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### Support Defined

According to MCL 552.602, support may include payment of expenses of medical, dental and other health care, child care expenses and educational expenses.

### Deviation Statute

#### **552.605 Child support order; deviation from formula; agreement.**

Sec. 5.

(1) If a court orders the payment of child support under this or another act of the state, this section applies to that order.

(2) Except as otherwise provided in this section, the court **shall** order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519. The court **may enter** an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be **unjust or inappropriate** and sets forth in **writing or on the record** all of the following:

- (a) The child support amount determined by application of the child support formula.
- (b) How the child support order deviates from the child support formula.
- (c) The value of property or other support awarded instead of the payment of child support, if applicable.
- (d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

(3) Subsection (2) does not prohibit the court from entering a child support order that is agreed to by the parties and that deviates from the child support formula, if the requirements of subsection (2) are met.

## Deviation Formula

1.04(A) When applying the formula would lead to an **unjust** or **inappropriate** result, the court may exercise its discretion, and, on a case-by-case basis, deviate from the formula and determine a more appropriate support amount. Deviations cannot be based solely on disagreement with the policies embodied in the formula. See MCL 552.605, *Ghidotti v Barber*, 459 Mich 189 (1998), and *Burba v Burba*, 451 Mich 637 (2000).

1.04(B) When a court decides to deviate, it **should still follow the formula** except for the provisions that create an unjust or inappropriate result in that case.

(1) When entering an order that deviates from the child support formula, the court **must** record (a) its reasons for finding that the formula would produce an unjust or inappropriate result, **as well as** (b) the information required by MCL 552.605(2). *Burba v Burba*, 461 Mich 637, 644-45 (2000).

(2) Friend of the court recommendations that deviate from the formula **must comply** with the requirements of MCL 552.505(1)(h).

### 1.04(C) *Agreements to Deviate*

MCL 552.605(3) permits the court to enter orders that deviate from the formula based on an agreement of the parties, **so long as the court also satisfies all the requirements of MCL 552.605(2).**

1.04(D) In exercising its discretion to deviate, the court may consider any factor that it determines is relevant.

## Deviation Formula Factors

Strict application of the formula may produce an **unjust** or **inappropriate** result in a case when any of the following situations occur:

- (1) The child has **special needs**.
- (2) The child has **extraordinary educational expenses**.
- (3) A parent is a **minor**.
- (4) The child's residence **income is below the threshold to qualify** for public assistance, and at least one parent has sufficient income to pay additional support that will raise the child's standard of living above the public assistance threshold.
- (5) A parent has a reduction in the income available to support a child due to extraordinary levels of **jointly accumulated debt**.

- (6) The court awards **property in lieu of support** for the benefit of the child (§4.03).
- (7) **A parent is incarcerated** with minimal or no income or assets.
- (8) A parent has incurred, or is likely to incur, **extraordinary medical expenses for either that parent or a dependent**.
- (9) A parent earns an **income of a magnitude not fully taken into consideration** by the formula.
- (10) A parent receives **bonus income in varying amounts** or at irregular intervals.
- (11) **Someone other than the parent** can supply reasonable and appropriate **health care** coverage.
- (12) A parent provides substantially all the **support for a stepchild**, and the stepchild's parents earn no income and are unable to earn income.
- (13) A child earns an **extraordinary income**.
- (14) The court orders a parent to pay **taxes, mortgage installments, home insurance premiums, telephone or utility bills**, etc. before entry of a final judgment or order.
- (15) A parent must pay significant amounts of **restitution, fines, fees, or costs** associated with that parent's conviction or incarceration for a crime other than those related to failing to support children, or a crime against a child in the current case or that child's sibling, other parent, or custodian.
- (16) A parent makes payments to a **bankruptcy plan** or has debt discharged, when either significantly impacts the monies that parent has available to pay support.
- (17) A parent provide a **substantial amount of a child's day-time care** and directly contributes toward a significantly greater share of the child's costs that those reflected by the overnights used to calculate the offset for parental time.
- (18) A child in the **custody of a third-party recipient** spends a significant number of overnights with the payer that causes a significant savings in the third party's expenses.
- (19) The court ordered **nonmodifiable spousal support** paid between the parents before **October 2004**.

- (20) When a parent's share of net **child care expenses exceeds 50 percent** of that parent's base support obligation calculated under §3.02 before applying the parental time offset.
- (21) **Any other factor** the court deems relevant to the best interests of a child.

#### Key Cases

- *Ghidotti v Barber*, 459 Mich 189; 586 NW2d 883 (1998). A trial court may not deviate from the child support formula unless it determines that circumstances exist that render compliance with the formula “unjust or inappropriate”. The income of the parties are accounted for when the child support levels are set.
- *Burba v. Burba*, 461 Mich 637; 610 NW2d 873 (2000). Income disparity between the parties does not render the application of the child support formula unjust or inappropriate.
- *Borowsky v. Borowsky*, 273 Mich App 666; 733 NW2d 71 (2007). Trial courts are not free to deviate from the Michigan Child Support Formula because they disagree with its provisions.
- *Holmes v. Holmes*, 281 Mich App 575; 760 NW2d 300 (2008). Merely because the circuit court possesses the power to modify a child support award, it may not simply ignore an unambiguous contractual provision regarding child support. Inserting the purported contract between the parties regarding support in the property provision of the Judgment of Divorce rather than in the child support section was a distinction lacking meaningful difference. The Court of Appeals held that regardless of the location of the contract regarding support in the Judgment of Divorce, this particular provision was contractual, freely negotiated and unambiguous and therefore it was enforced as written.

- *Hance v. Hance*, 1998 WL 1990311. The trial court deviated and the Court of Appeals upheld a deviation from the formula as the parties historically provided their children with lavish benefits thus making the case unusual.
- *Schultz v. Waynick*, 2003 WL 22204861. In determining the amount of child support, the trial court may only deviate from the Michigan Child Support Formula if application of the formula would be unjust or inappropriate under the facts of the case. MCL 722.717(3). A trial court may not deviate from the formula based on a factor that is already accounted for in the formula. *Burba v. Burba*, 461 Mich 637, 648-649; 610 NW2d 873 (2000). The formula is based on the children's needs and the actual resources of each party. MCL 552.519(3)(a)(vi); *Burba, supra* at 648. Thus, a court cannot deviate from the formula based on the children's needs.
- *Radulovich v. Koffman*, 2005 WL 1249253. This case represents a deviation based upon the special needs and private school tuition of the parties' minor child. The trial court deviated from the support formula and required the father to pay two-thirds of the minor child's tuition at private school based upon the minor child's independent and special needs. Although the Court of Appeals approved the deviation, it found that the deviation amount was questionable given that the trial court only considered the parties' incomes and did not consider its prior order regarding finances that father continued to pay with respect to the other child's college education. As a result, the court found that in light of the prior order and without taking into account the credit received for paying the parties' other

child's education expenses that the trial court abused discretion. The case was remanded for proceedings consistent with the Court of Appeals opinion.

- *Department of Human Services v. Erdman*, 2007 WL 2711314. The court held that the payor's heavy medical expenses, in light of his modest income, put the trial court's decision to depart from the child support formula and enter an award of zero, within the range of principled outcomes.
- *George v. George*, 2008 WL 4004928. The court is required to carefully articulate its reasons for deviating from the child support formula. The formula contains no expressed mandate that those reasons be articulated in writing. In this case, the Referee deviated without specific written findings. The trial court allowed the Referee to appear at the hearing before the trial court and explain her reasons for the deviation which the Court of Appeals upheld as an appropriate writing or on the record deviation.
- *Toal v. Toal*, 2010 WL 1568479. The Plaintiff was a former investment banker earning \$350,000. He had given up his investment banking career and became a school teacher with a much more meager annual salary of approximately \$40,000. \$350,000 was utilized to calculate the child support amount.
- *Lemmen v. Lemmen*, 2010 WL 454959. Child support was set at \$9,835 a month. At the Referee hearing, the Referee concluded that because the parent paying child support increased his standard of living, that there was no reason why the minor child should not also increase her standard of living through the payment of child support.

- An argument was made in this case that the payer failed to timely raise the issue of deviation. The case is further cited for the proposition that if you are going to raise a deviation, raise it as early as possible and as frequently as possible.
- *Stout v. Stout*, 2011 WL 222256. The trial court utilized the catchall deviation factor and deviated based upon the parties' contractual agreement. The Court of Appeals upheld the deviation.
- *Cook v. Bossenbroek*, 2012 WL 4800425. A stipulated Uniform Child Support Order (USCO) failed to comply with three of the four requirements under MCL 552.605(2) and therefore, the UCSO was void. Further in this case, the trial court applied the formula and determined that the Defendant would owe approximately \$63,000 per year in child support. The court then departed from the formula by 50% and ordered the Defendant to pay \$30,000 per year in support. In deviating, the court took into consideration the following: (1) that the Plaintiff received approximately \$3.5 million dollars in the divorce settlement agreement, (2) that the parties initially did not intend that either party would pay child support and (3) that the payee had more than sufficient assets to support the two children. Based upon these findings, the Court of Appeals held that the trial court did not abuse its discretion in deviating from the formula.

### **Burden of Proof & Standard of Review**

Just as with a statute, courts must comply with the plain language of the Michigan Child Support Formula, and may not read language into the formula that is not present (*Peterson v. Peterson*, 272 Mich App 511, 518; 727 NW2d 393 (2006)). When a word is undefined in a

statute, resort to the standard dictionary definition is an appropriate means of determining its common and approved usage (*Horace v. Pontiac*, 456 Mich 744, 756; 575 NW2d 762 (1989)).

An award of child support rests in the sound discretion of the trial court, and its exercise of discretion is presumed to be correct (*Morrison v. Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1992)). The party appealing a support order has the burden of showing the abuse of discretion (*Thompson v. Merritt*, 192 Mich App 412, 416; 481 NW2d 735 (1991)). Whether a trial court properly operated within the statutory framework relative to child support calculations and any deviation from the child support formula are reviewed *DeNovo* as questions of law. An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes (*Maldonado v. Ford Motor Co.*, 476 Mich 372, 388; 719 NW2d 809 (2006)). A finding is clearly erroneous if this court, on all of the evidence, is left with a definite and firm conviction that a mistake was made (*Beason v. Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990)).

#### Interesting Cases

- *Ewold v. Ewold*, 292 Mich App 706; 2010 NW2d 396 (2011). A parent's alleged interference with the parents parenting time rights by the other parent is not a circumstance that would permit deviation from the Michigan Child Support Formula.
- *Bettors v. Bettors*, 2000 WL 33533980. A parent was held in contempt of court several times for failure to pay his child support. As a result, the trial court placed an injunction upon the payor preventing him from gambling or entering a place of gambling. The payor appealed and the Court of Appeals upheld the injunction. Specifically, it held that since it appeared from the record that the payor's



gambling was impeding his ability to comply with the court's ordered child support which is necessary for his children, that the injunction was proper.

- *Fuhst v. Cain*, 2000 WL 33417464. The Court of Appeals held that a request for an increase in child support to include private school expenses was appropriate under the child support statute.
- *Orbach-Shear v. Orbach*, 2008 WL 441607. The Court of Appeals held that the trial court committed an error when it ordered an attorney fee award to be added to the Defendant's child support obligation as arrears.

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