority,[54] some are mentioned here as giving at least some indication as to how such an issues have been, and, so, might be treated on appeal.

In ***Whisenhunt v. Whisenhunt,*** [55] the mother appealed from trial court decision not to apply the "shared parenting" statute then in effect, 43 O.S. §118.C.10 (now, see 43 O.S. §118.E.10) where the parties had agreed to a joint custody plan in which the mother received extensive visitation with the children. While the terms of custody were agreed, the mother's child support was not. Relevant excerpts from opinion read:

> ¶3 For the child support computation, Father was found to have a gross monthly income of $4,728.94, and Mother's income was found to be $3,000.00. Using the Child Support Guidelines Schedule at 43 O.S. §119 (1999), the total combined child support was $1,270.00. Father's share was 61% or $774.31. Mother's share was 39% or $495.69. Mother was designated as the obligor or payee, presumably because she was not the primary custodial parent. The trial court found the Child Support Guidelines to be applicable and stated that they were followed.
>
> ¶4 As noted above, Mother's appeal is based on the trial court's failure to apply 43 O.S. §118(C)(10). This section provides for an adjustment to the payor's monthly child support obligation where there is "shared parenting". Appellee/Father contends this section does not apply because the joint custody agreement was not a "shared parenting" order. He further contends that the parties approved the Decree as to form and content and that such approval should presumably estop Mother from challenging it on appeal. Father also points out that this statute has been amended again with legislative approval on June 6, 2000. These are legal issues which are reviewable de novo. *Kluver v. Weatherford Hosp. Authority*, 1993 OK 85, 859 P.2d 1081, 1084.

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[54] 12 O.S., Appendix 1, Oklahoma Supreme Court Rules, Rule 1.200(b)(5) and (b)(8). While not on the Oklahoma Supreme Court's website, unpublished decisions may be read at the Oklahoma Attorney General's "Public Legal Research System"website, **http://oklegal.onenet.net/**.

[55] *Whisenhunt v. Whisenhunt,* Unpub. No. 94,388 (COCA Div. 1 November 22, 2000).

> ¶5 First, this is precisely the kind of "shared parenting" situation contemplated by 43 O.S. §118(C)(10). "Shared parenting time" is defined in the statute as where "... each parent has physical custody of the child or children overnight for more than ninety-two (92) nights each year." Section 43 O.S. §118 (C)(10)(a). Mother points out that under the Decree and Joint Custody Plan, she would have actual physical custody of the children for 162 nights per year, well beyond the statutory threshold of 92 nights. Although the term "shared parenting" is not used in the Decree or Joint Custody Plan, the plan approved by the trial court clearly meets the definition of "shared parenting time".
>
> * * *
>
> ¶8 The trial court erred in not applying 43 O.S. §118(C)(10). This is a proper case for the application of the child support adjustment for shared parenting. On remand, the trial court is instructed to recalculate the child support obligation in light of this decision that 43 O.S. §118(C)(10) applies.

Another example is ***Bell v. Bell*** [56], in which COCA Division 2 stated,

> The trial court granted the parties a decree of divorce, filed September 13, 2000, which, among other things, required Father to pay Kelly Lynn Bell (Mother) $549.42 in monthly child support for the parties' two minor children. Additionally, the decree granted Father at least 150 instances of overnight visitation. According to 43 O.S. §118(E)(10) (2000), custody orders granting more than 120 instances of overnight visitation to each parent qualifies as "shared parenting time." Child support orders are therefore modified accordingly to reflect the shared parenting time. However, the trial court's child support award did not reflect this statutory modification.
> * * *
> The sole issue on appeal is whether the trial court erred by not reducing Father's child support obligation pursuant to the requirements of 43 O.S. §118(E)(10) (2000).
> * * *
> The statute, which then sets out the formula to be followed, clearly divests the trial court from any discretion in applying the 43 O.S. §118(E)(10) formula to the base child support in instances where, as here, both parties have more than 120 nights of visitation per year. It is clear from the record that the trial court used the standard child support guidelines to compute Father's child support obligation, and did not deviate from those guidelines. Thus the trial court clearly erred when it declined to follow the statutory requirement of adjusting the base child support in light of the shared parenting time.

[56] *Bell v. Bell*, Unpub. No. 95,733 (COCA Div. 2 December 26, 2001)

> However, we are cognizant that the trial court has authority to deviate from the statutory child support guidelines if it articulates its reasons therefore. See 43 O.S. §118(B) (2000). We do not have a sufficient record to discern what, if any, reasons existed for the trial court to deviate from child support guidelines and decline to adjust the base child support to account for the shared parenting time. Therefore, we must reverse the trial court's order denying Father's motion to reconsider, and remand the matter for further proceedings. Upon remand, the trial court is directed to either follow the child support guidelines and adjust the base child support in accordance with 43 O.S. §118(E)(10), or, after complying with that statutory requirement, if the trial court determines that the amount of child support should remain the same, or in any way differ from that produced by the 43 O.S. §118(E)(10) adjustment, it shall so state the basis for its deviation from the guidelines.

Another example is ***Department of Human Services/Rosser v. Givens***.[57] As far as this author is aware, this is the ONLY appellate opinion dealing with the "shared parenting" issue which *had been marked for publication*. After the Supreme Court denied certiorari it also withdrew the COCA opinion from publication. Here are some excerpts from the COCA decision:

> ¶7 Father next urges the trial court erred because it failed to apply the "shared parenting" formula when calculating child support. He urges the parties stipulated to an expanded visitation schedule at trial which qualified as "shared parenting;" therefore, the "shared parenting time" formula at 43 O.S. §118(E)(10) (2001) should have been applied. "Shared parenting time" means "each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year." 43 O.S. §118(E)(10)(a). When "shared parenting time" has been ordered by the trial court or agreed to by the parents, the base monthly obligation shall be adjusted as set forth in 43 O.S. §118(E)(10). Father urges that under this formula, since Mother's monthly gross income is higher, she would owe a greater amount of base child support and would be obligated to pay the difference between her amount and Father's base child support to Father. However, due to the exception at 43 O.S. §118(E)(10)(f) which expressly provides this paragraph is not to be construed to allow the payment of child support by the custodial parent to the non-custodial parent, Mother would not have to pay such difference to Father. But, the end result is that under the "shared parenting time" formula, Father would not have to pay Mother any monthly child support.
>
> ¶8 This court finds the trial court properly denied Father's request for the "shared parenting time" formula. The record reflects Father did not request the trial court to apply the "shared parenting time" formula at trial. Further, Father did not submit any evidence that the parties entered into "shared

[57] *Department of Human Services / Rosser v. Givens*, Unpub. No. 96,628 (COCA Div. 1 2003).

parenting time." In fact, Father presented no testimony or evidence during his case-in chief. Instead, Father purportedly requested the "shared parenting time" formula for the first time in his post-trial recommendations, which are not a part of the record, and again orally at a later hearing after the trial court announced its decision on the merits. The trial court advised Father he was free to raise this issue in a motion to modify, but denied Father's request for "shared parenting time." The trial court stated it was unwilling to make decisions based on post-trial recommendations when there was no evidence presented on the issue at trial. Father has failed to affirmatively demonstrate how the trial court erred in this regard. See *Chamberlin v. Chamberlin*, 1986 OK 30, 720 P.2d 721, n.16. The trial court's disposition of Father's request for the "shared parenting time" formula is not clearly contrary to the weight of the evidence upon which it rests.

PRACTICE TIP: Concerning temporary order shared parenting, note that 43 O.S. §110.1 provides, "It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, if requested by a parent, **the court shall provide substantially equal access** to the minor children to both parents at a temporary order hearing, unless the court finds that such **shared parenting** would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody and the reason for such determination shall be documented in the court record." Emphasis supplied.

H. High Income Cases. The 1988 version of §119 remained intact until the 1999 revisions became effective on November 1, 1999 and 1999's Child Support Schedule amounts are presently effective. The 1988 – 1998 table topped out at $10,000 per month combined monthly income and the 1999 – present table tops out at $15,000 per month. The concluding text of all versions of §119 is substantially the same.[58]

Mocnik v. Mocnik [59] was the first Oklahoma Supreme Court decision to discuss high income computations:

[58] The pre-1999 version of §119 concluded, "In the event monthly income exceeds Ten Thousand Dollars ($10,000.00), the child support shall be that amount computed for a monthly income of Ten Thousand Dollars ($10,000.00) and such additional amount as the court may determine." The 1999-current ending text of §119 is, "B. If combined gross monthly income exceeds Fifteen Thousand Dollars ($15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars ($15,000.00) and an additional amount determined by the court."

[59] *Mocnik v. Mocnik*, 1992 OK 99, ¶s 35 -39, 838 P.2d 500.

> ¶37 Wife presented evidence that the direct and indirect expenses of the children exceeded $4,700.00 per month. The attorney for Husband cross-examined Wife regarding these expenses, and pointed out that a few of the expenses were unnecessary.
>
> ¶38 Looking to the Guides, we note that at an income of $10,000.00, monthly payments of $1,352.00 are required. This equals 13.52% of the monthly income. Taking the gross monthly income of the parties of $19,543.00 and multiplying it by the percentage mentioned above, $2,642.21 per month would be consistent with the Guides. However, Husband would not be required to pay this full amount, as the gross monthly income included the income of Wife. Husband's income was found to be 91% of the total combined income and thus his obligation should not exceed 91% of the child support, or $2,404.41.
>
> ¶39 Considering that Husband was given visitation of two weekends per month, one weekday per week, and eight consecutive weeks in the summer, we do not find it an abuse of discretion that the trial court reduced the above figure to $2,000.00 per month. Subsection 18 of 12 O.S. Supp. 1989 §1277.7 states that "[T]he court may make adjustments to child support guidelines for periods of extended visitation." We affirm this award.

PRACTICE TIP: For what it's worth, be aware that the formula approved in *Mocnik* results in greater support than is true when the 2000 statutes are computed for the same data. Given the 2000 Legislation, that may, or may not, indicate a legislative theoretical disapproval of the method employed in *Mocnik.*

Also, see ***Archer v. Archer*** [60] (where evidence established that the children's monetary needs, based on established lifestyle, were consistent with the amount of child support awarded above the $10,000 combined parental income level, the award was sustained even though "the custodial parent also receives an incidental benefit"); ***Ford v. Ford***; [61] and ***Casey v. Casey***.[62] In *Ford v. Ford*, supra, ¶s 10-11, an award of $1,352 support to the mother for two children was deemed adequate, where the trial court's order also required expenses for private schooling and other expenses for the children totaling $2,537 monthly was affirmed, even though after the trial the mother elected to place the children in public school (that fact not being in the record). The father's monthly income was $23,941 but the mother's income wasn't stated in the opinion. Running the computations at the father's income makes it clear that the ordered base child support obligation was either at or only slightly above the top

[60] *Archer v. Archer*, 1991 OK CIV APP 28, ¶s 9 - 15, 813 P.2d 1059, approved by Supreme Court for publication.

[61] *Ford v. Ford*, 1992 OK CIV APP 123, 840 P.2d 36.

[62] *Casey v. Casey*, 1993 OK CIV APP 129, 860 P.2d 807.

amount in the 1988 Child Support Schedule (if the mother were making only minimum wage income, child support at the top of the 1988 Schedule would have been $1,303). The Court said, "We must decide whether the court ordered level of child support will deny the children any benefits which they have enjoyed prior to the divorce. The record does not support this assertion." These cases, particularly when reviewed in the light of various unpublished opinions, give no certain rudder in computing child support beyond the Schedule's amounts.

In ***Griggs v. McKinney*** [63], a paternity case involving both "back" and prospective child support, Division 3 reversed the trial court's application of the method approved in *Mocnik v. Mocnik* in determining both the amount of the retrospective and prospective obligations. The Court (Division 3) reasoned that since *Archer v. Archer* had been approved for publication by the Oklahoma Supreme Court, the *Archer* opinion is the "definitive case" for determining above-the-chart child support. Since the trial court's decision simply applied the mathematical method that *Mocnik* gave its blessing to and did not receive evidence concerning the direct or indirect expenses of the children or the "prior standard of living" – the children's parents were never married – the Court reversed and remanded the retrospective and prospective child support decisions for further hearing, noting that:

> ¶9 Nothing in *Mocnik* suggests that this "one size fits all" mathematical extrapolation is a substitute for the "circumstances of each case" analysis required by *Archer*. * * *"

In another high income case, ***Kerby v. Kerby***, [64] the trial court had denied both parents' attempts to modify support. The Supreme Court gave the context and framed the issues:

> ¶0 Mother sought modification of child support award based on increase in father's income without showing of change in children's needs. Father sought to have support decreased. * * *
>
> ¶1 There are two issues presented for this Court's review: (1) In cases where the parent's combined income exceeds the child support guideline table (above table cases), whether a substantial increase in one parent's income is a material change of circumstances allowing review of an existing child support award without a showing of change in children's needs; and (2) Whether the appellee is entitled to appeal-related attorney fees. We answer both issues in the affirmative.

In its opinion, the Court noted that a child support modification case involves a two-step process:

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[63] *Griggs v. McKinney*, 2002 OK CIV APP 127, ¶3 - ¶11, 61 P.3d 907.

[64] *Kerby v. Kerby*, 2002 OK 91, 60 P.3d 1038.

> ¶6 There are two steps in the process of a child support award's modification. Before a court has authority to review an existing child support award, there must have been a material change in circumstances. Okla. Stat. tit. 43, § 118 (E)(16)(a)(1) (2001). After establishing a material change of circumstance, the moving party must show that, under the facts, modification of the existing award is warranted. *Huchteman v. Huchteman*, 1976 OK 174, ¶ 27, 557 P.2d 427, 430.

In the initial award for above-table child support, the Court said:

> ¶7 * * * Though not exhaustive, in cases where the combined income exceeds the table, the trial court should consider three factors in its initial award: (1) the children's needs, (2) the parents' ability to pay, and (3) prior standard of living. In cases that fall within the table, these factors are determined by use of the table with little discretion for deviation. Where the parents' income exceeds the maximum addressed by the table, a determination of the children's needs and the parents' ability to pay in excess of the tables' standards are within the trial court's discretion. Okla. Stat. tit. 43, §119 (B) (2001). In cases where the parents' income falls within the guideline table, as well as those whose incomes exceed the table, each parent's income is a factor in apportioning the responsibility for meeting the children's needs. The parents' income is a substantial factor considered in the initial child support award because it impacts the decision regarding the children's needs and the determination of the amount of financial responsibility each parent should bear. Because the parents' income is a fundamental factor in the initial award, a significant change in the income is material even where there is no change in the children's needs.
>
> ¶8 * * * Similarly, a significant increase in a parent's income is a material change of circumstance warranting review of an existing award. Because income is a factor used for setting child support in cases falling within the guideline table as well as cases where the parents' income exceeds the table, a significant change in a parent's income alone is a material change of circumstance warranting review of an existing child support award.
>
> ¶10 Father argues the mere change in income does not require modification of the monetary award. We agree. A trial court is not obligated to modify an award when a material change has occurred but must consider all the relevant factors including the needs of the children at the time of the modification and the parents' income.
>
> ¶11 Father's income has increased nearly four times what it was at the time of the divorce. Courts are not required to provide opulence and excess in an award for child support. If a custodial parent's income significantly increases, the children will surely benefit by an enhanced lifestyle. Likewise, the children should benefit from a significant increase in a non-custodial parent's income. Therefore, it was error for the trial court to exclude Mother's evidence of the

> children's projected needs. Okla. Stat. tit. 12, § 2402 (2001). On remand, the trial court should consider the children's needs at the time of the modification, not at the time of the decree and determine whether modification of the current amount of child support is warranted.

In ***Smith v. Smith***, [65] Division 1 of the Court of Civil Appeals had occasion to construe *Archer* and *Mocnik* under circumstances where the non-custodial father's income had *dramatically* increased post-decree – the decretal incomes were $2,834 for the father and $1,500 for the mother. At the point of modification the father's monthly income was $46,015 (88% of combined) and the mother's was $6,419 (12% of combined), for a combined income of $52,434. It appears that the appellate court's statement is correct when it said, "It is clear from the record that the trial court multiplied that amount by 9.15% to calculate that the child support amount would be $4,797 under the guidelines." To the father's 88% share of that number, after adjustments for health insurance and child care, the final amount was $4,300. The original order was for $460 per month.

The Court critiqued the methodology used by the *Mocnik* (presumably trial) Court and said:

> ¶11 Father urges that the trial court should not have simply extrapolated the amount due under the guidelines for the parties' incomes in this case. We note one commentary which urges that a simple mathematical extrapolation is not a well-received method of determining the support amount in cases involving parents with very high incomes. See Hogan, *Child Support in High Income Cases*, 17 J. Am. Acad. Matrim. Law 349, 351 (2001). That article noted that at least some consideration should be given to the child's actual needs, which may include consideration of the child's lifestyle. *Id*.
>
> ¶12 A review of the child support table found at 43 O.S.Supp. 2000 §119(A) reveals that as the parents' combined gross income increases, the proportion of that income which is designated for child support decreases. This is due in part to the fact that a child's needs, both essential and lifestyle-related, do not inherently increase regardless of the amount of income. This has been referred to as the "three pony rule," which is that no child needs three ponies, no matter that the parents might easily afford to provide them. 17 J. Am. Acad. Matrim. Law 349, 351. That article noted that, in the case of parents with very high incomes, determining child support on the basis of a simple percentage of income used to determine child support at a lower income level may result in such an exorbitant child support award that it effectively results in a redistribution of the wealthy parent's estate, rather than simply providing support for the child consistent with the child's reasonable needs. *Id*.
> * * *

[65] *Smith v. Smith*, 2003 OK CIV APP 28, 67 P.3d 651.

> ¶15 However, the *Mocnik* court's method of multiplying the parties' monthly income used at the top bracket of the guidelines fails to consider the methodology of the guidelines. As explained above, as income increases, the percentage of income directed to child support decreases. A more accurate method of calculating child support for income amounts beyond the guidelines chart is to consider the decreasing percentage of income for each bracket as income rises. [7] This would recognize that at some point, child support for each additional $1000 in income approaches zero. In this case, even if the percentage for the highest bracket of income (4%) is applied to income exceeding $15,000 per month, the result is total support of $2,869 per month. [8] Absent other considerations, the trial court would have been justified in using this amount as an extrapolation of the guidelines.
>
> ¶16 Mother submitted an exhibit detailing the child's monthly expenses which totaled $3,355.90 per month. [9] A child's reasonable living expenses could justify a child support award in excess of an extrapolation for income exceeding the guidelines. However, we find it was an abuse of the trial court's discretion to award child support in an amount greater than even the liberal amount of expenses of the child asserted by Mother. We therefore modify the child support calculations.[10] Using the living expenses submitted by Mother, $3,355.90, Father's 88% share of that amount is $2,953.19 per month. [11] Any greater amount would simply be a transfer of wealth from Father to Mother.

I. Child Care. In non-permissive statements, the 2000 version of §118 provides that, "the 'actual' child care expenses reasonably necessary to enable either or both parents to: (1) be employed, (2) seek employment, or (3) attend school or training to enhance employment income" (§118.E.13) "shall be allocated and paid monthly in the same proportion as base child support." §118.E.13.b. Under the 1999 version, only the obligee's child care expense was to be divided between the parents, but in the 2000 version it is clear that if either party incurs such expense that the expense is to be divided proportionally between the parents. Further, the Court "shall require the obligee" (presumably the same requirement would exist for the obligor, if he/she incurs such expense) to provide timely documentation of any change in the child care cost. Additionally, the "obligor" (ditto the previous comment) may make monthly requests of documents of the child care cost. §118.E.13.c. Additionally, if the Court determines that it will not cause the child/children any detriment, "in lieu of payment of child care expenses . . . the obligor may provide care for the child". §118.E.13.d. In ***Minnich v. Minnich***, [66] in modifying child support, the trial court's order that child care costs be based on a former child care arrangement was reversed and remanded:

> The statutes do not require the court to require the parties to shop for child care costs and to do that which is the least expensive. Many factors must be considered, not the least of which is the best interests of the child. Any parent

[66] *Minnich v. Minnich*, 1995 OK CIV APP 60, ¶8, 898 P.2d 747.

> must take the best interests of the child into consideration. The definition of custody is safekeeping. The custodial parent has a special burden to act in the best interests of the child or children entrusted to his/her safekeeping. Appellant chose to move two of the children to what Appellant considered a more structured and safer environment with a better disciplinary situation. The attendant child care costs increased. These are "actual" costs as defined by §118(12). A finding by the court that the child care costs is "frozen" at the rate it was at the day care the children used at the time of divorce is erroneous. Reasonableness is an issue. This case must be remanded for further proceedings to determine the actual child care costs, and if reasonable, to use the correct amount in the child support calculation.

In ***Griggs v. McKinney***, [67] Division 3 affirmed a trial court decision *limiting* the amount of child care expense where some portion of the custodial mother's expense included "an educational component". The father appealed other aspects of the child care expense order where the mother's increased child care expense resulted from her relocation from Oklahoma to Oregon. Concerning the father's issue, the appellate court found no trial court abuse of discretion.

J. Health Care. The 1999 version of §118 deleted the phrase "reasonable and necessary" attributable to divisible health care expenses, but it's back in the 2000 statute. The definition provided for a child's heath care expense is expansive: "Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance." 43 O.S. §118.E.14.

As to how a child's health care expenses are to be divided, the statute is somewhat obtuse in its wording: such expenses "*may* be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation." That may mean that the Court has discretion to divide such expenses in some other proportion, or not at all. The subsection concludes, "If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense". §118.E.14.

K. Visitation – Transportation Expenses and Abatement. §118.E.15 provides that, "Transportation expenses of a child between the homes of the parents *may* be divided between the parents in proportion to their adjusted gross income." Ditto the "oblique" comment in Health Care, above. It appears to this writer that the Court has discretion to do what it wants concerning such expense. And, while abatement of child support

[67] *Griggs v. McKinney*, 2002 OK CIV APP 127, ¶12 - ¶27, 61 P.3d 907.

during extended visitation is not mentioned in the present Guidelines, ***Abbott v. Abbott*** [68] speaks to both these issues:

> ¶13 We find that mother's complaints are also well taken as to the trial court's rulings that she should pay 100% of the transportation costs for Kyle's visitation periods with his father, and that father's child support payments should totally abate for the period of 30 days in the summer while Kyle is with his father. We find that both rulings are an abuse of discretion. For these considerations the father's income, which was 12 times that of mother's, is a significant factor and should have been given more importance by the trial court. This common sense view is reflected by 43 O.S. §118.14, (now set forth in 43 O.S.§118.15) providing that transportation expenses of a child between the homes of the parents may be "divided between the parents in proportion to their adjusted gross income."
>
> ¶14 We also disagree with the trial court's order totally abating father's responsibility for payment of child support during the month that Kyle visits him in Oklahoma. Most expenses borne by the custodial parent for the maintenance of the child remain fixed and constant for that parent even though the child is visiting with the other parent. As a matter of economic equity, courts do sometimes grant a noncustodial parent an abatement of child support if the facts show the reduction is necessary to enable that parent to be better able to care for the child during a longer period of visitation such as summer visitation. Here, however, no necessity for such relief was shown.

L. Income Information Exchange. The Court may include an order requiring the parties to periodically "exchange information for an informal review and adjustment process", however, if the Court doesn't order such an exchange, the parties have the capacity to request such data in any event. §118.E.17. In the latter event, the data must be provided within forty-five (45) days of the request. §118.E.17.b.[69] Data requested may include "verification of income, proof and cost of children's medical insurance, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged". §118.E.17.c. Such a request can at least be presented annually

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[68] *Abbott v. Abbott*, 2001 OK 31, ¶s 13 and 14, 25 P.3d 291. The Court incorrectly cited §118.E.15. as being §118.15.

[69] But, compare §118.E.17's provisions with 43 O.S. §118.3, which reads: "On or after April 15th of each year, the obligor or obligee may make a written request to the other party for the other party's previous tax year W-2 forms, 1099 form, or other wage and tax information. This request shall be served upon the other party in the same manner prescribed for the service of summons in a civil action, and the original request shall be filed in the court file. The party receiving such a written request shall provide the requesting party a copy of the requested information by certified mail within ten (10) days of receiving the written request. If a motion to modify child support is subsequently filed by the requesting party, and it is shown to the court that the non-moving party failed to comply with this section, the court may award the moving party his or her attorneys fees and costs incurred as a result of the failure to provide requested information." Laws 1997, c. 403, §12, effective July 1, 1997.

and regular mail is sufficient to present the request. §118.E.17.d. If either parent fails to cooperate in the information exchange, and if the Court orders mediation, the non-cooperative parent may be assessed the mediation expense. §118.E.17.f.(e).

M. Accounting. In its discretion, the Court may enter such orders as it deems appropriate to assure that child support payments are being used for the support of the child/children. §118.E.18.

N. Prospective Adjustment of Certain Orders. §118.E.21 allows, if not requires, that the Court make provision in its order for various foreseeable occurrences. "The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, and extraordinary costs." Whether this text might authorize a prospective order for a child who will "age out" in the near future, contrary to ***Larimore v. Larimore***, [70] is not stated.

O. Duration of Liability and Equitable Credit. 43 O.S. §112.E. provides that, "Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of eighteen (18) years. No hearing shall be required to extend such support through the age of eighteen (18) if the child is regularly and continuously attending high school."

That said, the provisions of the current law present a serious trap to a passive and non-litigious parent who might fairly presume that once a child ages out, as stated in §112.E., above, that support for that child is no longer required. Instead, current law virtually requires that the obligor parent commence litigation for his/her self-protection. §118.E.16.c. provides: "The amount of a child support order *shall not be construed to be an amount per child* ***unless specified*** by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order." For a pre-Guidelines support order which was worded generally but which the trial court found was intended to be a "per child" order in a support enforcement action commenced after the Guidelines were adopted, see ***Burgess v. Burgess***, [71] holding that the Guidelines statutes were "substantial" [probably intended to be "substantive"], not "procedural", in nature, and that the later adopted statutes were not entitled to retroactive application.

As to possible credit after children have "aged out", see ***Tortorelli v. Tortorelli***.[72]

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[70] *Larimore v. Larimore*, 1980 OK 141, ¶14, 617 P.2d 892.

[71] *Burgess v. Burgess*, 2000 OK CIV APP 122, 15 P.2d 526.

[72] *Tortorelli v. Tortorelli*, 1995 OK CIV APP 99, 901 P.2d 237.

Are equitable defenses to child support collection available? See these cases for quick reference in representing your clients.[73] Regardless of whether equitable defenses are *passe* in Oklahoma or not, the obligor parent must be prepared to litigate to avoid owing child support which is not, according to 43 O.S. §112.E., legitimately due.

In ***Phillips v. Hedges***, [74] "equitable credit/defenses" was again presented to the Oklahoma Supreme Court but it declined to come to grips with the issue since the opinion concluded that, actually, equitable defenses were not before the Court. At the outset, the Court's opinion preliminarily casts the issues as follows:

> ¶0 At a post-decree stage of the case, the plaintiff brought contempt proceedings against her divorced spouse for failure to pay child support for their three children, all of whom had reached the age of majority. The trial court *dismissed* the contempt application and *recast* the proceeding into a quest for ascertainment and satisfaction of past-due and unpaid child-support obligation, resting its denial order *on the obligor's (defendant's) defense theories* of *laches and waiver*. The plaintiff's appeal stands retained for this court's disposition. [Emphasis by the Court]

From the manner in which the parties presented their arguments, it appeared as though the Court would have occasion to resolve the equitable defenses issues:

> ¶5 Mother (appellant) argues on appeal that the trial court should have applied the teachings of *Aguero v. Aguero* and *Cowan v. Cowan*, two Court of Civil Appeals' opinions which pronounce that "equitable defenses" cannot be invoked to shield a parent from the legal consequences of child support's nonpayment. According to Mother, had the trial court based its decision on the *Aguero* and *Cowan* analyses of this court's jurisprudence in *McNeal v. Robinson* and *Thrash v. Thrash*, it would have rejected Father's *equitable defenses* against Mother's quest. Mother, on the other hand, claims that she has *an undefeated right* to pursue past-due child support based on the explicit language of 43 O.S.Supp.1996 §137. If the court should agree that equitable defenses do not shield Father from his obligation to pay delinquent child support, she argues that we must confine our inquiry to the single question of what amount remains unaffected by the time bar.

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[73] See the following cases for: **Pro:** ***McNeal v. Robinson***, 1981 OK 43, 628 P.2d 358, ***Thrash v. Thrash***, 1991 OK 32, 809 P.2d 665, and ***Merritt v. Merritt***, 2003 OK 68, 73 P.3d 878; ***Raczynski v. Raczynski***, 1976 OK CIV APP 50, 558 P.2d 425; ***Kissinger v. Kissinger***, 1984 OK CIV APP 52, 692 P.2d 71; ***Hyde v. Hyde***, 1992 OK CIV APP 161, 843 P.2d 393; ***Tortorelli v. Tortorelli***, 1995 OK CIV APP 99, 901 P.2d 237; **Ambiguous:** ***Phillips v. Hedges***, 2002 OK 92, 66 P.3d 364; **Con:** Dissenting opinion in ***Merritt v. Merritt***, 2003 OK 68, 73 P.3d 878; ***Aguero v. Aguero***, 1999 OK CIV APP 38, 976 P.2d 1088; ***Cowan v. Cowan***, 2001 OK CIV APP 14, 19 P.3d 322. None of the COCA decisions were marked for publication by the Oklahoma Supreme Court. See Note 1, above.

[74] *Phillips v. Hedges*, 2002 OK 92, 66 P.3d 364.

> ¶6 Father counters that according to *Thrash*, "equitable defenses may be invoked to bar the recovery of delinquent child support payments." He points out that the teachings of *Thrash* have not been departed from and that anything to the contrary in *Aguero* and *Cowan*, though perhaps persuasive, has no precedential value. Father also notes that *Swearingen v. Swearingen* recognizes laches as an available defense in child-support enforcement proceedings. He argues that the equitable doctrines of "laches and waiver" should be upheld as a bar to Mother's recovery.

But, that's not how the case was decided. First, the Court determined that the issue of *waiver* wasn't involved in the case – rather, what the parties and trial court referred to when using the term *waiver* was actually whether or not a statutorily permitted defense existed under 12 O.S.Supp.1987 §1277 (renumbered 43 O.S.Supp.1989 §112, an *agreement between the parties*. See ¶7 of the opinion. And, in the same paragraph, the Court bypassed the latches issue, as well:

> ¶7 * * * We need not *globally* address ourselves today to the *continued invocability* of laches as an equitable defense in arrearage enforcement proceedings. This is so because, on this record, we hold that it does not avail in this case. [Emphasis the Court's]

So, *Phillips v. Hedges* left the issue of equitable defenses very much up for grabs!

With ***Merritt v. Merritt***, [75] that *appears* to have changed, even it the change be by *dicta*.

The context of *Merritt* was this: In a 1994 post-decree modification order, the father obtained custody of their child and the mother was ordered to pay child support. Apparently, she didn't – her parental rights were terminated by a default order in 1996 for her failure to pay support for over a year. On January 31, 2000, the day before the child would reach majority, the father filed a contempt proceeding to enforce a child support arrearage which arguably accrued between March 1996 and the date of the contempt application.

The mother filed a dismissal motion in which she alleged that she became legally disabled in 1997 and, because of that, the Social Security Administration had made payments directly to the child, which payments exceeded the amount of the claimed arrearage. The trial court determined these allegations to be true and determined that equity required the application of the doctrine of equitable estoppel and that the father's claim (if he had one) was against his son to the extent of unpaid child support payments received by the son during his minority. The trial court dismissed the father's application.

The Court of Civil Appeals reversed on the basis of 43 O.S. §137's "judgment by operation of law" provisions. The Supreme Court accepted certiorari.

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[75] *Merritt v. Merritt*, 2003 OK 68, 73 P.3d 878.

Justice Winchester authored the majority opinion, joined by four Justices (Watt, Lavender, Kauger and Summers). Justice Hargrave concurred in the result. Justices Opala and Hodges dissented on an attorney fee issue but concurred in the order exonerating the mother of liability, without saying why. Only Justice Boudreau wrote an expository separate opinion which concurred in the majority holding that equitable "credit" toward the child support obligation was proper but dissented with the majority's general viewpoint that equitable defenses of estoppel, waiver, and laches remain available notwithstanding 43 O.S. §137.

In its "Standard of Review", the majority previewed the equitable underpinnings of its decision:

> ¶7 The trial court stated that its judgment was based on equitable considerations. *We have recently reaffirmed that child support proceedings are of equitable cognizance*. *Hedges v. Hedges*, 2002 OK 92, ¶10, 66 P.3d 364, 370. In *Thrash v. Thrash*, 1991 OK 32, ¶9, 809 P.2d 665, 668, we noted that equitable defenses may be invoked to bar the recovery of delinquent child support payments. Those defenses include the equitable doctrines of waiver, estoppel and laches. *Thrash*, 1991 OK 32, ¶9, 809 P.2d at 668. When reviewing the decision of the trial court in an equity proceeding, this Court has long held that the judgment will not be disturbed unless the trial court abused its discretion or unless the court's finding was clearly contrary to the weight of the evidence. *Creech v. Creech*, 1956 OK 10, ¶9, 292 P.2d 376, 378; *Tschauner v. Tschauner*, 1952 OK 230, ¶¶ 22, 25, 245 P.2d 448, 451. [Emphasis supplied]

Given that the existence of equitable defenses has been such a disputed topic in the past, and given that the majority's opinion might well be considered *dicta* (since, in the end, it did not base the result of its decision upon equitable estoppel at all), the full text of the majority's opinion on the topic will be stated here, as will Justice Boudreau's separate opinion.

The Majority Opinion:

> ¶8 The trial court based its decision on principles of equity. In 1987, the legislature enacted a new law, codified in the Oklahoma Statutes as §1291 of Title 12, now 43 O.S.2001, §137. Section 137(A) provides that "Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order of the Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law." Except for the rearranging of some commas, the sentence is identical to that which was originally enacted. The Court of Civil Appeals has construed this statute as eliminating equitable defenses to excuse noncompliance with a support order. *Aguero v. Aguero*, 1999 OK CIV APP 38, ¶10, 976 P.2d 1088, 1090. *Cowan v. Cowan*, 2001 OK CIV APP 14, ¶10, 19 P.3d 322, 325-326, relied on *Aguero* to reach the same result.

¶9 In his Response of Michael L. Merritt to Motion to Dismiss Contempt Citation, the appellant argues that he has a series of judgments for unpaid child support as a result of the appellee's failure to make her required child support payments. Appellant cites 43 O.S.2001, §137, which uses the term "judgment by operation of law." The term "judgment by operation of law" appears to be incorporated into Oklahoma's statutes as a result of a requirement by Congress. [2]

¶10 A money judgment is discharged by actual payment in full to a person authorized to receive it. *Hart v. Jett Enterprises, Inc.*, 1985 OK 24, ¶6, 744 P.2d 561, 562. Due process requires that an obligor be allowed a hearing for any legally-cognizable defense to an assertion of arrearage. The Supreme Court of Alaska recognized this in *State v. Maxwell*, 6 P.3d 733 (Alaska 2000). That court observed that an alleged obligor be allowed an opportunity for a fair and impartial hearing before finalizing and implementing a continuing child support order that would become a series of enforceable judgments. *Maxwell*, 6 P.3d at 737.

¶11 North Dakota likewise recognized this right to a hearing in *Ruscheinsky v. Ulrich*, 2000 ND 133, ¶10, 612 N.W.2d 283, 286. There the court noted that simply because obligor's arrearages constituted judgments by operation of law did not necessarily mean that North Dakota's Social Services could collect on the judgments. Pursuant to North Dakota statutes, the claims were subject to a statute of limitations or cancellation by N.D.C.C. §28-20-35.

¶12 Like support alimony, child support becomes vested at the time each payment becomes due. *Nantz v. Nantz*, 1988 OK 9, ¶10, 749 P.2d 1137, 1140. "[A]n action which seeks to recover unpaid installments for child support is an action for a debt created by law and evidenced of record, and is maintainable in the court which directed payment, or any other court of competent jurisdiction. . . ." *Turk v. Coryell*, 1966 OK 194, ¶10, 419 P.2d 555, 558.

¶13 Even though the arrearages are judgments by operation of law, they are nevertheless subject to equitable defenses. We have already stated that Oklahoma recognizes equitable defenses. *Hedges*, 2002 OK 92, ¶10, 66 P.3d at 370. "[T]he equitable jurisdiction of a district court is not dependent upon specific statutory authorization." *Marley v. Cannon*, 1980 OK 147, ¶8, 618 P.2d 401, 404. "The purpose of a court sitting in equity is to promote and achieve justice with some degree of flexibility." *Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 855 (Colo. 1992). Therefore, the trial court's exercise of equitable jurisdiction requires an inquiry into the particular circumstances of the case. *Garrett*, 826 P.2d at 855. There is a legal maxim that equity must follow the law; it will not allow legal limitations to be abridged unless there are equitable considerations of a compelling nature. *Hedges*, 2002 OK 92, ¶ 8, 66 P.3d 364, 370. Equity will follow both the letter and the spirit of the law.

¶14 Pursuant to the standard of review, we must examine the record to determine if the trial court abused its discretion or if its findings were clearly contrary to the weight of evidence. In concluding that equitable estoppel applied, the trial court specifically considered the mother's disability, the fact that Social Security paid an amount in excess of the arrearage, and that the mother was not responsible for Social Security's decision to pay the adult son.

¶15 Equitable estoppel is employed to prevent one party from taking a legal position inconsistent with an earlier action that places the other party at a disadvantage. *First State Bank v. Diamond Plastics Corp*., 1995 OK 21, ¶39, 891 P.2d 1262, 1272. Equitable estoppel holds a person to a representation made, or a position assumed, where otherwise inequitable consequences would result to another, who has in good faith, relied upon that representation or position. *Oxley v. General Atlantic Resources, Inc*., 1997 OK 46, ¶20, 936 P.2d 943, 947. In the case at bar, the representation or position assumed must be the amount of time the father delayed before filing for his application for an indirect contempt citation and motion to reduce arrearage to judgment.

¶16 Both estoppel and the equitable defense of laches share the elements of delay and resulting prejudice to the other party. In *Hedges*, cited above, this Court found that a ten-year delay was not sufficient to support a laches defense where the only prejudice that could be shown was the fact that the party owing the arrearage must now pay the accrued interest along with the arrearage. *Hedges*, 2002 OK 92, ¶11, 66 P.3d at 370. In the case at bar, the mother is alleged to have failed to pay child support for three years and nine months. Concerning resulting prejudice from a delay in enforcement, the mother could claim to be prejudiced by the fact that the father's delay resulted in the Social Security Administration's paying the parties' adult child instead of paying the father. But she cannot claim that her failure to pay child support was in good faith. Also, there is no evidence that the father has taken now a legal position inconsistent with his earlier action. The evidence is insufficient to support the conclusion of the trial court that equitable estoppel applies.

¶17 But to affirm the decision of the trial court, it is not necessary for this Court to agree with the reason for the decision. "It is a settled rule of appellate review in this jurisdiction that a judgment, if correct, must stand, regardless of the correctness of the reasons, theory or conclusions upon which it was based." *McDaniel v. McCauley*, 1962 OK 72, ¶10, 371 P.2d 486, 489, quoting *Duncan v. Golden*, 1957 OK 194, ¶6, 316 P.2d 1116, 1118.

¶18 The judgment of the trial court is based on an assumption that Social Security disability benefits may be credited for court-ordered support of a minor child. That assumption is correct. The foundation for crediting disability benefits for a minor child as child support payments was laid in *Nibs v. Nibs*, 1981 OK 25, 625 P.2d 1256. The Court found that the trial court in *Nibs* was within its discretion to credit Social Security payments against a child support obligation, although the Court held that the evidence in *Nibs* weighed against

such a credit. *Nibs*, 1981 OK 25, ¶10, 625 P.2d at 1257. The entire *Nibs* court agreed that credit for Social Security disability benefits toward a child support order should be allowed. *Nibs*, 1981 OK 25, ¶1, 625 P.2d at 1258 (dissent). "Social Security benefits are not gratuitous, but are earned, and they constitute, in effect, insurance payments substituting for lost earning power. [Citations omitted.] It is therefore equitable to substitute Social Security disability benefits for child support for the period during which such benefits are paid." *Nibs*, 1981 OK 25, ¶1, 625 P.2d at 1258 (dissent).

¶19 In the case before us, Social Security benefits have been paid for child support. The amount paid was in excess of that owed as an arrearage. The mother is entitled to credit for that payment. The trial court found that the mother was not responsible for the lump sum payment directly to the adult child of the parties. In balancing the equities, we will not require a disabled party on Social Security to pay a second time. *McNeal v. Robinson*, 1981 OK 43, ¶13, 628 P.2d 358, 360. We do not find an abuse of discretion in the decision of the trial court.

Justice Boudreau's Opinion:

¶1 I agree with the majority opinion to the extent it allows the mother an equitable credit against her child support obligation, in the amount of social security disability payments which the Social Security Administration paid directly to the child as a consequence of the mother's disability. [1] The majority opinion need not have gone farther than that. Instead, the majority opinion proceeds to make a hyper-global pronouncement by way of *obiter dicta* that child support judgments are subject to the equitable defenses of waiver, estoppel and laches.

¶2 In *Hedges v. Hedges*, 2002 OK 92, 66 P.3d 364, our most recent decision concerning the availability of equitable defenses to child support judgments, we restrained from making a pronouncement about the availability of equitable defenses to child support judgments because no such pronouncement was necessary to the holding. *See also Myers v. Lashley*, 2002 OK 14, ¶17, 44 P.3d 553, 561 (not making global pronouncements). In exercising this restraint in *Hedges*, we said: "We need not globally address ourselves today to the *continued invocability* of laches as an equitable defense in arrearage enforcement proceedings. This is so because, on this record, we hold that it does not avail in this case." *Hedges*, 66 P.3d at 369 (emphasis in original). Contrary to what we did in *Hedges*, the majority opinion in this case makes an across-the-board pronouncement on an issue that was neither necessary to the holding nor clearly framed by the parties.

¶3 If the holding of the majority opinion in this case is indeed that child support judgments are subject to the equitable defenses of waiver, laches and estoppel, then I dissent. In 1987 the Legislature enacted a statute that says a child support obligation becomes a judgment by operation of law on the

date it becomes past due. 43 O.S. 2001 §137(A).2 The result of that statute was to transform an order in equity for the payment of continuing child support into a judgment by operation of law as each installment falls due and remains unpaid. *Hedges*, 66 P.3d at 373 n. 41. When §137(A) is viewed in connection with subsequent enactments, I am convinced that the Legislature intended to eliminate the equitable defenses of waiver, laches and estoppel to the enforcement of child support judgments.

WAIVER

¶4 It need hardly be repeated that 43 O.S. 2001 §112 eliminated the equitable doctrine of waiver as a defense to the enforcement of child support judgments. In *Hedges* we recognized that with the enactment of §112, parents have statutory authority to mutually agree to relinquish payment of all or a portion of past due child support. Noting that the effect of §112 was to eliminate the equitable defense of waiver in this context, we said: "[T]he latter defense characterized by the parties and by the trial court as 'waiver' is [now] statutorily declared ... its effectiveness stands limited to matured and unpaid installments either reduced or relinquished by mutual agreement." *Hedges*, 66 P.3d at 369 (emphasis in original). Waiver as a defense to child support judgments is now restricted to the terms of §112(A)(3).

LACHES

¶5 We have held that laches is an affirmative defense to stale claims not yet barred by limitations. *Hedges*, 66 P.3d at 369; *Sooner Federal Sav. & Loan Ass'n. v. Smoot*, 1995 OK 31, 894 P.2d 1082. Laches is defined as delay that disadvantages another. *Hutchinson v. Pfeil*, 105 F.3d 562, 564 (10th Cir.), cert. denied, 522 U.S. 914 (1997). In 1996 the Legislature enacted new laws concerning delay in asserting child support claims. The new statutes provide, among other things:

> A child support judgment is not subject to a statute of limitations:
>
> Court-ordered child support is ...not subject to a statute of limitations. 12 O.S.2001 § 95(9). [3]
>
> A child support judgment never becomes dormant:
>
> A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien on real property five (5) years from the date it is filed .... 43 O.S. 2001 §137(B). [4]
>
> A child support judgment is enforceable until paid in full:
>
> Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full. 43 O.S.2001 §137(B)(1). [5]
>
> A child support judgment is owed until it is paid:

> Court-ordered child support is owed until it is paid ....
>
> 12 O.S.2001 § 95(9). [6]

¶6 Because these statutes are in derogation of common law, they must be liberally construed to effect their purpose. *Finnell v. JEBCO Seismic*, 2003 OK 35, ¶15, 67 P.3d 339, 345; see also 25 O.S. 2001 §29.7 The purpose of these statutes is to ensure that delay on the part of the obligee in seeking to enforce child support obligations does not in any way affect his or her entitlement to those obligations. Construing these statutes liberally to effect their purpose, I am convinced the Legislature, in enacting these various statutes, intended to eliminate the equitable defense of laches to the enforcement of child support judgments.

ESTOPPEL

¶7 Equitable estoppel holds a person to a representation made, or a position taken, where otherwise inequitable consequences would result to another who in good faith relied upon the representation or position. *Oxley v. General Atlantic Resources, Inc.*, 1997 OK 46, 936 P.2d 943, 947. Estoppel and waiver are closely akin and their legal effect is much the same. *Grant v. Norris*, 85 N.W.2d 261 (Iowa 1957); *First National Bank of Hastings v. Davis*, 242 N.W. 655 (Neb. 1932); *Woodmen of the World Life Ins. Soc. v. Greathouse*, 7 So.2d 89 (Alabama 1941). Although there are well recognized distinctions between the two doctrines, both are based on acts, conduct or declarations of the party against whom the defenses are asserted. In my view, 43 O.S.2001 §112, which prohibits (with a single exception) waiver of "payment of all or a portion of the past due amount [of child support]" applies to all acts, conduct or declarations relating to child support obligations, whether denominated waiver or estoppel. I am convinced the Legislature, in enacting this statute, intended to eliminate the equitable defense of estoppel to the enforcement of child support judgments.

THRASH v. THRASH

¶8 The majority opinion relies on *Thrash v. Thrash*, 1991 OK 32, 809 P.2d 665, for the across-the-board proposition that equitable defenses may be invoked against the enforcement of child support judgments. In *Thrash*, the parties' divorce decree provided that father was to pay $220 per month child support until his gross salary reached $1,500, at which time he was to pay child support in an amount equal to 15% of his gross salary. In 1987, mother filed an application for contempt citation alleging that father was in arrears for child support in the amount of $31,876.80, based upon his income tax returns for the years through 1986. The trial court found father not guilty of indirect civil contempt, but entered judgment against father for the arrearage. On appeal, father argued that since mother made no attempt to enforce the automatic increases in child support based on his gross salary from the time the parties were divorced until 1987, the equitable doctrines of waiver, laches

> and estoppel barred mother's recovery of the arrearage. We disagreed, saying: "No set of facts has been stated for this Court to conclude that the appellant may in this case defeat the claim for the arrearage by interposing equitable defenses." *Thrash*, 809 P.2d at 668. In reaching this decision, we made a gratuitous comment regarding the availability of equitable defenses. We said: "The appellant is correct in concluding that equitable defenses may be invoked to bar the recovery of delinquent child support payments." *Id.* This comment was certainly not essential to our holding in the case and is mere *obiter dicta*.
>
> ¶9 More importantly, *Thrash* was decided in 1991, and was based on pre-1987 child support arrearages. Thus, it was decided before 43 O.S. §137(A) transformed an order in equity for the payment of continuing child support into a judgment by operation of law as each installment falls due and remains unpaid, and before the Legislature made child support judgments enforceable until paid in full, with no statute of limitations and no dormancy.
>
> CONCLUSION
>
> ¶10 I agree with the majority opinion to the extent it allows the mother an equitable credit against her child support obligation, in the amount of social security disability payments which the Social Security Administration paid directly to the child as a consequence of the mother's disability. However, I dissent to that portion of the opinion that holds that the equitable defenses of waiver, estoppel and laches are available as defenses to the enforcement of child support judgments because the pronouncement was not necessary to the holding and because I think it is wrong.
>
> ¶11 If this Court is going to declare that these equitable defenses may be invoked as defenses to the enforcement of child support judgments, we should do it in a case in which such declaration is essential to the holding of the case, and our opinion should include a reasoned discussion of all relevant statutory enactments subsequent to 1986.

If, has been true in the past, *dicta* in one appellate decision has a way of becoming black letter law in a later decision by the same court (e.g., compare *dicta* in *McDonald v. Wrigley*, 1994 OK 25, ¶12, 870 P.2d 777, and the holding in *Guardianship of M.R.S.*, 1998 OK 38, ¶12, 960 P.2d 357), particularly given (a) the majority's blessing upon *Thrash* and (b) that no other Justice joined in Justice Boudreau's opinion, equitable defenses would appear to be alive and well.

P. Modification of Support.

1. Retrospective Modification. 43 O.S. §118.E.16.b prohibits retroactive modification of temporary and final child support orders.[76] As to temporary orders, see ***Ward v. Ward***.[77] The sole exception is that "An order of modification shall be effective upon the date the motion was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date." §118.E.16.(4).

Phillips v. Hedges, [78] a unanimous opinion, makes clear that, per 43 O.S. §112, the parties may effectively agree that accrued child support may be agreed away. The Court states:

> ¶18 The legislature recognized in 1987 that an ***agreement-based reduction (or relinquishment) of past-due and owing child-support installments is effective in law.*** According to the terms of 12 O.S.Supp.1987 §1277 (*renumbered 43 O.S. O.S.Supp.1989 §112*),[33] the obligor-obligee parents by "mutual agreement" may relinquish the "payment of all or a portion of the past due amount." "Mutual agreement" within the meaning of the statute *must address* and *be confined to* that part of the child-support obligation *which had accrued at the time of the agreement*. [34] The statute clearly *transformed* the *pre-existing equitable defense* of contract-based reduction (or relinquishment) of decreed child support *into a legal defense* and *limited* its effectiveness to the then-matured unpaid installments that were reduced (or relinquished) by mutual agreement. While the obligor-obligee parents can modify past-due and unpaid installments by agreement, future support is subject only to *prospective modification by the court*. [35] In sum, the outer reach of the parties' ***mutual agreement*** is the reduction (or relinquishment) of ***matured installments***, while the outer limit of ***statutory power*** confines the court's authority to reducing (or modifying) ***unmatured installments***. [Emphasis by the Court]

Footnote 33 reads:

> [33] The terms of 12 O.S.Supp.1987 §1277 (renumbered 43 O.S. Supp.1989 §112) provided in pertinent part:

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[76] But see 43 O.S. §112 A. 3. which reads in part: ...the court: 3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, *except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support to the Department of Human Services or other entity, by agreement of the Department or other entity*." This text appears to indicate that *retrospective* modification is possible by agreement.

[77] *Ward v. Ward*, 1995 OK CIV APP 51, ¶6, 895 P.2d 749.

[78] *Phillips v. Hedges*, 2002 OK 92, 66 P.3d 364.

> ". . . If there are ... children [of the marriage], the court shall make provision for . . . support ,. . . and may modify or change any order in this respect . . . provided that the amount of the periodic child support payment shall not be modified retroactively or ***payment of all of a portion of the past due amount waived, except by mutual agreement of the obligor and obligee*** . . . ."
>
> The 1990, 1993, 1994, 1996 and 1998 (eff. 4 March 1998) amendments did not substantially change the quoted text. The 1998 (eff. 1 Nov. 1998), 1999, 2000, 2002 amendments *do not affect this case because they were enacted after the last child-support payment became past-due and owing*. [Emphasis by the Court].

The corresponding language in the current version of 43 O.S. §112 is this:

> A. * * * If there are minor children of the marriage, the court:
> * * *
>
> 3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Department of Human Services or other entity, by agreement of the Department or other entity.

The Court remanded the case to the trial court with these instructions:

> ¶24 In postremand proceedings the trial court shall, among others, (1) *reject* Father's laches defense; (2) *afford* Father the opportunity to adduce *proof of* a "mutual agreement" with Mother concerning reduction or relinquishment *of the then past-due and owing decreed child-support installments* and the *date it was made*; and (3) if there be ascertained a past-due-and-owing portion of the child-support obligation, *direct* that it be satisfied as a judgment
>
> ¶25 The proceedings to be conducted on remand ***shall stand confined*** to a full-scale inquiry into whether a *statutory agreement-based defense* (rested on a parol agreement or agreements and/or by acquiescence) can be found. ***Both parties*** are to be given the opportunity to develop the proof necessary to advance their respective positions. In its postremand consideration of the issue in contest the court should accord due importance to the subject matter of the mutual agreement. If it finds that a mutual agreement (or agreements) was made, it should establish its date for the purpose of ascertaining the quantum of matured unpaid installments that stood relinquished (or reduced) by its terms. If the agreement dealt only or partly with *future installments* it is *unenforceable* (*in toto* or *pro tanto*), but if it dealt with *past-due and unpaid* installments, it is within the range of Father's statutory defense. [40]

> ¶26 Should the trial court rule that there was no viable statutory agreement-based reduction (or relinquishment) **or** that the parties' agreement (or agreements) does not reduce (or relinquish) ***all*** the overdue and unpaid installments, the trial court should consider the ***impact, if any***, of post-decree (after-enacted) statutory changes that may legally affect the obligation sought to be satisfied. [41]

Footnote 41 reads as follows (with all emphasis by the Court):

> [41] For the statutory scheme in force ***at the time of the decree's entry***, see 12 O.S.Supp.1987 § 1291 **(A) and (C))** (eff. 1 Oct. 1987) (*renumbered* 43 O.S.Supp.1989 §137), ***whose terms*** (a) ***transform an order in equity*** (for the payment of continuing child support) ***into a judgment by operation of law as each installment falls due and remains unpaid*** and (b) ***provided*** that *the judgment* shall become ***dormant if not enforced within five years***. For the 1996 amendment that extinguished the statute's dormancy provisions and made the past-due and owing child-support installments enforceable until paid in full, see 43 O.S.Supp.1996 §137 (eff. 1 Nov. 1996), *supra* note 12. For the statute that eliminated the five-year statute of limitations for enforcement of unpaid child support, see 12 O.S.1981 §95 **(6).** For the 1996 amendment that extinguished the time bar upon the enforcement of past-due and unpaid child-support installments, see 12 O.S. Supp.1996 §95 **(9).** Each of these after-enacted provisions should be carefully considered in order to ascertain its effect, if any, on the obligation that is sought to be enforced, keeping in mind the rule that judgments are generally to be governed by the law in effect at the time they were entered. *Evans v. Evans*, 1993 OK 59, ¶¶ 10-11, 852 P.2d 145, 149.
>
> We express no opinion (a) on Father's argument that he was entitled to a reduction in child support as each child reached majority or (b) on Mother's response that automatic modifications are prohibited by the provisions of 43 O.S.Supp.1994 § 118 **(B)(1)** (*enacted eff. 1 Sept. 1994*). We cannot foretell, with any degree of accuracy, that these issues will arise again in postremand proceedings.

So, while a lot of questions remain unanswered, an enormous amount of "meat" is present in *Phillips v. Hedges* and the case needs to be read from top to bottom for much more than is stated here. The Court noted that is not disposed to make sweeping statements (even though you or I may wish differently) when it said, in footnote 19:

> [19] *See* Part IV *infra.* Moreover, the common-law tradition in appellate judicature eschews across-the-board pronouncements. Changes in the common law are done in an incremental fashion, on a case-by-case basis. *See Myers v. Lashley*, 2002 OK 14, ¶17, 44 P.3d 553, 561.

2. Basis for Modification. See §118.E.16. The single basis stated is "a material change in circumstances." Modification of the Child Support Guidelines Schedule as to support orders entered before November 1, 1999, is expressly excluded as a material change of circumstance and providing support for children born to or adopted after the support order is not, by itself, a material change of circumstance. A child's "aging out" is. §118.E.16.c. But, *what else is* a material change in circumstances? A substantial increase or decrease in the income of one of the parents is a sufficient material change in circumstance to support a modification of child support. ***Pharaoh v. Pharaoh***; [79] ***McKee v. McKee***. [80] ***Tirey v. Tirey*** [81] makes some interesting comments:

> ¶6 Under 43 O.S. (1990) §118, child support orders may be modified upon a showing of a material change in circumstances. A district court may deviate from the guideline amount if it is "unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved."
>
> ¶7 We hold that a "material change in circumstances" may be shown by a substantial increase in the income of one or both parents, a substantial decrease in the income of one or both parents, a substantial change in the needs of the child, or a combination of these factors.
>
> ¶8 In the instant case, the evidence tended to prove that Appellee's income had increased substantially. Moreover, it is undisputed that Appellant is no longer receiving alimony, and Appellee is no longer having to pay it. Finally, the dependent child is older, and his needs may have changed substantially. We find that Appellant offered sufficient evidence of a change in circumstances to warrant application of the child support guidelines to this case.

These comments are interesting given that the Guidelines are presumptively correct concerning the incomes of the parties and the needs of the children. See §7.B, above. And, how the presence or absence of alimony could be considered a sufficient change of conditions in child support modification entitlement seems pretty "iffy" to this writer.

Riedel v. Riedel [82] represents the only case known to this writer which actually makes an attempt to deal with what amount of an income change would considered "material". Although the Court made no attempt to quantify "material" by a defined percentage, it did review some authorities which had done so.

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[79] *Pharaoh v. Pharaoh*, 1993 OK CIV APP 181, ¶8, 86 5 P.2d 1279.

[80] *McKee v. McKee*, 1991 OK CIV APP 116, 820 P.2d 1362.

[81] *Tirey v. Tirey*, 1993 OK CIV APP 184, ¶s 6 - 8, 866 P.2d 454.

[82] *Riedel v. Riedel*, 1992 OK CIV APP 166, 844 P.2d 184.

¶10 Husband secondly complains of error by the Trial Court in granting Wife's motion to modify child support, arguing in essence that Wife failed to demonstrate the requisite "material" change of circumstances warranting modification. In support thereof, Husband points out that since the Guidelines' formula is based upon changes in the combined income of the parties, any resulting percentage change in child support must be "material," as opposed to modest or negligible. While admitting Oklahoma has no case law on point, Husband cites law from other jurisdictions establishing a range of ten to twenty-five percent increase in support as "material," asserting that although his income increased twelve percent (12%), Wife's income had increased twenty percent (20%), and thus, any change in circumstances since entry of the initial decree was not material.

¶11 The record reflects Husband's total child support obligation increased $35.00 per month. While such an increase may seem negligible to Husband, we refuse to hold as a matter of law that this increase does not reflect a "material" change. In that regard, modification of child support obligations is a matter addressed to the sound discretion of the Trial Court whose rulings thereon will not be disturbed absent (1) a showing of abuse of discretion, or (2) that the determination thereof is against the clear weight of the evidence. In view of the evidence of the increased costs of maintenance of the child, the parties' relative incomes, and Husband's decreased debt, we find no abuse of discretion by the Trial Court in increasing Husband's child support obligation in conformity with the Child Support Guidelines.

Q. Private Information – Social Security Numbers. Until November 1, 2002, §118.E.22 provided that, “The social security numbers of both parents and the children who are the subject of the order shall be included in all paternity or child support orders.” Presumably to deal with privacy concerns, the statute was modified effective November 1, 2002, to read: “22.The social security numbers of a paternity or child support order shall be included in the support order summary form provided for in Section 120 of this title.” And, per the corresponding revision to 43 O.S. §120, also effective November 1, 2002, the summary of support order is forwarded to the Central Registry and is no longer filed in the case.

§ 8. MISCELLANEOUS ISSUES.

A. Forms. In the 1999 legislation, the Court Administrator was required to publish a child support computation form which was submitted by the Oklahoma Department of Human Services. The 2000 legislation changed that. Compare the 1999 and 2000 versions of 43 O.S. §120:

1999's §120	2000's §120
A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.	A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided under the Department of Human Services State IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes, a support order summary form shall be prepared and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in district court, the clerk of the court shall forward a copy of the support order summary form to the Central Case Registry.

C. A standard agreed order form shall be used by all parents for any agreements submitted to the court for approval as a part of the informal review and adjustment process provided in Section 118 of this title.

D. The forms shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

B. 1. When services are not being provided under the Department of Human Services State IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes, a support order summary form shall be prepared and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in district court, the clerk of the court shall forward a copy of the support order summary form to the Central Case Registry.

2. A standard agreed order form shall be used by all parents for any agreements submitted to the court for approval as a part of the informal review and adjustment process provided in Section 118 of this title.

3. The forms specified by this subsection shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

In the 2000 version of §120 (and as since revised), the only forms "specified by this subsection" are (1) the "support order summary form" and (2) the "standard agreed order form" involved with the "informal review and adjustment process" (see §118.E.17.). The "child support computation form" is referenced in §120.A., not §120.B. Post-2000 revisions to §120 have not changed that. Hence, no statewide "official" child support computation form exists under current law. The Child Support Computation Form presented in the Family Law Section's Practice Manual was developed by the Hon. Gary J. Dean, Special Judge, Mayes County, and this author. Still, if you don't like it, don't use it! No official statewide computation form exists.

B. Credits Against Child Support – Disability or Social Security Benefits. ***Nibs v. Nibs*** [83] (pre-Guidelines decision; father was disabled and receiving VA disability benefits at time of divorce judgment which ordered him to pay child support; in post-decree contempt proceeding, credit against the father's child support obligation for the disability benefits received by the mother was reversed, the Court noting that at the time or the decree that credit *could* have been allowed for such payments, but that it had not been); ***Adoption of B.R.H.*** [84] (adoption action by stepfather to adopt without consent; the social security dependent benefits the disabled father arranged to be paid to the mother were deemed credits to his unspecified duty of support, distinguishing *Nibs*, supra); ***Wilson v. Stenwall*** [85] (post-decree custody modification action by the father, filed after his retirement; child would be with the father during the school year and with the mother two months during the summer; the child received a $271 social

[83] *Nibs v. Nibs*, 1981 OK 25, 625 P.2d 1256.

[84] *Adoption of B.R.H.*, 1991 OK CIV APP 125, 823 P.2d 383.

[85] *Wilson v. Stenwall*, 1992 OK CIV APP 34, 868 P.2d 1317.

security payment by reason of the father's retirement; parties agreed that the mother would receive $50 per month during those two months but did not agree concerning support the father would receive or how to apply the social security benefits; discusses *Nibs*, supra; held, the mother was improperly allowed credit for the child's social security payment against her support obligation to the father); ***Nazworth v. Nazworth*** [86] (allowing the obligor father credit for social security dependent disability benefits paid to the children, where the father's disability arose after the initial support order); ***Baker v. Baker*** [87] (in a post-decree modification proceeding, where the obligor father had retired after the initial order, and where the social security benefits received by the mother for the benefit of the children were the same amount as the father's child support obligation, the social security benefit payments to the mother for the children were held to be a proper substitute for the father's payments he would otherwise owe).

Although most notable for its discussion of support of equitable defenses to an accrued child support claim, *Merritt v. Merritt* (see ¶I., above) is also noteworthy for its clear statement that *Nibs v. Nibs* has present vitality even though it was a pre-Child Support Guidelines decision. See ¶I., above, for more discussion.

C. Income Tax Exemptions. The Guidelines make no mention of state or federal income tax exemptions being awarded to anyone. In 1984, Federal tax statutes were amended to create a non-rebuttable presumption that the federal income tax exemptions for children belong to the custodial parent unless the custodial parent delivers to the non-custodial parent a particular form executed by the custodial parent (IRS Form 8332) that the non-custodial parent is entitled to the exemption. See 26 USC §152. Do Oklahoma District Courts have the authority to effectively alter that presumption by awarding such exemptions to non-custodial parents and/or by ordering custodial parents to execute and deliver the appropriate form to the non-custodial parent? Four decisions of the Oklahoma Court of Civil Appeals answer, "Yes". ***Wilson v. Wilson*** [88] (affirms such authority in ¶7 of the opinion, and, as importantly, it notes in ¶12 that, "The Oklahoma Child Support Guidelines do not take into account the dependency exemption."); ***Light v. Light*** [89] (the trial court's decision that it lacked jurisdiction to enter such an order was reversed and remanded for hearing; the non-custodial father argued that he paid more than half of the annual support for the children, citing 26 USC §152, and that, as such, he was entitled to the exemption); ***Lamb v. Lamb*** [90] (affirmed the authority and held that contempt was available to

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[86] *Nazworth v. Nazworth*, 1996 OK CIV APP 134, 931 P.2d 86.

[87] *Baker v. Baker*, 1996 OK CIV APP 97, 923 P.2d 1198.

[88] *Wilson v. Wilson*, 1991 OK CIV APP 79, 831 P.2d 1.

[89] *Light v. Light*, 1992 OK CIV APP 11, 828 P.2d 447.

[90] *Lamb v. Lamb*. 1992 OK CIV APP 119, 848 P.2d 582.

enforce such a decision); and ***White v. Polson*** [91] (while affirming the existence of a trial court's power to award the exemption to the non-custodial parent, the trial court's decision not to do so was affirmed).

D. Paternity. Although the focus of this paper is child support in a divorce context, mention must be made of child support establishment in a paternity context, wherein retrospective, as well as prospective, child support will be ordered. It is not possible for parents to contract away their duties to support a child. See ***State Dept. of Human Services ex rel. K.A.G. v. T.D.G.*** [92] Instead, child support will be ordered in accordance with 10 O.S. §83, a portion of which reads:

> C. 1. An individual who has been legally determined to be the father of a child pursuant to Section 70 of this title, or an individual who has been judicially or administratively determined to be the father of a child shall be ordered to pay all or a portion of the costs of the birth and the reasonable expenses of providing for the child, provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action.
>
> 2. Copies of bills for pregnancy, child birth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for genetic testing on behalf of the child.
>
> D. The amount of child support and other support including amounts provided for in subsection C of this section shall be ordered and reviewed in accordance with the child support guidelines provided in Section 118 of Title 43 of the Oklahoma Statutes.

Arguably, the retrospective child support provided for above would be computed using the parties' incomes and applicable statutes in place during the period of retroactivity. Hence, before November 1, 1999, 1988's Schedule, 43 O.S. §119, would be applicable; after November 1, 1999, 1999's Schedule, 43 O.S. §119 would be applicable. For these reasons, it may be important to keep the pre-1999 §118 and §119 available for use in such cases. By analogy, see ***Burgess v. Burgess***, [93] where the mother brought post-decree collection proceedings against the obligor father and where the pre-Guidelines support order was found to be a "per child" order, and against the mother's claim that 43 O.S.1997 §118.B.19 (similar to the current §118.E.16.c) required that "per child" orders be so stated in the support order, the Court held:

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[91] *White v. Polson*, 2001 OK CIV APP 88, ¶s 11 - 13, 27 P.3d 488 .

[92] *State Dept. of Human Services ex rel. K.A.G. v. T.D.G.*, 1993 OK 126, 861 P.2d 990.

[93] *Burgess v. Burgess*, 2000 OK CIV APP 122, 15 P.2d 526.

> ¶7 The divorce decree being considered was entered by the trial court on April 11, 1985, and filed on April 26, 1985. Neither the statute above quoted, nor any other statute with which we are familiar, was in effect in 1985. The above statutory provision, or one substantially the same, was first enacted by the 1994 Legislature. See Laws 1994, Ch. 356, §14. This provision has been amended from time to time, and has been renumbered in various sub-sections of §118. Each amended version has been substantially the same as the 1994 version.
>
> ¶8 This statute is substantial in nature. It cannot be deemed to be procedural because substantial rights and duties are involved, and more than the remedy or a procedural matter is involved. Therefore, it cannot be applied retroactively. Thus, it is apparent that it cannot be deemed to be applicable here. Only remedial or procedural statutes may operate retrospectively.[94]

As to credit against retroactive support for the time that children born out of wedlock are proven to have lived with the father, see ***Anderson v. Fellers***. [95]

As to downward deviation in a paternity case based on various equitable factors, see ***Department of Human Services v. Glasby*** [96] (trial court's individual and collective considerations of the obligor's age, that 10 years had passed before the obligor knew of a paternity claim, the ages of obligor's other children, and other factors, was reversed as not falling within the statutory bases for deviation).

In ***Martin v. Brock*** [97] the mother filed a paternity action against the father. The trial court found the defendant to be the father of the child and ordered the father to pay support from the date of the mother's paternity petition. The mother appealed arguing that the court should have ordered the father to pay support retroactively for five years.

The Court of Civil Appeals reversed the trial court. It agreed with the mother's argument that the trial court did not have any discretion in determining whether to order five years retroactive support under 10 O.S. §83 (C)(1) which provides that:

> An individual who has been legally determined to be the father of a child pursuant to Section 70 of this title, or an individual who has been judicially or administratively determined to be the father of a child shall be ordered to pay all or a portion of the costs of the birth and the reasonable expenses of providing for the child, provided that liability for support provided before the

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[94] Cf. ***McCormack v. Town of Granite***, 1996 OK 19, 913 P.2d 282 and ***Testerman v. First Family Life Insurance Company***, 1990 OK CIV APP 108, 808 P.2d 703.

[95] *Anderson v. Fellers*, 1998 OK CIV APP 53, ¶s 10, 11, 960 P.2d 851.

[96] *Department of Human Services v. Glasby*, 1993 OK CIV APP 126, ¶10, 858 P.2d 1291.

[97] *Martin v. Brock*, 2001 OK CIV APP 145, 55 P.3d 1095.

> determination of paternity *shall be imposed for five (5) years preceding the filing of the action.* (Emphasis added.)

Using normal rules of statutory construction, the appellate panel held that the term "shall" means that the trial court has been divested of discretion with regard to retroactive support.

The father also argued that he should not be required to pay support because he and the mother had agreed that he would not have to pay support and in return he promised not to seek visitation with the child. The panel rejected this argument since the Supreme Court held quite clearly in ***State ex rel. K.A.G. v. T.D.G.*** [98] that such agreements violate public policy. The court also rejected the father's argument that since he relied on the agreement the mother should be estopped from seeking support. The case was remanded to determine the total amount of the arrearage.

Also, see the discussion of ***Griggs v. McKinney*** [99] in ¶G., above.

E. Limitations & Dormancy. This topic will not be developed completely, but see the language in ***Cowan v. Cowan*** [100] which contains several references:

> ¶14 The statute of limitations for actions to collect unpaid child support was previously five years under 12 O.S.1981 §95(6). *Logan v. Logan*, 1994 OK CIV APP 77, 877 P.2d 51, citing *Hough v. Hough*, 206 Okla. 179, 242 P.2d 162 (1952). Effective September 1, 1994, the following provision was added to the limitations statute: "(a)n action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18)." 12 O.S.Supp.1994 §95(7). Then, effective November 1, 1996, the following provision was added to the limitations statute: "(c)ourt-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations." 12 O.S.Supp.1996 §95(9).[4] [Note 4: "(A) legislative change in the statute of limitations applies to existing claims, in the absence of contrary provisions, as of the date those claims first became subject to operation of the changed limitation." *Logan*, 877 P.2d at 52.] However, in *Logan*, this court noted that the enactment of 12 O.S.Supp.1987 §1291, now 43 O.S.1991 §137, effectively negated the statute of limitations for child support matters. 877 P.2d at 52. This is because §137 established that all court-ordered child support payments become judgments on the date they are due. In other words, obligee parents no longer need to file actions to enforce child support orders because they are judgments by operation of law on the date each payment becomes due, and therefore a limitations period on such actions is unnecessary. Section 137(C) originally provided that such

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[98] *State ex rel. K.A.G. v. T.D.G.,* 1993 OK 126, 861 P.2d 990.

[99] *Griggs v. McKinney*, 2002 OK CIV APP 127, ¶3 - ¶11, 61 P.3d 907.

[100] *Cowan v. Cowan*, 2001 OK CIV APP 14, 19 P.3d 322.

judgments become dormant if not enforced within five years. However, effective November 1, 1996, §137(C) was modified to provide that child support orders shall not become dormant for any purpose,[5] [Note 5: Except that they shall cease to be a lien upon real property five years from the date they are filed of record with the county clerk.] and that a judgment for past due child support shall be enforceable until paid in full. Accordingly, judgments for past due child support due on or before November 1, 1991 are dormant and cannot be enforced. Therefore, the order entered by the trial court which ordered Father to pay an arrearage of $900 for child support owed in 1984 is reversed. We remand for entry of an order enforcing the child support judgments which are not dormant.

F. The Child Support Registry. For more than a decade, practitioners have been waiting and wondering if the "Centralized Support Registry" contemplated by 43 O.S. §413 would ever really happen.[101] Both the public and private elements of the Registry are now in place. Now, all child support payments in which DHS is the conduit (private or public) and all income assignment payments are required to be made through the Registry. More, §413.C. provides that, "Any party desiring child support, spousal support, or related support payments to be paid through the Registry may request the court to order the payments through the Registry. Upon such request the Court shall order payments to be made through the Registry." The draconian part of the 2000 version of §413 which provided that service of process could be had on the obligor (only) of "subsequent child support actions" *by regular mail* at his/her "registry" address was eliminated in legislation which became effective on June 4, 2001. [102]

The Registry address is: Oklahoma Centralized Support Registry, PO Box 268809, Oklahoma City, OK 73126-8809.

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[101] The Child Support Registry statutes, 43 O.S. §410 et seq., were first adopted in 1992.

[102] The former §413.E. read, "E. Parties who have been ordered or notified to make payments through the Registry may in subsequent child support actions be served with process by regular mail with a certificate of mailing from the United States Post Office, or in child support cases where services are being provided under the state child support plan, with a certificate of mailing from the child support representative, to the last address of record provided to the Registry." As of June 4, 2001, that ceased to be the law.

G. Adult Children. If the statutory conditions are satisfied, parents have had the legal potential of supporting their adult children for at least fifty years under 10 O.S. §12.[103] The 1951 version of the statute was interpreted in ***Roberts v. Roberts***: [104]

> ¶2 The cause was tried on the merits in the Court below. The fact that the adult child was unable to maintain herself is unquestioned.
>
> ¶3 Under Title 10 O.S. 1951 §12, it is the duty of the father and the mother of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability.
>
> ¶4 The record discloses that the mother and father of the adult incompetent child are divorced and each remarried; that the adult incompetent is now living with her mother and step-father; that the father is willing to take the daughter into his home and support her to the best of his ability, but is otherwise unable and unwilling to contribute to her support, although he has, in the past, contributed some to her support. We find nothing in the statutes enjoining such duty upon a parent except that by 10 O.S. 1951 §12, supra, parents must maintain such child to the extent of their ability. The extent of their ability is a question of fact for the trial court. The trial court in this case found that the father's offer constituted support to the extent of his ability. We see no reason to disturb that finding.

A 2001 statute gives greater visibility and definition to that potential. See 43 O.S. §112.1A, which became effective July 1, 2001, below. As with 10 O.S. §12, the support which may be ordered under §112.1A is not linked to the Guidelines. Unlike 10 O.S. §12, the support which may be ordered under 43 O.S. §112.1A is conditioned upon a child's mental or physical disability existing, or the cause of the disability being known to exist, before the child's eighteenth birthday. However, since 10 O.S. §12 remains the law as well, such a fact would not apparently limit the applicability of the older statute.

In ***Holleyman v. Holleyman*** [105] the Court had occasion to consider whether a district court had jurisdiction to order support for an adult child where the parties had entered into a consent decree of divorce and, if so, whether a parent (in this instance, the

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[103] Under this statute, parents the potential parents being required to support their adult children has been present since at least 1951. The relevant portion of the present statute reads: "It is the duty of the father and the mother of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. Provided, that the liability of a parent to an institution, nursing home, intermediate care facility, or other resident facility for the care or maintenance of any such poor person shall not be excessive and shall not cause undue financial hardship upon said parent. Provided further, that the provisions of this section shall not apply to charges for care provided by institutions of the Department of Mental Health and Substance Abuse Services or to charges for care provided by Department of Mental Health and Substance Abuse Services outpatient facilities, including the alcohol and drug programs. * * *".

[104] *Roberts v. Roberts*, 1954 OK 149, 270 P.2d 651.

[105] *Holleyman v. Holleyman*, 2003 OK 48, 78 P.3d 921.

mother) had standing to maintain such an action. Although the Court noted that 43 O.S. §112.1A had been adopted during the action's pendency, it was not involved in the Court's decision. Briefly stated, the Court determined that the parties had entered into a consent decree and that the mother was "in court" to determine the existence of, and, if so, intent and meaning of the terms of that agreed-to decree, but remanded issues beyond that to the trial court to determine.

The context was stated to be:

> ¶1 Our question involves the enforceability of a divorce decree by which the parties purport to agree "to leave the child support open after the minor child reaches the age of eighteen and/or complete high school . . ." based on the needs of the child, if any. The parties agree that the child is a "special needs" child with some degree of retardation and seizure problems.
>
> ¶2 Mother and Father divorced in 1993 when their child was fifteen years old. Father stopped providing medical insurance in 2000. Mother then sought an order from the District Court to (1) compel Father to provide medical insurance, (2) pay additional child support, (3) reimburse Mother for payments made to maintain the insurance and for medical expenses, (4) pay child support payments that were unpaid since 1999, and (5) adjudicate future support amounts needed by the child. She alleged that at the time of the divorce the parties agreed that Father would provide support after the child was 21 years old.
>
> ¶3 Father responded to Mother's application with a motion to dismiss. He stated that he stopped making the child support payments in May of 1999 after the child graduated from high school at the age of 21 years. He argued that the District Court was without jurisdiction to order payments to support a child after the child has reached the age of 21 years.

The Court had no difficulty in finding that the order in question had been agreed to by the parties. Part of the order read, "Due to the special needs of the minor child, the parties have agreed to leave the child support open after the minor child reaches the age of eighteen (18) and/or completes high school, and the Court will retain jurisdiction for either party to file an application for further support based upon the specific needs and requirements of the minor child, if any."

> ¶9
> * * *
>
> Just as parties may consent to a retroactive adjustment of their personal rights, they may also contract as to their personal rights in the future. For example, in *Kittredge v. Kittredge*, 1995 OK 30, 911 P.2d 903, we explained that a consent decree awarding the wife a percentage of the husband's future income in lieu of property division was enforceable, even though the statute would otherwise have prohibited an order to that effect:
> * * *

> *Kittredge v. Kittredge*, 911 P.2d at 904. Thus, the parties may, as a general proposition, agree between themselves as to future child support payments.

Based on language in ***Whitehead v. Whitehead***, [106] the father argued that since the order was not specific as to such agreed-to obligation that it was not a consent decree. The Court rejected that argument, saying:

> ¶10 * * * This language addresses the finality of an obligation, and not whether the amount of an obligation may be contractually set for a future determination. We have allowed consent decrees to possess obligations where the amount thereof is determined at a future date. *Kittredge v. Kittredge, supra*.

The Court noted that such contracts are to be construed as other contracts and said:

> ¶12 * * * A lack of specificity in either the amount or scope of an obligation does not necessarily mean an absence of a judicially enforceable obligation. We have explained that even if a provision of a contract is too vague and indefinite to determine the intent of the parties, their conduct may supply the necessary information to determine intent of the parties. *Bartlett v. Sterling Const. Co.*, 1972 OK 67, 499 P.2d 425, 429.
>
> ¶13 The intent of the parties at the time they entered into an agreement controls the meaning of their written contract, and the statutory rules for ascertaining intent are set out at 15 O.S.2001 §§151 through 157. *Founders Bank and Trust Co. v. Upsher*, 1992 OK 35, 830 P.2d 1355, 1361.1 The trial court made its decision in the context of a motion to dismiss challenging the jurisdiction of the trial court to award statutorily mandated support after a child has reached her majority. The trial court did not make findings of fact or law on the issue of the parties' intent, the essential elements of an agreement, or the contested portion of the divorce decree. Further, although Mother alleges that a judicially enforceable agreement exists, neither Father or Mother identify the relevant principles of contract law that may apply to the controversy in support of their respective positions. This Court will not exercise its appellate jurisdiction to make first instance determinations on disputed questions of fact or law. *Oklahoma Public Employees Association v. Oklahoma Dept. of Central Services*, 2002 OK 71, ¶21, 55 P.3d 1072, 1081; *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶42, 987 P.2d 1185, 1201. This cause must, therefore, be remanded to the trial court for further proceedings.
> * * *
>
> ¶15 The trial court dismissed the claims with two conclusions: first, that it did not possess subject matter jurisdiction, and secondly, that once a child reaches his or her majority the child is the proper party to bring a legal action

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[106] *Whitehead v. Whitehead*, 1999 OK 91, at ¶10, 995 P.2d 1098, at 1101.

against a parent for the parent's failure to pay support during that child's minority. A child does possess an independent right to maintain an action and to request support and maintenance. *State Dept. of Human Services ex rel. K.A.G. v. T.D.G.*, 1993 OK 126, 861 P.2d 990, 993. Whether the disputed portion of the decree is in fact an agreement allowing Mother to act on the child's behalf, and the effect of such an agreement upon Father's right to challenge Mother's representative status, if any, was not addressed by the trial court. The trial court's order must be reversed on this point as well.

¶16 * * * Father's motion to dismiss argued that no consent decree existed, and that the parties could not, as a matter of law, agree to subject matter jurisdiction. The trial court order determines that no subject matter jurisdiction existed.

¶17 That order is correct insofar as it determines a lack of jurisdiction to award statutory child support under Title 43. But district courts have jurisdiction to adjudicate the existence and effect of contracts. Here the Mother's claim is for enforcement of a contract she alleges to be in effect. She alleges consideration for the bargain by way of her agreeing to give up part of her statutorily calculated child support. The Father does not dispute this, but the trial court has never adjudicated the existence or non-existence of that alleged contract. The trial court did not determine whether Father agreed to pay child support after the child reached her majority. We will not determine in the first instance whether the decree contains such an agreement. *Oklahoma Public Employees Association v. Oklahoma Dept. of Central Services,* supra; *Patel v. OMH Medical Center, Inc.*, supra. The Mother is entitled to her day in court to prove what, if anything, the parties agreed to, and whether the Father is in fact in breach of any agreement.

H. Status of Adult Children To Collect Minority Arrearages. In ***Moore v.Moore*** [107] the obligor-father was sued by his adult daughter to collect about $27,000 accrued and unpaid child support due her mother during the child's minority. Division 1 affirmed the trial court's dismissal of the child's action finding that the child lacked standing to pursue the claim. In a brief opinion, Division 1 distinguished the issue from a claim by an adult child via 43 O.S. §112.1A and concluded:

¶7 Since we can find no legislative mandate or Supreme Court ruling permitting a non-disabled adult child to bring a cause of action against the non-contributing parent for past due child support, we decline to create such an action.

I. Medical (Insurance) Child Support Orders. This discussion presents only a thumbnail of health insurance law/orders which may be entered under state or federal

[107] *Moore v. Moore*, 2003 OK CIV APP 99, 79 P.3d 1137.

law – it is by no means exhaustive. The types of health insurance orders which may be entered vary by both state and federal law. All applicable statutes are contained in the **Statute Appendix**, below.

1. Federal Law – "Qualified Medical Child Support Orders" (QMCSOs). This phrase and acronym (try and say it!) derives wholly from, and is totally governed by, federal law. Neither the phrase nor acronym are mentioned Oklahoma Statutes. If an employee's group health insurance plan through his/her employer is subject to ERISA (not all group plans are), then you need to be concerned about QMCSOs – but, otherwise, not.

(a) **Public or Private Lawyers** – **29 U.S.C. §1169** – QMCSOs. A fine "Compliance Guide For Qualified Medical Child Support Orders" which presents numerous issues in a Question & Answer format is at **http://www.dol.gov/ebsa/publications/ qmcso.html**. Generally, §1169 provides that a "Qualified Medical Child Support Order" is a "Medical Child Support Order" which the group plan administrator has determined is "qualified" under the federal statute. Under the same statute, a "Medical Child Support Order" is defined at 29 U.S.C. §1169(a)(2)(B), which you should read if you want the complete definition. However, boiling it down a bit, a Medical Child Support Order is an order made pursuant to state domestic relations law relating to medical child support which provides for child support or health benefit coverage for a child of a participant under a group health plan and relates to benefits under the plan. Boiling it down a bit more, if the Court orders someone to maintain health insurance for minor children AND the insurance is an employer group plan which is subject to ERISA, THAT ORDER IS a "Medical Child Support Order" for all practical purposes.

(b) **Public (e.g., DHS) Organizations** are bound to use a particular form – the "National Medical Support Notice". That form is located at the DHS website at **http://www.okdhs.org/childsupport/empMedSup.htm** and its use is mandated by 45 C.F.R.§303.32 at the federal level and by **36 O.S. §6058A.F** and **43 O.S. §118.2.B**. According to 29 U.S.C. §1169(a)(1)(C), a National Medical Support Notice is "deemed" to be a Qualified Medical Child Support Order.

(c) **Other Federal Law.** According to the "Compliance Guide For Qualified Medical Child Support Orders", [108]

Q1-8: What State laws relating to medical child support can be enforced by a QMCSO?

[108] "Compliance Guide For Qualified Medical Child Support Orders", U.S. Department of Labor, Employee Benefits Security Administration, at **http://www.dol.gov/ebsa/publications/qmcso.html**.

At the same time that the QMCSO provisions were added to ERISA, Congress also added section 1908 to the Social Security Act. Section 1908 says that States cannot receive Federal Medicaid funds unless they have in place specific State laws relating to medical child support. States must have laws that:

- Require health insurers to enroll a child under his or her parent's health insurance even if the child was born out of wedlock, does not reside with the insured parent or in the insurer's service area, or is not claimed as a dependent on the parent's Federal income tax return;
- Require a health insurer to enroll a child pursuant to court or administrative order without regard to the plan's open season restrictions;
- Require employers and insurers to comply with court or administrative orders requiring the parent to provide health coverage for a child; and
- Require insurers to permit a custodial parent to file claims on behalf of his or her child under the non-custodial parent's health insurance and to make benefit payments to the custodial parent or health care provider.

[ERISA § 609(a)(2) and 609(a)(4), §1908 of the Social Security Act]

(d) **Applicability.** According to the "Compliance Guide For Qualified Medical Child Support Orders" referenced above,

Q1-1: What types of plans are subject to the qualified medical child support order (QMCSO) provisions?

The QMCSO provisions apply to "group health plans" subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). For this purpose a "group health plan" generally is a plan that:

- Is sponsored by an employer or employee organization (or both) and provides "medical care" to employees, former employees or their families.
- "Medical care" means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of a disease; for the purpose of affecting any structure or function of the body; transportation primarily for or essential to such care or services; or for insurance covering such care or services.

- ERISA does not apply to plans maintained by: Federal, State or local governments; churches; and employers solely for purposes of complying with applicable workers compensation or disability laws. However, provisions of the Child Support Performance and Incentive Act (CSPIA) of 1998 require church plans to comply with QMCSOs and National Medical Support Notices, and State and local government plans to comply with National Medical Support Notices.

[ERISA §§ 4(b), 609(a), and 607(1), § 213(d) of the Internal Revenue Code, § 401(f) of CSPIA]

2. State Law. Two Oklahoma Statutes are applicable, **36 O.S. §6058A** and **43 O.S. §118.2**. While their content is similar, there are potentially important differences. 43 O.S. §118.2 relates to employer group insurance for employer's doing business in this state. The section begins, "A. Where a parent is required by a court or administrative order to provide health coverage **which is available through an employer doing business in this state**, the **employer** is required * * *". 36 O.S. §6058A's application is much broader:

> E. As used in this section, "insurer" includes a licensed insurance company, not-for-profit hospital service or medical indemnity corporation, a fraternal benefit society, a health maintenance organization, a prepaid plan, a preferred provider organization, a multiple employer welfare arrangement, a self-insured, the State and Education Employees Group Insurance Board, or any other entity providing a plan of health insurance or health benefits in this state.

It's application parts read, "B. Where a child has health coverage through an insurer of a noncustodial parent the **insurer** shall * * *" and "C. Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the **insurer** shall be required * * *."

3. Features In Common. Both the state and federal authorities cited place certain mandates and restrictions upon employers and/or insurers. See the particular statutes in the Statute Appendix for more complete description, but, in general, and subject to the provisions of the statutes, both federal and state law place obligations upon either employers or insurers to enroll minor children (if not already enrolled) for coverage without regard to enrollment season restrictions, to not disenroll them, to provide documents and forms to custodians, to process claims by and make payments to the custodian or to the health care provider, and to deduct the cost of the coverage from the employee's wages (assuming, of course, that an employer group is involved).

4. Differences. In this writer's opinion, the state statutes are applicable whether ERISA is applicable to the insurance or not. No words of limitation appear in either 43 O.S. §118.2 or 36 O.S. §6058A to limit the application of either statute to "Qualified Medical Child Support Orders" – as noted previously, that term is not even used in the state statutes. Consequently, it would appear that 43 O.S. §118.2 applies to any employer group plan, whether or not it involves ERISA, and that, if the parent is eligible for family health coverage, 36 O.S. §6058A applies to individual insurers, as well.

§ 9. APPENDICES

A. Primary Child Support Statutes

43 O.S. §112A – Agreement to Obtain Certain Necessary Information

A. 1. The Child Support Enforcement Division of the Department of Human Services shall maintain a central case registry on all Title IV-D cases and all child support orders established or modified in this state after October 1, 1998. Title IV-D cases are cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes.

2. In Title IV-D cases, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A.

3. In cases in which child support services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes and in which a child support order is established or modified in this state after October 1, 1998, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C., Section 654A, and information from the support order summary form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

B. 1. All orders entered after October 31, 2001, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

a. an address of record for service of process in support, visitation and custody actions, and

b. the address of record may be different from the party's or custodian's physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the central case registry within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Department of Human Services. The Department of Human Services may refuse to disclose address and location information if the Department has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child.

C. 1. All parties and custodians ordered to provide an address of record to the central case registry as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address of record provided to the central case registry.

2. Proof of service shall be made by a certificate of mailing from a United States Post Office, or in child support cases where services are being provided under the state child support plan, by a certificate of mailing from the child support representative.

D. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Historical Data

Laws 1997, c. 402, § 11, effective July 1, 1997; Amended by Laws 2001, SB 675, c. 407 § 4, emerg. eff. June 4, 2001. Also, see **43 O.S. §118.3**, *supra*.

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43 O.S. §112.1A – Parental Support of Children with Disabilities

A. In this section:

1. "Adult child" means a child eighteen (18) years of age or older.

2. "Child" means a son or daughter of any age.

B. 1. The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

a. the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support, and

b. the disability exists, or the cause of the disability is known to exist, on or before the eighteenth birthday of the child.

2. A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support

for the child. The court may designate a child who is eighteen (18) years of age or older to receive the support directly.

C. 1. A suit provided by this section may be filed only by:

a. a parent of the child or another person having physical custody or guardianship of the child under a court order, or

b. the child if the child:

(1) is eighteen (18) years of age or older,

(2) does not have a mental disability, and

(3) is determined by the court to be capable of managing the child's financial affairs.

2. The parent, the child, if the child is eighteen (18) years of age or older, or other person may not transfer or assign the cause of action to any person, including a governmental or private entity or agency, except for an assignment made to the Title IV-D agency.

D. 1. A suit under this section may be filed:

a. regardless of the age of the child, and

b. as an independent cause of action or joined with any other claim or remedy provided by this title.

2. If no court has continuing, exclusive jurisdiction of the child, an action under this section may be filed as an original suit.

3. If there is a court of continuing, exclusive jurisdiction, an action under this section may be filed as a suit for modification pursuant to Section 115 of this title.

E. In determining the amount of support to be paid after a child's eighteenth birthday, the specific terms and conditions of that support, and the rights and duties of both parents with respect to the support of the child, the court shall determine and give special consideration to:

1. Any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;

2. Whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

3. The financial resources available to both parents for the support, care, and supervision of the adult child; and

4. Any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

F. An order provided by this section may contain provisions governing the rights and duties of both parents with respect to the support of the child and may be modified or enforced in the same manner as any other order provided by this title.

Historical Data

Added by Laws 2001, SB 675, c. 407 §5, emerg. eff. June 4, 2001.

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43 O.S. § 118. Child Support Guidelines

A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

B. The district or administrative court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child. If the district or administrative court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action.

C. The court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of the parent.

D. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

E. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section 119 of this title shall be used for

such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

(2) "Earned income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from:

(a) salaries,
(b) wages,
(c) commissions,
(d) bonuses, and
(e) severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from:

(a) dividends,
(b) pensions,
(c) rent,
(d) interest income,
(e) trust income,
(f) annuities,
(g) social security benefits,
(h) workers' compensation benefits,
(I) unemployment insurance benefits,
(j) disability insurance benefits,
(k) gifts,
(l) prizes, and
(m) royalties.

b. Specifically excluded from gross income are:

(1) actual child support received for children not before the court, and

(2) benefits received from means-tested public assistance programs including, but not limited to:

(a) Temporary Assistance for Needy Families (TANF),
(b) Supplemental Security Income (SSI),
(c) Food Stamps, and
(d) General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

3. a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.

b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the district or administrative court to be inappropriate for determining gross income for purposes of calculating child support.

c. The district or administrative court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation.

d. The district or administrative court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;

4. a. For purposes of computing gross income of the parents, the district or administrative court shall include for each parent, whichever is most equitable, either:

(1) all earned and passive monthly income,
(2) all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,
(3) the average of the gross monthly income for the time actually employed during the previous three (3) years, or
(4) the minimum wage paid for a forty-hour work week.

b. If equitable, the district or administrative court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

5. The amount of any preexisting district or administrative court order for current child support for children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the district or administrative court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service;

7. The results of paragraphs 2, 3, 4, 5, and 6 of this subsection shall be denominated "adjusted gross income";

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support;

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent;

10. a. In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared parenting time" means that each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year.

b. An adjustment for shared parenting time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1 ½). The result shall be designated the adjusted combined child support obligation.

c. To determine each parent's adjusted child support obligation, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

d. (1) The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred sixty-five (365).

(2) Each parent's share of the adjusted combined child support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

(3) The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars.

e. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case, shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in shared parenting time.

f. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent;

11. a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child

support obligation;

12. In cases of split custody, where each parent is awarded custody of at least one of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation;

13. a. The district or administrative court shall determine the "actual" child care expenses reasonably necessary to enable either or both parents to:

(1) be employed,

(2) seek employment, or

(3) attend school or training to enhance employment income.

b. The actual child care costs incurred for the purposes authorized by this paragraph shall be allocated and paid monthly in the same proportion as base child support.

c. The district or administrative court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.

d. If the court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time;

14. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense;

15. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income;

16. a. (1) Child support orders may be modified upon a material change in circumstances.

(2) Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders in existence on November 1, 1999.

(3) Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.

(4) An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

b. (1) A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

(2) All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.

c. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order;

17. a. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.

b. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

c. Requested information may include

verification of income, proof and cost of children's medical insurance, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.

d. Exchange of requested information may occur once a year or less often, by regular mail.

e. (1) If the parents agree to a modification of a child support order, their agreement shall be in writing on a standard agreed order form provided for in Section 120 of this title and shall comply with the child support guidelines.

(2) The standard agreed order form, the standard child support guideline calculation form, and the standard financial affidavit form shall be submitted to the district or administrative court.

(3) The standard agreed order form and supporting documents submitted shall be reviewed by the district or administrative court for approval to confirm that the standard agreed order form and documents comply with the child support guidelines and that all necessary parties have been notified. The approved standard agreed order form shall be filed with the court.

(4) If the standard agreed order form does not comply with the child support guidelines, or all necessary parties have not been notified, the matter shall be set for hearing.

f. (1) If the parents fail to cooperate in the exchange of information, either parent may move for a modification hearing or for mediation. The district or administrative court on its own motion may refer the parents to a mediator.

(2) If referred to mediation, and modification is subsequently found to be appropriate, the modification shall be effective on the date the motion was filed.

(3) Costs for mediation, if any, shall be paid by the parent who failed to cooperate in the exchange of information. Otherwise, the court may assess costs equally between the parents, or as determined by the court;

18. Child support orders may include such provisions as the district or administrative court deems appropriate to assure that the child support payments to the custodial parent are used for the support of the child;

19. The district or administrative court shall require and enforce a complete disclosure of assets by both parents on a financial affidavit form prescribed by the Administrative Office of the Courts;

20. Child support orders issued for prior-born children of the payor may not be modified for the purpose of providing support for later-born children;

21. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, and extraordinary costs;

22. The social security numbers of a paternity or child support order shall be included in the support order summary form provided for in Section 120 of this title; and

23. A completed support order summary form shall be presented to the judge with all paternity and child support orders, and no such order shall be signed by the judge without presentation of the form.

Historical Data

Added by Laws 1988, c. 224, §1, emerg. eff. June 20, 1988. Renumbered from Title 12, § 1277.7 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1989, c. 362, §2, eff. Nov. 1, 1989; Laws 1992, c. 251, §1, eff. Sept. 1, 1992; Laws 1993, c. 307, §2, emerg. eff. June 7, 1993; Laws 1994, c. 356, §14, eff. Sept. 1, 1994; Laws 1995, c. 1, §13, emerg. eff. Mar. 2, 1995; Laws 1994, c. 185, §1 repealed by Laws 1995, c. 1, §40, emerg. eff. Mar. 2, 1995.; Amended by Laws 1997, c. 402, §13, eff. July 1, 1997; Amended by Laws 1997, c. 403, §11, eff. November 1, 1997; Amended by Laws 1998, c. 323, §8, eff. October 1, 1998; Amended by Laws 1999, S.B. 689 c. 422. §2, eff. November 1, 1999; Amended by Laws 2000, HB 2190 c. 345. §2, eff. June 6, 2000; Amended by Laws 2000, 1st Ex.Sess., c. 9, §1, emerg. eff. June 30, 2000.Amended by Laws 2002, SB 1538, c. 314, § 3, eff. November 1, 2002.

43 O.S. §118.1 Department to Review Child Support Orders – Time and Notice-Disclosure of Financial Status

A. In all cases in which child support services are being provided under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes, the Department shall conduct a review upon the request of any party or upon its own decision. All procedures for reviews will be conducted pursuant to rules promulgated by the Department. Prior to such review, all parties shall receive notice of the review as provided by law. If the Department determines that individual awards are not in accordance with such guidelines, the case shall be presented to the district or administrative court for action. The district or administrative court shall review the award to determine its compliance with child support guidelines and order modification if appropriate.

B. In any proceeding to establish or modify a support order, each party shall completely disclose his or her financial status.

Historical Data

Added by Laws 1989, c. 362, §3, eff. Nov. 1, 1989; Renumbered from Title 12, §1277.7A by Laws 1990, c. 171, §3, operative July 1, 1990, and Laws 1990, c. 188, §2, eff. Sept. 1, 1990; Amended by Laws 1992, c. 153, §1, emerg. eff. April 30, 1992; Laws 1994, c. 356, §24, eff. Sept. 1, 1994.; Amended by Laws 1997, c. 402, §14, eff. July 1,1997.

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43 O.S. §118.2 Employer's Duties Regarding Court or Administrative Order for Health Coverage

A. Where a parent is required by a court or administrative order to provide health coverage which is available through an employer doing business in this state, the employer is required:

1. To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

2. If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage and to deduct the cost of the coverage from the employee's wages, unless the employer currently pays for the cost or portion of dependent coverage, upon application by the child's custodial person, by the state agency administering the Medicaid program or the state agency administering the child support program under Title IV-D of the Social Security Act;

3. Not to disenroll or eliminate coverage of a child unless the employer is provided satisfactory written evidence that:

a. the court order is no longer in effect,

b. the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment, or

c. the employer has eliminated family health coverage for all of its employees;

4. Upon request, to provide complete information to the custodial person, the state agency administering the Medicaid program or the state agency administering the child support program under Title IV-D of the Social Security Act regarding any insurance benefits to which the child is entitled, and any forms, publications, or documents necessary to apply for or to utilize the benefits;

5. Permit the custodial person, the designated agency administering the State Medicaid Program, or the provider with approval, to submit claims for covered services without the approval of the noncustodial parent; and

6. Make payments on claims submitted in accordance with paragraph 5 of this subsection directly to the custodial person, the designated agency administering the State Medicaid Program, or the provider.

B. If child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the Child Support Enforcement Division shall notify the parent's employer to enroll the child in health care coverage available under the employer's plan by sending the employer a National Medical Support Notice issued pursuant to Section 466(a)(19) of the Social Security Act, and Section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974. The employer shall comply with the National Medical Support Notice. The employer may be fined up to Two Hundred Dollars ($200.00) per month per child for each failure to comply with the requirements of the National Medical Support Notice. Fines collected shall be remitted to the Child Support Revenue Enhancement Fund created pursuant to Section 225 of Title 56 of the Oklahoma Statutes.

C. An employer may not be fined under this section where an employee fails to contribute his or her portion of a health insurance premium.

D. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Historical Data

Added by Laws 1994, c. 356, §15, eff. Sept. 1, 1994; Amended by Laws 1998, c. 323, §9, eff. October 1, 1998; Amended by Laws 2001, SB 675, c. 407 §6, emerg. eff. June 4, 2001; Amended by Laws 2003, SB 431, c. 19, §2, eff. November 1, 2003.

Also, see **36 O.S. §6058A** and **29 U.S.C. §1169**, below.

43 O.S. §118.3 Agreement to Obtain Certain Necessary Information

On or after April 15th of each year, the obligor or obligee may make a written request to the other party for the other party's previous tax year W-2 forms, 1099 form, or other wage and tax information. This request shall be served upon the other party in the same manner prescribed for the service of summons in a civil action, and the original request shall be filed in the court file. The party receiving such a written request shall provide the requesting party a copy of the requested information by certified mail within ten (10) days of receiving the written request. If a motion to modify child support is subsequently filed by the requesting party, and it is shown to the court that the non-moving party failed to comply with this section, the court may award the moving party his or her attorneys fees and costs incurred as a result of the failure to provide requested information.

Historical Data

Laws 1997, c. 403, §12, effective July 1, 1997. Also, see **43 O.S. §112A**, infra.

43 O.S. §118.4 Child Support Benefits - Assignment To Attorney For Legal Representation

A. Child support benefits or any claim thereto shall not be directly or indirectly assigned, except as provided in subsection B of this section.

B. Child support benefits may be assigned or transferred to an attorney for the purpose of providing legal representation up to fifty percent (50%) of the net amount of the child support collected and remitted to the obligee.

Historical Data

Added by Laws 2003, HB 1256, c. 302, §4, emerg. eff. May 28, 2003.

43 O.S. §119. Child Support Guideline Schedule

A. Child support shall be computed in accordance with the following Child Support Guideline Schedule:

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

If Combined Gross Monthly Income Is Equal to or Above	Number of children 1	2	3	4	5	6 or More
50	50	50	50	50	50	50
650	50	50	50	88	118	141
700	50	50	101	122	154	176
750	61	107	132	156	198	207
800	94	141	165	190	239	242
850	127	174	199	224	274	276
900	159	207	232	258	308	311
950	192	240	265	291	342	345
1,000	206	272	298	325	375	379
1,050	215	305	332	359	409	414
1,100	224	326	365	392	443	448
1,150	232	338	397	425	476	481
1,200	241	351	415	458	497	515
1,250	249	363	430	475	515	551
1,300	257	375	443	490	531	568
1,350	265	386	457	504	547	585
1,400	273	397	470	519	562	602
1,450	280	408	483	533	578	618
1,500	288	419	496	548	594	635
1,550	296	430	509	562	609	652
1,600	304	442	522	576	625	669
1,650	312	453	535	591	640	685
1,700	319	464	548	605	656	702
1,750	327	475	561	620	672	719
1,800	335	486	574	634	687	735
1,850	343	497	587	648	703	752
1,900	351	509	600	663	718	769
1,950	358	520	613	677	734	785
2,000	366	531	626	691	750	802
2,050	374	542	639	706	765	819
2,100	382	554	652	720	781	835
2,150	390	565	665	735	796	852
2,200	398	576	678	749	812	869
2,250	406	587	691	763	828	886
2,300	414	599	704	778	843	902
2,350	422	610	717	792	859	919
2,400	430	621	730	807	874	936
2,450	437	632	743	821	890	952
2,500	445	643	755	835	905	968
2,550	451	653	768	848	919	984
2,600	458	663	780	862	934	1,000
2,650	465	673	792	875	949	1,015
2,700	472	683	804	888	963	1,030
2,750	477	691	814	900	975	1,043
2,800	483	700	824	911	987	1,056
2,850	489	708	834	922	999	1,069
2,900	494	716	844	933	1,011	1,082
2,950	500	725	854	944	1,023	1,095
3,000	505	733	864	955	1,035	1,107
3,050	511	741	874	966	1,047	1,120
3,100	517	749	884	977	1,059	1,133
3,150	521	756	892	986	1,069	1,143
3,200	525	761	897	992	1,075	1,150
3,250	528	766	903	998	1,081	1,157
3,300	532	771	908	1,003	1,088	1,164
3,350	535	776	913	1,009	1,094	1,170

If Combined Gross Monthly Income Is Equal to or Above	Number of children 1	2	3	4	5	6 or More
3,400	539	780	919	1,015	1,100	1,177
3,450	543	785	924	1,021	1,107	1,184
3,500	546	790	929	1,027	1,113	1,191
3,550	550	795	935	1,033	1,119	1,198
3,600	553	800	940	1,039	1,126	1,205
3,650	557	805	945	1,045	1,132	1,211
3,700	560	809	951	1,050	1,139	1,218
3,750	564	814	956	1,056	1,145	1,225
3,800	567	819	961	1,062	1,151	1,232
3,850	571	824	966	1,068	1,158	1,239
3,900	574	828	972	1,074	1,164	1,245
3,950	577	832	977	1,079	1,170	1,252
4,000	580	837	982	1,085	1,176	1,258
4,050	583	841	987	1,090	1,182	1,265
4,100	586	845	992	1,096	1,188	1,271
4,150	589	850	997	1,102	1,194	1,278
4,200	592	854	1,002	1,107	1,200	1,284
4,250	595	859	1,007	1,113	1,206	1,291
4,300	598	863	1,012	1,119	1,213	1,297
4,350	601	867	1,017	1,124	1,219	1,304
4,400	604	872	1,023	1,130	1,225	1,311
4,450	607	876	1,028	1,136	1,231	1,317
4,500	610	880	1,033	1,141	1,237	1,324
4,550	613	885	1,038	1,147	1,243	1,330
4,600	617	890	1,044	1,154	1,250	1,338
4,650	622	897	1,052	1,162	1,260	1,348
4,700	626	903	1,059	1,171	1,269	1,358
4,750	631	910	1,067	1,179	1,278	1,368
4,800	636	916	1,075	1,188	1,287	1,377
4,850	640	923	1,082	1,196	1,296	1,387
4,900	645	930	1,090	1,205	1,306	1,397
4,950	650	936	1,098	1,213	1,315	1,407
5,000	654	943	1,105	1,222	1,324	1,417
5,050	659	950	1,113	1,230	1,333	1,427
5,100	664	956	1,121	1,239	1,343	1,437
5,150	668	963	1,129	1,247	1,352	1,446
5,200	673	969	1,136	1,256	1,361	1,456
5,250	678	976	1,144	1,264	1,370	1,466
5,300	682	982	1,151	1,272	1,379	1,475
5,350	686	987	1,157	1,279	1,386	1,483
5,400	689	992	1,163	1,285	1,393	1,490
5,450	692	997	1,168	1,291	1,400	1,498
5,500	696	1,002	1,174	1,297	1,406	1,505
5,550	699	1,007	1,180	1,304	1,413	1,512
5,600	703	1,012	1,185	1,310	1,420	1,519
5,650	706	1,017	1,191	1,316	1,427	1,527
5,700	709	1,022	1,197	1,322	1,433	1,534
5,750	713	1,027	1,203	1,329	1,441	1,542
5,800	717	1,032	1,209	1,336	1,448	1,550
5,850	721	1,038	1,216	1,343	1,456	1,558
5,900	724	1,043	1,222	1,350	1,464	1,566
5,950	728	1,049	1,228	1,357	1,471	1,574
6,000	732	1,054	1,234	1,364	1,479	1,582
6,050	736	1,060	1,241	1,371	1,487	1,591
6,100	741	1,067	1,249	1,380	1,496	1,601
6,150	746	1,074	1,257	1,389	1,506	1,612

43 O.S. §119. Child Support Guideline Schedule

A. Child support shall be computed in accordance with the following Child Support Guideline Schedule:

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

If Combined Gross Monthly Income Is Equal to or Above	Number of children 1	2	3	4	5	6 or More
6,200	751	1,081	1,266	1,398	1,516	1,622
6,250	756	1,088	1,274	1,407	1,526	1,633
6,300	761	1,095	1,282	1,417	1,536	1,643
6,350	765	1,102	1,290	1,426	1,545	1,653
6,400	770	1,109	1,298	1,435	1,555	1,664
6,450	775	1,116	1,306	1,444	1,565	1,674
6,500	780	1,123	1,315	1,453	1,575	1,685
6,550	785	1,130	1,323	1,462	1,584	1,695
6,600	790	1,137	1,331	1,471	1,594	1,706
6,650	795	1,144	1,339	1,480	1,604	1,716
6,700	800	1,151	1,347	1,489	1,614	1,727
6,750	805	1,158	1,355	1,498	1,623	1,737
6,800	810	1,165	1,364	1,507	1,633	1,748
6,850	815	1,172	1,372	1,516	1,643	1,758
6,900	819	1,179	1,380	1,525	1,653	1,768
6,950	824	1,186	1,388	1,534	1,663	1,779
7,000	829	1,193	1,396	1,543	1,672	1,789
7,050	834	1,200	1,404	1,552	1,682	1,800
7,100	838	1,206	1,411	1,560	1,691	1,809
7,150	842	1,211	1,418	1,567	1,698	1,817
7,200	846	1,217	1,424	1,574	1,706	1,825
7,250	850	1,222	1,430	1,581	1,713	1,833
7,300	853	1,228	1,437	1,588	1,721	1,842
7,350	857	1,233	1,443	1,595	1,729	1,850
7,400	861	1,238	1,450	1,602	1,736	1,858
7,450	864	1,244	1,456	1,609	1,744	1,866
7,500	868	1,249	1,462	1,616	1,751	1,874
7,550	872	1,254	1,469	1,623	1,759	1,882
7,600	875	1,260	1,475	1,630	1,767	1,890
7,650	879	1,265	1,481	1,637	1,774	1,899
7,700	883	1,270	1,488	1,644	1,782	1,907
7,750	887	1,276	1,494	1,651	1,790	1,915
7,800	890	1,281	1,500	1,658	1,797	1,923
7,850	894	1,287	1,507	1,665	1,805	1,931
7,900	898	1,292	1,513	1,672	1,812	1,939
7,950	901	1,297	1,519	1,679	1,820	1,947
8,000	905	1,303	1,526	1,686	1,828	1,955
8,050	909	1,308	1,532	1,693	1,835	1,964
8,100	912	1,313	1,538	1,700	1,843	1,972
8,150	916	1,319	1,545	1,707	1,850	1,980
8,200	920	1,324	1,551	1,714	1,858	1,988
8,250	924	1,330	1,557	1,721	1,866	1,996
8,300	927	1,335	1,564	1,728	1,873	2,004
8,350	931	1,340	1,570	1,735	1,881	2,012
8,400	935	1,346	1,577	1,742	1,888	2,021
8,450	938	1,351	1,583	1,749	1,896	2,029
8,500	943	1,357	1,590	1,757	1,905	2,038
8,550	949	1,363	1,597	1,765	1,913	2,047
8,600	954	1,369	1,605	1,773	1,922	2,057
8,650	959	1,375	1,612	1,781	1,931	2,066
8,700	964	1,381	1,619	1,789	1,939	2,075
8,750	969	1,387	1,626	1,797	1,948	2,084
8,800	974	1,393	1,633	1,805	1,957	2,093
8,850	979	1,399	1,641	1,813	1,965	2,103
8,900	984	1,405	1,648	1,821	1,974	2,112
8,950	989	1,411	1,655	1,829	1,982	2,121
9,000	995	1,417	1,662	1,837	1,991	2,130
9,050	1,000	1,423	1,669	1,845	2,000	2,140
9,100	1,005	1,429	1,677	1,853	2,008	2,149
9,150	1,010	1,435	1,684	1,861	2,017	2,158
9,200	1,015	1,441	1,691	1,869	2,026	2,167
9,250	1,020	1,447	1,698	1,877	2,034	2,177
9,300	1,025	1,453	1,706	1,885	2,043	2,186
9,350	1,030	1,459	1,713	1,893	2,052	2,195
9,400	1,035	1,465	1,720	1,901	2,060	2,204
9,450	1,040	1,471	1,727	1,909	2,069	2,214
9,500	1,046	1,477	1,734	1,917	2,077	2,223
9,550	1,051	1,483	1,742	1,924	2,086	2,232
9,600	1,056	1,489	1,749	1,932	2,095	2,241
9,650	1,061	1,495	1,756	1,940	2,103	2,251
9,700	1,066	1,501	1,763	1,948	2,112	2,260
9,750	1,071	1,507	1,770	1,956	2,121	2,269
9,800	1,076	1,513	1,778	1,964	2,129	2,278
9,850	1,081	1,519	1,785	1,972	2,138	2,288
9,900	1,086	1,525	1,792	1,980	2,147	2,297
9,950	1,091	1,531	1,799	1,988	2,155	2,306
10,000	1,097	1,537	1,807	1,996	2,164	2,315
10,050	1,102	1,543	1,814	2,004	2,173	2,325
10,100	1,107	1,549	1,821	2,012	2,181	2,334
10,150	1,112	1,555	1,828	2,020	2,190	2,343
10,200	1,117	1,561	1,835	2,028	2,198	2,352
10,250	1,122	1,567	1,843	2,036	2,207	2,362
10,300	1,127	1,574	1,850	2,044	2,216	2,371
10,350	1,132	1,580	1,857	2,052	2,224	2,380
10,400	1,137	1,586	1,864	2,060	2,233	2,389
10,450	1,142	1,592	1,871	2,068	2,242	2,399
10,500	1,148	1,598	1,879	2,076	2,250	2,408
10,550	1,153	1,604	1,886	2,084	2,259	2,417
10,600	1,158	1,610	1,893	2,092	2,268	2,426
10,650	1,163	1,616	1,900	2,100	2,276	2,436
10,700	1,168	1,622	1,907	2,108	2,285	2,445
10,750	1,173	1,628	1,915	2,116	2,293	2,454
10,800	1,178	1,634	1,922	2,124	2,302	2,463
10,850	1,183	1,640	1,929	2,132	2,311	2,473
10,900	1,188	1,646	1,936	2,140	2,319	2,482
10,950	1,193	1,652	1,944	2,148	2,328	2,491
11,000	1,199	1,658	1,951	2,156	2,337	2,500
11,050	1,204	1,664	1,958	2,164	2,345	2,509
11,100	1,209	1,670	1,965	2,172	2,354	2,519
11,150	1,214	1,676	1,972	2,180	2,363	2,528
11,200	1,219	1,682	1,980	2,188	2,371	2,537
11,250	1,221	1,686	1,984	2,193	2,377	2,543
11,300	1,223	1,689	1,898	2,197	2,382	2,549
11,350	1,225	1,693	1,993	2,202	2,387	2,554
11,400	1,227	1,697	1,997	2,207	2,392	2,560
11,450	1,229	1,700	2,001	2,212	2,397	2,565
11,500	1,231	1,704	2,006	2,216	2,403	2,571
11,550	1,233	1,708	2,010	2,221	2,408	2,576
11,600	1,235	1,711	2,014	2,226	2,413	2,582
11,650	1,237	1,715	2,019	2,231	2,418	2,587
11,700	1,239	1,719	2,023	2,235	2,423	2,593
11,750	1,241	1,723	2,027	2,240	2,428	2,598
11,800	1,243	1,726	2,031	2,245	2,433	2,604
11,850	1,245	1,730	2,036	2,249	2,438	2,609

43 O.S. §119. Child Support Guideline Schedule

A. Child support shall be computed in accordance with the following Child Support Guideline Schedule:

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

If Combined Gross Monthly Income Is Equal to or Above	Number of children 1	2	3	4	5	6 or More
11,900	1,247	1,734	2,040	2,254	2,444	2,615
11,950	1,249	1,737	2,044	2,259	2,449	2,620
12,000	1,251	1,741	2,049	2,264	2,454	2,626
12,050	1,253	1,745	2,053	2,268	2,459	2,631
12,100	1,255	1,748	2,057	2,273	2,464	2,637
12,150	1,257	1,752	2,061	2,278	2,469	2,642
12,200	1,259	1,756	2,066	2,283	2,474	2,648
12,250	1,261	1,759	2,070	2,287	2,479	2,653
12,300	1,263	1,763	2,074	2,292	2,485	2,659
12,350	1,265	1,767	2,079	2,297	2,490	2,664
12,400	1,267	1,770	2,083	2,302	2,495	2,669
12,450	1,270	1,774	2,087	2,306	2,500	2,675
12,500	1,272	1,778	2,091	2,311	2,505	2,680
12,550	1,274	1,781	2,096	2,316	2,510	2,686
12,600	1,276	1,785	2,100	2,320	2,515	2,691
12,650	1,278	1,789	2,104	2,325	2,520	2,697
12,700	1,280	1,792	2,109	2,330	2,526	2,702
12,750	1,282	1,796	2,113	2,335	2,531	2,708
12,800	1,284	1,800	2,117	2,339	2,536	2,713
12,850	1,286	1,803	2,121	2,344	2,541	2,719
12,900	1,288	1,807	2,126	2,349	2,546	2,724
12,950	1,290	1,811	2,130	2,354	2,551	2,730
13,000	1,292	1,814	2,134	2,358	2,556	2,735
13,050	1,294	1,818	2,138	2,363	2,562	2,741
13,100	1,296	1,822	2,143	2,368	2,567	2,746
13,150	1,298	1,825	2,147	2,372	2,572	2,752
13,200	1,300	1,829	2,151	2,377	2,577	2,757
13,250	1,302	1,833	2,156	2,382	2,582	2,763
13,300	1,304	1,836	2,160	2,387	2,587	2,768
13,350	1,306	1,840	2,164	2,391	2,592	2,774
13,400	1,308	1,844	2,168	2,396	2,597	2,779
13,450	1,310	1,847	2,173	2,401	2,603	2,785
13,500	1,312	1,851	2,177	2,406	2,608	2,790
13,550	1,314	1,855	2,181	2,410	2,613	2,796
13,600	1,316	1,858	2,186	2,415	2,618	2,801
13,650	1,318	1,862	2,190	2,420	2,623	2,807
13,700	1,320	1,866	2,194	2,425	2,628	2,812
13,750	1,322	1,869	2,198	2,429	2,633	2,818
13,800	1,324	1,873	2,203	2,434	2,638	2,823
13,850	1,326	1,877	2,207	2,439	2,644	2,829
13,900	1,328	1,880	2,211	2,443	2,649	2,834
13,950	1,330	1,884	2,216	2,448	2,654	2,840
14,000	1,332	1,888	2,220	2,453	2,659	2,845
14,050	1,334	1,891	2,224	2,458	2,664	2,851
14,100	1,336	1,895	2,228	2,462	2,669	2,856
14,150	1,338	1,899	2,233	2,467	2,674	2,862
14,200	1,340	1,902	2,237	2,472	2,679	2,867
14,250	1,342	1,906	2,240	2,477	2,685	2,873
14,300	1,344	1,910	2,246	2,481	2,690	2,878
14,350	1,346	1,913	2,250	2,486	2,695	2,884
14,400	1,348	1,917	2,254	2,491	2,700	2,889
14,450	1,350	1,921	2,258	2,496	2,705	2,894
14,500	1,352	1,924	2,263	2,500	2,710	2,900
14,550	1,354	1,928	2,267	2,505	2,715	2,905
14,600	1,356	1,932	2,271	2,510	2,721	2,911
14,650	1,358	1,935	2,276	2,514	2,726	2,916
14,700	1,360	1,939	2,280	2,519	2,731	2,922
14,750	1,362	1,943	2,284	2,524	2,736	2,927
14,800	1,364	1,946	2,288	2,529	2,741	2,933
14,850	1,366	1,950	2,293	2,533	2,746	2,938
14,900	1,368	1,954	2,297	2,538	2,751	2,944
14,950	1,370	1,957	2,301	2,543	2,756	2,949
15,000	1,372	1,961	2,305	2,548	2,762	2,955

B. If combined gross monthly income exceeds Fifteen Thousand Dollars ($15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars ($15,000.00) and an additional amount determined by the court.

C. If there are more than six children, the child support shall be that amount computed for six children and an additional amount determined by the court.

Historical Data

Added by Laws 1988, c. 224, §2, emerg. eff. June 20, 1988. Renumbered from Title 12, §1277.8 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989; Amended by Laws 1999, S.B. 689 c. 422. §3, eff. November 1, 1999; Amended by Laws 2000, HB 2190 c. 345. §3, eff. June 6, 2000.

43 O.S. §120. Child Support Computation Form

A. A child support computation form shall be signed by the judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. 1. When services are not being provided under the Department of Human Services State IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the judge without presentation of the support order summary form. After the order is signed by the judge, the summary of support order form shall be submitted to the Central Case Registry provided for in Section 112A of this title.

2. A standard agreed order form shall be used by all parents for any agreements submitted to the court for approval as a part of the informal review and adjustment process provided in Section 118 of this title.

3. The forms specified by this subsection shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

Historical Data

Added by Laws 1988, c. 224, § 3, emerg. eff. June 20, 1988. Renumbered from Title 12, § 1277.9 by Laws 1989, c. 333, §1, eff. Nov. 1, 1989. Amended by Laws 1993, c. 307, §3, emerg. eff. June 7, 1993; Amended by Laws 1998, c. 323, §10, eff. October 1,1998; Amended by Laws 1999, S.B. 689 c. 422. §4, eff. November 1,1999; Amended by Laws 2000, HB 2190 c. 345. §4, eff. June 6, 2000; Amended by Laws 2001, SB 675, c. 407 §7, emerg. eff. June 4, 2001; Amended by Laws 2002, SB 1538, c. 314, §4, eff. November 1, 2002.

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43 O.S. §413 Payments Made Through Registry-Procedure-Change of Address-Service of Process

A. The Department of Human Services shall maintain a Centralized Support Registry to receive, allocate and distribute support payments. All child support, spousal support, and related support payments shall be paid through the Registry as follows:

1. In all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes; and

2. In all other cases in which support is being paid by income withholding.

B. When child support enforcement services are being provided under Section 237 of Title 56 of the Oklahoma Statutes, all monies owed for child support shall continue to be paid through the Registry until child support is no longer owed.

C. Any party desiring child support, spousal support, or related support payments to be paid through the Registry may request the court to order the payments to be made through the Registry. Upon such request the court shall order payments to be made through the Registry.

D. The Registry shall maintain the following information on all cases in which support is paid through the Registry. This information shall include, but not be limited to:

1. Names, social security numbers and dates of birth for both parents and the children for whom support is ordered;

2. The amount of periodic support owed under the order;

3. Case identification numbers; and

4. Payment address.

E. In all cases, except those being enforced under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, employers shall provide the Registry with a copy of the notice of income assignment specified in Section 1171.3 of Title 12 and Section 240.2 of Title 56 of the Oklahoma Statutes. Employers, parties, and obligees to an order, upon request, shall provide additional information necessary for the Registry to identify and properly allocate and distribute payments.

F. An obligee, pursuant to a judgment, decree, or order in which payment of support is required by this section to be paid through the Registry or whose support is being paid through the Registry, shall provide information as directed by the Department of

Human Services necessary to properly allocate and distribute the payments.

G. All payments made through the Registry shall be allocated and distributed in accordance with Department of Human Services' policy and federal regulations.

H. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Historical Data

Added by Laws 1992, c. 279, §4, emerg. eff. May 25, 1992; Amended by Laws 1997, c. 402, §18, eff. July 1,1997; Amended by Laws 1998, c. 323, §13, eff. October 1,1998; Amended by Laws 2000, SB 1520 c. 384. §8, eff. November 1, 2000; Amended by Laws 2001, SB 675, c. 407 §15, emerg. eff. June 4, 2001; Amended by Laws 2002, SB 1538, c. 314, §5, eff. November 1, 2002.

ADDITIONAL STATUTES RELATING TO HEALTH INSURANCE

36 O.S. §6058A Coverage of Child under Child's Parents Health Plan

A. Notwithstanding any other provision of law, an insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that:

1. The child was born out of wedlock;

2. The child is not claimed as a dependent on the parent's federal income tax return; or

3. The child does not reside with the parent or in the insurer's service area.

B. Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

1. Upon request, provide complete information to the custodial person, the designated agency administering the State Medicaid Program, the state agency administering the provisions of 42 U.S.C., Sections 5 through 669, or the Child Support Enforcement Division of the Department of Human Services, regarding any insurance benefits to which the child is entitled, and any forms, publications, or documents necessary to apply for or to utilize the benefits available through that coverage;

2. Permit the custodial person, the designated agency administering the State Medicaid Program, or the provider with approval, to submit claims for covered services without the approval of the noncustodial parent; and

3. Make payments on claims submitted in accordance with paragraph 2 of this subsection directly to the custodial person, the provider, or the designated agency administering the State Medicaid Program.

C. Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall be required:

1. To permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

2. If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage and deduct the cost of the coverage from the employee's wages, upon application of the custodial person, the designated agency administering the State Medicaid Program, or the state agency administering the provisions of 42 U.S.C., Sections 5 to 669, the Child Support Enforcement Division; and

3. Not to disenroll, or eliminate coverage for the child unless the insurer is provided satisfactory written evidence that:

a. the court or administrative order is no longer in effect, or

b. the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment;

provided, however, the provisions of this subsection shall not apply where the coverage is through a group plan and the group's coverage through the insurer is discontinued or the noncustodial parent ceases to be eligible for participation in the group plan.

D. An insurer may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual covered.

E. As used in this section, "insurer" includes a licensed insurance company, not-for-profit hospital service or medical indemnity corporation, a fraternal benefit society, a health maintenance organization, a prepaid plan, a preferred provider organization, a multiple employer welfare arrangement, a self-insured, the State and Education Employees Group Insurance Board, or any other entity providing a plan of health insurance or health benefits in this state.

F. If child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the Child Support Enforcement Division shall notify the parent's employer to enroll the child in health care coverage available under the employer's plan by sending the employer a National Medical Support Notice issued pursuant to Section 466(a)(19) of the Social Security Act, and Section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, as soon as the National Medical Support Notice is promulgated by the United States Department of Health and Human Services. The insurer, upon receipt from the employer of Part B of the National Medical Support Notice to Plan Administrator, shall comply with Part B of the National Medical Support Notice. The insurer may be fined up to Two Hundred Dollars ($200.00) per month per child for each failure to comply with the requirements of the National Medical Support Notice. Fines collected shall be remitted to the Child Support Revenue Enhancement Fund created pursuant to Section 225 of Title 56 of the Oklahoma Statutes.

G. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

Historical Data

Added by Laws 1994, c. 27, §1, emerg. eff. April 7, 1994; Amended by Laws 1998, c. 323, § 6, eff. October 1,1998. Amended by Laws 2001, SB 132, c. 63, §1, eff. November 1, 2001 and SB 675, c. 407 § 3, emerg. eff. June 4, 2001; Multiple amendments repealed and statute amended by Laws 2002, HB 2924, c. 22, §§12, 34, emerg. eff. March 8, 2002; Amended by Laws 2003, SB 431, c. 19 §1, eff. November 1, 2003.

Also, see **43 O.S. §118.2** and **29 U.S.C. §1169.**

29 U.S.C. §1169 – Additional standards for group health plans

(a) Group health plan coverage pursuant to medical child support orders

(1) In general

Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order. A qualified medical child support order with respect to any participant or beneficiary shall be deemed to apply to each group health plan which has received such order, from which the participant or beneficiary is eligible to receive benefits, and with respect to which the requirements of paragraph (4) are met.

(2) Definitions

For purposes of this subsection -

(A) Qualified medical child support order

The term "qualified medical child support order" means a medical child support order --

(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

(B) Medical child support order

The term "medical child support order" means any judgment, decree, or order (including approval of a settlement agreement) which -

(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

(ii) is made pursuant to a law relating to medical child support described in section 1908 of the Social Security Act (42 U.S.C. 1396g-1) (as added by section 13822 {ed. note: should probably just read

"section" without the "13822"} of the Omnibus Budget Reconciliation Act of 1993) with respect to a group health plan, if such judgment, decree, or order

(I) is issued by a court of competent jurisdiction or

(II) is issued through an administrative process established under State law and has the force and effect of law under applicable State law. For purposes of this subparagraph, an administrative notice which is issued pursuant to an administrative process referred to in subclause (II) of the preceding sentence and which has the effect of an order described in clause (i) or (ii) of the preceding sentence shall be treated as such an order.

(C) Alternate recipient

The term "alternate recipient" means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

(D) Child

The term "child" includes any child adopted by, or placed for adoption with, a participant of a group health plan.

(3) Information to be included in qualified order

A medical child support order meets the requirements of this paragraph only if such order clearly specifies -

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of a State or a political subdivision thereof may be substituted for the mailing address of any such alternate recipient,

(B) a reasonable description of the type of coverage to be provided to each such alternate recipient, or the manner in which such type of coverage is to be determined, and

(C) the period to which such order applies.

(4) Restriction on new types or forms of benefits

A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act (42 U.S.C. 1396g-1) (as added by section 13822 [1] of the Omnibus Budget Reconciliation Act of 1993).

(5) Procedural requirements

(A) Timely notifications and determinations

In the case of any medical child support order received by a group health plan -

(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

(B) Establishment of procedures for determining qualified status of orders

Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures -

(i) shall be in writing,

(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the

alternate recipient with respect to a medical child support order.

(C) National Medical Support Notice deemed to be a qualified medical child support order

(i) In general

If the plan administrator of a group health plan which is maintained by the employer of a noncustodial parent of a child or to which such an employer contributes receives an appropriately completed National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 in the case of such child, and the Notice meets the requirements of paragraphs (3) and (4), the Notice shall be deemed to be a qualified medical child support order in the case of such child.

(ii) Enrollment of child in plan

In any case in which an appropriately completed National Medical Support Notice is issued in the case of a child of a participant under a group health plan who is a noncustodial parent of the child, and the Notice is deemed under clause (i) to be a qualified medical child support order, the plan administrator, within 40 business days after the date of the Notice, shall -

(I) notify the State agency issuing the Notice with respect to such child whether coverage of the child is available under the terms of the plan and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent (or by the official of a State or political subdivision thereof substituted for the name of such child pursuant to paragraph (3)(A)) to effectuate the coverage; and

(II) provide to the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage.

(iii) Rule of construction

Nothing in this subparagraph shall be construed as requiring a group health plan, upon receipt of a National Medical Support Notice, to provide benefits under the plan (or eligibility for such benefits) in addition to benefits (or eligibility for benefits) provided under the terms of the plan as of immediately before receipt of such Notice.

(6) Actions taken by fiduciaries

If a plan fiduciary acts in accordance with part 4 of this subtitle in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

(7) Treatment of alternate recipients

(A) Treatment as beneficiary generally

A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this chapter.

(B) Treatment as participant for purposes of reporting and disclosure requirements

A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1 of this subtitle.

(8) Direct provision of benefits provided to alternate recipients

Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

(9) Payment to State official treated as satisfaction of plan's obligation to make payment to alternate recipient

Payment of benefits by a group health plan to an official of a State or a political subdivision thereof whose name and address have been substituted for the address of an alternate recipient in a qualified medical child support order, pursuant to paragraph (3)(A), shall be treated, for purposes of this subchapter, as payment of benefits to the alternate recipient.

(b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for medicaid benefits

(1) Compliance by plans with assignment of rights

A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) pursuant to section 1912(a)(1)(A) of such Act (42 U.S.C. 1396k(a)(1)(A)) (as in effect on August 10, 1993).

(2) Enrollment and provision of benefits without regard to medicaid eligibility

A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical assistance under a State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) will not be taken into account.

(3) Acquisition by States of rights of third parties

A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

(c) Group health plan coverage of dependent children in cases of adoption

(1) Coverage effective upon placement for adoption

In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

(2) Restrictions based on preexisting conditions at time of placement for adoption prohibited

A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) Definitions

For purposes of this subsection -

(A) Child

The term "child" means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

(B) Placement for adoption

The term "placement", or being "placed", for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(d) Continued coverage of costs of a pediatric

vaccine under group health plans

A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act (42 U.S.C. 1396s(h)(6)) as amended by section 13830 {ed note: should probably just read "section" without the "13830"} of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

(e) Regulations

Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.

Ed Note: Also, see **43 O.S. §118.2** and **36 O.S. §6058A**.

B. Table of Cases Cited in this Paper.

This section operates differently than the others in this paper. If you are Internet ready, clicking a **blue link below opens the case** whether it be from OSCN or in the instance of an unpublished opinion from the Attorney General's Public Legal Research System. Either way, if you are Internet ready, the case will open. You can then copy it to paste it into WordPerfect or Word (tip: use "paste special" to eliminate web formatting) or print it, if you want. **Red "Note" references are links to the top of sections in this paper** which contain the referenced footnotes.

1 ***Abbott v. Abbott*, 2001 OK 31, 25 P.3d 291** (**Note 68**)
2 ***Adoption of B.R.H.*, 1991 OK CIV APP 125, 823 P.2d 383** (**Note 84**)
3 ***Aguero v. Aguero*, 1999 OK CIV APP 38, 976 P.2d 1088** (**Note 73**)
4 ***Anderson v. Fellers*, 1998 OK CIV APP 53, 960 P.2d 851** (**Note 50**; **Note 95**)
5 ***Anderson v. Anderson,* 1990 OK CIV APP 23, 791 P.2d 116** (**Note 22**)
6 ***Archer v. Archer*, 1991 OK CIV APP 28, 813 P.2d 1059** (**Note 27**; **Note 60**)
7 ***Asal v. Asal*, 1998 OK CIV APP 54, 960 P.2d 849** (**Note 40**)
8 ***Bailey v. Bailey*, 1994 OK 6, 867 P.2d 1267** (**Note 19**)
9 ***Baker v. Baker*, 1996 OK CIV APP 97, 923 P.2d 1198** (**Note 87**)
10 ***Bell v. Bell*, Unpub. No. 95,733** (COCA Div. 2 December 26, 2001) (**Note 56**)
11 ***Burgess v. Burgess*, 2000 OK CIV APP 122, 15 P.2d 526** (**Note 71**; **Note 93**)
12 ***Casey v. Casey*, 1993 OK CIV APP 129, 860 P.2d 807** (**Note 62**)
13 ***Cowan v. Cowan*, 2001 OK CIV APP 14, 19 P.3d 322** (**Note 73**; **Note 100**)
14 ***Department of Human Services v. Glasby*, 1993 OK CIV APP 126, 858 P.2d 1291** (**Note 34**; **Note 96**)
15 ***Department of Human Services / Rosser v. Givens*, Unpub. No. 96,628** (COCA Div. 1 2003) (**Note 57**)
16 ***Dye v. White,* 1999 OK CIV APP 20, 976 P.2d 1286** (**Note 36**; **Note 46**)
17 ***Earnheart v. Earnheart*, 1999 OK CIV APP 42, 979 P.2d 761** (**Note 37**)
18 ***Fitzgerald v. Sharum*, 1993 OK CIV APP 118, 857 P.2d 92** (**Note 49**)
19 ***Ford v. Ford*, 1992 OK CIV APP 123, 840 P.2d 36** (**Note 61**)
20 ***Griggs v. McKinney*, 2002 OK CIV APP 127, 61 P.3d 907** (**Note 63**; **Note 67**; **Note 99**)
21 ***Hensley v. Hensley*, 2000 OK CIV APP 34, 1 P.3d 446** (**Note 21**)
22 ***Holleyman v. Holleyman*, 2003 OK 48, 78 P.3d 921** (**Note 105**)
23 ***Hyde v. Hyde*, 1992 OK CIV APP 161, 843 P.2d 393** (**Note 73**)
24 ***In re M.B. and A.B.*, 1998 OK CIV APP 35, 956 P.2d 171** (**Note 48**)
25 ***Jones v. Baggett*, 1999 OK 68, 990 P.2d 235** (**Note 41**)
26 ***Kerby v. Kerby*, 2002 OK 91, 60 P.3d 1038** (**Note 4**; **Note 28**; **Note 64**)
27 ***Kissinger v. Kissinger*, 1984 OK CIV APP 52, 692 P.2d 71** (**Note 73**)
28 ***Lamb v. Lamb*. 1992 OK CIV APP 119, 848 P.2d 582** (**Note 90**)
29 ***Larimore v. Larimore*, 1980 OK 141, 617 P.2d 892** (**Note 70**)

30 ***Light v. Light*, 1992 OK CIV APP 11, 828 P.2d 447 (Note 89)**
31 ***Lincoln v. Lincoln*, 1992 OK CIV APP 124, 840 P.2d 41 (Note 39; Note 43)**
32 ***Lockhart v. Lockhart*, 1996 OK CIV APP 56, 919 P.2d 454 (Note 26; Note 33)**
33 ***Manzanares v. Manzanares*, 1989 OK 24, 769, 769 P.2d 156 (Note 1)**
34 ***Martin v. Brock*, 2001 OK CIV APP 145, 55 P.3d 1095 (Note 97)**
35 ***McCormack v. Town of Granite*, 1996 OK 19, 913 P.2d 282 (Note 94)**
36 ***McKee v. McKee*, 1991 OK CIV APP 116, 820 P.2d 1362 (Note 4; Note 80)**
37 ***McNeal v. Robinson*, 1981 OK 43, 628 P.2d 358 (Note 73)**
38 ***Merritt v. Merritt*, 2003 OK 68, 73 P.3d 878 (Note 73; Note 75)**
39 ***Miles v. Young*, 1991 OK CIV APP 101, 818 P.2d 1258 (Note 23)**
40 ***Minnich v. Minnich*, 1995 OK CIV APP 60, 898 P.2d 747 (Note 51; Note 66)**
41 ***Mocnik v. Mocnik*, 1992 OK 99, 838 P.2d 500 (Note 59)**
42 ***Moore v. Moore*, 2003 OK CIV APP 99, 79 P.3d 1137 (Note 107)**
43 ***Nazworth v. Nazworth*, 1996 OK CIV APP 134, 931 P.2d 86 (Note 45; Note 86)**
44 ***Nero v. Nero*, 2002 OK CIV APP 64, 48 P.3d 127 (Note 32; Note 38; Note 47; Note 52)**
45 ***Nibs v. Nibs*, 1981 OK 25, 625 P.2d 1256 (Note 83)**
46 ***Pharaoh v. Pharaoh*, 1993 OK CIV APP 181, 86 5 P.2d 1279 (Note 79)**
47 ***Phillips v. Hedges*, 2002 OK 92, 66 P.3d 364 (Note 73; Note 74; Note 78)**
48 ***Raczynski v. Raczynski*, 1976 OK CIV APP 50, 558 P.2d 425 (Note 73)**
49 ***Read v. Read*, 2001 OK 87, 57 P.3d 561 (Note 29)**
50 ***Riedel v. Riedel*, 1992 OK CIV APP 166, 844 P.2d 184 (Note 82)**
51 ***Roberts v. Roberts*, 1954 OK 149, 270 P.2d 651 (Note 104)**
52 ***Smith v. Smith*, 2003 OK CIV APP 28, 67 P.3d 651 (Note 65)**
53 ***State ex rel. K.A.G. v. T.D.G.*, 1993 OK 126, 861 P.2d 990 (Note 20; Note 92; Note 98)**
54 ***State ex rel. Huffman v. Robertson*, 1993 OK CIV APP 71, 853 P.2d 249 (Note 24)**
55 ***State ex rel. DHS obo Snellings v. Strohmeyer*, 1995 OK CIV APP 157, 925 P.2d 77 (Note 31)**
56 ***Testerman v. First Family Life Insurance Company*, 1990 OK CIV APP 108, 808 P.2d 703 (Note 94)**
57 ***Thomas v. Thomas*, 1996 OK CIV APP 151, 932 P.2d 54 (Note 35; Note 42)**
58 ***Thomason v. Sears*, 1998 OK CIV APP 66, 957 P.2d 144 (Note 30)**
59 ***Thrash v. Thrash*, 1991 OK 32, 809 P.2d 665 (Note 25; Note 73)**
60 ***Tirey v. Tirey*, 1993 OK CIV APP 184, 866 P.2d 454 (Note 81)**
61 ***Tortorelli v. Tortorelli*, 1995 OK CIV APP 99, 901 P.2d 237 (Note 72; Note 73)**
62 ***Ward v. Ward*, 1995 OK CIV APP 51, 895 P.2d 749 (Note 77)**
63 ***Whisenhunt v. Whisenhunt*, Unpub. No. 94,388** (COCA Div. 1 November 22, 2000) **(Note 55)**
64 ***White v. Polson*, 2001 OK CIV APP 88, 27 P.3d 488 (Note 91)**
65 ***Whitehead v. Whitehead*, 1999 OK 91, 995 P.2d 1098 (Note 106)**
66 ***Wilson v. Wilson*, 1991 OK CIV APP 79, 831 P.2d 1 (Note 88)**
67 ***Wilson v. Stenwall*, 1992 OK CIV APP 34, 868 P.2d 1317 (Note 44; Note 85)**