

Do I Really Owe My Ex Child Support?

Do I owe my former spouse child support if I'm the custodial parent? The short answer is maybe. Up until about a year ago, I was rarely, if ever, asked that question. In the last year, however, word has apparently spread that non-custodial parents may qualify for child support. This has understandably taken many custodial parents by surprise and has resulted in some healthy discussions on the topic.

This very issue was addressed by the Indiana Supreme Court in June of 2007. Grant v. Hager, 868 N.E.2d 801 (Ind. 2007). Grant and Hager divorced in 2003 and Grant was ordered the primary custodial parent. Id. at 802. In turn, Hager was ordered to pay support to Grant in the weekly sum of \$108. Id. In 2005, Hager petitioned to modify his support obligation. Id. Hager supplied the trial court with a Child Support Worksheet showing Grant's gross weekly earnings to be \$2,033 (65.4%) and his gross weekly earnings to be \$1,075 (34.6%) for total weekly earnings of \$3,108. Id. Based on their respective income levels without any credits being given, Grant was responsible for \$338 (65.4%) a week and Hager was responsible for \$179(34.6%) a week in support. Id.

Under the Child Support Guidelines, a credit is given to the non-custodial based upon the number of overnights a child or children spend with the parent. Id. Hager provided the court with evidence that he exercised 156 overnights per year. Id. Hager also paid the children's health insurance premium of \$55 per week. Based on these factors, the trial court determined Hager was entitled to a total credit of \$271. Id. This credit exceeded his child support obligation of \$179 by \$92 a week. Id.

Recognizing that Grant was in fact the custodial parent, the trial court still held the Guidelines produced a "negative credit" and required modification of the support order. Id. The trial court therefore modified Hager's child support obligation and ordered that Grant pay Hager \$92 per week. Id.

The Indiana Supreme Court acknowledged that the Child Support Guidelines "do not authorize 'the payment of child support from a custodial to a noncustodial parent'". Id. at 803. However, the Supreme Court held that factor did not

“automatically render the trial court's resolution of this matter invalid. . Ind. Child Support Rule 2 provides that:

In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.”

As such, there is a rebuttable presumption that neither party owes the other support under their respective current incomes and their shared parenting time arrangement. However, Child. Supp. R. 3 provides:

If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a

written finding articulating the factual circumstances supporting that conclusion.

Given this deviation authority, a court could order a custodial parent to pay child support to a non-custodial parent based on their respective incomes and parenting time arrangements if the court had concluded that it would be unjust not to do so and the court had made the written finding mandated by Child. Supp. R. 3.”

Id. at 803.

The Supreme Court found that the trial court's order “may very well be supportable on this basis but the court did not make the required findings . . . apparently believing instead that the Guidelines themselves authorized it to order Grant to pay child support to Hager.” Id. at 804. The Supreme Court therefore remanded the matter back to the trial court “for reconsideration in accordance with the principles enunciated in this decision.” Id.

So, while support payments to non-custodial parents are not automatic when there is a “negative credit” situation, the non-custodial parent can argue that it would be unjust not to order support and the court may find accordingly so long as it justifies its holding with written findings laying out the circumstances supporting that conclusion. The burden is on the non-custodial parent to make this argument and provide this evidence to the trial court as the initial rebuttable presumption favors the custodial parent.

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