Memorandum on Parenting-Time Adjustments and Addendum

(Revised, Addendum of May 12, 2023)

Submitted by:
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This document is being used for discussion purposes only with the Georgia Child Support Commission.

To: Georgia Child Support Guidelines Statute Review Subcommittee
From: Jane Venohr
Date: Apr 18, 2023 (Revised May 12, 2023)
RE: Parenting Time Adjustments

There are many sub-issues in developing a parent-time adjustment. CPR's contract identifies the following.

Exhibit 1: Contract Requirements and Preliminary, Short Answers

Contract Requirements	Preliminary Short Answer
1. Contractor will identify the main methods used by other states to account for parenting time when calculating child support.	There are over a dozen methods currently in use by states. An overview is provided later in this memorandum.
2. Contractor will give a recommendation as to the simplest method to account for parenting time in child support calculations.	All of the formulas are simple if automated. The easiest formula to calculate manually is a percentage adjustment such as what AZ and KY use. There is a trade-off, however, between simplicity and precipitous decreases between intervals. (This is illustrated in Exhibit 7 of this memo.)
3. Contractor will provide recommendation on what is the most appropriate method for Georgia to consider to account for parenting time in child support calculations.	That is to be determined based on discussions with subcommittee. Some factors to consider: • Appropriateness for GA • Ease of use • Understood by guidelines users including parents • Perception of fairness • Degree of transparency • Trends in parenting time • Future legislative revisions
Contractor will provide recommendations accounting for parenting time in cases with various levels of parenting time ranging from 1% to 49% O.C.G.A. 19-6-15 (a)(17); O.C.G.A. 19-6-15 (i)(2)(K). Contractor will provide recommendations accounting for parenting time in 50/50 equal physical custody cases. O.C.G.A. 19-6-15 (a)(9); O.C.G.A. 19-6-15 (a)(14); O.C.G.A. 19-6-15 (i)(2)(K).	Ideally, the same formula would apply across all timesharing arrangements. States with one formula for timesharing below 50% and another at 50% typically have a precipitous decrease between the two formulas or clustering around 50% timesharing. Another thing to keep in mind is the lower the timesharing threshold the less likely there is to a precipitous decrease when that timesharing threshold is met.
Contractor will provide recommendations accounting for parenting time in split parenting cases as defined in O.C.G.A. 19-6-15 (a)(21) and O.C.G.A. 19-6-15 (l).	To be addressed after parenting-time is addressed. This is typically an easier issue. Averaging of time is generally fine except when there is at least one child 100% of

	time with one parent only. When this occurs, the economies of scale from having more children are distorted. (Economies of scale mean that expenditures on a child are not what would be expended for one child multiplied by the number of children; rather, there may be some sharing of bedrooms, clothes that are handed down, and etc..)
4. When considering the most appropriate way for Georgia to account for parenting time, Contractor will note that not all parents have been granted court-ordered parenting time. Contractor should be aware of Georgia's legitimation statute when making recommendations for Georgia. In 2021, the Georgia Department of Vital Records reported that 46% of Georgia's children were born out of wedlock.	A common criterion among state guidelines with a parenting-time adjustment formula is court-ordered parenting time, a parenting plan, or agreed-to-parenting time. Several states without this criterion find it difficult to determine the actual time with each parent particularly when each parent reports a different amount. Although having a clear roadmap and mechanism for never-married parents to gain court-ordered parenting time is important, the issue is separate from the child support guidelines that are used to calculate support.
5. If a unit of time is needed to account for parenting time, what unit of time should be used?	The most important thing is to allow some flexibility for non-traditional work and timesharing arrangements (e.g., one parent works evenings and the other works days, both parents provide the child meals, but the child spends the night with one parent). This can be addressed through judicial discretion or defining time as narrowed as 4-hour blocks. See examples from other states on page 17 of this memorandum. Also, see page 3 of the report of the Parenting Time Deviation Study Committee for a summary of their recommendations: https://csc.georgiacourts.gov/wp-content/uploads/sites/8/2022/05/Georgia-2018-PTD-Study-Committee-Report_04-26-2022.pdf
6. Contractor will provide a recommendation as to whether Georgia should continue to account for parenting time as a "deviation" or whether Georgia should amend its child support guidelines statute to account for parenting time as an "adjustment."	At a minimum, GA should have a formula within a deviation for timesharing and very clear criteria for applying the deviation and formula (see FL and SC for examples on page 18). A formula will produce more consistent and predictable amounts. As an aside, Alabama struggled with the same issue last year. Alabama did not have a timesharing adjustment, but recently adopted one that will be effective next

	month. Alabama landed on providing the cross-credit with multiplier formula to be used when there is a court-order for 50-50% timesharing.
7. If Contractor recommends a parenting time "adjustment" instead of a parenting time "deviation," Contractor will explain at what point in the child support calculation that adjustment should be applied.	That depends on the formula selected. Some formulas do not work well at low thresholds
8. Contractor will opine on the appropriateness of the definitions of "custodial parent" and "noncustodial parent" in joint physical custody cases as found in O.C.G.A. 19-6-15 (a)(9) and O.C.G.A. 19-6-15 (a)(14).	To be discussed later. The language should complement any formula or guidelines provision recommended by the Committee.
9. There is no formula to determine the amount of a parenting time deviation in Georgia's Child Support Guidelines Statute. In the absence of a formula, jurists have developed their own. Four examples are listed below. Contractor will review each example and consider the economic soundness of each methodology. Method #1 (daily rate for over 90 days) Method #2 (noncustodial parent pays the difference in each parent's orders) Method #3 (per diem amount) Method #4. (Real life example) with three options 1. Higher income parent pays the full, sole custody amount. 2. Take the difference in basic obligation owed by each parent 3. Take the difference and divide by 2 4. Take the basic child support obligation (BCSO) and apply the same formula as Option 3	There is no economic evidence that 90 days (or any other number of days) is a threshold where costs shift. Also, economic theory does not support a "per diem" rate because some expenses (e.g., housing) are paid monthly not per day. Still, a couple of states (e.g., PA and UT) use a version of this, but their thresholds are significantly higher than 90 days. This approach does not account for the fact that it costs more to raise a child in two households than one household; and the timesharing amount. No state uses this method as their parenting-time adjustment formula in their guidelines. See issues with Method #1. This is not a parenting time adjustment. See comments on Method #2. A few states use this approach when there is 50%/50% physical custody. It would not work for 40%/60% or another arrangement. Not clear what this means. Does it mean take the BCSO and divide it in half?
10. In Georgia's 2022 case sampling data, 10% of cases (49 out of 472 cases) reduced child support to $0 by using a parenting time or non-specific deviation. Contractor will evaluate as to whether these were appropriate outcomes in those cases.	Cannot evaluate without knowing child support arrangements in each case. That data was not collected.

11. Contractor will review the public comments collected by and provided to Contractor by the Georgia Child Support commission when evaluating methods for calculation.	Still in the process of reviewing.
12. Contractor will consider domestic violence concerns when making a recommendation on the most appropriate method for Georgia to consider to account for parenting time in child support calculations and Contractor will identify the ways, if any, other states consider domestic violence concerns when accounting for parenting time.	There are two ways that states are addressing this issue. • Requiring court-ordered timesharing—hence, any DV concerns are addressed in the court-ordered timesharing arrangement, which would hopefully consider pickup/dropoff, and etc. • Some states require periodic sharing of income information and changes in addresses in ALL child support orders (not just timesharing). States with these provisions are reviewing them and making appropriate exceptions.

Overview of Shared-Parenting Time Adjustments in State Guidelines

Exhibit 2 is an attempt to group the types of timesharing formulas in state child support guidelines. Even though Exhibit 2 shows eight groups, no state formula is exactly like. For example, those using simple percentages or sliding scale adjustment vary in the percentages they use and the income thresholds in which they apply the percentages. Even those states using the cross-credit with a 1.5 multiplier vary in the percentage of parenting time that must be met before applying the formula and the criteria that must be met for the adjustment to occur. As shown in Exhibit 3, state thresholds for applying the timesharing formula vary.

Most states bordering Georgia (i.e., AL, FL, NC, and SC) use the cross-credit with a multiplier, which is the most commonly used formula among states. TN uses a unique formula that can be considered a variation of per diem approach. As shown later, the TN formula is mathematically complicated. Exhibit 2 also shows eight states without a formula. Most of these states (Connecticut, Georgia, Mississippi, New Hampshire, and New York) reviewed their guidelines last year or are currently reviewing their guidelines. Many of these states are considering a timesharing formula to improve consistency and predictability of timesharing adjustments. Many also believe that timesharing is increasing and that providing an adjustment to recognize the paying-parent’s direct expenditures on the children is appropriate, fair, and just.

Exhibit 2: Types of Timesharing Formulas in State Child Support Guidelines

Formula	States
Cross-Credit with 1.5 Multiplier	19 states (AL[a], AK, CO, DC, IL, ID, FL, LA, ME, MD, NE, NC, NM, SC, SD, VT, WV, WY, WI) and IA* for equal custody
Cross-Credit with No or Alternative Multiplier	4 states (MT, NV, OK, VA)
Offset	1 state (RI) and ND* for equal custody
Simple Percentage or Sliding Scale Adjustment	6 states (AZ, DE, IA*, KS, KY, OH)
Consideration of Transferable and Fixed Expenses	3 states (IN, MO, NJ)
Non-Linear Formulas	3 states (MI, MN, OR)
Per Diem Adjustment	5 states (HI, PA, ND*, TN, UT)
Unique Formula	2 states (CA, MA)
States with a Formula	43 states
States without a Formula	8 states (AR, CT, GA, MS, NH, NY, TX, WA)

[a]The Alabama formula will become effective June 1, 2023.
* State is listed twice because it has two different formulas depending on the amount of time.

Exhibit 3: Threshold for Applying Parenting-Time Formula

Threshold for Shared-Parenting Time Adjustment	States
1–10% parenting time	8 states (AZ, CA, MI, MN, MO, NV, NJ, OR)
11–15% parenting time	1 state (IN)
16–20% parenting time	1 (FL)
21–25% parenting time	9 states (CO, DE, ID, KY, OH, TN, VT, VA, WI)
26–30% parenting time	7 states (AK, MT, NE, ND, NM, SC, UT)
31–35% parenting time	8 states (DC, IA, KS, MA, MD, NC, OK, WV)
36–40% parenting time	4 states (HI, IL, PA, WY)
41–45% parenting time	None
46–50% parenting time	5 states (Al, KS, LA, ME, SD)
States with a threshold	42 states
States without a Formula	8 states (AR, CT, GA, MS, NH, NY, TX, WA)

* Nevada does not specify a threshold.

Cross-Credit Formula

The most commonly applied formula is the cross-credit formula. Essentially, theoretical orders are calculated for each parent based on the time the child is with the other parent, then offset against each other so that the parent with the higher theoretical order owes the difference. Exhibit 4 illustrates the cross-credit calculation using the

existing Georgia income shares table and applying it to one child. It is called the "cross-credit" because Line 10 of Exhibit 4 could also be achieved by cross-multiplying each parent's Line 6 by the other parent's Line 8.) Most states relying on the cross-credit formula increase the basic obligation by 150 percent to account for it costing more to raise the child in two households than one household. In other words, 150 percent is used to capture the duplicated expenses. Housing and some transportation expenses are believed to be duplicated, but there is no quantitative research confirming that largely because of the lack of data sets of matched parents with timesharing arrangements. Virginia uses a 140 percent multiplier, and Oklahoma uses a sliding scale multiplier. The West Virginia legislature just passed an increase from a multiplier of 150 percent to 160 percent. Montana and Nevada do not use a multiplier, but neither use the income shares model. Montana relies on the Melson formula, and Nevada relies on a percentage of obligor income guidelines model. Colorado is the first state to use the cross-credit; it began using the formula in 1986.

Strengths of Cross-Credit Formula

- Adjustment has a theoretical basis;
- Explainable;
- Used by many states and for many years;
- Results in zero order when there is equal custody and equal income (which many perceive as an appropriate and fair outcome); and
- Mathematically, the greater-time parent can be the paying-parent if the greater time parent has significantly more income than the lesser-time parent (which many also perceive as an appropriate and fair outcome).

Weaknesses of Cross-Credit Formula

- Requires another worksheet;
- Requires a timesharing threshold to apply;
- The formula with the multiplier does not work mathematically at low levels of timesharing;[1]
- There can be a precipitous decrease in the support amount at the timesharing threshold;
- Theoretically, not consistent with the income shares model because the adjustment is time dependent rather than income dependent; and
- Some policymakers do not favor a formula that allows the parent obligated to pay support to "flip" from one parent to the other with more timesharing (which can occur using the cross-credit if the greater-time parent has much more income than the lesser-time parent).

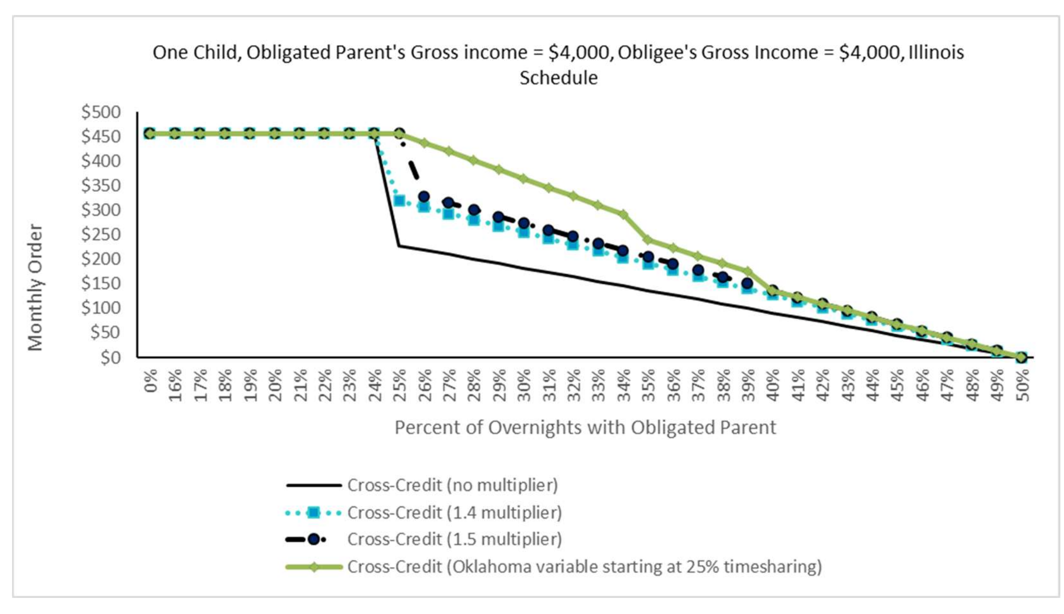
[1] This is because the cross-credit amount can be more than the sole-custody calculation. A simple solution to this is to take the lower of the two calculations. This is shown on Line 12 of Exhibit 7.

Exhibit 4: Illustration of Cross-Credit Formula with 150% Multiplier and Using Existing Georgia Income Shares Table: One Child

Line		Parent A	Parent B	Combined
1	Monthly Adjusted Gross Income	$3,100	$4,300	$7,400
2	Percentage Share of Income	42%	58%	100%
3	Basic Obligation for 1 Child (Combined Line 1 applied to table)	$462	$638	$ 1,100
4	Each Parent's Share (Line 3 x each parent's Line 2)			
5	Shared Custody Basic Obligation (Line 3 x 1.5)			$1,650
6	Each Parent's Share (Line 5 x each parent's Line 2)	$693	$957	
7	Overnights with Each Parent (must total 365)	265	100	365
8	Percentage Time with Each Parent (Line 7 divided by 365)	73%	27%	100%
9	Amount Retained (Line 6 x Line 8 for each parent)	$506	$258	
10	Each Parent's Obligation (Line 6 – Line 9)	$187	$699	
11	Shared Custody Obligation (Subtract smaller from larger on Line 10)		$512	
12	Final Order (lessor of Line 4 and 11)		$512	

Exhibit 5 shows how the cross-credit formula can result in a cliff effect when it reaches the timesharing threshold. For this particular example, the timesharing threshold is 25 percent timesharing. The example is adapted from a recent *Family Law Quarterly* article.[2] It relies on the Illinois schedule for its illustration, which calculates orders monthly.

Exhibit 5: Illustration of the "Cliff Effect" in the Cross-Credit Formula and the Impact of Different Multipliers



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[2] Oldham, Thomas, & Venohr, Jane. (May 2021). "The Relationship between Child Support and Parenting Time. *Family Law Quarterly.* Volume 43, Number 2. Available at https://centerforpolicyresearch.org/publications/the-relationship-between-child-support-and-parenting-time/.

Simple Percentage or Sliding Scale Percentages

Most states using percentages rely on sliding scale percentages that increase with more overnights (see Exhibit 6 for sliding-scale adjustments in Arizona, Iowa, Kentucky, and Missouri). Arizona first adapted its adjustment in the mid-1990s. It used the concept of transferable/duplicated expenses, which is discussed next, to develop it. Since then, Arizona has tweaked it several times. Missouri and Kentucky considered the Arizona percentages when crafting their sliding scale. Kentucky also considered typical timesharing arrangements, child-rearing expenses, that there is not always a $1 for $1 transfer of expenses from one parent to the other parent for child-rearing expenses, and other factors. In crafting the adjustment, Kentucky policymakers aimed to keep the adjustment simple, appropriate, fair, and produce gradual amounts to minimize litigation over one or two overnights.

Exhibit 6: Examples of Sliding-Scale Percentage Adjustments

Iowa

128–147 overnights	15%
148–166 overnights	20%
167 or more but less than equally shared physical care	25%

Cross-credit with 150% multiplier for equally shared

Missouri: Deviation allowed for equal custody

Number of Overnights	Adjustment
Less than 36	0%
36–72	6%
73–91	9%
92–109	10%
110–115	13%
116–119	15%
120–125	17%
126–130	20%
131–136	23%
137–141	25%
142–147	27%
148–152	28%
153–158	29%
159–164	30%
165–170	31%
171–175	32%
176–180	33%
181–183	34%

Arizona

Parenting Time Days	Adjustment Percentage
0–19	0
20–34	.025
35–49	.050
50–69	.075
70–84	.10
85–99	.15
100–114	.175
115–129	.20
130–142	.25
143–152	.325
153–163	.40
164 or more	.50

Kentucky (eff. 4/2023)

Parenting Time Days	Adjustment Percentage
72–87	.105
88–115	.15
116–129	.205
130–142	.25
143–152	.305
153–162	.36
163–172	.42
173–181	.485
182–182.5	.50

Exhibit 7 uses a case scenario involving parents with equal income (i.e., each has gross income of $4,000 per month) to illustrate the staircase impact that more time with the other parent has on the order amount using a sliding scale percentage. There are more "stairs" under the Arizona adjustment than the Kentucky adjustment because there are more rows for the range of parenting days. Exhibit 7 also shows that Arizona reaches a zero-order amount by 164 parenting days, while Kentucky does not reach a zero-order amount until 182 parenting days. These thresholds correspond to the last row in each of the state's respective sliding scale chart.

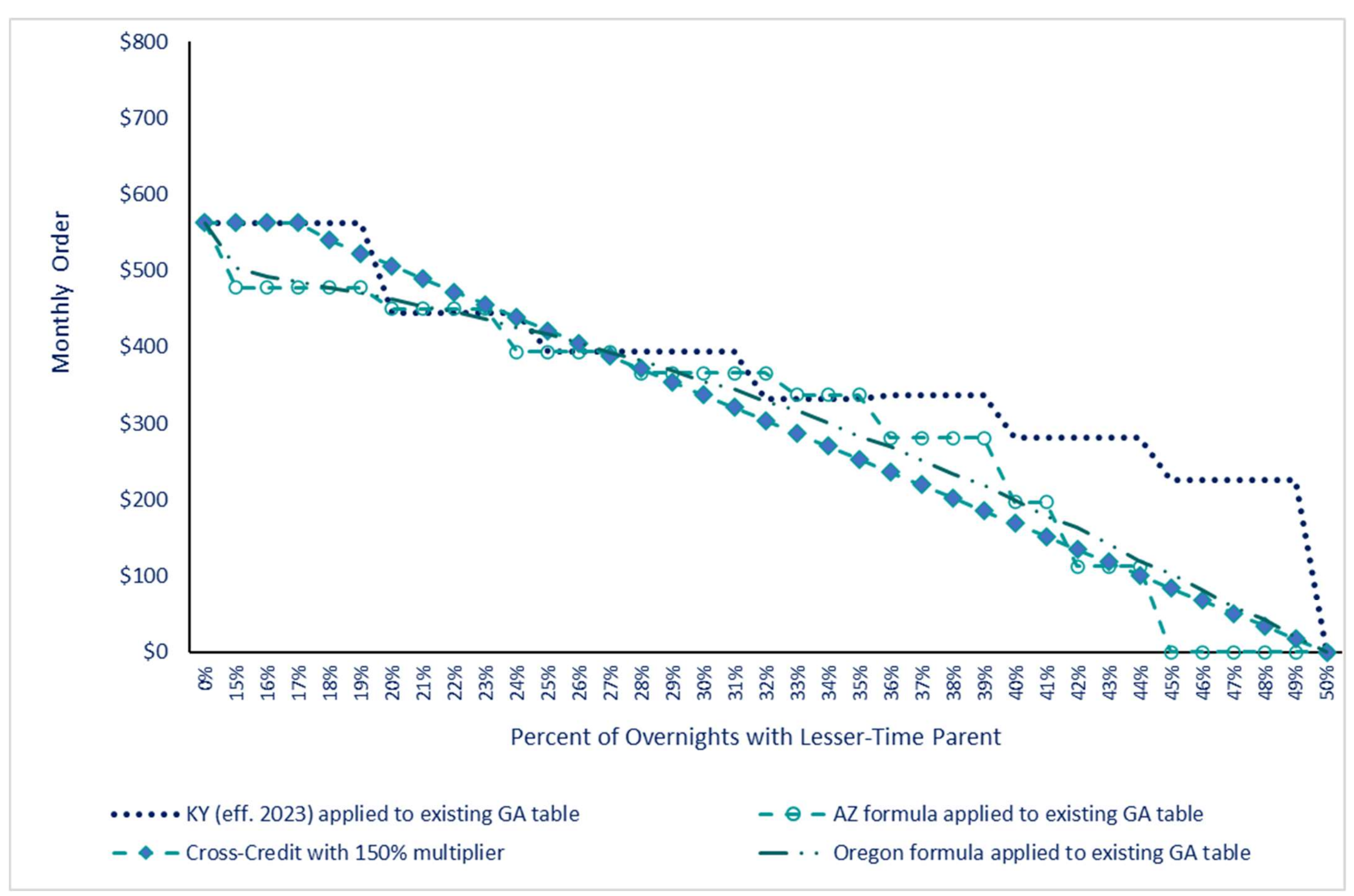
Strength of Percentage/Sliding Scale Percentage Formula

- Simple to calculate and understand

Limitations of Percentage/Sliding Scale Percentage Formula

- "Cliff effects" between overnight intervals are unavoidable;
- Theoretical basis less clear than the cross-credit; and
- Does not allow flipping of paying-parent when greater-time parent is also the parent with greater income.

Exhibit 7: Illustration of the Staircase Nature of the Sliding-Scale Percentage Formula Using a Case Scenario Involving Parents with Equal Incomes



Formulas that Consider Transferable and Fixed Expenses

Indiana, Missouri, and New Jersey formulas are based on the concept that some child-rearing expenditures are transferable between parents while others are fixed, yet the formulas vary significantly. The original Arizona timesharing formula was also based on transferable- and fixed-expenditures concept. Over the years, however, Arizona has modified its timesharing formula extensively. The existing Arizona timesharing formula is essentially a lookup table and has no mention of transferable or fixed expenditures.

Exhibit 8 shows the different breakdowns among transferable (variable); fixed, duplicated, and fixed, non-duplicated child-rearing expenses used by different states and studies.

At low levels of time-sharing, the adjustment is for transferable expenses only. When time-sharing becomes more substantial, the adjustment also considers duplicated, fixed expenses. Variable expenses are those that are transferable between the parents, depending on which parent has time with the child. For example, food expenses are typically considered a variable child-rearing expense. If one parent buys the child food, there is no need for the other parent to purchase food also. Duplicated, fixed costs are those child-rearing expenses that both parents incur and the other parent's time with the child does not reduce that expense for the first parent (e.g., housing for the child). Non-duplicated, fixed costs are child-rearing expenses that are not affected by the parent's time and are not duplicated. For example, the child has one set of clothes that are generally not duplicated. Due to the non-duplicated, fixed costs, one parent even in equal custody and equal income situations, incurs more child-rearing expenditures. That is, one parent buys the child's clothes, cell phone, and other non-duplicated, fixed items. This means the order is never zero in Indiana when the parents have equal incomes and equal timesharing.

Indiana Formula

The Indiana adjustment is rooted in work by Professor David Betson, University of Notre Dame, who developed the measurements of child-rearing expenditures underlying most state guidelines. The Indiana formula is premised on a consideration of three types of child-rearing expenditures:

- Transferable (variable) expenses;
- Duplicated, fixed expenses; and
- Non-duplicated, fixed expenses.[3]

Indiana's existing formula consists of a worksheet with percentage adjustments, which are shown in Exhibit 9. The most unusual part of the Indiana parenting-time adjustment is the controlled expenses. On the one hand, this means the formula does not produce a zero order when there is equal custody and equal timesharing. On the other hand, it clarifies which parent is responsible for some of the child-rearing expenses that are not always clearly allocated (e.g., which parent is responsible for purchasing the child's prom dress and which parent is responsible for purchasing the child's cell phone), since these are controlled expenses.

[3] Indiana Rules of Court. (Oct. 2016). Child Support Rules and Guidelines. Retrieved from https://www.in.gov/judiciary/rules/child_support/#g6.

Exhibit 8: Percentage of Child-Rearing Expenditures Deemed to Be Transferable and Duplicated

	Transferable (Variable)	Fixed Duplicated	Fixed Non-Duplicated	Source	Notes
AZ[4]	38% (Food home and away and household operations and utilities)	28% (furnishings and shelter), but rounded up to 30% initially	34% (all other expenses[5])	1995 analysis by Professor Shockey, University of Arizona using 1991 Consumer Expenditure Survey data	No longer adhered to; converted to sliding scale that has been modified several times since originally adapted in the late 1990s
IN	35% (food and transportation)	50% (shelter)	15% (clothing, education, school books and supplies, ordinary uninsured health care and personal care)	Thomas Espenshade (1984)	Fixed, non-duplicated are called “controlled” expenses. 6% uninsured healthcare expenses
MO	30%	38%	32%	Looked at other states, and designed to create gradual change	Converted to a sliding scale similar to Arizona
NJ	37% (food and transportation)	37% (housing)	25% (clothing, personal care, entertainment, and miscellaneous)	USDA (early 1990s—exact year is unknown)	
Melli & Brown (1994)[6]	Estimated 40%–50% (food, recreation, and some transportation)	Estimated at 25%–33% (utilities, household furnishing, pay and study space, toys and play equipment)	Estimated 25% (clothing, medical care, childcare, and school expenses)	Unknown (possibly Espenshade)	

The Indiana formula to adjust the child support order for timesharing complements the Indiana parenting time guidelines that is used to help parents develop a parenting plan that spells out each parent’s time with the child including holidays and pickup and drop-off times. Indiana strongly encourages the use of its parenting-time guidelines to establish a parenting plan and encourages that the parties file the parenting plan with the courts.

[4] Shockey, J. W. (1995). *Determining the Cost of Raising Children in Nonintact Arizona Households*, Report to Arizona Judicial Council, University of Arizona Department of Sociology, p. 27.

[5] Although not explicitly stated, this would be apparel, transportation, reading and entertainment, healthcare, and other using Shockey’s categories on page 9 of his report.

[6] Melli, Marygold S., & Brown, Patricia. R. (1994). “The Economics of Shared Custody: Developing an Equitable Formula for Dual Residence.” 31 *Hous. L. Rev*. 543.

Appendix D shows the link and table of contents to the parenting-time guidelines. (The actual guidelines are not attached because of their length.) The amount of time designated in the parenting-time plan is often used in the parenting-time formula to calculate the support order.

Exhibit 9: Indiana Parenting-Time Worksheet and Percentage Adjustment Table

Line:		
1PT	Enter Annual Number of Overnights	
2PT	Enter Weekly Basic Child Support Obligation – BCSO (Enter Line 4 from Child Support Worksheet)	
3PT	Enter Total Parenting Time Expenses as a Percentage of the BCSO (Enter Appropriate TOTAL Entry from Table PT)	
4PT	Enter Duplicated Expenses as a Percentage of the BCSO (Enter Appropriate DUPLICATED Entry from Table PT)	
5PT	Parent's Share of Combined Weekly Income (Enter Line 2 from Child Support Worksheet)	
6PT	Average Weekly Total Expenses during Parenting Time (Multiply Line 2PT times Line 3PT)	
7PT	Average Weekly Duplicated Expenses (Multiply Line 2PT times Line 4PT)	
8PT	Parent's Share of Duplicated Expenses (Multiply Line 5PT times Line 7PT)	
9PT	Allowable Expenses during Parenting Time (Line 6PT – Line 8PT)	
	Enter Line 9PT on Line 7 of the Child Support Worksheet as the Parenting Time Credit	

Percentage Adjustment

ANNUAL OVERNIGHTS			
FROM	TO	TOTAL	DUPLICATED
1	51	0	0
52	55	0.062	0.011
56	60	0.07	0.014
61	65	0.08	0.02
66	70	0.093	0.028
...	...	...	..
151	155	0.623	0.476
156	160	0.634	0.483
161	165	0.644	0.488
166	170	0.652	0.491
171	175	0.66	0.494
176	180	0.666	0.495
181	183	0.675	0.5

Comparison of Indiana, Missouri, and New Jersey

Exhibit 10 uses a case example where the parents have equal incomes to illustrate that the order amount never goes to zero when using these formulas unless there is a guidelines deviation. This is because of controlled expenses (i.e., there is always one parent who picks up the school fees or cellphone for the child).

Strengths of Transferable/Fixed Cost Formulas

- Has a theoretical basis;
- Considers breakdown of actual child-rearing expenditures; and
- By definition, makes it clear which parent is responsible for the child's clothing and school expenses.

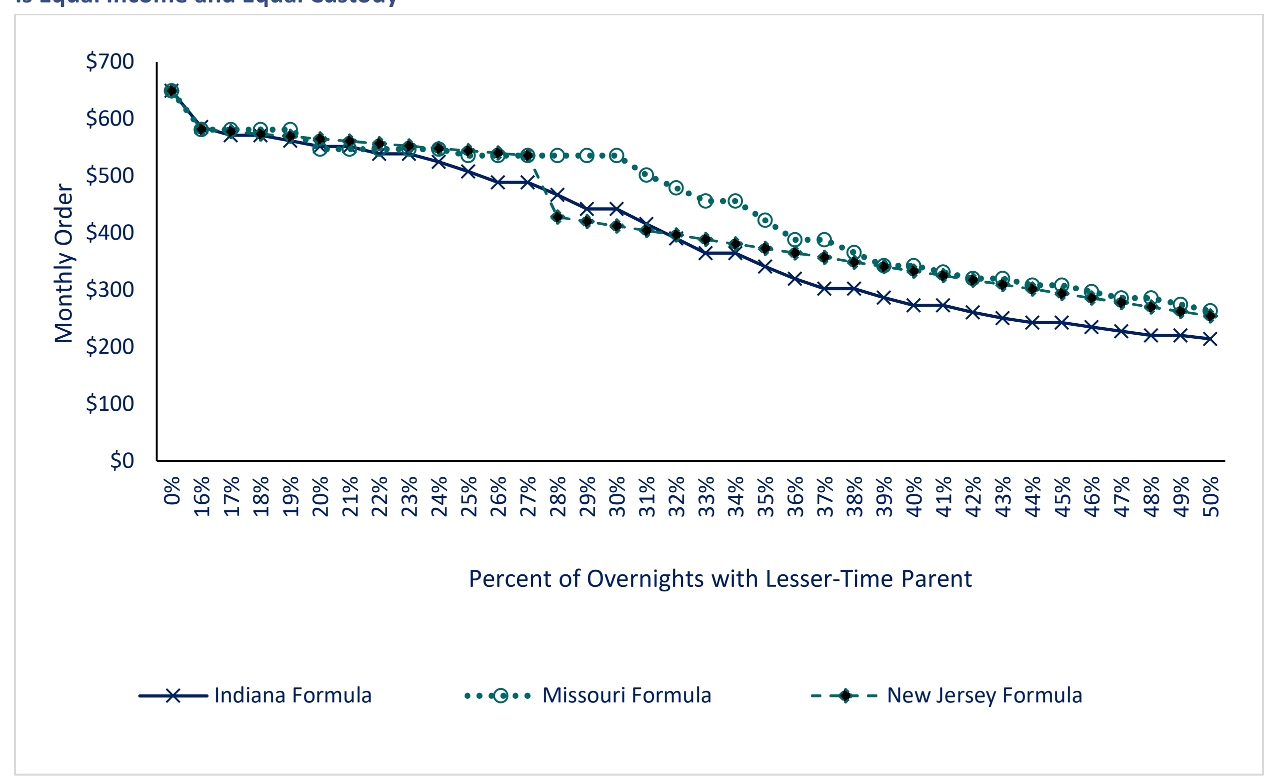
Limitations of Transferable/Fixed Cost Formulas

- Complicated to calculate;
- Does not allow for a zero order when there is equal income and equal custody (which is actually an arguable limitation depending on the policy perspective); and
- Does not always flip the paying-parent when greater-time parent is also the parent with greater income. (The Indiana formula can mathematically, but the Missouri formula cannot.)

Determining which parent is responsible for controlled expenses can be challenging, but both Indiana and Missouri provide clear guidance. Indiana has almost two decades of experience with the successful implementation of its adjustment, which complements its parenting-time guidelines and encouragement of the filing of a parenting plan with the courts. Missouri just adopted its adjustment and does not have statewide parenting-time guidelines.

Whether the formula does not result in a zero order when there is equal income and equal timesharing is a strength or weakness depends on the policy perspective. Similarly, whether the formula not allowing for the flipping of the paying-parent from the mother to the father or vice versa is a strength or weakness is also a policy perspective.

Exhibit 10: Illustration of how "Controlled Expenses" in Timesharing Adjustment Do Not Allow for a $0 Order when There Is Equal Income and Equal Custody[7]



[7] Adapted from Oldham, Thomas, & Venohr, Jane. (May 2021). "The Relationship between Child Support and Parenting Time." *Family Law Quarterly*. Volume 43, Number 2. Available at https://centerforpolicyresearch.org/publications/the-relationship-between-child-support-and-parenting-time/.

Non-Linear Formulas

In contrast to sliding-scale formulas, "non-linear" formulas do not produce the staircase effect with more parenting days. Usually, this is achieved by using exponential functions or taking something to the power of another value (e.g., squared when something is multiplied by itself and cubed when something is multiplied by itself thrice). Michigan, Minnesota, and Oregon use nonlinear formulas.

Minnesota/Michigan Formula

After forming a legislated committee that extensively investigated alternative formulas, Minnesota decided to adopt Michigan's formula at the time. Minnesota's formula is shown below.

$$\frac{(A_o)^3(B_s)^3 - (B_o)^3(A_s)^3}{(A_o)^3 + (B_o)^3}$$

Where

A_0 – Approximate annual number of overnights the children will spend with parent A

B_0 – Approximate annual number of overnights the children will spend with parent B

A_s – Parent A's base support obligation

B_s – Parent B's base support obligation

As Minnesota deliberated the Michigan formula, Michigan changed its parameter from taking the number of overnights and base support obligations to the third power (as noted by the "3" in superscript) to a power of 2.5. The base of the formula is essentially a cross-credit. Taking it to the third power (or 2.5th power) results in a gradual decrease when the paying-parent has more time with the child. The higher the power, the more gradual the adjustment. Michigan originally started with using the second power, switched to the third power, and then settled to a power of 2.5. Minnesota extensively reviewed several formulas, including the Oregon formula, and, using different powers with the Michigan formula, it eventually settled on using the third power.[8]

Oregon Formula

Oregon consulted with a mathematics professor to develop an adjustment that gradually changes as the paying-parent had more time with the child, but results in a zero order when the parents have equal time with the child and equal incomes.[9] The Oregon formula[10] for determining each parent's parenting time credit percentage is:

$$1/(1+e^{(-7.14*((overnights/365)-0.5)))-2.74\%+(2*2.74\%*(overnights/365))}$$

Oregon converted the formula into a table for ease of use. (Appendix C contains an excerpt of the table.) It results in a 0.07 percent credit for one overnight per year, a 0.14 percent credit for two overnights per year, a 0.21

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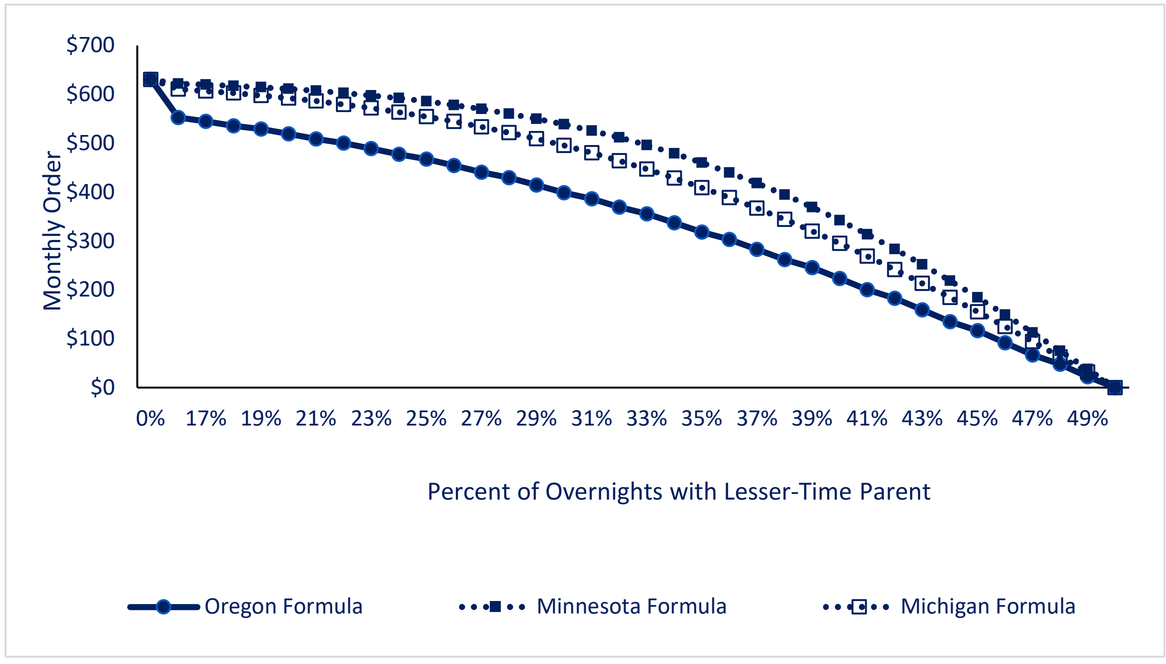
[8] Minnesota Department of Hyman Services Child Support Work Group. (Jan. 29, 2016) *Child Support Work Group Final Report.* Retrieved from https://www.leg.state.mn.us/docs/2016/mandated/160242.pdf.

[9] Oregon Guidelines Advisory Committee. (May 27, 2012). *Oregon Child Support Program 2011-12 Child Support Guidelines Review: Report and Recommendations.* Retrieved from https://justice.oregon.gov/child-support/pdf/guidelines_advisory_committee_report_and_recommendations_2011-12.pdf.

[10] Oregon Child Support Guidelines Rule OAR 137-050-07030. Retrieved from https://justice.oregon.gov/child-support/pdf/137-050-0730.pdf.

percent credit for three overnights per year, and so forth up to a 49.75 percent credit for 182 overnights—effectively a 50.0 percent credit for 182.5 overnights.

Exhibit 11: Illustration of Non-Linear Timesharing Formulas Using a Case Scenario Where the Parents Have Equal Income[11]



Strengths of Non-Linear Formulas

- No cliff (precipitous decrease) with more time;
- Oregon believes its formula has reduced litigation since it was adopted;
- Can adjust for one night (which is an arguable strength depending on the policy perspective); and
- Produces $0 order when equal income and equal custody (which is an arguable strength depending on the policy perspective).

Limitations of Transferable/Fixed Cost Formulas

- Complicated to calculate; and
- Difficult to explain.

Per Diem and Other Formulas

The Tennessee formula is a variation of a per-diem adjustment. Several state guidelines provide a per-diem adjustment, which essentially is a percentage adjustment for timesharing above a state-determined threshold. Under the Tennessee parenting-time formula, the paying-parent gets an adjustment based on the other parent's prorated share of the following: the paying-parent's number of overnights multiplied by 0.0109589 multiplied by the basic obligation (table amount) minus the basic obligation (table amount). Tennessee's formula only works for

[11] Adapted from Oldham, Thomas, & Venohr, Jane. (May 2021). "The Relationship between Child Support and Parenting Time." *Family Law Quarterly*. Volume 43, Number 2. Available at https://centerforpolicyresearch.org/publications/the-relationship-between-child-support-and-parenting-time/.

timesharing of 25 percent or more. It results in no adjustment if the obligee has no income. However, it produces a zero order when there is equal timesharing and equal income. The Tennessee guidelines presume standard parenting of 80 overnights per year. The formula applies when the number of overnights is 92 or more.

Strength of Per Diem Adjustment

- Per-diem concept is simple.

Limitations of Per Diem Adjustment

- Calculation of per diem amount is not simple to explain;
- Amount of adjustment does not become larger with more time; and
- Produces a zero adjustment when the oblige has no income (which is an arguable limitation depending on the policy perspective).

Exhibit 12: Definitions of Days in State Child Support Guidelines (Compiled in 2019)

Examples of How States Address Extraordinary Time: Listed from Least Restrictive to More Restrictive		
State	**Overview of Measurement**	**Excerpt**
MO	Court-ordered overnights	This adjustment is based on the number of periods of overnight visitation or custody per year awarded to and exercised by the parent obligated to pay support under any order or judgment.
MN	Permissible to use something other than overnights if the parent has significant time periods	The percentage of parenting time may be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order. For purposes of this section, overnight equivalents are calculated by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight.
IN	Recognizes “overnight” will not always mean 24-hour block. Encourages consideration of whether party feed or transported child	An overnight will not always translate into a twenty-four hour block of time with all of the attendant costs and responsibilities. It should include, however, the costs of feeding and transporting the child, attending to school work and the like. Merely providing a child with a place to sleep in order to obtain a credit is prohibited.
LA	Court discretion but no less than 4 hours can constitute a day	A day for the purposes of this Paragraph shall be determined by the court; however, in no instance shall less than four hours of physical custody of the child constitute a day.
TN	More than 12 consecutive hours	(10) “Days” — For purposes of this chapter, a “day” of parenting time occurs when the child spends more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control or direct supervision of one parent or caretaker. The twenty-four (24) hour period need not be the same as a twenty-four (24) hour calendar day. Accordingly, a “day” of parenting time may encompass either an overnight period or a daytime period, or a combination thereof.
OR	Alternatives such as 12-hr blocks, but never less than 12 hour blocks	(a) Determine the average number of overnights using two consecutive years.[5] (c) Notwithstanding the calculation provided in subsections (2)(a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent’s physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

		[5] Commentary: Parenting time cannot be calculated using speculative data. Since parenting time is calculated based on 365 days in a year, averaged over two consecutive years, practitioners may calculate the number of days spent with the parent for known periods of time (E.g., "The child will spend Memorial Day weekend with the Mother,": quantifiable as 3 overnights). Unknown or unquantifiable periods of time would not be calculated (E.g., "The child will spend time during the summer months with the Father": unquantifiable period of time; no overnights can be calculated). The determination of overnights applies to the parenting plan that will be followed while the new support order is in effect.
AZ	Breaks down to 3-hour blocks	To adjust for the costs of parenting time, first determine the total annual amount of parenting time indicated in a court order or parenting plan or by the expectation or historical practice of the parents. Using the following definitions, add together each block of parenting time to arrive at the total number of parenting time days per year. Calculate the number of parenting time days arising from any block of time the child spends with the parent with less parenting time in the following manner: A. Each block of time begins and ends when that parent receives or returns the child from the primary residential parent or from a third party with whom the primary residential parent left the child. Third party includes, for example, a school or childcare provider. B. Count one day of parenting time for each 24 hours within any block of time. C. To the extent there is a period of less than 24 hours remaining in the block of time, after all 24-hour days are counted or for any block of time which is in total less than 24 hours in duration: 1. A period of 12 hours or more counts as one day. 2. A period of 6 to 11 hours counts as a half-day. 4. A period of 3 to 5 hours counts as a quarter-day. 5. Periods of less than 3 hours may count as a quarter-day if, during those hours, the parent with less parenting time pays for routine expenses of the child, such as meals. EXAMPLES: For the purposes of these examples, mother has parenting time 130 days per year and father is the primary residential parent. 1. Mother receives the child at 9:00 p.m. on Thursday evening and brings the child to school at 8:00 a.m. on Monday morning, from which father picks up the child at 3:00 p.m. on Monday. a. 9:00 p.m. Thursday to 9:00 p.m. Sunday is three days. b. 9:00 p.m. Sunday to 8:00 a.m. Monday is 11 hours, which equals a half day. c. Total is 3 ½ days. 2. Mother picks the child up from school at 3:00 p.m. Friday and returns the child to school at 8:00 a.m. on Monday. a. 3:00 p.m. Friday to 3:00 p.m. Sunday is two days. b. 3:00 p.m. Sunday to 8:00 a.m. Monday is 17 hours, which equals one day. c. Total is 3 days. 3. Mother picks up child from soccer at noon on Saturday, and returns the child to father at 9:00 p.m. on Sunday. a. Noon Saturday to noon Sunday is one day. b. Noon Sunday to 9:00 p.m. Sunday is 9 hours, which equals ½ day. c. Total is 1 ½ days. If the children have different parenting time schedules, then see Section 16 to determine the parenting time adjustment or to determine if separate worksheets are required. After determining the total number of parenting time days, refer to "Parenting Time Table A" below. The left column of the table sets forth numbers of parenting time days in increasingly higher ranges. Adjacent to each range is an adjustment percentage. The parenting time adjustment is calculated as follows: locate the total number of parenting time days per year in the left column of "Parenting Time Table A" and select the adjustment percentage from the adjacent column. Multiply the Basic Child Support Obligation determined under Section 8 by the appropriate adjustment percentage. The number resulting from this multiplication then is subtracted from the proportionate share of the Total Child Support Obligation of the parent who exercises parenting time.

Exhibit 13: Examples of States with Timesharing Adjustment is a Deviation, but the Guidelines Provides a Formula

FLORIDA

*(*11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors: 10. The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child. (b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows: 1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5. 2. Calculate the percentage of overnight stays the child spends with each parent. 3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2. 4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses. 5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child. 6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.
South Carolina A. SHARED PARENTING ARRANGEMENTS When both parents are deemed fit, and other relevant logistical circumstances apply, active participation in the life of the child(ren) by the parent without custody should be encouraged in order to ensure the maximum involvement by both parents in the life of the child(ren). . The amount of visitation, however, is left to the discretion of the judge in consideration of the various factors of the Children's Code, and the use of the calculation on Worksheet C in shared physical custody cases is advisory and not compulsory. The court should consider each case individually before applying the adjustment to ensure that it does not produce a substantial negative effect on the child(ren)'s standard of living. For the purpose of this section, shared physical custody means that each parent has court-ordered visitation with the children overnight for more than 109 overnights each year (30%) and that both parents contribute to the expenses of the child(ren) in addition to the payment of child support. If a parent with shared physical custody does not exercise it as ordered by the court, the parent to whom support is owed may petition the court for a reversion to the level of support calculated under the guidelines without the shared parenting adjustment. The shared physical custody adjustment is an annual adjustment only and should not be used when the proportion of overnights exceeds 30% for a shorter period, e.g., a month. For example, child support is not abated during a month-long summer visitation. This adjustment should be applied without regard to legal custody of the child(ren). Legal custody refers to decision-making authority with respect to the child(ren). If the 109 overnights threshold is reached for shared physical custody, this adjustment may be applied even if one parent has sole legal custody. 1. Child support for cases with shared physical custody shall be calculated using Worksheet C. This worksheet should be used only for shared physical custody as defined above. 2. The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support

Exhibit 14: Excerpt from Tennessee Guidelines

(h) Reduction in Child Support Obligation for Additional Parenting Time.

1. If the ARP spends ninety-two (92) or more days per calendar year with a child, or an average of ninety-two (92) days with all applicable children, an assumption is made that the ARP is making greater expenditures on the child during his/her
parenting time for transferred costs such as food and/or is making greater expenditures for child-rearing expenses for items that are duplicated between the two (2) households (e.g., housing or clothing). A reduction to the ARP's child
support obligation may be made to account for these transferred and duplicated expenses, as set forth in this chapter. The amount of the additional expenses is determined by using a mathematical formula that changes according to the
number of days the ARP spends with the child and the amount of the BCSO. The mathematical formula is called a "variable multiplier."
2. Upon reaching the threshold of ninety-two (92) days, the variable multiplier shall be applied to the BCSO, which will increase the amount of the BCSO in relation to the ARP's parenting time, in order to account for the child-rearing expenses
incurred by the ARP during parenting time. These additional expenses are divided between the parents according to each parent's PI. The PRP's share of these additional expenses represents an amount owed by the PRP to the ARP
and is applied as a credit against the ARP's obligation to the PRP.
3. The presumption that more parenting time by the ARP results in greater expenditures which should result in a reduction to the ARP's support obligation may be rebutted by evidence.
4. Calculation of the Parenting Time Credit.
(i) First, the variable multiplier is determined by multiplying a standard per diem of .0109589 [2 / 182.5] by the ARP's parenting time determined pursuant to paragraph (7)(b) above. For example, the 94 days of parenting time calculated in the example from part (7)(b)4. above is multiplied by .0109589, resulting in a variable multiplier of 1.0301366 [94 x .0109589].
(ii) Second, the variable multiplier calculated in subpart (i) above is applied to the amount of the parties' total BCSO, which results in an adjusted BCSO. For example, application of the variable multiplier determined above for
ninety-four (94) days of parenting time to a BCSO of one thousand dollars ($1000) would result in an adjusted BCSO of one thousand thirty dollars and fourteen cents ($1030.14) [$1000 x 1.0301366].
(iii) Third, the amount of the BCSO is subtracted from the adjusted BCSO. The difference is the child-rearing expenses associated with the ARP's additional parenting time. In the example above, the additional childrearing expenses associated with the ninety-four (94) days of parenting time would be thirty dollars and fourteen cents ($30.14) [$1030.14 -
$1000].

(iv) The additional child-rearing expenses determined in subpart (iii) above are pro-rated between the parents according to each parent's percentage of income (PI). The PRP's share of these additional expenses is applied as an adjustment against the ARP's pro-rata share of the original BCSO. For instance, if the PRP's PI is forty percent (40%), the PRP's share of the additional expenses in the example above would be twelve dollars and six cents ($12.06) [$30.14 x 40%]. The twelve dollars and six cents ($12.06) is applied as a credit against the ARP's share of the BCSO, resulting in a child support obligation for the ARP of five hundred eighty-seven dollars and ninety-four cents ($587.94) [$1000 x 60% = $600 - $12.06]. (v) Once the BCSO is reduced for parenting time, only one parent will owe a BCSO. Once it is determined who that one parent is, that parent's AGI and number of children for whom support is being determined shall be checked against the "shaded area" to determine if the SSR applies to that parent. If….

Addendum: Examples of Parenting-Time Calculations Using MI/MN, and OR Approaches (May 12, 2023)

Neither Michigan nor Minnesota steps out their timesharing formula in a worksheet. Rather, both states have automated calculators that have one line for the resulting timesharing adjustment (see to this the Appendix to this Addendum). Minnesota uses an exponent of 3, Michigan uses an exponent of 2.5, and Michigan previously used an exponent of 2.0. Exhibit A.1 shows the MN/MI formula with an exponent of 2.0 (which is the easiest to calculate manually.) In the example, decimal points are used to avoid round-off error. As shown later, the higher the exponent, the higher the order. The impact of this is shown in Exhibit A.2.

The formula is:

$$\frac{(A_o)^2(B_s)^2 - (B_o)^2(A_s)^2}{(A_o)^2 + (B_o)^2}$$

Where

A_0 – Approximate annual number of overnights the children will spend with parent A
B_0 – Approximate annual number of overnights the children will spend with parent B
A_s – Parent A's base support obligation
B_s – Parent B's base support obligation

Exhibit A.1: Illustration of Minnesota Formula Assuming an Exponent of 2 Using Existing Georgia Income Shares Table: One Child

Line		Parent A	Parent B	Combined
1	Monthly Adjusted Gross Income	$3,100	$4,300	$7,400
2	Percentage Share of Income	41.89%	58.11%	100%
3	Basic Obligation for 1 Child (Combined Line 1 applied to table)			$1,100
4	Each Parent's Share of Basic Obligation for 1 Child (Line 3 multiplied by Line 2 for each parent)	$460.79	$639.21	
5	Overnights with Each Parent (must total 365)	265	100	365
6	Percentage of Time with Each Parent (Line 7 divided by 365, DO NOT USE PERCENTAGE SIGN)	0.726	0.274	1.00
7	Other Parent's Time Share (for Parent A, use Parent B's Line 6; for Parent B, use Parent A's Line 6)	0.274	0.726	
8	Other Parent's Time Share (Enter information again from Line 7 on Line 8)	0.274	0.726	
9	Adjustment for disparity in timeshare (Add Parent A's Line 8 to Parent B's Line 8 and put the sum in the Combined Column)			0.6022
10	Timesharing to the 2nd power (Line 7 multiplied by Line 8; this is the same thing as taking Line 7 to an exponent of 2)	0.0751	0.5271	
11	Each parent's timesharing weight (Line 10 for each parent divided by combined from Line 9)	0.1247	0.8753	
12	Amount Owed to Other Parent (Line 4 multiplied by Line 11)	$57.46	$559.50	
13	Child Support Order: for the parent with the larger amount on Line 12 subtract the smaller amount on Line 12 from the larger amount on Line 12		$502.04	

The MN/MI (exponent of 2) calculation shown in Exhibit A.1 produces an order of $502 per month. The cross-credit calculation with a multiplier for the same scenario produces an order of $512 per month (see Exhibit 4 on page 7 of memorandum.) The Minnesota formula (exponent of 3) produces an order of $580. The Oregon Formula (see Exhibit A.3) would produce an order of $470 per month.

Exhibit A.2: Comparison of Impact of MN/MI Exponent of 2 and 3 to Oregon Formula

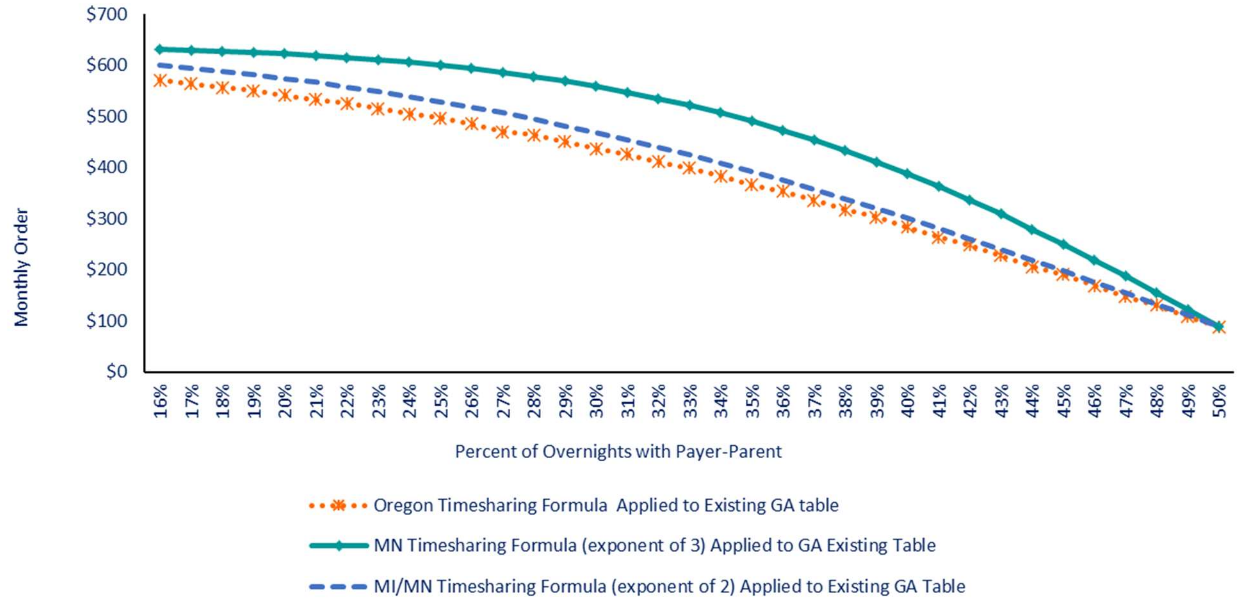


Exhibit A.3: Illustration of Oregon Using Existing Georgia Income Shares Table: One Child

Line		Parent A	Parent B	Combined
1	Monthly Adjusted Gross Income	$3,100	$4,300	$7,400
2	Percentage Share of Income	41.89%	58.11%	100%
3	Basic Obligation for 1 Child (Combined Line 1 applied to table)			$1,100
4	Each Parent's Share of Basic Obligation for 1 Child (Line 3 multiplied by Line 2 for each parent)	$460.79	$639.21	
5	Overnights with Each Parent (must total 365)	265	100	365
6	Percentage Adjustment from Oregon Table for Lesser Time Parent (If equal number of days use 0.50 for the higher income parent).		.1537	
7	Dollar Amount of Parenting Time Adjustment for Lesser Time Parent (Line 3 Combined multiplied by Line 6)		$169.07	
8	Child Support Order (Line 4 minus Line 7 for Lesser Time Parent)		$470.14	

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APPENDIX to May 12, 2023 Addendum: Excerpts from MN, MI, and OR Automated Worksheets.

The output from the Minnesota worksheet (below) is designed to work with MN's old adjustment too (Lines 4a-5d address the old adjustment method), so is not as straightforward as it could be.

Parenting Expense Adjustment Supplement

Parent A: **IV-D Case Number:** **Number of Joint Children:** 1
Parent B: **Court File Number:** **Date:** 5/3/2023

	Parent A	Parent B	Combined
1. Number of Annual Overnights for joint child(ren)	182.5	182.5	----
2. Percentage of Parenting Time	50%	50%	----
3. Basic Support Obligation	$569	$785	$1354
4a. Percentage of Adjustment for Parenting Time between 10% and 45%			
4b. Amount of Adjustment for Parenting Time			
4c. Obligation after Parenting Expense Adjustment			
5a. Percentage of Parenting Time is at Least 45.1% for Both Parents			
5b. Each Parent's Percentage Share of Combined PICS			
5c. Each Parent's Pro Rata Basic Child Support Obligation			
5d. Obligation After Parenting Expense Adjustment			
6a. Obligation after Parenting Expense Adjustment Based on the Number of Annual Overnights		$108	----
6b. Greater than 55% Parenting Time Adjustment			----

Minnesota guidelines provision describing the calculation of parenting time	Subd. 2.**Calculation of parenting expense adjustment.** (a) For the purposes of this section, the following terms have the meanings given: (1) "parent A" means the parent with whom the child or children will spend the least number of overnights under the court order; and (2) "parent B" means the parent with whom the child or children will spend the greatest number of overnights under the court order. (b) The court shall apply the following formula to determine which parent is the obligor and calculate the basic support obligation: (1) raise to the power of three the approximate number of annual overnights the child or children will likely spend with parent A; (2) raise to the power of three the approximate number of annual overnights the child or children will likely spend with parent B; (3) multiply the result of clause (1) times parent B's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5); (4) multiply the result of clause (2) times parent A's share of the combined basic support obligation as determined in section 518A.34, paragraph (b), clause (5); (5) subtract the result of clause (4) from the result of clause (3); and (6) divide the result of clause (5) by the sum of clauses (1) and (2). (c) If the result is a negative number, parent A is the obligor, the negative number becomes its positive equivalent, and the result is the basic support obligation. If the result is a positive number, parent B is the obligor and the result is the basic support obligation. Subd. 3.**Calculation of basic support when parenting time is equal.** If the parenting time is equal and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared.

Output from MI automated calculator

Section: Calculation Results

A pays B $93.00 a month.

**The support calculation provided by this Calculator is not a support recommendation or a support order.*

	1 Child	2 Children	3 Children	4 Children	5+ Childre
Payer	A	-	-	-	
Average Overnights with Payer	182	-	-	-	
Base Support after Parental Time Offset	$72.00	-	-	-	
Health Care Insurance Premium Adjustment	$0.00	-	-	-	
Subtotals	$72.00	-	-	-	
Ordinary Medical	$21.00	-	-	-	
Child Care	$0.00	-	-	-	

Section: Base Support Calculation

See 2021 MCSF 3.02(A)	A	B
Child Support Children	1	1
Child Support Children on Calculation	1	1
Base Support Equation	General Care Equation	General Care Equation
Base Support Amount	$724.00	$589.00
Average Overnights (Highest Tier)	182	183
Payer's Base Support after Parental Time Offset	$72.00	$0.00

Obligation End Date (Children are listed from top to bottom, youngest to oldest.)

Children:	Obligation End Date	Post Majority
CHILD 1		No

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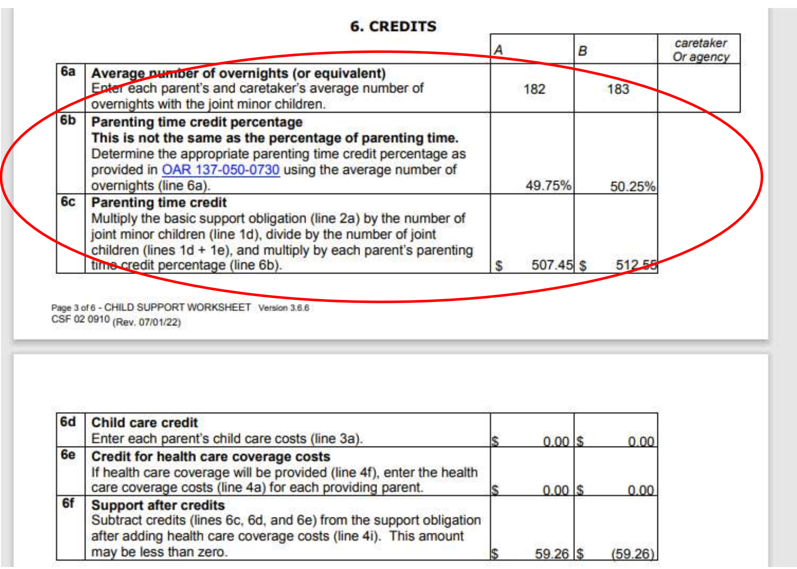
Output from OR Automated Calculator

The Oregon adjustment is a bit convoluted because of the interaction with add-ons and the $100 minimum order. It could be simplified. The percentage reduction for timesharing is shown on Line 6b. This is the percentage from the look-up table of percentages. It is unnecessary to calculate it for both parents like Oregon does.



6. CREDITS

		A	B	caretaker Or agency
6a	**Average number of overnights (or equivalent)** Enter each parent's and caretaker's average number of overnights with the joint minor children.	182	183	
6b	**Parenting time credit percentage** **This is not the same as the percentage of parenting time.** Determine the appropriate parenting time credit percentage as provided in OAR 137-050-0730 using the average number of overnights (line 6a).	49.75%	50.25%	
6c	**Parenting time credit** Multiply the basic support obligation (line 2a) by the number of joint minor children (line 1d), divide by the number of joint children (lines 1d + 1e), and multiply by each parent's parenting time credit percentage (line 6b).	$ 507.45	$ 512.55	

Page 3 of 6 - CHILD SUPPORT WORKSHEET Version 3.6.6
CSF 02 0910 (Rev. 07/01/22)

		A	B
6d	**Child care credit** Enter each parent's child care costs (line 3a).	$ 0.00	$ 0.00
6e	**Credit for health care coverage costs** If health care coverage will be provided (line 4f), enter the health care coverage costs (line 4a) for each providing parent.	$ 0.00	$ 0.00
6f	**Support after credits** Subtract credits (lines 6c, 6d, and 6e) from the support obligation after adding health care coverage costs (line 4i). This amount may be less than zero.	$ 59.26	$ (59.26)

	may be less than zero.	$ 59.26	$ (59.26)

7. WHO SHOULD PAY SUPPORT FOR MINOR CHILDREN?

		A	B
7a	**Minor children's portion of basic support obligation** Divide each parent's portion of the basic support obligation (line 2b) by the total number of joint children (lines 1d + 1e) and multiply by the number of minor children (line 1d).	$ 566.71	$ 453.29
7b	**Net obligation for minor children** Add the minor children's portion of the basic support obligation (line 7a), each parent's share of child care costs (line 3c), and the minor children's portion of health care coverage costs (line 4h divided by total of lines 1d and 1e, multiplied by line 1d). Subtract parenting time credit (line 6c), child care credit (line 6d), and the minor children's portion of health care coverage costs credit (line 6e divided by total of lines 1d and 1e, multiplied by line 1d). May be less than zero.	$ 59.26	$ (59.26)
7c	**Which parent(s) should pay support for minor children?** Enter "**Yes**" in the column of the parent with the higher net support for minor children (line 7b). Enter "**No**" in the other parent's column. Enter "**No**" for both parents if the parents' line 7b figures are equal or there are no minor children (line 1d). If the children live with a caretaker or are in state care, enter "**Yes**" in both columns.	Yes	No

8. MINIMUM ORDER; REDUCTION FOR BENEFITS PAID TO CHILD

		A	B
8a	**Total support payment obligation, including medical support** To each parent's support obligation after credits (line 6f), add the greater of the health care coverage premium costs that will be ordered (line 6e) or cash medical support (line 5b).	$ 59.26	$ (59.26)
8b	**Is there a need to apply an exception to the minimum order presumption?** If line 8a is less than $100 and the parent has an exception to the minimum order as provided in OAR 137-050-0755, enter "**yes**" in that parent's column. Otherwise, enter "**no.**"	No	No
8c	**Amount needed to meet minimum order** If a parent has a total support payment obligation of less than $100 (line 8a), and does not have an exception to the minimum order (line 8b), subtract line 8a from $100. This is the increase needed to reach the $100 minimum order. Otherwise, enter $0.	$ 40.74	$ 159.26

Excerpt of Oregon Table

Table: Parenting time credit percentage by number of overnights

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
0	0.00%	36	3.19%	72	8.67%	108	17.77%
1	0.07%	37	3.30%	73	8.87%	109	18.09%
2	0.14%	38	3.42%	74	9.07%	110	18.41%
3	0.21%	39	3.54%	75	9.27%	111	18.73%
4	0.28%	40	3.66%	76	9.48%	112	19.06%
5	0.35%	41	3.78%	77	9.68%	113	19.39%
6	0.42%	42	3.91%	78	9.90%	114	19.72%
7	0.49%	43	4.04%	79	10.11%	115	20.06%
8	0.57%	44	4.16%	80	10.33%	116	20.40%
9	0.65%	45	4.30%	81	10.55%	117	20.75%
10	0.72%	46	4.43%	82	10.77%	118	21.10%
11	0.80%	47	4.56%	83	11.00%	119	21.45%
12	0.88%	48	4.70%	84	11.23%	120	21.81%
13	0.96%	49	4.84%	85	11.47%	121	22.17%
14	1.04%	50	4.98%	86	11.70%	122	22.54%
15	1.13%	51	5.12%	87	11.94%	123	22.90%
16	1.21%	52	5.27%	88	12.19%	124	23.27%
17	1.29%	53	5.41%	89	12.43%	125	23.65%
18	1.38%	54	5.56%	90	12.68%	126	24.03%
19	1.47%	55	5.71%	91	12.94%	127	24.41%
20	1.56%	56	5.87%	92	13.19%	128	24.80%
21	1.65%	57	6.02%	93	13.45%	129	25.19%
22	1.74%	58	6.18%	94	13.72%	130	25.58%
23	1.84%	59	6.34%	95	13.98%	131	25.98%
24	1.93%	60	6.51%	96	14.25%	132	26.38%
25	2.03%	61	6.67%	97	14.53%	133	26.78%
26	2.12%	62	6.84%	98	14.80%	134	27.19%
27	2.22%	63	7.01%	99	15.08%	135	27.60%
28	2.32%	64	7.19%	100	15.37%	136	28.01%
29	2.43%	65	7.36%	101	15.66%	137	28.43%
30	2.53%	66	7.54%	102	15.95%	138	28.85%
31	2.64%	67	7.72%	103	16.24%	139	29.27%
32	2.74%	68	7.91%	104	16.54%	140	29.70%
33	2.85%	69	8.09%	105	16.84%	141	30.13%
34	2.96%	70	8.28%	106	17.15%	142	30.56%
35	3.08%	71	8.47%	107	17.46%	143	31.00%

Sec. 46b-215a-3a. Arrearage guidelines

(a) **Scope of section**

This section shall be used to determine periodic payments on child support arrearages, subject to section 46b-215a-5c of the Regulations of Connecticut State Agencies. [The] Except as provided in subsection (f) of this section, the determination of lump sum payments remains subject to the discretion of the judge or family support magistrate, in accordance with existing law.

(b) **General rule**

(1) Except as provided in subsections (c), (d) and (e) of this section, the weekly arrearage payment shall equal the lesser of:

(A) twenty percent of the weekly current support order, or

(B) fifty-five percent of the obligor's net income, reduced by the amount of the current support order.

(2) In a Title IV-D case where arrearages are owing to both the state and a custodial parent, one payment order shall enter under which payments shall be distributed in accordance with Title IV-D distribution requirements. Such order shall be payable to the custodial parent until the custodial parent’s arrearage is satisfied, and then to the state.

(c) **Special rule for low-income obligors**

Subject to subsection (e)(1) of this section, the weekly arrearage payment of a low-income obligor shall equal the greater of:

(1) ten percent of the weekly current support order, or

(2) one dollar per week.

(d) **Special rule if there is no current support order**

Subject to subsection (e)(1) of this section, the weekly arrearage payment when there is no current support order in effect for any child of the parties shall equal:

(1) twenty percent of an imputed support obligation for the child for whom the arrearage is owed if the parents have a present duty to provide support for the child, or

(2) one hundred percent of an imputed support obligation for the individual for whom the arrearage is owed if the parents have no present duty to provide support for the individual.

(e) **Special rule for child living with the obligor**

(1) **Applicability**

This subsection applies when the child for whom the arrearage is owed is living with the obligor. If this subsection applies, subsections (c) and (d) of this section shall not be used to determine the arrearage payment. For the purposes of this subsection, a child is deemed to be living with the obligor if the circumstances in either subparagraph (A) or subparagraph (B) of this subdivision are found.

(A) The obligor is the child's legal guardian and is currently living in the same household with such child.

(B) The obligor is not the child's legal guardian, but the child has lived in the same household with the obligor for at least:

(i) the six months immediately preceding the determination of the arrearage payment, or

(ii) six of the twelve months immediately preceding such determination.

(2) Special rule

When this subsection applies, the weekly arrearage payment shall be:

(A) one dollar per week if the obligor's gross income is less than or equal to two hundred fifty percent of the poverty guideline for the obligor's household size, as published annually in the *Federal Register* by the Department of Health and Human Services; or

(B) twenty percent of the imputed support obligation for such child if the obligor's gross income is greater than two hundred fifty percent of the poverty guideline for the obligor's household size, as published annually in the *Federal Register* by the Department of Health and Human Services.

(f) **Special rule for dependency benefits**

(1) **Applicability**

This subsection applies when a custodial parent receives a dependency benefit for the child for whom the arrearage is owed based on an award of Social Security Disability Insurance granted to the noncustodial-parent obligor.

(2) **Lump sum awards**

A judge or family support magistrate shall reduce any arrearage owed to the custodial parent based on a retroactive, lump-sum award of dependency benefits to the extent such arrearage accrued during the same time said award is intended to cover.

(3) **Monthly awards received after lump sum**

As required by section 46b-215a-2c(c)(5) of the Regulations of Connecticut State Agencies, monthly dependency benefits shall be used to adjust the presumptive current support owed by the obligor. If the monthly dependency benefit exceeded the amount of presumptive support that would have otherwise been owed but for said adjustment, a judge or family support magistrate may reduce any arrearage owed by the obligor to the custodial parent by an amount not to exceed the total excess amount received by the custodial parent in past months.

(g) **Use of the worksheet in arrearage determinations**

Line references throughout this subsection are to the worksheet included in section 46b-215a-6 of the Regulations of Connecticut State Agencies, which worksheet is intended for use with the following instructions.

(1) Determine the total arrearage

Add all amounts described in subparagraphs (A), (B) and (C) of this subdivision to determine the total arrearage to be paid for past support of the subject child. Enter the sum on line 32, indicating separately, if applicable, amounts due to the state and amounts due to the family. Amounts comprising the total arrearage are:

(A) the total of all delinquent amounts that have become due and payable under a current support order, but which have not been reduced to a judgment or an arrearage finding;

(B) the total of all unpaid support amounts that have been reduced previously to a judgment or arrearage finding; and

(C) the total of all support amounts due for periods prior to the initial determination of a support order.

(2) Determine the arrearage payment

Enter on line 29 either twenty percent of the line 30 amount or, if applicable, the amount determined in one of subparagraphs (A) to (D), inclusive, of this subdivision (corresponding to paragraphs A to D, inclusive, in section VI of the worksheet). The line 29 amount is the presumptive arrearage payment. Enter this amount on line 31 unless a deviation criterion applies.

If the amount entered on line 31 differs from the line 29 amount, complete section VIII of the worksheet.

(A) If the noncustodial parent is a low-income obligor, enter on line 29 the greater of ten percent of the line 30 amount or $1 per week, unless subparagraph (B) of this subdivision applies.

(B) If the child is living with the obligor, enter on line 29 either: (i) $1 per week if the obligor's gross income is less than or equal to two hundred fifty percent of poverty level for the obligor's household size, or (ii) twenty percent of an imputed support obligation for the child if the obligor's gross income is greater than two hundred fifty percent of poverty level for the obligor's household size.

(C) If there is no current support order and subparagraph (B) of this subdivision does not apply, enter on line 29 either: (i) twenty percent of an imputed support obligation if the parents have a present duty to provide support for the child, or (ii) one hundred percent of an imputed support obligation if the parents have no present duty to provide support for the individual.

(D) If subparagraphs (A) to (C), inclusive, of this subdivision do not apply and the sum of the current support and arrearage payments would exceed fifty-five percent of the noncustodial parent's line 14 amount, enter fifty-five percent of the noncustodial parent's line 14 amount, minus the line 30 amount, on line 29.

54 Fam. L.Q. 141

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THE RELATIONSHIP BETWEEN CHILD SUPPORT AND PARENTING TIME

Introduction

When child support guidelines were initially drafted, it was assumed that in most instances, the lesser-time parent would be the father, the father would see the children infrequently, and the father would have a higher income than the mother. Today, more custodial parents are male than before,[1] the wage gap between mothers and fathers has narrowed,[2] and a substantial number of fathers are more involved in their children's lives.[3]

Decades ago, it was rare for an obligor parent to have access to his child more than every other weekend and every other holiday and approximately ***142** three weeks in the summer (or about 20% of all overnights per year).[4] Recent studies have found that shared placement has become more common.[5] Census data find that 58% of noncustodial fathers and 73% of noncustodial mothers had provisions for visitation or joint custody or both in 1991, and that the percentage increased to 81% of noncustodial parents in 2018.[6] These trends raise questions about how to calculate child support obligations in various situations, particularly when the payor parent has substantial access to the child.

This article will discuss various approaches that have been applied to how child support should be calculated (i) when the lesser-time parent has a higher income than the other parent but has substantial access, (ii) when both parents have equal joint physical custody, and (iii) when the greater-time parent has a higher income than the other parent. We will highlight the advantages and disadvantages of the various policy options.

I. Background Information

A. The Theoretical Foundation of Child Support Guidelines in the United States

Most states adopted child support guidelines in the late 1980s to fulfill a federal requirement that each state have advisory child support guidelines by 1987.[7] The Family Support Act of 1988 expanded the requirement from statewide advisory guidelines to require rebuttable presumptive guidelines.[8] The requirements were intended to correct several deficiencies: inconsistent order amounts among parties in similarly situated cases, inefficient adjudication of child support amounts due to ***143** the lack of uniform standards, and inadequate levels of support when compared to poverty levels and the cost of child-rearing.[9]

A number of different conceptual models were proposed as a foundation for the creation of child support guidelines. For example, some commentators have argued that guidelines should be crafted so that both parents will have equal living standards until the child becomes an adult.[10] However, no state has adopted this as a conceptual framework for guidelines. Instead, most states adopted a "continuity of expenditure" model of child support guidelines.[11] The principle of the continuity-of-expenditure model is that the child whose parents are living separately should receive the same level of

financial support that the child would have received if the child and parents lived together as an intact family. To this end, the continuity of expenditure model is based on measurements of child-rearing expenditures in intact families. The continuity of expenditure philosophy has been implemented in the United States via the "income shares model" and the "percentage-of-obligor income model," the two major types of models for the calculation of child support. All but three states use one of these two models. The income shares model, which is used by 41 states,[12] presumes that each parent is responsible for his or her prorated share of what an intact family with the same number of children and combined parental income spends on child-rearing. The obligated parent's prorated share (based on the obligated parent's share of the total parental income) is the basis of the child support order.[13] Under the percentage-of-obligor income model, the presumptive child support amount is calculated based on only the income of the lesser-time parent.[14] States utilizing the percentage-of-obligor income model often presume that the custodial parent spends at least an equal percentage of income or dollar amount on the child as the guidelines percentage or amount.

144** ***B. Federal Requirements

Federal law does not require adjustments in state guidelines for when the obligor has substantial access. Recent changes to federal requirements for state guidelines, however, attempt to make sure that states provide adjustments within their guidelines to not impoverish the obligor parent.[15] States are now required to provide a self-support reserve or a similar adjustment in their guidelines. Self-support reserves have been established so that significant child support is not required if the obligor parent's income is below a certain specified amount.[16] Most states with both a self-support reserve and an adjustment for timesharing do not allow both adjustments; rather, most take the lower of the two adjustments.

C. Timesharing Adjustment

In the past few decades, there has been a movement toward the adoption of formulas that adjust for parenting time. In 1998, 24 states provided formulas to adjust for parenting time.[17] Today, more than two decades later, 38 states have now adopted a parenting-time adjustment formula for child support.[18] The formulas and criteria for applying them vary. As set forth in more detail below, many states have adopted rules so that, once the obligor parent has the child for at least a specified number of overnights, the presumptive child support amount is reduced as the level of access increases. In addition, some states have incorporated rules so that, even if the obligor parent has substantial access or equal physical custody, child support should not be reduced if the impact would be to impoverish the recipient parent.[19]

To the extent that states provide a timesharing adjustment formula, it is helpful to know what level of parenting time is assumed in the basic ***145** formula or table. Most states using the income shares guidelines make no assumption of parenting time in their basic table. This is because most income shares tables, which contain the basic child support obligation owed by both parents for a range of combined parental incomes and number of children for whom support is being determined, are based on economic measurements of child-rearing expenditures among intact families; that is, how much is spent on the children when the parents and the children live together. In other words, there is no timesharing arrangement in the underlying economic data because the parents live together.

As mentioned earlier, the income shares model is one type of continuity of expenditures model, which means the child support obligation relates to how much would have been spent on the child in an intact family. For example, Figure 1, which is an excerpt of the Illinois income shares table, shows that the basic obligation for one child when the parents have a combined income of $7,000 net per month is $1,136 per month. This amount is based on a study of how much an intact family spends for one child on average.[20] The obligated parent's prorated share of the basic obligation in the table is the basis of the child support order. An adjustment may be layered on top of this for parenting time.[21] Pennsylvania is the only income shares state to incorporate a parenting-time adjustment into its basic table. The Pennsylvania table reflects how much is spent on a child in an intact family less what the obligated parent would need to cover most of the child's food and entertainment expenses, assuming the child is with the obligated parent 30% of the time.[22]

***146 Figure 1**[23]

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Excerpt of Illinois Income Shares Table

COMBINED ADJUSTED NET INCOME			ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
6525.00	-	6574.99	1078	1621	1929	2155	2371	2577
6575.00	-	6624.99	1085	1630	1941	2168	2385	2593
6625.00	-	6674.99	1091	1640	1953	2181	2400	2608
6675.00	-	6724.99	1097	1650	1965	2195	2414	2624
6725.00	-	6774.99	1104	1660	1976	2208	2429	2640
6775.00	-	6824.99	1110	1669	1988	2221	2443	2655
6825.00	-	6874.99	1117	1679	2000	2234	2457	2671
6875.00	-	6924.99	1123	1689	2012	2247	2472	2687
6925.00	-	6974.99	1129	1698	2023	2260	2486	2703
6975.00	-	7024.99	1136	1708	2035	2273	2501	2718
7025.00	-	7074.99	1142	1718	2047	2286	2515	2734
7075.00	-	7124.99	1148	1728	2059	2300	2530	2750
7125.00	-	7174.99	1155	1737	2070	2313	2544	2765
7175.00	-	7224.99	1161	1747	2083	2326	2559	2782
7225.00	-	7274.99	1168	1758	2095	2340	2574	2798
7275.00	-	7324.99	1175	1768	2107	2354	2589	2814
7325.00	-	7374.99	1181	1778	2119	2367	2604	2831
7375.00	-	7424.99	1188	1788	2132	2381	2619	2847
7425.00	-	7474.99	1195	1798	2144	2395	2634	2863
7475.00	-	7524.99	1201	1808	2156	2408	2649	2880

Most percentage-of-obligor income guidelines, which is the other type of continuity of expenditures model, also relate to measurements of childrearing expenditures in intact families. Some states (such as Wisconsin) mentioned that they adjusted the percentages to account for the child's time with the obligated parent, but did not specify what assumption was made regarding the "normal" level of contact.[24] Other percentage-of-obligor income guidelines (such as those of Alaska and Mississippi) do not clearly state that any consideration of timesharing is considered in the basic percentages.[25]

*147 II. Calculating the Child Support Order When the Lesser-Time Parent Has Substantial Access and a Higher Income Than the Other Parent

A. Introduction

Although most states do not contain any parenting-time assumptions in their basic guidelines tables or percentages, most states have adopted a formula pertaining to how the guidelines support amount should be reduced based on the level of access by the obligor. This is premised on the assumption that, as the obligor-parent's parenting time increases, this increases the

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childrearing costs of the obligor parent and reduces the expenses of the other parent. Most states with formulas provide that the formula is to be applied presumptively if the case meets certain criteria (e.g., a shared-custody order that the obligor parent actually exercises). These states, however, disagree about whether the obligor parent should receive some support reduction starting with a relatively low level of contact, or whether such an adjustment should begin only when there is substantial access because the custodial parent's expenses are not reduced by the child spending only a small number of overnights with the other parent.

Some commentators have argued that child support should not be presumptively reduced if the obligor parent has substantial access.[26] Proponents of this view contend that it is not clear that the recipient parent's expenses will be reduced as a result of substantial access, so it is not fair to presumptively reduce support when substantial access exists. The consideration of whether the custodial parent's expenses are reduced is also echoed in a recent New York case that involved a father who had possession of his child overnight three nights per week. He argued that, due to his level of possession, his support amount should be reduced below the normal presumptive amount of child support under the guidelines. The appellate court ruled that, based on the New York law, he did not have the right to have his presumptive support amount reduced due to his substantial parenting time without showing that his expenses had increased as a result or that the other parent's expenses had decreased.[27] In this particular case, a major consideration was the presentation of evidence that the custodial ***148** parent's expenses were not substantially reduced by the obligor parent's time with the child.[28]

A small number of states have merely treated the matter as a deviation factor, giving the court the power to reduce the presumptive award due to substantial access. In some of these states, courts have been critical of an absolute rule that an obligor should automatically get a certain reduction in child support as a result of a certain level of access.[29] Some statutes of this type (such as New Hampshire's) invite the court to consider, when deciding whether to reduce the support amount, whether the obligor's level of access reduces the expenses of the recipient parent.[30]

In contrast with the New Hampshire and New York approaches summarized above, to obtain a parenting-time adjustment under the various formulas in force among most states today, the obligor does not have to establish that his level of access reduces the expenses of the other parent. Nonetheless, some states do give the court some discretion when applying the timesharing adjustment. For example, in the District of Columbia, a timesharing adjustment is not made if the recipient parent can show that such an adjustment would be unjust or inappropriate.[31] In some other states, before a timesharing adjustment is made, the obligor parent must show that he or she contributed to the expenses of the child, in addition to paying child support.[32]

***149** *B. Adjustment Criteria*

1. Timesharing Criteria

One common criterion for obtaining a parenting-time adjustment is that the lesser-time parent must have at least a certain number of overnights per year with the child. This is the approach used in many states and some other countries. In some Western European countries, the United Kingdom, and Canada, child support is not reduced until a specified access threshold is reached. For example, in the UK, child support is reduced when the obligor has access 53 nights per year. Greater reductions occur when the obligor has access for 104, 156, and more than 175 nights. In France, child support is reduced when the obligor has the child 25% of the time. Child support is reduced in Canada when the obligor has the child 40% of the time.[33] In Australia, child support begins to be reduced due to obligor access starting with 14% of all overnights (one night per week).[34]

To make a parenting-time adjustment calculation, the country or state must specify how levels of contact are to be measured. While a few U.S. states attempt to measure time spent with each parent (e.g., one-fourth day, one-half day),[35] the most common way to measure levels of access is in terms of how many nights the child spends with the parent.[36] This is done due to the relative simplicity of this method, as well as the fact that, if a child spends the night with a parent, it is likely that the parent will provide dinner and breakfast. (Oregon generally uses overnights, but another method may be used if a parent has frequent contact that does not consist of overnights.)[37] Another related question is whether the child ***150** support should be calculated based on the parenting time set forth in the decree or the parenting time actually occurring or both.[38]

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As mentioned earlier, of those states that have adopted a formula for the reduction of child support based on access levels, they do not agree regarding when the child support amount should begin to be reduced. Some states require nearly equal timesharing before the adjustment is applied. In other states, the child support amount is reduced by a small amount even with a very low level of access.[39] In the states that reduce support beginning with low levels of access, the child support reduction gradually increases as the number of overnights increases.[40] These parenting-time reduction schedules were created to attempt to give the obligor parent credit for the additional expenses that are incurred as parenting time increases.

Further, when the child support reduction starts at few overnights, there is not a precipitous drop in the guidelines support amount at any level of access. Such a precipitous drop in the child support amount with a small change in access is referred to as a "cliff effect." For example, if a substantial number of overnights are required before a parenting-time adjustment can be made, and the guidelines-calculated amount is significantly reduced with additional access, then cliff effects are created. The cliff effect becomes larger as the minimum threshold is increased.

This is shown by comparing in Figure 2 the amount of support that would be due under the Illinois child support guidelines schedule using the Illinois timesharing reduction formula, which uses a 146-overnight threshold for applying the Illinois shared physical care adjustment,[41] to how the support amount would change if the Colorado threshold of more than 92 overnights would be applied to the Illinois child support guidelines schedule.[42] (Both Illinois and Colorado use the same general timesharing adjustment ***151** formula.[43]) The comparisons consider a scenario where the father's net income is $4,000 per month, the mother's net income is $3,000 per month, there is one child, and there are no other adjustments. It is assumed in Figure 2 that the father is the lesser-time parent. The figure shows the changes in the monthly order amount as the lesser-time parent has more time with the child. The figure starts at zero timesharing, skips to 16% timesharing, and then tracks with one percent increases in the percent of overnights until equal physical custody of 50%. (Including one percent increments from 0-16% in the figure would make the graph unwieldy to read.) The cliff effect that results from the Illinois approach is much more dramatic than the cliff effect arising from the Colorado timesharing threshold.

Figure 2

Illustration of the Impact of Lower and Higher Timesharing Thresholds:

Image 1 within document in PDF format.

***152 2. Timesharing Adjustments and Low-Income Recipients**

One question presented by parenting-time child support reductions is whether they should be granted if they would significantly harm the financial condition of the household of the recipient parent. A few courts have not granted parenting-time reductions due to the low income of the recipient parent.[44] The parenting-time adjustment rules in Missouri, Virginia, and New Jersey provide that generally no support adjustment should presumptively occur if the recipient-parent's income is below a certain specified level.[45]

C. Formulas for Adjusting for Timesharing

With the exception of the "cross-credit formula" (which is also called the "offset formula" in some states), no other timesharing formula is used by more than two states. The cross-credit formula is used by 23 states.[46]

1. Cross-Credit Formula

The cross-credit formula essentially calculates a theoretical order for each parent weighed by the percentage of time with the other parent. The parent with the larger theoretical order is the obligor parent and owes the difference between the two theoretical orders. Colorado was the first state to adopt this method and promulgated it in 1986.[47]

The first step in calculating the child support amount under an income shares approach in most states using the cross-credit formula is to ***153** increase the basic obligation owed by both parents by 50%[48] to account for some child-rearing expenses

being duplicated when both parents have substantial access (i.e., the cost of housing and some transportation expenses). In other words, the cross-credit formula with such a multiplier assumes it costs more to raise a child in two households when both parents have substantial access than it does in one household. (A few states do not utilize a multiplier or use a multiplier other than 1.5.)[49]

As shown in Figure 3, each parent's share of that larger theoretical support amount is determined (under an income shares approach) based on each parent's share of combined parental income. Once each parent's shared-care enhanced child support obligation is calculated, that amount is multiplied by the percentage of overnights the child spends with the other parent. The smaller number is then subtracted from the larger number to arrive at the child support amount. The parent with the larger amount would pay the other parent the difference between the two amounts.[50]

Figure 3

Illustration of the Cross-Credit Adjustment

LINE		PARENT A	PARENT B	COMBINED
1	Monthly net income	$4,000	$3,000	$7,000
2	Percentage share of income	57%	43%	100%
3	Basic obligation for 1 child (from Illinois Schedule)			$1,136
4	Shared-care enhanced child support obligation (Line 3 multiplied by 150%)			$1,704
5	Each parent's share (Line 2 x Line 4)	$971	$733	
6	Overnights with each parent (must total 365)	146	219	365
7	Percentage time with each parent (Line 6 divided by 365)	40%	60%	100%
8	Each parent's obligation (for Parent A, Parent A's line 5 x Parent's B Line 7; For Parent B, Parent B's line 5 x Parent's A Line 7)	$583	$293	
9	Shared custody obligation (subtract smaller from larger on Line 8)	$290		

***154** (An alternate way to make this calculation is to multiply each parent's enhanced shared-care child support amount by that parent's percentage of overnights, and then to subtract that amount from the enhanced shared-care child support amount to arrive at the amount each parent owes the other parent. Then the lower amount would be subtracted from the higher amount to arrive at the child support obligation.) Under this approach, if the shared-care child support amount is greater than the amount that would have resulted from a sole custody award, the parent normally pays the smaller amount.[51]

All states using a cross-credit approach set a certain timesharing threshold for its use. States do not agree regarding the appropriate threshold. Alaska and Vermont have chosen 30% of overnights, the District of Columbia has chosen 35%, and Illinois utilizes 40%.[52] The cross-credit approach is commonly used with an income shares approach, although a few states with percentage-of-obligor income guidelines (such as Alaska and Wisconsin) also use it.[53]

There are some strengths and weaknesses to the cross-credit with multiplier approach. The major strengths of a cross-credit formula are that it has been used for decades by many states and is easily explainable. The first weakness is that the child support is not reduced until the parenting-time level reaches the threshold. Once the parenting time reaches the threshold, child support frequently goes down substantially as parenting-time levels increase above the threshold. This creates a cliff effect. (This is evident in Figure 2.) Small variations in parenting time can result in substantial changes in child support. When there is a cliff effect, particularly a large cliff effect, there is a concern that the child support recipient may oppose the

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obligor's parenting time meeting the amount of timesharing required for the adjustment, while the obligor might want to meet that threshold. The result can be more litigation over parenting time.[54] Some commentators have questioned whether this is a significant ***155** problem;[55] also, some parents may not be familiar with the law or may misunderstand it.

The second perceived weakness of this cross-credit approach is that it can result in the greater-time parent paying child support to the lesser-time parent if the lesser-time parent's income is substantially less than that of the other parent. While such a result is controversial in some states, it is perceived to be a desirable outcome in some other states.

2. Mathematical Variations to the Cross-Credit Formula

There are at least two mathematical variations of the cross-credit formula. One variation is used by Michigan and Minnesota.[56] The other variation is used by Oregon.[57] The mathematical structure of these two formulas is rooted in the cross-credit formula, but they do not require a timesharing threshold for their application. These approaches have also been called "advanced math" or "non-linear" formulas because they are complicated mathematical formulas with exponential functions. The use of an exponential function allows the dollar reduction of the child support order for more overnights to increase gradually, rather than have a cliff effect. Figure 4 shows the formulas of these three states. Figure 5 compares the order amounts for the same case scenario shown in Figure 2 (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000). That is, the Michigan, Minnesota, and Oregon formulas (and a cross-credit formula with a threshold of 92 overnights) are applied on top of the Illinois child support guidelines schedule for comparison purposes to illustrate the impact of the timesharing formula, rather than the guideline support amount differences among states.

***156 Figure 4**

Formulas of States That Have Modified the Cross-Credit Approach

	FORMULA
Michigan[58]	$[(A_o)^{2.5} \times (B_s) - (B_o)^{2.5} \times (A_s)]/[(A_o)^{2.5} + (B_o)^{2.5}]$
	A_o Approximate percentage of overnights the children will likely spend with parent A annually
	B_o Approximate percentage of overnights the children will likely spend with parent B annually
	A_s Parent A's base support obligation
	B_s Parent B's base support obligation
Minnesota[59]	$[(A_o)^3 \times (B_s) - (B_o)^3 \times (A_s)]/[(A_o)^3 + (B_o)^3]$
	Same key as Michigan
Oregon[60]	Credit percentage = 1/(1 + e^(-7.14 x ((overnights/365) - 0.5))) - 2.74% + (2 x 2.74% x (overnights/365))

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***157 Figure 5**

Comparison of Modified Cross-Credit Formulas

Image 2 within document in PDF format.

As shown in Figure 4, the elements of the Michigan and Minnesota formulas are similar to the cross-credit formula in that both consider each parent's share of the basic obligation and weight it by the percentage of time the child is with the other parent. The difference is neither the Michigan timesharing adjustment nor the Minnesota timesharing adjustment applies a multiplier to the basic obligation. Instead, both states make an exponential function of the percentage of time: Michigan takes it to the 2.5 power and Minnesota takes it to the third power, which essentially cubes it. This causes the timesharing formula to start off with small adjustments when the lesser-time parent has few overnights and increases the adjustment as the parents move toward almost equal custody.

Figure 5 shows significant differences in support amounts in the four timesharing formulas when the lesser-time parent has few overnights, but the differences in the order amounts produced by the different timesharing formulas narrow as the lesser-time parent's time with the child approaches almost equal physical custody. When the lesser-time parent has the child for 40% of the time, the order amount would be $292 per month under the cross-credit formula with a 150% multiplier, $347 per month under ***158** the Michigan timesharing formula, $389 per month under the Minnesota timesharing formula, and $282 per month under the Oregon timesharing formula. (The reader should keep in mind that the timesharing formulas are applied to the Illinois schedule to not confound differences among the timesharing formulas with differences with state child support schedules.) Figure 5 also shows that the Michigan timesharing adjustment produces a larger reduction than the Minnesota timesharing adjustment. In other words, the higher the exponential power used in the formula, the smaller the reduction.

The Oregon formula produces the greatest adjustment at low levels of timesharing. The Oregon formula was developed by a mathematics professor to yield gradual changes when the lesser-time parent had little time with the child and larger changes when the lesser-time parent has almost equal custody, and it was also designed to track what a cross-credit formula with a 1.5 multiplier would yield at almost equal custody.[61] For ease of use, Oregon has developed a lookup table of overnights and percentage adjustments from its formula as well as an automated calculator.[62] An excerpt of the Oregon lookup table is shown in Table 1.

Table 1

Excerpt of the Oregon Lookup Table[63]

OVERNIGHTS	CREDIT %	OVERNIGHTS	CREDIT %	OVERNIGHTS	CREDIT %	OVERNIGHTS	CREDIT %
0	0.00%	36	3.19%	72	8.67%	108	17.77%
1	0.07%	37	3.30%	73	8.87%	109	18.09%
2	0.14%	38	3.42%	74	9.07%	110	18.41%
3	0.21%	39	3.54%	75	9.27%	111	18.73%
4	0.28%	40	3.66%	76	9.48%	112	19.06%
5	0.35%	41	3.78%	77	9.68%	113	19.39%
6	0.42%	42	3.91%	78	9.90%	114	19.72%
7	0.49%	43	4.04%	79	10.11%	115	20.06%

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8	0.57%	44	4.16%	80	10.33%	116	20.40%
9	0.65%	45	4.30%	81	10.55%	117	20.75%
10	0.72%	46	4.43%	82	10.77%	118	21.10%
11	0.80%	47	4.56%	83	11.00%	119	21.45%
12	0.88%	48	4.70%	84	11.23%	120	21.81%
13	0.96%	49	4.84%	85	11.47%	121	22.17%
14	1.04%	50	4.98%	86	11.70%	122	22.54%
15	1.13%	51	5.12%	87	11.94%	123	22.90%
16	1.21%	52	5.27%	88	12.19%	124	23.27%
17	1.29%	53	5.41%	89	12.43%	125	23.65%
18	1.38%	54	5.56%	90	12.68%	126	24.03%
19	1.47%	55	5.71%	91	12.94%	127	24.41%
20	1.56%	56	5.87%	92	13.19%	128	24.80%
21	1.65%	57	6.02%	93	13.45%	129	25.19%
22	1.74%	58	6.18%	94	13.72%	130	25.58%
23	1.84%	59	6.34%	95	13.98%	131	25.98%
24	1.93%	60	6.51%	96	14.25%	132	26.38%
25	2.03%	61	6.67%	97	14.53%	133	26.78%
26	2.12%	62	6.84%	98	14.80%	134	27.19%
27	2.22%	63	7.01%	99	15.08%	135	27.60%
28	2.32%	64	7.19%	100	15.37%	136	28.01%
29	2.43%	65	7.36%	101	15.66%	137	28.43%
30	2.53%	66	7.54%	102	15.95%	138	28.85%
31	2.64%	67	7.72%	103	16.24%	139	29.27%
32	2.74%	68	7.91%	104	16.54%	140	29.70%
33	2.85%	69	8.09%	105	16.84%	141	30.13%

***159** The major advantages to the mathematical variations of the cross-credit formulas are that they produce gradual reductions to the child support order as overnights increase (no cliff effect), they recognize that the rate of reduction should be less when there is little timesharing and more when there is greater timesharing, and they do not require a timesharing threshold. The disadvantages are that the formulas are not easily explainable, they cannot be calculated manually, and they

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can produce an adjustment at a very low number of overnights. The adjustment for a low number of overnights is a concern to policymakers who believe that the parent with more overnights does not incur a reduction in child-rearing expenditures until the child spends a substantial number of overnights with the other parent.

***160 3. Variable Expenses and Fixed, Duplicated, and Nonduplicated Expenses**

A few states (e.g., Arizona, Indiana, Missouri, and New Jersey) premise their parenting-time adjustments on expenses of children grouped into three categories: variable expenses (which travel with the child, such as food), duplicated fixed expenses incurred by both parents (such as the cost of housing), and nonduplicated fixed expenses (such as clothing).[64] Although this is the premise underlying the parenting-time formulas in these states, the premise is not always evident because each of these states (except New Jersey) has converted the formula to a sliding-scale lookup table. Nonetheless, Indiana, Missouri, and New Jersey specifically discuss the foundation of this adjustment in their guidelines.[65]

Indiana, Missouri, and New Jersey have not changed their underlying assumptions. Indiana assumes 35% of child-rearing costs are variable, Missouri assumes 38% are variable, and New Jersey assumes 37% are variable.[66] Another difference between the timesharing adjustments in these states is that all require a different minimum amount of overnights for an adjustment: Arizona requires at least four parenting-time days per year, Indiana generally requires at least 52 overnights per year, Missouri requires at least 36 overnights per year, and New Jersey generally does not specify a number of overnights for its adjustment for overnights not exceeding two or more per week.[67]

At low levels of obligor parenting time, such timesharing adjustments try to give the obligor credit for variable expenses only. At higher levels of parenting time, the obligor is also given credit for duplicated fixed expenses.[68] For example, New Jersey begins to include adjustments for ***161** duplicated fixed expenses when the lesser-time parent has at least two overnights per week (28% timesharing).[69]

There is a dearth of research confirming whether a particular expense is variable, duplicated fixed, or nonduplicated fixed. However, most states assume housing expenses, which is the largest expenditure category, are a duplicated fixed expense. States are mixed on their treatment of transportation expenses, which are the second-largest category of expenses. Depending on the state, some or all transportation expenses are considered variable expenses.[70] Food is normally considered a variable expense. Other categories of expenses, such as clothing, entertainment, and personal items, are less clear in their categorization. Yet these expenses comprise smaller shares of total child-rearing expenditures. A 2000 survey of parental expenditures regarding the living expenses of college students explored the classification of variable/duplicated fixed/nonduplicated fixed expenses and found conflicts with state assumptions.[71] For example, many of the college students recalled that their nonresidential father purchased clothing for them,[72] while clothing is typically deemed a nonduplicated fixed expense (hence, only incurred by one parent) in the states using this classification.

Figure 6 compares the parenting-time formulas for Arizona, Indiana, Missouri, and New Jersey using the same case scenario considered in Figures 2 and 5 (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000) and applying each of the state's timesharing formulas to the Illinois income shares child support schedule. When the lesser-time parent has 40% timesharing, the order amount would be $300 per month under the Arizona timesharing formula, $272 per month under the Indiana timesharing formula, $342 per month under the Missouri timesharing formula, and $333 per month under the New Jersey timesharing formula.

***162** The Arizona parenting-time formula, which is shown in Table 2,[73] consists of 13 intervals. The wide range of overnights within an interval (e.g., a 16.1% adjustment for 88 to 115 overnights) causes the downward staircase effect (i.e., notches) of the Arizona timesharing formula as the lesser-time parent has more time with the child. As observed in Figure 6, the Missouri parenting-time formula also has a downward staircase effect, but because it considers more and narrower timesharing intervals (18 intervals instead of 13 intervals like Arizona does),[74] the notches under the Missouri parenting-time formula are not as dramatic as those under the Arizona parenting-time formula.

The strengths of the variable/duplicated fixed/nonduplicated fixed timesharing premise are that it has a theoretical basis, can adjust for low levels of timesharing, and can be structured not to have a cliff effect. The weaknesses include the lack of empirical evidence on whether families actually organize their child-rearing expenditures this way and what the levels for each category of expense are, as well as the lack of clarity regarding at what timesharing threshold parents should move from

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sharing of variable expenses only to sharing of variable expenses and duplicated fixed expenses.

***163 Figure 6**

Comparison of Variable, Duplicated Fixed, and Nonduplicated Fixed Formulas

Image 3 within document in PDF format.

***164 Table 2**

Arizona's Parenting Time Table A[75]

NUMBER OF PARENTING-TIME DAYS	ADJUSTMENT PERCENTAGE
0-3	0
4-20	.012
21-38	.031
39-57	.050
58-72	.085
73-87	.105
88-115	.161
116-129	.195
130-142	.253
143-152	.307
153-162	.362
163-172	.422
173-182	.486

4. Other Formulas

Some states have established a sliding scale for the reduction of child support once the level of access reaches a certain level. For example, the Iowa guidelines provide that an obligor's obligation is to be reduced by 15% for 128 to 147 nights, 20% for 148 to 166 nights, and 25% for more than 167 nights (but less than equal physical custody).[76] Iowa also provides that a

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cross-credit formula with a 150% multiplier should be applied when there is equal physical custody.[77] Other states with sliding scales are Delaware and Kansas.[78] The lowest adjustment percentage is 10% and the highest is 30% in these sliding-scale formulas. Pennsylvania and North Dakota essentially provide a formulaic version of the sliding scale that allows the percentage reduction to vary from 10-20% in Pennsylvania and 9-16% in North Dakota.[79] Ohio simply provides an adjustment of ***165** 10% for 90 or more overnights per year.[80] These percentage adjustments may be loosely linked to the concept such as variable/duplicated fixed/nonduplicated fixed child-rearing expenses, but this is not clearly stated in the guidelines.

Utah reduces its basic guidelines calculation by a factor of 0.27% for every overnight over 110 but not greater than 131 overnights.[81] For overnights exceeding 131, Utah provides a deduction factor of 0.84% for each overnight.[82] The 0.27% is the ratio of 100% divided by 365 overnights; hence, it is a per diem approach. It is not clear what the basis of the 0.84% is or why Utah set the threshold at 110 overnights. The Tennessee timesharing adjustment is also essentially a per diem adjustment. The Tennessee adjustment has a timesharing threshold of 92 overnights and is designed to result in an award of no support at 182.5 overnights when the parents have equal incomes.[83]

To that end, the Tennessee adjustment factor for 92 overnights or more is the number of overnights multiplied by .0109589 (which is 2/182.5: that is, 92 overnights is a quarter of the year and 182.5 is half the year, so the timesharing formula contains percentages needed to result in a zero order at 50%/50% timesharing).

Figure 7 illustrates the impact of these different approaches by comparing the order amounts under the Iowa, Pennsylvania, Tennessee, and Utah timesharing formulas applied to the same case scenario considered in earlier figures (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000), using the Illinois income shares child support schedule. When the lesser-time parent has the child 40% of the time, the order amount would be $479 per month under the Iowa timesharing formula, $536 under the Pennsylvania timesharing formula, $357 per month under the Tennessee timesharing formula, and $432 per month under the Utah timesharing formula. Figure 7 shows that a sliding-scale percentage such as the Iowa timesharing formula and Pennsylvania's timesharing formula produces cliff effects at each timesharing interval (128, 148, and 167 overnights in Iowa) or when the timesharing threshold is met (40% timesharing in Pennsylvania). In contrast, the per diem approaches used by Tennessee and Utah produce more gradual changes in the order amount as the child's time with the lesser-time parent increases.

***166 Figure 7**

Comparison of Other Formulas

Image 4 within document in PDF format.

The strength of the sliding scale and per diem timesharing adjustments is that they are simple. The weaknesses are that the adjustment thresholds can still result in cliff effects and the percentage adjustments can appear arbitrary.

5. Summary of Timesharing Adjustments for When Lesser-Time Parent Has More Income

Many states have adopted formulas for reducing child support based on the obligor's parenting time. In these states, the criteria for applying the adjustment, the adjustment formulas, and formula parameters vary widely. Only the cross-credit with a 150 multiplier is used by more than two states. Due to these large variations, state timesharing formulas produce very different order amounts even when the same child support schedule is used. This is illustrated by Figure 8, which compares the 12 different timesharing formulas graphed earlier using the same case scenario (the monthly income of the lesser-time parent is $4,000 and the monthly income of the other parent is $3,000) and the Illinois income shares child support guidelines schedule, and assumes that the lesser-time parent cares ***167** for the child 40% of the time. It shows the monthly order ranges from $272 per month using the Indiana timesharing formula to $536 per month using the Pennsylvania timesharing formula. In contrast, the sole custody order for this case in Illinois is $649 per month.

Figure 8

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Comparison of the 12 Formulas When Lesser-Time Parent Has Child 40% of Time

Image 5 within document in PDF format.

The information presented in Figure 8 should not be used to rank which state timesharing formulas produce more or less support orders. As is seen in the next section, the rankings vary with the circumstances of the case scenario being considered.

III. Calculating the Child Support Order When Both Parents Have Equal Physical Custody

Most formulas used for the scenario where the lesser-time parent has more income and substantial access apply when both parents have equal physical custody. However, a few states with parenting-time adjustment formulas for substantial access have decided to use a different approach when parents have equal physical custody. Most states with a different ***168** formula rely on the sliding-scale formula or the variable/duplicated fixed/nonduplicated fixed formula. These states also need to clarify what constitutes "equal physical custody." For example, would an arrangement of 45%/55% parenting time constitute equal physical custody?[84]

Some have argued that there should not be a child support obligation if there is equal physical custody. For example, in Western Europe, some countries abate child support when there is equal physical custody.[85] This approach is generally not accepted in the United States, at least when the parents have different incomes.

In most states, including all states using the cross-credit formula at lower levels of timesharing, the parenting-time adjustment approach to substantial access also applies to equal physical custody. Pursuant to the cross-credit approach discussed above, when there is equal physical custody, the higher-income parent would pay some child support to the other.[86] However, if both parents have equal incomes, no child support would be due.[87] The modifications to the cross-credit adopted in Oregon, Michigan, and Minnesota also result in no child support when there are equal physical custody and equal incomes.[88]

Not all states agree that when there are equal joint physical custody and equal income, no child support should be due. For example, in some of the states that reduce child support using the concept of variable/duplicated fixed/nonduplicated fixed expenses, such as Indiana and New Jersey, there is an assumption that, even with equal physical custody and equal incomes, one parent may be paying the nonduplicated fixed expenses relating to the child, so some child support should be due.[89] Some states with a sliding-scale percentage or a percentage formula, such as Pennsylvania, also do not produce a zero order when there are equal physical custody and equal income. Also, in some of these states, such as Iowa[90] and North Dakota,[91] there is a different formula for equal physical custody.

Figure 9 compares the results of the 12 parenting-time adjustment formulas applied to an equal physical custody situation and the Illinois ***169** income shares child support schedule. It considers two scenarios. The first scenario is the same scenario that has been considered in previous figures: There is one child, the father has a net income of $4,000 per month, and the mother has a net income of $3,000 per month. The first scenario reveals a wide variation in the results of the parenting-time formulas with the exceptions of the mathematical modifications of the cross-credit formula used by Michigan, Minnesota, and Oregon. Each of these mathematical formulas yields an order of $81 per month because of the similarities in their mathematical calculation. The parenting-time formulas of the other states all yield greater amounts. The states using the variable/duplicated fixed/nonduplicated fixed concept (with the exception of Arizona) and the percentage adjustment at equal physical custody (e.g., Pennsylvania) and Tennessee's per diem approach yield considerably higher amounts.

In the second scenario, there is still one child, but the parents have equal incomes: Each parent has a net income of $4,000 per month. Figure 9 shows 7 of the 12 timesharing formulas considered produce a zero order when there are equal physical custody and equal income. This includes the cross-credit formula with 150% multiplier, the mathematical modifications of the cross-credit approach (the Michigan, Minnesota, and Oregon parenting-time formulas), the Arizona formula (which has modified its variable/duplicated fixed/nonduplicated fixed premise to produce a zero order when there are equal physical custody and equal incomes), the Tennessee parenting-time formula (which is a per diem approach), and the Iowa parenting-time formula (which provides for a cross-credit with 150% multiplier at equal physical custody). While the Utah timesharing formula comes close to zero for the equal physical custody and equal income with a three-dollar-per-month order, the state parenting-time formulas using the pure variable/duplicated fixed/nonduplicated fixed concept do not because there is always one parent who incurs some nonduplicated fixed expenses. New Jersey assumes that the parent incurring the fixed expenses in equal physical custody is the parent with whom the child resides mostly when attending school.

The comparisons in Figure 9 should not be used to draw the conclusion that there are substantial orders for all cases involving equal physical custody and equal incomes. It is not uncommon for parties with almost equal physical custody and almost equal incomes to agree upon a zero order.

***170 Figure 9**

Comparison of the 12 Formulas When There Is Equal Timesharing

Image 6 within document in PDF format.

IV. Calculating the Child Support Order When the Lesser-Time Parent Has a Lower Income Than the Other Parent

A. Formulas

It is normally assumed that the lesser-time parent will pay support to the greater-time parent. One reason for this is that it was assumed that the income of the lesser-time parent would be greater than that of the other parent.[92] Should this rule extend to situations where the income of the lesser-time parent is less than that of the other parent? The underlying premise of the income shares model is that both parents should contribute financially toward the cost of raising their child in proportion to their share of the parents' combined income. For example, in a Colorado case, ***171** the lesser-time parent with a monthly income of $2,000 was ordered to pay child support to the greater-time parent, who had a monthly income of $19,500.[93] In many such cases, the standard of living of the lower-income parent would be lower than that of the other parent, even before the income transfer required by a child support obligation.[94] Still, creating a special rule for a situation when the lesser-time parent has a lower income than the other parent would be inconsistent with the cross-credit formula, which essentially calculates a theoretical order for each parent, weights each parent's theoretical order by the child's time with the other parent, and provides that the parent with the larger amount owes the other parent the difference.[95] In other words, the cross-credit formula is just a mathematical calculation indifferent to which parent pays support in these circumstances. It is just where the numbers land.

Figure 10 compares some parenting-time formulas shown earlier for a scenario where the father is the lesser-time parent with a net income of $4,000 per month and the mother's net income is $5,000 per month. There is one child and the Illinois child support schedule is applied to each state's timesharing formula. Figure 10 shows that four of the six timesharing formulas result in the mother owing the father child support for this case scenario, even when the father is the lesser-time parent with substantial access. The obligated parent flips from the father to the mother at 45% timesharing under the cross-credit formula with the 150% multiplier, 46% timesharing under the Tennessee timesharing formula, 47% timesharing under the Oregon timesharing formula, and 50% timesharing under the Indiana timesharing formula. Although not shown, it would also flip for the Michigan and Minnesota timesharing formulas. In other words, it will flip using the cross-credit formula and mathematical modifications to the cross-credit formula. Tennessee uses a per diem formula, which will generally flip depending on the parameters. Sliding-scale percentages and formulas, such as what Pennsylvania uses, will not flip. Whether the variable/duplicated fixed/nonduplicated fixed formulas flip depends on the parameters. As shown in Figure 10, the Indiana timesharing formula, which is based on the variable/duplicated fixed/non-duplicated fixed concept, flipped, while Missouri's version of the concept did not for this particular scenario.

***172 Figure 10**

Comparison of Selected Formulas When Lesser-Time Parent Has Lower Income

Image 7 within document in PDF format.

At 50% timesharing for this scenario, the cross-credit formula with a 150% multiplier would result in the mother owing the father $113 per month, the Oregon timesharing formula would result in the mother owing the father $75 per month, the Tennessee timesharing formula would result in the mother owing the father $150 per month, the Indiana timesharing formula

would result in the mother owing the father $2 per month, the Pennsylvania timesharing formula would result in the father owing the mother $331 per month, and the Missouri timesharing formula would result in the father owing the mother $141 per month. Missouri, however, does indicate a guidelines deviation could be granted for this circumstance.

The reader should note that although Figure 10 shows four of the six state timesharing formulas flip which parent is obligated to pay support, the outcome will differ depending on the circumstances of the case. The flipping could occur at a lower level of timesharing if the lesser-time parent has significantly lower income relative to the other parent. Further, a guidelines deviation may be granted for this circumstance.

***173** A few states have adopted an absolute rule or have case law that if a greater-time parent has the child for more than a specified number of overnights, that parent cannot be ordered to pay child support.[96] Other states have adopted a presumption that the obligated parent should have a reduction in child support once the number of overnights exceed a certain number.[97]

B. Case Law

Because courts may deviate from the guidelines when appropriate or just or in the best interest of the child, case law often informs the treatment of shared-parenting situations. Perhaps the most challenging cases of this type involve situations where the greater-time parent has a high income and the other parent has substantial access and a low income. For example, in a recent Illinois case, the father's net monthly income was almost $21,000 and the mother's net monthly income was $929.[98] The mother had substantial access, but less than 50% of all overnights.[99] Over the father's objection, the appellate court affirmed the trial court's order that the father had to pay monthly child support of $3,990.[100]

In a similar case, a New York court ruled that New York law did not give a New York court the power to order the custodial parent to pay child support, even when the greater-time parent was wealthy and the other parent had limited resources and substantial access.[101] In contrast, the Pennsylvania Supreme Court reversed the denial of a child support award against a greater-time parent when the greater-time parent had a substantially higher income than the other parent and the other parent had contact for about 27% of the year.[102] The Illinois Supreme Court has also affirmed an order finding the court had authority to require the greater-time parent to pay child support to the other parent, who had "nearly equal" time with one of the children but less-frequent contact with the other child, when the lesser-time parent's income was much lower than that of the ***174** greater-time parent.[103] In both of these cases, the Pennsylvania and Illinois supreme courts were generally supportive of requiring the greater-time parent to pay child support when the greater-time parent's income was significantly higher than that of the other parent.

A recent Texas case presented a similar issue. Texas relies on a percentage-of-obligor income guideline formula.[104] While the statute is not totally clear, it has been assumed by lawyers and judges that the guideline is to be applied to the income of the lesser-time parent. (Of course, the court can deviate from this presumptive amount if there is a reason to deviate.)[105] In this particular case, the parents were granted joint legal custody.[106] The father (who had a significantly higher income than the mother) was granted more than 70% of all overnights.[107] To calculate the presumptive child support award, the trial court calculated the presumptive child support award that the mother would have owed under the guidelines and subtracted it from the presumptive award that the father would have had to pay based on his income.[108] (Texas has no specific formula for reducing child support due to parenting time.) The trial court concluded that the father therefore should pay the mother monthly child support based on the difference between the two presumptive obligations because it was "in the child's best interest to have an adequate amount of resources available in each home to support the child."[109] The appellate court affirmed.[110]

The authors believe that the cases summarized above in this section create a great deal of uncertainty regarding how a child support award should be calculated if the greater-time parent has a significantly higher income than the other parent. One of the goals of child support guidelines was to create more predictability in child support awards. There seems to be some disagreement as to how guidelines should be applied when the ***175** greater-time parent has a higher income than the other parent, and this uncertainty will encourage litigation.

The Georgia Supreme Court considered a case very similar to the Texas *In re A.R.W.* case discussed above. At the time this case was decided, Georgia, like Texas, relied on a percentage-of-obligor income guideline formula and had no specific formula for reducing child support due to parenting time. In a custody modification action, the court awarded the father 60%

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of the parenting time and the mother 40%.[111] The father had a higher income than the mother. To calculate the child support obligation, the Georgia trial court, like the court in *In re A.R.W.*, subtracted the amount that the mother would be ordered to pay under the guidelines from the presumptive amount the father would have to pay if the guideline would be applied to his income[112] and ordered the father to pay the mother the difference, which was $1,087 per month.[113] The Georgia Supreme Court ruled that the trial court had misapplied the guidelines. To calculate the presumptive award, the Georgia Supreme Court clarified that the guidelines should be applied to the income of the lesser-time parent.[114] The Georgia Supreme Court explained that the trial court can, of course, then deviate from the presumptive amount for good cause.[115] The Georgia Supreme Court stated that it could be possible to order the greater-time parent to pay child support if adequate grounds for deviation could be established to do so.[116] However, because the trial court had misapplied the guidelines, the Georgia Supreme Court reversed the child support order of the trial court and remanded the case for the trial court to recalculate child support.[117]

Perhaps some objective standard could be established to govern the award of child support when the income of the greater-time parent exceeds that of the other parent, particularly in those states that have not adopted a parenting-time adjustment formula. For example, one type of objective standard would be to specify that, if the lesser-time parent's income is less than a certain specified percentage of the income of the other parent, and the lesser-time parent has the child for at least a certain specified number of overnights, the greater-time parent can be ordered to pay child support. ***176** A disadvantage of such a system is that it could create a substantial cliff effect at the threshold. As was mentioned above, a number of parenting-time adjustment approaches clarify when the greater-time parent should pay child support and the presumptive amount of the support payment.

V. Other Concerns

One concern regarding parenting-time adjustments for child support is that, over time, parenting time will decrease. This would require the greater-time parent to go to court to modify support to reduce or eliminate the child support parenting-time reduction. One study found that, compared to the level of contact at divorce, for parents with a shared-care arrangement, there was some reduction in the level of contact for some fathers (19% of fathers with young children reduced contact, while 30% of fathers with older children reduced contact).[118]

Another concern is that timesharing will not occur as specified in the order. A Florida statute provides that, if an obligor parent does not regularly exercise the timesharing schedule set forth in the parenting plan, this is a substantial change in circumstances that can justify a modification in child support retroactive to the date the parent first failed to exercise the specified access rights.[119] A few other states have similar provisions. Some states provide a simplified procedure for an order modification if the amount of parenting time used to calculate the support amount does not actually occur on a regular basis. None of these states clarify how large the difference between the amount of timesharing that occurred and what was considered in the order is required to be eligible for a modification.

Still another concern is if a "typical" level of timesharing is assumed in the standard basic child support schedule, what should be done if the timesharing is actually less? Tennessee and Pennsylvania are the only states with guidelines that explicitly state what a standard amount of timesharing is under the guidelines. The Tennessee guideline provides what the adjustment should be if actual timesharing is more or less than the standard amount. Pennsylvania, which incorporates an adjustment for 30% timesharing of the lesser-time parent in its basic child support schedule, does not specify a formula for when actual timesharing is less than 30%. Tennessee assumes a standard amount of timesharing of 80 overnights (every other weekend, two weeks in the summer, and two weeks during holidays through the year), and also uses a per diem approach to adjust ***177** the basic formula amount upward if the lesser-time parent has the child 68 overnights or less per year.[120] Some courts have endorsed increasing child support above the presumptive guideline amount if the obligor has little or no contact with the child.[121]

VI. Summary and Policy Choices

This Article identifies several approaches to parenting-time adjustments in state guidelines. Some state guidelines provide for timesharing as a guideline deviation factor, while most states provide a parenting-time adjustment formula. The criteria for applying the parenting-time formula vary, but often a state-determined level of timesharing must be met before an adjustment

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is made.

By far the most common formula is a cross-credit formula with a specified minimum threshold of timesharing before an adjustment occurs. Three states have taken the basic concept of the cross-credit formula and mathematically modified it to result in a more gradual change in the order amount as the lesser-time parent's time with the child increases. In addition to the states that have adopted some variation of a cross-credit formula, other states use a wide variety of parenting-time formulas. None of these other formulas are identical. A few states base their timesharing adjustment on the principle that child-rearing expenses can be classified as variable, duplicated fixed, and nonduplicated fixed. Under these formulas, the lesser-time parent receives credit for variable expenses at low levels of timesharing and additional credit for variable and duplicated fixed expenses at almost equal levels of timesharing. In addition, there are states that use a sliding-scale percentage adjustment or formula and still other states that use a per diem approach for timesharing above a state-determined threshold.

The graphs in this Article reveal certain differences among the various approaches. For example, the rate of decrease due to more overnights with the child generally is more gradual under the modified cross-credit formulas as well as under Indiana's version of the variable/duplicated fixed/nonduplicated fixed timesharing formula. This occurs because a parenting-time adjustment begins at a relatively low level of access by the payor. In contrast, the cross-credit formula and sliding-scale percentages and formulas do not provide an adjustment until the specified timesharing ***178** threshold is met. The cross-credit formula can have a significant cliff effect at the timesharing threshold required for applying the adjustment. When the recipient has no income, the child support amount under the cross-credit with multiplier is greater than the amounts calculated using the mathematically modified cross-credit formulas. When both parents have equal incomes, many of the formulas go toward no child support with equal joint physical custody, while most parenting-time formulas based on the variable/duplicated fixed/nonduplicated fixed expense concept and the sliding-scale percentage or formula do not. When the lesser-time parent's income is significantly less than that of the greater-time parent, under the cross-credit and the modified cross-credit formulas and the per diem approach, the greater-time parent begins to pay support once the lesser-time parent's percentage of overnights gets close to equal timesharing, but not under most versions of the variable/duplicated fixed/nonduplicated fixed expenses model or the sliding-scale percentage or formula.

A number of the differences in results mentioned above reveal policy choices states make when adopting a parenting-time adjustment approach. First, should the adjustment be applied when the recipient's household income is below a certain level? If so, what should that level be?

The parenting-time support reduction adjustments described above presumptively apply once the obligor parent establishes that he or she meets the specified threshold for a parenting-time adjustment. Should there be any ground for not applying the parenting-time adjustment, other than the relative poverty of the recipient parent, as mentioned in the previous paragraph? If so, what other reasons should there be for not applying the adjustment?

Second, should child support be reduced if there is a relatively low level of obligor contact or should a more substantial threshold be specified before support is reduced? Note that approaches with a threshold by definition do not reduce support until the threshold level of access is reached, and then reduce support more substantially as parenting time exceeds the threshold. The cliff effect resulting from the threshold conceivably could increase litigation, which could be a concern. However, it could be argued that it is fair not to reduce child support until a certain threshold of contact is met because the recipient's expenses are not significantly reduced until the obligor's access is substantial.

Third, what should be the magnitude of the parenting-time child support reduction at various levels of contact? (Note the large variation in award amounts in Figure 8 for support when the obligor parent has possession of the child 40% of all overnights and in Figure 9 when the parties have equal physical custody.)

***179** Fourth, should the greater-time parent ever have to pay child support to the other parent if the greater-time parent's income is significantly higher? Should it be possible for the greater-time parent to be ordered to pay a substantial amount in support if the parents' incomes are very different?

Should the same formula be used when there is substantial access by the obligor, as when there is equal joint physical custody? If a different formula is to be used, what constitutes equal joint physical custody, when a different formula would

apply? Further, if two different formulas are to be used, how can the transition from one formula to the second formula be made without a cliff effect?

Finally, should the parenting-time adjustment be made based on the level of access set forth in the court order, or should the adjustment be based on the actual number of overnights, if that differs from what is set forth in the order (or if there is no order)?

VII. Conclusion

States are required to review their child support guidelines at least once every four years.[122] Most states review their guidelines through a commission or committee that typically consists of a wide range of stakeholders, such as attorneys, judges, representatives of the state child support agency, parents, children's advocates, economists or accountants, and academicians.[123] Adopting parenting-time formulas or expanding parenting-time formulas are often issues discussed in these reviews. Committees and commissions in states without parenting-time formulas generally are interested in adopting formulas to create greater consistency in shared-parenting situations and to respond to an increased number of cases with shared parenting. Many committees and commissions in states with parenting-time formulas, particularly those that require timesharing thresholds be met before an adjustment occurs, generally seek to alleviate the cliff effect.

Committees and commissions considering parenting-time adjustment formulas share two common objectives. The first objective is to keep the adjustment simple. The common beliefs are that a simple formula is easier to explain and easier to calculate and can be calculated manually. (This is a particular concern in states without automated calculators or where judges and decision-makers with authority to issue child support orders ***180** lack computers.) However, states often find a trade-off between keeping it simple and creating cliff effects. The second objective is to minimize parental strife regarding parenting time. The concern is that too large of an adjustment for substantial access will fuel more litigation over the obligor-parent's time with the child.

Most recently, commissions have officially and unofficially favored the Oregon formula because of its gradual support decrease as the obligated parent's time with the child increases. In addition, they are encouraged by Oregon's reports that its formula does not increase litigation because each additional overnight creates a minuscule decrease in the order amount.[124] However, final approval of any guidelines changes typically rests with the legislature or the state's supreme court, depending upon whether the state sets its guidelines via legislation, court rule, or administrative rule.[125] Legislatures and supreme courts appear to be less receptive to dramatic changes in parenting-time formulas and generally do not favor timesharing formulas (like the Oregon formula) that begin to reduce support after relatively few overnights.

The Oregon formula may seem particularly extreme in states that currently have no timesharing adjustment formula or have adopted a formula that requires a parent to have a large number of overnights before the adjustment is applied. For these states, it may be more attractive to adopt a cross-credit formula with a multiplier and a relatively low threshold, or if they have already adopted a cross-credit formula, the state could consider lowering the threshold. The effect of the change can be evaluated as a part of the next review of the state's child support guidelines to determine whether the timesharing adjustment better serves children and families.

Footnotes

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[1] In 1992, only 14% of custodial parents were males, while in 2018, the percentage increased to 20%. *Compare* Lydia Scoon-Rogers & Gordon Lester, U.S. Census Bureau, U.S. Dep't of Com., No. P60-187, Child Support for Custodial Mothers and Fathers: 1991, at 2 (1995), https://www2.census.gov/prod2/popscan/p60-187.pdf, *with* Timothy Grall, U.S. Census Bureau, U.S. Dep't of Com.,

No. P60-269, Custodial Mothers and Fathers and Their Child Support: 2017, at 2 (2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf.

2 Historically, female earnings averaged about 60% of male earnings, but climbed to 79% by 2014 (approximately 83% on a weekly basis). Francine Blau & Lawrence Kahn, The Gender Wage Gap: Extent, Trends, and Explanations 2 (Nat'l Bureau of Econ. Rsch. 2016), https://www.nber.org/papers/w21913.pdf.

3 Daniel R. Meyer et al., *The Growth in Shared Custody in the US: Patterns and Implications*, 55 Fam. Ct. Rev. 1, 2 (2017).

4 For example, one study of divorced fathers in 1981 found that only 8% of all fathers had possession of their child for four or more overnights per month. *See* Frank F. Furstenberg Jr. & Christine Winquist Nord, *Parenting Apart: Patterns of Childrearing After Marital Disruption*, 47 J. Marriage & Fam. 893, 895 tbl.1, 896 (Nov. 1985).

5 *See* Meyer et al., *supra* note 3; Daniel Meyer et al., Changes in Placement After Divorce and Implications for Child Support Policy (Inst. for Rsch. on Poverty 2019); Bruce Smyth et al., *Legislating for Shared-Time Parenting After Parental Separation: Insights from Australia?*, 77 Law & Contemp. Probs. 109 (2014); Marygold S. Melli & Patricia Brown, *Exploring a New Family Form--The Shared Time Family*, 22 Int'l J. L., Pol'y & Fam. 231 (2008).

6 *See* Scoon-Rogers & Lester, *supra* note 1, at 6; Grall, *supra* note 1, at 7.

7 Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 18, 98 Stat. 1305, 1321-22.

8 Family Support Act of 1988, Pub. L. No. 100-485, § 103, 102 Stat. 2343, 2346-48.

9 *See* Robert G. Williams, U.S. Dep't of Health & Hum. Serv. Off. of Child Support Enf't, Development of Guidelines for Child Support Orders II-2 (1987); Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 Fam. L.Q. 7 (1999).

10 *See generally* Marsha Garrison, *Child Support Policy: Guidelines and Goals*, 33 Fam. L.Q. 157, 157 (1999) (discussing a number of possible alternate goals for child support guidelines).

11 *Id.* at 160-62, 166-69. *See* Venohr & Williams, *supra* note 9, at 12; Jane C. Venohr, *Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues*, 29 J. Am. Acad. Matrim. L. 377, 385 (2017).

12 *Child Support Guideline Models*, Nat'l Conf. of State Legislatures (July 10, 2020), https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx.

13 *See* Venohr & Williams, *supra* note 9, at 12-15.

14 *Id.* at 10-12.

15 Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492, 93494-95, 93562 (Dec. 20, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf (codified at 45 C.F.R. § 302.56(c)(ii)).

16 *See* Leslie Hodges & Lisa Klein Vogel, Inst. for Rsch. on Poverty, Univ. of Wis.-Madison, Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents 5-6 (2019), https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T4.pdf.

[17] *See* Venohr & Williams, *supra* note 9, at 18-19.

[18] *See* Jane Venohr, Economic Basis of Minnesota Basic Schedule and Parenting-Time Expense Adjustment 8 (2015), *reprinted in* Minn. Dep't of Hum. Serv. Child Support Div., Child Support Work Group Final Report app. E at 29 (2016), https://mn.gov/dhs/assets/child_support_work_group_2016_tcm1053-166182.pdf. [hereinafter Venohr, Parenting-Time Expense Adjustment]. Venohr (2015) reports 37 states. *Id.* Since then, Illinois has also adopted a formula. *See* 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8) (West 2020).

[19] *E.g.*, Richardson v. Richardson, 545 S.W.3d 895, 897 (Mo. Ct. App. 2018).

[20] Jane Venohr, Ctr. for Pol'y Rsch., Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table 4 (2017), https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNe.

[21] *See* Ill. Dep't of Healthcare & Fam. Servs., Child Support Servs., Shared Physical Care Support Obligation Worksheet, https://www.illinois.gov/hfs/SiteCollectionDocuments/StandaloneSharedPhysicalCareSupportOblig.

[22] Jane Venohr, Ctr. for Pol'y Rsch., 2015-2016 Pennsylvania Child Support Guidelines Review: Economic Review and Analysis of Case File Data 35 (2016), https://www.humanservices.state.pa.us/CSWS/CSWS/Forms/PAguidelines.pdf.

[23] For the complete table, see Ill. Dep't of Healthcare & Fam. Servs., Child Support Servs., Income Shares Schedule Based on Net Income, https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesScheduleBasedonNetIncome.pdf.

[24] Ingrid Rothe et al., Inst. for Rsch. on Poverty, Estimates of Family Expenditures for Children: A Review of the Literature 10 (2001).

[25] Miss. Code. Ann. § 43-19-101(1) (2020); Alaska R. Civ. P. 90.3(a)(2).

[26] *See* Karen Syma Czapanskiy, *The Shared Custody Child Support Adjustment: Not Worth the Candle*, 49 Fam. L.Q. 409 (2015).

[27] Jennifer VV. v. Lawrence WW., 124 N.Y.S.3d 474, 478-79 (App. Div. 2020); *see also* N.Y. Fam. Ct. Act § 413(1)(f)(9) (McKinney 2020) ("unjust or inappropriate" deviation factors may include "(i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof").

[28] *Jennifer VV.*, 124 N.Y.S.3d at 479.

[29] *See In re* Marriage of Sobieski, 984 N.E.2d 163, 176 (Ill. App. Ct. 2013).

[30] *See* N.H. Rev. Stat. Ann. § 458-C:5(1)(h)(2)(B) (2020). The statute also allows the court to consider whether the parent with less income will have adequate resources to support the child in a similar style as the other parent. *Id.* § 458-C:5(1)(h)(2)(C).

[31] D.C. Code Ann. § 16-916.01(q)(3) (2020).

[32] *E.g.*, Wyo. Stat. Ann. § 20-2-304(c) (2020) (adjustment applies "[w]hen each parent keeps the children overnight for more than twenty-five percent (25%) of the year and *both parents contribute substantially to the expenses of the children*") (emphasis added).

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Compare Jensen v. Milatzo-Jensen, 297 P.3d 768, 777-778 (Wyo. 2013) (obligor parent made such a showing), *with* Fountain v. Mitros, 968 P.2d 934, 938-39 (Wyo. 1998) (obligor parent did not make such a showing). *See also* N.J. Ct. R. app. IX-A § 13(b) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf ("In determining if such an adjustment is appropriate, the court should consider whether the non-custodial parent has incurred variable expenses for the child during PAR Time and if PAR Time has reduced the other parent's variable expenses for the child."); S.C. Code Ann. Regs. 114-4730(A) (2020) ("For the purpose of this section, shared physical custody means that each parent has court-ordered visitation with the children overnight for more than 109 overnights each year (30%) and that both parents contribute to the expenses of the child(ren) in addition to the payment of child support.").

33 For a general discussion of parenting-time adjustments in various countries, see generally Elke Claessens & Dimitri Mortelmans, *Challenges for Child Support Schemes: Accounting for Shared Care and Complex Families*, 28 J. European Soc. Pol'y 2, 11 (2018).

34 *See* Bruce Smyth et al., *Separated Parents' Knowledge of How Changes in Parenting Time Can Affect Child Support Payments and Family Tax Benefit Splitting in Australia: A Pre/Post-Reform Comparison*, 26 Austl. J. Fam. L. 1, 183-84 (2012).

35 *See* Va. Code Ann. § 20-108.2(G)(3)(c) (2020); Ariz. Rev. Stat. Ann. § 25-320(11) (C) (2020).

36 *See* Minn. Stat. § 518A.36(1)(a) (2020); Wyo. Stat. Ann. § 20-2-304(c); Iowa Ct. R. 9.9; North Carolina Child Support Guidelines, Form AOC-CV-628, at 5 (Mar. 1, 2020), https://www.nccourts.gov/assets/documents/forms/a162_1.pdf?xjkR4e2imYNRbMDxJJT.1ppuFWJUuUWf; Fla. Stat. Ann. § 61.30(11)(a)(10), (b) (West 2020); 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8) (West 2020); Ind. Ct. Child Support Rules & Guidelines, Guideline 6, https://www.in.gov/judiciary/rules/child_support/#g6.

37 *See* Or. Admin. R. 137-050-0730(2)(c) (2020).

38 *See* Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 8; Jane Venohr & Savahanna Matyasic, Ctr. for Pol'y Rsch., Review of the Arkansas Child Support Guidelines: Analysis of Economic Data, Development of Income Shares Charts, and Other Considerations 52 (2019), https://www.arcourts.gov/sites/default/files/formatted-files/review-of-arkansas-child-support-guidelines.pdf. *Compare* Koeneman v. Boersma, No. S-13882, 2011 WL 6116480, at *5 (Alaska Dec. 7, 2011) (parenting-time adjustment should be based on the terms of the order and not actual parenting time), *with* Cnty. of San Diego v. P.B., 55 Cal. App. 5th 1058, 1068-72 (2020) (parenting-time adjustment should be based on actual access, not terms of the order).

39 *See, e.g.*, Ariz. Child Support Guidelines § 11 (Apr. 1, 2018), http://www.azcourts.gov/Portals/34/Forms/FamilyLaw/AOCDRS10H2018.pdf.

40 *See id.*

41 *See* 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8) (West 2020).

42 *See* Colo. Rev. Stat. § 14-10-115(3)(h) (2020).

43 *Compare* 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8), *with* Colo. Rev. Stat. § 14-10-115(8)(b).

44 *See* Milam v. Milam, 778 S.E.2d 535 (Va. Ct. App. 2015); Richardson v. Richardson, 545 S.W.3d 895 (Mo. Ct. App. 2018).

45 The Missouri guideline sets forth a level of "adjusted monthly income" of the recipient parent below which a parenting-time

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adjustment generally should not occur. This income level changes with the number of children in the household. *See* Directions, Comments for Use and Examples for Completion of Form No. 14, at 8, *Child Support Forms*, Mo. Courts (updated Mar. 13, 2019), https://www.courts.mo.gov/file.jsp?id=114614 [hereinafter Directions, *Mo. Child Support Forms*]. In Virginia, the adjustment is not presumptively to be made if either parent's gross income is less than or equal to 150% of the federal poverty level. *See* Va. Code Ann. § 20-108.2(G)(3)(d) (2020). In New Jersey, the adjustment is not presumptively made if the net income of the recipient parent is less than two times the poverty level for the recipient's household size. *See* N.J. Ct. R. app. IX-A § 13(b)(3) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf.

46 *See* Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10, which counted 21 states in 2015. Since then, Illinois, Nevada, and North Dakota have also adopted the cross-credit formula, while Minnesota no longer uses it. *See* 750 Ill. Comp. Stat. Ann. 5/505(a) (3.8) (West 2020); Nev. Admin. Code § 425.115(3); N.D. Admin. Code 75-02-04.1-08.1 (2020); Minn. Stat. § 518A.36 (2020).

47 *See* Colo. Rev. Stat. § 14-10-115(8)(b) (2020).

48 *E.g.*, *id.*; 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8).

49 *See* N.D. Admin. Code 75-02-04.1-08.1; Okla. Stat. tit. 43, § 118E(D)(2)(a)-(b) (2020).

50 For example, *see* Valdes v. Valdes, 154 So. 3d 1165, 1166-67 (Fla. Dist. Ct. App. 2015).

51 *E.g.*, Colo. Rev. Stat. § 14-10-115(8)(b).

52 *See* Alaska R. Civ. P. 90.3(b), (f)(1), https://public.courts.alaska.gov/web/rules/docs/civ.pdf#page=124; D.C. Code § 16-916.01(q)(1); Vt. Stat. Ann. tit. 15, § 657(a) (2020); 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8) (West 2020).

53 *See* Alaska R. Civ. P. 90.3(a), (b), https://public.courts.alaska.gov/web/rules/docs/civ.pdf#page=124; Wis. Admin. Code DCF §§ 150.03(1), 150.04(2), https://docs.legis.wisconsin.gov/code/admin_code/dcf/101_199/150.

54 In 2016, the committee reviewing the Minnesota approach stated that one primary goal was to adopt a new approach that did not have a significant cliff effect. *See* Minn. Dep't of Hum. Serv. Child Support Div., Child Support Work Group Final Report 3, 10-11 (2016), https://mn.gov/dhs/assets/child_support_work_group_2016_tcm1053-166182.pdf.

55 *See generally* Bruce Smyth & Bryan Rogers, *Strategic Bargaining over Child Support and Parenting Time: A Critical Review of the Literature*, 25 Austl. J. Fam. L. 210 (2011).

56 *See* Minn. Stat. § 518A.36(2)(b) (2020); Mich. State Ct. Admin. Off., Friend of the Ct. Bureau, 2017 Michigan Child Support Formula Manual § 3.03 (2017), https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2017MCSF.pdf.

57 Or. Admin. R. § 137-050-0730(6)-(7) (2020), https://oregon.public.law/rules/oar_137-050-0730.

58 *See* 2017 Michigan Child Support Formula Manual, *su*pra note 56, § 3.03(A)(2).

59 Minn. Stat. § 518A.36(2)(b).

60 Or. Admin. R. § 137-050-0730(6).

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[61] Or. Child Support Program Guidelines Advisory Comm., 2011-12 Child Support Guidelines Review: Guidelines Advisory Comm. Report and Recommendations 19-21, 19 n.6 (2012), https://justice.oregon.gov/child-support/pdf/guidelines_advisory_committee_report_and_recommendations_2011-12.pdf.

[62] *See Parenting Time Calculator*, Oregon Dep't of Just., Child Support, https://justice.oregon.gov/calculator/parenting_time/ (last visited Oct. 31, 2020).

[63] Or. Admin. R. 137-050-0730(6), tbl. (2020), https://justice.oregon.gov/child-support/pdf/137-050-0730.pdf.

[64] Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10-11. Arizona has changed its shared-parenting adjustment over the years such that it no longer obviously links to the concept of variable, duplicated fixed, unduplicated, and fixed child-rearing expenses.

[65] *See* Ind. Ct. Child Support Rules & Guidelines, Guideline 6 cmt., https://www.in.gov/judiciary/rules/child_support/#g6 [hereinafter Ind. Ct. Guideline 6 cmt.]; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13(a), 14(g) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf.

[66] *See* Ind. Ct. Guideline 6 cmt., *supra* note 65; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13(a)(3), 14(g)(1).

[67] *See* Ariz. Child Support Guidelines § 11 (July 1, 2015), http://www.azcourts.gov/Portals/31/Child%20Support/2015CSGuidelinesRED.pdf; Ind. Ct. Guideline 6 cmt., *supra* note 65; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13.

[68] For a more lengthy discussion of these schedules, see Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10-11.

[69] *See* N.J. Ct. R. app. IX-A § 13(a), 14(c)(2).

[70] For example, New Jersey considers the cost of the child's transportation to be a variable expense, while Indiana considers only some of the transportation expenses. *Compare* N.J. Ct. R. app. IX-A § 13(a)(2), *with* Ind. Ct. Guideline 6 cmt., *supra* note 65.

[71] *See* William V. Fabricius & Sanford L. Braver, *Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers: Results of a Study*, 41 Fam. Ct. Rev. 321 (2003).

[72] *Id.* at 327.

[73] This is Parenting Time Table A from the Arizona Child Support Guidelines. The Guidelines also provide a Parenting Time Table B to be used when some child-rearing expenses are not substantially or equally shared in each household. Ariz. Child Support Guidelines § 11 (Apr. 1, 2018), http://www.azcourts.gov/Portals/34/Forms/FamilyLaw/AOCDRS10H2018.pdf (depicting Parenting Time Tables A and B). Parenting Time Table B is rarely used, and there is a suggestion to eliminate it.

[74] *See* Directions, *Mo. Child Support Forms*, *supra* note 45, at 8, Line 11 Direction.

[75] Ariz. Child Support Guidelines § 11, *supra* note 73.

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[76] *See* Iowa Ct. R. 9.9 (2020).

[77] *See id.* R. 9.14(3).

[78] *See* Family Court of the State of Del., Del. Child Support Formula, Evaluation and Update 43-44 (2018), https://courts.delaware.gov/forms/download.aspx?id=39228; Kan. Child Support Guidelines, § IV.E.2.b (2020), https://www.kscourts.org/KSCourts/media/KsCourts/Child%20Support%20Guidelines/KSCSG-2020withoutmarkup.pdf.

[79] Pa. R. Civ. P. 1910.16-4(c)(1)-(2) (2020); N.D. Admin. Code 75-02-04.1-08.1 (2020).

[80] Ohio Rev. Code Ann. § 3119.051(a) (LexisNexis 2020).

[81] Utah Code Ann. § 78B-12-208(3)(a) (LexisNexis 2020).

[82] *Id.* § 78B-12-208(3)(b).

[83] Tenn. Comp. R. & Regs. § 1240-02-04-.04(7)(h)(2), (4)(i).

[84] *E.g.*, Bluestein v. Bluestein, 345 P.3d 1044 (Nev. 2015) (joint physical custody exists where both parents have physical custody of the child at least 40% of the time).

[85] *See generally* Christine Skinner & Jacqueline Davidson, *Recent Trends in Child Maintenance Schemes in 14 Countries*, 23. Int. J. Law, Pol'y & Fam. 25, 43-44 (2009).

[86] *See* Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 17.

[87] *Id.* at 15.

[88] *Id.*

[89] *Id.* at 10-12.

[90] *See* Iowa Ct. R. 9.14(3).

[91] *Compare* N.D. Admin. Code 75-02-04.1-08.1 (2020), *with* N.D. Admin. Code 75-02-04.1-08.2 (2020).

[92] *See* Dudgeon v. Dudgeon, 318 S.W.3d 106, 111 (Ky. Ct. App. 2010).

[93] *See* Marriage of Antuna, 8 P.3d 589, 596-97 (Colo. App. 2000).

[94] *See generally* J. Thomas Oldham, *The Appropriate Child Support Award When the Noncustodial Parent Earns Less Than the Custodial Parent*, 31 Hous. L. Rev. 585 (1994).

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95 *See supra* text accompanying notes 46-53.

96 *See* State Dep't of Hum. Servs. v. Coldwater, 364 P.3d 672 (Okla. Civ. App. 2015) (noting that the Oklahoma limit is 205 or more overnights).

97 *See* Pa. R. Civ. P. § 1910.16-4(c) (2020).

98 *See* McClure v. Haisha, 51 N.E.3d 831, 832, 833 (Ill. App. Ct. 2016).

99 *Id.* at 833.

100 *Id.* at 835-39.

101 *See* Rubin v. Salla, 964 N.Y.S.2d 41, 52 (App. Div. 2013) (Acosta, J., dissenting in part) (noting that the father, who had custody for 56% of overnights, had about $20 million in assets).

102 *See* Colonna v. Colonna, 855 A.2d 648, 651-52 (Pa. 2004). The case was remanded for further proceedings. *Id.*

103 *See In re* Marriage of Turk, 12 N.E.3d 40, 43-51 (Ill. 2014). When this article was about to be published, the Court of Special Appeals of Maryland issued an opinion affirming an award of child support from the greater-time parent to the lesser-time parent. In this case, the greater-time parent had an annual salary of approximately $1.3 million, while the other parent had an annual salary of $50,000. Kaplan v. Kaplan, No. 3387, 2020 WL 6789989, at *2-3, 11-13 (Md. Ct. Spec. App. Nov. 18, 2020).

104 *See* Tex. Fam. Code Ann. § 154.125 (West 2020).

105 *See id.* § 154.123.

106 *See In re* A.R.W., No. 05-18-00201-CV, 2019 WL 6317870, at *3 (Tex. App. 2019).

107 *Id.* at *8.

108 *Id.* at *2, *3.

109 *Id.* at *2.

110 *Id.* at *4, *9-10.

111 *See* Williamson v. Williamson, 748 S.E.2d 679, 679 (Ga. 2013).

112 *Id.* at 682.

113 *Id.* at 680.

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114 *Id.* at 682-83.

115 *Id.*

116 *Id.*

117 *Id.* A concurring judge in an Illinois case made a similar point when Illinois had a percentage-of-obligor income guideline. *See In re* Marriage of Turk, 12 N.E.3d 40, 51-55 (Ill. 2014) (Theis, J., concurring).

118 *See* Melli & Brown, *supra* note 5, at 256.

119 *See* Fla. Stat. § 61.30(11)(c) (2020).

120 Tenn. Comp. R. & Regs. 1240-02-04-.04 (7)(a), (i) (2020).

121 *See In re* Marriage of Krieger, 199 P.3d 450, 457 (Wash. Ct. App. 2008); Gray v. Gray, 909 So. 2d 108, 114 (Miss. Ct. App. 2005).

122 45 C.F.R. § 302.56(e) (2020).

123 Jane Venohr, Review of the Nevada Child Support Guidelines 78-82 (2016), https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD144D.pdf.

124 State of Colorado Child Support Comm'n, Final Report 17 (2016), https://childsupport.state.co.us/sites/default/files/2019-08/DCSS%20Commission%C20FINAL%C20PRINT%C20DOCUMENT%206-17-19-smaller%20file%C20%C281%C29%C20%C281%29.pdf.

125 Most states with guidelines set in administrative rule also require legislative approval for substantive guidelines changes such as those that change the state timesharing formula.

54 FAMLQ 141

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226 Conn.App. 752
Appellate Court of Connecticut.

Francis Mark WALD
v.
Anne Louise CORTLAND-WALD

(AC 45329)
|
Argued January 2, 2024
|
Officially Released July 23, 2024

Attorneys and Law Firms

Maria McKeon, for the appellant (defendant).

Victoria K. Lanier, with whom was Anna Hoberman, for the appellee (plaintiff).

Bright, C. J., and Moll and Prescott, Js. [*]

[*] Although Judge Prescott was not present at oral argument, he has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.

Opinion

PRESCOTT, J.

***754** The defendant, Anne Louise Cortland-Wald, [1] appeals from the judgment of the trial court dissolving her marriage to the plaintiff, Francis Mark Wald, and from certain postjudgment financial orders. On appeal, the defendant claims that the court improperly (1) deviated from the child support guidelines in entering its support orders, (2) found that the defendant had an annual earning capacity of $60,000, (3) modified pendente lite support orders, (4) failed to adjudicate the plaintiff in contempt for violating the court's pendente lite and automatic orders, (5) failed to award reasonable attorney's fees after adjudicating the plaintiff in contempt for failing to comply with discovery ***755** orders, (6) failed to award attorney's fees to the defendant to prosecute her appeal, and (7) issued a postjudgment modification of the dissolution judgment. We conclude that the court improperly deviated from the child support guidelines to calculate its child support orders and, accordingly, reverse in part the judgment of the court and remand the matter for a new trial on all financial orders. We affirm the judgment of the court as to the defendant's motions for contempt. [2]

[1] Although the dissolution complaint lists the defendant's name as Anne Louise Cortland-Wald, she has filed her brief and other documents using the name Anne Cortland. For convenience, we use the name Anne Louise Cortland-Wald, as it appears in the summons and complaint, in this opinion.

[2] Because we remand the matter for a new trial on all financial orders, we need not reach the defendant's claims that the court improperly (1) found that she had an earning capacity of $60,000, (2) modified its pendente lite support orders and (3) issued a postjudgment modification of the dissolution judgment, as these issues necessarily need to be considered on remand. We also need not reach the defendant's claim that the trial court improperly failed to award appellate attorney's fees. The award of attorney's fees is dependent upon the relative financial circumstances of the parties, as affected by the court's financial orders; for this reason, this issue must also be reconsidered in light of the new financial orders that the court will issue on remand in this case. See *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 555, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013).

****3** The following facts and procedural history are relevant to our resolution of the present appeal. The parties were married on December 29, 2000, in Tucson, Arizona. The parties have a son, who was born in 2003, and a daughter, who was born in 2009. [3] On September 30, 2019, the plaintiff commenced this action seeking dissolution of his marriage to the defendant. On October 4, 2019, the defendant filed an answer and cross complaint. On November 13, 2019, the trial court, *Connors, J.*, approved a pendente lite agreement that required, in part, (1) the plaintiff to pay the defendant $500 twice per month and to pay "for all other family expenses including all children's expenses, home expenses and medical expenses" and (2) the defendant to actively search for employment. [4]

[3] The parties' son had reached the age of majority at the time of judgment in this case.

[4] This agreement provided in relevant part:

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"[The plaintiff] shall deposit $500 in accordance with his 2x monthly pay schedule to [the defendant's] bank account. [The defendant] will pay for groceries for the family with these funds. [The plaintiff] will pay for all other family expenses including all children's expenses, home expenses and medical expenses (includ[ing] [the defendant's] anticipated necessary medical expenses) to the extent that his income is sufficient to cover said expenses.

"[The defendant] is actively searching for employment and will continue to actively search. [The defendant] will promptly notify [the plaintiff] through attorneys when she obtains an offer of employment."

***756** On April 23, 2021, the defendant filed an agreement for dissolution signed by both parties, a request for approval of a final agreement without court appearance, and an affidavit in support of her request for entry of judgment of dissolution of marriage.[5] The parties' agreement provided, in part, that the plaintiff was required to transfer twelve months of his G.I. Bill benefits[6] to the defendant for her continuing education at Bay Path University and to pay 35 percent of his net military pension to the defendant.

5 The plaintiff also filed an affidavit in support of the request for entry of judgment.

6 The plaintiff was entitled under provisions of the G.I. Bill to thirty-six months of in-state tuition payments and a housing allowance.

On May 26, 2021, the defendant withdrew her request for approval of the agreement. On September 3, 2021, following a hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, 225 Conn. 804, 626 A.2d 729 (1993),[7] the trial court, *Carrasquilla, J.*, found the April 23, 2021 agreement unenforceable. The defendant thereafter filed an "ex parte motion for hearing on child support, alimony, exclusive possession [of the marital home], and attorney's fees pendente lite." On October 7, 2021, the trial court, *Diana, J.*, in ruling on this motion, ordered, inter alia, that "[t]he defendant shall continue to receive 35 percent of the ***757** plaintiff's net [military] pension as unallocated support" and "100 percent of the G.I. Bill benefits for her continuing education at Bay Path University."[8]

7 A hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, supra, 225 Conn. 804, 626 A.2d 729, "typically follows a party's filing of a motion to enforce a settlement agreement, and the hearing is conducted to determine whether the agreement is sufficiently clear and unambiguous to be summarily enforced." *Doe* v. *Bemer*, 215 Conn. App. 504, 524, 283 A.3d 1074 (2022).

8 The court entered the following interim orders:
"1. The parties shall have joint legal custody of their minor child ... primary residence shall remain the marital residence.
"2. The defendant shall continue to receive 35 percent of the plaintiff's net pension as unallocated support.
"3. The defendant shall maintain 100 percent of the G.I. Bill benefits for her continuing education at Bay Path University."

****4** On January 19, 2022, following a four day trial, the trial court, *Diana, J.*, rendered judgment dissolving the parties' marriage. In its memorandum of decision, the court found that "[t]he plaintiff is fifty-two years old and in good health. He has a bachelor's degree from Arizona State University (2000) and a master's degree in National Security from the Naval Postgraduate School (2009). He enlisted in the Marine Corps in August, 1990, and retired in February, 2013, as a Major, after twenty-three years of service. ... He moved to Connecticut in 2017, where he currently earns $145,000 [per] year. He also receives an annual military pension of $47,000 and an annual VA disability of $10,000. The plaintiff's current annual income is approximately $202,000. The plaintiff and the defendant continue to reside in the marital residence in Simsbury ... with their daughter and son, when he is not in San Diego ... at college. This is the plaintiff's second marriage; he also has a twenty-nine year old daughter.

"The defendant is fifty years old and in good health. She has her bachelor's degree from [State University of New York] Purchase (1997) and a master's degree in educational technology from Arizona State University (1999) and is currently completing her program of study for a master's degree in occupational therapy from Bay Path University. The defendant is not employed and has no earned income. She is receiving 35 percent of ***758** the plaintiff's military retirement, the G.I. Bill tuition payment through April, 2022,

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and a monthly housing allowance. This is the defendant's first marriage.” (Footnotes omitted.)

The court also detailed the financial difficulties that the parties faced over the course of their marriage. It addressed the defendant's claim that the plaintiff exercised coercive control over the parties’ finances, finding that “[t]he plaintiff supported the defendant in all her educational decisions and never prevented her from doing as she pleased.” Regarding payment of the children's college expenses, the court found that the parties “had planned to allow the defendant to use the plaintiff's G.I. Bill in order for the defendant to obtain her PhD. Then, after the defendant secured gainful employment, the parties would pool their funds to pay for college from their income. After the defendant's original plan to pursue a doctorate changed, she decided on a new plan, but this was delayed because it required her to take science prerequisite classes in order to pursue a master's degree in occupational therapy. The plaintiff sought to secure a well paying job to support the family. The defendant changed her career, requiring more education and delaying her return to the workforce.” (Footnote omitted.)

Regarding the defendant's income, the court found that “[t]he defendant needs to complete her program of study, her fieldwork and then take her boards to be certified and secure employment. Her best-case scenario if everything goes according to schedule is that she expects to be employed [in the fall of 2022]. The court finds that the defendant is resourceful, intelligent, and driven. The court finds the defendant to have an earning capacity initially of $60,000 with a real potential to increase that amount in the short term as the professional opportunities vary.”

***759** The court found the plaintiff's testimony to be credible and reliable. It found the defendant to be at fault for the breakdown of the marriage because she had engaged in an extramarital affair. The court noted that “[t]he parties and their children have continued to reside together while these [proceedings] have been pending for thirty months and counting. The delay, strain and tension has overwhelmed the defendant and their children.”[9]

9 At oral argument before this court, counsel for the defendant indicated that the family was still living together in the marital residence.

In its orders, the court awarded the parties joint legal custody and shared physical custody of their minor child.[10] It ordered the plaintiff to pay the defendant $300 per week in child support. The court acknowledged that this was a deviation from the presumptive amount of child support pursuant to the child support guidelines, but it found the presumptive amount of child support of $431 “to be inequitable and inappropriate due to the shared physical custody access schedule for the minor child.” The court further ordered that the child support obligation “shall not commence until the week following the sale of the parties’ Simsbury residence.”[11] The court stated that “the pendente lite orders from October 7, 2021, shall continue with the plaintiff ***760** paying the household expenses until the parties’ residence in Simsbury is sold and title is transferred.” (Footnote omitted.) The court further ordered the plaintiff to pay the defendant $200 per week in periodic alimony, stating that this obligation “shall not commence until the week following the sale of the parties’ Simsbury residence.”[12] Finally, the court ordered that the plaintiff retain 65 percent of his net military pension income and the defendant retain 35 percent of the plaintiff's net military pension income.

10 The court ordered that “[t]he plaintiff shall have access to the minor child every Sunday night until Wednesday morning; the defendant shall have access to the minor child every Wednesday morning until Friday night. The parties shall alternate access to the minor child from Friday night until Sunday night.”

11 The court ordered that “[t]he parties shall list and sell their Simsbury residence. The net proceeds after deducting normal and customary closing costs shall be divided 60 percent to the plaintiff and 40 percent to the defendant. Any dispute between the parties regarding the listing agent, listing price, terms of sale or accepting an offer for sale shall be decided by the plaintiff. No additional liens shall be placed upon this property. The court shall retain jurisdiction over the sale of this property. The defendant may remain living in the residence until it is sold.” (Footnote omitted.)

12 The order provides that the periodic alimony was to be paid “until the first of the following to occur: [the defendant] remarries, the death of either party or five years from [the] date of the first payment.”

****5** In its memorandum of decision, the court also denied the defendant's motions for contempt filed on November 8 and December 1, 2021. In those motions, the defendant had

claimed that the plaintiff violated the pendente lite agreement that had been approved by the court on November 13, 2019, by failing to pay her $500 twice per month and had violated the automatic orders by buying and selling motor vehicles and other household items without her knowledge or consent. In denying these motions, the court effectively concluded that the parties' April 23, 2021 agreement had rendered the parties' obligation to comply with the prior support orders unclear and ambiguous. The court, however, granted the defendant's motion for contempt filed on December 21, 2021, in which she claimed that the plaintiff had violated certain discovery orders. Accordingly, it ordered the plaintiff to pay attorney's fees in the amount of $1000 to the defendant based on this finding of contempt.

The defendant filed the present appeal on February 28, 2022, and an amended appeal on December 19, 2022. Additional facts will be set forth as necessary.

***761** I

The defendant first claims that, in rendering its child support orders, the court improperly deviated from the presumptive amount of child support without using a permissible deviation criterion and by delaying the commencement of child support until the sale of the parties' residence. We agree with the defendant that the court improperly deviated from the presumptive amount of child support without using a permissible deviation criterion. We also agree that the court improperly ordered that the plaintiff's child support obligation would not commence until the sale of the parties' residence. We, therefore, remand this matter for a new trial on all financial orders.[13] See *Renstrup* v. *Renstrup*, 217 Conn. App. 252, 284, 287 A.3d 1095 ("the mosaic doctrine ... allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property division or child support awards" (internal quotation marks omitted)), cert. denied, 346 Conn. 915, 290 A.3d 374 (2023).

13 In light of this conclusion, we need not address the defendant's additional arguments that the trial court improperly failed to award a portion of the plaintiff's bonuses as part of the child support award and failed to apply the correct percentages for sharing unreimbursed medical expenses and childcare costs as required by the child support guidelines.

Before addressing the defendant's claims regarding child support, we first note that, "[n]otwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling ... may be reversed if ... the trial court applies the wrong standard of law. ... The question of whether, and to what extent, the child support guidelines apply ... is a question of law over which this court should exercise plenary review. ... Furthermore, although the trial court is vested with broad discretion in domestic relations matters, with respect to child support, the parameters of ***762** the court's discretion have been somewhat limited by the factors set forth in the child support guidelines." (Citations omitted; internal quotation marks omitted.) Id., at 259–60, 287 A.3d 1095.

A

****6** We first consider whether the court improperly deviated from the child support guidelines without using a permissible deviation criterion. As indicated earlier in this opinion, the court found the presumptive amount of child support of $431 "to be inequitable and inappropriate due to the shared physical custody access schedule for the minor child." The trial court, therefore, ordered the plaintiff to pay the defendant $300 per week in child support, commencing after the sale of the parties' residence. The defendant argues that the court, in so doing, improperly deviated from the presumptive amount of child support without using a permissible deviation criterion.

We begin with a review of the statutory scheme regarding child support and the guidelines. General Statutes § 46b-84 provides in relevant part: "(a) Upon or subsequent to the ... dissolution of any marriage ... the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance. Any post judgment procedure afforded by chapter 906 shall be available to secure the present and future financial interests of a party in connection with a final order for the periodic payment of child support. ...

"(d) In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and ***763** sources of income, estate,

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vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child."

General Statutes § 46b-215a provides for a commission "to issue child support and arrearage guidelines to ensure the appropriateness of criteria for the establishment of child support awards and to review and issue updated guidelines every four years." General Statutes § 46b-215b (a) provides in relevant part that the "guidelines issued pursuant to section 46b-215a ... and in effect on the date of the support determination shall be considered in all determinations of child support award amounts .... In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. *A specific finding on the record at a hearing, or in a written judgment, order, or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate in a particular case*, as determined under the deviation criteria established by the [c]ommission ... under section 46b-215a, *shall be required in order to rebut the presumption in such case*." (Emphasis added.) See also Regs., Conn. State Agencies § 46b-215a-5c (a) ("The current support ... amounts calculated under [the child support guidelines] ... are presumed to be the correct amounts to be ordered. The presumption regarding each such amount may be rebutted by a specific finding on the record that such amount would be inequitable or inappropriate in a particular case. ... Any such finding shall state the amount that would have been required under such sections and include a factual finding to justify the variance.").

***764** "A court's failure to substantiate its decision to adjust the presumptive basic child support order by making the explicit findings in the record that are expressly required by the guidelines constitutes an incorrect application of the law ...." *Renstrup* v. *Renstrup*, supra, 217 Conn. App. at 272, 287 A.3d 1095. Our Supreme Court "has stated that the reason why a trial court must make an on-the-record finding of the presumptive support amount before applying the deviation criteria is to facilitate appellate review in those cases in which the trial court finds that a deviation is justified. ... In other words, the finding will enable an appellate court to compare the ultimate order with the guideline amount and make a more informed decision on a claim that the amount of the deviation, rather than the fact of a deviation, constituted an abuse of discretion." (Citation omitted; internal quotation marks omitted.) *Kiniry* v. *Kiniry*, 299 Conn. 308, 320, 9 A.3d 708 (2010).

****7** "Only the deviation criteria stated in ... subdivisions (1) to (6), inclusive, of subsection (b) of [§ 46b-215a-5c of the Regulations of Connecticut State Agencies] ... shall establish sufficient bases [to justify a deviation from the presumptive amount of child support set forth in the guidelines]." [14] Regs., Conn. State Agencies § 46b-215a-5c (a). The deviation criteria listed in § 46b-215a-5c (b) (6) of the regulations, titled "Special circumstances," provides that, "[i]n some cases, there may be special circumstances not otherwise addressed in this section in which deviation from presumptive support amounts may be warranted for reasons of equity." Section 46b-215a-5c (b) (6) (A) of the regulations lists shared physical custody as one of the special ***765** circumstances that may justify a deviation from the presumptive support amount, providing that, "[w]hen a shared physical custody arrangement exists, it may be appropriate to deviate from the presumptive amounts when: (i) such arrangement substantially: (I) reduces expenses for the child, for the parent with the lower net weekly income, or (II) increases expenses for the child, for the parent with the higher net weekly income; and (ii) sufficient funds remain for the parent receiving support to meet the needs of the child after deviation; or (iii) both parents have substantially equal income."

14 The deviation criteria set forth in the regulations are: "(1) Other financial resources available to a parent ... (2) [e]xtraordinary expenses for care and maintenance of the child ... (3) [e]xtraordinary parental expenses ... (4) [n]eeds of a parent's other dependents ... (5) [c]oordination of total family support ... [and] (6) [s]pecial circumstances ...." Regs., Conn. State Agencies § 46b-215a-5c (b).

The defendant contends that the trial court improperly deviated from the child support guidelines based on the special circumstance of "shared physical custody" as set forth in § 46b-215a-5c (b) (6) (A) of the regulations. She contends that no evidence was introduced at trial that either party would have substantially increased or decreased expenses by any type of shared parenting plan. The plaintiff counters that, because he is responsible for the minor child more than one half of the time, the shared physical custody arrangement substantially increases the expenses he incurs on her behalf. He further argues that, until the marital residence is sold, he is responsible for 100 percent of the housing expenses and,

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thus, the defendant has sufficient funds to meet the needs of the child after the deviation. [15] We agree with the defendant.

15 As to the plaintiff's arguments, we first note that the court's order granted both parties approximately equal access to the minor child, with the plaintiff having access one more night per week than the defendant. See footnote 10 of this opinion. Furthermore, the preamble to the child support guidelines provides, as to "shared physical custody," that "[t]he commission continues to reject the notion of a mathematical formula based on the time spent with each parent to determine support amounts in the shared physical custody context. Application of such a formula would tend to shift the focus away from the best interests of the child and more toward financial considerations, which would be inconsistent with Connecticut law." Child Support and Arrearage Guidelines (2015), preamble, § (g) (3), p. xiii.
Finally, we note that, in its decision, the court stated that "[t]hese parties remain in one household out of necessity as they cannot afford to separate at this time." Inasmuch as both parties continue to reside at the marital residence, the plaintiff's payment of household expenses necessarily includes payment of his own household expenses. Further, the court's order specifies that any disputes between the parties regarding the listing agent, listing price, terms of sale or acceptance of an offer of sale are to be decided by the plaintiff. See footnote 11 of this opinion.

***766** A review of the court's memorandum of decision in the present case reveals that, although it cited the "shared physical custody access schedule for the minor child" as the reason it deviated from the presumptive support amount set forth in the guidelines, it did not make a specific finding to justify the downward deviation based on this criterion. It is, therefore, unclear how the trial court concluded that the plaintiff or the defendant would have substantially increased or decreased expenses due to the shared parenting plan and that sufficient funds would remain for the parent receiving support to meet the needs of the child after deviation, or that both parties have substantially equal income, as required by § 46b-215a-5c (b) (6) (A) of the regulations.

****8** The failure to make the required finding is problematic because the parties strenuously disagree regarding the nature of the defendant's income and earning capacity and how that factored into the trial court's decision to deviate from the guidelines. [16] In this regard, the defendant contends that she has no income, except for the ***767** $14,400 that she receives from the defendant's military pension, while the plaintiff claims that the defendant was receiving the entirety of his G.I. Bill for her education, which included a housing allowance of up to $1650 monthly, as well as 35 percent of his military pension equaling approximately $1200 monthly.

16 In its memorandum of decision, the court found that the defendant had an earning capacity of $60,000. The defendant argues that, although the court did not cite her earning capacity as the reason that it deviated from the child support guidelines, the court factored her earning capacity into its decision to deviate from the guidelines.
A parent's earning capacity is considered part of the "[o]ther financial resources available to a parent" that would justify a deviation from the child support guidelines. See Regs., Conn. State Agencies § 46b-215a-5c (b) (1) (B). "A party's earning capacity is a deviation criterion under the guidelines, and, therefore, a court must specifically invoke the criterion and specifically explain its justification for calculating a party's child support obligation by virtue of the criterion instead of by virtue of the procedures outlined in the guidelines." (Internal quotation marks omitted.) *Renstrup* v. *Renstrup*, supra, 217 Conn. App. at 268, 287 A.3d 1095. In the present case, although the court found that the defendant had an earning capacity of $60,000, that finding was not the basis for its deviation from the child support guidelines. Rather, the court specifically found that the presumptive amount of child support would be inequitable or inappropriate "due to the shared physical custody access schedule for the minor child." This deviation criterion is found in § 46b-215a-5c (b) (6) (A) of the regulations.
On November 8, 2022, the defendant filed a motion for permission to file a late motion for articulation in which she requested, in part, that the court articulate "the factual and legal basis for imputing $60,000 income to [her] when she was in a full-time graduate program and could not earn any income." On December 7, 2022, this court denied the defendant's motion for permission to file a late motion for articulation and ordered, sua sponte, that

the court articulate the basis for its finding that the defendant had an earning capacity of $60,000. The court issued its articulation on December 15, 2022. Notwithstanding the defendant's motion for permission to file a late motion for articulation and the court's response to this court's sua sponte articulation order, the defendant did not request that the court articulate whether its decision to deviate from the child support guidelines was based, in part, on its finding that the defendant had an earning capacity of $60,000. “Absent an articulation regarding the legal basis for the trial court's decision, a claim of error cannot be predicated on the assumption that the trial court acted erroneously.” *In re Kyara H.*, 147 Conn. App. 855, 871 n.11, 83 A.3d 1264, cert. denied, 311 Conn. 923, 86 A.3d 468 (2014). Accordingly, we limit our consideration to whether the court improperly deviated from the guidelines based on the special circumstance of “shared physical custody” as indicated by the court in its memorandum of decision and as set forth in § 46b-215a-5c (b) (6) (A) of the regulations.

****9** The plaintiff further argues that, pursuant to the judgment, as long as the parties remain in the marital home, the defendant has no housing or utility expenses, as he is responsible for all household expenses. Regardless of the parties’ disagreement regarding the defendant's income, the court failed to make the requisite findings that would support a deviation based on the shared ***768** physical custody of the parties’ minor child, specifically, that the plaintiff or the defendant would have substantially increased or decreased expenses due to the shared parenting plan, and that sufficient funds would remain for the parent receiving support to meet the needs of the child after deviation, or that both parties have substantially equal income, as required by § 46b-215a-5c (b) (6) (A) of the regulations. Without the specific findings that would support a deviation based on the shared physical custody of the minor child, it is impossible to ascertain how the court determined that application of the child support guidelines was inequitable and inappropriate due to this criterion. We conclude, therefore, that the court improperly deviated from the presumptive amount of child support without making the required findings. See *Renstrup* v. *Renstrup*, supra, 217 Conn. App. at 272–73, 287 A.3d 1095 (trial court abused its discretion when it deviated from child support guidelines without making required findings); *Zheng* v. *Xia*, 204 Conn. App. 302, 308, 312, 253 A.3d 69 (2021) (trial court abused its discretion when its reason for deviating from guidelines failed as matter of law and it made no other findings explaining why guidelines were inequitable or inappropriate).

B

We next consider the defendant's claim that the court improperly delayed the commencement of child support payments until the sale of the parties’ residence.[17] She contends that, because the court specifically ordered that payment of child support would not commence until after the house was sold, it effectively ***769** forced her to choose between taking an appeal or receiving child support. The plaintiff counters that the court properly awarded child support by requiring him to be responsible for all household expenses in the marital home where the parties continue to reside together. We conclude that the court improperly delayed the commencement of child support until the sale of the parties’ residence.

17 In her brief, the defendant also argues that the court improperly delayed commencement of *alimony* until the residence is sold. Because we conclude that the court improperly delayed the commencement of child support until after the sale of the parties’ residence, we need not address whether the court also erred in delaying commencement of alimony until after the sale of the parties’ residence.

As set forth earlier in this opinion, the court ordered the plaintiff to pay the defendant $300 per week in child support. The court further ordered that the child support obligation “shall not commence until the week following the sale of the parties’ Simsbury residence” and that “the pendente lite orders from October 7, 2021, shall continue with the plaintiff paying the household expenses until the parties’ residence in Simsbury is sold.” (Footnote omitted.)

On June 22, 2022, the defendant filed a motion to terminate the appellate stay in which she requested, inter alia, “that the automatic stay be terminated with respect to the ... child support [order] which currently [requires] that no payment be made until the marital home is sold ....” The plaintiff objected to the defendant's motion, contending that she “seeks relief of a stay that does not exist” and appears to be attempting a “backdoor approach to seeking a modification of the orders that are currently pending appeal.” The plaintiff

further argued that the mosaic of the financial orders in the court's memorandum of decision would be undermined if the court granted the defendant's motion.

A hearing on the defendant's motion to terminate the appellate stay took place on August 22, 2022. At that hearing, the defendant testified, inter alia, that the plaintiff was not paying for her groceries, car expenses, dental expenses, clothing for her work, student loans, ***770** and some activities for her daughter. The plaintiff acknowledged during this hearing that he had received a promotion since the date of the dissolution judgment, resulting in a raise of $25,000 annually.[18] At the conclusion of the hearing, the court stated: "[The defendant] is entitled to take an appeal, but what that did with the structure of this since she's allowed to stay in the house and she's relieved of paying those expenses, she—there is a benefit of being able to live in the house without paying the household expenses. ... And now we fast-forward ... several months and here we are today, and [the plaintiff's] got a better situation, and [the defendant's] got a worse situation. That's the reality."

18 Although the plaintiff did not list any bonuses in his financial affidavit filed in connection with the defendant's motion to terminate the appellate stay, he included a note on the affidavit indicating: "2021 net bonus received 3/15/22 $13,299.75—used to pay IRS for 2021 tax due ($9357) + $3000 atty fees."

****10** Following the hearing, the trial court denied the defendant's motion in an order dated August 22, 2022, finding that "the mosaic of financial orders in the decision provide the defendant with no financial obligation for the household expenses where she resides. The plaintiff is solely paying these expenses." The court further clarified that the financial obligations for the term "household expenses" as used in the memorandum of decision include "the mortgage, real estate taxes and insurance, the utilities (oil, electric, water and sewer), household improvements, home phone, Internet and trash collection."[19] The court thereafter issued a supplemental order stating that "[n]o automatic stay ***771** applies to child support ... nor was a stay ever ordered," and "[t]he plaintiff's financial support to the defendant is being paid by way of the household expenses on real property that she owns an equitable interest in."

19 At the hearing on August 22, 2022, the court similarly stated: "I'm going to clarify something that I think needs to be clarified based on the testimony. When the court referred to household expenses, the court is referring to mortgage, [principal] interest, taxes, insurance, any special assessments on the real estate if they exist, the utilities at the residence, including oil, electric, gas, water, or sewer, any household improvements, any home phone, including any Internet at the house, any trash collection that may exist."

We agree with the trial court that no automatic appellate stay applies to orders of child support. See Practice Book § 61-11 (c) ("[u]nless otherwise ordered, no automatic stay shall apply ... to orders of periodic alimony, support, custody or visitation in family matters"). Furthermore, the trial court's order specifically stated that it did not order a stay in this case. The issue, therefore, is whether the court's order, providing that the plaintiff's child support obligation did not commence until the sale of the parties' residence and that, until that time, the plaintiff was responsible for payment of the household expenses where the parties reside, complies with the applicable procedures regarding the payment of child support. We conclude that it does not.[20]

20 To the extent that the defendant contends, as part of her argument, that the court improperly denied her motion to terminate the appellate stay, we note that "[i]ssues regarding a stay of execution cannot be raised on direct appeal. The sole remedy of any party desiring ... [review of] ... an order concerning a stay of execution shall be by motion for review ...." (Internal quotation marks omitted.) *Lawrence* v. *Cords*, 165 Conn. App. 473, 479, 139 A.3d 778, cert. denied, 322 Conn. 907, 140 A.3d 221 (2016). In this regard, on September 2, 2022, the defendant filed a motion for review of the court's August 22, 2022, order denying her motion to terminate the appellate stay and her motion for appellate attorney's fees. On October 5, 2022, this court denied this motion. On December 13, 2022, this court denied the defendant's motion for reconsideration en banc of this court's order denying her motion for review.

We begin our analysis by noting that "[t]he fundamental purpose of child support ... is to provide for the care and well-being of minor children .... Thus, the [statutory] duty on divorced parents to support the minor children of their marriage ... creates a corresponding *right in the children* to such support." (Citation omitted; emphasis in original;

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internal quotation ***772** marks omitted.) *Blondeau* v. *Baltierra*, 337 Conn. 127, 172, 252 A.3d 317 (2020). "Both state and national policy has been, and continues to be, to ensure that all parents support their children and that children who do not live with their parents benefit from adequate and enforceable orders of child support. ... Child support is now widely recognized as an essential component of an effective and comprehensive family income security strategy. ... As with any income source, the effectiveness of child support in meeting the needs of children is, of necessity, increased when payments are made regularly and without interruption." (Citations omitted; internal quotation marks omitted.) *Mulholland* v. *Mulholland*, 229 Conn. 643, 651–52, 643 A.2d 246 (1994). "Where the need for child support is established and ordered by the court, it is of the utmost importance for the welfare of the child that such payments be made in a timely fashion. It is also in the interest of society that the child be supported by those obligated to support the child and that the child not be required to seek public assistance to satisfy those needs unless otherwise necessary." (Internal quotation marks omitted.) Id., at 652, 643 A.2d 246.

****11** In the present case, the trial court ordered that the plaintiff's child support obligation would not commence until the week following the sale of the parties' Simsbury residence and that the pendente lite orders from October 7, 2021, continued in effect with the plaintiff paying the household expenses until the parties' residence was sold. It is unclear, based on the foregoing, whether the court was ordering that the plaintiff had no child support obligation until the sale of the parties' residence or whether it was ordering a temporary, 100 percent downward deviation from the child support guidelines during an indeterminate period until the sale of the parties' home. Under either of these scenarios, ***773** we conclude that the court improperly delayed commencement of the plaintiff's obligation to pay child support.

As previously set forth in this opinion, "the [child support] guidelines provide that the support amounts calculated thereunder are the correct amounts to be ordered by the court unless rebutted by a specific finding on the record that the presumptive support amount would be inequitable or inappropriate. ... The finding *must* include a statement of the presumptive support amount and explain how application of the deviation criteria justifies the variance." (Citation omitted; emphasis in original; internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 550, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013). The court's order in the present case does not reference the child support guidelines or the dollar amount of any expenses to be paid by the plaintiff on behalf of the minor child during the indeterminate period until the sale of the parties' residence. Although the plaintiff contends that his obligation to pay the household expenses totaled $940 weekly, the court's order is silent regarding the percentage of household expenses that are attributable to the child, the plaintiff and the defendant.[21] Furthermore, with regard to the indeterminate ***774** period prior to the sale of the parties' residence, the court did not make a finding on the record, as required by § 46b-215b, that the application of the guidelines would be inequitable or inappropriate as determined under the deviation criteria established by the Commission for Child Support Guidelines. Considering the applicable statutory framework, the child support guidelines previously set forth, as well as the fundamental purpose of child support " 'to provide for the care and well-being of minor children' "; *Blondeau* v. *Baltierra*, supra, 337 Conn. at 172, 252 A.3d 317; we conclude that the trial court improperly ordered that the plaintiff's child support obligation did not commence until the sale of the parties' residence and that, during the indeterminate period of time until the sale of the marital residence, the plaintiff's support to the defendant was being paid by way of the household expenses where the parties both reside. See *Maturo* v. *Maturo*, 296 Conn. 80, 118, 995 A.2d 1 (2010) ("[t]he ... guidelines shall be considered in *all* determinations of child support amounts within the state" (emphasis in original; internal quotation marks omitted)); *Y. H.* v. *J. B.*, 224 Conn. App. 793, 803, 313 A.3d 1245 (2024) (trial court abused its discretion in declining to award child support without reference to child support guidelines based on its conclusion that support had not been requested); *Chowdhury* v. *Masiat*, 161 Conn. App. 314, 322–23, 128 A.3d 545 (2015) (trial court, without reference to applicable statutes and child support guidelines, improperly declined to award child support for parties' oldest child); *O'Brien* v. *O'Brien*, supra, 138 Conn. App. at 555, 53 A.3d 1039 (trial court abused its discretion in entering unallocated award of alimony and child support without considering and applying guidelines or principles espoused therein).

21 The trial court made no finding regarding the total amount to be paid by the plaintiff as household expenses. The plaintiff's financial affidavit, however, provides the following weekly

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expenses that are included in the court's definition of household expenses:

Home (Rent or mortgage):	$696
Home (Household improvements):	52
Utilities (Oil)	57
Utilities (Electricity)	54
Utilities (Water and Sewer)	28
Utilities (Telephone/Cell):	29
Utilities (TV/Internet)	24
	$940

C

****12** In light of our conclusion that the trial court improperly deviated from the child support guidelines without ***775** using a permissible deviation criterion and delayed the commencement of the plaintiff's child support obligation until the sale of the parties' residence, we turn to the question of the appropriate relief. "Individual financial orders in a dissolution action are part of the carefully crafted mosaic that comprises the entire asset reallocation plan. ... Under the mosaic doctrine, financial orders should not be viewed as a collection of single disconnected occurrences, but rather as a seamless collection of interdependent elements. Consistent with that approach, our courts have utilized the mosaic doctrine as a remedial device that allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property distribution or child support awards. ...

"Every improper order, however, does not necessarily merit a reconsideration of all of the trial court's financial orders. A financial order is severable when it is not in any way interdependent with other orders and is not improperly based on a factor that is linked to other factors. ... In other words, an order is severable if its impropriety does not place the correctness of the other orders in question. ... Determining whether an order is severable from the other financial orders in a dissolution case is a highly fact bound inquiry." (Citation omitted; internal quotation marks omitted.) *Renstrup* v. *Renstrup*, supra, 217 Conn. App. at 284, 287 A.3d 1095.

Upon remand in the present case, the court may issue a child support order that is substantially different from the original order, including a potential arrearage. Any such order will necessarily impact the court's related orders pertaining to alimony and property division. See *Valentine* v. *Valentine*, 149 Conn. App. 799, 802–803, 90 A.3d 300 (2014) ("In dissolution proceedings, the court must fashion its financial awards in accordance ***776** with the criteria set forth in [General Statutes] § 46b-81 (division of marital property), [General Statutes] § 46b-82 (alimony) and § 46b-84 (child support). All three statutory provisions require consideration of the parties' *amount and sources of income* in determining the appropriate division of property and size of any child support or alimony award." (Emphasis in original; internal quotation marks omitted.)). Because it is uncertain whether the court's other financial orders will remain intact after reconsidering the child support order in a manner consistent with this opinion, we conclude that the entirety of the mosaic must be refashioned. See *Renstrup* v. *Renstrup*, supra, 217 Conn. App. at 285, 287 A.3d 1095. Accordingly, the court must consider all the financial orders on remand, including the alimony and property distribution awards.

II

The defendant next raises three issues pertaining to the court's rulings on her motions for contempt. Specifically, the defendant claims that the court abused its discretion by failing (1) to hold the plaintiff in contempt for failing to comply with the pendente lite orders dated November, 2019, (2) to hold the plaintiff in contempt based on his failure to comply with the automatic orders, and (3) to award reasonable attorney's fees after holding the plaintiff in contempt for his refusal to comply with discovery orders. We address these claims in turn.

The following additional facts are relevant to our analysis of these claims. As previously set forth in this opinion, on November 13, 2019, the trial court, *Connors, J.*, approved a pendente lite agreement that required, in part, (1) the plaintiff to pay the defendant $500 twice per month and to pay "for all other family expenses including all children's expenses, home expenses and medical expenses" and (2) the defendant to actively ***777** search for employment. See footnote 4 of this opinion. On April 23, 2021, the defendant filed an agreement for dissolution signed by both parties, a request for approval of a final agreement without a court appearance, and an affidavit in support of her request for the entry of a judgment of dissolution of marriage.

****13** The parties' agreement, which set forth the terms for dissolving the parties' marriage, included a requirement that the plaintiff transfer twelve months of his G.I. Bill benefits to the defendant and pay the defendant 35 percent of his military pension. This agreement further provided that the

defendant was entitled to 100 percent of the value of the Pioneer Investment Account listed on the parties' financial affidavits. Article XXII of this agreement provided that the agreement "shall become effective and binding immediately upon its execution by the parties without regard to the status of the dissolution action." Article XXIII of this agreement contained a "Gap in Time" clause pursuant to which the parties agreed to be bound by the agreement notwithstanding that there may be a gap in time between the date of the execution of the agreement and its approval by the court. [22] On May 26, 2021, the defendant withdrew her ***778** request for approval of the agreement. On September 3, 2021, the trial court, *Carrasquilla, J.*, found the April 23, 2021 agreement unenforceable because it had been withdrawn by the defendant before she could be canvassed regarding whether it was fair and equitable. [23]

22 Article XXIII of the agreement, captioned "Gap in Time Clause," provides:

"Each party has executed this Agreement for Judgment knowingly, intelligently and voluntarily, with the assistance of effective and competent counsel, free of any duress, coercion, or undue influence.

"The parties understand, recognize, and acknowledge that there may be a gap in time between the date of the execution of this Agreement for Judgment and its approval by the court. Notwithstanding any such gap in time, the parties agree that they shall each be bound by the terms of this Agreement of Judgment in the same manner as if this Agreement of Judgment had been filed with, and approved by, the Connecticut Superior Court. Until such time as this Agreement of Judgment is approved by the Connecticut Superior Court, it shall have the same full force and effect as an Order of the Court. This shall include, but not be limited to, the ability of each party to seek the appropriate remedies under section 46b-87 of the Connecticut General Statutes."

23 Neither party challenges the court's decision in this regard.

The defendant thereafter filed an "ex parte motion for hearing on child support, alimony, exclusive possession [of the marital home], and attorney's fees pendente lite." On October 7, 2021, the trial court, *Diana, J.*, in ruling on this motion, ordered, inter alia, that "[t]he defendant shall continue to receive 35 percent of the plaintiff's net pension as unallocated support" and the "defendant shall maintain 100 percent of the G.I. Bill benefits for her continuing education at Bay Path University." See footnote 8 of this opinion.

On November 8, 2021, the defendant filed a motion for contempt claiming that the plaintiff wilfully violated the November 13, 2019 pendente lite orders by failing to pay her $500 twice per month and by failing to pay for certain household expenses. She also contended that the plaintiff repeatedly had violated the automatic orders by buying and selling motor vehicles and other household items without her knowledge and consent. On December 1, 2021, the defendant filed another motion for contempt claiming that the plaintiff had violated the automatic orders by buying another vehicle without her consent. On December 21, 2021, the defendant filed a motion for contempt based on the plaintiff's failure to provide complete discovery to her.

In its memorandum of decision, the court denied the motion for contempt regarding the plaintiff's failure to comply with the November 13, 2019 pendente lite orders, specifically finding that "none of the court orders between the parties were clear and unambiguous after the parties signed their divorce agreement in April, ***779** 2021." The court further found that "the plaintiff did not fail to comply with the court orders. ... The plaintiff has paid 35 percent of his military retirement to the defendant since April, 2021, based upon the parties' agreement that was not found to be unenforceable until September, 2021...." (Footnote omitted.) The court also denied the defendant's motion for contempt based on the plaintiff's failure to comply with the automatic orders and granted the defendant's motion for contempt as to the discovery orders, finding, inter alia, that the plaintiff wilfully had violated the discovery orders by not producing documents as ordered. The court ordered the plaintiff to pay the defendant attorney's fees in the amount of $1000 based on this finding of contempt.

A

****14** The defendant first claims that the court abused its discretion by failing to adjudicate the plaintiff in contempt for failing to comply with the pendente lite orders dated November 13, 2019. The plaintiff counters that the court properly determined that none of the court orders were clear and unambiguous after the parties signed the April 23, 2021 agreement and that, without a determination that the orders

were clear and unambiguous, there can be no finding of contempt. We agree with the plaintiff.

Our review of this claim is guided by the following principles. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. ... [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. ... In part because the contempt remedy is particularly harsh ... such punishment should not rest upon implication or conjecture, [and] the language [of the court order] ***780** declaring ... rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. ... To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. ... It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. ... The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. ... If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Internal quotation marks omitted.) *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 68–69, 290 A.3d 825 (2023). "[A]n order of the court must be obeyed until it has been modified or successfully challenged." (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, 258 Conn. 713, 719, 784 A.2d 890 (2001).

According to the defendant, the court improperly determined that "none of the court orders between the parties were clear and unambiguous after the parties signed their divorce agreement in April, 2021." This is so, the defendant claims, because the April 23, 2021 agreement was found to be unenforceable on September 3, 2021. The defendant contends that, once the April 23, 2021 agreement was found to be unenforceable, the plaintiff had an obligation to pay all amounts due under the November, 2019 pendente lite order yet refused to do so from April, 2021 through the end of trial in January, 2022. At oral argument before this court, the defendant argued that the trial court, in issuing its orders, forgot about the November, 2019 pendente lite order.

The plaintiff counters that he complied with the November, 2019 order until the parties executed the ***781** agreement for dissolution in April, 2021, and that the agreement for dissolution implicitly terminated the parties' obligations under the November, 2019 order. The plaintiff relies on the "Gap in Time" clause in the parties' agreement, pursuant to which the parties agreed to be bound by the agreement notwithstanding a gap in time between the date of the execution of the agreement and its approval by the court. See footnote 22 of this opinion. The plaintiff further contends that the actions of the defendant, specifically, her withdrawal of funds from the parties' joint investment account, which took place after she withdrew her affidavit in support of approval of the April, 2021 agreement, demonstrate that she was acting in accordance with, and received the benefit from, the April, 2021 agreement.

****15** The issue before this court is whether, in light of the agreement executed by the parties in April, 2021, the court properly concluded that the November, 2019 order was no longer clear and unambiguous.[24] In this regard, the court specifically found that both parties had acted in accordance with the April, 2021 agreement, stating: "The parties signed an agreement to dissolve their marriage on April 21, 2021. Up until then the plaintiff has paid all the household bills. In April, 2021, he started paying 35 percent of his military retirement to the defendant based upon their divorce agreement. This same amount was court-ordered to be paid after a hearing in October, 2021. On May 26, [2021], the defendant ***782** withdrew her affidavit in support of the request for approval of the final agreement. After trial briefs were filed and a ... hearing [pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, supra, 225 Conn. 804, 626 A.2d 729] conducted, the agreement was found to be unenforceable on September 3, 2021. On May 28, 2021, the defendant withdrew $33,880 from the parties' joint investment account leaving a balance of $52.22. This asset was going to be retained by her as part of their divorce agreement that the defendant had vacated. She did not return these funds but used them as she decided. Now the defendant is seeking retroactive financial orders based upon the pendente lite agreement from November, 2019, which required her to actively search for employment. This selective enforcement request, seeking to have the plaintiff follow the first agreement while she benefitted substantially from the second agreement that she had vacated, lacks merit."[25] (Footnotes omitted.)

24 We disagree with the defendant's contention that the court forgot about the November, 2019 agreement. We conclude, rather, that the trial

court's statement that "none of the court's orders were clear and unambiguous after the parties signed their divorce agreement in April, 2021," reflected its understanding that, in light of the April, 2021 agreement, any orders prior to that time were no longer clear and unambiguous. See *O'Brien* v. *O'Brien*, 326 Conn. 81, 113, 161 A.3d 1236 (2017) ("[w]hen construing a trial court's memorandum of decision, [e]ffect must be given to that which is clearly implied as well as to that which is expressed" (internal quotation marks omitted)).

25 In denying the defendant's motion for contempt, the court later stated that it "gives great latitude to the conduct after the parties had a signed divorce agreement. The court finds that the defendant cashed in and retained their entire joint investment account after she sought to vacate their April, 2021 divorce agreement which gave her that same asset. She did not return those joint funds. The defendant's claims about not having money during this time to buy their daughter a winter coat is unsupported by the facts. She had $5000 to spend on Botox, the spa, nails, and products from April, 2021, through December, 2021. In October, 2021, the plaintiff was ordered by the court to pay the defendant 35 percent of his military retirement while he continued to pay all household expenses." (Footnote omitted.)

We conclude, under the circumstances of this case, that the plaintiff's obligation to comply with the November, 2019 pendente lite agreement was rendered unclear by the April, 2021 agreement. Indeed, the April, 2021 agreement provided: "Notwithstanding any ... gap in time [between the date of the execution of this Agreement for Judgment and its approval by the court] the parties agree that they shall each be bound by the terms ***783** of this Agreement of Judgment in the same manner as if this Agreement of Judgment had been filed with, and approved by, the Connecticut Superior Court. Until such time as this Agreement of Judgment is approved by the Connecticut Superior Court, it shall have the same full force and effect as an Order of the court." The April, 2021 agreement, however, was silent regarding the parties' obligation to comply with the court's 2019 pendente lite orders if the court declined to approve the parties' 2021 agreement.

Furthermore, we also note that the court issued an order on October 7, 2021, prior to the filing of the defendant's motion for contempt, requiring the plaintiff to pay the defendant 35 percent of his net pension as unallocated support and providing that the defendant was to maintain 100 percent of the G.I. Bill benefit for her continuing education. Under these circumstances, it was unclear whether the plaintiff was still obligated to pay the defendant $500 twice per month and to pay all other family expenses pursuant to the November, 2019 agreement.

****16** The present case is similar to *Forcier* v. *Sunnydale Developers, LLC*, 84 Conn. App. 858, 862, 856 A.2d 416 (2004). In *Forcier*, we concluded that a defendant could not be adjudicated in contempt for violating the underlying judgment because the "court's subsequent orders [had] rendered the judgment ambiguous" and "subsequent orders [had] clouded the court's original judgment granting specific performance ...." Id. As in *Forcier*, we conclude that the April, 2021 agreement and the court's October 7, 2021 order in the present case rendered the plaintiff's obligation to comply with the prior pendente lite orders unclear and, accordingly, affirm the trial court's decision to decline to hold the plaintiff in contempt for violating the pendente lite orders. [26]

26 To be clear, the parties' April, 2021 agreement did not render the court's November, 2019 pendente lite orders unenforceable. Our conclusion, rather, is that, under the unique circumstances of this case, the court properly found that the parties' April, 2021 agreement had rendered the plaintiff's obligations pursuant to the November, 2019 orders unclear and, thus, not supportive of an adjudication of contempt. The plaintiff's obligation to comply with the November, 2019 orders was further clouded by the court's October 7, 2021 interim orders. Under these circumstances, the court properly declined to adjudicate the plaintiff in contempt for violation of the November, 2019 pendente lite orders.
Finally, we note that, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 326 Conn. 81, 99, 161 A.3d 1236 (2017). Citing this principle, the defendant argues that, *even in the absence of a finding of contempt*, the court should have remedied the situation by requiring

the plaintiff to make the payments pursuant to the pendente lite agreement. We note that the defendant did not make this argument in her motion for contempt based on the plaintiff's failure to comply with the pendente lite orders. More importantly, however, under the circumstances set forth in this opinion, we cannot conclude that the court abused its discretion in failing to order the plaintiff to make payments pursuant to the November, 2019 order.

***784** B

The defendant next claims that the court abused its discretion by failing to hold the plaintiff in contempt for failing to comply with the automatic orders prohibiting him from buying and selling vehicles during the pendente lite period and incurring debt to purchase such vehicles. The plaintiff counters that the court properly concluded that he did not violate the automatic orders when he continued his practice of buying and selling used vehicles. We agree with the plaintiff.

Practice Book § 25-5 (b) (1) provides: "Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, *except in the usual course of business* or for customary and usual household expenses or for reasonable attorney's fees in connection with this action." (Emphasis added.) The automatic orders further provide that ***785** "[n]either party shall encumber ... any property"; Practice Book § 25-5 (b) (3); and "[n]either party shall incur unreasonable debts ...." Practice Book § 25-5 (b) (5). Whether a transaction has been conducted in the usual course of business and is, therefore, exempt from the automatic orders, is a question of fact to be determined by looking at the circumstances of each case. See *O'Brien* v. *O'Brien*, 326 Conn. 81, 115, 161 A.3d 1236 (2017). "Whether a transaction is conducted in the usual course of business does not turn solely on the type of asset or transaction but on whether the transaction at issue was *a continuation of prior activities* carried out by the parties before the dissolution action was commenced." (Emphasis in original; internal quotation marks omitted.) *Leonova* v. *Leonov*, 201 Conn. App. 285, 318–19, 242 A.3d 713 (2020), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021).

****17** In its memorandum of decision, the court stated: "The plaintiff buys, sells and trades used cars and motorcycles. This practice is not new; it has been a source of contention throughout the marriage as these used vehicles break down routinely." Referring to the plaintiff as a "gearhead," the court detailed the plaintiff's spending regarding these vehicles, noting that it was "not extravagant."[27] The court also noted that the defendant "resented the plaintiff for buying and selling used ***786** cars. It annoyed the defendant not to be consulted to which he would reply, 'Get a job.' " (Footnote omitted.) The defendant acknowledges that the plaintiff bought and sold vehicles during the parties' marriage. She contends, however, that, because this was a continued source of contention between the parties and she did not approve of the transactions, the "usual course of business" exception to Practice Book § 25-5 (b) (1) does not apply. We disagree.

27 The court stated: "The plaintiff buys, sells and trades used cars and motorcycles. This practice is not new; it has been a source of contention throughout the marriage as these used vehicles break down routinely. The defendant sought a newer, more reliable vehicle that does not break down. He is currently spending $1400 a month financing $56,500 in loans for these motor vehicles. He is a gearhead; this is his style, it is not extravagant; he has three used cars and two used motorcycles. Last summer, while this action was pending, the plaintiff traded a used motorcycle that he was trying to sell for another used motorcycle, a 2001 Moto. Last fall, while this action was pending, the plaintiff's primary vehicle, a 2006 Jeep, broke down and he bought another used vehicle, a 2007 Toyota. The financing for the parties' son's vehicle is included above." (Footnotes omitted.)

In discussing the "usual course of business" exception to the automatic orders, our Supreme Court has stated: "We do not suggest ... that the usual course of business exception is reserved only for transactions made in connection with a party's business or profession; rather, because the automatic orders are intended to maintain the status quo between the parties, the exception would appear to extend to personal transactions, but only if such transactions are conducted in the normal course of the parties' ordinary activities, such that both parties would fully expect the transactions to be undertaken without prior permission or approval." *O'Brien* v. *O'Brien*, supra, 326 Conn. at 115 n.12, 161 A.3d 1236. "Thus, personal transactions ... will meet the exception only if they previously were conducted in the normal course of the parties' ordinary activities, *such that both parties would fully expect the activity to be undertaken without the*

actor obtaining prior consent.” (Emphasis added.) *Leonova* v. *Leonov*, supra, 201 Conn. App. at 319, 242 A.3d 713.

On the basis of the foregoing, once the trial court found that the plaintiff's practice of buying and selling motor vehicles was done in the usual course of business, it properly declined to adjudicate the plaintiff in contempt for violating the automatic orders. We, therefore, conclude that the court properly exercised its discretion in denying the defendant's motions for contempt based on a violation of the automatic orders.

***787** C

The defendant next claims that the court abused its discretion by failing to award reasonable attorney's fees after adjudicating the plaintiff in contempt for refusing to comply with discovery orders. The defendant contends that the court's imposition of only $1000 in attorney's fees punishes her for the plaintiff's transgressions and rewards the plaintiff for violating clear court orders. The plaintiff counters that the court entered an award that was reasonable and took the entirety of the parties’ financial situation into account.

General Statutes § 46b-87 grants the court the discretion to award attorney's fees to the prevailing party in a contempt proceeding. “The award of attorney's fees in contempt proceedings is within the discretion of the court. ... An abuse of discretion in granting the counsel fees will be found only if this court determines that the trial court could not reasonably have concluded as it did. ... Importantly, where contempt is established, the concomitant award of attorney's fees properly is awarded pursuant to § 46b-87 and is restricted to efforts related to the contempt action.” (Citation omitted; internal quotation marks omitted.) *Malpeso* v. *Malpeso*, 165 Conn. App. 151, 184, 138 A.3d 1069 (2016).

****18** The following additional facts are necessary for the resolution of this claim. On December 13, 2021, the trial court, *Nastri, J.*, issued an order, following a hearing, requiring the plaintiff to comply with outstanding discovery requests by December 20, 2021. On December 21, 2021, the defendant filed the motion for contempt at issue, stating that the plaintiff had failed to comply with the December 13, 2021 order, and the plaintiff filed a notice of compliance with the outstanding discovery requests. On January 4, 2022, the defendant filed a request for a status conference due to the plaintiff's failure to comply with all discovery requests, and the ***788** plaintiff filed another notice of compliance providing additional documents. The plaintiff also filed an objection to the defendant's request for a status conference, contending that he had complied with all outstanding discovery.[28] The court granted the defendant's request for a status conference and overruled the plaintiff's objection.

28 On January 5, 2022, the defendant filed a reply to the plaintiff's objection to her request for a status conference, listing the documents that had not been provided, despite the plaintiff's representations to the contrary.

On January 10, 2022, the defendant filed a motion in limine pendente lite, in which she requested, in part, that the court order sanctions pursuant to Practice Book § 13-14 due to the plaintiff's failure to comply with discovery. On the first day of trial, counsel for the defendant argued that the plaintiff had provided some but not all documents by December 20, 2021. Counsel for the plaintiff indicated her belief that her client's discovery responses had been complete, and she indicated that she would continue to review the requests with the plaintiff to produce any missing documents. The court indicated that the outstanding motions for contempt and motion in limine would be taken up during the course of the trial.

During closing arguments at the conclusion of trial, counsel for the plaintiff reiterated that her client had complied with the discovery requests; counsel for the defendant, however, argued that she had “never seen a bigger lack of compliance on discovery” and that, notwithstanding that counsel for the plaintiff had certified compliance with the discovery requests, documents were still missing. She also stated that she received “hundreds of pages of documents after [December 20, 2021],” when they “should have been provided well before that.” In its decision, the court stated that “[t]he plaintiff is found to have wilfully violated the discovery orders by not producing documents ***789** as ordered; some of the documents were produced during this trial.”[29] (Footnote omitted.) Although counsel for the defendant had filed an affidavit reflecting attorney's fees and expenses in the amount of $17,282.50 related to her motions for contempt, the court ordered the plaintiff to pay $1000 in attorney's fees to the defendant as a result of its finding of contempt.

29 The court did not specify which documents had been produced and which documents were still missing.

According to the defendant, the court abused its discretion in ordering the plaintiff to pay only $1000 in attorney's fees when her affidavit of attorney's fees reflected fees and expenses in the amount of $17,282.50. Although we agree that the defendant's affidavit reflected attorney's fees and expenses in the amount of $17,282.50, we also note that this affidavit included fees related to the motions for contempt that were denied by the trial court. Specifically, the affidavit stated, in part, that the attorney's fees were "related to the various *motions* for contempt" and included fees for "[l]egal research regarding contempt motions, automatic orders and court action on same, [e]xtensive discussion with client [regarding] plaintiff's purchase of vehicles, review of photos of vehicles, [and] [r]eview of records and court orders [regarding] obligation to pay for various items under agreements." [30] We are unable to conclude that the court abused its discretion by failing to award attorney's fees based on motions for contempt that the court properly denied.

30 The defendant had filed a prior affidavit of legal fees on December 13, 2021, reflecting $3557.50 as the total amount of fees and expenses "related to the attorney's fees with respect to the discovery matters at issue in the December 13, [2021] hearing."

****19** Furthermore, although the defendant relies on *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007), as support for her argument that the court's actions effectively penalized the innocent party and rewarded ***790** the party who abused the discovery process, that case is readily distinguishable from the present case. In *Ramin*, our Supreme Court concluded that the trial court had abused its discretion in refusing to consider a plaintiff's motion for contempt and request for sanctions based on the defendant's repeated failure to comply with discovery requests. Id., at 330, 915 A.2d 790. In the present case, the court did not decline to act on the defendant's motion for contempt. The court, rather, granted the defendant's motion for contempt and ordered the plaintiff to pay $1000 to the defendant as a result of the contempt. [31] Additionally, it was undisputed in *Ramin* "that the case was rife with discovery misconduct by the defendant." Id., at 340, 915 A.2d 790. The trial court's decision in *Ramin* explicitly noted, with respect to the defendant's misconduct during trial, "the defendant's pattern of deceit and disdain for the legal process." Id., at 356, 915 A.2d 790. There is no such finding in the present case.

31 The defendant contends that the trial court never ruled on her motion in limine. As to this motion, the court stated, at the commencement of trial on January 10, 2022: "So, that's my order on the motion in limine, docket entry 200.00. The [c]ourt will consider issuing an interim order if it deems it appropriate based on the evidence." The court's order on the motion in limine, dated January 10, 2022, states: "No action necessary."

"[I]t is not the role of this court to exercise discretion to determine what attorney's fees, if any, are just if contumacious conduct has been proven, but to review the trial court's exercise of discretion in this regard." *Mitchell* v. *Bogonos*, supra, 218 Conn. App. at 70, 290 A.3d 825. On the basis of our review of the proceedings in the present case, we cannot conclude that the court abused its discretion in ordering the plaintiff to pay the defendant $1000 in attorney's fees after adjudicating him in contempt for failing to comply with the court's discovery orders.

The judgment is reversed only as to the financial orders, and the case is remanded for a new trial on all ***791** financial issues; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

All Citations

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