NEW YORK STATE | Office of Temporary and Disability Assistance

2024 Child Support Case Law Update

NYPWA Winter Conference

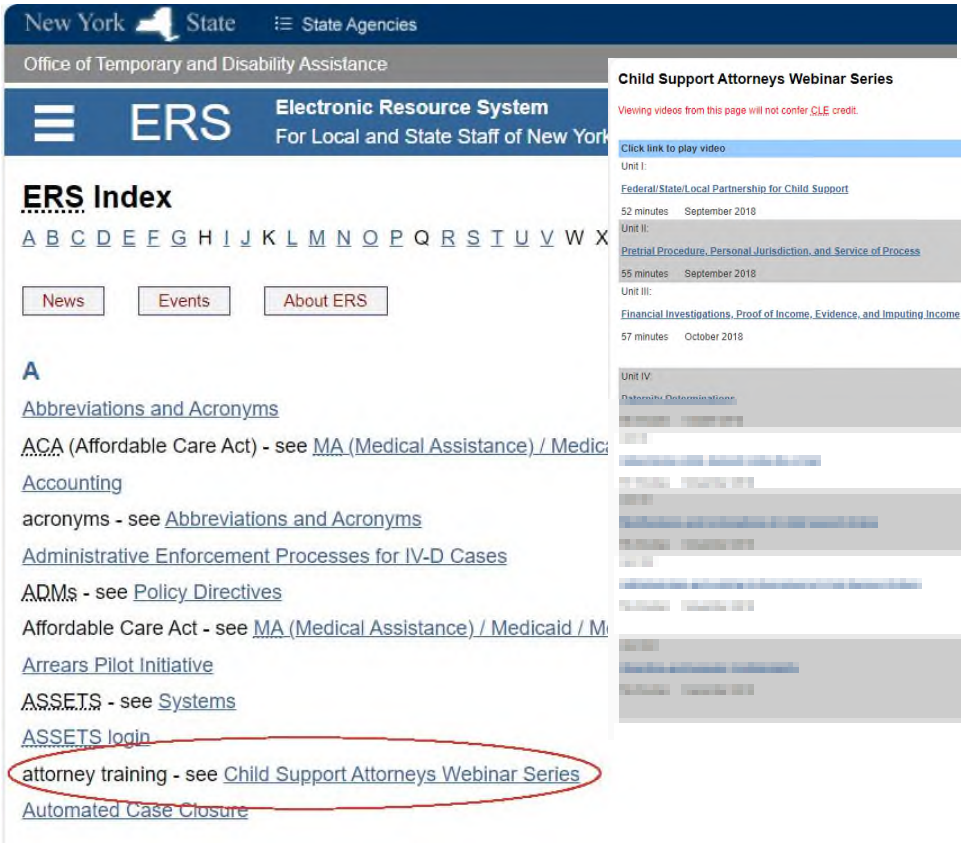
January 15, 2025

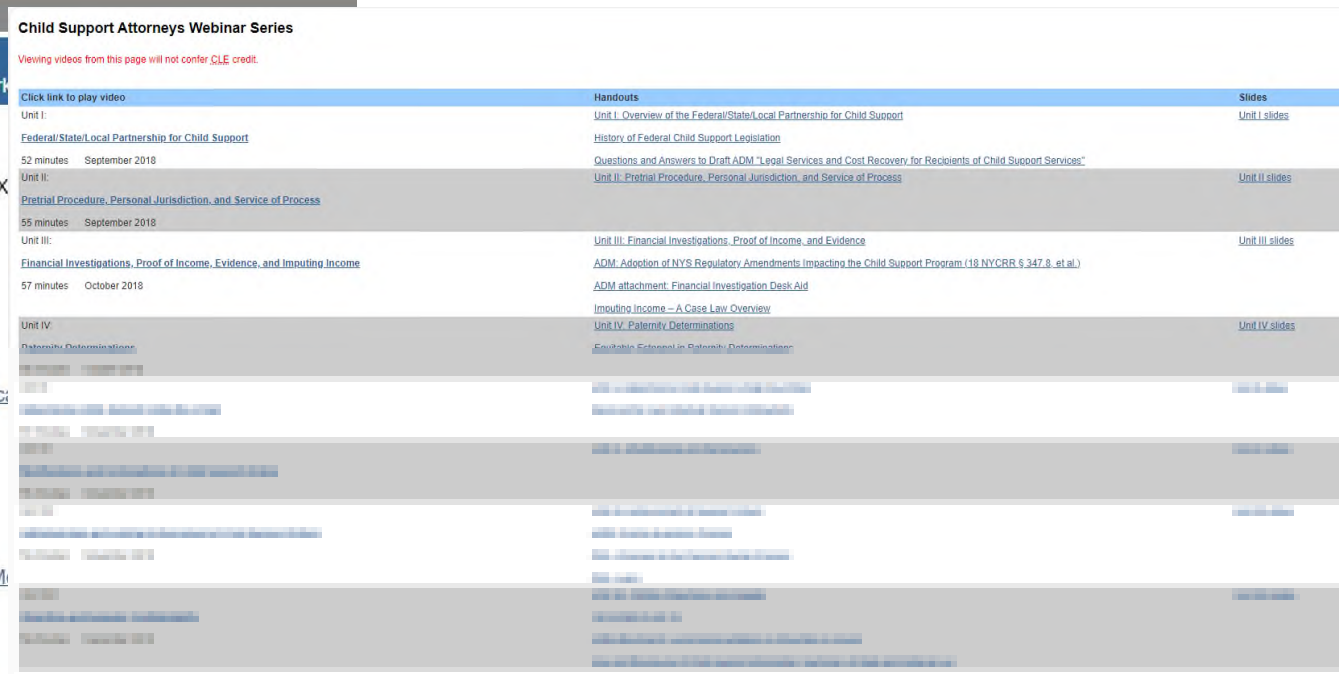
Introduction

Overview

- Paternity and Parentage
- Establishment
  - Child Support Standards Act
  - Statutory Cap
- Imputing Income
- Procedure
- Modification
- Violation
- UIFSA

Child Support Attorneys Webinar Series





Paternity and Parentage

Overview

The Child-Parent Security Act was signed into law on April 3, 2020 as part L of the Article VII Budget Bill, and took effect February 15, 2021.

Overview

- Addition of new Article 5-C of the Family Court Act (FCA), General Business Law (GBL) Article 44, and Public Health Law Article 25-B
- Amendments to:
  - Domestic Relations Law (DRL)
  - Family Court Act
  - Social Services Law (SSL)
  - Public Health Law
  - Estates, Powers and Trusts Law (EPTL)
  - Insurance Law

What changed?

- Effective 2/15/21 there is no longer a Voluntary Acknowledgment of **Paternity** in New York.
- A Voluntary Acknowledgment of Parentage should be used.
- Gestational surrogacy agreements are permitted in New York.
- Courts can issue a Judgment of Parentage for cases involving assisted reproduction and surrogacy.

What did not change?

- Establishing paternity under Article 5 of the Family Court Act
- Obtaining Orders of Filiation
- Genetic marker tests
- Estoppel
- Paternity Establishment Percentage (PEP) reporting

Family Court Act
Article 5-C

FCA Article 5-C

- Article 5-C of the Family Court Act – Judgments of Parentage of Children Conceived Through Assisted Reproduction or Pursuant to Surrogacy Agreements
- 7 Parts

FCA Article 5-C

1. General Provisions
2. Judgment of Parentage
3. Child of Assisted Reproduction
4. Surrogacy Agreement
5. Payment to Donors and Persons Acting as Surrogates
6. Surrogates' Bill of Rights
7. Miscellaneous Provisions

FCA Article 5-C – Part 1 § 581-101 – 102

General Provisions

§ 581-101 – Purpose

- To legally establish a child's relationship to his or her parents where the child is conceived through "Assisted Reproduction" (AR)

Note: Surrogacy appears to be included in AR here, but is distinguished elsewhere.

FCA Article 5-C – Part 1 § 581-101 – 102

§ **581-102 – Definitions**

(a) “Assisted Reproduction” a method of causing pregnancy other than sexual intercourse including but not limited to:

- Artificial insemination
- Donation of gametes or embryos
- In vitro fertilization (IVF), transfer of embryo

Assisted Reproduction – Surrogacy

Assisted Reproduction

- Birth mother (gestating parent) is an intended parent = legal parent
- Sperm and egg may come from the parents or from donors

Surrogacy

- Surrogate, who gives birth is not a parent
- Sperm and egg may come from the parents or from donors

Surrogacy

Genetic Surrogacy

- The surrogate is inseminated or impregnated with an embryo which is the product of her egg.

Gestational Surrogacy

- The surrogate is impregnated with an embryo which is not a product of her own egg.

Surrogacy

- **Genetic surrogacy** is prohibited under the Child-Parent Security Act while **gestational surrogacy** is permitted.
- Article 8 of the Domestic Relations Law has been amended to allow gestational surrogacy agreements in NYS. (DRL §§ 121 – 124).

FCA Article 5-C

1. General Provisions
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FCA Article 5-C – Part 2 § 581-201 – 207

JUDGMENT OF PARENTAGE

- Similar to the Order of Filiation but for
  - Children conceived AR, or
  - Children conceived per a surrogacy agreement
- Parents may be married or unmarried

FCA Article 5-C – Part 2 § 581-201

JUDGMENT OF PARENTAGE

§ 581-201 – Judgment of Parentage

- May be issued prior to birth but not effective until birth
- Petition for parentage or nonparentage of a child conceived through AR may be brought by a child, parent, participant, DSS official, or representative for deceased individual

FCA Article 5-C – Part 2 § 581-206

JUDGMENT OF PARENTAGE

§ 581-206 – Jurisdiction, and exclusive continuing jurisdiction

- Supreme, Family, or Surrogates Court
- Subject to DRL § 76 the court has continuing jurisdiction until the child attains the age of 180 days

FCA Article 5-C

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FCA Article 5-C – Part 3 § 581-301 – 307

CHILD OF ASSISTED REPRODUCTION

§ 581-301 – Scope of Article

- Does not apply to children conceived by means of sexual intercourse

FCA Article 5-C – Part 3 § 581-302

§ 581-302 – Status of Donor

- A donor is not a parent where there is proof of donative intent under § 581-202.

FCA Article 5-C – Part 3 § 581-303

§ 581-303 – Parentage of Child of Assisted Reproduction

- An individual who either
  - Provides gametes, or
  - Consents to AR with the intent to be a parent with the **consent** of the gestating parent

is the parent for all legal purposes

FCA Article 5-C – Part 3 § 581-304

§ 581-304 – Consent to Assisted Reproduction

- (a) If the gestating parent is married, the consent of both spouses is presumed and may only be challenged pursuant to §581-305.
- (b) If the gestating parent is not married the consent must be in a record “in such a manner as to indicate the mutual agreement of the intended parents to conceive and parent a child together.”

FCA Article 5-C – Part 3 § 581-304

§ 581-304 – Consent to Assisted Reproduction

- (c) If no record was made the court may find that consent existed by clear and convincing evidence that the intended parents agreed to conceive and parent the child together.

FCA Article 5-C

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FCA Article 5-C – Part 4 § 581-401 – 406

SURROGACY AGREEMENT

§ 581-401 – 406

- Eligibility – age, citizenship, medical eval., representation, health & life insurance, etc.
- Requirements – witnesses, disclosures, etc.
- Termination
- Parentage – intended parents by operation of law

FCA Article 5-C – Part 4 § 581-407

§ 581-407 – Insufficient Surrogacy Agreement

- If a surrogacy agreement does not meet the material requirements of this article, the agreement is not enforceable and the court shall determine parentage based on the intent of the parties, taking into account the best interests of the child. An intended parent's absence of genetic connection to the child is not a sufficient basis to deny that individual a judgment of legal parentage.

FCA Article 5-C – Part 4 § 581-408

§ 581-408 – Absence of Surrogacy Agreement

- Where there is no surrogacy agreement, the parentage of the child will be determined based on other laws of this state.

FCA Article 5-C

1. General Provisions
2. Judgment of Parentage
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FCA Article 5-C – Part 7 § 581-701 – 705

MISCELLANEOUS PROVISIONS

§ 581-701 – 705

- This legislation is to be construed liberally.

Matter of Sabastian N.

Matter of Sabastian N., 83 Misc.3d 514 (Erie County Fam. Ct., 2024).

- 2014 – 2022 intimate relationship
- Lisa gave birth to twins in 2000 via IVF
- Amy filled out birth certificate paperwork and crossed out father and wrote “mother 2” – which was rejected by Vital Stats
- They co-parented until 12/22 when Lisa cut off Amy’s access

Matter of Sabastian N.

- Amy filed in ECFC to establish parentage
- The magistrate dismissed – under FCA §581-206, which provides that the court has jurisdiction until the child attains 180 days
- On written objections, the court vacated the order dismissing the petition and issued an order of parentage

Matter of Sabastian N.

- The court relied on FCA §581-701
- *This legislation is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child*

Matter of Anonymous

Matter of Anonymous, 2024 WL 4821566 (NY Sup. Ct., 2024).

- The parties petitioned for an order and judgment of parentage declaring them to be the legal parents of their child born via surrogate using the genetic material of one petitioner and a donor egg.
- They entered into an agreement with a surrogate, which predated the CPSA
- The agreement substantially complied with the CPSA requirements

Matter of Anonymous

- The child was born in 2018 and more that 180 days old at the time of the filing of the petition
- Relying on FCA § 581-701, McKinney's Practice Commentaries, and Matter of Sabastian N., the court may disregard FCA §581-206
- The court granted the petition

Voluntary Acknowledgments of Parentage

Voluntary Acknowledgments of Parentage

In Hospital Births	• Public Health Law § 4135-b
Obtained By DSS	• Social Services Law § 111-k
Not in Hospital or with DSS	• Public Health Law § 4135-b(2)(b)

PHL § 4135-b – Voluntary AOP

- Subdivision 1 – In-hospital births
- Subdivision 2(a) – Obtained by DSS
- Subdivision 2(b) – Not obtained in-hospital or by DSS
- Subdivision 3(a) – Same effect as court order – file with the registrar
- Subdivision 3(b) – Registrar to file with DOH and PFR

PHL § 4135-b – Voluntary AOP

- Subdivision 4 – Full faith and credit for other state AOP
- Subdivision 5 – New birth certificate
- Subdivision 6 – Any reference to Ack of Pat. shall mean Ack of Parentage

PHL § 4135-b – Voluntary AOP

- Can be signed by:
  - Unmarried person who gave birth and genetic parent
  - Married or unmarried person who gave birth and intended parent for child conceived by AR

PHL § 4135-b – Voluntary AOP

- Must be witnessed by 2 persons not related to the signatories
- On the form promulgated by DOH & OTDA
- Signatories must be provided information orally and in writing about rights and consequences of signing

SSL § 111-k – AOP, Agreements, Genetic Tests

Procedures relating to Acknowledgment of Parentage, agreements to support, and genetic tests

- DSS may obtain an AOP – advise of rights
- Upon signing, DSS shall file the original with the registrar
- DSS may obtain a support agreement pursuant to FCA§425 – advise of rights

SSL § 111-k – AOP, Agreements, Genetic Tests

- When paternity is contested may order the parties to submit to a genetic marker test
- No test is required if the court has found it is not in the best interests of the child based on equitable estoppel, the child was conceived through AR, or the presumption of legitimacy applies

SSL § 111-k – AOP, Agreements, Genetic Tests

- Any reference to acknowledgment of paternity shall be interpreted to mean acknowledgment of parentage

FCA § 516-a – Acknowledgment of Parentage

- An AOP executed in conformance with SSL § 111-k or PHL § 4135-b and filed with the birth registrar shall establish liability for child support.
- No judicial or administrative proceeding is necessary to ratify an unchallenged AOP.

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (b) – Vacating an AOP

- May seek to rescind within 60 days of signing or turning 18 – or earlier if there is a proceeding pending
- After 60 days the AOP may only be challenged on fraud, duress, or material mistake of fact

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (b) – Vacating an AOP

- If the request is made within 60 day, the court shall order a genetic marker test, unless:
  - The child was born through assisted reproduction, or
  - It's not in the best interests of the child based on:
    - Equitable estoppel (Res judicata), or
    - The Presumption of Legitimacy

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (b) – Vacating an AOP

- If the court determines after the genetic marker test that the signor is a parent then the court will enter an “order of parentage.”
- If the person who signed is not the parent, the court shall vacate the AOP.

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (b) – Vacating an AOP – After 60 Days

- If the petitioner proves fraud, duress, or mistake of fact, the court shall order a genetic marker test (with the previous exceptions).
- If the court determines after the genetic marker test that the signor is a parent then the court will enter an “order of parentage.”
- If the person who signed is not the parent, the court shall vacate the AOP.

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (c) – AOP Void

- An AOP is void if, at the time of signing:
  - A non-signatory is a presumed parent
  - A judgment of parentage has been entered
  - Another person signed a valid AOP
  - A child born of AR has another parent by operation of law

FCA § 516-a – Acknowledgment of Parentage

§ 516-a (c) – AOP Void

- An AOP is void if, at the time of signing:
  - A signatory is a gamete donor, or
  - The signatory asserts that s/he is a parent of child conceived by AR, but the child was not conceived through AR.

Shala C. v. Dacia A.D.S.

Shala C. v. Dacia A.D.S., 2024 WL 4964797 (2nd Dept., 2024).

- Proceeding to vacate an acknowledgement of parentage (AOP) filed in July 2022
- The petitioner father signed the AOP on the day the child was born in June 2019
- Mistake of Fact – after DNA test
- Lower court denied as DNA test

Shala C. v. Dacia A.D.S.

- Lower court denied the petition on the ground that the DNA test did not constitute newly discovered evidence, because it was not in existence when the prior petition to vacate the AOP was denied without prejudice.
- The appellate division reinstated the petition and remitted for further proceedings, finding that the petition was potentially meritorious as the petitioner alleged that he was unaware that the mother had other sexual partners during the relevant time period.

Equitable Estoppel

Equitable Estoppel

This defense bars a party from contesting paternity (and requesting DNA testing) if that party has:

- Held the putative father out as the biological father of the child;
- Actively created or sponsored a parent/child relationship between the putative father and a child; or
- Delayed in challenging a determination of parentage for an unreasonable time.

M.R. v. E.R.

M.R. v. E.R., 84 Misc.3d 1240(A) (Westchester County Sup. Ct., 2024).

- The parties were married in February 2016 and there is one child of the marriage.
- JOD – August 2021
- In 2024, Mother moved to direct 3rd party to submit to DNA test – declaring that E.R. (Ex) is the not the father & vacating child support.

M.R. v. E.R.

- Mother testified that she was in relationship with Y.F. during the marriage, who is the child's bio father, who has resided with her and child since birth
- E.R. has not met the child & child support has not been paid or demanded
- Court found best interests of the child to vacate the JOD and issue order of filiation for Y.F.

C.M. v. S.J.

C.M. v. S.J., 84 Misc.3d 1240(A) (Kings County Fam. Ct., 2024).

- Respondent father had been adjudged the father of the subject child by order of filiation dated May 2016
- Respondent objected, and the matter was remitted to Family Court to determine whether equitable estoppel applies
- Matter dismissed and OOF vacated on mother's non-appearance

C.M. v. S.J.

- Mother petitioned again in February of 2021
- The court found the respondent established with clear and convincing evidence that the mother allowed the child to develop a close relationship with a father figure (Petitioner’s husband)
- Equitable estoppel will only be applied where it furthers the best interests of the child

C.M. v. S.J.

- The court found that the respondent failed to meet this burden, as the mother has been asserting respondent's paternity since 2015 and the mother and J.W. testified that they had explained to the child that respondent is her biological father and J.W. is her stepfather years ago.
- The court ordered the respondent, mother, and child to submit to DNA testing to determine the child's paternity.

L.T. v. C.C.

L.T. V. C.C., 82 Misc.3d 1221(A) (Erie County Fam. Ct., 2024).

- The child, C.A.G., born in 2017
- In 2019, an order of filiation was entered naming J.G. the father of C.A.G.
- In December 2019, J.G. passed away
- L.T. filed a petition to establish paternity on December 29, 2022

L.T. v. C.C.

- The family court found that a strong and permanent father-daughter bond has formed between C.A.G. and Mr. G. which clearly rises to the level of a “recognized and operative parent-child relationship.”
- It is in the child’s best interests to estop Mr. T. from disputing paternity.
- The court dismissed the paternity petition with prejudice.

Establishment – Child Support Standards Act (CSSA)

FCA Article 4

1. Jurisdiction and Duties of Support
2. Venue and Preliminary Procedure
3. Hearings
4. Orders
5. Compliance with Orders
6. Effect of Action for Separation, etc.
7. Undertaking

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(b)(5) defines income

- Gross (total) income reported in the most recent federal tax return
- Other types of income and compensation
- (iv) imputed income – specific to the parent
- (v) imputed income on former resourced or income

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(b)(5) defines income

- (vii) subtractions
  - FICA actually paid
  - SSI
  - PA

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(c) – basic child support obligation

1. Determine combined parental income
2. Multiply up to cap by percentage in (b)(3)
3. If income exceeds the cap apply the (f) factors
4. Pro-rate childcare
5. Calculate health insurance

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(c) – basic child support obligation

6. Calculate childcare if CP seeking work
7. Calculate education expenses

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(d) – Poverty/Self Support Reserve

- Where the obligation would reduce the NCP's income below the poverty income guidelines amount - $25/mo.
- Where the obligation would reduce the NCP's income below the self-support reserve (135% of the poverty income guidelines) - $50/mo.

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(d) – Poverty/Self Support Reserve

- Or the difference between the NCP's income and the SSR, whichever is greater

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

- FCA § 413(1)(f) – The court shall calculate the basic child support obligation, and the noncustodial parent's pro rata share of the basic child support obligation. Unless the court finds that the noncustodial parent's pro-rata share of the basic child support obligation is unjust or inappropriate, which finding shall be based on consideration of the enumerated factors.

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(f) – 10 factors

- (10) Any other factors the court determines are relevant in each case

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

- FCA § 413(1)(g) – Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the noncustodial parent to pay such amount of child support as the court finds just and appropriate
- Written order with CSSA calculation and reasons for deviation

FCA Article 4 – Part 1

Section 413 – Parents' Duty to Support Child

FCA § 413(1)(k) – Default or insufficient information

- When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the support obligation shall be based on available information about the specific circumstances of the parent, in accordance with clause (iv) of subparagraph five of paragraph (b) of this subdivision. Such order may be retroactively modified upward, without a showing of change in circumstances.

Statutory Cap

G.B. v. N.P.

G.B. v. N.P., 84 Misc.3d 1241(A) (New York County Sup. Ct., 2024).

- Imputed income $900,000 to father, $625,000 to mother.
- Application of the statutory cap ($183,000) would be wholly unjust and inappropriate, crippling the child's ability to maintain the status quo and prejudicing the mother as the custodial parent to assume far beyond her pro-rata share of the child support amount to meet the child's reasonable needs, while also depriving the child of the financial benefit she should enjoy from both parents.

G.B. v. N.P.

- Cap of $650,000
- $64,161 annual child support

V.A. v. E.M.

V.A. v. E.M., 83 Misc.3d 1282(A) (New York County Sup. Ct., 2024).

- Income cap of $250,000 is more appropriate and equitable than the $350,000 cap used by the referee

D.A. v. C.A.

D.A. v. C.A., 83 Misc.3d 1214(A) (Westchester County Sup. Ct., 2024).

- Plaintiff's CSSA income – $89,457
- Defendant's CSSA income – $104,619.24
- Combined parental income – $194,076.24
- Under the circumstances of this case and upon consideration of the (f) factors, including the financial resources of the parties and the standard of living enjoyed by the children during the marriage, no support above the statutory cap is warranted.

G.K. v. S.T.

G.K. v. S.T., 83 Misc.3d 1238(A) (New York County Sup. Ct., 2024).

- Father is a successful anesthesiologist whose earnings funded a comfortable Manhattan lifestyle for the family
- $500,000 income cap

N.F. v. O.F.

N.F. v. O.F., 82 Misc.3d 1240(A) (Westchester County Sup. Ct., 2024).

- Combined income – $953,849.86
- $350,000 income cap

M.D.R. v. M.A.G.

M.D.R. v. M.A.G., 84 Misc.3d 1247(A) (New York County Sup. Ct., 2024).

- Combined income – $2,344,000.63
  - Plaintiff – $2,045,667.30
  - Defendant – $298,333.33
- $650,000 income cap

Imputation

C.N. v. R.N.

C.N. v. R.N., 84 Misc.3d 1236(A) (Westchester County Sup. Ct., 2024).

- The court found the defendant's statement of net worth and testimony not credible, finding both represent willful attempts by defendant to hide additional sources of income to further his efforts for a reduced child support obligation.
- The defendant voluntarily took leave from his employment and offered no medical or mental health records to substantiate an inability to work.

C.N. v. R.N.

- The court further imputed additional income to defendant based upon the rental proceeds from his two roommates.

Zwicklbauer v. Hannigan

Zwicklbauer v. Hannigan, 232 A.D.3d 1138 (3rd Dept., 2024).

- The father was ordered to pay $2,400 per month in basic child support, plus an additional $1,179.24 per month toward childcare bills and health insurance premiums.
- The court calculated the father's income at $200,075 based upon information gleaned from his individual tax returns, W–2 statements and corporate tax filings.

Zwicklbauer v. Hannigan

- The Father appealed, arguing that the Support Magistrate improperly imputed income to him; should have imputed income to the Mother; and that the Support Magistrate erroneously failed to consider his support obligations to his other children in calculating his income ($2,800/mo. CS, $2,200/mo. SS).
- Only amounts actually paid shall be deducted from the parent's income.

Zwicklbauer v. Hannigan

- Appellate Division affirmed.
- The record supports the imputation to the Father, the discretion not to impute to the Mother, and the Father's failure to provide proof of payments for his other support obligations.

Doores v. Doores

Doores v. Doores, 229 A.D.3d 1138 (4th Dept., 2024).

- The Supreme Court ordered the Father pay child support based on a downward deviation from the presumptive CSSA obligation and using the Mother's current wages.
- The mother appealed and the A.D. affirmed.
- She was receiving higher rates of compensation at the time of trial than she had received before, the court was not required to determine her income based on previous tax returns or W-2s.

Doores v. Doores

- The supreme court found that the presumptive amount would be unjust and inappropriate and considered several (f) factors in awarding a lower amount and did not abuse its discretion.

Procedure

Written Objections

Marcie A.M. v Joseph A.C., 223 A.D.3d 436 (1st Dept., 2024).

Tobar v. Wheeler, 223 A.D.3d 910 (2nd Dept., 2024).

Alexander v. Avilez, 2024 WL 5063253 (2nd Dept., 2024).

- Written objections must be filed within 35 days after the date of mailing of the order (30 days for personal service or receipt in court)
- Proof of service must be filed with the objections

Written Objections

Samples v. Manragh, 225 A.D.3d 707 (2nd Dept., 2024).

- On a default written objections will be denied as the proper procedure is to move to vacate the default.

CSSA Opt-Out

V.W. v. N.M.H., 2024 WL4120672 (Nassau County Fam. Ct., 2024).

Odom v. Williams, 217 N.Y.S.3d 68 (Mem) (1st Dept., 2024).

- Requirements for opting out of the support obligation calculated pursuant the CSSA:
  - The parties have been made aware of the provisions of the CSSA
  - The parties are aware that application of the CSSA guidelines would result in a presumptively correct support award
  - The amount of the basic award calculated under the CSSA
  - The parties' reasons for departing from the CSSA.

Modification

Modification

Family Court Act § 451(3)

- Substantial change in circumstances;
- Three years have passed since the order was entered, last modified or adjusted;
- Change in either party's gross income by 15% or more since the order was entered, last modified or adjusted.

Chapter 357 of the Laws of 2024

- Amended FCA § 451(3)(a)
- Removed incarceration as the result of
  - non-payment of a child support order, or
  - an offense against the custodial parent or child who is the subject of the order or judgment

  as exceptions to finding a substantial change in circumstances.
- Elimination of exceptions was required for federal compliance.

Written Agreement or Stipulation

- A written separation agreement or stipulation that is incorporated but not merged with an order of child support is a separate contractual obligation
- Parties may choose to waive the provisions of FCA § 451(b) in a validly executed agreement

Substantial Change in Circumstances

- The party seeking to modify the order has the burden of proof
- Must show a change in his or her financial circumstances, not just a decrease in income
  - Diligent search for comparable employment commensurate with qualifications
  - If involuntarily terminated, diligent search for new employment
- NCP's receipt of public benefits or Social Security Disability payments **alone** are not a basis for downward modification
- Child's receipt of benefits or Social Security **do not** provide basis for downward modification

Substantial Change in Circumstances – Garanin v. Bykhovsky

Garanin v. Bykhovsky, 232 A.D.3d 604 (2nd Dept., 2024).

- Father sought a modification so as to terminate his obligation to pay childcare expenses
- Alleged substantial change in circumstances was that mother no longer employed a nanny
- “The party seeking modification of an order of child support has the burden of establishing the existence of a substantial change in circumstances warranting the modification.”
- The father's conclusory and unsubstantiated assertion that the mother no longer employed the nanny was insufficient to meet his burden.

Substantial Change in Circumstances – D.N. v. T.N.

D.N. v. T.N., ., 82 Misc.3d 1245(A) (Nassau County Sup. Ct., 2024).

- Mother sought an upward modification of the father's child support obligation and determination of father's pro rata share of college expenses
- Parties did not opt out of statutory bases for modification under FCA § 451 in their stipulation
- Mother met her burden using public records to show that father's income as a Nassau County police office increased more than 15% between 2017 and 2022.

Effect on Arrears – Akhtar v. Naeem

Akhtar v. Naeem, 226 A.D.3d 1284 (3rd Dept., 2024).

- Father sought a downward modification in 2018 after his employment was terminated and he was diagnosed with renal disease; petition dismissed.
- Again sought downward modification in 2022; obligation reduced but only because one child was emancipated, no further relief granted.
- On appeal, father challenged Family Court's refusal to cancel child support arrears in excess of $500 which accrued from September 2017 to January 2019.
- "In fact, contrary to Family Court's analysis, this is not a matter of arrears being forgiven in contravention of Family Ct Act § 451 but, rather, a circumstance of arrears between September 2017 and January 2019 *never having accrued*." (emphasis added)

Suspension - Parental Alienation – Franklin v. Quinones

Franklin v. Quinones, 225 A.D.3d 759 (2nd Dept., 2024).

- Father petitioned to suspend his support obligation based upon mother's interference with access to the child.
- Appellate Division held that the Family Court should have granted father's motion to suspend support obligation.
- Evidence established that the mother "encouraged the estrangement of the father and [the child], and deliberately frustrated visitation" and "and made no effort to assist the [child] in restoring [the] relationship with the father."

Violation

Powers of the Court

FCA § 454 sets forth the relief that the court can grant after finding the respondent in violation of an order of support

- A violation may be willful or non-willful
- Subdivision (2) sets out the penalties for a finding of violation
- Subdivision (3) sets forth the sanctions for a finding of a willful violation

Willfulness

- “[F]ailure to pay support as ordered, shall constitute prima facie evidence of a willful violation” FCA § 454(3)(a)
- If the petitioner submits evidence of the respondent’s failure to pay support, the burden of going forward shifts to the respondent to offer some credible evidence of inability to pay.

Willfulness

- Upon a finding by a support magistrate of a willful violation and recommendation for commitment to jail, the family court judge has the option of whether or not to confirm the findings.
- The family court judge may direct that commitment be served on certain days, or parts of days; or may stay or suspend the sentence, which may be conditioned upon regular payments.

Burden of Proof – Franco v. Paez

Franco v. Paez, 228 A.D.3d 656 (2nd Dept., 2024).

- Father appealed from an order of the Family Court finding he willfully failed to comply with the order of child support.
- Appellate Division affirmed as the father failed to meet his burden – he testified he worked sporadically but did not offer any testimony or documentation about attempts to find work during times he wasn't employed.
- Father failed to show that issues with his immigration status rendered him unable to meet his obligation because he had previously obtained and maintained employment in the United States.

Burden of Proof – Jobin v. Hotaling

Jobin v. Hotaling, 228 A.D.3d 1085 (3rd Dept., 2024).

- Mother commenced this violation proceeding alleging that the father had once again failed to meet his support obligations and asked the court to impose the suspended jail sentence entered in 2015.
- Upon the father's request, Family Court admitted the payment records retained by DSS, which demonstrate that the father failed to pay child support for three months in 2022, all of 2021, seven months in 2020, and all of 2019, 2018 and 2017.

Burden of Proof – Jobin v. Hotaling

Jobin v. Hotaling, 228 A.D.3d 1085 (3rd Dept., 2024).

- “Although the mother could have been more detailed in her testimony, ‘[t]here is no question that the father failed to make support payments as ordered, which is prima facie evidence of a willful violation.’ Thus, the burden shifted to the father to demonstrate an inability to pay. However, the proof submitted by the father does nothing but further demonstrate his failure to pay and, as such, was ‘clearly inadequate to meet his burden of showing an inability to pay that would defeat the prima facie case of willful violation.’” (internal citations omitted)

Voluntary Unemployment – Tanya N.C. v. Bryant P.

Tanya N.C. v. Bryant P., 226 A.D.3d 485 (1st Dept., 2024).

- Father appealed from an order of the Family Court finding that he willfully violated a child support order and directing a money judgment be entered against him.
- Father chose to forgo employment at Montefiore Hospital rather than consent to vaccination, which constituted a willful violation of the support order.
- Evidence showed he searched online only for positions that required him to be vaccinated, presenting the same impediment to employment as his previous position.

Right to Counsel – Hanisz v. Wright

Hanisz v. Wright, 229 A.D.3d 548 (2nd Dept., 2024).

- Mother filed a violation petition and Family Court found that the father willfully violated child support provisions of the judgment of divorce and entered a money judgment against the father
- Father appealed contending his statutory right to counsel under FCA § 262 was violated
- Right to counsel in a violation proceeding only when an order of contempt is being sought – here the mother withdrew her demand for a contempt finding

Right to Counsel – Onondaga County v. Taylor

Onondaga County v. Taylor, 229 A.D.3d 1381 (4th Dept., 2024).

- Taylor appealed a Family Court order sentencing him to six months of incarceration for willfully violating a child support order.
- Appellate Division reversed, finding that the Family Court did not afford the respondent the right to a fair hearing by denying his right to counsel.
- Family Court judge was not impartial and expressed a preconceived opinion at the hearing.

Right to Counsel – McCloskey v. Unger

McCloskey v. Unger, 231 A.D.3d 1031 (2nd Dept., 2024).

- Father appealed from an order of commitment of the Family Court based upon a finding of willful violation.
- Appellate Division reversed, finding that based on the meaningful representation standard, the father had been denied effective assistance of counsel.
- Counsel failed to obtain relevant medical and financial information to support father's contention that he was unable to work and dependent on public assistance.

Uniform Interstate Family Support Act (UIFSA)

Review – Common Subtopic Inquiries

- Personal/Long-Arm Jurisdiction
  - What qualifies as an “act or directive?”
    - FCA § 580-201 – Bases for Jurisdiction Over Nonresident
      - (a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
        - (5) the child resides in this state as a result of the acts or directives of the individual
- Registration and Enforcement
  - Is registration/notice of registration upon non-registering party required for administrative enforcement?
    - FCA § 580-603 – Effect of Registration for Enforcement

Review – Common Subtopic Inquiries

- Continuing Exclusive Jurisdiction (CEJ)/Modification
  - Which state has CEJ?
    - FCA § 580-205 – Continuing Exclusive Jurisdiction to Modify Child Support Order
- Residence v. Domicile
  - Can a party have more than one residence?
    - Burnes v. Burnes, 2024 WL 5135427 (Conn. Super. Ct. Dec 11, 2024).
- Enforcement/Choice of Law
  - Computation of arrearages versus enforcement
    - FCA § 580-604 – Choice of Law

Case Law Update

Sherman v. Killian

Sherman v. Killian, 225 A.D.3d 771 (2nd Dept., 2024).

- Parties were divorced in NY in 2009. The father was directed to pay the mother $1,411 per month in child support
- The parties executed a settlement agreement in 2021 relating to custody, allowing the mother and child to move to Florida
- The agreement provided that upon relocation, the parties would cooperate in filing a petition to terminate the father's obligation

Sherman v. Killian

- The father filed the petition to terminate and the mother moved to dismiss based upon lack of SMJ, citing *inter alia* DRL § 75–a(7)
- Dutchess County Family Court granted her motion
- The 2nd Dept. held that the DRL did not apply, but rather the UIFSA
  - A person is a “resident” of NYS when they have a significant connection with some locality in the state as the result of living there for some length of time during the course of a year
  - The mother failed to show that NYS lost CEJ and a hearing was warranted

Isenberg v. Isenberg

Isenberg v. Isenberg, 227 A.D.3d 1078 (2nd Dept., 2024).

- The parties divorced in 2019 by NJ judgment of divorce
- The father filed a modification petition in Rockland County Family Court to modify the NJ judgment to award him child support for one of the children. The SM dismissed and the father filed objections
- The Family Court denied the objections

Isenberg v. Isenberg

- Later, the Family Court granted his motion for leave to reargue the aforementioned objection.
- Upon reargument, the prior denial was upheld. The father was also directed to seek permission from the court before filing any additional petitions for a period of one year from the date of entry of the order.
- On appeal, the 2nd Dept. Affirmed
  - The father was a permanent resident of NJ and under the UIFSA, the state issuing the order retains CEJ so long as an individual contestant continues to reside there. NY did not have jurisdiction to modify.

Rotem v. Mancini

Rotem v. Mancini, 227 A.D.3d 1081 (2nd Dept., 2024).

- The parties were never married and had one child
- In 2019, an Israeli court ordered the father to pay monthly support payments to the mother
- In 2020, the order was registered in Richmond County Family Court and the father moved to remove the matter to the Supreme Court and to vacate the registration

Rotem v. Mancini

- The Supreme Court denied the motion to vacate the registration, the father appealed and the 2nd Dept. affirmed.
  - Under the UIFSA, “[a] support order or income withholding order issued in another state or a foreign support order may be registered in this state for enforcement” (Family Ct Act § 580–601). Here, the father failed to allege or establish any of the enumerated defenses pursuant to Family Court Act § 580–607(a). To the extent that the father contended that his consent to the foreign order was based on a mistake, his remedy was to move to vacate or resettle the order in the courts of Israel. The father's contention that the foreign order should be vacated based on common-law principles of comity was without merit.

Burnes v. Burnes

Burnes v. Burnes, 2024 WL 5135427 (Conn. Super. Ct. Dec 11, 2024).

- In 2023, the father filed an objection to Florida's Notice of Registration
- In 2024, he filed a general appearance listing a CT address and he amended his original objection to also allege that CT did not have jurisdiction and could not enforce an order without proof of Florida's PJ

Burnes v. Burnes

- Personal jurisdiction
  - The father failed to submit any documentary evidence regarding residence
  - The CT address listed in FL's registration packet matched the address he listed on his objections and general appearance
  - He was personally served at that residence

- Subject Matter Jurisdiction
  - Registration of the order with the required documents implicates the SMJ of the court
  - Father's due process rights were protected – he was properly served, filed a general appearance, timely objected

Office of Child Support Enforcement v. Milner

Office of Child Support Enforcement v. Milner, 2024 Ark. App. 117 (2024).

- Arkansas OCSE appealed from an order refusing to enter judgment against the father for an arrearage $15,000 and $18,000 in interest under a registered support order from Alaska. The Columbia County Circuit Court found that the father owed no further support for the children or to the State of Alaska, and his child-support obligation “had been completely satisfied.”
- The Alaskan order of support was registered in the Arkansas in 2010. The order was the second modification of an original 1995 order.

Office of Child Support Enforcement v. Milner

- Arkansas OCSE began enforcement in 2022 when the children were 26 years old. The father was homeless at the time
- The father's obligation began in 2004 when he worked for Cooper Tire
  - His IWO payments did not cover the full monthly obligation – support for two other children was also being withheld
- Despite losing his job in 2010, he did not seek a modification in Alaska

Office of Child Support Enforcement v. Milner

- Arkansas Law allows child support arrearages to be recovered only until the child for whom support was ordered turns 23
- Alaska could collect arrearages indefinitely
- UIFSA requires that the limitation period of the enforcing state or the issuing state be applied, *whichever is longer*
  - *Collection procedures and remedies are provided by the law of the state where the order is registered*

Office of Child Support Enforcement v. Milner

- Arkansas law placed no limitations on the enforcement of child support judgments
- The father's arrears became a judgment by operation of Alaskan law
- The Court of Appeals held that OCSE's attempt to enforce the arrearage in Arkansas was valid and timely

County of Alameda Dept. of CSS v. T.O.

County of Alameda Dept. of Child Support Services v. T.O., 2024 WL 906792 (Cal Ct. App. Mar. 4, 2024).

- The parties were divorced in China in 2018 and the father was ordered to pay child support to the mother for their one child
- The mother moved to NJ with the child and new spouse in 2021, and the father lived in California
- In 2020, the DCSS in CA filed to establish support against the father

County of Alameda Dept. of CSS v. T.O.

- The father answered the complaint and alleged lack of SMJ because of the existing Chinese order and lack of PJ DCSS argued that a foreign order may be recognized in CA, but the issuing country:
  - (1) must have been declared a reciprocating jurisdiction by either the United States or California; (2) must be found to have laws that are substantially similar to the UIFSA; or (3) enforces the Hague Convention.
  - No party attempted to register the Chinese order and the father did not establish that the order was entitled to recognition

Questions?

Office of Temporary and Disability Assistance