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Retroactive Child Support Payments in Illinois

Discussion

Child support is a vested right and is more or less inflexible in nature as the courts take affirmative action in favor of children in the event of unpaid arrearage or delinquency and payments are generally not subject to reduction either as to amount or time of payment. *Hoos v. Hoos* 86 Ill. App. 3d 817 at 821 (1980, First District, Second Division). An award of child support is determined in accordance with the standards prescribed by the Illinois Parentage Act of 1984. The right flows from § 750 ILCS 45/14(b) which read in part:

§ 750 ILCS 45/14(b)

(b) The court shall order all child support payments, determined in accordance with such guidelines, to commence with the date summons is served. The level of current periodic support payments shall not be reduced because of payments set for the period prior to the date of entry of the support order. **The Court may order any child support payments to be made for a period prior to the commencement of the action.** In determining whether and the extent to which the payments shall be made for any prior period, the court shall consider all relevant facts, including the factors for determining the amount of support specified in the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/101 et seq.] and other equitable factors including but not limited to:

(1) The father's prior knowledge of the fact and circumstances of the child's birth.

(2) The father's prior willingness or refusal to help raise or support the child.

(3) The extent to which the mother or the public agency bringing the action previously informed the father of the child's needs or attempted to seek or require his help in raising or supporting the child.

(4) The reasons the mother or the public agency did not file the action earlier.

(5) The extent to which the father would be prejudiced by the delay in bringing the action.

For purposes of determining the amount of child support to be paid for any period before the date the order for current child support is entered, there is a rebuttable presumption that the father's net income for the prior period was the same as his net income at the time the order for current child support is entered.

Section 14(a) of the Parentage Act specifies that child support be determined in conformity with sections 505 and 505.2 of the Marriage Act. Under section 505 of the Marriage Act, the minimum child support for one child is to be 20% of the supporting parent's net income.

§ 750 ILCS 5/505 reads:

For purposes of this Section, the term "child" shall include any child under age 18 and any child under age 19 who is still attending high school.

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%

3	32%
4	40%
5	45%
6 or more	50%

In *Rawles v. Hartman*, 172 Ill. App. 3d 931 (1988, Second District), while addressing a question as to the right to claim support for the educational needs of a nonminor illegitimate child in a parentage proceeding, it has been held that **these guidelines establish a minimum level of support and not maximum**. In this case, despite the absence of statutory provision, the court held that when the Parentage Act and Marriage and Dissolution of Marriage Act read together authorized a court making a child support award to include provisions for the payment of educational expenses for nonminor, illegitimate children:

The guidelines in section 505(a) merely provide a place to begin the analysis, which should be based on all relevant factors dictated by Illinois law. (In *re Marriage of Blaisdell* (1986), 142 Ill. App. 3d 1034, 1040.) The guidelines in section 505(a) establish a minimum level of support, not a maximum. *In re Marriage of McBride* (1988), 166 Ill. App. 3d 504, 510. *Id* at 935-936

EXTENT OF A CLAIM FOR RETROACTIVE PAYMENT

Retroactive child support is authorized by section 14(b), 750 ILCS 45/14(b) which provides:

The Court may order any child support payments to be made for a period prior to the commencement of the action, including payments to reimburse any public agency for assistance granted on behalf of the child. In determining whether and the extent to which such payments shall be made for any prior period, the court shall consider all relevant facts, including the factors for determining the amount of support specified in the 'Illinois Marriage and Dissolution of Marriage Act,' approved September 22, 1977, as amended, and other equitable factors including but not limited to:

- (1) the father's prior knowledge of the fact and circumstances of the child's birth;
- (2) the father's prior willingness or refusal to help raise or support the child;
- (3) the extent to which the mother or the public agency bringing the action previously informed the father of the child's needs or attempted to seek or require his help in raising or supporting the child;
- (4) the reasons the mother or the public agency did not file the action earlier; and
- (5) the extent to which the father would be prejudiced by the delay in bringing the action.

For purposes of determining the amount of child support to be paid for any period before the date the order for current child support is entered, there is a rebuttable presumption that the father's net income for the prior period was the same as his net income at the time the order for current child support is entered.

In *Department of Public Aid ex rel. McFarland v. Thompsen*, 218 Ill. App. 3d 1099 (1991, Second District) the court held:

...section 14(b) of the Act plainly states that the court may order child support payments to be made "for a period prior to the commencement of the action" (Ill. Rev. Stat. 1989, ch. 40, par. 2514(b)). **This language means what it says.** (*Milligan v. Cange* (1990), 200 Ill. App. 3d 284, 293; *In re Paternity of Hubbard* (1989), 186 Ill. App. 3d 234, 236-37.) The trial court therefore did not err in ordering retroactive support payments. *Id* at 1104.

The amount of an award of child support is a matter within the sound discretion of the trial court, and the award will not be disturbed on appeal

absent an abuse of discretion. (*In re Marriage of Dwan* (1982), 108 Ill. App. 3d 808, 812, 439 N.E.2d 1005, 1008.) As quoted in *Childerson v. Hess*, 198 Ill. App. 3d 395 at pp.397-398. *See also In re Marriage of Potts*, 297 Ill. App. 3d 110

In the above case, the appellate court affirmed the lower court's order for child support retroactive to the child's birth.

In *Janssen v. Turner*, 292 Ill. App. 3d 219 (Fourth District, 1997) the court held that an award of retroactive support was not an abuse of discretion; the father conceded that he knew of the child's birth, the father participated in the child's support to the extent he saw fit, the mother tried to work out an agreement with the father before filing suit, and the father was not prejudiced by the delay in bringing suit. *Id* at 226. In this case the respondent additionally argued that the retroactive child support is an abuse of discretion or against the manifest weight of the evidence for two reasons: (1) the application of the factors in section 14(b) of the Parentage Act weigh in respondent's favor and (2) the award of retroactive child support was a windfall to petitioner in the nature of a property settlement she might have received had the parties been married. The Court rejected Defendants objections, holding that 14(b) of the Parentage Act incorporates section 505 of the Marriage Act and that the failure to order child support to relate back to the child's date of birth encourages delay tactics and defeats the intent of the legislature. *Id.* at 225 (Citing *Carnes v. Dressen*, 215 Ill. App. 3d 166 (1991)).

Once the paternity is established, Illinois law does not differentiate between the child born out of wedlock and the child born in lawful wedlock and the former is entitled to all rights available to the latter.

the parent of a child born out of wedlock whose paternity is established is liable for the child's support, maintenance, education, and welfare to the same extent and in the same manner as the parent of a child born in lawful wedlock." *Rawles v. Hartman, Supra* at 934.

DEFENSES

In a child support case there are mainly two types of defenses available to the defendant. They are the defense of laches and estoppel.

In re Estate of Ierulli, 174 Ill. App. 3d 134(1988, Third District) was an action by a mother against an estate for unpaid child support and statutory interest. The circuit court awarded the child support arrearage plus interest. On appeal, the estate contended that the mother's claim was subject to the defense of laches, that the mother was estopped from bringing her claim, and that the circuit court erred in awarding the mother statutory interest. The Appellate court affirmed the decision awarding the mother unpaid child support and reversed that portion of the decision awarding her interest on her judgment. The court held that the circuit court was correct in refusing laches as a defense to the mother's claim, since the award did not prejudice the estate. Further, the court held that the circuit court was correct in refusing estoppel as a defense to the mother's claim for unpaid child support, because the estate had offered nothing to show detrimental reliance. However, the court held that the circuit court abused its discretion in awarding the mother interest on her judgment, since the mother commenced the support action five years after the last of the parties' children turned 18 years old. The Court explained the requirements of defense of laches:

The equitable defense of *laches* is available where, considering all the circumstances, a defendant shows that it would be prejudiced by an award of relief to the plaintiff considering the plaintiff's failure to assert its right over a period of time. (*Gill v. Gill* (1973), 56 Ill. 2d 139, 144-45, 306 N.E.2d 281, 284.) Mere passage of time, standing alone, will not warrant

the application of *laches*. (*In re Estate of Comiskey (1986)*, 146 Ill. App. 3d 804, 810, 497 N.E.2d 342, 345.) The party asserting the *laches* defense must establish facts showing that it will suffer prejudice or injury. (146 Ill. App. 3d at 810, 497 N.E.2d at 345.)

Id at 137.

The court further explained the requirement of defense of estoppel:

To prevail on a claim of estoppel, the party raising the defense must show that, having no access to the true facts, it relied on statements or conduct of the plaintiff to its detriment. (*Heinze v. Heinze (1979)*, 79 Ill. App. 3d 1121, 1124, 398 N.E.2d 1187, 1190.) Here, as in the asserted defense above, there is no evidence sufficient to support the defense of estoppel.

Id at 137.

In *Gill v. Gill* 56 Ill. 2d 139, (1973), the court, relying on *Pyle v. Ferrell*, 12 Ill.2d 547 discussed the doctrine of *laches* in detail. Plaintiff former wife sought reimbursement from defendant former husband for money expended after their divorce for their child's support during his infancy. The decree exempted child support for the child of the parties. When the former wife later learned the location of the former husband she initiated an action to collect child support from the date of the child's birth. The appellate court affirmed a trial court's award of child support. The Supreme Court affirmed the appellate court's judgment and further held that the former wife's claim was not barred by *laches* for the time between the divorce and the time when she was able to locate the former husband:

This court in *Pyle v. Ferrell*, 12 Ill.2d 547, 552, described the doctrine: *Laches*, or the doctrine of stale demand, as it is sometimes termed, is a defense peculiar to equity which is bottomed on the reluctance to aid one who has knowingly slept upon his rights and acquiesced for a great length of time [citation], and its existence depends on whether, under all circumstances of a particular case, a plaintiff is chargeable with want of due diligence in failing to institute proceedings before he did."..... "(1) Conduct on the part of the defendant giving rise to the situation of which

complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had notice or knowledge of defendant's conduct and the opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his] suit, and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is held not to be barred." *12 Ill.2d 547, 553. Id at 144*

In *Hoos v. Hoos*, *Supra*, the appeal was made from a post-divorce order of the circuit court of Cook County which reduced child support arrearages. The former husband appealed, contending that he and the former wife made binding agreements to reduce the child support payments, and that the arrearages should have been further reduced under the doctrine of equitable estoppel. On appeal, the court reversed, remanded with directions, and held that, absent a clear demonstration that there was an enforceable agreement by the former wife, the trial court erred in reducing the arrearages on the basis of a disputed agreement, and that the former husband's conduct precluded the application of equitable estoppel. The court explained various instances of estoppel:

The test of equitable estoppel in the child-support context generally focuses on conduct of the petitioner and change of position by respondent. (See *Martin v. Comer* (1975), *25 Ill. App. 3d 1038, 1041, 324 N.E.2d 240.*)..... In practice, those cases which have found a change of position for the worse have involved rather egregious circumstances where the respondent has acted in good faith and the petitioner has received an unwarranted benefit. (See *Anderson*, *48 Ill. App. 2d 140, 142-44* (husband signed release for adoption form for his child in return for release from child-support payments); *Martin v. Comer*, *25 Ill. App. 3d 1038, 1040* (husband would pay ex-wife's hospital bill for unborn child who allegedly was by another man in return for release); *Strum v. Strum* (1974), *22 Ill. App. 3d 147, 149-50, 317 N.E.2d 59* (child living with noncustodial parent while custodial parent trying to get child support) *Id at 823.*

Conclusion

In Illinois, the courts and Statutes lean heavily towards the recipients of support particularly when the interests of minors are at stake. The threshold factor in an action for child support is parentage. Public policy considerations are high and the State is also keen to ensure strict compliance. The date of commencement of the payment of child support may generally commence on the date on which the summons is served. However, it is subjected to judicial discretion and the court may order any child support payments to be made for a period prior to the commencement of the action. The court is given great latitude in ordering retroactive child support to the date of birth.