Child Support Standards Act: When to Cap and When to Deviate
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Published in the *Journal of Taxation of Investments*, Winter 2009 (p. 92)

The New York State Child Support Standards Act (CSSA) became law in 1989 and can be found in Domestic Relations Law § 240 and Family Court Act § 413. These statutes enumerate the standards courts must use when making child support awards. This article refers only to the Domestic Relations Law however the same provisions are found in the Family Court Act.

I. Determining Income

"Combined parental income" is the sum of the income of both parents. N.Y. Dom. Rel. Law § 240 (1-b)(b)(4) (Consol. 2008). Simplistically, income is determined by a party's most recent federal income tax return. Domestic Relations Law § 240 (1-b)(b)(5)(iv)(h) In State Supreme Court, parties must submit tax returns for the previous five years, as well as a 236(B) financial affidavit and recent paystub. In Family Court, parties must submit a financial disclosure affidavit, any licenses the parties possess including drivers licenses, and a recent paystub. DRL § 240 (1-b)(b)(5) allows the court to consider income that *should have* been reported, and therefore, courts have been willing to impute income to parties who have seemingly underreported income in their tax returns. (*See* Ivani v. Ivani, 757 N.Y.S.2d 89 (N.Y. App. Div. 2003)). Additionally, DRL § 240 (1-b)(b)(5) instructs courts to include other items when computing gross income, including, but not limited to: worker's compensation benefits; disability benefits; unemployment insurance benefits; social security benefits; veterans benefits; pensions and retirement benefits; fellowships and stipends; and annuity payments. directs the court to reduce a party's income by the amount of FICA taxes paid by that individual.

II. Statutory Percentages

Domestic Relations Law § 240 (1-b)(b)(3) states the percentage of the parent(s)' income that will be used to determine the amount of child support to be paid. For one child, 17% of the combined parental income must be allocated for child support; for two children, 25% of the combined parental income must be allocated for child support; for three children, the percentage increases to 29%; for four children the percentage is 31% of the combined parental income; and for 5 or more children, no less than 35% of the combined parental income is to be applied toward child support.

III. Determining Child Support Using the Statutory Cap

The method for calculating the actual amount of child support owed is set forth in DRL § 240 (1-b)(c). First, the court determines combined parental income and then multiplies the combined parental income, up to the $80,000 cap total found in DRL § 240 (1-b)(b)(c)(2), by the appropriate child support percentage (i.e. 17% for one child). Then, that

amount is prorated in the same proportion as each parent's income is to the combined parental income.

By way of example, assume that the combined parental income is $70,000, and that each parent earns $35,000 and that there is one child who is entitled to receive support. First, $70,000 is multiplied by 17% which means $11,900 is the "presumptively correct" amount to be paid. Now, because each parent's income represents 50% of the combined parental income, each parent is responsible for 50% of the $11,900 child support. This payment by the custodial parent is obviously a mathematical fiction. The process for computing child support gets even more creative when the combined parental income exceeds the $80,000 cap found in DRL § 240 (1-b)(b)(c)(2).

IV. Combined Parental Income Exceeding the Cap

When combined parental income exceeds $80,000, the court is directed by DRL § 240 (1-b)(c)(3). This statute states that in order to determine the amount of child support derived from a combined parental income in excess of $80,000, the court is to use the child support percentage multiplied by the excess income over $80,000 and/or consider enumerated statutory factors, including but not limited to: financial resources of the custodial and non-custodial parent as well as the child; the physical and emotional health of the child and his/her special needs and aptitudes; the standard of living the child would have enjoyed had the marriage or household not been dissolved; the tax consequences to the parties; non-monetary contributions that the parents will make toward the care and well-being of the child; the educational needs of either parent; a determination that the gross income of one parent is substantially less than the other parent's gross income; the needs of other children of the non-custodial parent who are not subject to the instant action and for whom the non-custodial parent is providing support; as well as any other factors that the court determines are relevant. N.Y. Dom. Rel. Law § 240 (1-b)(f)(1-8, 10) (Consol. 2008).

V. Recent Case Law

If the court deviates from the child support figure that would be arrived at through application of the CSSA, it must set forth its reasons for doing so in a written order, and the written order may not be waived by either party or counsel. DRL § 240 (1-b)(h).

The New York Court of Appeals, in the case of Cassano v. Cassano, 85 N.Y.2d 649 (1995), affirmed that when the parties' combined income exceeds $80,000, the courts may apply both the additional paragraph (f) factors , the statutory percentages, or both. The Court also reaffirmed in Cassano the necessity of courts providing a "record articulation" describing why they may have disregarded the formula provided in the CSSA.

A court order of child support may be overturned if a the court does not issue an order detailing its reasons for deviating from the CSSA when applying the statutory percentage to all combined parental income in excess of $80,000. For example, in Irene v. Irene,

837 N.Y.S.2d 797 (N.Y. App. Div. 2007), the Fourth Department modified an order of support where the Erie County trial court did not provide a sufficient "record articulation" for applying the CSSA percentage to all of the combined parental income in excess of $80,000. The Fourth Department found insufficient the trial court's statement that "based on the needs of the children and all relevant factors," it applied the statutory formula to all parental income above $80,000. The Appellate Division noted that the children's actual needs were not adequately addressed in the record and that the parties were in the midst of bankruptcy proceedings at the time of trial.

The Fourth Department has cautioned that when the combined parental income exceeds $80,000, it cannot just apply the statutory formula. The court must consider the actual needs of the children, and if the court does not, it is an "abdication of judicial responsibility and renders meaningless the statutory provision setting a cap on strict application of the formula." Malecki v. Fernandez, 809 N.Y.S.2d 316 (N.Y. App. Div. 2005). Even where the trial court provides an articulate record of the reasons for calculating child support based on a combined parental income greater than $80,000, the Fourth Department has been willing to reduce the amount of income applied if it is deemed unnecessarily large based upon the child's actual reasonable needs. Michelle M. v. Thomas F., 839 N.Y.S.2d 982 (N.Y. App. Div. 2007).

Courts have been willing to proactively apply the CSSA formula to combined parental incomes greater than $80,000. Perhaps this is most likely because the statutory $80,000 figure has not been changed in nearly twenty years. For example, in Levy v. Levy, 835 N.Y.S.2d 228 (N.Y. App. Div. 2007), the Second Department applied the statutory percentage of 29% for three minor children to the first $140,000 of combined parental income. The Second Department modified the original judgment which had only taken the $80,000 cap into consideration because support in excess of the children's documented needs was at issue.

Also, in Vladlena B. v. Mathias G., 2008 WL 2521283 (N.Y. App. Div. 2008), the First Department opined that in high-income cases, the proper determination for an award of child support with respect to parental income in excess of $80,000 should be based on the child's actual needs and the amount required for a lifestyle appropriate for the child, not the wealth of one or both parties.

In Erie County, the Division of Child Support Enforcement automatically reviews child support orders every two years in order to apply cost of living adjustments. If the cost of living has increased by more than ten percent since the order was made or since the order's last review, the child support order amount will increase by the amount of the change in the cost of living. The Child Support Collection Unit may re-evaluate child support orders every 18 months, and may even do so ex parte.

VI. Imputing Income

There is abundant case law demonstrating the courts' willingness to apply the statutory percentages to incomes greater than $80,000. Also, there is even more case law in which

the court first imputes income to the litigant in excess of $80,000 and then applies the percentages to this imputed income. For example, in Pulver v. Pulver, 837 N.Y.S.2d 369, the plaintiff's income tax return listed his income as $77,278, but the court noted that by examining plaintiff's business ledger, a sufficient record existed that justified imputing the father's income to $90,000. Plaintiff claimed that the trial court did not sufficiently articulate why it would not depart from the given statutory percentages when evaluating his income over $80,000. The Third Department dismissed this contention, stating that the children's standard of living and their level of activities were sufficient reasons for the trial court to sustain the percentages.

VII. Conclusion

In essence, courts are given broad statutory discretion to apply the CSSA percentages to incomes greater than $80,000; however, they MUST articulate their reasons for doing so. The support order may be overturned if a court fails to give a sufficiently detailed record articulation of why it deviated from the basic child support obligation set forth in the Child Support Standards Act.