

Domestic Law Update



Cheryl Howell
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Determining Income

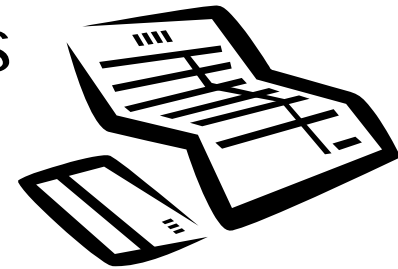
- Ultimate finding required:
 - “Parents’ current incomes at the time the order is entered.”
 - “Party’s actual income at the time the order is made or modified.”
 - *Armstrong v. Droessler* (2006)
 - *Holland*, 169 N.C. App. 564 (2005)



Present Income: Evidence

- “Verified through documentation of both current and past income”

- Pay stubs, employer statements, receipts and expenses



- Self-employment requires:

- Most recent tax return “to provide verification of earnings over a longer period”



Present Income: Evidence

- Can you use past years' income to determine present income?
 - *Holland* (2005) (child support)
 - *Diehl* 2006 (child support)
 - *Squires* 2006 (alimony)





Holland

- “Court must determine gross income at the time the support order was originally entered, not as of the time of remand nor on the basis of the parent’s average monthly income over the years preceding the original trial.”
 - *Lawrence v. Tise*, 107 N.C. App. 140 (1992)
 - *Cf. Conrad v. Conrad*, 252 N.C. 412 (1960)

Holland

- “While we believe the trial court could have used plaintiff’s 2001 income to determine his [2002] income, the order fails to support this approach with the necessary findings of fact.”



Averaging past income

- *Diehl* (2006): OK for child support when the order explains why it was necessary
- *Squires* (2006): OK without explanation
- In both cases, order contained ultimate finding of present income





Imputing Income

- Different than using evidence from past year(s)
 - *Diehl* (2006)
- Must find bad faith, and
- Must explain amount of imputed income
 - *McKyer* (2006)(child support)
 - *Megremis* (2006)(alimony)



Imputed Income: Guidelines

- Amount is “based on the parent’s employment potential and probable earnings level based on parent’s recent work history, occupational qualifications and prevailing job opportunities and earning levels in the community.”
- If no history, not less than minimum wage
 - *Roberts v. McAllister* (2005)

What is Income?



- “Actual gross income from any source”
- Includes income received on an “irregular, non-recurring or one-time basis”
- Includes in-kind payments or expense reimbursements that are significant and reduce personal living expenses

What is Income?

- Self employment/business
 - Gross receipts minus ordinary and necessary business expenses
 - Generally different than income for tax purposes



What is Income?

- Excluded:
 - Benefits from a means-tested public assistance program
 - Income of a non-parent





Is it Income?



- Dividends, interest, capital gains?
 - *Squires* (2006) (alimony)
- Educational grants obtained to attend college?
 - *McKyer* (2006) (child support)
- Proceeds from the sale of a home?
 - *McKyer*



Child Support Modification

- Prospective modification:

- Substantial change of circumstances
- Apply guidelines to set new award
 - Consider imputing income
 - *Armstrong v. Droessler* (2006)



Substantial Change



- Change in needs of child
- 3 years/15% change in guideline amount
- Involuntary decrease in income
- Voluntary decrease plus change in needs of child
 - *Armstrong . Droessler (2006)*



Retroactive Modification

- “Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced or otherwise modified in any way for any reason.” G.S 50-13.10
- Unless “moving party is precluded by ...other compelling reason from filing a motion before the payment is due.”



Retroactive Increase in Order

- Can order reimbursement of paying parent when a “true sudden emergency situation required expenditure of funds in excess of the existing child support order.”
 - *McKyer* (2006) (no emergency)
 - *Biggs v. Geer*, 136 N.C. App. 294 (2000) (need for private school not an emergency)



Child Support

- Need findings to deny attorney fees
 - *Diehl* (2006)
- Appeal of custody does not take jurisdiction to hear support
 - *McKyer* (2006)
- Changes to Guidelines
 - Cases heard and decided after October 1



Domestic Violence

- “Placing aggrieved party in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress.”
 - G.S. 50B-1(a)(2)

Wornstaff

- Trial court can draw “inferences” from “inflections, tones and temperament” of witnesses
- Subjective test to determine fear, not objective reasonableness
- *Cf. Price*, 133 N.C. App. 440



Custody

- Joint legal custody means shared decision-making authority
- Can limit decision-making authority for good reason
 - *Diehl* (2006)



UCCJEA: Part 3

- Registration of foreign order
- Expedited Enforcement
 - Does not require registration
- New AOC forms soon





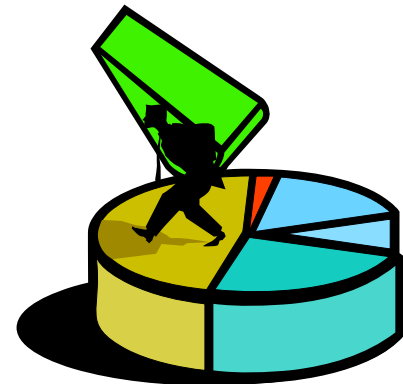
UCCJEA: Part 3

- Court *shall* award fees and expenses unless party proves award is clearly inappropriate
 - G.S. 50A-312
- Only applies to Part 3 proceedings
 - *Creighton v. Lazell-Fankell* (2006)

Equitable Distribution



- Classification
 - Estate “freezes” on date of separation
- Effect of title change after DOS?
 - *Davis* (2006)
 - *Estate of Nelson* (2006)



Separate Property

- “All real and personal property ... acquired by a spouse by bequest, devise, descent or gift during the course of the marriage.”
- And before the date of separation?

