



# CHILD SUPPORT

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# PRINCIPLES TO REMEMBER

- ▶ Florida Statute § 61.29:
- ▶ The following principles establish the public policy of the State of Florida in the creation of the child support guidelines:
  - (1) Each parent has a fundamental obligation to support his or her minor or legally dependent children.
  - (2) The guidelines schedule is based on the parent's combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household.
  - (3) The guidelines encourage fair and efficient settlement of support issues between the parties and minimizes the need for litigation.

# WAYS TO ESTABLISH CHILD SUPPORT

- ▶ A dissolution of marriage action pursuant to Florida Statute § 61.052.
- ▶ A paternity action pursuant to Florida Statute § 742.031.
- ▶ A petition for injunction against domestic violence pursuant to Florida Statute § 741.30(6)(a)4.
- ▶ A petition for support unconnected with dissolution of marriage pursuant to Florida Statutes § 61.09 and 61.10.
- ▶ A Title IV-D Administrative Child Support Proceeding pursuant to Florida Statute § 409.2563(2)(f).
- ▶ A Title IV-D Judicial Proceeding pursuant to Florida Statute § 409.2564.

# INCOME FOR PURPOSES OF CALCULATING CHILD SUPPORT

- ▶ Florida Statute § 61.046(8) provides the definition of income as: any form of payment to an individual regardless of source, including but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support.

# GROSS INCOME

- ▶ Florida Statute § 61.30 provides that gross income includes but is not limited to:
  - ▶ Salary or wages.
  - ▶ Bonuses, commissions, allowances, overtime, tips, and other similar payments.
  - ▶ Business income from sources such as self-employment, partnership, close corporations, and independent contracts. “Business income” means gross receipts minus ordinary and necessary expenses required to produce income.
  - ▶ Disability benefits.
  - ▶ All workers’ compensation benefits and settlements.
  - ▶ Reemployment assistance or unemployment compensation.

# GROSS INCOME

- ▶ Pension, retirement, or annuity payments.
- ▶ Social security benefits.
- ▶ Spousal support received from a previous marriage or court ordered in the marriage before the court.
- ▶ Interest and dividends.
- ▶ Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
- ▶ Income from royalties, trusts, or estates.
- ▶ Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
- ▶ Gains derived from dealings in property, unless the gain is nonrecurring.

# BONUS INCOME

- ▶ Regularly received bonus income shall be included in the calculation of a parties' gross income. *Haupt v. Haupt* 288 So.3d 1275 (Fla. 1<sup>st</sup> DCA 2020) (the Husband received bonus income from 2016-2018 and although the amount varied he anticipated receiving some bonus income in 2019).
- ▶ However, keep in mind that if bonuses are not regular and continuous they should not be included. *Rudnick v. Harman* 162 So.3d 116 (Fla. 4th DCA 2015).

# OVERTIME INCOME

- ▶ Regular overtime income should be included as part of a parent's income for purposes of calculating child support. *Burton v. Burton* 697 So.2d 1295 (Fla. 1<sup>ST</sup> DCA 1997).
- ▶ Overtime income shall not be included if the trial court specifically finds that such earnings will not be available as a source of income in the future. *Skipper v. Skipper* 654 So.2d 1181 (Fla. 3d DCA 1995).
- ▶ To properly include overtime income the Court must evaluate whether a parent's overtime is regular and continuous. The overtime is included unless the Court specifically finds that the opportunity to earn income will not be available in the future. *Mitchell v. Mitchell* 841 So.2d 564 (Fla. 2d DCA 2003).

# BUSINESS INCOME

- ▶ Business income shall be included in the calculation for child support. It is calculated pursuant to Florida Statute § 61.30 as the gross income minus the necessary expenses required to produce the income. *Mattison v. Mattison* 266 So.3d 258 (Fla. 5<sup>th</sup> DCA 2019).
- ▶ The ordinary and necessary expenses have to be those required to produce income. Deducting payments to the Wife from revenues of the business for purposes of calculating Husband's income was error. *Jorgansen v. Tagarelli* 312 So.3d 505 (Fla 5<sup>TH</sup> DCA 2020).

# BENEFITS

- ▶ Pursuant to Florida Statute § 61.30 the following benefits are considered gross income: social security disability insurance, veteran's disability benefits, and supplemental security income. This does not include any social security benefits paid to a party as a result of the child's disability.
- ▶ Workers compensation benefits and unemployment compensation are to be included in the definition of gross income for the purpose of calculating child support. However, social security benefits received for a child as a result of a parent's disability should not be included.
- ▶ Retirement benefits are to be included in the calculation of gross income.

# ALIMONY

- ▶ Alimony awarded to a spouse shall be included as part of their income for purposes of calculating child support. *Paul v. Paul* 300 So.3d 811 (Fla. 5<sup>th</sup> DCA 2020).
- ▶ The trial court erred in failing to deduct the rehabilitative alimony award from the Former Husband's gross income for purposes of computing child support. *Maali v. Maali* 312 So.3d 1030 (Fla. 5<sup>th</sup> DCA 2021).
- ▶ Alimony must first be determined and then included as income in determining the amount of child support. *Christensen v. Christensen* 147 So.3d 118 (Fla. 1<sup>st</sup> DCA 2014).

# INTEREST AND DIVIDENDS

- ▶ Dividend and interest income on a brokerage account should be included in the child support guidelines worksheet. *Rotolante v. Rotolante* 22 So.3d 684 (Fla. 5<sup>TH</sup> DCA 2009).

# RENTAL INCOME

- ▶ Rental income defined as gross receipts minus ordinary and necessary expenses required to produce the income shall be included for purposes of calculating child support.
- ▶ Rental income both positive and negative should be included in a party's income for purposes of calculating child support. *Marenco v. Marenco* 310 So.3d 1002 (Fla. 2d DCA 2020).

# ROYALTIES, TRUST AND ESTATE INCOMES

- ▶ A parties' trust income should be included in the calculation of income for child support whether a party chooses to take the income or not. *Oxley v. Oxley* 695 So.2d 364 (Fla. 4th DCA 1997).
- ▶ Trust income must be included in the determination of gross income for purposes of calculating child support even were a party elects to defer receipt of the trust income during the pendency of the proceedings. *Beck v. Beck* 852 So.2d 934 (Fla. 2d DCA 2003).

# REIMBURSED EXPENSES AND IN KIND PAYMENTS

- ▶ Reimbursed automobile expenses from a parties' own business should be including the calculation of a party's income. *Mikhail v. Mikhail* 279 So.3d 1269 (Fla. 2d DCA 2019).
- ▶ Value of the mortgage payments paid by the Former Husband and \$250 paid for by the Mother for the Former Wife's cellphone shall be included as in-kind contributions for purposes of calculating child support. *Schafstall v. Schafstall* 211 So.3d 1108 (Fla. 3d DCA 2017).

# GAINS DERIVED FROM DEALINGS IN PROPERTY

- ▶ If the Court awards a parent exclusive use and possession of a home during the child's minority the Court must determine the fair market rental value of the home and include the figure in the parent's gross income for purposes of calculating child support. *Mitchell v. Mitchell* 841 So.2d 564 (Fla. 2d DCA 2003).

# GIFT INCOME

- ▶ Gift income regularly received by a parent should be included as part of their income for purposes of calculating child support so long as the gifts are continuing, ongoing, not sporadic and where there was evidence the gifts would continue in the future. *Karam v. Nambiar* 301 So.3d 405 (Fla. 3D DCA 2020).
- ▶ When the evidence is uncontroverted that gift income has stopped then it should not be included in the calculation for child support. *Oluwek v. Oluwek* 2 So.3d 1038 (Fla. 2d DCA 2009).

# ALLOWABLE DEDUCTIONS

- ▶ Pursuant to Florida Statute § 61.30(3) allowable deductions shall include:
  - ▶ Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
  - ▶ Federal insurance contributions or self-employment tax.
  - ▶ Mandatory union dues.
  - ▶ Mandatory retirement payments.
  - ▶ Health insurance payments, excluding payments for coverage of the minor child.
  - ▶ Court-ordered support for other children which is actually paid.
  - ▶ Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

# IMPUTATION OF INCOME

Florida Statute § 61.30(2)(b) governs the imputation of income.

- ▶ Monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part, absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. In the event of such voluntary unemployment or underemployment, the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. However, the court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child who is the subject of a child support calculation...

# IMPUTING INCOME

- ▶ The party seeking to impute income other than at the amount provided by the United States Bureau of Census has the burden to present competent, substantial evidence that:
  - ▶ The unemployment or underemployment is voluntary and
  - ▶ Identifies the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

# IMPUTING INCOME

- ▶ Income may not be imputed based upon:
  - ▶ Income records that are more than five years old at the time of the hearing.
  - ▶ Income at a level that a party has never earned in the past unless the party is recently degreed, licensed, certified, or re-certified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

# FINDINGS REQUIRED FOR IMPUTATION

- ▶ To survive appeal the Court must make specific findings regarding imputation of income.
  - ▶ You must have competent substantial evidence and express findings for an imputation of income. The trial court must explain its calculations used in determining a parties' income. *Holaway v. Holaway* 197 So.3d 612 (Fla. 5<sup>th</sup> DCA 2016).
  - ▶ *Tutt v. Tutt* 299 So.3d 568 (Fla. 2d DCA 2020): While there was evidence that the Former Husband was voluntarily underemployed there was insufficient evidence to support the trial court's ruling that a rate of more than double the Former Husband's historical earnings was to be used for purposes of his income when it was based on the Former Husband's testimony that he could earn this amount at some indefinite, future time after he built his business.

# FINDINGS REQUIRED FOR IMPUTATION

- ▶ *Cura v. Cura* 299 So.3d 1127 (Fla. 3d DCA 2020): the trial court's findings regarding imputation of income were affirmed where the trial court reconciled the contested facts, determined the reliability of the testimony and made findings that the Husband was voluntarily unemployed and imputed income to the Husband based on recent work history, occupational qualifications and prevailing earnings along with the relevant economic factors.
- ▶ *Wilkins v. Wilkins* 312 So.3d 1278 (Fla. 1<sup>st</sup> DCA 2021): the trial court was reversed where there was no competent substantial evidence to support computation of income to a parent when the parties had agreed the parent would stay home to care for the children and attend college and there was no evidence that the Mother was required or expected to generate an income.

# FINDINGS REQUIRED FOR IMPUTATION

- ▶ *Jones v. Jones*, 295 So.3d 1226 (Fla. 5th DCA 2020): the trial court was reversed as the Former Husband failed to present evidence of any jobs available to the Former Wife.
- ▶ *Gerville-Reache v. Gerville-Reache*, 307 So.3d 962 (Fla. 1st DCA 2020): while there was sufficient evidence to find that the Former Husband was involuntarily terminated there was no competent evidence to support the imputed income ordered by the Court.

# FAILURE TO PROVIDE DISCOVERY

- ▶ The statute allows for the automatic imputation of income as follows:
  - ▶ If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census.
- ▶ The website for this information is: <http://data.census.gov/>

# REMINDERS

- ▶ All orders establishing or modifying child support must have a Child Support Worksheet filed with the Court.
- ▶ You must make findings regarding net incomes. Even if a child support guideline worksheet is attached to the Final Judgment it is reversible error if the Court's Final Judgment fails to make findings regarding the net incomes of the parties. See *Skelly v. Skelly* 300 So.3d 342 (Fla. 5th DCA 2020).

# INCARCERATED PARENTS

- ▶ Florida Statute § 61.30(2)(c) effective October 1, 2021 states:
  - ▶ Except for incarceration for willful non-payment of child support or for an offense against a child or person who is owed child support, incarceration may not be treated as voluntary unemployment in establishing or modifying a support order. However, the court may deviate from the child support guideline amount as provided in paragraph (1)(a).

# CALCULATION OF CHILD SUPPORT

- ▶ Timesharing schedules play a role in determining the amount of child support to be paid. If parents have timesharing where the children are with one parent for more than 20% of the time the “gross up” method is used to calculate the child support. The “gross up” calculation is lengthier, however, the same form used to complete the calculation.

# DIRECT PAY CREDITS

- ▶ Pursuant to Florida Statutes § 61.30(7) and 61.30 (8) a parent paying for a child's daycare expense or health insurance expense directly to the provider will receive a pro-rata credit in the child support obligation.
  - ▶ *Gillette v. Gillette* 226 So.3d 958 (Fla. 4th DCA 2017): the trial court erred when it failed to consider the childcare expenses incurred by the Former Wife as part of the child support obligation.
  - ▶ *Marini v. Kellett* 279 So.3d 248 (Fla. 5th DCA 2019): the trial court is required to consider the mother and the child's health insurance expense as part of the child support obligation.

# CHILD SUPPORT CALCULATION

- ▶ Once you have determined the below for each party, you will be able to calculate child support based using the Supreme Court Approved Florida Family Law Form 12.902(e).
  - ▶ Gross Income;
  - ▶ Allowable Deductions;
  - ▶ Net Incomes;
  - ▶ Payment of Daycare;
  - ▶ Payment of Child's Health Insurance; and
  - ▶ Timesharing Overnights.

# UNCOVERED MEDICAL EXPENSES

- ▶ Orders and agreements should include a determination on how uncovered medical expenses should be paid. These expenses should be paid according to each party's pro-rata share of the net income. For example, if the Mother's net income is \$6,000 per month and the Father's net income is \$4,000 per month the Mother should be responsible for 60% of the uncovered and unreimbursed medical expenses and the Father should be responsible for 40% of the uncovered and unreimbursed expenses.

# RECENT CASE LAW

- ▶ The trial court was reversed for mistakenly adding the parties' tax obligations to their gross monthly income instead of subtracting the tax obligations to arrive at the parties' net incomes for purposes of calculating child support. *King v. King* 320 So.3d 766 (Fla. 4<sup>th</sup> DCA 2021).
- ▶ Imputing income based on prevailing earnings in the community means the community where the payor lives and works. The court must use net incomes and not gross incomes of the parties to calculate child support. Retroactive child support can only be ordered for the periods when the parties were not living together. *Williams v. Gonzalez* 294 So.3d 941 (Fla. 4<sup>th</sup> DCA 2020).
- ▶ Travel expenses related to timesharing must be considered and addressed by the trial court in calculating child support. *Scudder v. Scudder* 296 So.3d 426 (Fla. 4<sup>th</sup> DCA 2020).

# RECENT CASE LAW

- ▶ *Young v. Williams* 2021 WL 4188733: service of court documents to pro-se parties and who do not designate an email address must be made by delivering a copy of the document or by mailing it to the party at their last known address.
- ▶ *Pratt v. Department of Revenue* 293 So.3d 1099 (Fla. 4th DCA 2020): trial court's child support order was reversed where the Father did not receive notice of the hearing as the notice was not sent to Father's address of record.

# RECENT CASE LAW

- ▶ *Moses v. Moses* 2021 WL 4228322: the trial court's ruling was reversed in order for the Court to re-calculate the child support arrearage to include credit for the payments the Former Husband made between March 2018 through March 2019.
- ▶ *Frye v. Cuomo* 296 So.3d 939 (Fla. 4th DCA 2020): the trial court's ruling that the husband would be 100% responsible for the cost of a BAC device was reversed as the cost of the device should have been calculated as part of the child support obligation. Costs associated with restrictions on timesharing are a part of the child support obligation.