

## ORDERING CHILD SUPPORT WHEN THERE IS A CHANGE IN PLACEMENT

### Background & Analysis

Section 61.13(1)(a), Florida Statutes, indicates, in a proceeding for dissolution of marriage, “the court may at any time order either or both parents who owe a duty of support to a child to pay support.” As with any hearing, the parties to a child support hearing must have notice and an opportunity to respond. Either one or both parties may request that the court enter an order for child support in actions for paternity, dissolution of marriage, supplemental petitions for modification, temporary custody by extended family, or petitions for support for children both during and not during marriage. Likewise, the petitioner in a domestic violence action may seek temporary child support from the respondent if the respondent is the legal parent, adoptive parent, or guardian by court order of a minor child or children. See §§741.30(6)(a)(4), 61.13(1)(a), 39.402(11)(a), Florida Statutes; Florida Supreme Court Approved Family Law Form 12.980(a), section VI, paragraph 3. In cases with self-represented litigants, the parties may fail to address child support and the judge should inquire about the parties’ intentions regarding child support to bring the matter to their attention so it can be properly addressed. Many child support hearings also involve cases in which the parents are not married and paternity has already been established.

In successful modification actions, the parent awarded the majority of the time-sharing may seek retroactive child support back to the filing date of the supplemental petition for modification. In fact, it is error for the court to fail to award support from the date of the petition for modification “where the need for the support and the ability of the parent to pay existed at the time the petition was filed.” Young v. Young, 745 So. 2d 1074 at 1076 (Fla. 4th DCA 1999). See also Nierenberg v. Nierenberg, 758 So. 2d 1179 (Fla. 4th DCA 2000). A court cannot however, award retroactive child support in a modification action prior to the filing date of the petition. See Anderson v. Anderson, 609 So. 2d 87 at 88 (Fla. 1st DCA 1992) and Wertheim v. Wertheim, 667 So. 2d 331 (Fla. 1st DCA 1995).

However, if the court is being presented with an initial petition to establish child support, it has discretion to order retroactive child support even before the date of the filing of the petition. Pursuant to §61.30(17), Florida Statutes,

In an initial determination of child support, ... the court has discretion to award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition.”

The section goes on to provide certain areas of inquiry required before the court should award such retroactive child support. There are a number of times when a court hearing a dependency case must make findings related to child support. The first instance will be at the shelter hearing pursuant to §39.402(11), Florida Statutes, which indicates,

If a child is placed in a shelter pursuant to a court order following a shelter hearing, the court shall require in the shelter hearing order that the parents of the child ... to pay, to the department or institution having custody of the child, fees as established by the department. ... The shelter order shall also require the parents to provide to the department and any other state agency or party designated by the court, within 28 days after entry of the shelter order, the financial information necessary to accurately calculate child support pursuant to s. 61.30.

Next, pursuant to §39.6011(4)(d), Florida Statutes, one of the required elements of the case plan for parents of a child who is in an out-of-home placement is a description of the parent’s financial support obligation to the child, including health insurance. Likewise, in the dispositional order in a dependency case, the court shall make determinations regarding child support if the child is in an out-of-home placement pursuant to §39.521(1)(d)7, Florida Statutes.

Whether the child is placed in shelter care, foster care, with a relative caregiver, or with a non-offending parent, both parents have a continuing obligation to support the child and must be ordered to pay such child support accordingly.