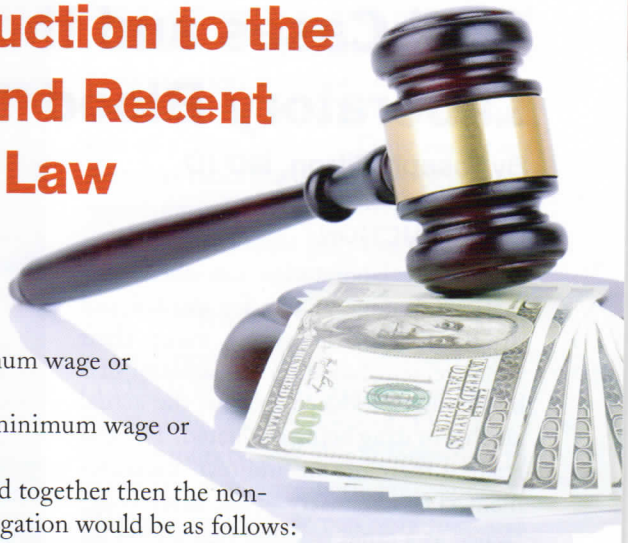
I Have to Pay What!? An Introduction to the New Child Support Guidelines and Recent Wyoming Supreme Court Case Law

By Alex Sitz



On July 1, 2013, the Wyoming Legislature instituted a change to the presumptive child support statutes set forth in W.S. § 20-2-304. The Wyoming Department of Family Services (DFS) is required to review the presumptive child support amounts every four (4) years to ensure that they remain reasonable pursuant to W.S. §20-2-306. If it finds that the existing presumptive amounts are no longer reasonable, then DFS makes a recommendation to the Joint Labor, Health and Social Services Interim Committee for proposed changes to the statutory guidelines. The last modification to the presumptive child support statutes took place on July 1, 2005. DFS review of the previous four (4) year period in 2009 was found not to warrant a change in the presumptive child support amounts; however, it was determined during the most recent four (4) period review that the presumptive amounts were no longer reasonable and gave rise to the new guidelines enacted this year.

The critical question to be discussed is how the new presumptive support guidelines affect most child support obligors. As is the case so often in this great field of law in which we practice, the answer is… it depends. Analysis is based on the particular factual circumstances and the income of the parties in each case.

One might assume that generally the new presumptive guidelines would increase support amounts across the board, but that is not always true of the 2013 changes. One might also assume that the change in support may coincide with the 19.6 % inflation rate experienced since 2005. However, that is not necessarily correct either. Instead, there was a particular attempt to recognize the effects of the recession on those parents with lower incomes. To examine more closely how the new guidelines affect an obligor's child support amount, consider the following examples:

Scenario #1 facts:

- Custodial parent earns minimum wage or $1160 net income per month
- Non-Custodial parent earns minimum wage or $1160 net income per month
- If the parents had one (1) child together then the non-custodial parent's support obligation would be as follows:
  - Per 2005 presumptive amount = $288
  - Per new 2013 presumptive amount = $250
- **This is a $38 decrease which represents a 13% change downward adjustment**

Scenario #2 facts:

- Custodial parent earns $2,500 per month net income
- Non-Custodial parent earns $5,000 per month net income
- If the parents had three (3) children together, then the non-custodial parent's support obligation would be as follows:
  - Per the 2005 presumptive amount = $1378
  - Per the 2013 presumptive amount = $1408
- **In this scenario there is a $30 increase which is a 2% change upward adjustment**

Scenario #3 facts:

- Custodial parent earns $2,500 per month net income
- Non-Custodial parent earns $2,500 per month net income
- If the parents had two (2) children together then the non-custodial parent's support obligation would be as follows:
  - Per the 2005 presumptive amount = $647
  - Per the 2013 presumptive amount = $690
- **In this scenario there is a $43 increase which is a 6.5% change upward adjustment**

It is interesting to note when looking at the above scenarios, that #1 results in a change downward, #2 results in only a two-percent (2%) change upward, and #3 results in the highest amount of change upward at six and a half percent (6.5 %). Therefore, the change in the law will depend on the particular fact scenario regarding income, numbers of children etc., that you may encounter when calculating support.

In addition to the statutory guidelines changes, there have been a number of child support related cases decided in 2013. One of the more recent cases is **In re ARF**, 2013 WY 97 (Wyo. August 13, 2013), which was an appeal out of Natrona County. The relevant issue as it relates to child support was the District Court's failure to state in its order whether the amount of support was the presumptive amount or a deviation therefrom. Additionally, the Court failed to state the parties' net monthly incomes, which it relied upon to calculate the support amount. The Wyoming Supreme Court reversed and remanded the portion of the order as it related to child support for failure to include these key findings on the record.

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Practicing in Circuit Court

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and police report to which Ms. Lewis acknowledged exclusion. Ms. Lewis filed a motion in limine to Dr. Olson's causation testimony as speculative, which the Court denied.

The trial began promptly on February 5, 2013, and a jury of six, with an alternate, was empaneled by the lunch hour break. On February 7, 2013, the jury returned an evening verdict finding that Mr. Beck had negligently operated his vehicle causing damages to Ms. Lewis. The jury, through special verdict, found Ms. Lewis' shoulder injury to be unrelated to the accident and assessed Ms. Lewis no comparative fault. Finally, the jury compensated Ms. Lewis with a verdict of $37,083.17.

After submission of costs and objections thereto, the majority of Ms. Lewis' litigation expenses were awarded in the amount of $555.15.

Both parties were represented by experienced trial counsel and because of voluntary compliance with the Rules, Judge Greer, noted that he had little involvement in the proceedings before the trial. Additionally, the verdict was returned less than nine months after filing and Judge Greer noted this in reflecting on the case. He stated that it was a good reflection of the speed and efficiency of the new circuit court procedural system and, particularly for these two elderly parties, the quick justice was necessary and appropriate.

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Therefore, this case serves as a gentle reminder to both attorneys and judges alike that a child support order may not be valid if it does not contain the necessary findings as to the net incomes of the parties as required per W.S. § 20-2-304, or a statement of the presumptive amount in a particular case, whether there is any deviation to the presumptive amount as mandated by W.S. § 20-2-307(a).

A second case worth noting is **Lee v. Lee,** 2013 WY 76 (Wyo. June 18, 2013), an appeal from Teton County, wherein the Wyoming Supreme Court addressed how to calculate child support in a custodial arrangement where each parent keeps the child overnight for at least forty percent (40%) of the year. According to W.S. § 20-2-304(c), a reduction of the presumptive support amount may be allowed in proportion to the time the children are in the obligor's care. However, there is a second statutory requirement in order to receive the deduction which is often overlooked. This case serves as a reminder that just because a parent may have a child overnight at least forty percent (40%) of the year, it does not trigger an automatic deduction in the amount of child support they may owe. Instead, both parts of the statute must be satisfied: First, the parent must have the child overnight at least forty percent (40%) of the year; and second, the parent must also contribute substantially to the expenses of the children in addition to the payment of child support.

For example, assume a father pays his child support and has overnight visitation with his children every Friday, Saturday and Sunday nights, which allows him to argue that he has the children 3 out of every 7 days, or forty-three percent (43%) of the time. However, the mother buys all the children's school clothes, pays for all their school lunches, pays for all the extra-curricular activities of the children, provides them medical insurance through her employment, etc. in addition to having them in her care the rest of the week. While in father's care each weekend, his only expense is feeding the children, and putting a roof over their head in the 2-bedroom apartment, he would have rented regardless of the visitation schedule. Is it fair that the noncustodial parent would get a deduction in his support amount simply because he "may" have the children forty-three percent (43%) of the time? Factoring the totality of these circumstances, probably not, but many noncustodial parents make the argument. The trial court in Lee applied the second part of the statutory requirement, when it denied the obligor's request for a deduction, and although the Supreme Court disagreed with part of the trial court's analysis in reaching that denial, it ultimately upheld the decision.

A third case decided by the Wyoming Supreme Court this year on the topic of child support is **State Dept. of Family Services v. Powell,** 300 P.3d 858 (Wyo. 2013). This decision is a reminder that a court can only act in accordance to the powers granted to it statutorily. In this particular case the trial court retroactively modified a child support order, and it also set aside a judgment of child support arrears, arising in 2003, when there was no currently pending modification request before it. As the Supreme Court made clear, there is no doubt a court can retroactively modify child support in accordance with W.S. § 20-2-311. However, it can only do so upon agreement of the parties, or where no agreement is reached and a pending modification action exists. Then a retroactive modification may begin on the date the modification action was served upon the opposing party. There are no statutory exceptions otherwise. In this case the trial court modified a support order which was approximately 9 years old, without a pending modification action before it, and without agreement of the parties. The Supreme Court ultimately dismissed the appeal and remanded it to the trial court, directing that it enter an order vacating its recent order retroactively modifying child support for the past 9 years, and vacating the judgment of arrears as well.

Don't forget! The Laramie County Clerk of District Court's office has a very useful online calculator publicly available which saves tedious hours trying to calculate child support by hand.

ONLINE CALCULATOR:
www.laramiecounty.com/_departments/_district_court/calculator.aspx