

Fahrney v. Fahrney

Child Support - Deviation from Support Guidelines - Shared Custody

BAR NEWS ITEM

The Pennsylvania Defense Institute ("PDI"), has announced it will hold a one-day seminar on "Employment Law" Friday, March 21, 1997, at the DoubleTree Hotel, Philadelphia.

PDI states that the program has been approved by the CLE Board for five hours credit in substantive law and one hour credit in ethics.

Topics include interviewing and hiring, the employee manual, discipline and discharge, employment practices liability ADEA and reductions in force, sexual harassment, and ethical issues, according to Joseph G. Manta, chair of PDI's Employment Law Committee.

Registration is from 8:00 to 8:45 a.m., and the program concludes at 4:30 p.m. Additional information may be obtained through the PDI Office at 717-238-7806 or 800-734-0737.

1. There is a rebuttable presumption that the amount of child support derived from the guidelines is correct.
2. The support guidelines contemplate that the non-custodial parent has regular contact with his or her children and makes direct expenditures on their behalf.
3. In determining whether a deviation from the guidelines is appropriate based on an existing custody arrangement, the court looks at the amount of time actually spent with the children, whether that amount of time is "unusual", and whether the arrangement results in significant additional expense to the non-custodial parent.
4. Where the non-custodial parent has visitation every Tuesday and Thursday night, on alternate weekends until Monday morning, and for periods of time during vacations, the court does not find that the visitation is so out of the ordinary as to be "unusual", or to be considered shared custody.
5. The fact that the non-custodial parent occasionally buys articles of clothing and packs school lunches for the children does not suggest that she is incurring significant additional expenses that would call for a deviation from the guidelines.

E. Franklin Martin, Esquire, Attorney for plaintiff
Rosemary A. McDermott, Esquire, Attorney for defendants

Walker, P. J., January 29, 1997

OPINION AND ORDER

PROCEDURAL BACKGROUND

At a hearing on plaintiff's complaint for child support held on November 8, 1996, Domestic Relations Hearing Officer Charles R. McKissick determined that plaintiff had a monthly income of \$4,073 based on his 1995 federal income tax return. The defendant's monthly income was found to be \$1,117. Although the defendant stated at the hearing that she had visitation with the three children for 191 days per year, the hearing officer found that this arrangement did not constitute shared custody. Based on the support guidelines as set forth in Pa. R.C.P. Rule 1910.16-3, he recommended that an order be entered requiring the defendant to pay \$148 biweekly plus arrearage for the support of the children. The order was signed on November

15, 1996 by the Honorable William H. Kaye. A timely appeal was filed and a hearing was held before this court on December 18, 1996.

DISCUSSION

Defendant asserts that the court should deviate from the support guidelines because the existing custody arrangement in effect amounts to shared custody of their children. At various times, she alleged that the children spend 191, 219 and 260 days per year with her. The plaintiff acknowledged that the children spend roughly equal time with each of them. The uncontroverted testimony of the parties indicated that the plaintiff pays all medical and dental bills. He also purchases most of the children's clothing, although the defendant does on occasion buy school clothes and other items for the children.

The use of the support guidelines is intended to promote among other things, similar treatment of persons similarly situated. Pa. R.C.P. Rule 1910.16-1, Explanatory Comment Introduction. There is a rebuttable presumption that the amount of support derived from the guidelines is correct. Pa. R.C.P. Rule 1910.16-1(b). If a court determines that a deviation from the guidelines is appropriate, the reasons for the deviation must be set forth in writing. Pa. R.C.P. Rule 1910.16-4(a).

In addition, the rules state that the guidelines:

[C]ontemplate that the non-custodial parent has regular contact, including vacation time, with his or her children, and that he or she makes direct expenditures on behalf of the children. Thus, a non-custodial parent's support obligation should be reduced only if that parent spends an *unusual* amount of time with the children.

Pa. R.C.P. Rule 1910.16-5(m)(emphasis added).

The Pennsylvania Superior Court recently set forth the standard for determining whether a deviation from the guidelines is appropriate based on an existing custody arrangement. The court is required to examine the amount of time actually spent with the children, whether that amount of time is "unusual", and whether the arrangement results in significant additional expense to the non-custodial parent. *Anzalone v. Anzalone*, 449 Pa.Super. 201, 208-09, 673 A.2d 377, 381 (1996).

In the instant case, the testimony at the hearing disclosed that the defendant has visitation with the children every Tuesday and Thursday from 6:30 p.m. until before breakfast the following day, and on alternate weekends until Monday morning. She also takes the children for a period of time during the summer and during Christmas vacation.

While the court finds that the length of time the children spend with the non-custodial parent in this situation is somewhat more than the average amount of visitation in Franklin County, it is not so out of the ordinary as to be considered "unusual". A typical custody arrangement might include one night during the week instead of two, and might provide that during weekend visits the children are returned to the other parent on Sunday evening rather than on Monday morning. However, here, because the children are always returned to the father early in the morning before breakfast, the court finds that the defendant does not incur significant additional expenses by reason of this arrangement.

Nor does the fact that the defendant occasionally buys articles of clothing for the children and packs a school lunch for a child who does not purchase lunch at school suggest that she is incurring significant additional expense. It must be remembered that the support guidelines envision that the non-custodial parent will make direct expenditures as a result of exercising visitation. The court believes that these types of expenditures made by the defendant during periods of visitation are the normal result of the custody arrangement as well as a natural expression of parental caring. They are not the type of expenditure which would call for deviating from the support guidelines. If they were, parents might be tempted to seek to enlarge their periods of visitation solely to permit their support obligations to be reduced. Such a practice would run counter to the purpose of the child support guidelines which is to provide for the reasonable needs of the child based on the ability of the obligor to pay.

CONCLUSION

Therefore, the court finds that the amount of time that the children spend with the defendant is not "unusual" in the sense the term is used in the support guidelines. The court further finds that the extended

periods of visitation have not resulted in the expenditure of significant additional sums such that the court should deviate from the formula used by the hearing officer in calculating the amount of support the defendant is required to pay. Consequently, the defendant's appeal is denied and the previously entered support order and wage attachment remain in effect.

ORDER OF COURT

January 29, 1997, defendant's appeal is denied and the previous support order and wage attachment shall remain in effect.

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