

8523

2009-2010 Regular Sessions

I N A S S E M B L Y

May 27, 2009

Introduced by M. of A. O'DONNELL, WEINSTEIN -- Multi-Sponsored by -- M. of A. COOK, GABRYSZAK, GALEF, HYER-SPENCER, JAFFEE, JOHN, LAVINE, ROBINSON, SWEENEY -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to the child support obligation of indigent non-custodial parents

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (d), (g) and (i) of subdivision 1-b of section
2 240 of the domestic relations law, paragraphs (d) and (i) as added by
3 chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter
4 41 of the laws of 1992, are amended to read as follows:
5 (d) Notwithstanding the provisions of paragraph (c) of this subdivi-
6 sion, where the annual amount of the basic child support obligation
7 would reduce the non-custodial parent's income below the poverty income
8 guidelines amount for a single person as reported by the federal depart-
9 ment of health and human services, the basic child support obligation
10 shall be twenty-five dollars per month [or the difference between the
11 non-custodial parent's income and the self-support reserve, whichever is
12 greater], PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC
13 CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL
14 BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F)
15 OF THIS SUBDIVISION, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO
16 PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPRO-
17 PRIATE. Notwithstanding the provisions of paragraph (c) of this subdivi-
18 sion, where the annual amount of the basic child support obligation
19 would reduce the non-custodial parent's income below the self-support
20 reserve but not below the poverty income guidelines amount for a single
21 person as reported by the federal department of health and human
22 services, the basic child support obligation shall be fifty dollars per

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [In no instance shall the court order child support below twenty-five dollars per month.] Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of this article, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart. [In no instance shall the court approve any voluntary support agreement or compromise that includes an amount for child support less than twenty-five dollars per month.]

S 2. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of the family court act, paragraphs (d) and (i) as added by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be twenty-five dollars per month [or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater]; PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND

1 APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this
2 subdivision, where the annual amount of the basic child support obli-
3 gation would reduce the non-custodial parent's income below the self-
4 support reserve but not below the poverty income guidelines amount for a
5 single person as reported by the federal department of health and human
6 services, the basic child support obligation shall be fifty dollars per
7 month or the difference between the non-custodial parent's income and
8 the self-support reserve, whichever is greater, IN ADDITION TO ANY
9 AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH
10 SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS
11 SUBDIVISION.

12 (g) Where the court finds that the non-custodial parent's pro rata
13 share of the basic child support obligation is unjust or inappropriate,
14 the court shall order the non-custodial parent to pay such amount of
15 child support as the court finds just and appropriate, and the court
16 shall set forth, in a written order, the factors it considered; the
17 amount of each party's pro rata share of the basic child support obli-
18 gation; and the reasons that the court did not order the basic child
19 support obligation. Such written order may not be waived by either
20 party or counsel; provided, however, and notwithstanding any other
21 provision of law, including but not limited to section four hundred
22 fifteen of this [act] PART, the court shall not find that the non-custo-
23 dial parent's pro rata share of such obligation is unjust or inappropri-
24 ate on the basis that such share exceeds the portion of a public assist-
25 ance grant which is attributable to a child or children. [In no instance
26 shall the court order child support below twenty-five dollars per
27 month.] Where the non-custodial parent's income is less than or equal to
28 the poverty income guidelines amount for a single person as reported by
29 the federal department of health and human services, unpaid child
30 support arrears in excess of five hundred dollars shall not accrue.

31 (i) Where either or both parties are unrepresented, the court shall
32 not enter an order or judgment other than a temporary order pursuant to
33 section two hundred thirty-seven of [this article] THE DOMESTIC
34 RELATIONS LAW, that includes a provision for child support unless the
35 unrepresented party or parties have received a copy of the child support
36 standards chart promulgated by the commissioner of [social services] THE
37 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision
38 two of section one hundred eleven-i of the social services law. Where
39 either party is in receipt of child support enforcement services through
40 the local social services district, the local social services district
41 child support enforcement unit shall advise such party of the amount
42 derived from application of the child support percentage and that such
43 amount serves as a starting point for the determination of the child
44 support award, and shall provide such party with a copy of the child
45 support standards chart. [In no instance shall the court approve any
46 voluntary support agreement or compromise that includes an amount for
47 child support less than twenty-five dollars per month.]

48 S 3. This act shall take effect on the ninetieth day after it shall
49 have become a law.