Child Support Case Law Update

Game Show Edition

MFSRC – OCTOBER 7, 2015

Let's Make a Deal

This is just a sampling of cases we thought were interesting and helpful

We tried hard to get it right

If one of the cases seems like it might be helpful in one of your cases, make sure you read the case yourself

I'll stick around and answer questions afterwards if we don't have time during the presentation

The Price is Right

IN RE THE MATTER OF: DAKOTA COUNTY, AND LORINDA FLODING V. DARRELL GILLESPIE

MINN. S. CT. 866 N.W.2D 905

NO. A13–1240

JULY 22, 2015

Floding v. Gillespie

In 2000, obligor was adjudicated the father of twin boys and ordered to pay child support. The obligor retired due to a disability and began receiving Social Security benefits in February 2012.

Obligee subsequently began to receive a derivative social security benefit of $1,748 per month on behalf of the children while the obligor continued to pay $1,977 per month in child support. Obligor filed a motion to modify his child support obligation in July 2012.

Floding v. Gillespie

The Child Support Magistrate and the district court determined that the obligor had overpaid by $6,992.00 and that the overpayment could be credited against arrearages, medical expenses, or prospective child support.

In doing so, the Child Support Magistrate and district court both relied on *County of Grant v. Koser* in concluding that such a credit should not be considered a retroactive modification.

Floding v. Gillespie

The Court of Appeals affirmed, declining to overrule *County of Grant v. Koser*.

In addition to *County of Grant v. Koser*, the Court of Appeals relied on Minn. Stat. § 518A.34(f) (2014), which says that if "Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child based on the other parent's eligibility, the court shall subtract the amount of benefits from the other parent's net child support obligation, if any."

Floding v. Gillespie

The Supreme Court granted Dakota County's petition for review.

The question before the court was whether an obligor should be given credit for derivative Social Security benefits received by the obligee on behalf of the children prior to the time that the obligor moved to modify child support.

The Supreme Court reversed the Court of Appeals, holding that an obligee has a legal right to both a Social Security derivative benefit and child support payment until the obligor moves to modify child support.

Showcase Showdown

Floding v. Gillespie

No. A13–1240

An obligee has a right to both an existing child support obligation and derivative Social Security benefits until such time as the obligor brings a motion to modify the existing child support order.

The resulting child support modification is retroactive only to the date that notice of the motion to modify was served.

Press Your Luck

IN RE THE MARRIAGE OF: BECKI ANNE SULESKI V. RYAN MICHAEL RUPE

MINN. APP. PUBLISHED 855 N.W.2D 330

A13-2031

OCTOBER 20, 2014

Suleski v. Rupe

A judgment and decree dissolving the marriage of the parties granted the parties joint legal custody, granted the mother sole physical custody, and set a parenting schedule.

A subsequent child custody dispute arose because of the mother's relocation and father's change in employment.

Suleski v. Rupe

At the district court, the judge ruled from the bench and asked the father's attorney to submit a proposed order.

Upon its submission, the proposed order was adopted almost verbatim.

Suleski v. Rupe

Mother appealed, arguing that adopting a proposed order verbatim was improper because the court was not exercising independent judgment.

The Court of Appeals held that, because the ruling was made from the bench, independent judgment was exercised before the order was drafted.

No Whammies!

Suleski v. Rupe

A13-2031

It is not improper for a judicial officer to adopt a proposed order almost verbatim after ruling from the bench because such a bench ruling constitutes independent judgment.

Win, Lose or Draw

RAMSEY COUNTY, A.L.A. V. E.V.-S.

MINN. APP. UNPUBLISHED 2015 WL 3823184

A14-1955

JUNE 22, 2015

A.L.A. v. E.V.-S.

Ramsey County initiated an action seeking to establish paternity and child support and asked that the child's name remain as it was on the birth certificate.

The pleadings imputed father's income based on the minimum wage of the state in which he lived, Oklahoma.

At the initial paternity hearing, at which father did not appear, mother requested higher child support and to change the child's legal name.

The Child Support Magistrate imputed the father at Minnesota's minimum wage, despite the fact that he lived in Oklahoma.

The Child Support Magistrate declined to refer the issue of the child's name to district court as mother had an alternative remedy.

A.L.A. v. E.V.-S.

County appealed, arguing that the Child Support Magistrate erred in imputing the father at Minnesota minimum wage and refusing to refer the matter of the child's name to district court.

The Court of Appeals reversed on the imputation issue because Minnesota law requires that a party be imputed wages consistent with the state in which they reside.

The Court of Appeals affirmed the Child Support Magistrate on the name issue, citing the Minnesota Rules of General Practice which give the Magistrate "the authority to establish . . . the legal name of the child" and noting that an alternate remedy could be obtained.

Bonus Round

A.L.A. v. E.V.-S.

A14-1955

2015 WL 3823184

Minnesota law requires that a party be imputed wages consistent with the state in which they reside.

An alternative remedy may be sufficient to save a rule violation.

The Family Feud

IN RE THE MARRIAGE OF: STACY REEVES V. BRIAN REEVES

MINN. APP. UNPUBLISHED

A14-1419

MAY 11, 2015

Reeves v. Reeves

Mother and father were granted a dissolution of marriage in 2013. In the order, the district court reserved the issues of child support, spousal maintenance, parenting time, and division of property.

In a subsequent order addressing the reserved issues, father's child support obligation was ordered based on a finding that he had a gross monthly income of $1733.00 from unemployment compensation.

Reeves v. Reeves

Father moved to amend the findings, arguing that his unemployment compensation had ended and his gross monthly income should be $0.00.

The district court amended its findings, adjusting father's gross monthly income to $0.00 and ordering a monthly support obligation of $75.00.

The district court did not impute income to father because of his learning disability and lack of work experience.

Reeves v. Reeves

Mother appealed, arguing that the district court abused its discretion in failing to impute income to father.

The Court of Appeals reversed, holding that although a district court may deviate from the presumptive, statutory child support, it must make written findings stating how the deviation serves the best interest of the child.

Here, the Court did not find that father's learning disability is a mental incapacitation, nor make written findings illustrating how the deviation serves the best interests of the child.

Survey Says!

Reeves v. Reeves

A14-1419

Although a district court has discretion and may deviate from the presumptive, statutory child support, it must make written findings illustrating how the deviation serves the best interests of the child.

The Newlywed Game

IN RE THE MARRIAGE OF: MARY YANG V. CHUE FANG

MINN. APP. UNPUBLISHED 2015 WL 1880314

A14-1158, 2015

APRIL 27, 2015

Yang v. Fang

Appellant and respondent participated in a traditional Hmong wedding ceremony in Thailand in 1975 and later immigrated to the United States as a family in 1978.

The parties held themselves out as a married couple until 2005, and in 2012 respondent filed a petition for a dissolution of marriage.

Yang v. Fang

During the dissolution proceedings, the district court determined that the parties were legally married, despite no findings indicating that the marriage was valid under Thai marriage law.

Appellant argued that the district court erred because it failed to analyze whether the cultural marriage was legal under Thai marriage law.

Yang v. Fang

The Court of Appeals agreed, holding that, as a general rule, the validity of a foreign marriage is determined by the law of the place where the marriage is contracted. Because the district court's order contained no analysis as to that effect, it did not properly apply the law.

The Court of Appeals remanded, requiring the district court to make specific findings regarding the legal effect of a foreign marriage before concluding that such marriage is proper.

25-point Bonus Question

Yang v. Fang

A14-1158

2015 WL 1880314

In general, a foreign marriage is not valid unless it conforms with the law of the place where the marriage is contracted. Thus, before making a determination about the validity of a foreign marriage, the court must analyze whether the marriage conforms to the law of the place where the marriage was contracted.

Lightning Round!

CALCULATING INCOME IN CHILD SUPPORT CASES

In re the Marriage of Mary Marcouiller v. Gregory Quirk
Minn. App. Unpublished – A14-207 - 2014 WL 6609071
November, 24 2014

- Father appealed the District Court's spousal maintenance and child support determinations.
- He argued that the court erred in using the mother's 2012 income since she earned more the first two months of 2013. In addition, he argued that the court should not have considered future medical costs and that his debt should have been taken into consideration.
- The Court of Appeals held that 1) relying on mother's income for the preceding year was an adequate means of determining income in this case, and 2) father had waived his other arguments by failing to adequately cite any legal authority to support them.

In re the Marriage of: Stuart Mark Ferrell v. Amy Suzanne Ferrell
Minn. App. Unpublished – A13-2005
November 24, 2014

- Father brought a motion to modify custody and child support because the parties' youngest child moved permanently into father's home. One of the two remaining children was emancipated and the other was a disabled adult who resided with the mother.
- The district court determined the adult disabled child to be a "child" for the purpose of calculating support and used the father's actual income in calculating his gross income. Father tried to argue that the industry standard for pilots is 70 hours per month and that he was working over 70 hours per month and that the "overtime" income should not be used.
- The Court of Appeals affirmed, emphasizing that under the plain meaning of Minn. Stat. section 518A.29 gross income includes actual wages. Father did not show that he was working "overtime" of more than 40 hours per week.

In re the Marriage of: Terry John Hietpas v. Barbara Elizabeth Reed Hietpas
Minn. App. Unpublished – A14-105 - 2014 WL 6863173
December 8, 2014

- The district court granted wife's motion to extend spousal maintenance after considering her mental health status and resulting inability to work as a change in circumstances.
- The husband appealed, arguing that the court erred in finding that the wife's mental health issues prevented her from working.
- The Court of Appeals held that the district court did not abuse its discretion in considering mental health status when calculating wife's potential income and determining that it constituted a substantial change in circumstances from the prior order.

Ramsey County and Laniesha M. Williams v. Nathan D. Washington, Sr.
Minn. App. Unpublished – A13-1485 & A14-174 - 2014 WL 7343785
December 29, 2014

- Between August 2012 and December 2013, the district court denied numerous requests from father to modify child support, taking into the consideration the fact that he had recently purchased a Hummer.
- Father appealed, challenging the decisions regarding child support, physical and legal custody, and parenting time, and arguing that the district court was biased in favor of the mother.
- The Court of Appeals affirmed, emphasizing that a court can consider a party's "circumstances" in addition to earnings, income, and resources.

In re the Marriage of: Daria Vladimirovna v. Justin Andrew Tinaza
Minn. App. Unpublished – A14-323 - 2015 WL 46384
January 5, 2015

- Mother accepted a job and began working in California. She requested permission from the court to relocate with the minor child.
- The district court denied her motion, awarded the father sole physical custody if she decided to move to California, and retroactively awarded the father child support.
- The Court of Appeals affirmed the district court's decision as to the mother's relocation request and custody of the minor child.
- The Court reversed the district court's decision to retroactively order mother to pay child support under Minn. Stat. 518A. 39 subdivision 2(e), modification of support can only be made retroactively from the date of service of notice.

Lovely Parting Gifts

- Obligee has a right to child support order and derivative Social Security benefit until obligor moves to modify the child support.
- Judicial officer can accept a proposed order verbatim after ruling from the bench because the bench ruling is an exercise of independent judgment.
- Wages should be imputed according to the state in which the party resides.

Lovely Parting Gifts

- If deviating from guideline support, court must explain how the deviation serves the best interests of the child.
- A foreign marriage will only be recognized as valid if it conforms to the law of the place where the marriage was entered into.
- Order likely to be affirmed if the trial court makes sufficient findings when calculating present income.

Lovely Parting Gifts

- Gross income may include actual wages in certain cases like pilots, even if the party is working more than the industry standard.
- Mental health status can be considered when determining whether there was a substantial change in circumstance since the last order.

Lovely Parting Gifts

- In addition to earnings, income, and resources, a Court can consider a party's "circumstances" when determining child support. The Hummer Rule.
- Modification of child support can only be made retroactively from date of service of notice that a party is asking to modify the child support, not necessarily the date of motion to modify custody.

A Big Thank You To:

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WE MISS YOU MARK!

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