STATE OF NEW YORK

9505

IN ASSEMBLY

March 15, 2024

Introduced by M. of A. McMAHON -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to establishment and modification of child support orders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Clause (iv) of subparagraph 5 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(iv) at the discretion of the court, the court may attribute or impute income from[~~,~~] such other resources as may be available to the parent, including, but not limited to:

(A) non-income producing assets,

(B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or [~~indirecly~~] **indirectly** confer personal economic benefits,

(C) fringe benefits provided as part of compensation for employment, and

(D) money, goods, or services provided by relatives and friends;

In determining the amount of income that may be attributed or imputed, the court shall consider the specific circumstances of the parent, to the extent known, including such factors as the parent's assets, residence, employment and earning history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors such as the age, number, needs, and care of the children covered by the child support order. Attribution or imputation of income shall be accompanied by specific written findings identifying the basis or bases for such determination utilizing factors required or permitted to be considered pursuant to this clause;

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

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§ 2. Clause (iv) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(iv) at the discretion of the court, the court may attribute or impute income from[~~,~~] such other resources as may be available to the parent, including, but not limited to:

(A) non-income producing assets,

(B) meals, lodging, memberships, automobiles or other perquisites that are provided as part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or [~~indirecly~~] **indirectly** confer personal economic benefits,

(C) fringe benefits provided as part of compensation for employment, and

(D) money, goods, or services provided by relatives and friends;

In determining the amount of income that may be attributed or imputed, the court shall consider the specific circumstances of the parent, to the extent known, including such factors as the parent's assets, residence, employment and earning history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors such as the age, number, needs, and care of the children covered by the child support order. Attribution or imputation of income shall be accompanied by specific written findings identifying the basis or bases for such determination utilizing factors required or permitted to be considered pursuant to this clause;

§ 3. Paragraph (k) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(k) When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, [~~the court shall order child support based upon the needs or standard of living of the child, whichever is greater~~] **the support obligation shall be based on available information about the specific circumstances of the parent, in accordance with clause (iv) of subparagraph five of paragraph (b) of this subdivision**. Such order may be retroactively modified upward, without a showing of change in circumstances.

§ 4. Paragraph (k) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(k) When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, [~~the court shall order child support based upon the needs or standard of living of the child, whichever is greater~~] **the support obligation shall be based on available information about the specific circumstances of the parent, in accordance with clause (iv) of subparagraph five of paragraph (b) of this subdivision**. Such order may be retroactively modified upward, without a showing of change in circumstances.

§ 5. Clause (v) of subparagraph 5 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 313 of the laws of 2019, is amended to read as follows:

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation

for child support; provided that incarceration shall not be considered voluntary unemployment[~~, unless such incarceration is the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment~~];

§ 6. Clause (v) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as amended by chapter 313 of the laws of 2019, is amended to read as follows:

(v) an amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support; provided that incarceration shall not be considered voluntary unemployment[~~, unless such incarceration is the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment~~];

§ 7. Paragraph (a) of subdivision 3 of section 451 of the family court act, as amended by chapter 313 of the laws of 2019, is amended to read as follows:

(a) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be considered voluntary unemployment and shall not be a bar to finding a substantial change in circumstances [~~provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment~~].

§ 8. Clause (i) of subparagraph 2 of paragraph b of subdivision 9 of part B of section 236 of the domestic relations law, as amended by chapter 313 of the laws of 2019, is amended to read as follows:

(i) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be considered voluntary unemployment and shall not be a bar to finding a substantial change in circumstances [~~provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment~~].

§ 9. This act shall take effect immediately, and shall apply to any action or proceeding pending upon or commenced on or after such effective date.