



# PACE

Parents And Children for Equality

## Bulletin



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The "Best Parent" is Both Parents

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### Calculating Guideline Child Support in Shared Parenting Cases: What is the Law in Ohio?

Under Ohio law, both parents have a duty to provide financial support for their children in accordance with their ability. When each parent has an income (actual or imputed), each parent will have a child support obligation on line 18 (a or b) of the new child support worksheet.

"Except when parents have split parental rights and responsibilities, a parent's child support obligation for a child for whom the parent is the residential parent and legal custodian shall be presumed to be spent on that child and shall not become part of a child support order" [ORC 3119.07, was ORC 3113.215(C)].

On its face, ORC3119.07 grants this presumption and exclusion to the child support obligation of a residential parent and legal custodian in a shared parenting case. In many shared parenting cases, *both* parents are residential parents and legal custodians. However, in *Pauly v. Pauly*, the Ohio Supreme Court ruled that this clause does not apply in cases of shared parenting [*Pauly v. Pauly*, 80 Ohio St. 3d 386]. Instead, the court ruled that "R.C. 3113.215(B)(6)(a), rather than R.C. 3113.215(C), should be used to compute child support payments under a shared parenting order" [*Pauly, supra* at 387-388].

A series of unanimous Ohio Appellate court decisions traced out the implications of this decision. (See PACE Bulletin #2 at [www.PACEgroup.org](http://www.PACEgroup.org) for citations.) If a parent's guideline child support obligation is governed by the provisions of ORC 3113.215(B)(6)(a) [now ORC 3119.22 and 3119.23], then each parent has a child support obligation that cannot be presumed to be spent directly on the children—that is, a child support obligation that is not entitled to the presumption stated in ORC 3119.07. Thus, each parents' child support obligation, as shown on line 22 of the new child support worksheet is presumptively the correct amount of child support owed to the other parent and can be deviated from only in compliance with the stipulations of ORC 3119.22 and 3119.23.

However, an unexplained ruling in a recent Ohio Supreme Court case casts doubt on the reasoning of these courts. In *Hubin v. Hubin*

[(2001), 92 Ohio St.3d 240], the author of this *Bulletin* tested a decision of the Tenth Appellate District Court (*Hubin v. Hubin*, 2000 Ohio App. LEXIS 3885 Franklin App. No. 99AP-1156).

The case involved a shared parenting plan that clearly designated each parent to be a residential parent and legal custodian of the parties' children. The trial court calculated presumptive child support by affording one parent (and only one parent) a presumption that the parent's child support obligation was expended directly on the children. That is, it treated this amount as if it were the child support obligation of a custodial parent in a sole custody case—affording it the presumption stated in ORC 3119.07. It presumed that the other parent owed the entire amount of that parent's annual child support obligation. In other words, it treated that parent's obligation the same as a noncustodial parent's obligation—subjecting it to the presumption that it is the correct amount of child support owed and allowing deviation only in accordance with ORC 3119.22 and 3119.23.

The trial court did not indicate the basis for determining which parent's child support obligation to subject to which presumption.

The Tenth Appellate District Court upheld the decision of the trial court. The case was accepted by the Ohio Supreme Court both as a conflict case and on discretionary appeal.

In a one-sentence judgment, the unanimous Court upheld the decision of the Tenth Appellate Court. The Court said:

The judgment of the court of appeals is affirmed on the authority of *Pauly v. Pauly* (1997), 80 Ohio St.3d 386, 686 N.E.2d 1108.

This order of the Supreme Court, in response to a certified conflict of Ohio Appellate Courts, raises a number of difficult questions. First, for courts, there is the question of what law, if any, is established by this judgment. The *Ohio Rules for Court—Rules for Reporting Opinions* states that controlling points of law are stated in the syllabus of the decision or in a *per curiam* decision. In this case, no syllabus was published for the case and, though the

decision was unanimous, it was not published as a *per curiam* decision. Are other Ohio appellate courts bound by Ohio law to decide cases as the Tenth Appellate District Court has determined? Or, was the decision of the Tenth Appellate Court upheld as permissible without overruling the series of contrary decisions by other appellate courts? It is unclear.

Second, there is no indication in statute or in any court decision in this case of the *basis* on which one parent's obligation is to be afforded the presumption stated in ORC 3119.07 when both parents are residential parents and legal custodians. As a result, this determination by a trial court may be subject only to an abuse of discretion standard.

Though there is no statutory basis for this, it may be that courts will typically choose time with the children as the determining factor—presuming that the parent with more time with the children expends all of his/her child support obligation directly on the children and presuming that the parent with less time with the children expends none of his/her child support obligation directly on the children. If so, to protect your client's right to a presumption of child support, it will be crucial to ensure that s/he has possession of the children more than half the time. Agreeing to a parenting schedule that affords your client less than half the parenting time will, if the court uses this criterion, constitute granting a presumption that your client expends *none* of his/her child support funds directly on the children and that the other parent expends *all* of his/her obligation on them.

A future *PACE Bulletin* will present other ways to protect clients' interests in shared parenting cases.

Learn more about this case at:

[www.hubincase.homestead.com](http://www.hubincase.homestead.com)

The *Bulletin* took a break for the month of June. Otherwise, it has been published every other month since October, 1999. Visit [www.PACEgroup.org](http://www.PACEgroup.org) for back issues.

—Don Hubin, *Bulletin* editor

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