



P.A.C.E.

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Calculating Child Support in Shared Parenting Cases: A Developing Consensus

Ohio law requires the calculation of presumptive child support levels in all cases of divorce with minor children. The court must order this "guideline" amount of child support to be paid by the non-custodial parent to the custodial parent unless the court finds that such an order "would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child" [(R.C. 3113.215(B)(6)(a))].

The statutorily required worksheet for calculating guideline child support [R.C. 3113.215(E)] determined a presumptive amount of child support for *both* parents. However, R.C. 3113.215(C) imposed a presumption that the *custodial* parent's child support obligation would be spent directly on the children and exempted this amount from a child support order.

The exemption in R.C. 3113.215(C) created confusion concerning how to calculate presumptive child support in a shared parenting situation. (See, *Leis v. Leis* (Court of Appeals of Ohio, Second Appellate District, Case No. 96-CA-20, 1997 Ohio App. LEXIS 2638, June 20, 1997).) In such cases, *both* parents are custodial parents. A literal application of R.C. 3113.215(C) would preclude *any* presumptive child support order.

The confusion over whether R.C. 3113.215(C) applied to shared parenting was resolved when 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, "[W]e believe 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).

However, the Court did not trace out the implications of this ruling. As a result, there is still confusion concerning the proper method for determining presumptive child support in shared parenting situations. The confusion again results from the fact that in a shared parenting situation *both* parents are custodial parents. If, as the Court has held, R.C. 3113.215(B)(6)(a) applies to the calculation of presumptive child support in these cases, the logical implication is that *both* parents' child support obligations must presumptively be subjected to a child support order.

A series of appellate court decisions have confirmed this conclusion. The upshot of these rulings is precisely what one would expect, given the Supreme Court's ruling in *Pauly*. Since the provisions of R.C. 3113.215(C) do not apply **in cases of shared parenting, neither parent's child support obligation is entitled to the presumption that it will be spent directly on the children and, so, neither parent's child support obligation is exempted from a guideline child support order.**

This is the unanimous finding in four appellate court decisions. (See, *Luke v. Luke* (Feb. 20, 1998), 1998 Ohio App. LEXIS 647, Lake App. No. 97-L-044, unreported; *Weinberger v. Weinberger* (May 15, 1998), 1998 Ohio App. LEXIS 2165, Hamilton App. No. C-970552, unreported; *Beard v. Beard* (Sept. 25, 1998), 1998 Ohio App. LEXIS 4513, Portage App. No 97-P-0109, unreported;

and, *Congdon v. Congdon* (Nov. 13, 1998), 1998 Ohio App. LEXIS 5426, Hamilton App. No. C-971002, unreported. See also *Loeffler v. Loeffler* (November 20, 1998), 1998 Ohio App. LEXIS 5470, Lucas App. No. L-97-1271, unreported, footnote #3.)

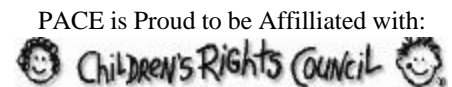
Not all courts are following the approach set forth in these appellate cases. PACE has reports of courts that are legally bound by the above decisions refusing to follow these decisions. Courts in other appellate districts often continue the practice of applying R.C. 3113.215(C) to *one* parent's child support obligation—though the *Pauly* decision appears to preclude this result. At least three additional appellate courts are being asked to rule on this issue. (See *Burkhart v. Burkhardt*, 99CAF-07-038, Fifth Appellate District; *Hubin v. Hubin*, 93DR-07-3589, Tenth Appellate District; and *Mueller v. Mueller*, DR96-06-0889, Twelfth Appellate District.)

Further information can be found on our web site (www.PACEgroup.org) on the "PACE Q & A" page.

Editor's Note:

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—Don Hubin



"The Best Parent is Both Parents"

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