NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
DIVISION OF LEGAL AFFAIRS
2022 CHILD SUPPORT CASE LAW UPDATE

1/25/23

ESTABLISHMENT

Moradi v. Buhl, 201 A.D.3d 928 (2nd Dept., 2022). The parents of 1 child born in 2004 were married in 2003. An action for divorce commenced in 2014 resulted in a judgment of divorce entered in 2019 after a bench trial on the issues of custody and support. The court ordered the father to pay $2,599.58 in monthly child support which was based on the parties' income which exceed the $148,000 cap.

The appellate division affirmed the judgment of the lower court. The trial court articulated the reasons that it applied the statutory percentage to income above the cap as the parties' considerable income, the needs of the child, and the fact that the mother was not seeking any add-on contributions.

Nassau County DSS v. F.S., N.Y.L.J (Nassau County Fam. Ct., May 2, 2022). The mother and her 2 children applied for and received public assistance benefits for the period between June 18, 2021 and April 11, 2022. In October 2021, the mother filed a petition to establish an order of child support against her husband from whom she had been separated after alleged domestic violence. In December, DSS intervened based on the assignment of the support rights.

The SCU caseworker testified that DSS was not seeking an order to "repay the full amount disbursed," but rather was seeking an order based on the CSSA to determine child support arrears during the time period when the family was in receipt of PA. The support magistrate determined the father's child support obligation to be $381.63 weekly retroactive to June 18, 2021 (through April 11, 2022) for 32 weeks totaling $11,830.53 in arrears payable at $381.63 per week through the SCU. (*It appears that there is no current order of support for the mother who filed the initial petition.*)

E.S. v. P.M., 77 Misc.3d 1213(A) (Tompkins County Fam. Ct., 2022). After a hearing to establish a child support obligation of the father before a support magistrate, he filed written objections to the order that required he pay $258.82 weekly and 71% of pro-rata expenses for health care of the parties' one child.

The family court held that the magistrate based the decision on the evidence and no reversal was warranted. The magistrate correctly sustained the mother's objection to admit a hypothetic 2021 tax return of the father, and imputed income to the father based on the parties agreed upon farm income from a 2012 filing.

Keefer v. Keefer, 2022 WL 17660462 (2nd Dept., 2022). The parties were married in 2007 and have 2 children. In 2015 they executed a separation agreement in which they shared joint custody of the children, with the mother having primary residential custody. In 2016, the father commenced an action for divorce and sought sole custody of the children. The court granted the

father the relief sought and ordered the mother to pay child support in the amount of $281.58 per month and 8.78% of certain add-ons, (and additionally awarded the father $225,000 in counsel fees).

The appellate division upheld the decision of the lower court. The record contained a sound and substantial basis that the mother had alienated the children from the father, constituting a change in circumstances. However, a mathematical error was made in the support calculation. The correct amount was $195.59 per month and 6.1% of add-ons.

Bradley v. Bakal, 2022 WL 17490833 (1st Dept., 2020). The supreme court entered a judgment of divorce incorporating the parties' stipulation of settlement. On appeal the appellate division vacated the child support provisions as the parties failed to comply with the opt-out provisions of the CSSA, namely reciting the presumptively correct amount of child support and the reasons for the deviation. In the interim, the NCP was required to continue to pay the agreed upon amount of $5,000 per month and 70% of the add-on expenditures.

Y.D. v. L.O., 2022 WL 17492475 (N.Y. County Fam. Ct., 2022). After a hearing, the support magistrate ordered the NCP to pay $4,661/mo. and 100% of add-on expenditures as child support for the parties' child, who was born in 2011. As the parties shared equal parenting time, the father being the more monied parent was deemed the NCP for purpose of child support. The support was ordered based on an income cap of $350,000. The magistrate's findings set forth the reasons for exceeding the cap as the respective financial resources of the parties, the standard of living the child would have enjoyed has the parties not separated, and the substantial difference in the parties' income. The father filed written objections which were denied as the magistrate carefully and thoroughly examined the relevant factors and made reasoned findings. Absent clear error the court would not disturb the findings.

A.C. v. A.A., 77 Misc.3d 1217(A) (Westchester County Fam. Ct., 2022). After a hearing before the support magistrate, the father was ordered to pay $3,000 per month as basic child support, in addition to contributions for childcare and health insurance for the parties one child. Retroactive support was set at $42,115.62 and $2,700 in counsel fees were awarded to the mother. The father filed written objections which resulted in the family court remanding the case for "clarified findings of fact and, if necessary, an amended order" based on the lack of clarity as to how the magistrate arrived at the $3,000 per month figure, which included income over the cap, but not the full amount of combined parental income. The support magistrate issued an amended order with basic support being set at $5,342 per month and a recalculation of retroaction support. The father again filed written objections, which were denied by the family court. The amended finding of fact supported an order based on the "parties' full combined income with sufficient consideration of the relevant statutory factors."

Smisek v. DeSantis, 209 A.D.3d 142 (2nd Dept., 2022). The parties, who were never married to each other, have shared physical custody of their two children. The mother petitioned for an order of child support in family court, which the magistrate dismissed based on the father having more overnights with the children and deeming him the custodial parent for the purpose of

determining a child support obligation. The family court agreed with the magistrate and denied the mother's written objections.

On appeal the appellate division reversed and remanded the case. All of the appellate division departments follow the *Baraby* decision, in which the parent with the greater pro rata share of the child support obligation is deemed the "non-custodial" parent, or payor of child support in equal shared custody arrangements. However, cases from various departments diverge as to the definition of "equal" parenting time. In *Rubin*, the first department ruled that counting "overnights" was the appropriate determining factor in an apparently equal custody arrangement. The third department in *Somerville,* used total hours for this determination. In other cases, the court does not entertain the counting of overnights or minutes spent with children and determines that the "custodial arrangement splits the children's physical custody so that neither can be said to have physical custody of the children for a majority of the time," which was followed in this case.

Anastasi v. Anastasi, 207 A.D.3d 1131 (4th Dept., 2022). The father appealed the child support and maintenance provisions of the parties' judgment of divorce. The appellate division unanimously affirmed the trial court's judgment. The father's contention that the court failed to articulate a proper basis for awarding child support on income in excess of the statutory cap was without merit. The court relied on the statutory factors set forth in DRL §240 (1-b)(f) and determined that it would be inequitable to limit child support to the cap as it would not afford the children the same standard of living as they would have enjoyed had the marriage remained intact.

Castelloe v. Fong, 203 A.D.3d 654 (1st Dept., 2022). In this divorce matter, the court ordered the father to pay $3,333.33 per month as child support, based on an imputation of income of $250,000, and utilizing a $250,000 cap. The father was awarded an overpayment credit of $291,513.40 towards future add-on expenses, based on the support paid during the pendency of the action. The mother's appeal of the amount of the imputation, the use of the cap and the overpayment credited were denied, and the order of the lower court was affirmed.

Ford v. Ford, 200 A.D.3d 854 (2nd Dept., 2022). The supreme court issued a judgement of divorce which set forth the child support obligation of the NCP but did not award any retroactive child support. During the pendency of the action, the NCP was paying carrying charges and unallocated support payments. After the judgement of divorce was entered, the CP made a motion for retroactive child support, which was denied. On appeal, this issue was remanded for the trial court to award child support to the date of commencement, credit child support payments made during the pendency of the action and calculate retroactive child support.

Hughes v. Hughes, 200 A.D.3d 1404 (3rd Dept., 2022). The parties were married in 2013, had one child in 2014, and were divorced in 2019. The parties have a split custody arrangement, with the mother being deemed the non-custodial parent for the purposes of determining child support, as her income was approximately $101,000, and the father's income was approximately $41,000 at the time of the trial. The trial court calculated the child support obligation and determined based on the statutory factor to deviate downward from the presumptively correct

amount by 60%. The appellate division affirmed the judgment as to child support. "Supreme Court considered the relevant statutory factors, with particular emphasis on the financial resources of the custodial and noncustodial parent and those of the child, the standard of living the child would have enjoyed had the marriage or household not been dissolved, the tax consequences to the parties and their lack of disposable income."

Hepheastou v. Spaliaras, 201 A.D.3d 793 (2nd Dept., 2022). The parties were married in 2013 and 2 children were born of the marriage. The parties were divorce by judgment in Oct. 2020, which required the father to pay $3,072/mo. as child support with retroactive support in the amount of $8,356.60 and $114,096. On appeal, the court reduced the support obligation to $1,896.19/mo., and the retroactive support accordingly. The trial court utilized the parties' income over the statutory cap when calculating child support. The trial court articulated its reasons for applying the percentages over the cap. However, the appellate division held that the record does not demonstrate that the children are not living in accordance with the lifestyle they would have enjoyed had the household remained intact. Moreover, when determining an appropriate amount of child support, a court should consider the children's actual needs and the amount required for them to live an appropriate lifestyle."

PENDENTE LITE

Levin v. Levin, 205 A.D.3d 452 (1st Dept., 2022). A pendente lite order in a divorce proceeding required the father to pay $4,750 per month as child support, 57% of add-on expenses, $60,000 in interim counsel fees and $6,085 per month for carrying costs for the marital home.

The matter was remitted by the appellate division, as a double shelter allowance resulted from the requirement to pay both child support and carrying costs. Neither party sought an award for carrying costs, and the court failed to provide an explanation as to why both were awarded.

Murray v. Rashid, 2022 WL 17490799 (1st Dept., 2022). The appellate division declined to modify the pendente lite award of child support. The husband has not shown that there are exigent circumstances necessitating a different award, nor has he shown that Supreme Court failed to consider the appropriate factors when it determined the award, which was derived from the parties' imputed incomes.

AW v. PW, 77 Misc.3d 1209(A) (Richmond County Sup. Ct., 2022). The parties were married in 1999, and there are two children born of the marriage. The plaintiff sought spousal maintenance and child support for the pendency of the divorce action. The court calculated child support based on the CSSA and used the parties' full combined income ($284,747.75). The plaintiff provided credible evidence of the lifestyle to which the children were accustomed, in addition to physical and emotional health issues.

Davidoff v. Davidoff, 209 A.D.3d 835 (2nd Dept., 2022). The defendant appealed the pendente lite support award in the parties' divorce matter. The parties were married in 2008 and have 2 children. An order was entered directing the defendant to pay $5,059 per month, plus an additional $1,700 per month towards $40,472 in retroactive support, as well as 100% of "the children's add-on expenses." The defendant's appeal was dismissed. Modification of pendente

lite relief is rarely warranted, and only under exigent circumstances "such as where a party is unable to meet his or her financial obligations or justice otherwise requires." Any perceived inequity is remedied by a speedy resolution of the matter.

PROCEDURE

Washington County DSS v. Oudekerk, 205 A.D.3d 1108 (3rd Dept., 2022). The father was ordered to pay $25 per month in child support for one child in 2013. The father failed to make any payments, and in 2017 he was found to be in willful violation of the support order. His committed to a term of jail was suspended so long as he was compliant with the underlying order. The father failed to make any payment on the order resulting in the DSS commencing an enforcement proceeding in 2020. The father exited the hearing, and the court issued an order committing him to a 15-day jail term and suspending the sentence if he complied with his support obligation.

The record before the appellate division did not contain a notice of appeal but rather a "notice of poor person requesting permission to proceed." There was no indication that a timely appeal was taken, nor was the petitioner served. As such, the appellate division dismissed the matter.

Hamid v. Ramroop, 206 A.D.3d 913 (2nd Dept., 2022). The family court properly denied the written objections of the father as he failed to file proof of service of the objections on the mother which is a requirement in FCA §439(e).

Andrei P. v. Irina P., 75 Misc3d 506 (Kings County Fam. Ct., 2022). The father commenced a matrimonial action in Queens County on July 28, 2020 by filing a summons and notice. The defendant filed a demand for complaint which was filed and served by plaintiff. In May 2021 the court issued an order requiring the father to pay pendente lite child support, in addition to other relief. In June 2021, the father retained new counsel who filed a notice of discontinuance and commenced a new action in Richmond County. The mother filed an order to show cause seeking to vacate the notice of discontinuance. The Queens county judge recused, and the case was transferred to Kings to hear the motion.

Since the defendant has failed to serve a responsive pleading, the plaintiff was permitted to voluntarily discontinue the action pursuant to CPLR §3217 in the absence of "deviousness, trickery or fundamentally unfair conduct." However, arrears that accrued under the pendente lite order could still be enforced.

K.L.T. v. Commissioner of Social Services o/b/o Z.T.J., 77 Misc.3d 1210(A) (N.Y. Co. Fam. Ct., 2022). A 2017 order required that Petitioner pay weekly support of $73. Petitioner filed a petition for downward modification. Petitioner did not appear for the hearing and the petition was dismissed without prejudice. He filed written objections claiming that he had called in to appear virtually for the hearing and was placed in a waiting room for over 45 minutes, then told that a decision had already been made on his case. The family court denied the objections since the "order issued by the Magistrate in this instance is not "a final order of support" as pursuant to FCA § 439 (e) and is not subject to review under the objection process delineated by the

statute, which contemplates review of a decision made on the merits, following a fact finding. The dismissal was procedural, there was no fact finding, and there were no conclusions of law, and therefore, FCA § 439(e) does not apply." The petitioner may file a motion to vacate or file a new petition.

Mezinev v. Tashybekova, 209 A.D.3d 586 (1st Dept., 2022). The NCP appealed from the supreme court order, seeking to vacate child support arrears, reduce his support obligation to $25/mo., and stay and modify a judgement for $100,00, in addition to other relief. In his record on appeal, he failed to include the minutes from the hearing in the record to allow for a full assessment of his arguments. Based on the limited record, there was no indication that the court erred, thus the trial court's decision was affirmed.

Matter of Buljeta v. Fuchs, 209 A.D.3d 730 (2nd Dept., 2022). The mother filed petitions for enforcement and violation of the parties' child support order. The court conducted a hearing over 4 days, after which the father moved to dismiss the petitions. The motion was stayed due to the COVID-19 pandemic, and eventually set for a return date of July 13, 2020. On Aug. 17, 2020, the mother submitted an extension to file opposition to the motion which was denied by the court. On Feb. 3, 2021, the court granted the father's motion and dismissed the mother's petitions on the default of the mother.

The mother appealed to the 2nd Department, which limited review to the denial of the mother's request for an extension, and ineffective assistance of counsel. The mother's failure to show good cause for the delay was sufficient for the family court to deny her request. In situations in which there is no statutory right to counsel, the standard is "extraordinary circumstances" which are not present in this case. Thus, the order of the lower court was affirmed.

Clarissa C. v. Alexi G., 208 A.D.3d 1089 (1st Dept., 2022). The respondent was found in willful violation of his support order. The matter was not referred to a family court judge for confirmation, as he largely satisfied his arrears before the purge period expired. Since the sole remedy was to await the final order of a family court judge, this matter was not properly before the appellate division. Thus, the matter was dismissed.

Camarda v. Charlot, 208 A.D.3d 1323 (2nd Dept., 2022). This appeal was dismissed as the appellant failed to assemble a proper record on appeal, which prohibited the court from making an informed determination on the merits.

DSS o/b/o Katie M. T.-J. v. Jemel D.T., 206 A.D.3d 651 (2nd Dept., 2022). The Commissioner of Social Services brought a paternity proceeding to adjudicate respondent the father of the subject child. The respondent denied paternity and requested a DNA test. After several adjournments, a hearing was scheduled to determine if equitable estoppel would preclude the test. The respondent failed to appear at the hearing and requested an adjournment by phone. The court denied the request and proceeded with the respondent appearing telephonically represented by his attorney in the courtroom. The court ultimately denied his request for genetic marker testing and adjudicated him the father. He appealed the denial of his request for an adjournment.

"The granting of an adjournment for any purpose rests within the sound discretion of the Family Court upon a balanced consideration of all relevant factors." The respondent had already delayed the court with multiple adjournment requests, had a history of nonappearances, and failed to provide a satisfactory reason for his failure to appear. The order of the family court was affirmed.

Zaid v. Zaid, 204 A.D.3d 931 (2nd Dept., 2022). In a child support proceeding, the Suffolk Co Child Support Enforcement Bureau was ordered to suspend enforcement of a prior support order. It appealed and its appeal was dismissed. No appeal lies as of right from a nondispositional order and under the circumstances of this case, the AD declined to grant leave to appeal.

Sasso v. Sasso, 204 A.D.3d 1019 (2nd Dept., 2022). After granting the downward modification petition of the father, the mother filed timely written objections, but failed to file proof of service. The written objections were denied for this failure to fulfill a condition precedent for review. On appeal, the appellate division held the lower court properly denied the mother's objections.

William J. v. Commissioner of Social Services, 203 A.D.3d 405 (1st Dept., 2022). The Support magistrate dismissed petitioner's motion to terminate or modify child support and vacate child support arrears. The AD dismissed the appeal. as it was taken from a nonappealable order of the Magistrate, and no objections were filed.

Nizen v. Jacobellis, 203 A.D.3d 719 (2nd Dept., 2022). After proceedings in family court before a magistrate, the father filed written objections claiming that the order failed to accurately provide him credit for payments made toward his support arrears. He sent a copy of his written objection to the mother via email. The family court denied his objections for inadequate service, which was affirmed by the appellate division. Email service may be acceptable if made to a party's attorney upon the party's written consent but is not permissible on a party who has not appeared by an attorney per CPLR 2103.

Commissioner of Broome County Social Services v. Wagner, 202 A.D.3d 1293 (3rd Dept., 2022). A 2013 order required the father to pay $118/wk. for 2 children. In a violation proceeding the matter was adjourned to allow the mother to serve the father. On the return date, the father failed to appear and was found to be in default, as an affidavit of service was filed indicating that he had been personally served. He was found to be willful violation of the 2013 order, as well as a 2019 order. The court directed entry of a judgment for arrears in the amount of $54,360.82 with a recommendation of 2 consecutive 6-month terms of commitment. At the confirmation hearing, the respondent appeared with counsel and disputed having been served. The family court confirmed the magistrate's findings and remanded the father for 2 consecutive 6-month sentences, with a purge amount of $75,754.39.

On appeal, the case was remanded. The affidavit of service indicated that the summons was served, but not the petition. The lower court should have held a *traverse* hearing to determine adequacy of service. If the father was properly served, the court should then hold a fact-finding hearing on the issue of credit applied against his child support arrearage. The mother was the administrator of the estate for the parties' youngest child who died. The father claims that he

waived his interest in the $150,000 settlement in consideration of the approximately $50,000 of child support arrears that had accrued in 2017. This issue was raised, but not entertained at the confirmation hearing.

Broome County DSS v. Royce Y., 200 A.D.3d 1524 (3rd Dept., 2021). The respondent failed to appear at a hearing following service of a summons and petition in a matter to establish paternity and child support. In Dec. 2014, the court entered orders of filiation and support ($50/mo.) on default. The respondent appeared in court in Oct 2019, on a warrant issued pursuant to one of the several violation petitions that had been filed. The respondent filed a motion to vacate the default, which was denied as untimely. The appellate division affirmed. While the one-year period to vacate a default is not a statute of limitations, and the court has discretion to entertain the motion in the interests of justice, the family court acted in its discretion not to do so. Furthermore, the respondent failed to present any plausible excuse for not moving to vacate for the past 5 years.

Deborah K. v. Richard K., 203 A.D.3d 433 (1st Dept., 2022). Under the parties' stipulation the father was entitled to pay his $2,100 in monthly child support directly to the mortgagee of the former marital residence. Family court did not have jurisdiction to modify the parties' separation agreement, thus it was improper for the court to amend the stipulation by imposing an annual maximum credit to which the father was entitled based on these payments.

EMANCIPATION

Jernigan-Leysath v. Leysath, N.Y.L.J 5/23/22 (N.Y. Co. Fam. Ct., 2022). The petitioner was adopted by the respondents in 2016, who at the time of the hearing were in receipt of an ongoing adoption subsidy for the petitioner. The petitioner left the home of his adoptive parents and filed a petition in March of 2020 seeking a support order in the amount of the adoption subsidy. After a hearing, the magistrate held that the petitioner had constructively emancipated himself from his adoptive parents. On written objections, the family court judge reversed and remanded the case back to the support magistrate as there were no findings of fact "as to what contribution Respondents made to the deterioration of the parent-child relationship, what efforts they made to repair the relationship, the amount of any adoption subsidy received by Respondents in connection with their adoption of Petitioner, and the dates of receipt of the subsidy."

Froebel v. Froebel, 2022 WL 17883153 (4th Dept., 2022). The parents of one child were divorced in 2006. The mother filed two appeals related to post divorce matters which took place in Supreme Court. The court had found a change of circumstances in that the child had changed residence as of 4/9/21 which warranted suspension of the father's child support obligation. The court also held that, consistent with the parties' stipulation, the father would be responsible for the child's freshmen year at college and the court would determine the respective contributions for future years at a later date. The mother objected to the child's choice of college as she never agreed that such college was "appropriate" as required by the oral stipulation. The court determined that both of the mother's arguments in the first appeal were without merit.

The court reversed and remanded the case as to the mother's second appeal, in which she claimed that the court erred in ordering her to pay child support without an evidentiary hearing. The record reflected that the court based the mother's child support obligation on financial documents that were submitted after the hearing, which was insufficient. As such an evidentiary hearing solely on this issue is warranted.

MODIFICATION

Petrushka v. Abizadeh, 202 A.D.3d 1088 (2nd Dept., 2022). The NCP mother's petition for downward modification of her child support obligation was granted by the court. In a related matter for violation, the father's motion for discovery and interrogatories was denied. The father's written objections were denied for both orders resulting in this appeal. The appellate division dismissed the discovery matter as no appeal lies as of right from a nondispositional order and deferred to the support magistrate who was in the best position to evaluate the credibility of the witnesses. The record supported the mother's loss of employment and the father's interference with her earning ability and potential job opportunities.

Zeidman v. Zeidman, 202 A.D.3d 893 (2nd Dept., 2022). The parties were married in 2005 and have 4 children of the marriage. After a trial the court entered a judgment of divorce in April 2017, requiring the father to pay $871.58 per month in child support based on the children's needs and standard of living, as the court was unable to ascertain the father's actual income.

The father filed a petition for a downward modification in family court in July 2018, which was consolidated in a supreme court action when the mother filed a motion to find the father in contempt for non-payment of support. The supreme court granted the father's petition and reduced support to $25/mo. retroactive to the date of filing and denied the mother's motion.

On appeal, the appellate division remanded the case for a hearing to settle the issues of fact with regards to the father's actual income, and his ability to comply with the child support obligation.

Gerety v. Gerety, 203 A.D.3d 827 (2nd Dept., 2022). The parties were divorce by judgment incorporating a stipulation in December 2016, whereby they agreed that the father would pay $2,000 per month in spousal maintenance until December 1, 2020 and child support in the amount of $3,250 per month until spousal maintenance terminates, at which time his child support obligation would be $4,157 monthly. The father filed for a downward modification in November of 2020 based on the oldest child attaining the age of 21 and therefore being emancipated. His petition was dismissed, and his written objections were denied.

The appellate division affirmed as the father failed to allege facts that set forth a substantial change in circumstances warranting a downward modification. He had agreed to the increase to $4,157 per month of child support knowing that the eldest child would be 21 at that time.

Durand v. Pierre-Louis, 2022 WL 1481392 (2nd Dept., 2022). The father's application for a downward modification of his child support obligation was denied. While he provided evidence that he was laid off from his job in the field of information technology, he made no diligent efforts to secure employment commensurate with his education, ability, and experience.

Grimes v. Medero, 210 A.D.3d 1427 (4th Dept., 2022). The NCP mother appealed the denial of her written objections of the dismissal of her petition for a downward modification of her child support order. During the pendency of the proceeding, the child emancipated at age 21. Her obligation to pay child support ceased, and if she succeeded she would be unable to recoup support that she had already paid, as NY has a "strong public policy against restitution or recoupment of support overpayments."

Burns v. Grandjean, 210 A.D.3d 1467 (4th Dept., 2022). In this post-divorce matter, the father sought to modify his access schedule with the parties' children and terminate his child support obligation, among other relief. The Supreme Court expanded the father's visitation, imposed "house rules" for the mother and children to abide by, and suspended the father's child support obligation, on the grounds that the mother was frustrating the father's right to visitation. The appellate division reversed and remanded on most issues including the suspension of child support. "Although a custodial parent's deliberate frustration of visitation rights can, under appropriate circumstances, warrant the suspension of future child support payments we conclude that the father failed to establish that the mother deliberately frustrated his visitation rights to such an extent that suspension of his support obligation was warranted." The court lacked necessary financial information to determine if any modification of the child support obligation is warranted. The case was remitted to reconsider this issue *de novo*, in addition to the mother's request for arrears.

Davis v. Shihadeh, 209 A.D.3d 733 (2nd Dept., 2022). The parties, who were never married to each other, had one child together for whom an order of support was entered in 2015 on consent, requiring the father to pay $50 per month. The mother petitioned to modify the order, which was granted, resulting in a child support obligation of $112.01 per week. The award was based on an imputation of income in accordance with the father's ability to earn. The father filed written objections and a subsequent appeal, which resulted in the courts order being affirmed. The father claimed that he had a long-term disability resulting from being struck in the head with a gold club when he was 10. The magistrate's findings relating to the father's ability to work were supported by the record. Furthermore, he failed to submit sufficient evidence of a disability that would prevent him from obtained gainful employment.

Jean-Baptiste v. Jean-Baptiste, 207 A.D.3d 630 (2nd Dept., 2022). The parents have 3 children together and were divorced in 2017. Pursuant to the judgment of divorce, the father is required to pay $973 per month as child support. The father petitioned in family court for a downward modification of his child support obligation based on his loss of work due to a lack of business. The matter was dismissed on motion of the mother without a hearing. The father's written objections were denied. On appeal, the appellate division affirmed the dismissal of his petition. The father failed to make any allegations or provide evidence of his diligent efforts to secure employment commensurate with his education, abilities, and experience. Thus, he failed to set forth a prima facie case warranting a hearing.

Green v. Palmer, 207 A.D.3d 545 (2nd Dept., 2022). The father's petition for a downward modification was dismissed without prejudice after a hearing. The father's written objections

were denied. The appellate division affirmed, as the father failed to establish a substantial change in circumstances.

Padilla v. Northington, 205 A.D.3d 915 (2nd Dept., 2022). The parents of 2 children were divorced by judgment in 2015. The mother petitioned the family court for an upward modification of child support. The magistrate granted the mother's petition and imputed income to the father based on his education and experience. The father's written objections were denied, and the appellate division affirmed the lower court's order. "In determining child support, a court does not have to rely on a party's own account of his or her finances and may impute income to a party based on the party's past income or demonstrated future potential. Moreover, since a factfinder's imputation of income is almost always based on a credibility determination, it is entitled to great deference on appeal."

Yezzi v. Small, 206 A.D.3d 1472 (3rd Dept., 2022). The parties were married in 1993 and had 2 children, born in 2004 and 2006. In 2012 they executed a separation agreement which provided for a 50/50 custodial arrangement and no child support to be paid. Each parent would contribute to a joint account to cover the children's expenses, with the mother contributing $780/mo. and the father $520. A judgment of divorce was entered incorporating the terms of the parties' agreement. The mother moved for a modification of custody and child support. Following a hearing the court imputed income to the father and required that he pay child support to the mother. On the father's appeal the court held that the mother had established a substantial change in circumstances in that the custodial schedule was modified from 50/50 to the father have the children 2 days per week and one weekend per month. However, the trial court was not justified in its imputation of income to the father of $50,000, who held both a masters and a law degree, but operated a farm. The appellate division reduced his total income from $170,014 to $120,014 and recalculated his child support obligation including income over the cap.

Livingston County SCU v. Sansocie, 203 A.D.3d 1675 (4th Dept., 2022). The SCU, "acting on behalf of the father of the subject children, appeals from an order denying its objections to the order of the Support Magistrate that, among other things, granted in part the petition for an upward modification of respondent mother's child support obligation." The parties have a shared custody arrangement with an approximate 50/50 split. After calculating the presumptively correct amount of child support, the court deviated due to the 50% of parenting time exercised by the mother, and her general expenses incurred for the children. The appellate division revered and remanded. While extraordinary expense incurred in exercising visitation may warrant a deviation, general expenses are not sufficient.

Lopez v. Campoverde, 201 A.D.3d 719 (2nd Dept., 2022). A child support order was issued in Mar. 2018 directing the father to pay $103/wk for the support of his child, using imputed income, based on the father's pervious earnings. The father brought a petition for downward modification which was dismissed. His written objections were denied, and the appellate division affirmed the ruling of the lower court. The father failed to establish a substantial change in circumstances which would warrant modification of the existing order.

IMPUTING INCOME

Tuchman v. Tuchman, 201 A.D.3d 986 (2nd Dept., 2022). The parties were married in 1985 and have 4 children, 2 of whom were emancipated at the time of the divorce. The court imputed $800,000 to the father and $62,231.46 to the mother for the purposed of calculating child support and spousal maintenance. A child support award of $4,611/mo. was ordered to be paid by the father in the judgment of divorce based on a $350,000 cap of combined income, in addition to 93% of extracurricular costs.

The appellate division reversed on the issue of child support and performed its own calculations. The $800,000 of imputed income was supported by the record. However, the (*very specific*) amount of income imputed to the mother was "entirely speculative, based upon assumptions as to the plaintiff's purported investment from her distributive award." She had been asked by the husband to leave the workforce over 30 years ago and has no recent work history. The lower court sufficiently articulated the rationale for the use of the $350,000 cap. However, the appellate division held that the father's income is 100% of the combined parental income, resulting in monthly support obligation of $4,958.33. Additionally, the court reversed on the issue of the add-on expenses for extracurriculars. Although it was acknowledged that it was in the child's best interest to attend summer camp, and all of the parties' other children had attended summer camp, expenses for "extracurricular activities are not specifically delineated as an "add-on" under the Child Support Standards. The substantial basic child support award should be sufficient to cover the child's expenses, including her extracurricular activities."

Malkani v. Malkani, 208 A.D.3d 863 (2nd Dept., 2022). The parties were married in Dec. 2007 and have 3 children. After a non-jury trial, the court issued a decision and judgement which contained provisions requiring the father to pay child support in the amount of $2,074.46 per month commencing on the first day of the month following the entry of the judgment of divorce, and 61% of add-on expenses. The court used an annual income of $270,000 for the father based on his salary of $235,000 and a potential bonus, and $169,000 was imputed to the mother based on an $85,000 per year offer of full-time employment that she received from her current employer, as well as $84,000 based on her father paying the rent for her current residence. The court used the statutory cap of $148,000 to calculate the father's child support obligation.

The appellate division reversed and remitted the matter back to the Westchester County Supreme Court for a recalculation of the basic child support obligation and percentages, as the lower court should not have imputed the rent payments to the mother as there is no obligation or indication that her father was going to continue such payments which was being provided in part due the court not awarding any pendente lite relief. Additionally, the lower court erred in not awarding the child support to be retroactive to the August 2017 date of commencement.

Sorscher v. Auerbach, 206 A.D.3d 813 (2nd Dept., 2022). The parties are the parent of 5 children. In June 2019, the mother sought an order of child support in family court. Income was imputed to the father based on various factors including housing and a vehicle provided to him at no cost from friends and family. The support magistrate issued an order requiring the father to pay $409 per week, 64% of education expenses, and 63% of unreimbursed health care, and set

retroactive child support at $44,464.14. The father file written objections, which were granted by the court. The magistrate, on remitter, removed the imputed income and recalculated the father's support obligation to $221 per week, 48% of add-ons, and $24,025.86 in retroactive support. The mother's written objection to this order were denied.

On appeal, the court held that the family court should have remitted the matter to the support magistrate to determine the appropriate value, if any, to impute for the housing and vehicle. The family court was correct that original determination by the magistrate was improper. That is, conducting her own research to value the housing, and the mother's unsubstantiated estimate of the value of the father's vehicle use. Thus, was matter was remanded for an additional fact-finding hearing.

Shvalb v. Rubinshtein, 204 A.D.3d 1059 (2nd Dept., 2022). The parties were married in 2007, and had twins born in 2010. The court imputed $64,000 of income to the father in calculating his child support obligation, which was retroactive to the date of the mother's answer and counterclaims. The court also required the father to pay his pro-rata share of add-on expenses until the children reach 18 or are otherwise emancipated. On appeal, the appellate division upheld the imputation of income as it was supported by the record. Retroactive support was properly calculated from the date requested in the responsive pleadings of the mother, and not back to the date of commencement, as argued by the mother. The add-ons as a component of support do not terminate at 18, but rather at 21 or emancipation. Additionally, the court should have required the father to maintain a life insurance policy for the benefit of the children until emancipation.

Giuliano v. Giuliano, 203 A.D.3d 1473 (3rd Dept., 2022). The parties were married in 1993 and 3 children were born of the marriage, in 1994, 1998, and 2007. The father was ordered to pay child support, and income was imputed to the mother for the purpose of the support calculation. On appeal, the mother argued that income should not have been imputed to her. She testified that while she was a registered nurse and had applied for nursing jobs, she was unable to work full time due to the needs of the youngest child. The mother's friend testified at court that she did not tell the mother about nursing jobs because "[t]here was no interest." And when asked on cross if the mother had made comment to her that returning to work full time would hurt her divorce case, she replied "I believe so." The appellate division held that the supreme court did not err in imputing $58,000/yr. to the mother based on her capability and testimony of her hourly wage as a nurse.

PARENTAGE & PATERNITY

Fern G. v. Kim J., 203 A.D.3d 510 (1st Dept., 2022). The petitioner was granted an "order of parentage" after a hearing in family court. "Here, clear and convincing evidence presented at the hearing, including numerous social media posts by respondent, private text messages between the parties, and a baby shower invitation designed by respondent in honor of both parties, established that the parties agreed to conceive and raise the subject child as the newest member of their already established family, which already included one child both parties referred to as

their son. After the subject child was born, the parties participated in a dedication ceremony at their church, where a "certificate of dedication" named both parties as the child's parents. At the hearing, respondent conceded that she referred to petitioner as the subject child's mother, even after their relationship ended. On this record, we find no reason to depart from Family Court's factual and credibility findings, which are afforded deference on appeal.

John D. v. Carrie C., 202 A.D.3d 1355 (3rd Dept., 2022). During the mother's pregnancy, John E. provided her support and accompanied her to prenatal appointments. The mother gave birth in 2014, and both mother and John E. executed an AOP resulting in John E. being listed as the child's father on the birth certificate. John E. was determined not to be the biological father by genetic marker test administered when the child was 6 months old. He was thereafter referred to by his first name, and not as dad. John E. lived with the mother and child until a few months before the child's 2nd birthday.

In 2020, Petitioner, John D. began to have visitation with the child for approximately 2 months. The mother stopped visitation and the Petitioner commend a paternity proceeding. The family court found that the mother met her initial burden of establishing a prima facie case of equitable estoppel but ordered a genetic marker test be administered.

The mother, supported by the attorney for the child, appealed and argued that the test is not in the best interests of the child who is now 7 years old. The appellate division disagreed. Although John E has a relationship with the child, it is not as her father. The child knows that John E. is not her father and does not refer to him as dad. The child does refer to John D. as "daddy" who has been involved since Jan. 2020. The breakdown in visitation appears to have ended by the mother as John D. "was not ready to discuss being a family and was more focused on the child."

Matter of the Commissioner of DDS o.b.o Katie M.T.-J. v. Jemel D.T., 206 A.D.3d 651 (2nd Dept., 2022). The respondent was adjudicated the father of the subject child after an equitable estoppel hearing. The respondent had denied paternity and requested a DNA test. He failed to personally appear for the hearing and requested an adjournment. He had a history of nonappearance and failed to provide a satisfactory excuse for his failure to appear. The court denied his request and held the hearing with his attorney present in the court room and allowed the respondent to appear virtually by phone. The appellate division held that the lower court acted within its discretion.

Daniel FF. v. Alice GG., 170 N.Y.S.3d 728 (3rd Dept., 2022). The petitioner executed an AOP in 2017 within 2 weeks of the child's birth. He commenced a proceeding to vacate the AOP in March 2021. Following a fact-finding the petitioner was equitably estopped from denying paternity, and the petition was dismissed. On appeal, the appellate division affirmed on different grounds. Prior the equitable estoppel analysis, the petitioner must initially prove that the AOP was "signed under fraud, duress, or due to a material mistake fact." As the petitioner failed to specifically plead the grounds on which he sought vacatur, the petition should have been dismissed without the necessity of the equitable estoppel hearing.

K.G. v C.H., 209 A.D.3d 526 (1st Dept., 2020). This equitable estoppel case commenced in 2016 and resulted in the petitioner being adjudicated a non-parent. At issue is the $2,250,000 interim

counsel fee award to respondent. The order was remanded to the lower court, as the "interim" order was actually a final order, and the petitioner was entitled to an evidentiary hearing on the extent and value of the counsel fees.

Escobar v. Pagan, 208 A.D.3d 580 (2nd Dept., 2022). The subject child was born in September 2013. The petitioner and the mother executed an acknowledgment of paternity. In October of 2013 a private DNA test was performed which indicated that Michael M. was the biological father of the child. Thereafter, Michael had regular visitation with the child and paid voluntary child support to the mother in the amount of $600 per month. In 2019, the petitioner (Escobar) filed a petition for access with the child, while Michael commenced a paternity proceeding. In Sept. 2020, after a hearing, the family court directed the parties to undergo genetic marker testing. Based on the results, the court issued orders vacating the AOP with Escobar, adjudicating Michael to be the father of the child, and dismissing Escobar's petition for access. The orders were affirmed on appeal. While Michael did not have standing to challenge the AOP to which he was not a party, he had standing to establish paternity pursuant to FCA §522. Equitable estoppel was not applicable as Michael and not Escobar had been providing a stable resource for the child. After adjudicating paternity, the court properly vacated the AOP.

Danielle E.P. v. Christopher N., 208 A.D.3d 978 (4th Dept., 2022). The mother, Danielle, of the subject child, born in September 2016, was in a relationship with another man who signed an AOP and was indicated as the father on the child's birth certificate. The relationship ended shortly after the child's birth and the mother filed a paternity petition against the respondent. The court dismissed the petition due to the existence of the AOP. The mother filed again after the AOP was vacated, and after a genetic marker test, the court adjudicated the respondent, Christopher, the father of the subject child. On appeal, the father argued that the support magistrate erred in ordering genetic marker testing prior to the resolution of equitable estoppel, and before he was represented by counsel. The appellate division rejected these arguments, as well as the father's argument that the newly discovered evidence pertaining to the mother and her boyfriend.

A.B. v. M.S., 2002 N.Y. Slip Op. 22399 (Ulster County Fam. Ct., 2022). Ms. S. filed a petition for parentage of the child being carried by Ms. B., dated Feb. 12, 2022. On Apr. 29, 2022, both parties appeared represented by counsel. Ms. B. indicated that she was not consenting to Ms. S. being named a parent, but waived her right to a hearing, and consented a decision based on the papers filed.

The support magistrate issued a judgment of parentage, that upon the birth of the child Ms. S. and Ms. B. will be the legal parents of the child. Ms. B. filed written objections, claiming that the Intrauterine Insemination Consent Form was misleading and incomplete, and that Magistrate Gordon should have conducted a fact-finding hearing. The family court denied the written objections. The waiver of a fact-finding hearing was clearly supported in the record, in which Ms. B. conferred with her attorney and made an informed decision to proceed on the papers. Additionally, requisite intend was found in the Intrauterine Insemination Consent Form consistent with FCA §581-304(b). The "consent to the assisted reproduction must be in a record

in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together."

Mitches-Lewis v. Lewis, 204 A.D.3d 989 (2nd Dept., 2022). The parties were married in April 2008 and had one child of the marriage, born in August 2008. The father was named on the birth certificate and given the father's surname. The parties ended their relationship in September 2008, and the father provided financial support for the child need for approximately 9 years. After receiving a letter form a CSEU he denied being the biological father of the child. The mother commenced an action for divorce and sought pendente lite support for the child. The father cross-moved seeking a genetic marker test for the child. The court denied the father's request, which was affirmed on appeal. "[T]he child, who is now 13 years old, has only ever known the defendant to be his father. Under the circumstances, the court providently exercised its discretion in determining that it was in the best interest of the child to apply the doctrine of equitable estoppel."

Mark R. v. Kimberly V., 204 A.D.3d 481 (1st Dept., 2022). The petitioner filed to establish paternity of the subject child. The respondent sought to dismiss the case as her current husband has executed an acknowledgement of paternity and assumed the role of the child's father. After an estoppel hearing, the respondent's motion was denied, and a genetic marker test was ordered. "After the child was born, respondent and the child lived with him for a time, and he cared for and provided for the child. When respondent unilaterally terminated contact with him, petitioner filed the paternity petition promptly; the child was only four months old. The delay in bringing the paternity proceedings to a conclusion is not attributable to petitioner, who was present at every court date, but to difficulty in obtaining service over respondent's husband and the delays caused by the COVID-19 pandemic."

VIOLATION

Michelle B. v. Thomas Y., N.Y.L.J Jan. 25, 2022 (Kings County Fam. Ct., 2022). The parties who were never married had a child born out-of-of-wedlock on November 15, 1992. The father was required to pay child support through the SCU by order dated January 7, 2011. The mother brought a violation proceeding resulting in the father being committed and serving a 6-month jail term ending in July 2019, with the outstanding arrears being reduced to money judgment "which [the father] was paying $23 bi-weekly consistent with the Terms of the SCU payout arrangement." (*Neither the child support obligation nor the amount of arrears reduced to judgment are provided in the decision.*)

The mother filed a subsequent violation petition in October of 2019 at which time the arrears exceeded $200,000. (*It's not clear how such a large amount of arrears accrued since the father has been working for the department of corrections for 12 years.*) At a court appearance, the parties placed a stipulation on the record. The parties agreed that the father would liquidate the balance of his NYCERS pension of $67,674 via a QDRO, and if paid in a lump sum to the mother, all remaining arrears would be forgiven. (*The decision uses the term QDRO throughout, which should presumably be a DRO as ERISA does not apply to governmental plans.*) In January 2021, the proposed DRO was rejected by the Assistant General Counsel to NYCERS,

who requested that the SCU submit an IWO, although the father was "only entitled to a monthly allowance upon retirement age (62) and only that amount could be garnished." (*So, the IWO would not be honored until 2025 at the earliest.*) The mother sought to vacate the agreement and reinstate the violation petition, which the support magistrate denied. On written objections, the family court judge found that was mutual mistake as the ability to pay a lump sum from the father's retirement account, as well as unconscionability, since the wife was not represented by counsel at the time of the stipulation. The court further held that the court lacked subject matter jurisdiction to vacate the arrears, as there had been no application before the court to do so. The judge vacated the stipulation, restored the violation petition, and remanded the case to the support magistrate. (*There is no discussion of the issue that the current order had stopped charging at the time the previous violation petition was adjudicated. Based on the existing case law, it would appear that the court would not have the ability to violate the father for the same arrearage.*)

Hanrahand v. Hanrahand, 202 A.D.3d 679 (2nd Dept., 2022). The father was found to be in willful violation of the parties' child support order. The order was confirmed by the family court judge and the father was committed to a 3-month jail term with a $5,000 purge amount.

The appellate division held that the appeal of the commitment was dismissed as academic, as the period of incarceration has expired. In light of the enduring consequences that could flow from the finding of willful violation, the court found that the petitioner established a prima facie case of willful violation, which the father failed to overcome with competent, credible evidence of his inability to pay. Thus, the order of commitment was affirmed.

Bermejo v. Suquilanda, 202 A.D.3d 1080 (2nd Dept., 2022). The father was committed to the custody of the NYC Dept. of Corrections for a period of 90 day with a $15,000 purge amount in a May 12, 2021 order. In an order dated June 16, 2021, the family court suspended the order of commitment, after which the father made a $15,000 support payment. The parties appeared before the court on July 14, 2021 and the court directed the father be placed on probation for 3 years. The father appealed, arguing that the court was not permitted to order probation after committing him to jail. The appellate division held that since the order of commitment had been suspended prior to the father's payment of $15,000, such payment did not apply to the purge amount. Thus, upon suspending the commitment, the court was permitted to place the father on probation.

Zombek v. Zombek, 204 A.D.3d 961 (2nd Dept., 2022). The parents of 4 children were divorced in 1999 by judgment which incorporated their stipulation. The CP moved to hold the father in contempt for failure to pay certain education, summer camp, extracurricular, and orthodontia expenses of the children as agreed in their stipulation. After a hearing the supreme court awarded the CP $256,000 and $15,000 in attorneys' fees.

On appeal, the appellate division affirmed the decision of the lower court. The parties had opted out of the CSSA and agreed the father's "entire child support contribution" would be to directly pay the providers for the expenses set forth above. His argument that "that the amount awarded did not constitute child support because child support is limited to basic child support" was not

meritorious. Even if the parties had not opted out, the CSSA defines child support as "a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years."

Dym v. Dym, 75 Misc.3d 454 (Richmond County Fam. Ct., 2022). The parties were divorced by stipulation incorporated into their judgment of divorce in 2014. The mother brought a motion for contempt for the failure of the father to pay child support in the amount of approximately $40,000 in arrears, $5,000 for unreimbursed health care, $63,000 in educational expenses, and $15,000 in counsel fees.

The father filed for bankruptcy resulting the mother purchasing the father's share in the marital residence. The father argued that the arrears were satisfied by the mother obtaining $107,000 of equity in the real property for $50,000 which was provided to the bankruptcy trustee. The court held that this did not satisfy the child support arrears which are still due and owing. The child support arrears were neither discharged nor satisfied in the bankruptcy proceeding. However, the contempt was not deemed willful as the father "was clearly unable to pay because the only mechanism to facilitate that payment was lost in bankruptcy."

The father was not required to contribute the orthodontic or private school costs as the mother incurred such expenses without consulting with the father as is required in the parties' stipulation. Counsel fees were not awarded as the father's failure to pay was deemed non-willful.

Laura R. v. Thomas Christopher B., 206 A.D.3d 501 (1st Dept., 2022). The mother sought an order of violation and a contribution towards one child's private high school tuition. The magistrate found the father in non-willful violation and denied the request for contribution for the education expenses. The magistrate found the father's testimony to be credible that he was unable to attain full-time employment due to parenting responsibilities. The parties' children resided with him full time during the relevant period. He transported them from NJ to their school in NYC as well as for other activities. The contribution for private school was never previously agreed to, nor did the mother's evidence warrant modification. The decision and order were affirmed on appeal.

B.D. v. E.D., 75 Misc.3d 828 (N. Y. County Sup. Ct., 2022). The mother brough a contempt proceeding alleging that the father was required to maintain health insurance for the parties' 26-year-old daughter under the NY State Age 29 health insurance law. The court held that the insurance provision in the parties' stipulation was ambiguous, and based on the evidence, there was no intent when the agreement was made to require the husband to provide such insurance. The agreement provided that the father would provide health insurance until each child's emancipation, or until "each child is no longer allowed by law to be covered under a parent's insurance." The Age 29 Law provides that the adult child is eligible for insurance if certain requirements are met, which is treated as a plan separate from that of the parent. The cost of coverage is separate as well, similar to COBRA coverage.

Faina P. v. Alexander S., 75 Misc.3d 701 (Kings County Sup. Ct., 2022). The mother sought to hold father in contempt of the stipulation of settlement and judgment of divorce of the parties which required father to pay $1,500 per month as child support in addition to 50% of add on expenses. The father moved for a downward modification or termination of his support obligation. The father, who is a licensed attorney, voluntarily left a position with a firm to start his own practice and informed the mother that he was no longer financially able to pay child support. The father's argument that he should receive child support credit for trips that he made to Legoland and other destinations, parties for the child, and his Nintendo subscription, were unpersuasive. Additionally, the father's claiming $965 for the monthly expenses related to maintaining a 2019 Audi was not helpful to his position that he was unable to pay support as agreed to and ordered.

The father's application was denied, and he was found to be in contempt. The arrears were determined to be $30,156.49 and the plaintiff was required to "settle an order of contempt against defendant together with a copy of this decision on notice to defendant and the court will therein set purge conditions." The court declined to suspend the father's driver's license but indicated that the mother may elect to open an account with the SCU. Counsel fees were granted to the mother.

Farina v. Karp, 210 A.D.3d 1335 (3rd Dept., 2022). The parties are the parents on one child born in 2003 who is the subject of a 2013 order requiring the father to pay child support. The mother commenced a violation proceeding against the father in January of 2020 which was resolved by an order of willful violation for in excess of $24,000 of child support arrears. In June 2021, the court confirmed the willfulness finding and issued an order for 6 months commitment, suspended on the condition of making scheduled payments. The father appealed.

The Appellate Division held that although the father submitted evidence of his medical condition limiting his ability to continue working in construction, he failed to pursue employment in another field which could accommodate his limitations. His application for SSD did not preclude him from seeking employment in some capacity. The lower court's determination was upheld.

Sweeney v. Sweeney, 209 A.D.3d 659 (2nd Dept., 2022). The NCP appealed the family court's orders finding him in willful violation, committing him to the Westchester County Correctional Facility, and confirmation of the dispositional orders. The parties were divorce in 2020 and have 3 children together. The father was required to pay $3,500 per month as child support. After a hearing, the support magistrate found that he had willfully violated the judgement of divorce and recommended 90 days of confinement unless he paid a purge amount of $37,250.

The appellate division dismissed the appeal of the commitment and the amount of the purge as academic. The portion of the order finding a willful violation was supported by the record. The father's failure to pay support as ordered was prima facie evidence of a willful violation. The faither failed to present competent, credible evidence that he made reasonable efforts to obtain employment in order to meet his child support obligation.

Santman v. Schonfeldt, 209 A.D.3d 742 (2nd Dept., 2022). The parties are the parents of two children for which the father was obligated to pay child support in the amount of $2,750 per

month based on a 2018 court order. The mother commenced violation proceedings which were dismissed by the magistrate. The family court denied the mother's written objections.

The appellate division reversed and remanded the case. The mother had presented evidence that the father had only made one payment towards this order and had arrears in the amount of $19,591.43. The father presented evidence that he intended to pay but "his employer and/or the Support Collection Unit had not properly followed through with the wage garnishment procedure." Although the magistrate found this evidence credible, the court should have found a non-willful violation had occurred and entered a judgment in favor of the mother for the arrears that had accrued.

Gioia v. Gioia, 204 A.D.3d 912 (2nd Dept., 2022). The father was found to be in willful violation of the parties' child support order. The family court confirmed the support magistrate's recommendation of 90 days of commitment in the Nassau County Correctional Facility unless he paid a $13,000 purge amount. The order of the lower court was affirmed on appeal. The mother presented a prima facie case for non-payment, and the father failed to offer competent, credible evidence of his inability to comply with the child support order. "In particular, the father failed to submit sufficient evidence to substantiate his contention that he was unable to contribute any portion of his social security disability benefits income toward child support in the approximately three-year period after he began receiving that income."

CONTRACT ENFORCEMENT

Poirier v. Demasi, 201 A.D.3d 977 (2nd Dept., 2022). The parties who were married in 2000 are the parents of 3 children. In 2010, the parties were divorced by judgment which incorporated the terms of a written agreement requiring the father to pay child support. The parties opted out the CSSA and included provisions in the agreement that they were advised of the CSSA, that the CSSA calculations would presumptively result in the correct amount of child support, the amount of presumptively correct support, and their reasons for deviating. The father's motion to vacate the child support provisions was denied, as the stipulation complied with required opt-out recitals. The mother's cross motion for an award of child support arrears in the amount of $24,426.75 was granted. No hearing was required as the father failed to raise a triable issue of fact as to the amount of the arrears. The appellate division affirmed the decision of the lower court.

Kirk v. Kirk, 207 A.D.3d 708 (2nd Dept., 2022). The parties were married in 1984 and 3 children were born of the marriage. They entered into a separation agreement in Jan. 2007, a modification agreement in Dec. 2010, and were divorced in Jan. 2011 by judgment of divorce which incorporate but did not merge the agreements.

The mother sought to enforce various provision of the agreements including the payment of child support arrears. The mother's motion was denied as to child support arrears. At the time of the separation agreement, the father occupied the marital residence and had custody of the children. The agreement reflects that the mother had no income and no child support obligation. Neither

agreement, nor the judgement of divorce imposed a child support obligation on the father. Thus, no child support arrears accrued. This was affirmed by the appellate division.

HIGHER EDUCATION

Pinto v. Pinto, 209 A.D.3d 778 (2nd Dept., 2022). The parties had two children of the marriage which ended by Judgment of Divorce in Feb. 2012. The plaintiff sought reimbursement from the defendant for one half of the student loans for the college costs of the children. The stipulation of settlement incorporated into the judgment of divorce required that "the parties shall consult and try to reach an agreement on payment of [the children's college-related] cost[s] and expenses." No obligation to contribute arose from the agreement or order of the court as such an "agreement to agree" is not enforceable. The Appellate division upheld the denial of the plaintiff's motion.

Pepe v. Pepe, 205 A.D.3d 920 (2nd Dept., 2022). The parent of 2 children were divorced by judgement in 2016, which incorporated the terms of their stipulation of settlement. Such stipulation provided that the "parties shall share the costs and expenses for the college education for the infant issue. The [plaintiff] shall pay fifty (50%) percent of the costs and expenses for the child's [sic] college education and the [defendant] shall pay fifty (50%) of said costs and expenses." And further that "[t]he parties ['] liability for payment of said costs and expenses is limited to four years of college." In 2019, the plaintiff filed in family court seeking to enforce the higher education provisions, which was transferred to supreme court. The court ruled that the parties were not obligation to provide for the higher education expenses of the children beyond the age of 21. The appellate division reversed. The stipulation clearly and unambiguously required the parties to pay 50% of each child's college education for 4 years. The stipulation did not contain an age limitation or restriction in this regard.

ADULT DEPENDENTS

Pettway v. Pettway, Index No. 700367/2022 (Queens County Sup. Ct., 2022). The parties were divorced by judgment which incorporated their stipulation of October 18, 2016. Child support provisions were included for the parties' three children who are currently emancipated, all having attained the age of 21. The oldest child (age 22) has been diagnosed with bi-polar disorder, and one of the twins (age 21) has been diagnosed with autism.

On motion of the CP-mother requesting that support be extended, the Court Attorney-Referee determined that the NCP "shall pay child support for the parties' two disabled children until the younger child, David, attains the age of 26 years."

Initially the CA-R decided that the 2 children met the standard of having a developmental disability per MHL §1.03 (22). She reasoned that the court could modify the child support obligation without a substantial change of circumstances as 3 years had passed and both parties incomes had increased by greater than 15% since the entry of the judgment of divorce.

"Moreover, pursuant to DRL § 240-d & FCA §413-b, a party may petition the court for the support of a disabled adult child until the that (*sic*) child attains the age of twenty-six years."

As the NCP failed to provide recent financial information, the CP's attorney was directed to submit a proposed Amended Judgment of Divorce and current child support worksheet using the NCP's last known financial information, with leave to make application for a modification upon attaining more current information.

OTHER

Syrett v. Syrett, 208 A.D.3d 1030 (4th Dept., 2022). In the context of the parties' divorce proceedings, the trial court ordered the father maintain a life insurance policy in the amount of $500,000 to secure his child support and maintenance obligation. The appellate division modified the judgment of divorce to require the father to obtain a life insurance policy in the amount of $300,000 with a declining term, reduced by the amount of child support and maintenance actually paid, and not less than the unpaid remaining balance of his obligations.

BANKRUPTCY

In re Bronson, 2022 WL 3637566 (B. Ct. D. Oregon 2022). The debtor made a motion for summary judgment seeking to hold Oregon Division of Child Support ("DCS") in contempt for violation of the automatic stay and for failure to comply with the terms of the court's order confirming the chapter 11 plan. The debtor alleged that DCS violated the stay and the plan when it intercepted a $1,200 stimulus payment that was issued under the CARES Act, sent notices to Debtor post-petition, and caused Debtor's passport to be withheld.

At the time of chapter 11 filing, debtor had an obligation to pay child support of $550 per. Debtor listed DCS and the Oregon Department of Justice on his bankruptcy schedules as holding a pre-petition child support claim of $10,130. DCS received notice of the bankruptcy in March 2020. After the petition was filed, DCS continued to send monthly statements for child support to the Debtor.

DCS intercepted a stimulus payment of $1,200 that was owed on account of Debtor on May 2, 2020. Debtor filed his Plan of Reorganization dated May 27, 2020 (the "Plan"). The Plan provided for full payment of current support and arrears.

After the plan was filed the debtor and the custodial parent reached an agreement ending child support and forgiving arrears in exchange for his supporting adoption of the child by a family member, effective after the adoption was complete. The bankruptcy plan was amended to remove the child support claim but the terms regarding obligation to pay support was not changed. The plan was confirmed, and the child's adoption finalized in 2021, ending the support obligation.

After the support obligation ended, DCS sent the debtor 3 billing statements for unpaid child support. These statements also contained a statement that “If you have a written agreement to pay a different amount, it is not reflected above.” Debtor's passport had been withheld by the State Department due to unpaid child support.

The court found that Debtor owed five monthly payments for child support that arose between August 13, 2020, and January 28, 2021. Under the parties’ agreement, all child support obligations of the Debtor that accrued on or before August 12, 2020, were released. The agreement was silent about monthly child support obligations accruing afterwards. The Plan required Debtor to pay normal monthly child support payments, which would include normal monthly child support amounts accruing between August 13, 2020, and January 28, 2021. Pursuant to the terms of the agreement and the Plan, debtor owed unpaid child support for five payments of $550 each, for a total of $2,750.

The court found that DCS did not use the billing statements to try to collect more than it was entitled to collect. DCS did not demand payment of more than $2,750 after the Plan was confirmed. DCS included language on the statements that “If you have a written agreement to pay a different amount, it is not reflected above.” A court could reasonably conclude that DCS acknowledged the existence of the Settlement Agreement as a “written agreement to pay a different amount” that would reduce the amount of arrearage actually due.

The filing of a bankruptcy case does not stay “the collection of a domestic support obligation from property that is not property of the estate.” 11 U.S.C. § 362(b)(2)(B). The filing of a bankruptcy case also does not stay “the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law.” 11 U.S.C. § 362(b)(2)(F).

A violation of an order confirming a chapter 11 plan is an act of contempt, which may be remedied by the court's authority under 11 U.S.C. § 105(a). Section 105(a) authorizes the court to issue any order, process, or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code, which includes enforcement of the bankruptcy court's own orders through the imposition of sanctions of civil contempt. To establish a basis for civil contempt, the moving party has the burden to show by clear and convincing evidence of a violation of a specific and definite order of the court. There must be no fair ground of doubt as to whether the order confirming plan barred the creditor's conduct.

The stimulus payment at issue can appropriately be treated as a tax refund. “Tax refunds come from two sources. First, they can result from over-withholding of payroll tax. Second, they can result from tax credits such as the Earned Income Credit (EIC), Child Tax Credit (CTC), or other tax credits that are available to low-income workers and result in tax refunds.” The automatic stay did not prohibit DCS from collecting from tax refunds, regardless of whether those refunds were estate property.

The analysis of whether DCS violated the automatic stay or the order confirming the Plan differs depending on when the statements were sent. The court addresses statements sent at different times below.

DCS did not violate the automatic stay when it sent statements to Debtor after he filed his petition and before he confirmed his Plan. These statements did not violate the automatic stay because DCS was entitled at that time to collect child support from assets that were not property of the estate. There was nothing in the statements to indicate they were directed toward collection from property of the estate. In addition, assets acquired post-petition and earnings from services performed by the debtor post-petition are not property of the estate unless and until a plan is confirmed. DCS did not violate the order confirming the Plan by sending statements prior to confirmation of the Plan, because the order did not exist at that time.

DCS did not violate the automatic stay when it sent statements to Debtor after the plan was confirmed. Property of the estate, other than property required to perform obligations under the Plan, revested in the Debtor upon confirmation of his Plan, and the automatic stay no longer applied to that property. Viewing the evidence in the light most favorable to the non-moving party, DCS intended to collect the post settlement monthly amounts due only from this non-estate property after the Plan was confirmed. There was nothing in the statements to indicate that DCS was directing them toward collection from any property remaining in the estate.

DCS also did not violate the terms of the order confirming the Plan when it sent statements post-confirmation. Viewing the evidence by drawing all inferences in the favor of the non-moving party, the statements DCS sent post-confirmation did not demand payment of more than the monthly child support that was expressly due and required to be paid under the Plan. The Plan provided that the Debtor would make normal monthly child support payments pursuant to the support order. The fact that the post-confirmation statements included incorrect information about the amount of the arrearage does not change this conclusion. The statements indicate that it was possible a different amount would be due—each statement contains a disclaimer that the terms of written agreements to pay different amounts were not reflected in the statement.

The record is insufficiently developed to provide a basis for the court to grant summary judgment establishing liability for violation of the automatic stay regarding the withholding of Debtor's passport. Debtor's only evidence regarding the passport—a single paragraph in Debtor's declaration—does not specify when DCS acted and exactly what actions it took. If, as DCS has asserted, DCS only provided a pre-petition notice to the State Department that the Debtor owed unpaid child support, and did not take any action post-petition, then DCS did not violate the automatic stay. Inaction that merely maintains the status quo does not violate the automatic stay.

Debtor argued that DCS violated the order confirming the Plan by not acting affirmatively to release the hold on the Debtor's passport. He argued that the Settlement Agreement and the Plan deemed all of Debtor's obligations to support his child “satisfied” or “waived,” and DCS had a duty “to trigger the release of his passport” after these obligations were extinguished. The court found that the Settlement Agreement and the Plan did not satisfy or waive all of Debtor's obligations to support his child.

For the reasons set forth above, Debtor's motion for summary judgment is denied. The parties should be prepared to address next steps in this matter at the upcoming status hearing. Since the child support debt never was total extinguished, there was no basis to notify the DOS.

In re Lockhart, 2021 WL 2593870 (B. Ct. N.D. West Va., 2021). The debtor filed a complaint alleging a violation of the automatic stay and a violation of the court's confirmation order in his chapter 13 case. He claimed that the West Virginia child support agency notified the Ohio child support agency of the status of and arrears due in the child support case when the custodial parent and child moved to Ohio and began receiving child support services there. Ohio then seized his stimulus check. He argued that this violated the automatic stay and was a violation of the confirmation order., He sought actual damages for monetary, incidental, and consequential damages and compensatory damages for emotional and mental distress, aggravation, anxiety, annoyance, and inconvenience as a result of not receiving the CARES Act stimulus payment to which he was otherwise entitled.

The court dismissed both claims. The automatic stay acts as a breathing spell and protects a debtor from any action that would interfere with the debtor's ability to effectively reorganize. However, a petition does not operate as a stay as to an action by a governmental unit to enforce the unit's police or regulatory power. 11 U.S.C. § 362(b)(4).

The police and regulatory power exception applies if the purpose of the action is to promote public safety and welfare or effectuate public policy. Specifically, the "public policy" test "distinguishes between government actions that effectuate public policy and those that adjudicate private rights." It is well established in West Virginia that there is a public policy interest in ensuring compliance with child support orders.

The court found that West Virginia's notification was excepted from the automatic stay under §362(b)(4). The child support agency is a governmental agency responsible for sending payments and other relevant reporting information to agencies like Ohio's child support agency. The Court held that the mere act of reporting the status of Debtor's child support obligations to an interested party does not constitute "an act" prohibited by § 362 of the Bankruptcy Code. The action was best characterized as an action which promotes public policy regarding child support payments by ensuring that the support payments reach the intended destination. Both government agencies have an interest in effectuating the support of minor children within their respective states, and communication between the two agencies is necessary to carry out their mission.

The court denied the request for a declaration of contempt for violation of the confirmed plan. Contempt is a violation of the Confirmation Order which may be remedied by the Court pursuant to § 105 of the Bankruptcy Code. In order for the court to hold a defendant in contempt, the movant must show:

> (1) [T]he existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
>
> (2) that the decree was in the movant's "favor";
>
> (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and
>
> (4) that the movant suffered harm as a result.

The debtor failed to allege that any harm was directly caused by West Virginia. Specifically, there were no actions which could plausibly be said to have violated the terms of the confirmed Chapter 13 plan.

In re: Lockhart, 2021 WL 2632765 (B. Ct. N.D. West Virginia, 2021). Debtor filed Chapter 13 bankruptcy on May 19, 2017 and listed his past-due child support as a debt. The child support was being collected by West Virginia Bureau of Child Services. West Virginia filed a proof of claim which the Debtor proposed to pay in full over the course of the 60-month plan. At some point post-confirmation, the child relocated to Washington County, Ohio. West Virginia notified Washington County of the Debtor's child support obligation. The Debtor alleged that Washington County, with knowledge of the Chapter 13 plan and confirmation order, coordinated with the U.S. Department of the Treasury to intercept a $2,400 economic stimulus payment.

The debtor filed a complaint seeking sanctions for violating the automatic stay and for contempt in violating the chapter 13 bankruptcy plan. The Debtor received a "Notice of Ohio Income Tax Refund Offset For Overdue Support" and argued that this notice constituted a separate violation of the stay. The IRS and Washington County sought dismissal on various grounds, including sovereign immunity. The court rejected their sovereign immunity defense as having been eliminated by amendments to section 106 of the bankruptcy code.

Washington County argued that the child support reporting system is automatically administered and, to a certain degree, out of the agency's control. CSEA states that under the "Treasury Offset Program" ("TOP"), arrears are required by law to be submitted to the State and any arrears owed to an obligee are then automatically reported by the state for federal tax offset. Because of this, the motion alleges, any decisions are made by the state of Ohio, not the individual counties or their agencies, and the only determination by the county is the total amount of arrearage. Washington County also argued that it is not bound by the confirmation order or, in the alternative, that the Stimulus was not property of the bankruptcy estate.

Critical to the parties' dispute is whether the Stimulus is a tax refund or credit. By its terms, the CARES Act expressly provided that the "economic impact payment" of $1,200.00 per person couldn't be offset against the kinds of debts expressly identified in the Act. However, child support obligations are not one of the debts excepted from setoff. Accordingly, the stimulus payment can be garnished to pay past-due child support.

The court held that the stimulus is more appropriately characterized as a refund. The plain language of the § 362(b)(2)(F) exception means what it says—that the stay does not operate as to "the interception of a tax refund"—and that the Stimulus qualifies as a refund. As a refund, § 362(b)(2)(F) excepts the interception from the automatic stay.

Debtor argued that even if the interception of his Stimulus did not violate the automatic stay, the Notice of the offset constituted a violation on its own.

A creditor which provides notice that has an informative purpose, rather than one amounting to an attempt to collect, does not violate the automatic stay. 42 U.S.C. § 666(a)(3)(A) provides that

a state shall ensure notice of an offset is sent to the noncustodial parent to ensure they are given an ability to contest it.

The facts here indicate an informative, rather than harassing purpose, and fail to amount to a violation of the stay. The closest thing to harassing language within the Notice is the statement "if you miss any further payments which add to your support debt, these amounts will also be subject to similar Ohio income tax intercepts." This language reminds the Debtor of his duty to pay but does not amount to a collection attempt. Rather, the Notice is the result of the state of Ohio complying with § 666(a)(3)(A) and ensuring that the Debtor had adequate notice of the offset. This court finds within the Notice no harassing language which indicates an attempt to collect that would render it a violation of the automatic stay.

The court held that the record required further development for a ruling on contempt.

In order for the court to hold a defendant in contempt, the movant must show by clear and convincing evidence:

> (1) [T]he existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
>
> (2) that the decree was in the movant's "favor";
>
> 3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and
>
> (4) that the movant suffered harm as a result.

The confirmed bankruptcy plan binds the debtor and each creditor to its terms, whether or not the creditor is provided for in the plan and regardless of whether the creditor has objected to, accepted, or rejected the plan.

There were several factual matters that are unresolved. First, neither Washington County nor the IRS had constructive knowledge of Debtor's case because they were not parties to the case. The County was aware of the bankruptcy but may not have known the specific terms of the confirmation order. The extent of the IRS' knowledge was unknown. As there were factual matters in dispute the court denied defendants' motions for summary judgement and ordered further proceedings on the issue of contempt.

In re Jardine, 2022 WL 16579457 (B. Ct. D. Idaho 2022). The debtor filed a chapter 7 bankruptcy petition. Because there were no assets to be used to pay debts, creditors were notified not to submit claims. However, the custodial parent submitted a claim for unpaid child support and medical expenses, as well as other debts arising from the parties' stipulation and divorce decree. The debtor did not object to the claim. The Debtor received a discharge and the case was closed after the trustee filed a notice of no distribution.

The CP sought to recover these debts in state court and the debtor moved to reopen the bankruptcy to contest the claim (to avoid a res judicata effect of the claims). The CP moved for relief from the stay to continue the state court proceeding.

The Court concluded that the child support and medical expenses were domestic support obligations. The language of the divorce indicated both the unpaid child support and medical expenses were in the nature of support. The overriding public policy of § 523(a)(5) is to safeguard the enforcement of familial obligations and protect minor children from potential neglect. The CP provided sufficient evidence that debtor owed $9,459.79 in unpaid child support and $1,974.49 in unpaid medical expenses. A claim is deemed prima facia proof of the debt and the debtor failed to present sufficient evidence to rebut prima facie validity of creditor's claims. Because such claims constitute a domestic support obligation, the CP had an allowed, nondischargeable claim.

As to the other claims, the court lifted the stay to the extent of allowing the state court to clarify certain issues and determine the value of some debts. However, the bankruptcy court reserved for itself the determination of what was dischargeable.

In re LaCroix, 2021 WL 3668040 (B. Ct. M.D. Fl. 2021).The debtor filed a chapter 13 bankruptcy petition and listed the Florida Department of Revenue as a creditor. Florida was collecting child support arrears owed by the debtor. The Texas Office of the Attorney General was the initiating state (and therefore submitting arrears for tax refund offset) but was not listed on the creditor matrix. Florida never advised Texas of the bankruptcy and Texas did not participate in the proceedings.

After the chapter 13 plan was confirmed, Florida sent various billing statements and garnished the debtor’s wages three times. Debtor's counsel contacted Florida after each collection attempt or garnishment, and Florida promptly ceased the actions. In May 2020, Texas intercepted the Debtor's $1,200 stimulus check for the child support arrears.

The Debtor filed the Motion seeking sanctions against Florida and Texas for violating the automatic stay and requested an accounting. The Court entered an order granting the Motion in part which directed Texas to provide the Debtor with a full accounting Texas did not comply with the Order or attend any hearing on the Motion. The Court then issued an OTSC which directed Texas to appear before the Court.

At the hearing, Debtor's counsel advised the Court that the Debtor had received an accounting from Texas and no longer sought return of the $1,200 stimulus check. The Debtor requested that the Court sanction Texas for $950 consisting of attorney fees incurred by the Debtor related to the Motion. The Debtor requested sanctions against Florida totaling $1,522 consisting of $1,500 attorney fees incurred relating to the garnishments and $22 employer garnishment fees incurred by the Debtor.

Texas argued sanctions should not be imposed because it did not receive notice of the Debtor's bankruptcy filing until the OTSC, and upon receipt of the OTSC it returned the $1,200 stimulus check. Texas asserted that “Jennifer Lynn LaCroix” is not listed in their records and until the

Court entered the OTSC, which included the Debtor's aliases, it could not determine to whom the Motion pertained.

Because the Claim is a DSO, the Florida DOR argued that any sanction would be inappropriate since the automatic stay is not in effect under 11 U.S.C. § 362(b)(2)(B) and upon notice of the garnishments, it immediately took steps to cease the garnishments.

The court didn't base its decision on violation of the automatic stay. Instead, it looked at the fact that the collection activities took place after confirmation of the plan. Section 1327 provides that "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). A plain reading of § 1327(a) makes clear that the binding effect of a confirmed plan encompasses all issues that could have been litigated ..." in the bankruptcy case. In this case, the confirmed Chapter 13 plan provided how the Claim would be paid. No plan provision allowed Florida or Texas to garnish wages or intercept stimulus checks.

A party seeking civil contempt sanctions for violation of a court order must establish by clear and convincing evidence:

(1) the allegedly violated order was valid and lawful;

(2) the order was clear, definite, and unambiguous and

(3) the alleged violator had the ability to comply with the order.

The Court sanctioned Florida for civil contempt. Florida is a sophisticated creditor, represented by counsel and received proper notice of the proceedings in this case. The confirmation order was valid and lawful. It was also clear, definite, and unambiguous as to how the Claim will be paid. Although Florida quickly ceased the garnishment actions when notified, the court couldn't ignore that the garnishments occurred repeatedly over time.

However, Texas was not sanctions. It received no notice of the bankruptcy. The debtor has a duty to list the name and addresses of each creditor and to complete the bankruptcy schedules accurately to provide sufficient notice. Texas could not comply with a confirmation order when it had no knowledge of the case. The Court found it credible that the Texas OAG could not locate the Debtor in its records because the Motion did not contain the Debtor's aliases. After Texas received notice of the bankruptcy, it took actions to correct the issue.