

Chicago Daily Law Bulletin®

Volume 165, No. 39

Serving Chicago's legal community for 164 years

Despite new state law, child support can remain tricky for pro athlete

Family law cases involving professional athletes or other high-income earners require a strategic game plan, especially when it comes to the determination of child support.

There is a common misconception that if one parent is a professional athlete, then the other parent, with a lower income or no income, is automatically going to win big when child support is ordered.

This result seemed reasonably likely under the old Illinois child support statute, where, absent a judge using discretion to deviate, child support was calculated using a set percentage of the payor's uncapped net income. The set percentage started at 20 percent for one child.

Current Illinois law provides a completely different and more complex formula for determining child support.

In recent cases, this method has resulted in guideline child support being lower than in the past. This is partially because as of July 1, 2017, Illinois statutory guideline child support is based upon a formula which considers both parents' incomes.

Even when one parent is voluntarily unemployed or underemployed, including for the reason of being married to or dating a professional athlete, the court will likely impute income to that parent based upon their potential and probable earning level.

Per 750 ILCS 5/505(a)(3.2), there is a rebuttable presumption that a parent's income will be at least the amount of 75 percent of the most recent U.S. Department of Health and Human Services federal poverty guidelines for a family of one person.

The child support calculation also factors in other information including the parenting time allocation between both parents and economic data regarding the standard needs of a child.

Following the current statute, the combined net income of both parents is first calculated, then it is used to locate a "basic child support obligation" on the Illinois Department of Healthcare and

Family Services' Income Shares Schedule Based on Net Income chart (or Income Shares Chart).

The chart provides the basic child support obligation for situations where the parents have a combined net income of up to \$30,024.99 per month (\$360,299.88 per year). When the combined net income of the parties is higher than that, the Illinois statute does not provide for extrapolation. Thus, in cases involving professional athletes, the chart appears inapplicable.

Did Illinois forget that professional athletes usually make more money than that? How do we determine what their child support payment is?

Professional athletes will get special treatment under Illinois child support law, as long as the total net income in their case exceeds \$30,024.99 per month. It just isn't clear whether their special treatment in this arena will be beneficial or detrimental.

In cases where the parties have a combined net income of more than \$30,024.99 per month, 750 ILCS 5/505(a)(3.5) applies, which allows the court to use discretion to determine child support. In these cases, the basic child support obligation cannot be less than the highest basic child support obligation set forth in the incomes shares chart.

According to the chart, the highest basic child support sum listed for one child is \$2,241 per month. Therefore, after applying the formula, the payor parent's highest possible child support payment for one child would be in the ballpark of \$2,000 per month. But since the court is not limited by the chart, the court can technically order much higher than that.

The court may also apply 750 ILCS(a)(3.4), which allows the court to deviate from child support guidelines if it makes specific findings that the application of the guidelines would be inappropriate. If this happens, then the court may also deviate lower than the highest basic child support amount set forth in the chart.

Before throwing in the towel and allowing the court to use its



Amy N. Schiller is an attorney at Schiller DuCanto & Fleck LLP where she practices family law with a strong focus on property issues and the complex financial and custody matters facing professional athletes and entertainers. She can be reached at aschiller@sdflaw.com.

complete discretion to pick any child support number, both professional athletes and their exes could benefit from negotiating an agreed upon child support sum that is acceptable to both sides and satisfies their child's needs.

In working on many cases where there is one disproportionately higher income earning parent, I have noticed that the child support recipient is more likely to settle for a lower amount of base child support when the other parent agrees to pay a larger percentage of direct expenses, including educational, medical, extracurricular and child care expenses. In divorce cases, the statutory or agreed upon spousal maintenance award will also ordinarily come into play when negotiating the child support figure.

If settlement negotiations fail, it is anyone's game. Each side should strategize using the statute's ambiguities to prepare a playbook of arguments in support of their ideal child support number.

Outcome predictability will be difficult because the newer Illinois child support statute has only been around for about a year and a half. The lack of existing precedent makes it unclear how high or how low the court will go in using its discretion.

The professional athlete should argue that child support be capped at the highest basic child support amount provided in the income shares chart because the legislature determined, with input

from economists, what should satisfy a child's needs.

In divorce cases, the court will also look to the standard of living during the marriage to determine the child's needs and whether they are higher than the standard child. However, in parentage cases, where the parents were never married, it will be more difficult for the court to determine the child's needs unless they are older and their status quo lifestyle has already been established.

The other parent should argue that child support should be higher than the highest basic child support amount provided in the chart. In divorce cases, this argument will be more successful if a high-end marital lifestyle was established.

In parentage cases, it will be difficult for this parent to prove that the child's needs are greater than the standard child unless this child has a previously established high-end lifestyle, funded by the professional athlete parent.

Although the court cannot order maintenance in parentage cases, when fighting for higher child support, this parent should also consider that the court may not favor a situation which results in the child living a completely different lifestyle with them in comparison to with the more wealthy parent.

Under current law, the court also has the discretion to order extracurricular activity expenses, school expenses, child care expenses and medical expenses on top of base child support. Both teams should be prepared to advocate for how these expenses be divided between the parties. This won't be a slam dunk for either party and will depend on each parent's total net income after payment or receipt of base child support.

Regardless of outcome, child support will generally be modifiable if a substantial change in circumstances occurs, including a substantial change in either parent's income. Given the typically short duration of a professional athlete's career, round two of the child support contest should always be anticipated.