

GEORGIA CHILD SUPPORT APPELLATE OPINION BY TOPIC ©

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Georgia Child Support Appellate Opinion by Topic

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Ability to Deviate

- ❖ The court has the flexibility to deviate however it wants if based on case facts, the best interest of the child, and follows proper procedure.
- ❖ Trial courts have broad discretion when ruling on child support obligations based on factors presented to the court
- ❖ The trial court also has considerable discretion to deviate from the presumptive child support amount based on the many specific deviations listed in the guidelines or on other grounds, but only after supporting any deviation with written findings of fact.

Ability to Pay

- ❖ In all cases, child support must be assessed by some calculation of the needs of the child and the ability of the parent to pay.
- ❖ A downward deviation for payment of child support arrears on a now adult other child is permitted due to the payment's impact on ability to pay. This suggests that any factor affecting ability to pay may be considered as a deviation.
- ❖ The judge must find that the award is in the child's best interest independently even though the proposed award is by agreement and the trial court has an obligation to consider whether support is sufficient based on child's needs and parents' ability to pay.

Agreement of the Parties

- ❖ The judge must find that the award is in the child's best interest independently even though the proposed award is by agreement.
- ❖ If an agreement between the parties does not follow guideline procedure, including containing required findings of fact for deviating, the court shall reject such agreement.
- ❖ The Basic Child Support Obligation assumes that the custodial parent pays all of the BCSSO costs. The custodial parent must ask for deviation and put in worksheet for noncustodial parent to help pay for a particular item.
- ❖ The court cannot order what it is not authorized to do. The court cannot modify what it is not authorized to order in an initial child support determination.
- ❖ An agreement that includes provisions that the court itself could not order is still enforceable by the court.
- ❖ The trial court has an obligation to consider whether the agreed-upon support is sufficient.
- ❖ When the existence of and the terms of the agreement are disputed and the sufficiency of child support is called into question, the record should reflect the trial court's comparison of need and ability to pay and it should reflect an award that is consistent with that comparison.

Alimony as a Deviation

- ❖ Because the custodial parent cannot waive the child's right to child support, the custodial parent cannot waive a portion of child support to obtain a higher amount of alimony. Thus, a downward deviation for payment of alimony for a waiver of a part of child support is not allowed.

Back Child Support

- ❖ Back child support cannot exceed actual spending on the children. When allocating past expenses, the child support guidelines must be considered.

BCSSO Assumptions

- ❖ The Basic Child Support Obligation assumes that the custodial parent pays all of the BCSSO costs. The custodial parent must ask for deviation and put in worksheet for noncustodial parent to help pay for a particular item.

Best Interest of the Child

- ❖ The court must reject an agreement that is not in the best interest of the child.
- ❖ The court cannot determine if the deviations are appropriate (in the child's best interest, the presumptive award is unjust or inappropriate) without all required explanations and for each deviation.

Child Care

- ❖ Child care expenses may be removed from the worksheet if expenses are variable, at the court's discretion. This is part of child support code.
- ❖ Child care expenses are part of the presumptive award and not a deviation.
- ❖ Health insurance premiums and child care expenses must be included in the child support worksheet and presumptive calculation.
- ❖ A nanny can be determined to be work-related child care and included in the presumptive calculation-if reasonable.

Child Dependency Exemptions

- ❖ In 50/50 parenting time cases, the court may allow both parents to evenly split child dependency exemptions.
- ❖ In Georgia, trial courts do not have authority to allocate child dependency exemptions to the noncustodial parent.
- ❖ A Georgia court is allowed to take dependency exemptions awarded to the noncustodial parent in another state's child support order and give to the custodial parent in Georgia modification. However, there was a change in custody, meaning the court was not bound by prior ruling of the Wyoming court.
- ❖ Nearly all states except Georgia allow family courts to order the custodial parent sign IRS documents allowing the noncustodial parent to claim dependency exemptions.

Conversion Factors

- ❖ Conversion factors in Uniform Rules, Superior Courts of the State of Georgia, Rule 24.2A must be used when converting economic data from weekly to monthly (and for other similar conversions).

Dependent Children, Emancipated, as a Deviation

- ❖ Spending on an older, emancipated child may be considered as impacting the interest of the child before the court. A deviation (lower award) based on spending more on the older child and less on the child before the court may be seen as not in the child's best interest.

Deviation Procedure

- ❖ The Court or jury must follow specific steps and make specific written findings for the deviation award to be valid (including why the presumptive award is unjust or inappropriate and how the deviation is in the child's best interest).
- ❖ *Brogdon v. Brogdon* provides details on required explanations in order to deviate from a presumptive award.
- ❖ The court cannot determine if the deviations are appropriate (in the child's best interest, the presumptive award is unjust or inappropriate) without all required explanations and for each deviation.
- ❖ Another example of mandatory explanations for deviations is that life insurance premiums cannot be a deviation if the deviation is not explained as required. When any of the required findings are omitted, the court has no choice but to set aside the judgment and remand for further proceedings.
- ❖ Schedule E must have written findings for each deviation separately.
- ❖ Even small deviations must include required findings or the award for child support must be vacated.