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## New child support statute no free ticket to recalculate what is owed

In 2017, those paying child support across Illinois rejoiced. This was because on July 1, 2017, the state's new child support law took effect. The new model presents a vastly different calculation for support than the historic iteration.

Previously, the child support presumption was calculated based only on the net income of the payor as a flat percentage. For example, support for one child was calculated as 20% of the payor's net income, for two children it was 28%, for three 32% and so on in relation to the number of children. The support recipient's income was not a factor in calculating the presumption for child support under the old support statute.

A vastly different model was adopted in 2017. The new support statute incorporated what is commonly referred to as the "income shares" approach. Instead of looking only to the payor's income in a support calculation, child support is now calculated using both parents' respective net incomes (750 ILCS 5/505(1.5)). Pursuant to the new guidelines, support calculations are made by combining both parties' net incomes, determining the appropriate column based on number of children, selecting the corresponding figure from the schedule for basic child support released by the Illinois Department of Healthcare and Family Services and calculating what each parent's respective

share of that support amount would be. That would be the percentage of each party's income that makes up the combined net incomes.

For example, if the support amount for the combined net income of the parties is \$1,000, the payor's income is 40% of their combined net incomes, then the support amount paid by the obligor parent is \$400.

The \$600 amount attributable to the recipient parent is presumed to be used for the child (750 ILCS 5/505(1.5)).

It is important to note that although the statutory guidelines create a weighty presumption with regard to support calculation, the final determination is always subject to judicial discretion. Given the specific circumstances of a case, a court may apply many different factors in addition to, or in lieu of, the formulaic guideline.

Upon application, as many anticipated, the new guidelines generally resulted in much lower support payments. As such, the legislature became concerned that those already under child support orders would attempt to recalculate their support obligation based only on the new child support statute and guidelines.

To combat a new wave of litigation from those seeking to modify support for this reason only, the legislature explicitly declared, "The enactment of [the new child support law] itself does not constitute a sub-



### MODERN FAMILY

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stantial change in circumstances warranting a modification" (750 ILCS 5/510(a)).

Regardless of whether a support order was entered prior to the new law, movants must still make a showing of a "substantial change in circumstances" for the court to recalculate support under the new guidelines.

Of course, this catchall provided by the legislature did not deter all would-be litigants from attempting to take advantage of the new guidelines. For example, in *In re Marriage of Salvatore*, the 2nd District

Appellate Court examined an action by a support payor attempting to modify his pre-2017 support order — and utilize the new law. 2019 IL App (2d) 180425 (2nd Dist. 2019).

In *Salvatore*, a divorce judgment was entered in August 2015. As such, the payor parent agreed to pay child support in the amount of \$8,100 per month, which represented 32% of his net income, in accordance with the then effective support guidelines. When the judgment was entered, the recipient parent was not employed. While the judgment referenced the possibility of her future employment elsewhere in the document, the support section did not make any specific reference to that prospect.

In November 2017, the payor parent filed a petition to modify his child support obligations, stating that there had been a substantial change in circumstances due to a decrease in his income. He further noted in his petition that the child support guidelines under 750 ILCS 5/505 had changed and that the nonsupporting parent's income is now a factor in determining support.

Since the entry of the judgment, the support recipient parent was now employed and earning a gross income of approximately \$45,000 per year.

After a hearing on the payor's petition to modify support, the trial court found that

any change in his income did not constitute a substantial change in circumstances. The trial court further held that the recipient parent's change in income was not a factor in determining the payor parent's obligation as it was not a consideration at the time of judgment, and further, there was no evidence that her future employment was not contemplated at the time of the prior order.

Here, the court makes an important note when it states, "that a party's increased income does not constitute a substantial change in circumstances when the increase was based on events that were contemplated and expected by the trial court when the judgment of dissolution was entered."

The court found that her employment was foreseeable and contemplated by the par-

the fact that there was nothing to indicate that the parties contemplated that her future employment would result in a reduction of the payor's support obligation.

The payor parent's final argument in favor of a modification reverted back to the 2017 change in the child support statute. He maintained that because his obligation would be less than half of his current payment under the

as" these.

The court concluded with a sage warning for litigants that may seek to "avail themselves of the new ... guidelines." The [a]ppellate [a]ourt directed that courts "should remain reluctant to find a substantial change in circumstances based on events that were contemplated and expected."

It will be interesting to see what courts continue to do with this issue as payor Daniel



The enactment of [the new child support law] itself does not constitute a substantial change in circumstances warranting a modification."

The payor parent's petition to modify support was thus denied. He appealed.

In considering whether the recipient's new income established a substantial change in circumstances, the court looked to whether this change was contemplated by the parties at the time of the judgment.

ties at the time of the judgment. This was evidenced by the fact that she worked during the marriage, it was a factor of the provision of the marital settlement agreement concerning the children's health insurance, it was referenced in a provision of the joint parenting agreement concerning employment of the parties and

new guidelines, this disparity cannot be ignored.

In response, the appellate court reiterated the language of the statute which explicitly provides that the change in the law itself is not alone a basis to modify support. Further, the court stated that this provision in Section 510 is "a safeguard for maneuvers such

Salvatore is hardly the last support obligor to attempt to avail himself of the new guidelines.

Given the court's recent decision, it may be anticipated that courts will take a discerning look at any alleged substantial change in circumstances when the support order in question was entered before July 2017.