

Memorandum Recommending Modification

COMMITTEE ON CHILDREN AND THE LAW

Children # 9

May 29, 2019

S. 6168

By: Senator Hoylman

Senate Committee: Judiciary

Effective Date: 90th day after it shall have become a law

AN ACT to amend the family court act and the domestic relations law, in relation to agreements and stipulations of child support.

LAW AND SECTIONS REFERRED TO: Section 413 of the family court act and section 240 of the domestic relations law.

One of the most fundamental “best interests” of the child is parental financial support of the child. Unfortunately, this statutory right of a child, is also one of the most frequented causes for a child’s life to be brought into a courtroom. Accordingly, the Committee on Children and Law regularly addresses child support awareness and updates the Child Support educational materials located on the Committee on Children and Law webpage of the New York Bar Association. This is an area of judicial interfacing with the Courts that leaves children vulnerable due to lack of uniformity if the statute is not uniformly applied in court orders or settlement agreements.

In cases of divorce or custody proceedings, child support calculations are set by the New York State Child Support Standards Act. These statutory protections are not waivable by the parties or their attorneys as it is the child’s right to be supported financially. Accordingly, all four Judicial Departments have held that agreements not in compliance with these requirements are invalid and unenforceable. See *David v. Cruz*, 103 A.D.3d 494 (1st Dept., 2013); *Jefferson v. Jefferson*, 21 A.D.3d 879 (2nd Dept., 2005); *Spooner v. Spooner*, 154 A.D.3d 1158 (3rd Dept., 2017); *Panzarella v. Panzarella*, 106 A.D.3d 1527 (4th Dept., 2013).

Although the judiciary recognizes the standard uniformly, unfortunately there is not a uniform procedure in place to correct a child support calculation error or a correction mechanism other than bringing a new action to address lack of notice of the statute.

The Family Court Act Section 413 states in pertinent part:

h) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for

incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision and that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded. In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

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 the domestic relations law, 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 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.

Committee Recommendations

The Committee on Children and Law recommends that provisions (h) and (i) above be modified so that the language in (h) “Such provision may not be waived by either party or counsel” be added to paragraph (i) and the language in (i), “the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of the domestic relations law, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart” be added into (h). This would then place the same notification standards on represented and pro as litigants.

For all such existing judgements that do not comply with the current (h) and (i) above, the Committee on Children and Law recommends that a judgement review part be instituted in all counties to conform to the existing statute and notify CSEU of the updated calculations.