

767.511 Child support.

(1) WHEN ORDERED. When the court approves a stipulation for child support under s. 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or (j), 767.501, or 767.805 (3), the court shall do all of the following:

(a) Order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child. The support amount must be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income and the requirements under s. 767.34 (2) (am) 1. to 3. are satisfied.

(b) Ensure that the parties have stipulated which party, if either is eligible, will claim each child as an exemption for federal income tax purposes under 26 USC 151 (c) (1) (B), or as an exemption for state income tax purposes under s. 71.07 (8) (b) or under the laws of another state. If the parties are unable to reach an agreement about the tax exemption for each child, the court shall make the decision in accordance with state and federal tax laws. In making its decision, the court shall consider whether the parent who is assigned responsibility for the child's health care expenses under s. 767.513 is covered under a health insurance policy or plan, including a self-insured plan, that is not subject to s. 632.897 (10) and that conditions coverage of a dependent child on whether the child is claimed by the insured parent as an exemption for purposes of federal or state income taxes.

(c) In addition to ordering child support for a child under par. (a), assign as a support obligation responsibility for, and direct the manner of payment of, the child's health care expenses under s. 767.513.

(1g) CONSIDERATION OF FINANCIAL INFORMATION. In determining child support payments, the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department or the county child support agency under s. 59.53 (5).

(1j) PERCENTAGE STANDARD GENERALLY REQUIRED. Except as provided in sub. (1m), the court shall determine child support payments by using the percentage standard established by the department under s. 49.22 (9).

(1m) DEVIATION FROM STANDARD; FACTORS. Upon request by a party, the court may modify the amount of child support payments determined under sub. (1j) if, after considering the following factors, the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

(a) The financial resources of the child.

(b) The financial resources of both parents.

(bj) Maintenance received by either party.

(bp) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2).

(bz) The needs of any person, other than the child, whom either party is legally obligated to support.

(c) If the parties were married, the standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of child care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(ej) The award of substantial periods of physical placement to both parents.

(em) Extraordinary travel expenses incurred in exercising the right to periods of physical placement under s. 767.41.

(f) The physical, mental, and emotional health needs of the child, including any costs for health insurance as provided for under s. 767.513.

(g) The child's educational needs.

(h) The tax consequences to each party.

(hm) The best interests of the child.

(hs) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.

(i) Any other factors which the court in each case determines are relevant.

(1n) DEVIATION FROM STANDARD; RECORD. If the court finds under sub. (1m) that use of the percentage standard is unfair to the child or the requesting party, the court shall state in writing or on the record the amount of support that would be required by using the percentage standard, the amount by which the court's order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.

(2) SEPARATE FUND OR TRUST. The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

(3) EFFECT OF PHYSICAL PLACEMENT VIOLATION. Violation of physical placement rights by the custodial parent does not constitute reason for failure to meet child support obligations.

(4) AGE OF CHILD ELIGIBLE FOR SUPPORT. The court shall order either party or both to pay for the support of any child of the parties who is less than 18 years old, or any child of the parties who is less than 19 years old if the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent.

(5) LIABILITY FOR PAST SUPPORT. Subject to ss. 767.805 (4m) and 767.89 (4), liability for past support is limited to the period after the birth of the child.

(6) INTEREST ON ARREARAGE. Subject to sub. (6m), a party ordered to pay child support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. Subject to sub. (6m), if the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this subsection is in lieu of interest computed under s. 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its designee under s. 767.57. Except as provided in s. 767.57 (1m) and except as required under federal statutes or regulations, the department or its designee shall apply all payments received for child support as follows:

(a) First, to payment of child support due within the calendar month during which the payment is received.

(b) Second, to payment of unpaid child support due before the payment is received.

(c) Third, to payment of interest accruing on unpaid child support.

(6m) PILOT PROGRAM ON INTEREST RATE. The department may conduct a pilot program under which the interest that accrues on the amounts in arrears specified in sub. (6) and in s. 767.531 shall be at the rate of 0.5 percent per month instead of 1 percent per month. If the department conducts a pilot program under this subsection, the program may begin at any time after December 31, 2013, and the new rate shall apply to interest that accrues during that time.

(7) EFFECT OF JOINT LEGAL CUSTODY. An order of joint legal custody under s. 767.41 does not affect the amount of child support ordered.

History: 1971 c. 157; 1977 c. 29, 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.25; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1987 a. 27, 37, 355, 413; 1989 a. 31, 212; 1991 a. 39; 1993 a. 481; 1995 a. 27 ss. 7101, 7102, 9126 (19); 1995 a. 201, 279, 404; 1997 a. 27, 35, 191; 1999 a. 9, 32; 2001 a. 16, 61; 2005 a. 253, 342; 2005 a. 443 ss. 103, 105, 219; Stats. 2005 s. 767.511; 2009 a. 185; 2011 a. 32; 2013 a. 20.

Cross-reference: See also ch. DCF 150, Wis. adm. code.

Cross-reference: See also Wisconsin Administrative Code Citations published in the Wisconsin Administrative Code for a list of citations to cases citing chs. DCF 150, HSS 80, HFS 80, and DWD 40, the child support percentage of income standard.

Cross-reference: See also notes to s. 767.59 for decisions regarding postjudgment modifications.

A provision in a judgment as to the education of children past the age of majority, inserted pursuant to a stipulation of the parties, cannot later be challenged and can be enforced by contempt proceedings. *Bliwas v. Bliwas*, 47 Wis. 2d 635, 178 N.W.2d 35 (1970).

When parents each own a 1/2 interest in future proceeds of real estate and the state contributes to child support, the court may not order the custodial parent to pay child support in the form of an accumulating real estate lien in favor of the state. *State ex rel. v. Reible*, 91 Wis. 2d 394, 283 N.W.2d 427 (Ct. App. 1979).

The trial court abused its discretion by setting child support payments without considering the needs of the children or the payer's ability to pay. *Edwards v. Edwards*, 97 Wis. 2d 111, 293 N.W.2d 160 (1980).

A personal injury damage award to a noncustodial spouse can be considered as a change of circumstances justifying increased support. *Sommer v. Sommer*, 108 Wis. 2d 586, 323 N.W.2d 144 (Ct. App. 1982).

Sub. (6) imposes interest on arrearages existing on July 2, 1983, as well as on those accruing afterward. *Greenwood v. Greenwood*, 129 Wis. 2d 388, 385 N.W.2d 213 (Ct. App. 1986).

Federal Supplemental Security Income may not be considered to be an economic resource for purposes of computing a child support obligation. However, a seek-work order may be appropriate. *Langlois v. Langlois*, 150 Wis. 2d 101, 441 N.W.2d 286 (Ct. App. 1989).

Educational grants and loans, AFDC, and other child support are not economic resources for purposes of computing a child support obligation. *Thibadeau v. Thibadeau*, 150 Wis. 2d 109, 441 N.W.2d 281 (Ct. App. 1989).

Consideration of expenses incurred by a child as an adult, including education expenses, is error. *Resong v. Vier*, 157 Wis. 2d 382, 459 N.W.2d 591 (Ct. App. 1990).

A divorce stipulation waiving or setting a ceiling on child support and preventing modification is against public policy and will not be enforced. *Ondrasek v. Tenneson*, 158 Wis. 2d 690, 462 N.W.2d 915 (Ct. App. 1990).

The trial court's use of a computer program to analyze financial evidence was not error. *Bisone v. Bisone*, 165 Wis. 2d 114, 477 N.W.2d 59 (Ct. App. 1991).

A stepparent has no legal obligation to support a stepchild. Under appropriate circumstances the theory of equitable estoppel may apply to cases involving child support. *Ulrich v. Cornell*, 168 Wis. 2d 792, 484 N.W.2d 546 (1992).

In a joint custody situation, the parent with primary physical custody may be ordered to pay child support. *Matz v. Matz*, 166 Wis. 2d 326, 479 N.W.2d 245 (Ct. App. 1991).

The absence of a mortgage obligation is relevant to the assessment of a party's economic circumstances, but does not translate into imputed income under the applicable administrative rule. In *Marriage of Zimmerman v. Zimmerman*, 169 Wis. 2d 516, 485 N.W.2d 294 (Ct. App. 1992).

A support order against actual AFDC grants is prohibited by *Thibadeau*, but an order against earned income of one who also receives AFDC is not. In *Support of B., L., T. & K.* 171 Wis. 2d 617, 492 N.W.2d 350 (Ct. App. 1992).

No matter how corporate income is labeled, a family court may pierce the corporate shield if it is convinced the obligor's intent is to avoid financial obligations. *Evjen v. Evjen*, 171 Wis. 2d 677, 492 N.W.2d 360 (Ct. App. 1992).

The parties' extrajudicial agreement that child support payments be discontinued was enforceable via the doctrine of equitable estoppel. *Harms v. Harms*, 174 Wis. 2d 780, 498 N.W.2d 229 (1993).

The "serial family payer" rule adopted under the percentage standards referred to in sub. (1) [now sub. (1j)] is discussed. *Brown v. Brown*, 177 Wis. 2d 512, 503 N.W.2d 280 (Ct. App. 1993).

The mandatory percentage standards for determining support do not allow for deferred payments. *Kelly v. Hougham*, 178 Wis. 2d 546, 504 N.W.2d 440 (Ct. App. 1993).

An AFDC recipient assigns all rights to child support payments to the state. As such the payments may not be held in trust for the child under sub. (2). *Paternity of Lachelle A.C.* 180 Wis. 2d 708, 510 N.W.2d 718 (Ct. App. 1993).

A lump sum separation benefit received upon termination of employment was properly considered to be income subject to the percentage standards for support. *Gohde v. Gohde*, 181 Wis. 2d 770, 512 N.W.2d 199 (Ct. App. 1993).

In deciding not to apply the percentage standard, the court erred when it compared the parties available incomes after deducting the percentage amount from the payer's income, but failed to consider the assumed contribution of the same percentage by the payee. *Kjelstrum v. Kjelstrum*, 181 Wis. 2d 973, 512 N.W.2d 264 (Ct. App. 1994).