NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE DIVISION OF LEGAL AFFAIRS

2023 CHILD SUPPORT CASE LAW UPDATE

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GREETINGS: This is a review of the significant child support case law from 2023.

ESTABLISHMENT

George JJ. v. Shannon JJ., 212 A.D.3d 1020 (3rd Dept., 2023). In this action for divorce, the trial court mistakenly awarded the CP mother her pro rata share of the combined child support obligation rather than the father's share. The appellate division modified such portion of the judgment to reflect the correct amount, which is $333.62 per week, retroactive to the date of commencement. (*The father had commenced the action, the mother later joined issue and asserted a counterclaim for divorce.*) Additionally, the appellate division ordered arrears to be paid at $50/wk.

Glaudin v. Glaudin, 213 A.D.3d 762 (2nd Dept., 2023). The parties are the parents of one child. While divorce proceedings were pending, the father moved out of the marital residence, which was his separate property. In Jan. 2020, the mother filed a support petition, which resulted in a $211/wk. child support order, dated Jan. 13, 2021, based on income imputed to the father. The father filed written objection claiming that he had lost his job due to attending family court proceeding, and that he was paying the carrying costs of the marital residence where the mother and child were residing. The court denied the father's objections and he appealed.

The appellate division affirmed the order of the lower court as to the imputation of income but remanded as to the credit for the carrying charges. The father should have received a credit for the payments that he was making. Otherwise, he would be making duplicate shelter payments in providing housing for the child.

Rosenbaum v. Festinger, 213 A.D.3d 788 (2nd Dept., 2023). In this divorce matter, the father of the parties' 2 children failed to comply with discovery demands relating to financial matters. The court ordered that in the event that the father failed to comply, an order of child support based on the needs of the children would be issued. In a separate appeal, the 2nd Dept. affirmed the conditional order of preclusion. The father failed to comply and the court and was precluded from presenting evidence regarding his financial circumstances. The court issued and order based on the needs of the children, $5,597 per month.

The appellate division affirmed. "When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs or standard of living of the child, whichever is greater. Here, as

authorized, the Supreme Court calculated the defendant's monthly child support obligation on the basis of the children's needs and did not impute income to the defendant. Thus, the requirement that the court specifically state the amount of income imputed and the resultant calculations does not apply." (*citations omitted*)

Lisowski v. Lisowski, 2023 218 A.D.3d 1214 (4th Dept., 2023). In this divorce action, the court awarded child support pursuant to the CSSA up the statutory cap. The court did not set forth the factors that it considered in electing not to award income over the cap, as required. However, as the appellate division "has the power to assume the functions and obligations of the trial court and make its own findings," the fourth department did not disturb the lower court's determination regarding child support. The lower court had addressed many of the relevant factors in its analysis and determination of spousal maintenance. The appellate division, reviewed the voluminous record on appeal and exercised it power to make its own findings "with respect to the to the relevant factors, including the age of the children, the husband's maintenance obligation, his payment of college expenses, and his numerous contributions both before and after the divorce."

Chung v. Adetayo, 221 A.D.3d 999 (2nd Dept., 2023). After a hearing, the support magistrate ordered the father of one child to pay $3,000 per month in child support, $1,310.40 per month as childcare, and retroactive support of $42,115. The case was remitted by the family court judge for an amended order as it was not clear how the magistrate arrived at $3,000. An amended order was issued with a support obligation of $5,342 per month based on the combined income over the cap.

The appellate division revised the order, requiring the father to pay $2,406.69 per month and $856 per month as his pro rata share of child care, and remitted the matter to the family court to recalculate retroactive support. " In determining basic child support, although the Support Magistrate adequately set forth the factors she considered in determining to apply the child support percentage of 17% to the parties' combined income in excess of the statutory cap, the Support Magistrate improvidently exercised her discretion in calculating child support on the parties' total combined income in excess of the statutory cap. The record shows that the child's needs will be met, and her lifestyle maintained, by limiting the combined parental income in excess of the statutory cap to $217,800. . . The father's child support obligation based upon the parties' combined income in excess of the statutory cap up to $217,800, when added to his obligation to pay his pro rata share of child care expenses and the child's health insurance premium, equals approximately $3,400 per month, the amount that the father had been paying as child support for a period of several months beginning at or around the time that the instant proceeding was commenced." The court additionally revised the childcare award to $856 per month based on the new finding of the appellate division that the mother pays, on average $1,097 per month.

PENDENTE LITE

M.G. v. J.G., 80 Misc.3d 1212(A) (N.Y. County Sup. Ct., 2023). The parties were married in 1998, and have 2 children, born in 2001 and 2007. Mother, aged 52, works for a pharmaceutical

company and earned $354,397 in 2020. Father, aged 63, was previously employed as a social worker and earned $65,303. In this divorce proceeding, the father sought temporary spousal maintenance and the mother sought an award of temporary child support.

The court awarded the father $3,000 per month as temporary maintenance using a $250,000 cap on income. The court used the CSSA formula to calculate temporary child support also using a $250,000 cap on income. Based on the father's reported income and the spousal maintenance award, his income for calculation of child support was $147,356, resulting a $1,100 per month obligation. He was additionally responsible for 30% of the child's add-on expenses.

McEvoy v. McEvoy, 219 A.D.3d 1513 (2nd Dept., 2023). In this divorce action, the court found that the parties' prenuptial agreement was unconscionable as the mother received no benefit from its enforcement and she was in danger of becoming a public charge, as she had recently suffered a debilitating stroke. The lower court awarded temporary spousal maintenance and attorneys' fees to the mother but denied her application for *pendente lite* child support.

The appellate division reversed on the issue of child support. The parties shared physical custody of the children (born in 2015 & 2019) equally. Thus, the lower court should have deemed the mother the custodial parent for purposes of child support, as she is the nonmonied spouse. Based on the record of the trial court, the father's child support obligation pursuant to the CSSA is $2,885.94 per month plus 80% of the add-on expenses during the pendency of the action.

KCC v. HKY, 80 Misc.3d 1239(A) (Richmond County Sup. Ct., 2023). In this action for divorce, the court granted a *pendente lite* award of child support based on imputation of income and calculation pursuant to the CSSA. The plaintiff father is the owner of an automotive body shop and reported in his statement of net worth annual income of $100,000.

The court imputed an additional $50,000 of income to the father and ordered $1,133.33 in monthly child support and $1,666.67 in spousal support. "There is evidence at this juncture that supports the Defendant's allegation that the Plaintiff's income is higher than reflected in his claimed income. The Court is therefore imputing an annual income of $150,000.00 to the Plaintiff for the purpose of calculations made herein, *pendente lite*, subject to reallocation at trial."

Gonzalez-Furtado v. Furtado, 221 A.D.3d 975 (2nd Dept., 2023). The parties were married in 2006 and 2 children were born of the marriage. The mother commenced a divorce action and sought an award of *pendente lite* child support and maintenance. The court awarded $4,953.62 per month for child support and $1,857.26 as maintenance On appeal, the court affirmed the order of the lower court. Although the court calculated the temporary support obligation using the CSSA and including income over the statutory cap, the court is not required to follow the calculations set forth in the CSSA when ordering *pendente lite* support. Additionally, a double shelter allowance was not awarded, nor was an award of childcare expense an abuse of discretion by the trial court. Perceived inequities can be remedied at trial where the parties' financial circumstance will be fully explored.

MODIFICATION

Martinez v. Carpanzano, 212 A.D.3d 621 (2nd Dept., 2023). The parents of 2 children were divorced pursuant to judgment in 2018, which required the father to pay $1,000 per month as child support. The father filed a petition for downward modification in October 2019, based on the substantial change in circumstances that the older child had turned 21 and was emancipated. The support magistrate dismissed the petition after a hearing. The father filed written objections which were denied, and he subsequently appealed.

The Second Department affirmed the order of the lower court. "While the eldest child's reaching the age of twenty-one constituted emancipation, this did not automatically reduce the unallocated amount of monthly child support owed by the father, considering the express terms of the parties' judgment of divorce and the fact that the parties' other child remained unemancipated. . . a party seeking a downward modification of an unallocated order of child support based on the emancipation of one of the children has the burden of proving that the amount of unallocated child support is excessive based on the needs of the remaining children."

Cotter v. Meng, 212 A.D.3d 610 (2nd Dept., 2023). In May 2017, the family court issued an order requiring the father to pay child support in the amount of $1,681.44/mo. as basic support, and $791.70/mo. for add-on childcare expenses, for the parties' one child. The mother filed a violation petition in May 2019, and the father then filed a downward modification/termination petition in Nov. 2019. After a hearing, the magistrate granted the father's petition and denied that mother's petition. The mother's written objections were denied, and the appellate division affirmed the decision and order of the lower court.

The father was no longer required to pay child support as the parties had a shared custodial arrangement in which neither party could be said to have physical custody of the child for a majority of the time, and the mother had the higher income at the time of the hearing. Thus, she was deemed the non-custodial parent, for the purposed of determining child support.

Hofmann v. Hofmann, 212 A.D.3d 462 (1st Dept., 2023). In a divorce matter, the NCP moved to reargue determinations of the court relative to equitable distribution and sought a downward modification of his child support order based on the reallocation of marital assets. The court declined to grant the modification as even "with the reallocation of the assets, plaintiff still has significant earnings potential, despite his claim that he had "retired" prior to the commencement of this action, and considerable assets." The appellate division affirmed.

Woodcock v. Welt, 212 A.D.3d 1064 (3rd Dept., 2023). The NCP was required to pay $315 monthly, in addition to $210.34 for childcare, and $11.46 towards health insurance based on imputed income of $28,000 for the parties' one child pursuant to a 2017 order of family court. In 2019, the NCP petitioned for a downward modification, claiming a disability prevented him from working, and annexed an ALJ determination approving him SSI. The ALJ's determination was the subject of inquiry during the hearing but was never entered into evidence. The magistrate determined that the NCP demonstrated a change of circumstances and modified the order by imputing $20,280 of annual income to him. This resulted in a $50/mo. order. The mother's objections were denied by the family court, and she appealed.

"[A]lthough the ALJ determination was properly before the Support Magistrate and Family Court because it was annexed to the petition and formed a part of that pleading (see CPLR 3014), it would not, standing alone, serve as proof of the father's allegations because it was not formally offered and received into evidence." No objection to considering the ALJ determination was made at the hearing, and as such was not preserved for appellate review. While the ALJ determination was not binding on the court, the magistrate considered it, as well as the testimony of the NCP in determining that a change in circumstances warranting a modification was present. The record supported the imputation of income based on his physical impairment and prior employment experience.

Morgan v. Morgan, 213 A.D.3d 669 (2nd Dept., 2023). The parties are the divorced parents of two daughters, born 2004 and 2006. The mother had sole custody and father had parental access with the children and was ordered to pay child support. The father filed a motion, which was granted in Nov. 2021, to suspend his child support obligation based on parental alienation.

On appeal, the appellate division affirmed the order of the lower court, as the record supported the father's right to reasonable access to the children had been unjustifiably frustrated by the mother.

Monaco v. Monaco, 214 A.D.3d 659 (2nd Dept., 2023). The parties, who have 3 children together, were divorce in 2013 by judgment which incorporated the terms of their stipulation of settlement, pursuant to which the father was obligated to pay $1,618.02 every 2 weeks as child support. They had applied the appropriate CSSA percentage on the total combined parental income of $185,980.

In 2020 the father filed for a downward modification and subsequently the mother filed for an upward modification. The support magistrate granted the petition of the father and calculated child support based on the combined parental income of $251,708.46 up to the $154,000 cap, and did not award any support over the cap. The mother filed written objections, and the family court modified the order to award support on entire combined income based on the intent of the parties at the time of their stipulation of settlement.

On appeal, the appellate division reinstated the order of the support magistrate. "The parties' agreement in their stipulation did not provide an appropriate rationale for the court's calculation of child support on parental income over the statutory cap." Additionally, the record does not reflect that the children are not enjoying the same standard of living that they would have if the family had stayed intact.

Cywiak v. Packman, 214 A.D.3d 652 (2nd Dept., 2023). The parties are the parents of 2 children. The father was required to pay child support pursuant to a 2016 order. The father commenced 2 proceedings for downward modification based on a decrease in his earnings. Following a hearing, the support magistrate dismissed his petitions, finding that he failed to demonstrate a substantial change in circumstances, or that his earnings decreased by 15% or more. The father filed written objections which were denied, and subsequently appealed.

The appellate division affirmed the order of the lower court. "The father's evidence failed to establish whether he had suffered a reduction in income since the 2016 order, and his evidence showed that the total value of his assets had increased since the 2016 order. Accordingly, the Support Magistrate properly dismissed his modification petitions."

O'Donoghue v. O'Donoghue, 214 A.D.3d 876 (2nd Dept., 2023). The parties have 5 children together and were divorced by judgment which incorporated a stipulation of settlement in 2018. In January 2021 the father filed a petition in family court for a downward modification of his child support obligation.

In the stipulation, the father has agreed to pay $700 per week based on an annual imputed income of $90,000. He stated that he entered this agreement based on his belief that his physical condition would improve but alleged that he had become totally disabled and unable to support his children.

After a hearing, the support magistrate dismissed the petition as the father failed to meet his burden a demonstrating a substantial change in circumstances. The family court denied the written objections of the father, and the appellate division affirmed on appeal.

Todd M. v. Cynthia O., 215 A.D.3d 1106 (3rd Dept., 2023). The parties are the divorced parents of 4 children born between 2001 and 2009. The parties entered into a separation agreement in 2014 which required the father to pay $1,700 per month as child support. In 2020, the parties stipulated to a modification of the child support obligation, which was incorporated in a family court order. The father agreed to pay $932 per month in child support, to "continue irrespective of the emancipation of any of the children or a change in custody of the children." The mother agreed to pay the health insurance premiums for 60 months. The remaining terms of the previous agreement remained in effect "with the parties reserving their right to seek modification of child support only in the event of a substantial change in circumstances."

In 2021, the father filed a petition to terminate his child support obligation and to obtain support from the mother. Following a hearing, the support magistrate dismissed the petition as the parties expressly agreed that a change in custody would not be grounds for modification of the support order. The decision was affirmed by the family court judge and the third department.

Frantz v. Marchbein, 216 A.D.3d 746 (2nd Dept. 2023). The parties have two children born of their 2013 marriage. In 2019, they entered into a stipulation, incorporated into their judgment of divorce, in which they agreed to "joint legal custody/shared parenting," with the mother being designated as custodial parent. The parties calculated child support by stipulating that the father had annual income of $200,000 (despite being unemployed at the time) and the mother $350,000. The parties opted out of the CSSA calculation and agreed that no basic child support would be paid. The cost of extracurriculars would be split with the father paying 35% up to a $12,000 year cap. Additionally, the parties opted out of the statutory modification provisions.

The parties entered into a so ordered stipulation in July 2020 which required the father to secure appropriate child seats, and both agreed to abide by NYS and CDC COVID-19 protocols. In August 2020, the mother moved to modify the 2019 stipulation and divorce to direct the father to

pay child support and to enforce the 2020 stipulation. The supreme court dismissed the application of the mother. On appeal, the appellate division affirmed the order of the lower court reasoning that the mother failed to demonstrate a substantial change in circumstances warranting modification of the stipulation as to child support. The court did not address the mother's application to enforce the terms of the July 2020 stipulation.

Lincor v. Crowell, 216 A.D.3d 1094 (2nd Dept., 2023). The parties were never married and have one child together. An order was entered in 2010 requiring the father to pay $446 per month in child support. In September 2021, a COLA order was issued increasing the father's child support obligation to $530 per month. The father filed a petition for downward modification of his child support obligation based on his allegations of having a serious medical illness which rendered him disabled. The family court treated the petition as an objection to the COLA and held a *de novo* hearing. An order was issued in January 2022 requiring the father to pay $86 per week. The support magistrate determined that the father failed to submit competent medical evidence to support his claim of disability. The father's written objections were denied and the appellate division affirmed.

Valvo v. Valvo, 218 A.D.3d 909 (3rd Dept., 2023). The parents of 3 children were divorced by a 2012 judgment incorporating the terms of their separation agreement after a 23-year marriage. The father was required to pay $1,840.41 biweekly as spousal maintenance and $1,245.34 biweekly as child support. In 2018 the father sought a modification of his support obligations in family court. On consent, the court reduced the father's child support obligation to $250 biweekly, until February 2020, and then $200 biweekly thereafter.

In Aug. 2020, the father filed another downward modification petition due to a substantial reduction in his salary. After a hearing the support magistrate found that the father demonstrated an extreme hardship to justify a reduction "in spousal support and, thus, reduced his maintenance obligation and ordered a corresponding increase in his child support obligation." The mother's written objections were granted, with the family court remanding the matter back to the support magistrate to reinstate the maintenance obligation, but to modify the child support obligation.

On appeal, the appellate division reversed and remanded the case, leaving the spousal maintenance, and child support obligations unchanged, and directing the court to calculate arrears. The court reasoned that the father was required to establish "an extreme hardship by measuring the change in circumstances from the 2018 order." He failed to do so, as he did not show that he diligently sought employment commensurate with his educational and employment history.

Anonymous 2011-3 v. Anonymous 2011-4, 219 A.D.3d 558 (2nd Dept., 2023). The parents of 4 children were divorced by judgement in 2016. In 2019 the mother filed a contempt motion due to the father's failure to comply with a number of obligations of the judgement of divorce, including child support. The father filed a cross-motion for a downward modification of his child support obligation. The supreme court granted the motion of the mother and denied the motion of the father. On appeal the appellate division remanded the case relative to the father's motion. The father was clearly in contempt. However, as 3 years had passed since the entry of

the current support order, and the father was not required to demonstrate a substantial change in circumstance, the lower court should have held a hearing on the modification of his child support obligation.

McLennan v. McLennan, 219 A.D.3d 1227 (1st Dept., 2023). The court properly denied the father's motion to vacate the parties' postnuptial agreement on grounds of fraud. He failed to prove his claim that the mother misrepresented her intent to work on the marriage to induce him to enter into the agreement. His claim that she failed to disclose stock interests in her company didn't warrant vacatur of the agreement. Both parties were represented by experienced counsel during its negotiation, explicitly waived their interest in the other's employee benefit plans, acknowledged that the other had made fair and reasonable disclosure of their respective assets and general financial status, and expressly waived any right to disclosure beyond the disclosure provided.

The father's application for a downward modification of his child support obligation in the parties' postnuptial agreement and judgment of divorce was denied by the supreme court without a hearing. The father had failed to make a prima facie showing of a substantial, unanticipated change in circumstances. He did not submit evidence supporting that the loss of his employment was involuntary or that he sought reemployment commensurate with his earning capacity. He also maintained substantial assets and the means to meet his child support obligation. The matter was affirmed as to the holding of the lower court but remanded to recalculate the amount arrears owed and counsel fees.

Yaroshevsky v. Yaroshevsky, 219 A.D.3d 609 (2nd Dept., 2023). The parties are divorced and have 2 minor children together. In 2018, a consent order of support was issued directing the father to pay $2,366 per month and $450 per month in childcare expenses. The mother filed a petition for an upward modification prompting the father filed a petition for a downward modification. In an order dated June 1, 2022, the support magistrate granted the mother's petition and ordered the father to pay $3,750 per month and $304 per week, respectively as child support and childcare for the period from June '21 to Feb. '22 when the father was unemployed, and $4,150 per month for child support in addition to $292 per week for childcare thereafter.

The father's written objections were denied, and the appellate division affirmed the decision. Three years had passed since the entry of the previous order permitting the court to modify based on FCA §451. The decision, support by the record, provided for the imputation of income during the period of time that the father was unemployed.

Alsamhouri v. Samhoury, 220 A.D.3d 699 (2nd Dept., 2023). The parents of 2 children were divorced in 2016 by judgment which incorporated the terms of their settlement agreement. The father sought a downward modification of his child support obligation in family court. After a hearing the magistrate denied the petition. The family court judge denied the written objections. The appellate division affirmed the lower court's ruling. The father failed to demonstrate that his loss of employment was no fault of his own and that he made diligent efforts to secure employment commensurate with his education, ability and experience.

Rose v. Lewandowski, 221 A.D.3d 1310 (3rd Dept., 2023). The NCP sought a downward modification based on his retirement at age 62. The appellate division affirmed the decision of the lower court and the denial of the NCP's written objections. The NCP's reduction in income was voluntary. Although he testified that he was "forced" to retire due to his bad knees, for which he underwent double knee replacement surgery in 2019, he failed to present any medical proof that he was disabled or unable to continue to operate his automotive repair business. The lower court properly denied his petition.

Srivastava v. Dutta, 220 A.D.3d 949 (2nd Dept., 2023). The parties have one child together and were divorced by judgment, entered in 2015, requiring the father to pay $878.92 per month as child support. After a hearing, an order was issued by family court, granting the mother's application for upward modification, requiring the father to pay $1,522.92 per month, based on the parties' income exceeding the statutory cap. The father's written objections were denied, and the appellate division affirmed the lower court's order.

In accordance with FCA §451, three years had passed since the previous order of support was made, warranting a modification. The support magistrate's decision to apply the percentage to income over the cap was supported by a thorough analysis of the parties' financial situation, including their considerable income and the needs of the child.

Faina P. v. Alexander S., 80 Misc.3d 1208(A) (Kings County Sup. Ct., 2023). In one of numerous post-judgment applications made by the pro se father (who is a practicing attorney in NYC), he sought to vacate and terminate his child support obligation *nunc pro tunc* based on the mother's receipt of a $250,000 inheritance. This application had previously been denied. However, the father sought leave to renew based on the newly discovered evidence that the mother failed to disclose the inheritance. However, the record clearly reflected that the mother had included full information on this asset in an updated statement of net worth more than a year prior. The father's additional argument that the inheritance automatically voided the parties' stipulation of settlement related to child support was denied. As was his argument that his stipulation was void based on his submission to the court of stipulations from other non-party friends. The remainder of the father's meritless application was denied.

Vilmont v. Vilmont, 219 A.D.3d 608 (2nd Dept., 2023). The father is required to pay support for his 2 children pursuant to a family court order in the amount of $417 per month. The father sought a downward modification of his child support obligation, alleging that he not been working since March 2020, had no income, and was not receiving unemployment benefits. The father failed to demonstrate that his loss of employment was no fault of his own, and that he diligently sought employment commensurate with his abilities. The appellate division affirmed the lower court denial of his petition and written objections.

Cooper v. Oliver, 215 A.D.3d 796 (2nd Dept., 2023). The parents of 2 children were divorced in 2013. In 2019, the mother sought an upward modification of child support, and removal of the SUNY cap on the father's contribution to higher education expenses, while the father sought a credit against his basic support obligation for college expenses. The court denied the application of the mother and granted the father's application. The appellate division remanded the case on

appeal. As 3 years had passed since the current order of support was entered, the trial court should have held a hearing on the modification of the order. The lower court correctly denied the request to expand the college contributions as the judgement of divorce required that the parties agree in writing to override the SUNY cap. Additionally, the court erred in the amount of credit awarded to the father, which should have only been for the portion related to the cost of room and board.

Butta v. Realbuto, 214 A.D.3d 973 (2nd Dept., 2023). The parties are the parents of one child, born in 2009. The mother was obligated to pay child support of $2,127 per month by a 2015 family court order. Both parties petitioned for a modification of the order. The support magistrate granted the petition of the mother and reduced the child support obligation to $785.40 per month based on her pro rata share of combined parental income up to the cap. The family court granted the father's written objections and issued an order for the mother to pay $1,823.16 per month, which included income above the cap.

The appellate division held that the family court didn't set forth a sufficient basis for its calculation of support from income exceeding the cap. "[T]he record shows that based on certain factors, including the parties' disparity in income and the child's standard of living, the child support obligation should be calculated based only on combined parental income up to the statutory cap." As the record provided sufficient information, the case was not remanded to the lower court to recalculate support. The appellate court reinstated the support magistrate's award.

Nimely v. Corneh, 214 A.D.3d 812 (2nd Dept. 2023). The father of 2 children sought a downward modification of his child support obligation pursuant to a 2018 order directing him to pay $519 per month. The petition was denied after hearing in which the father failed to establish a substantial change in circumstances. The father failed to show that his loss of employment was through no fault of his own and that he made diligent attempts to obtain employment commensurate with his education, ability and experience.

Treglia v. Varano, 2023 WL 8938897 (3rd Dept., 2023). The parties are the parents of 2 minor children who divorced in 2017. The parties shared custody 50/50 pursuant to their stipulation of settlement of Feb. 2014, and the father was ordered to pay $641.86 per week in child support to the mother pursuant to the judgment of divorce. Following a fact-finding hearing, the support magistrate modified the judgment, terminating the father's support obligation and ordering the mother to pay $150/wk. Both parties filed written objections which were denied by the family court. The mother contended the magistrate erred as the parties shared equal custody of the children and the father was the monied parent and should be deemed the NCP for child support purposes. The father argued that additional income should have been imputed to the mother.

The appellate division reversed and remanded the case. It is clear from the record that the parties have long followed the 50/50 schedule of custody. The greatest deviation from a precise 50/50 custody spilt was 11 nights in one year. The lower court erred in ordering the mother to pay support when the custody is substantially equal. As to the imputation of income, the record supports the magistrate's determination not to impute income to the mother who was not underemployed.

EMANCIPATION

Vayner v. Tselniker, 212 A.D.3d 638 (2nd Dept., 2023). The parties have one child born of their marriage, and were divorce by judgment in Nov. 2012, which incorporated the terms of their stipulation of settlement. In Dec. 2020, the father filed to modify/terminate his child support obligation, as pursuant to the settlement, the child had attained the age of 18, was employed full-time and was self-supporting. The mother consented to termination as of Nov. 27, 2021, the date on which the child moved in with the father. The court had a hearing for the period of time from date of filing to Nov. 27, 2021, and found that the child was not emancipated. While the child was employed full-time during this period, the mother was paying for his food, shelter, clothing, cell phone, and income tax preparation. The denial of the father's written objections was affirmed on appeal.

Kenneth H. v. Dawn P., 214 A.D.3d 731 (2nd Dept., 2023). The parties divorced in 2006, and are the parents of two children, born in 2003 and 2004. The father filed a petition resulting in an order terminating his child support obligation for the older child, Kevin. The mother and Kevin, each appealed. The second department reversed the decision of the lower court.

Contrary to the contention of the father, he did not establish that the older child actively abandoned him without justification. The record reflected that the father's conduct was the primary cause of the breakdown of the relationship.

Rosenkrantz v. Rosenkrantz, 221 A.D.3d 716 (2nd Dept., 2023). The parties are the parent of 1 child, born in 1997, who divorced in 2001. The last time the father communicated with the child was in 2015. Sometime thereafter he filed a petition to terminate his child support obligation based on constructive emancipation. After a hearing, the family court issued an order, dated Oct. 12, 2022, granting the petition of the father. The appellate division reversed. The record did not reflect that the father made serious efforts to maintain a relationship with the child, or that the child actively abandoned her relationship with him. (*The date the petition was filed in not reflected in the decision. Presumably, the child emancipated in 2018 when she turned 21. However, the order of the family court was not issued for 4 years.*)

P.Y. v. C.Y., 2023 WL 7268161 (N.Y. County Sup. Ct., 2023). The parents of 2 children, ages 19 & 15 entered into a settlement agreement in 2015 which obligated the father to pay $11,979 in child support each month and 100% of add-on expenses. Additionally, the agreement provided for the termination of child support upon the children's emancipation, defined as when a child establishes a permanent residence away from the mother. Since March 2022, pursuant to a custody order, the younger child has resided with the father, and the older child has resided at college or with father during school vacations. Therefore the court terminated the order of support.

D.A. V. N.A., 81 Misc.3d 1208(A) (Westchester County Sup. Ct., 2023). The father sought constructive emancipation and termination of his child support obligation for his daughter, who was 16 years old at the time of the decision. The court denied the father's petition finding the child not to be of employable age, and that the father's conduct is the root cause of the deterioration of his relationship with his daughter.

IMPUTING INCOME

Miller v. Miller, 2023 WL 3729892 (2nd Dept., 2023). The parties were married in 1994 and have eight children. After a nonjury trial, the court imputed $80,000 of annual income to the wife based on her salary and disbursement from the upscale baby clothing store that she owns and operates. The court then applied the child support percentage to the amount above the statutory cap due to the parties' considerable income and the needs of the children. (*The husband is physician and sole owner of 2 P.C.s – however neither the husband's salary, nor the amount of the child support obligation are provided in the decision.*) The order was affirmed on appeal. The lower court sufficiently articulated its reasons for imputing $80,000 and awarding child support on income which exceeded the cap.

Vaysburd v. Vaysburd, 217 A.D.3d 723 (2nd Dept., 2023). The parties were married in 1997 and have 2 children. In the parties' divorce proceedings, they stipulated that they would have joint legal custody of the children with residential custody to the mother. At some point, one child moved in with the father. In 2019, the court ordered the father to pay $2,096 per month in child support to the mother.

The appellate division found to the father's contentions on appeal to lack merit. His argument that income should have been imputed to the mother was not supported by the record. Additionally, the court correctly calculated child support at the 25% rate for 2 children. "Without a modification of custody, the defendant's obligation remains the same despite a de facto change of custody of the parties' son."

Anyanwu v. Anyanwu, 216 A.D.3d 1128 (2nd Dept., 2023). The parties were married in 1994 and have 4 children, 3 of which were unemancipated at the time of the divorce trial. The trial court imputed annual income of $92,942 to the father and ordered 7 years of spousal maintenance of $423.50 per month, and child support of $1,876.44 per month.

On appeal, the appellate division affirmed, as the record supported the trial court's determination to impute income. The father's educational background, questionable testimony, and evidence that he earned more than $96,000 in 2017 were sufficient for the supreme court to exercise its discretion in imputing income when calculating child support and maintenance.

Harry T. v. Lana K., 217 A.D.3d 537 (1st Dept., 2023). After a lengthy hearing, the support magistrate imputed income to the mother based on her earning potential as a dentist and on her other assets. Additionally, the court used the median income from the National Bureau of Labor and Statistics for a dentist in the calculation of child support, as the mother failed to provide any credible record of her income. On appeal, the appellate division affirmed the order of the family court, who had denied the mother's objections.

McGovern v. McGovern, 218 A.D.3d 1067 (3rd Dept., 2023). The parties were married in 1997 and have 2 children, born in 1999 and 2002. The wife commenced an action for divorce in 2017 and obtained a *pendente lite* order based on an annual imputed income of the husband of $300,000, requiring the payment of $2,000 per month in maintenance and $3,275.95 per month

in child support. After a trial, the court imputed an annual income of $85,000 and recalculated maintenance and support.

The wife appealed to the appellate division, who affirmed the lower court's order and judgment. The record supported the determination of the trial court, despite the wife's allegations that the husband was hiding money in a complex business structure. The wife had been awarded $5,000 to hire a forensic accountant but did not provide any expert testimony at the trial in that regard.

"Supreme Court found that, based on the husband's imputed $85,000 yearly salary and the mother's $76,000 yearly salary, the husband was responsible for $1,635.36 monthly in child support until the oldest child's emancipation in May 2020, and, following her emancipation, $1,112.05 monthly for support of the youngest child. However, because the husband had paid his pendente lite child support obligation, premised on an improperly imputed income of $300,000, until August 2021, well past the oldest child's emancipation, the court determined that he was entitled to an $86,552.97 credit for child support. The court then found that this overpayment covered the husband's obligation for both children's college expenses but not for their unpaid medical expenses – $5,292.45. Based on these calculations, the court subtracted the credit from the wife's distributive award and ordered the husband to pay the children's unpaid medical expenses and $1,112.05 in monthly child support for the youngest child until her emancipation."

The lower court properly imputed income to the husband based on the record. The appellate division found no error in the lower court's calculation or treatment of the overpayment of child support based on the *pendente lite* order.

Yentis v. Yentis, 218 A.D.3d 418 (1st Dept., 2023). In the parties' divorce action the trial court imputed $98,000 in addition to to the $141,526 that was reported in the father's 2015 tax return. The appellate division reversed, reasoning that the lower court should not have imputed this income based on the evidence that the father took home cash in the amount of $98,000 in 2014. He testified that he had reported all of his cash earnings on his 2015 tax return. The appellate division capped combined parental income at $295,009 for child support purposes. The matter was remanded to recalculate child support and directed that arrears be paid at a rate of $1,500 per month.

Qazi v. Qazi, 220 A.D.3d 660 (2nd Dept., 2023). The parties were married in 1994 and have two children. After trial, the court imputed annual income of $72,000 to the husband, directing him to pay $1,384.10 per month as basic child support and 66% of the unreimbursed medical and undergraduate college expenses. On appeal, the judgment of divorce was affirmed.

The court has broad discretion to impute income and is not bound by the parties' representations of their finances. The court is required to provide a clear record of the of the source of the imputed income, and the reasons for the imputation, which was evident in this case.

Coughlan v. Coughlan, 218 A.D.3d 569 (2nd Dept., 2023). The mother was directed to pay $188 per week in child support for the parties' 2 children pursuant to an Aug. 2019 family court order. In Jan. 2021, the father filed for an upward modification. The court imputed income to the mother of $19,855 from her employment as a waitress, but declined to impute based on other

deposits, gifts, and loans that she had received. Based on the adjusted gross income of the parties, the magistrate determined that an upward modification was not warranted. The dismissal of the father petition was affirmed by the family court and the appellate division. A magistrate is afforded considerable discretion in the imputation of income, which in this case was supported by the record.

Sinzieri v. Kaminsky, 218 A.D.3d 592 (2nd Dept., 2023). In an establishment of support case for one child, the support magistrate issued an order directing the father to pay $452.95 per week and 85% of the childcare and unreimbursed health care. The support magistrate imputed income to the mother based on her earning capacity, and to the father based on his company's gross profits. The father argued on appeal that additional income should have been imputed to the mother based on her liquid assets. However, this argument had was not raised in his written objections to the family court and was thus not preserved on appeal. Additionally, a magistrate is afforded great deference in determining income imputation. The order was affirmed on appeal.

Houck v. Houck, 217 A.D.3d 1556 (4th Dept., 2023). The father sought to modify his child support order with respect to his 3 children, seeking to terminate his obligation and seeking support from the mother. After a hearing, the magistrate modified the father's support obligation and dismissed the father's application for support from the mother. The matter was affirmed on appeal. The father's argument that the court should not have imputed income based on the Paycheck Protection Program (PPP) in 2021 was rejected. The PPP funds brought his income to a level generally consistent with what it had been prior to the pandemic.

Alevy v. Herz, 214 A.D.3d 582 (1st Dept., 2023). After a divorce trial involving a relocation of a parent with the parties' one child, the court imputed income of $37,800, directed her to pay $535.50 per month as child support and $16,600.50 in arrears to be paid over 36 months. On appeal, the appellate division agreed that imputation of $37,800 in annual income was appropriate based on her education level and past earnings. However, the court failed to follow the 3-step process in accordance with the CSSA – calculating combined parental income up to the statutory cap, allocating on a pro rata basis, and articulating any reasons for a deviating from the guideline. Thus, the matter was remanded to the lower court for an appropriate determination of child support.

Wagner v. Wagner, 217 A.D.3d 1509 (4th Dept., 2023). In this divorce matter, the trial court imputed income to the father, and deviated from the presumptively correct amount of child support calculated pursuant to the CSSA. The appellate division reversed and remanded the case on certain issues. While the lower court was correct to impute income, it was improper to treat a sum that he had paid pursuant to a contractual obligation as income. The appellate division concluded that based on the record, annual income of $76,000 should have been imputed to the father. Additionally, the lower court erred in deviating from the presumptively correct amount based on the shared custody arrangement. Other grounds on which the court relied were not supported by the record. The matter was remitted to recalculate child support.

PARENTAGE & PATERNITY

Yaseen S. v. Oksana F., 214 A.D.3d 883 (2nd Dept., 2023). The petitioner filed to establish his paternity of the subject child, as well as visitation. The attorney for the child filed a petition on behalf of her 15-year-old client to establish paternity for a third party. The petitioner was equitably estopped, and the third party with whom the child and her mother had lived since 2011 was adjudicated the father.

The petitioner lived with child and her mother from the child's birth in 2008 until 2011. Additionally, his name appeared on the child's birth certificate. However, since 2011, he had not maintained a parent-child relationship with the child. Yuriy K., the third party, had established a strong relationship with the child and has been referred to as "daddy" or "papa" since the child was 3 or 4. After Yuriy K filed a petition to adopt the child, the petitioner filed the instant petition.

G.P. v. S.S., 78 Misc.3d 1221(A) (Nassau County Sup. Ct., 2023). The parties were married on Aug. 5, 2017, and there is one child born of the marriage. In this divorce proceeding, the unrepresented defendant moved by order to show cause, to order a paternity test to determine the parentage of his daughter. The court denied the father's request and ordered him to pay *pendente lite* child support.

The father's unsubstantiated and uncorroborated allegations that the mother engaged in an extramarital affair were insufficient to rebut the presumption of legitimacy. Additionally, the court notes that it is the policy of New York to prevent the legal process from being used to render a child fatherless. The court does not need to consider equitable estoppel, as the father failed to rebut the presumption of legitimacy. However, the court considered the best interests of the child, which were served by not ordering the parties to undergo a genetic marker test.

As the father refused to provide a statement of net worth, or any financial information, the court ordered *pendente lite* child support of $445 per month, based on the needs of the child per DRL §240(1-b)(k). Additionally, childcare and health care pro-rata shares were set at 67% and 33% based in the allegations in the mother's pleadings that the father earned approximately $78,000 per year.

Jemelle S. v. Latina P., 213 A.D.3d 856 (2nd Dept., 2023). The child was born out of wedlock to the respondent in 2011. Around the time of the child's birth, the respondent mother began a relationship with Christopher S., and subsequently had 2 children with him. The petitioner brought a petition in 2018 to establish paternity for the child. The family court dismissed the petition after a hearing, based on equitable estoppel. The petitioner appealed.

The appellate division upheld the determination of the lower court. The mother had told the petitioner that he was the father of the child prior to the child's birth. However, he had "been an inconsistent and unreliable presence in the child's life." Christopher S. had assumed the role of father for the child and provided emotional and financial support and visited the child after she was removed from the mother's care by ACS. It was in the best interests of the child to estop the petitioner from asserting his paternity claim.

Matter of Alyssa C. v. Samuel L.W., 216 A.D.3d 1091 (2nd Dept., 2023). In Dec. 2021 Samuel L.W. commenced an Article 6 proceeding seeking parental access with the subject child, alleging that he was the child's father by virtue of his marriage to the mother at the time of the child's birth. In Jan. 2022, the mother filed an Article 5 proceeding alleging that Samuel L.W. was not the biological father, resulting in an order directing the parties to submit to genetic marker testing. Samuel L.W. appealed.

In May 2022, Pedro G. commenced an Article 5 proceeding to establish his paternity with respect to the subject child. The court issued an order of filiation on Oct. 11, 2022 after genetic marker testing establishing Pedro G's paternity.

The appeal by Samuel L.W. was determined to be moot and dismissed as academic.

Darrell RR. v. Donaisha SS., 216 A.D.3d 1234 (3rd Dept., 2023). The respondent gave birth to the subject child in 2017, at which time she was in a relationship with the petitioner. The mother married another person in March 2018. The petitioner commenced a proceeding to establish paternity in Nov. 2020. The mother alleged equitable estoppel as an affirmative defense, which was denied after a hearing. The court ordered a genetic marker test.

The appellate division affirmed the order of the lower court. The mother failed to establish that a parent-child relationship existed between her husband on the child that would estop the petitioner from establishing paternity. The testimony at the hearing by both the mother and her husband was conclusory in nature and did not establish that the husband was a father figure to the child.

Telicia M.B. v. Zyaire G., 217 A.D.3d 862 (2nd Dept., 2023). The family court granted the mother's application to vacate an acknowledgment of parentage within 60 days of its execution. The father's appeal was denied, and the order of the family court was affirmed as FCA §516-a permits a signatory to an AOP to rescind it within 60 days of the date of signing.

Eddie G. v. Gisbelle C., 221 A.D.3d 600 (2nd Dept., 2023). The subject child was born in 2014 to the respondent. Shortly after the birth of the child, she moved to the Dominican Republic and married Christopher C. who acted as a father to the child. They returned to NY in 2019. The petitioner commenced a proceeding to establish his paternity of the child in 2022. After a hearing, the court denied the petition on the grounds of equitable estoppel. The appellate division affirmed the order of the lower court, as the petitioner had very little interaction with the child, while Christopher C. had assumed a parental role, and the child believed him to his father.

Simpson v. Cyrius, 220 A.D.3d 708 (2nd Dept., 2023). On the day of the subject party's birth, the respondent executed an acknowledgment of paternity (AOP). A petition to vacate the AOP was dismissed by a 2019 order. The respondent did not file written objections or a notice of appeal. In a subsequent proceeding, the court in 2022 ordered the father to pay child support and denied the father's objection predicated on the alleged invalidity of the AOP. The appellate division affirmed the lower court's holding, additionally finding that the lower court correctly included the father's overtime income in its child support calculation.

VIOLATION

Keenan v. Tangco, 213 A.D.3d 664 (2nd Dept., 2023). The parties who were never married are the parents of one child. The parties agreed to a stipulated order of child support in Nov. 2018 requiring the father to pay $900 per month. A subsequent order was entered in Sept. 2020, which directed the father to additionally pay 48% of the childcare expenses for the child, retroactive to Nov. 2019. In Feb. 2021, the mother filed a violation petition concerning the childcare order. The support magistrate found the father in violation (*presumably non-willful*) and directed entry of a money judgment in the amount of $12,294.96. The family court denied the father's objections and he appealed.

The appellate division affirmed the order of the lower court. "The parties' testimony at the hearing established that the father failed to pay his share of the childcare expenses, as required by the childcare order. The father contended that he did not violate the childcare order because he continued to pay child support after the Family Court issued an order dated March 12, 2021, which allegedly eliminated his obligation to pay child support, and he was entitled to a credit for his purported overpayments of child support against his obligation to pay childcare expenses. However, contrary to the father's contention, the order dated March 12, 2021, did not invalidate the child support provisions of the parties' stipulation of settlement." (*Unfortunately, the contents of the Mar. 12, 2021 order are not discussed in the decision.*)

Susan W. v. Darren K., 213 A.D.3d 593 (1st Dept., 2023). After a hearing, the respondent was found in willful violation of the parties' child support order, and a money judgment in the amount of $61,080.50 was entered. On appeal, the appellate division affirmed the lower court's order with the exception of 6 months of arrears from June to December of 2021.

Despite the respondent presenting evidence that he had a reduction in income and borrowed from family members to pay his basic child support, he did not demonstrate that he made reasonable efforts to secure employment sufficient to meet his child support obligation.

"The Support Magistrate included an additional six months of child support in the total amount due, notwithstanding an absence of evidence of nonpayment, and the Family Court's calculation of the total due differed from that of the Support Magistrate. Due to these discrepancies as to the total sum of the remaining arrears due and owing, the matter is remanded for calculation as to the balance remaining, if any."

Barra v. Barra, 214 A.D.3d 1224 (3rd Dept., 2023). The parents of six child were divorced in 2011 by judgment which incorporated the terms of their 2011 separation and settlement agreement. The father agreed to pay $2,000 per month plus 35% of his income over $91,500, maintain health insurance for each child until the age of 21, and pay 50% of unreimbursed medical expenses. In 2018, the parties entered into a stipulation whereby the father agreed to pay $25,000 in full consideration of any arrearage, and $2,600 per month until Feb. 1, 2021.

The mother filed a violation petition alleging arrears based on the separation agreement and judgment of divorce, and that the father failed to pay his share of unreimbursed medical expenses. After the mother put in her case in a fact-finding hearing, the support magistrate

dismissed the matter as the father had complied with the 2018 stipulation. Her written objections were denied, and she appealed.

The appellate division agreed with the mother that the lower court had erred in considering the 2018 stipulation as family court is a court of limited jurisdiction and may only enforce or modify child support provisions contained in a valid court order or judgment. The court lacked subject matter jurisdiction to consider the 2018 stipulation. However, based on the record, the father has not missed any payments, including the $25,000 lump-sum payment agreed to in 2018. The allegations that the father did not pay unreimbursed medical and removed a child prior to age 21 was unsupported by evidence, other than the less-than-credible testimony of the mother.

T.H. v. M.B., 79 Misc.3d 1097 (N.Y. County Sup. Ct., 2023). The supreme court found the wife in civil contempt of its pendente lite order of child support and maintenance. The wife had accrued arrearage of $48,529 from Aug. 2021 through Jan. 2023. The wife was given until Apr. 28, 2023 to purge her contempt. The matter was reconvened on that date and the wife was committed to the custody of the NY County Sheriff for a maximum term of 3 week with a purge amount of $20,764.50. An amended order of commitment modified the term to 19 days, which the wife served.

The court held that "[b]y serving the full term, the Wife has effectively satisfied the purge amount of $20,764.50. The Court does not reach this decision lightly, but finds it is manifestly unjust to enter a money judgment against the Wife for the purge amount following her completed incarceration period. It is either one or the other, not both."

The court held that the wife purged her contempt of court and satisfied the $20,764.50 purge amount by of serving her entire incarceration period and that the balance of the child support and maintenance arrears ($24,264.50) were reduced to a money judgment.

Gomezpacheco v. Dedios-Santiago, 220 A.D.3d 692 (2nd Dept., 2023). After a hearing the father was found in willful violation of his child support order and committed to the custody of the Suffolk County Correctional Facility for 6 months with a purge amount of $10,000. On the father's appeal, the appellate division dismissed as academic the appeal of the portion of the order that committed the father. As to the portion of the order confirming the finding of willfulness, the court held that the mother presented evidence that constituted a prima facie case of willful violation, which the father failed to rebut with competent, credible evidence that he made reasonable efforts to obtain employment to meet his child support obligation. The order of the lower court was affirmed.

Hoffman v. Hoffman, 220 A.D.3d 639 (2nd Dept., 2023). The mother moved in supreme court to find the father in contempt for failing to comply with his child support obligation. The father appeared at a virtual conference approximately 20 minutes late. The court had already issued a arrest warrant and set bail at $40,000 for his failure to appear. The father requested that an attorney be assigned to him as he was unable to afford one. The court denied the request but stayed the warrant for 1 week for the father to pay the $40,000. The father failed to make payment.

On appeal, the appellate division reversed the order of commitment and vacated the warrant. The lower court should have inquired into the father's financial circumstance to determine if he was eligible for assigned counsel. "Further, it was an improvident exercise of discretion for the Supreme Court to decline to vacate the warrant issued for the defendant's arrest after his eventual appearance at the conference on May 9, 2022, and his subsequent appearance at the conference on May 16, 2022. That the court issued a warrant and set bail at $40,000 in response to what was, in effect, a late appearance is particularly egregious where the potentially indigent defendant claimed that he did not have the means to pay his court-ordered child support."

Rebore v. Woodby, 220 A.D.3d 948 (2nd Dept., 2023). The parent of 2 children who were never married entered into agreements for custody and support in 2008 and 2010 which were incorporated into a court order. The mother filed petitions to enforce, and the father filed a petition to modify. Following the resolution of the petitions, on the mother's motion, she was granted a counsel fee award of $49,461.25 pursuant to FCA §438. The father filed written objections which were denied. The appellate division affirmed the order of lower court.

The mother's alleged failure to provide notice of default pursuant to the 2008 agreement did not preclude an award of attorney's fees.

Alisha B. v. Dominique S., 221 A.D.3d 445 (1st Dept., 2023). The appellate division affirmed the lower court's willful violation finding. Respondent father failed to rebut petitioner mother's prima facie evidence of willful violation because he failed to present competent medical evidence that he was unable to perform work of any kind. His submission of an unaffirmed letter from a doctor was insufficient to establish his inability to work. In any event, the unaffirmed letter applied only to part of the relevant time period in which the father was not paying any child support. Nor did the father offer proof of his efforts to find any type of work before his alleged accidents in 2019 and 2020, but rather, blamed his unemployment on multiple factors, including the fact that he was not vaccinated against COVID.

Paul v. Thelusma, 281 A.D.3d 586 (2nd Dept., 2023). The father is obligated to pay child support for the parties' 2 children in the amount of $937 every two weeks pursuant to an order of support issued in 2014. After a hearing on the two petitions filed, the magistrate granted the mother's violation petition and denied the father's modification petition. The family court committed the father to a correctional facility for 6 months unless he paid a $30,000 purge.

The appellate division affirmed the order and decision of the lower court. With regard to the violation, the father failed to present competent credible evidence of his inability to pay support as ordered. As to for the modification, he failed to show that he has made a diligent effort to secure employment commensurate with his earning capacity.

Kelly v. Napier, 217 A.D.3d 1538 (4th Dept., 2023). The father was found in willful violation of a child support order. The petitioner provided evidence that he failed to pay the support as ordered constituting prima facie case for willful violation. The father failed to submit competent credible evidence of his inability to make required payments and that he made reasonable efforts to obtain gainful employment to pay his child support obligation. The matter was affirmed on appeal.

Benson v. Sherman, 217 A.D.3d 1174 (3rd Dept., 2023). The father was directed to pay $40 per month for 1 child pursuant to a 2020 support order. The father defaulted in the violation proceeding which resulted in a finding of willful violation for $468.12 in arrears and a recommendation of 6 months commitment to jail. The father appeared at the confirmation hearing with counsel at which the magistrate's order was confirmed and a 6 month sentence was imposed. The court accepted proof provided by the father that he had back surgery and was hospitalized between Oct. and Nov. 2021 but concluded that there was no evidence that he was unable to work. The order of the lower court was affirmed on appeal.

O'Keeffe v. O'Keeffe, 215 A.D.3d 848 (2nd Dept., 2023). The divorced parents of 2 children stipulated to the father paying child support in the amount of $1,162 semimonthly. The mother filed a violation petition which resulted in a willful finding, a recommendation of 180 days commitment to jail with a $22,690.41 purge amount. The family court confirmed the order with a 90-day commitment period unless purged by $15,000. Written objections were denied, and the appellate division affirmed the lower court's order. The father failed to offer competent credible evidence of his reasonable efforts to obtain employment to meet his child support obligation. Additionally, the was not abuse of discretion of the lower court as the enforcement remedy was not excessive.

Khalia R. v. Evans D., 2023 WL 8721040 (1st Dept., 2023). The appellate division affirmed the order of the lower court which found the father in willful violation of his child support obligation and sentenced him to 6 months of weekend confinement with a $7,000 purge amount. After the mother made a prima facie case by providing evidence that the father failed to pay support in conformance with the court order, the father failed to show that he diligently sought gainful employment during the period in which he chose to attend school.

CONTRACT ENFORCEMENT

B.D. v. E.D., 218 A.D.3d 9 (1st Dept., 2023). The parties entered into a stipulation in 2014, and an agreement which modified their stipulation in 2015, both of which were incorporated into their judgment of divorce. The agreement contained a provision which required that the father would maintain medical insurance until "each Child is no longer allowed by law to be covered under a parent's insurance."

New York's Age 29 Law was effective in 2009, and allows unmarried children through age 29 to be covered under a parent's group health insurance policy. The Affordable Care Act, effective in 2010, generally requires health insurance coverage available to the children of insureds until the children attain age 26.

The trial court, on the mother's motion seeking to require the father to maintain insurance for the child, found the provision to be ambiguous, considered extrinsic evidence, and ruled that provision of coverage after the child turned 26 was not contemplated by the parties.

The appellate division reversed, holding that the provision was unambiguous and must be enforced in accordance with its plain meaning. The child was allowed by NY's Age 29 Law to be covered by a parent. The parties did not limit this provision to the application of the ACA.

Additionally, despite the father's argument that his employer does not subsidize coverage for a child over the age of 25, the insurance is made available for the child through his employer.

Sayles v. Sayles, 220 A.D.3d 657 (2nd Dept., 2023). The parties were married in 1996 and have 2 children. They entered into a separation agreement in May 2012 which deviated from the CSSA and required the father to pay $1,200 per mo., and then $600 per month upon the emancipation of the older child. The mother commenced an action for divorce in 2021 seeking to incorporate the parties' separation agreement but to set aside the child support provisions and require the father to pay child support pursuant to the CSSA. The supreme court denied the mother's application to recalculate child support.

The appellate division reversed and remanded the case as the agreement failed to properly opt-out of the presumptively correct calculation of child support under the CSSA. The "provisions in the parties' separation agreement relating to the child support obligations with respect to one child did not contain the specific recitals mandated by the CSSA, and the record does not demonstrate that the plaintiff's agreement to said provisions was made knowingly. Accordingly, the provisions are not enforceable."

Franklin v. Franklin, 220 A.D.3d 412 (1st Dept., 2023). The parties entered into a stipulation in 2021 which provides that the father will pay $2,000 per month "as a contribution towards [defendant's] childcare expenses, conditioned on the mother being employed by a nonrelative and providing paystubs documenting such employment. The supreme court granted a motion by the mother based on her providing timesheets purporting to document childcare services that she performed for the father of 2 girls, one of whom is a friend of the parties' daughter. The trial court determined that the timesheets were the "functional equivalent' of the required "paystubs".

The appellate division reversed. A paystub is a record that is provided to an employee, a term which has a clear meaning under the terms of the parties' agreement. The lower court impermissibly changed the meaning of the parties' agreement.

Herman v. Herman, 220 A.D.3d 849 (2nd Dept., 2023). In 2015, the parties were divorced by judgment incorporating their stipulation of settlement. In 2021, the supreme court granted the application of the mother for $31,128 in add-on expense, and an award of counsel fees, and denied the application of the father to terminate his child support obligation for the oldest child, direct the mother to provide proof of add-on expenditures, and hold her in contempt.

The appellate division modified the order of the lower court by denying all relief sought by the mother. The parties' stipulation was unambiguous on its face and required the father to pay a percentage of add-on expenses incurred. Apparently, there was no proof in the record of the lower court of expenses actually incurred. The Father's motion was also denied as without merit.

Wilson v. Wilson, 218 A.D.3d 630 (2nd Dept., 2023). The parents of one child were divorced by judgment in 2005 which incorporated their 2004 stipulation. In 2019 the plaintiff moved to direct the defendant to pay $91,852, representing expenses incurred for the plaintiff's failure to maintain a certain health plan as required by the stipulation. The motion was denied and

affirmed on appeal. The evidence in the record did not support the claim that defendant did not maintain a health plan for the child.

PROCEDURE

Borrero v. Banks, 212 A.D.3d 496 (1st Dept., 2023). The petitioner filed an Art. 78 proceeding against NYC DSS and OTDA to remove his name from the putative father registry (PFR), to prevent respondents from enforcing a child support order, and compelling respondents to provide employment information of DSS employees in accordance with FOIL. The supreme court's denial of his petition was upheld on appeal.

The petition was without merit. Petitioner had previously litigated the matter in family court, attempting to vacate the default orders of filiation and support. The petition was denied, and the denial was upheld on direct appeal. An article 78 proceeding cannot be used to challenge a determination made in a civil action or criminal proceeding (*other than a summary contempt finding*). As to the FOIL request, the petitioner had failed to exhaust his administrative remedies. In any event, if this issue were properly before the court, OTDA's decision would be determined to be rational, as it certified that after a diligent search it did not have any of the records requested.

Proechel v. Bensman, 213 A.D.3d 1009 (3rd Dept., 2023). The parties are the divorced parents of two children. A 2018 support order required the NCP father to pay $195 per week as child support. The mother brought a petition seeking an upward modification based on the father's receipt of an inheritance of approximately $106,000. The court granted the request and ordered the father to pay $238/wk. as child support and ½ of the unreimbursed health-related and educational expenses. The father filed objections to which to the mother filed no opposition. The family court upheld the determination of the lower court. The mother appealed from the family court order.

The mother's appeal was dismissed as she is not aggrieved by the order (CPLR 5511). "Insofar as the mother did not file objections to the Support Magistrate's December 2020 order, or otherwise oppose the father's objections thereto, Family Court was constrained to review only the portions of the December 2020 order challenged by the father. In that respect, Family Court dismissed the father's objections, finding them to be without merit, and did not render a decision on any other aspect of the December 2020 order. This ruling had the effect of upholding the Support Magistrate's upward modification of the father's child support obligation – a determination in the mother's favor. In these circumstances, there is no part of the April 2021 Family Court order that adversely affects the mother and, thus, she is not an aggrieved party who may take an appeal therefrom." (**Superseded on Reargument – see following case**)

Procehel v. Bensman, 214 A.D.3d 1115 (3rd Dept., 2023). The appellate court had dismissed the mother's appeal based on her purported failure to file objections in Family Court. The Court then granted the mother's motion for reargument and vacated the February 2, 2023 decision. In its decision, Family Court only addressed objections filed by the father to the December 2020 order. In her motion, the mother provided copies of both her objections to the support order and her rebuttal to the objections filed by the father, time stamped as received by the Family Court Clerk

on January 8, 2021 and January 22, 2021, respectively. It was evident that neither of the mother's submissions were forwarded to and/or considered by Family Court in rendering its decision. Under these circumstances, the order was reversed, and the matter remitted to the Columbia County Family Court for a determination that takes into consideration the submissions of both parties.

Josefina O. v. Francisco P., 213 A.D.3d 1158 (3rd Dept., 2023). The parties are the separated parents of 5 minor children. In 2019, the parties entered into a stipulated child and spousal support agreement. In Dec. 2020, the mother filed a family offence petition (FCA Art. 8). The mother then filed for divorce in Jan. 2021. In the Art. 8 proceeding, the mother filed an order to show cause for temporary child support and recoupment of federal stimulus payment funds pursuant to FCA §828. The court granted the mother's request and ordered that the father pay the mother a lump sum representing the children's share of the federal stimulus funds.

On appeal, the appellate division reversed. The federal stimulus payments were not paid for the benefit of the minor children "but they were the parties' advance refund for a tax credit earned pursuant to their last tax return, which was jointly filed, and which was partially measured by the number of children the tax filers had listed as dependents." Tax refunds are generally marital property and subject to equitable distribution in the context of a divorce. The Family Court lacks jurisdiction make such an order. Additionally, the mother had not sought a modification of the existing child support order or alleged a violation of such order which may have allowed for such funds to be seized.

Lew v. Lew, 214 A.D.3d 732 (2nd Dept., 2023). The parties are the parents of one child and were divorced in 2009. The judgment of divorce required that the father pay $220 per week for basic child support and 50% of childcare expenses. In April 2021, the father filed a petition for termination, suspension, or downward modification of his child support obligation based on his unemployment and alienation of the child.

The mother brought a motion to dismiss as to parental alienation, which was granted, as the father's petition failed to provide allegations, if proven, would rise to the level of deliberate frustration or active interference with his visitation. His petition merely provided the conclusory statement that the "child has been alienated and has no relationship with or desire to have any contact with [him] including therapeutic visitation." The court however erred in dismissing that portion of the petition with prejudice, which was modified by the appellate division.

Rachel R. v. Michael F., 216 A.D.3d 494 (1st Dept., 2023). The petitioner sought an award of $61,087 in child support arrears for the period from December 2012 to November 2014. The matter was dismissed as her claim was identical to that raised in her previous objections. The appellate division affirmed the judgment of the lower court as the matter had already been finally determined and cannot be relitigated.

Licitra v. Licitra, 219 A.D.3d 837 (2nd Dept., 2023). The parties were divorced by judgment in 2020 which incorporated the terms of a stipulation of settlement, directing the father to pay $1,325 per month as child support. In May 2021, the father filed a petition for a downward modification, which was denied by the support magistrate. The father filed objections without

raising any arguments addressed to the support magistrate's order. The family court denied the written objections on the ground that they were not specific. The appellate division affirmed as FCA §439(e) provides that "specific written objections" may be filed, which the father failed to submit. Other issued raised on appeal were unpreserved as he failed to raise such issues in his written objections.

Dellorusso v. Dellorusso, 220 A.D.3d 706 (2nd Dept., 2023). The parents of 4 children were divorced in 2016 by judgment which incorporated the terms of their settlement agreement. The father filed a petitioner for downward modification of his child support obligation in 2020. The mother's motion to dismiss was granted as the father failed to comply with discovery demands. The appellate division affirmed the dismissal of the father's petition. Pursuant to CPLR §3126 if a party "refuses to obey an order for disclosure or willfully fails to disclose information" the court may dismiss the action. The record supported the father's willful failure to respond to discovery demands and court-ordered discovery.

Benzaquen v. Abraham, 221 A.D.3d 599 (2nd Dept., 2023). The mother brought a petition in family court to enforce a provision in an order of support for higher education expenses. The mother sought $45,645 but was only granted $11,200 by the support magistrate. The mother filed written objections and served them on father within the required timeframe. However, she filed proof of service 2 weeks late. The father submitted a rebuttal which did not raise the issue of proof of service. The appellate division held that the family court should not have denied the written objections based on failure to comply with the proof of service requirement and remitted the matter for consideration on the merits.

Grant v. Seraphin, 221 A.D.3d 897 (2nd Dept., 2023). The mother filed a petition for the support of the parties' one child. The father failed to submit a financial affidavit. The mother made an application at the hearing to determine support based on the needs of the child. The support magistrate denied the application and allowed the father to present evidence regarding his ability to pay support, resulting in a $283 biweekly support order. The mother's written objections were denied by the family court.

The appellate division reversed and remanded the case back to the lower court. FCA §424-a mandates submission of a financial affidavit by both parties. Where a respondent fails "without good cause, to comply with the compulsory financial disclosure mandated by Family Count Act § 424-a, the court on its own motion shall grant the relief granted in the petition, or shall order that, for purposes of the support proceeding, the respondent shall be precluded from offering evidence as to respondent's ability to pay support." The lower court should have precluded the father from offering evidence of ability to pay and should have determined support based on the needs of the child.

Munro v. NYC HRA, 221 A.D.3d 904 (2nd Dept., 2023). The support obligor, father commenced a proceeding pursuant to Article 78 of the CPLR on Feb. 28, 2020 to review determinations of NYC HRA. The father sent a letter, dated Aug. 13, 2019, requesting HRA recalculate his arrears based on an order dated May 13, 2003, which suspended his obligation to pay $100 per week for childcare expenses. HRA denied the request in a letter dated Sept. 17,

2019 and included an account statement continuing the $100 childcare expenses "AS PER ACS FROM QUEENS" effective Nov. 9, 2004.

The father sent another letter, dated Nov. 7, 2019 requesting an emergency release of his passport based on the grounds that his son had been abducted by the child's maternal grandmother in 2016. HRA denied the request in a letter dated Dec. 12, 2019 as a review of the account reflected that the arrears were correct and accurate.

HRA's motion to dismiss was granted by the supreme court based on the 4-month statute of limitations for the September determination, and failure to exhaust administrative remedies relative to the passport determination.

The appellate division reversed and remanded the case. The "respondent submitted no evidence that the petitioner was notified of the determination dated September 17, 2019, more than four months before this proceeding was commenced." Furthermore, "the determination dated December 12, 2019, was an unequivocal denial of the petitioner's request for relief and left "no doubt that there would be no further administrative action."

Peterson v. McCall, 220 A.D.3d 947 (2nd Dept., 2023). The father filed written objections to a temporary and final order of support, but failed to file proof of service, a condition precedent for family court review. The dismissal of his written objections by the family court was affirmed by the appellate division.

Orok-Edem v. Wondemagegehu, 221 A.D.3d 818 (2nd Dept., 2023). The father appealed an order which had granted the mother's petition to enforce the parties' judgment of divorce which awarded her child support and spousal maintenance. However, the father failed to assemble a proper record on appeal which required dismissal by the appellate division, as it was unable to reach an informed determination on the merits of the case.

Gallousis v. Gallousis, 219 A.D.3d 466 (2nd Dept., 2023). The court denied the plaintiff's application to vacate a default judgment which awarded the defendant $6,000 per month in spousal maintenance and $3,934.66 per month as child support based on the imputation of $350,000 of annual income and his access to over $26 million worth of assets, supported by his statement of net worth and 2009 tax return. The plaintiff failed to demonstrate a reasonable excuse for his default. Additionally, there was no evidence of fraud, misrepresentation, or misconduct which would warrant vacatur. The decision of the supreme court was affirmed on appeal.

Moor v. Moor, 218 A.D.3d 772 (2nd Dept., 2023). The parties had previously agreed to shared custody of their one child and stipulated that neither would pay child support. In October 2021, the father filed a petition for child support based on the change in circumstance that he had sole custody of the child. After the father appeared with counsel and the mother, pro se, the support magistrate issued an order requiring the mother to pay $319.32 bi-weekly. The mother's written objections were denied by the family court. The appellate division reversed and remitted the matter back to family court as the magistrate failed to advise the mother that she had "an absolute right to be represented by counsel at the hearing at [her] own expense, and that [s]he

was entitled to an adjournment for the purpose of retaining the services of an attorney." The magistrate should not have proceeded with a hearing without an explicit waiver of the mother's right to counsel on the record.

Butler v. Miller, 218 A.D.3d 953 (3rd Dept., 2023). The father was directed to pay $199 per month (+$19 toward arrears) as child support in a Sept. 2020 Pennsylvania order. The order was registered in Chemung County and a violation petition was filed in family court. The father appeared initially and provided his address but failed to appear at subsequent court appearances. A default order was issued in Aug. 2022 finding a willful violation, entering a money judgment of $1,331.62 and recommending 20 days of commitment. The father also failed to appear at the confirmation hearing in which the judge confirmed the order and issued a warrant for the father's arrest.

On appeal the father argued improper service and ineffective assistance of counsel. No appeal lies from an order entered on default. The father could bring a motion to vacate the default.

Carmen C.S. v. Ginew L.B., 217 A.D.3d 642 (1st Dept., 2023). "The father's argument that he was denied due process because the order misstates the date of the Support Magistrate's order lacks merit. The mistake did not affect the validity of the order and was corrected in an order issued the same day. Furthermore, the record supports the finding of willful nonpayment since the Support Magistrate's order was entered on consent and the father presented no evidence of his income or inability to make payments."

Hanrahand v. Hanrahand, 2023 WL 8609021 (2nd Dept., 2023). The mother commenced a violation proceeding against the father for failure to comply with the order of support for their 2 children. Both parties appeared at an initial appearance and a hearing date was set for in-person appearances. The Support Magistrate warned the father that if he did not appear, the hearing would proceed in his absence. The father did not appear, but his attorney requested an adjournment or leave for the father to appear telephonically, which was denied. The father was found in willful violation and a money judgement was entered for $6,022.72. The father's motion to vacate his default was denied for failure to serve, and that it was meritless. The family court confirmed the magistrate's order.

As the order appealed from was upon the appellant's default, the review was limited to the request for adjournment or telephonic appearance, which is a matter resting with the sound discretion of the trial court. The appellate division found there was no improvident exercise of discretion and affirmed the lower court's order.

Dawson v. Iskhakov, 216 A.D.3d 950 (2nd Dept., 2023). The parents of one child divorced in 2017 and consented that each would pay child support to the maternal grandmother. The mother filed a petition in 2021 seeking an order of child support, which was dismissed by the court for lack of subject matter jurisdiction. FCA §461 (b) provides that where "an order of the supreme court or of another court of competent jurisdiction requires support of the child," the family court may only entertain applications to enforce or modify the order. As there was an order in effect for the child, the family court lacked subject matter jurisdiction to entertain the petition. *See also* D.I. V. Y.I, 79 Misc3d 1214(A) (N.Y. County Sup. Ct., 2023).

Adriana K. v. Grzegorz K., 215 A.D.3d 490 (1st Dept., 2023). The father was found in willful violation and sentenced to 3 months confinement with a purge amount of $15,000 on his default. He made a motion to vacate the default which was denied, and then appealed the orders of the finding of willfulness and the confirmation, which were not appealable. His recourse was to appeal from the order denying his motion to vacate the default.

Girard v. Girard, 2023 WL 8899907 (2nd Dept., 2023). The father sought a downward modification of his child support obligation alleging that he was unable to maintain his earnings "due to serious, severe and permanent personal injuries." The support magistrate dismissed the petition with findings that the father's decrease in earnings was voluntary, in an order dated July 19, 2022, and mailed to the parties on July 28, 2022. The father's written objections, filed on Sept. 2, 2022 were deemed untimely as written objections must be filed within 35 days of the mailing of the order. The appellate division affirmed the lower's court determination.

Brandon P. v. Jennifer M.C., 2023 WL 8866046 (4th Dept., 2023). Petitioner commenced this proceeding seeking to establish paternity of the subject child. After a hearing, family court determined that genetic testing was not in the best interests of the child and dismissed the petition. The respondent mother's appeal was dismissed as she is not an aggrieved party. The mother sought no relief in the action, and her rights remain unchanged. Her disappointment with the outcome does not equate to aggrievement under CPLR 5511.

EDUCATION

Napolitano v. Napolitano, 217 A.D.3d 948 (2nd Dept., 2023). The parties, who have two children together, were divorced in 2013 by judgment which incorporated a settlement agreement in which the parties agreed that they would each "pay 50% for the college/technical/vocational school expenses of the children." The parties added to that provision the following handwritten sentence: "The said payments are limited by each parent's ability to pay."

The father brought a petition in family court seeking to reduce his obligation of higher education expenses. The petition was dismissed by the court. The appellate division remitted the case back to family court for a hearing. The parties' agreement as to higher education expenses was ambiguous on its face. A fact-finding inquiry is necessary to determine the parties' intent in the inclusion of "said payments are limited by each parent's ability to pay."

Abayomi v. Guevara, 215 A.D.3d 720 (2nd Dept., 2023). The father made a motion to modify the parties' judgment of divorce to permit him to pay a portion of his child support obligation to the child's private school. The supreme court denied the motion and ordered the father to pay 100% of the cost of the tuition in addition to the $1,500 per month child support obligation. On appeal the appellate division affirmed. The father had previously advised the mother in an email that he would cover the entire cost of the child's tuition in the private school where the father wanted to enroll the child. Thus, the lower court considered the circumstance of the case, the circumstance of the parties and the best interests of the child in awarding educational expenses.

OTHER

Majid v. Hasson, 213 A.D.3d 1175 (3rd Dept., 2023). The parties were married in Iraq in 1988 and have one unemancipated child born in 2010. The husband filed for divorce in April 2019. The wife's application for poor-person status and appointment of counsel was granted in June 2019. On the eve of trial, the parties executed a settlement agreement. The wife thereafter moved to set aside the agreement, which the supreme court denied and entered a judgment of divorce incorporating the terms of the settlement agreement.

On appeal of the wife, the appellate division affirmed the judgment of divorce with the exception of two issues which were remanded. As the wife's annual income was only $11,446, the trial court should have made inquiry into the wife's waiver of spousal support to determine is she is likely to become a public charge in violation of GOL §5-311. In the event that an award of spousal support is warranted, the child support award must be reviewed to account for the change in the parties' income. (*The parties did agree to an upward deviation from the CSSA amount of child support – but the amount is not provided in the opinion*.)

People v. Hadlock, 218 A.D.3d 925 (3rd Dept., 2023). After a standoff with law enforcement executing a warrant at his home stemming from his failure to pay child support, the defendant was charged with a number of criminal charges, including possession of a weapon, resisting arrest, and obstruction of governmental administration. Upon arriving at the single-wide trailer of the defendant, the deputy went to the door expecting the arrest to be uneventful.

> However, when that deputy spoke to defendant at the door of his home, defendant stated that he was not going to jail and shut and locked the door in the deputy's face. The deputy, watching through a window as defendant walked back into his living room, continued speaking with him while calling for backup. Additional deputies arrived who could also see defendant through the window. Eventually, two deputies began kicking the door in, to which defendant could be heard responding, "you don't wanna [expletive] do that, you don't wanna come in." The door was successfully breached and the two deputies went inside, one after the other. The first deputy to enter encountered defendant pointing a rifle at him, and both deputies then quickly retreated and took cover. After a standoff lasting an hour and a half to two hours, defendant exited his home without the weapon and was arrested. At trial, the People also introduced into evidence a rifle, ammunition and marihuana that the police had seized from defendant's residence. For his part, defendant testified that he stayed inside his trailer only because he was trying to think of ways to come up with the unpaid child support.

BANKRUPTCY

In re: Gallagher, 2023 WL 7030047 (B. Ct. E. D. NY 2023). The parties' judgment of divorce required that the debtor sell the marital residence and that the parents share the proceeds equally. The property was encumbered with three debts (two mortgages and a state tax lien). The value of the house was less than these encumbrances.

The debtor filed a chapter 13 bankruptcy petition. The custodial parent filed a claim for a domestic support obligation. Under normal circumstances, with the bankruptcy trustee would not sell that property that had no equity after the secured liens. However, in this case the trustee sold the property to pay a portion of the domestic support obligation.

11 USC 724 subordinates tax liens to domestic support obligations and certain administrative expenses. The holder of the domestic support obligation steps into the shoes of the tax authority in terms of priority. The trustee also negotiated a reduction in the claim of the second mortgage holder to increase the amount have funds available to the custodial parent.

The debtor argued that that the subordination of the tax lien created a fund that could be used to pay his homestead exemption. There is no homestead exemption if there is no equity in the property. The court held that the tax lien had not been discharged or reduced by agreement and therefore the full amount was due and owing (i.e., the property was still over encumbered so no homestead exception). The subordination clause in section 724 only changed who the money was payable to.

In re: MacMaster, 2023 WL 4758668 (B. Ct, E. D. Mich., 2023). The parties were divorced in Florida, and the judgment of divorce set out a parenting schedule. The CP/debtor failed to comply with the schedule, resulting in extensive (and expensive) litigation. The court granted relief to the noncustodial parent, including an award of attorney's fees. The fees were awarded under a Florida law authorizing attorneys fees for violation of a parenting schedule, without regard to the parent's ability to pay the fees.

The debtor filed a chapter 7 petition, and the NCP filed an adversarial proceeding to have the claim for fees declared nondischargeable as a DSO (§ 523(a)(5)) or as arising in connection with a divorce (§ 523(a)(15)).

The court held that the debt was not a nondischargeable DSO. Under Sixth Circuit precedent, "[a] debt is 'in the nature of support' if two conditions are met: first, 'the state court or parties intended to create a support obligation'; and second, the debt has 'the actual effect of providing necessary support.' " In re Thomas, 591 Fed. Appx. 443, 445 (6th Cir. 2015) (citing In re Fitzgerald, 9 F.3d 517, 520 (6th Cir. 1993)).

There was nothing in the record showing that the Parties explicitly intended to create a support obligation. The only evidence in the record was the Florida Contempt Order and the Florida Money Judgment, neither of which addressed the parties' intent. Instead, the judgment clearly stated that it was ordered due to the debtor's failure to comply with the parenting time schedule. The money judgment bore none of the other indicia of a support obligation. It was not labeled as alimony, support, or maintenance. It was not contingent upon future events including death, remarriage, or eligibility for Social Security. It was not based upon the length of the marriage, or the age, health, or work skills of the parents.

However, the court held that the judgment for attorney fees was nondischargeable under 11 U.S.C. § 523(a)(15), which applies to a debt owed: "to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course

of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.

The court held that although the judgment was entered years after the marriage was dissolved, it was still entered in the divorce case, as evidenced by the case caption and was in connection with the divorce decree or other order of a court of record.

In re: Smith, 2023 WL 4189915 (B. Ct. N. D. Ga., 2023). The issue was whether court ordered fees owed by Plaintiff to Defendant were nondischargeable as a "domestic support obligation." To determine whether a debt is a "domestic support obligation," the Court must make an inquiry as to whether the obligation can legitimately be characterized as support. The general rule is that fees awarded in a child custody proceeding are in the nature of support because the determination of custody is essential to the welfare of the children. This is not an irrebuttable presumption, but the Court finds that the record does not support the existence of unusual circumstances or that the fees awarded were intended as a sanction.

The state court judge appeared to grant the $10,000 in fees solely under a state law allowing the court to order reasonable attorney's fee" of a child custody action to be paid by the parties in proportions and at times determined by the judge. This award was separate from a prior award of fees ordered as a result of a motion to compel discovery.

Additionally, the $1,709.35 in fees awarded in the Final Contempt Order are also in the nature of support. Those fees were awarded because Defendant had to file a Contempt Petition to force Plaintiff to pay attorney's fees, which this Court has found were in the nature of child support. Attorney's fees awarded in a contempt action were ancillary to the primary obligation for child support and therefore nondischargeable.