

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 1024

“Resolve, to Study the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity”

Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 1024, “Resolve, to Study the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity”

Discussion

This resolve establishes the Study Commission on the Impact of Divorce, Child Support Issues and Custody Issues on Children, Parents, Health, Poverty and Housing Insecurity.

As presented, there is a question as to whether the current system of child support and spousal support can cause systemic inequities in the system toward male parents as opposed to female parents. The Judiciary Committee has asked for FLAC's input on whether FLAC could itself study the issues raised in the bill and public testimony.

In response to the Committee’s request, FLAC created an *ad hoc* committee that engaged with other agencies to develop and provide information that we hope will be helpful in responding to most, if not all the Committee’s concerns surrounding these issues.

It is necessary to first explain the process of the Family Law Magistrates and the significant role they play in avoiding inequities in divorce, child support and custody issues relating to health, poverty, and housing insecurity.

Family Law Magistrates

All family matters involving children are assigned first to a Family Law Magistrate. M.R. Civ. P. 110A. Family Law Magistrates are judicial officers with limited jurisdiction. There are eight Family Law Magistrates serving Maine’s District Courts. They are all well-respected and qualified members of the Maine Bar with substantial experience in family law and a strong commitment to public service. As explained below, the Family Law Magistrates provide a significant benefit to Maine families and to the Maine Judicial Branch.

Family Law Magistrates conduct a case management conference to promptly assess and address a family’s needs as the first step in processing family matters involving children. At the case management conference, the Family Law Magistrate (1) explains the court process to the

parties; (2) helps the parties identify issues on which the parties agree; (3) enters interim court orders; and (4) determines how to help the parties resolve any issues remaining in dispute.

One of the Family Law Magistrate’s primary role is to ensure that the children’s financial needs are met while the case is pending. If the parties are unable to agree to an interim order of child support at the case management conference, the Family Law Magistrate will hold an interim child support hearing immediately following the conference or not more than 63 days after the case management conference. M.R. Civ. P 108(f)(2). All interim orders entered by a Family Law Magistrate may be “decided de novo [i.e., anew] at the final hearing.” M.R. Civ. P. 110A(b)(7).

The Legislature has determined that when minor children are involved in a family matter, the court must refer the parties to mediation, except for “extraordinary cause shown.” 19-A M.R.S. § 251(2)(B). In cases involving domestic abuse, the court may find “extraordinary cause” and waive mediation or may give the parties the option to mediate in separate rooms. At mediation, the parties are assisted by a professional mediator who is rostered by the Court Alternative Dispute Resolution Services (CADRES).

When the parties are unable to reach a full agreement through mediation, the court will schedule their case for a final hearing. When all parties consent, a Family Law Magistrate is authorized to hear and dispose of all elements of a Family Division matter, except adoptions, provided that the Family Law Magistrate determines that it is reasonably likely that the hearing can be completed within 3 hours. [M.R. Civ. P 114 (b) (3).]

A judge will preside over all other final hearings in family matters. See 4 M.R.S. § 183(1)(D); M.R. Civ. P. 110A(5)(B). All final orders entered by Family Law Magistrates are subject to review by a District Court Judge if a party files an objection within 21 days after entry of the Family Law Magistrate’s final order. M.R. Civ. P. 118(a). When an objection is filed, a Judge will review the record established before the Family Law Magistrate and, with or without a hearing, may (1) adopt, modify, or reject the order; (2) set the matter for further hearing; or (3) recommit the matter to the Family Law Magistrate with instructions. M.R. Civ. P. 118(a)(2). A party whose timely objection to the Family Law Magistrate’s order was unsuccessful may appeal from a judge’s final judgment in accordance with the Maine Rules of Appellate Procedure. M.R. Civ. P. 118(b).

When there has been a “substantial change in circumstances” since the entry of the most recent decree, and a modification would serve the best interest of a child, a party may ask the court to change provisions relating to parental rights and responsibilities in that decree by filing a post-judgment motion to modify. All post-judgment motions asking to modify or enforce provisions related to minor children are assigned to a Family Law Magistrate for case management. M.R. Civ. P.110A(b)(6).

The Interrelation Between Child Support and the Parties.

In Maine, the statutory method for calculating child support takes into account both the obligor parent’s ability to pay and the obligee parent’s capacity to support the child. 19-A M.R.S. § 2006 (2023); *see Levy, Maine Family Law* § 6.5[1] at 6-43 (8th ed. 2013) (“The financial support of a child of divorced parents is the equal responsibility of each parent to be discharged in accordance with each parent’s capacity and ability to support the child”); *cf. Twomey v.*

Twomey, 2005 ME 124, ¶ 13, 888 A.2d 272 (tying, in part, the showing of a substantial change in circumstances that may support a downward modification of a child support order to the obligor parent’s diminished ability to contribute to the child’s financial support); *Absher v. LaCombe*, 432 A.2d 1241, 1242-43 (Me. 1981) (requiring a party seeking an upward modification of a child support order to prove that the obligor parent had “sufficient financial resources to meet the requested increase”); 10-144 C.M.R. ch. 351, ch. 7, § 1(A)-(C) (effective July 6, 2016) (ensuring that, when imputing income based on a parent’s voluntary unemployment or underemployment, the amount ordered for support is based on evidence of the obligor’s ability to pay).

Child support is calculated under an “income share formula.” Levy, *Maine Family Law* § 6.5[2][a] at 6-45 (quotation marks omitted). Under this approach, a support figure is “based upon an estimate of the share of each parent’s income that would have been allocated to the child if the parents of the child were living in an intact household.” *Id.* (quotation marks omitted); *see also* 19-A M.R.S. § 2006(1), (4). Accordingly, although increasing an obligor parent’s gross income results in a greater payment to the obligee parent, the same reasoning is applied in calculating the obligee parent’s income: an increase to the obligee parent’s income results in a lower child support payment by the obligor parent. [*Howard v White*, 24 ME 9].

The Judges and Family Law Magistrates in a vast majority of the cases regarding Child Support follow the presumptive amount from the table. However, the Court does not in all cases utilize the presumptive amount of Child Support. When there is good reason (more than “just by the parties’ agreement”) the Court can and does deviate from the presumptive child support amount.

§2007. Deviation from child support guidelines

1. Rebutting presumption. If the court or hearing officer finds that a child support order based on the support guidelines would be inequitable or unjust due to one or more of the considerations listed under subsection 3, that finding is sufficient to rebut the presumption established in section 2005.

2. Proposed findings. A party in a court action proposing deviation from the application of the support guidelines shall provide the court with written proposed findings showing that the application of the presumptive amount would be inequitable or unjust.]

3. Criteria for deviating from support guidelines. Criteria that may justify deviation from the support guidelines are as follows:

- A. The application of section 2006, subsection 5, paragraph D or D-1 would be unjust, inequitable or not in the child’s best interest.
- B. The number of children for whom support is being determined is greater than 6;
- C. The interrelation of the total support obligation established under the support guidelines for child support, the division of property and an award of spousal support made in the same proceeding for which a parental support obligation is being determined;
- D. The financial resources of each child,
- E. The financial resources and needs of a party, including nonrecurring income not included in the definition of gross income;

- F. The standard of living each child would have enjoyed had the marital relationship continued;
- G. The physical and emotional conditions of each child;
- H. The educational needs of each child;
- I. Inflation with relation to the cost of living,
- J. Available income and financial contributions of the domestic associate or current spouse of each party;
- K. The existence of other persons who are actually financially dependent on either party, including, but not limited to, elderly, disabled or infirm relatives, or adult children pursuing post-secondary education. If the primary care provider is legally responsible for another minor child who resides in the household and if the computation of a theoretical support obligation on behalf of the primary care provider would result in a significantly greater parental support obligation on the part of the nonprimary care provider, that factor may be considered,
- L. The tax consequences if the obligor is awarded any tax benefits. In determining the allocation of tax exemptions for children, the court may consider which party will have the greatest benefit from receiving the allocation;
- M. Repealed.
- N. The fact that income at a reasonable rate of return may be imputed to non-income-producing assets with an aggregate fair market value of \$10,000 or more, other than an ordinary residence or other asset from which each child derives a substantial benefit;
- O. The existence of special circumstances regarding a child 12 years of age or older, for the child's best interest, requires that the primary residential care provider continue to provide for employment-related day care;
- P. An obligor party's substantial financial obligation regarding the costs of transportation of each child for purposes of parent and child contact. To be considered substantial, the transportation costs must exceed 15% of the yearly support obligation; and
- Q. A finding by the court or hearing officer that the application of the support guidelines would be unjust, inappropriate or not in the child's best interest.

The Court may also utilize the actual earnings of the obligor rather than impute the State of Maine minimum wage. For example, someone who does not have a high school education and has consistently earned less than minimum wage would not be imputed to the State of Maine minimum wage of \$29,423. Another is the subsistence needs of the obligor. It does not help the child or children if the obligor cannot meet their expenses and then have a very burdensome child support obligation to be able to care for the children.

In light of all of the above, the Court takes into consideration the subsistence needs of the parties when ordering a fair amount of Child Support that meets the needs of the children yet is also in the child's best interest. Families do not benefit from an obligation that exceeds what a parent can legitimately afford to pay.

There is also support provided to parents through the Department of Health and Human Services in the Division of Support Enforcement and Recovery ("DSER"). Attached to this report is the Maine Child Support Services information sheet for parents who seek enforcement and/or assistance regarding child support obligations. This information provides helpful and instructional tools for parents regarding child support.

Finally, FLAC reached out to Jerry Joy, Director of the Division of Support Enforcement and Recovery at the Maine Department of Health and Human Services, and requested assistance specifically related to child support regarding the Committee's concerns about the potential negative impacts the current child support guidelines, statutes, and enforcement have on families at or near the poverty line. FLAC was aware of a recent child support guidelines review by Dr. Jane Venohr, and the recent updates to the child support table which would help shed some light. FLAC felt that many of the Committee's concerns are addressed in Dr. Venohr's comprehensive report.

Director Joy graciously responded to our request. Attached to this report is a letter from Director Joy outlining Dr. Venohr's report, which FLAC feels will be most helpful.

Please do not hesitate to reach out to FLAC for further assistance in this regard.

Dated: March 4, 2024

Respectfully submitted:

Maine Family Law Advisory Commission
Hon. John Martin, District Court Judge (Chair)
Hon. Stephen Nelson, Superior Court Justice
Hon. Steven Chandler, Family Law Magistrate
Hon. Scott Houde, Probate Court Judge
Christopher McLaughlin, MSW, LCSW
Timothy E. Robbins, Esq., Executive Director, Kids First Center
Edward S. David, Esq.
Diane E. Kenty, Esq., Maine Judicial Branch, CADRES
Catherine Miller, Esq.
Linsey Ruhl, Esq., Pine Tree Legal Assistance
Debby Willis, AAG., Maine Dept. of Health and Human Services Appointee