Child Support Awards over the Income Cap
By Joel R. Brandes

Domestic Relations Law § 240(1–b) and its counterpart, Family Ct Act § 413 (1) are known as the Child Support Standards Act ("CSSA'). The Child Support Standards Act contains a rebuttable presumption that the application of its guidelines which result in the "basic child support obligation" will yield the correct amount of child support. This presumption may be rebutted, and the basic child support obligation adjusted, where the court finds that the non-custodial parent's support obligation is **"**unjust or inappropriate.**"**

Before the passage of the Child Support Standards Act, the common law doctrine of necessaries entitled the child to support in accordance with the fathers' "condition and station in life." (Garlock v Garlock, 279 NY 337 (1939); De Brauwere v. De Brauwere (203 N.Y. 460 (1911)). Today, this obligation is reciprocal. (Medical Business Associates, Inc. v Steiner, 183 AD2d 86, 588 NYS2d 890 (2d Dept 1992); Our Lady of Lourdes Memorial Hosp., Inc. v Frey, 152 AD2d 73, 548 NYS2d 109 (3d Dept 1989)). Although the obligation is reciprocal, the necessaries doctrine has not been changed as a matter of common law. (Lichtman v Grossbard, 73 N.Y.2d 792, 537 N.Y.S.2d 19 (1988)).

The Child Support Standards Act, which was enacted in 1989, replaced a needs-based discretionary system with a "precisely articulated three-step method for determining child support." (Matter of Dutchess County Dept. of Social Services ex rel. Day v Day, 96 N.Y.2d 149, 726 N.Y.S.2d 54 (2001)).

The method for determining the "basic child support obligation", is based, in part on the "combined parental income amount" which is sometimes referred to as the "income cap". The "combined parental income amount" is reported by the Commissioner of Social Services in the child support standards chart which is published every year. As of March 1, 2022, the "Combined parent income amount" is up to and including $ $163,000 per year. (See https://www.childsupport.ny.gov/dcse/pdfs/CSSA.pdf; Soc. Serv. Law §111-i (2) (b)).

Step one of the three-step method is the court's calculation of "combined parental income" in accordance with Domestic Relations Law § 240 (1-b).

Second, the court multiplies that figure, up to the combined parental income amount, by a specified percentage based upon the number of children in the household. For example, it is 17% of combined parental income for one child; and 25% of the combined parental income for two children. It then pro-rates that amount between the parents according to their share of the total combined parental income. If the court finds

that the basic child support obligation is “unjust or inappropriate”, based upon consideration of the factors set forth in Domestic Relations Law § 240 (1-b)(f), the court must order the non-custodial parent to pay the amount of child support the court finds just and appropriate. *(*Domestic Relations Law § 240 (1-b)(d)).

Third, where combined parental income exceeds the “combined parental income amount” the court must determine the amount of child support for the amount of the combined parental income in excess of that dollar amount through consideration of the factors set forth in Domestic Relations Law § 240 (1-b) paragraph (f) and/or the child support percentage *(*Domestic Relations Law § 240 (1-b)(b)(3)). The “paragraph (f)” factors include the financial resources of the parents and child, the health of the child and any special needs, the standard of living the child would have had if the marriage had not ended, tax consequences, nonmonetary contributions of the parents toward the child, the educational needs of the parents, the disparity in the parents' incomes, the needs of other nonparty children receiving support from one of the parents, extraordinary expenses incurred in exercising visitation and any other factors the court determines are relevant *(*Domestic Relations Law § 240 (1-b)(f); Cassano v Cassano, 85 N.Y.2d 649, 628 N.Y.S.2d 10 (1995)).

When the combined parental income exceeds the “combined parental income amount” and a court chooses to adjust the child support award through consideration of the factors set forth in paragraph (f) and/or the child support percentage it is required to provide “some record articulation” of its reasons to facilitate appellate review. (Cassano v Cassano, 85 N.Y.2d 649, 628 N.Y.S.2d 10 (1995)) In addition to providing a record articulation for deviating or not deviating from the statutory formula, a court must relate that record articulation to the statutory factors.(Matter of Gluckman v Qua, 253 A.D.2d 267, 271, 687 N.Y.S.2d 460, 463, (3 Dept., 1999); De Souza v. Nianduillet 112 A.D.3d 823, 978 N.Y.S.2d 52 (2 Dept. 2013)).

Where the custodial parent is working, or receiving elementary or secondary education, or higher education or vocational training which the court determines will lead to employment the basic child support obligation includes reasonable child care expenses prorated in the same proportion as each parent's income is to the combined parental income. It also includes health insurance benefits and cash medical support prorated in the same proportion as each parent's income is to the combined parental income *(*Domestic Relations Law § 240 (1-b)(c)(4) and (5)).

The basic child support obligation also includes reasonable child care expenses where the court determines that the custodial parent is seeking work and incurs child care expenses as a result; and educational expenses where the court determines that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate. These expenses are paid in a manner determined by the court and need not be prorated in the same proportion as each parent's income is to the combined parental income *(*Domestic Relations Law § 240 (1-b)(c)(6) and (7)).

The standard of living the child would have enjoyed had the marriage or household not been dissolved is factor (3) of the factors the court may consider in determining if the basic child support obligation is unjust or inappropriate. It would appear that consideration of this factor allows the court to award support for a child in accordance with former law, but this factor has not been construed by the Appellate Divisions to mean that.

In Anonymous v Anonymous, (286 A.D.2d 585, 729 N.Y.S.2d 890, (1 Dept., 2001)) the First Department focused on paragraph (f) factor (3). In that case, the Supreme Court awarded the mother child support of $12,825 per month, based on a finding that her child support costs, including housing costs attributable to the child, were $13,500 per month. It also directed the father to pay 100% of the child's educational, medical, extracurricular and camp costs, and up to $60,000 per year for nannies employed by the defendant. In affirming the award the Appellate Division observed that, in calculating the award of child support to the defendant under Domestic Relations Law § 240 (1-b), the trial court properly set the total child support obligation at an amount that would enable the child to significantly enjoy aspects of the parties' marital standard of living, to enhance her development, to fully provide for her education, her physical and psychological health, and consistent with the social milieu in which she is raised. In this connection, it noted that consideration of the child's actual needs with reference to the prior standard of living continues to be appropriate in determining an award of child support on parental income in excess of the combined parental income amount.

The First Department revisited this factor in Culhane v Holt, (28 A.D.3d 251, 813 N.Y.S.2d 400 (1st Dep't 2006)). There it held that a Support Magistrate erred, in applying the 17% statutory rate to the entire portion of the parties' combined income above the combined parental income amount without considering the actual needs of the two-year-old child. The court wrote that “[I]n high income cases, the appropriate determination … for an award of child support on parental income in excess of [the income cap] should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties” (*Matter of Brim v Combs*, 25 AD3d 691, 693 [2006], citing *Anonymous v Anonymous,* 286 AD2d 585 [2001]).”

The Second Department has held that the appropriate determination under Family Court Act § 413(f) (the analogous provision is Domestic Relations Law § 240 (1-b)(f)) for an award of child support on parental income over the combined parental income amount should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties. (Matter of Brim v Combs, 25 AD3d 691, 808 N.Y.S.2d 735, 736 (2d Dept.,2006))

In Brim v Combs, supra, the mother's net worth statement and her extensive testimony at the hearing established that her expenses related to the child were

$19,148.74 per month, exclusive of the child's educational, health, medical, dental, school transportation, school supplies/books, security, and summer camp expenses, which were paid by the father. This amount was deemed admitted as fact by the father due to his failure to comply with the compulsory financial disclosure requirements of Family Court Act § 424-a. The Appellate Division held that in calculating the award of child support to the mother under Family Court Act § 413, the Support Magistrate erred in basing the award in part on the amount of child support the father paid for his other child by a different woman, particularly where no evidence was presented as to that child's expenses, resources, and needs. To this end, in high-income cases, the appropriate determination under Family Court Act § 413 (1) (f) for an award of child support on parental income above the combined parental income amount should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties. It held that the Family Court erred in awarding $35,000 in monthly child support to the mother. Instead, the mother should have been awarded monthly child support of $19,148.74 to satisfy the child's actual needs and to afford him an appropriate lifestyle.

This is still the rule in the Second Department. (See Hepheastou v Spaliaras, 2022 WL 164200 (2d Dept.,2022)).

The Third Department initially adopted a different approach (See Matter of Gluckman v Qua, (253 A.D.2d 267, 687 N.Y.S.2d 460 (3 Dept., 1999)) but revisited the issue in Matter of Mitchell v. Mitchell,(264 A.D.2d 535, 540 (3d Dept., 1999)) and held that in cases where the combined parental income is well in excess of the combined parental income amount, it is proper to consider and base the award upon the child's actual reasonable needs. “Although children must generally be permitted to share in a noncustodial parent's enhanced standard of living and a court is not permitted to make an award based solely on their actual needs, it may consider the child's needs in determining an award of child support on income exceeding the [statutory] cap.”

The Fourth Department has adopted the Third Department rule. It has also said that where the combined parental income is well in excess of [the income cap], it is proper to consider and base the award upon the child's “actual reasonable needs ” (citing *Anonymous v. Anonymous,* 222 A.D.2d 305, 306, 636 N.Y.S.2d 12). “ ‘[A]lthough children must generally be permitted to share in a noncustodial parent's enhanced standard of living and a court is not permitted to make an award based solely on their actual needs ..., we may consider the child's needs in determining an award of child support on income exceeding the [income] cap’ ” (citing Matter of Mitchell v. Mitchell, 264 A.D.2d 535, 540, 693 N.Y.S.2d 351). Matter of Michele M. v Thomas F., 839 N.Y.S.2d 892, 2007 WL 1953685 (4 Dept., 2007)).

Conclusion

Where the combined parental income exceeds the ‘income cap” the test in the First and Second Departments is whether the child is receiving enough to meet his or her “actual needs and the amount required to live an appropriate lifestyle.” However, neither court has explained what is meant by “an appropriate lifestyle” or whether “appropriate lifestyle” refers to the standard of living the child would have had if the marriage had not ended.

In contrast, the Third Department and Fourth Departments have held that where the combined parental income is well in excess of the income cap, it is proper to consider and base the award upon the child's “actual reasonable needs. ” Although children must generally be permitted to share in a noncustodial parent's enhanced standard of living and a court is not permitted to make an award based solely on their actual needs, it may consider the child's needs in determining an award of child support on income exceeding the income cap.

It is difficult to reconcile the minor but significant differences in these two conflicting rules with the common law doctrine of necessaries which is still the law in New York, and which entitles the child to support in accordance with the parents “condition and station in life.”

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