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CHILD SUPPORT IN MARYLAND: TIME FOR CHANGE?

by Barbara A. Babb

In 1984, Congress passed the Child Support Enforcement Amendments of 1984, 98 Stat. 1305 (1984), which required every state receiving federal funding for its Aid to Families with Dependent Children Program to have laws establishing child support guidelines. Although the guidelines initially were advisory only, the Family Support Act of 1988 required that they operate as rebuttable presumptions of the correct amount of child support. Family Support Act of 1988, 42 U.S.C. §667(b)(2) (1881).

According to the federal requirements, child support guidelines must apply to all cases establishing child support. These types of cases involve child protection, foster care, third party proceedings, proceedings between parents, as well as cases establishing temporary and permanent support, initial child support awards, and any modifications. In addition, the Family Support Act of 1988 requires states to reevaluate their guidelines at least once every four years to determine their appropriateness. Family Support Act of 1988, 42 U.S.C. §667(a) (1991).

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Maryland responded to the federal mandate by enacting as an emergency measure in February of 1989, the Maryland Child Support Guidelines, which originally were advisory only. Md. Fam. Law Code Ann. §§12-201 through 12-204 (1984 & Supp. 1990). The guidelines were adopted as rebuttable presumptions of the correct amount of support on April 10, 1990. Md. Fam. Law Code Ann. §12-204 (1984 & Supp. 1991). Maryland adopted the guidelines for several purposes:

First, the guidelines were intended to remedy the low levels of most child support awards relative to the actual costs of rearing children. Second, the guidelines were intended to improve the consistency and equity of child support awards. Third, the guidelines were intended to improve the efficiency of court processes for adjudicating child support awards. Additionally, the failure to adopt such guidelines could have resulted in the loss of up to \$35 million in federal funds for Aid to Families with Dependent Children.

Tannehill v. Tannehill, 88 Md. App. 4, 11, 591, A.2d 888, 891 (1991).

The purpose of this article is to discuss the implementation of the child support guidelines in Maryland and highlight relevant cases decided after the enactment of the guidelines, review child support enforcement practices in Maryland, and recount several study groups' suggestions for improving the guidelines and child support enforcement procedures.

Cases Interpreting the Child Support Guidelines

These guidelines have existed in Maryland for over four years. One author has reported from a national perspective that lawyers report that guidelines have resulted in more consent agreements and few issues to litigate. Custodial and non-custodial parents are better able to predict the outcome of support actions. The guidelines have tended both to result in higher support awards, and to promote judicial economy and equitable treatment of litigants.

Margaret Haynes, *Understanding the Guidelines and the Rules*, 16 Fam. Adv. 14, 17 (1993). Nonetheless, the Maryland courts have clarified many guidelines issues which were not defined clearly by the statute and which require judicial in-

terpretation.

In one of the first Maryland cases to consider the child support guidelines, the Court of Special Appeals confirmed that one of the purposes of Maryland's guidelines was to improve the efficiency of the court process for adjudicating child support awards. "[W]e hold that it was the intent of the legislature that the guidelines and accompanying statutory provisions limit the necessity of the court to make those findings of fact required in existing [child support] case law..." *Gates v. Gates*, 83 Md. App. 661, 666, 577 A.2d 382, 385 (1990). The court stated that the standardized worksheets used to calculate child support under the guidelines cause

Adequate child support awards ensure that Maryland children receive the financial and emotional investment they deserve.

child support determinations now to be "purely numerical with little, if any, room for the former factual considerations." *Id.*

The first substantive issue the Maryland courts addressed involved the application of the child support guidelines to split custody situations, an area about which the guidelines are silent. The Court of Special Appeals first determined the basic child support obligation for each parent based on the number of children in the custody of that parent pursuant to the existing statutory guidelines scheme. To determine the amount of child support each parent owed the other parent, the court multiplied each parent's proportionate share of the combined adjusted actual income by the amount of the basic child support obligation for the children in the other parent's custody. The court ordered the parent owing the greater amount of support to pay the difference between the two amounts to the parent owing the least amount of support. *Tannehill v. Tannehill*, 88 Md. App. 4, 12, 591 A.2d 888, 892 (1991).

Also addressed in *Tannehill* were the circumstances under which a court may deviate from the guidelines if it determines "that the application of the guidelines would be unjust or inappropriate in a particular case." Md. Fam. Law Code Ann. §12-202(a)(2)(iv) (1991). The Court of Special Appeals concluded in *Tannehill* that, while the statute lists particular circumstances that allow a court to deviate from the guidelines [Md. Fam. Law Code Ann. §12-202(a)(2)(iii) (1991)], the list of considerations contained in the statute is not exclusive. "[R]ather, these considerations provide an analytical framework within which a judge may determine the appropriate award of child support." *Tannehill, supra*, at 14, 893.

Calculation of child support under the guidelines requires an inclusion for child care expenses resulting from either parent's employment or job search. Md. Fam. Law Code Ann. §12-204(g) (1991). In *Krikstan v. Krikstan*, 90 Md. App. 462, 601 A.2d 1127 (1992), the Court of Special Appeals confirmed that child care expenses should be determined according to actual family experience, unless the actual family experience was not in the best interests of the children. *Id.* at 471, 1131. The Court of Special Appeals concluded in *Krikstan* that there was no evidence demonstrating that an au pair's services (the actual family experience) were not in the best interests of the children and, consequently, upheld a proper award of child care expenses.

The Court of Appeals for the first time addressed the child support guidelines in a case where the parties' combined monthly income exceeded the monthly maximum listed on the schedule for determining child support, or where their combined monthly income exceeded \$10,000. The Court concluded "that the guidelines do establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule." *Voishan v. Palma*, 327 Md. 318, 331-32, 609 A.2d 319, 326 (1992). The Court said that in these high income cases, the trial judge must focus on the child's needs relative to the parents' resources to determine a child support award that would enable the child to maintain the standard of living the child maintained prior to the parties' separation. The Court cited a pre-guidelines case, *Unkle v. Unkle*, 305 Md. 587, 598, 505 A.2d 849, 854 (1986), in suggesting that, when setting child support in cases be-

yond the guidelines, the court should consider the financial circumstances of the parties, their station in life, their age and physical condition, expenses of educating the child, the best interests and needs of the child, and the parents' financial ability to meet those needs. The Court based its decision in *Voishan* on the theory of the Income Shares Model, which formed the basis for Maryland's child support guidelines and which established child support obligations based on estimates of the percentage of income parents of intact households spend on their children.

In *Shrivastava v. Mates*, 93 Md. App. 320, 612 A.2d 313 (1992), the court determined that a binding agreement between the parties for child support was not a sufficient reason for deviation from the guidelines. The court relied on the longstanding law and policy of Maryland that, based upon a child's best interests, a parent cannot bargain away a child's right to support by the other parent. The Court of Special Appeals stated in *Shrivastava* that it would not distinguish the application of the child support guidelines in litigated versus agreement-based child support. Because the parties in *Shrivastava* signed the agreement before the adoption of the guidelines, the court held "as a matter of law, where application of the guidelines would result in a change in the child support obligation of 25 percent or more, there is a rebuttable presumption that the adoption of the guidelines constitutes a material change in circumstances." *Shrivastava*, *supra*, at 336, 321. Once a party establishes this material change in circumstances, that party is entitled to have a modification request reviewed by the court, whether the child support award resulted from litigation or an agreement.

The Court of Special Appeals dealt with the issue of child support paid to a third party in *In Re Joshua W.*, 94 Md. App. 486, 617 A.2d 1154 (1993). The trial court in *Joshua W.* relied on Md. Cts. & Jud. Proc. Code Ann. §3-830 (1989) in ordering a parent whose children were in foster care to pay child support. The Court of Special Appeals concluded that the child support guidelines are to be used in all child support cases, including those where child support is paid to a third-party or, as in the case of *Joshua W.*, to the government, to reimburse the costs of foster care. The court based its conclusion, in part, on the language of the guidelines legislation which provides that "in any proceeding to establish or modify child

support, whether *pendente lite* or permanent, the court shall use the child support guidelines set forth in this subtitle." Md. Fam. Law Code Ann. §12-202(a) (1991).

In *Walsh v. Walsh*, 95 Md. App. 710, 622 A.2d 825 (1993), *cert. granted*, 331 Md. 719, 629 A.2d 720 (1993), the Court of Special Appeals retreated somewhat from its position in *Shrivastava*. In *Walsh*, the parties entered into an agreement with regard to child support after the effective date of the child support guidelines. Pursuant to this agreement, the father paid child support in an amount at least 25% less than the guidelines amount. Rather than address the best interests of the child and the parents' inability to bargain away child support, the court in *Walsh* relied on the rule of statutory construction which requires an examination of the language of the statute involved. Thus, the court looked to the specific language of Md. Fam. Law Code Ann. §12-202(b) (1991) as to the modification of child support orders and held that because the parties opted not to apply the child support guidelines in calculating the amount of child support, after the guidelines were adopted as the presumptively correct support standard, the court was not allowed thereafter to find that the application of the guidelines alone constituted a change in circumstances justifying the modification of the support agreement. *Walsh*, *supra*, at 717-18, 829.

The Court of Special Appeals relied on language of *In Re Joshua W.*, *supra*, and *John O. v. Jane O.*, 90 Md. App. 406, 601 A.2d 149 (1992), to clarify the issue of voluntary impoverishment in *Goldberger v. Goldberger*, 96 Md. App. 313, 621 A.2d 1328 (1993), *cert. denied*, 332 Md. 453, 631 A.2d 150 (1993). In *Goldberger*, the court gave clear guidance concerning the factors that determine whether a parent is voluntarily impoverished. The factors include the parent's current physical condition, level of education, timing of any change in financial circumstances relative to the divorce proceedings, relationship with the other parent, efforts to find and retain employment, efforts to secure any necessary retraining, past failure to pay support, work history, the job market in the area in which the parent lives, and any other considerations presented by either party. *Id.* at 327, 1335. The court held that "for purposes of the child support guidelines, a parent shall be considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by

factors beyond his or her control, to render himself or herself without adequate resources." *Id.* The *Goldberger* court listed the following factors as determinative of a parent's potential income in calculating the amount of child support when there is a finding of voluntary impoverishment: age, mental and physical condition, assets, education, training, or skills, prior earnings, efforts to find and retain employment, the job market in the area in which the parent lives, actual income from any source, and any other factor bearing on the parent's ability to obtain funds for child support. *Id.* at 328, 1335-36. The court said this legislative scheme prevents parents from avoiding their child support obligations by purposely not earning what they could earn, whether or not the voluntary impoverishment is for the purpose of avoiding child support. *Id.* at 325, 1334-35.

In a second case where the combined, adjusted, actual monthly income of the parties exceeded the \$10,000 limit of the guidelines schedule, the Court of Special Appeals articulated several principles discussed in *Voishan v. Palma*, *supra*. In *Bagley v. Bagley*, 99 Md. 18, 632 A.2d 229 (1993), the Court of Special Appeals recognized that the guidelines allow for judicial discretion in setting child support at such high income levels. Md. Fam. Law Code Ann. §12-204(d) (1991). The court outlined several factors for consideration, including the intent of the Income Shares Model to maintain children at the standard of living they would have enjoyed absent any separation or divorce; the financial circumstances of each party; each parties' station in life; the age and physical condition of the parties; the costs of educating the child; the need for consistency of support awards; the maximum in the schedule as establishing a minimum amount; and the results of extrapolation from the schedule. *Bagley*, *supra*, at 36-39, 238-240. In *Bagley*, the court remanded the case for a specific determination as to whether the children's expenses were reasonable relative to the particular parent's affluence.

Child Support Enforcement

According to the 17th Annual Report to Congress on Child Support Enforcement, "[c]hild support agencies collected nearly \$8 billion in 1992, a 16 percent increase from a year earlier but only one-fourth of what was owed..." Jennifer Dixon, "Child Support Collection In-

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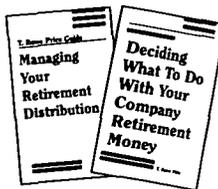
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creases," *The Daily Rec.*, Jan. 7, 1994, at 11. Further, only half of the parents awarded child support collect the full amount; half receive only partial payment or nothing. Charles Drake & Jan Warner, *Child Support Collection - What's A Client To Do?*, 16 Fam. Advoc. 38 (1993). Thus, despite the fact that the establishment of child support guidelines in all states has tended to result in higher child support awards, the major problem appears to remain the enforcement of child support orders.

In this respect, Maryland is consistent with the rest of the nation. The Child Support Enforcement Administration's Annual Statistical Report for fiscal year 1993 indicates that the administration collected 57 percent of the current child support obligations owed and 43 percent of obligations accumulated for prior years, with an overall state collection average of 40 percent. Meg Sollenberger, Child Support Enforcement Admin. Annual Statistical Report at 39 (1993). Indeed, child support collections in several Maryland counties have increased substantially in fiscal year 1993: Howard County's child support collections increased 25 percent, Anne Arundel County's increased 23 percent, Frederick County's increased 22 percent, and Calvert County's increased 20 percent. "Howard County - Support Collections Up," *The Sun* (Baltimore), Dec. 21, 1993, at B2. Nonetheless, Maryland is unable to collect 39 million dollars in current obligations and over 300 million dollars in collections owed from prior years. Sollenberger, *supra*, at 39. Thus, Maryland must consider ways to enhance child support enforcement. Several laws passed in 1993 specifically address the enforcement issue. Md. Fam. Law Code Ann. §10-108.1 (1991 & Supp. 1993) now authorizes the Child Support Enforcement Administration, upon requests, to report child support arrears of sixty days or more to a consumer credit reporting agency. In all child support orders initially issued in Maryland on or after January 1, 1994, the court shall immediately authorize service of an Earnings Withholding Order on the effective date of the order. Md. Fam. Law Code Ann. §10-122(b). (1991 & Supp. 1993). Finally, pursuant to Md. Fam. Law Code Ann. §5-1028.1 (1991 & Supp. 1993), an unmarried father and mother shall have an opportunity to execute an affidavit of parentage, available in all hospitals in the state. When executed, this affidavit constitutes a rebuttable presumption of percentage in a paternity

proceeding and facilitates the entry of child support orders, as the determination of paternity is a necessary first step in establishing child support orders between unmarried parents.

Other states' experiences in attempting to enforce child support orders are also instructive. At least one jurisdiction in California has produced a public access television show that exposes parents who owe more than \$10,000 in child support and are more than six months overdue in their payments. This method motivates some obligors to pay rather than have their identities broadcast on television. Jane Gross, "Using Cable TV to Get Child Support," *N.Y. Times*, Nov. 14, 1993. Other collection efforts in California and across the country include "most wanted posters," highly publicized 'roundups' of delinquent parents, interstate computer tracking networks and a growing number of private collection agencies..." *Id.* Delaware collected a record-breaking amount of child support during fiscal year 1993 as a result of its automated case tracking system, which resulted in few delays throughout the collection process and relied on layers of mediation in Delaware's Family Court system. "Delaware Cites Success in Efforts to Boost Child Support Collection," *The Daily Rec.*, Sept. 15, 1993, at 12. Recently, Maryland joined the electronic parent locator network (EPLN), a high-tech network of nine states using a huge database and instant access to millions of records to locate within seconds parents who do not pay child support. Laura Gonzales, "Deadbeat Parents May Be Easier To Find," *The Sun* (Baltimore), Dec. 4, 1993, at B1.

Suggestions for Improving the Maryland Child Support Guidelines and Enforcement Procedures

Several study groups in Maryland recently released reports proposing suggestions for improving the child support guidelines and court and administrative procedures for the establishment and enforcement of child support. The Advisory Council on Family Legal Needs of Low Income Persons, *Increasing Access to Justice for Maryland's Families* (1992); the Governor's Task Force on Family Law, *Final Report* (1992); and the Child Support Alliance, *Child Support: A Proposal for Reform* (Executive Summary, 1993) had many suggestions in common:

- Establish a Family Court or Family Division of the Circuit Court in order to

have continuity of judges and other court personnel in all child related issues.

- Simplify court forms, and provide sample pleadings or forms to *pro se* litigants seeking to obtain, enforce, or modify child support. Courts should provide information and relevant procedural instructions to assist *pro se* representation.
- Develop procedures to make forms available to *pro se* litigants and assign a clerk to provide assistance in completing, filing and serving such forms.
- Eliminate the use of lengthy financial questionnaires in cases where child support is the only contested issue and permit the filing of a short form financial statement, unless one or both parties intend to rebut the presumption in favor of applying the guidelines. Require the standardized, shortened financial statements to be executed under oath.
- Re-examine the shared custody formula for calculating child support, Md. Fam. Law Code Ann. §12-204(1) (1991), to determine whether this formula, in fact, deprives the primary caretaker of too much necessary child support.
- Determine through legislation how after-born children in second families of a parent should be treated for purposes of calculating that parent's child support obligation under the guidelines.

While each of the three cited reports suggests additional proposals, these six, coupled with the enforcement procedures recently enacted, should significantly enhance the establishment and enforcement of child support in Maryland. The measures should benefit all Maryland citizens by reducing the welfare rolls. More importantly, however,

equity in financial support and compliance with support orders will... help create the best environment and incentive for continuing emotional support in the fragmented family. A parent who willingly provides financial support for his or her child usually also maintains a close parent-child relationship. Conversely, a parent who does not provide financially for his or her child is, many times, the parent who avoids contact with the child.

Child Support Alliance, *supra*, at 1.

Thus, establishment of adequate child support awards under the guidelines and conscientious enforcement efforts must continue to receive focused attention to ensure that Maryland's children receive the financial and emotional investment they deserve.

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