Child Support in New York State

As if complying with the Child Support Standards Act wasn't tough enough, things just got a little tougher thanks to a New York Court of Appeals ruling on child support affecting families with combined incomes of $80,000 or more.

You might well be wondering what all this has to do with you. Believe it or not, a rapidly increasing number of people are finding themselves in this situation. With more and more two income families, that $80,000 figure is no longer a rarity. If a man earns $50,000 and his wife earns $45,000, you've already become an $80,000.00 income family.

The Child Support Standards Act

Under the Child Support Standards Act, in effect since 1989, minimum guidelines were established for paying child support. Those guidelines are still in effect today. According to the statute, child support is determined by combining parental incomes up to $80,000 and multiplying that amount by 17% for one child, and 25% for two, 29% for three, 31% for four and 33% for five or more children. Each parent pays support in the same percentage they contributed to the combined parental income.

The statute stipulates ten factors the court could consider to determine whether application of the basic percentage rate as stipulated above would be unjust for families with combined income of $80,000 or more. The ten factors to be considered include such things as: consideration of the financial resources of both parents; a child's special need; the standard of living the child(ren) would have if there were no divorce; the needs of other children of the non-custodial parent, etc.

To appreciate how this works, the Court, for example, might question whether the custodial parent in a family with two children, where the combined income is $120,000 needs $40,000 or ($3,333 a month) to maintain the children's customary lifestyle.

The Way it Was

The statute, as it had been interpreted in the past, instructs that where the combined parental income exceeds $80,000, it is within the Court's discretion to exceed the guidelines and order support over the first $80,000 of combined parental income by applying the ten factors stipulated by the statute. The Courts throughout the State of New York have been reluctant to blindly apply the child support percentage to a combined income to over $80,000.

In 1991, the Appellate Division in the Second Department, in Reiss v. Reiss, held that after considering two of the factors as set forth in the statute, the application of child support percentage to income over $80,000 was an inappropriate exercise of discretion.

In 1992, the Appellate Division in the First Department in Horsburgh v. Horsburgh, held that the Court properly looked at the ten factors rather then blindly applying the child support percentage to the parent's combined income over $80,000.

And in 1994, the Appellate Division in the Third Department, in Faber v. Faber, held that the lower court improperly failed to consider the actual needs of the child when the Court blindly applied the child support percentage to combined income up to $80,000.

What is Different Now

What has changed appears to be who has the burden of proof on this issue. In 1995, the New York Court of Appeals, the highest court in the State of New York, in Cassano v. Cassano, 85 NY2d 649 (Court of Appeals, 1995), held that the Hearing Examiner correctly applied the statutory percentage to income over $80,000 without setting forth reasons for that particular award. Only when the statutory percentage would be unjust, due to extraordinary circumstances, does the statute require the Court to set forth its reasons.

This seems to place application of the percentage to combined income over $80,000 within the Court's discretion and delegates to the party who will pay support the burden of showing why the Court should not order support in excess of the first $80,000 of combined parental income. In simple language, that means you must be prepared to show why applying the percentage to income exceeding $80,000 would be unjust in your situation.

The Court declared that the stated basis for an exercise of discretion to apply the formula to income over $80,000 should reflect both that the Court has carefully considered the parties' circumstances, and that it found no reason why there should be a departure from the child support percentage.

Domestic Relations Law Section 240 1-b(c)(3) provides that for the combined adjusted gross income over $80,000, child support shall be calculated using either the factors listed in Domestic Relations Law Section 240 1-b(f) or the percentages under Domestic Relations Law Section 240 1-b(b)(3). Initially, it was understood that for the court to apply the percentages past $80,000, the reasons must satisfy the factors of Domestic Relations Law Section 240 1-b(f).

For high income cases, the court may set a cap which falls over $80,000 but less than the total combined income. In Kaplan v Kaplan, 21 A.D.3d 993,(2nd Dept. 2005) Appellate Division affirmed the lower court's holding in applying CSSA guidelines to a combined income of $300,000 when the combined income was over $400,000. However, as there was an annual award of maintenance of $90,000 per year, the Appellate Division corrected the lower court's child support calculation and deducted that amount from the $300,000 cap pursuant to Domestic Relations Law Section 240 1-b(b)(5)(vii).

What Does All This Mean to You?

The decision in Cassano v. Cassano does not condone or stand for the proposition that child support should blindly be applied to the child support percentage to combined parental income over $80,000. What it does do is put the burden of proof of establishing hardship or unfairness so as to not apply the percentage to income over $80,000 on you. The Court made clear, however, that it values a complete investigation into the existence of extraordinary circumstances based on the circumstances of the parties, and the needs of the child(ren).

In sum, therefore, if the combined parental income exceeds $80,000 one must be prepared to demonstrate at the hearing that it is unnecessary to order support on income exceeding $80,000 in order to see that the child's needs are met.