

RETROACTIVE CHILD SUPPORT IN DEPENDENCY CASES

Background & Analysis

Florida Statutes provide authority for the dependency court to issue child support orders, but are silent as to the specific issue of retroactive support in a dependency case. Issues relating to retroactive child support, as they have been dealt with in domestic relations cases, are discussed in the first question under this heading. In that section, it was indicated that the parent who was awarded the majority of time-sharing may only seek retroactive child support back to the filing date of the petition for modification. In fact, it is considered error for the court not to award support from the date of the petition for modification “where the need for the support and the ability of the parent to pay existed at the time the petition was filed.” Young v. Young, 745 So. 2d 1074 at 1076 (Fla. 4th DCA 1999). See also Nierenberg v. Nierenberg, 758 So. 2d 1179 (Fla. 4th DCA 2000). A court cannot however, award retroactive child support in a modification action prior to the filing date of the petition. See Anderson v. Anderson, 609 So. 2d 87 at 88 (Fla. 1st DCA 1992) and Wertheim v. Wertheim, 667 So. 2d 331 (Fla. 1st DCA 1995). It would appear that this line of reasoning could be applicable when these issues arise in a dependency setting.

While Chapter 39 gives the dependency court authority to decide all matters pertaining to child support, it neither mentions nor requires either parent to file a petition to change custody or child support. This is a notable difference from dissolution or other matters involving children. Instead, in dependency, the court’s jurisdiction is invoked when the State files a petition pursuant to §39.013(2), Florida Statutes. As a result of that petition, the court has jurisdiction to place the child with a non-offending parent and to order the previous custodial parent to pay support. It follows that the order for child support (if not announced at the time of the change in placement) should be retroactive to the date the State placed the child with the non-offending parent.

Additional jurisdictional questions may arise in a circuit following the “one family, one team” model as opposed to the “one family, one judge” model. Clearly, if all UFC matters are addressed before one judge, there is much less confusion as to which forum should deal with which issue. In a “one team” setting, if child support was originally ordered in a domestic relations case, and a subsequent dependency arose, then it would appear the domestic relations court would be the more appropriate forum for determining retroactive support while taking into consideration any placement changes that may have been ordered in the dependency action.