

Chicago Daily Law Bulletin®

Volume 160, No. 154

Non-custodial parents can get child support, too

The Illinois Supreme Court recently affirmed a non-custodial parent's right to receive child support under Section 505 of the Illinois Marriage and Dissolution of Marriage Act.

This is a significant departure from the engrained belief of many in the family law bar, as well as litigants themselves, that the Illinois child support statute authorized awards of support to the primary residential custodial only.

Allowing a non-custodial parent to receive support, however, is consistent with the principles that both parents owe a duty of support to their children and that children should enjoy a similar standard of living with both parents.

In the case of *In re Marriage of Turk*, 2014 IL 116730, the parties were divorced in July 2005. At the time, the mother was awarded primary residential custody of the parties' two sons, Nathaniel, age 8, and Jacob, age 6. The father was ordered to pay \$4,000 in child support as well as one-half of the children's ordinary medical and dental costs. After considerable post-decree litigation, in July 2012, the father was awarded sole custody of the boys.

While the mother was granted limited visitation with Nathan, she received nearly 50 percent of time with Jacob. A separate schedule was also entered providing equal time with both boys during holidays, vacations and summers.

At the time that the custody judgment was modified, the trial court adjudicated the father's motion to terminate his child support obligation.

Based on the terms of the custody judgment, as well as the fact that the father was earning approximately \$150,000 per year

compared to the wife's annual earnings of less than \$10,000, the court required the father (the custodial parent) to pay child support to the mother (the non-custodial parent) of \$600 per month as well as all of the children's uncovered medical expenses.

The father appealed, arguing that the court lacked the authority under Section 505 of the IMDMA (750 ILCS 5/505) to obligate a custodial parent to pay child support to a non-custodial parent.

The appellate court rejected this argument on its face, but remanded the case for an evidentiary hearing as to "what moneys (the mother) actually pays when she has visitation with the children."

The father filed a petition for leave to appeal on the basis that an award of support to a non-custodial parent is contrary to Illinois precedent and statute.

The Supreme Court granted the father's petition for leave to appeal. The court held that, unlike other states, the Illinois child support statute does not bar an award of support to a non-custodial parent.

Indeed, Section 505 expressly confers on courts the option to "order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the support of a child." 750 ILCS 5/505(a). The statute further provides that, in addition to support, the court may "order either or both parents owing a duty of support to a child of the marriage to contribute to (various) expenses, if determined by the court to be reasonable." (Emphasis added) 750 ILCS 5/505(a)(2.5).

The high court reasoned that when the General Assembly fashioned the current child support guidelines as a percentage of the supporting

MODERN FAMILY



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payor's net income, it was just a starting point.

The legislature also included very broad criteria for a court to consider when determining whether to deviate from the guidelines. Specifically, the court must be guided by "the best interest of the child in light of the evidence, including, but not limited to, one of more of the relevant factors."

Among the factors to be considered are the financial resources and needs of the custodial parent as well as those of the non-custodial parent. 750 ILCS 5/505 (a)(2). Nothing in the non-exclusive factors renders custody dispositive. The sole objective of the statute is to serve the best interests of the child.

There are times, the court reasoned, when a non-custodial parent has almost as much time with the child as the custodial parent and at a concomitant cost. If the non-custodial parent were precluded from receiving child support, he or she would be forced to bear a significant portion of the child-related expenses without any consideration of the parties' relative

economic circumstances.

While this may not be a problem when the non-custodial parent is the wealthier of the two, disqualifying the poorer non-custodial parent from obtaining any financial assistance based solely on his or her classification may leave that parent with insufficient recourses to care for the child. This could be detrimental to the child as the "instability resulting from having to lead a dual life in order to conform to the differing socio-economic classes of his or her parents" may cause the child to experience distress.

Lastly, the court rejected the husband's argument that approving an award of child support to a non-custodial parent would open the floodgates to baseless support modification requests. The court reasoned that the statutory modification criteria of 750 ILCS 5/510 would continue to be the standard by which the requests would be judged. Moreover, speculation cannot justify failing to follow the child support statute as written.

Whether the *Turk* decision will truly open the door to a flurry of support petitions filed by non-custodial parents is yet to be seen. As a practical matter, in most pre-decree cases, the issue of disparity in the parties' respective financial resources can be mitigated with an award of maintenance.

Even in those cases where maintenance is inappropriate because of remarriage or waiver, the court can ease the burden on the poorer non-custodial parent by ordering a downward deviation from the minimum child support guidelines.

Under proper circumstances, however, the right to be able to award child support to a non-custodial parent will give the court another tool to protect children.