

Support:
**Proving Income/Earning
Capacity/Imputed Income**

The Honorable Daniel Sulman, Mark Momjian (Team Leader), Meredith Brennan, Rebecca Kolsky, Alexa Terribilini

Pennsylvania
Domestic
Relations
Procedural
Rules
Committee

Supreme Court
of Pennsylvania

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The Wild Wild West (1965-69)

Pre-Guidelines

The Support Guidelines were first published in 1989.

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There are 58 pages of Support Guidelines from start to finish.

Watershed Moments in Support



2008 – The Great
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Digitization/ Artificial
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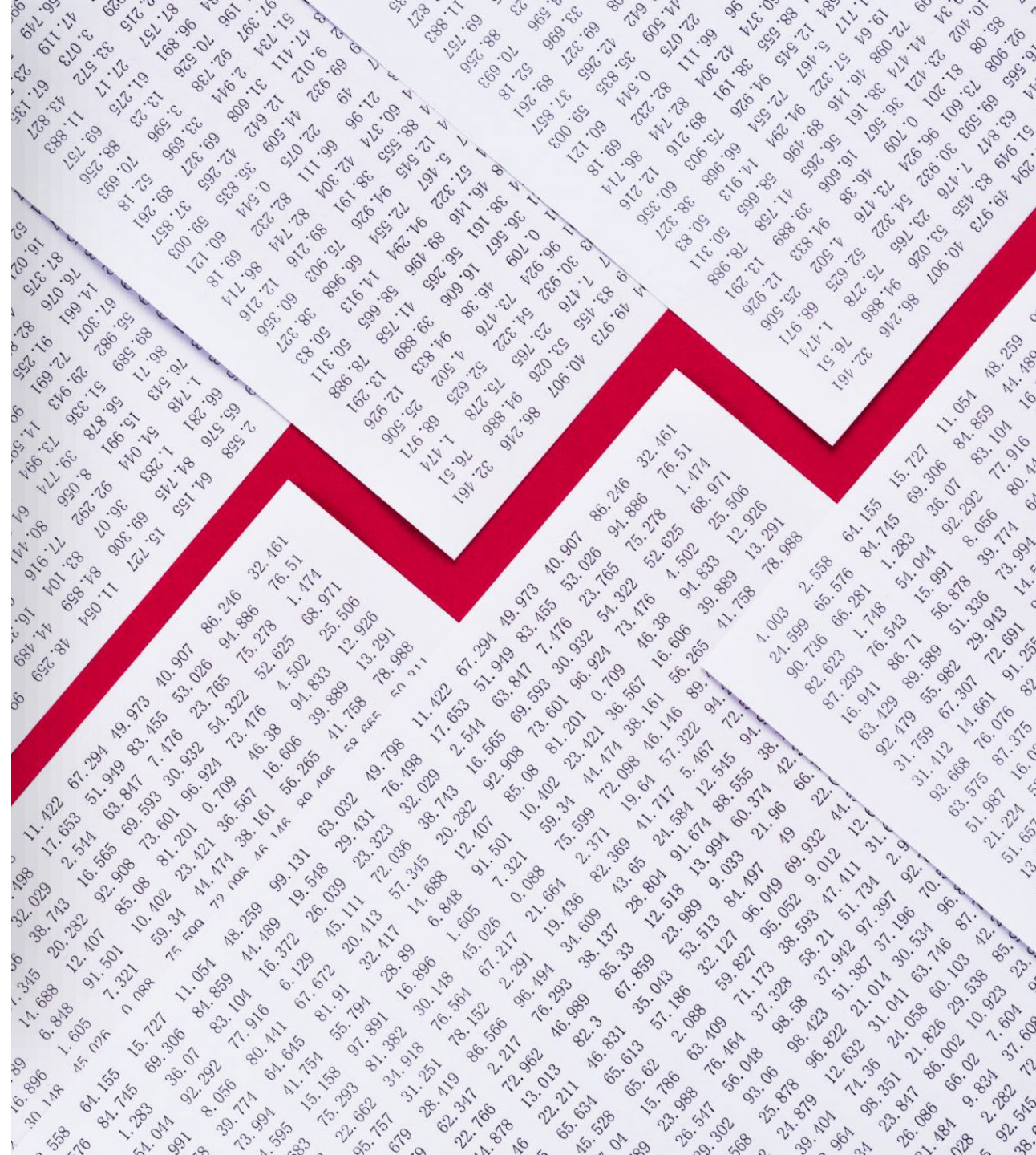


Reduced Income or Fluctuating Earnings

Rule 1910.16-2(d)

Voluntary and Involuntary Income Reduction

- “Voluntary Income Reduction” and “Involuntary Income Reduction” now apply to **existing orders**. Pa.R.C.P. 1910.16-2(d)(1)-(2).



(d) Reduced Income or Fluctuating Earnings.

(1) *Voluntary Income Reduction--Existing Orders.* The trier-of-fact shall not downwardly adjust a party's net income from an existing order if the trier-of-fact finds that:

(i) the party's income reduction resulted from the party willfully attempting to favorably affect the party's basic support obligation; or

(ii) the party voluntarily assumed a lower paying job, quit a job, left employment, changed occupations, changed employment status to pursue an education, or employment is terminated due to willful misconduct.

(2) *Involuntary Income Reduction. Incarceration. Earnings Fluctuations--Existing Orders.*

(i) *Involuntary Income Reduction.* The trier-of-fact shall adjust a party's monthly net income from an existing order for substantial continuing involuntary decreases in income due to an employment situation over which the party has no control, including, but not limited to, illness, lay-off, termination, or job elimination.

Earning Capacity

- Earning Capacity now applies to **initial orders**.
- “When Calculating an initial order, if a party willfully fails to obtain or maintain appropriate employment, the trier-of-fact may impute to the party an income equal to the party’s earning capacity.” Pa.R.C.P. 1910.16-2(d)(4)(i).
- These are meant to be clarifying changes, as (d)(1), (d)(2), and (d)(4) could all apply to the same circumstances.

One Full-Time Job Rule

- The trier-of-fact “shall not impute to the party an earning capacity that exceeds the amount the party could earn from one full-time position.” Pa.R.C.P. 1910.16-2(d)(4)(i)(A).



Factors to Consider: Rule 1910.16-2(d)(4)(ii)

(A) child care responsibilities and expenses;

(B) assets;

(C) residence;

(D) employment and earnings history;

(E) job skills;

(F) educational attainment;

(G) literacy;

(H) age;

(I) health;

(J) criminal record and other employment barriers;

(K) record of seeking work;

(L) local job market, including the availability of employers who are willing to hire the party;

(M) local community prevailing earnings level; and

(N) other relevant factors.

Allocation of Additional Expenses: Rule 1910.16-6

- Rule 1910.16 (a)(1)(ii): The trier-of-fact “may allocate reasonable child care expenses **that would be** paid by the parties when the trier-of-fact imputes an earning capacity to a party pursuant to Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D).”
- Rule 1910.16-2(d)(4)(i)(D): “When the trier-of-fact imputes an earning capacity to a party who would incur childcare expenses if the party were employed, the trier-of-fact shall consider reasonable childcare responsibilities and expenses **for the purpose of discretionary allocation pursuant to Pa.R.Civ.P. 1910.16-6(a)(1)(ii).**”



Recent Cases in Support Law

Hall v. Bartron,
321 A.3d 1047 (Pa. Super. Ct. 2024)

Precedential opinion out of Wyoming County. Decided August 8, 2024.

Issue: Perquisites and income available for support.

Holding: Father's perquisites of fuel and car insurance, cell phone, accounting and professional fees, and company's retirement match constitute income available for support purposes.

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- Non-precedential decision out of Lancaster County.
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Establishing Earning Capacity



Methods to Establish Earning Capacity



Historical earnings



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Labor Statistics



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Addiction and Earning Capacity

Addiction and Disability

- With respect to SSDI benefits, the law defines “disability” as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 20 C.F.R. § 404.1505
- The DSM-5 now recognizes Alcohol Use Disorder as a disability.
- According to the National Institute on Alcohol Abuse and Alcoholism, in a 2023 study, 28.9 million people had AUD in the past year.

Ewing v. Ewing,
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Does SSDI or unemployment compensation end the analysis of whether a party can nonetheless be imputed with an earning capacity?



SSDI vs. SSI – see Pa. R.C.P. 1910.16-2(b)



The trial court is not bound by the Unemployment Compensation Bureau's determination and the trial court could make its own determination as to whether Father was fired for cause.

How to Disprove a Claim of Disability or Unemployment?



File motion to have matter deemed complex and leave to conduct discovery pursuant to Pa. R.C.P. 1930.5(b).



Request a party's medical records to have reviewed by independent medical professional.



File a petition for a physical examination pursuant to Pa. R.C.P. 1915-8.



Request work search requirement for unemployment benefits.

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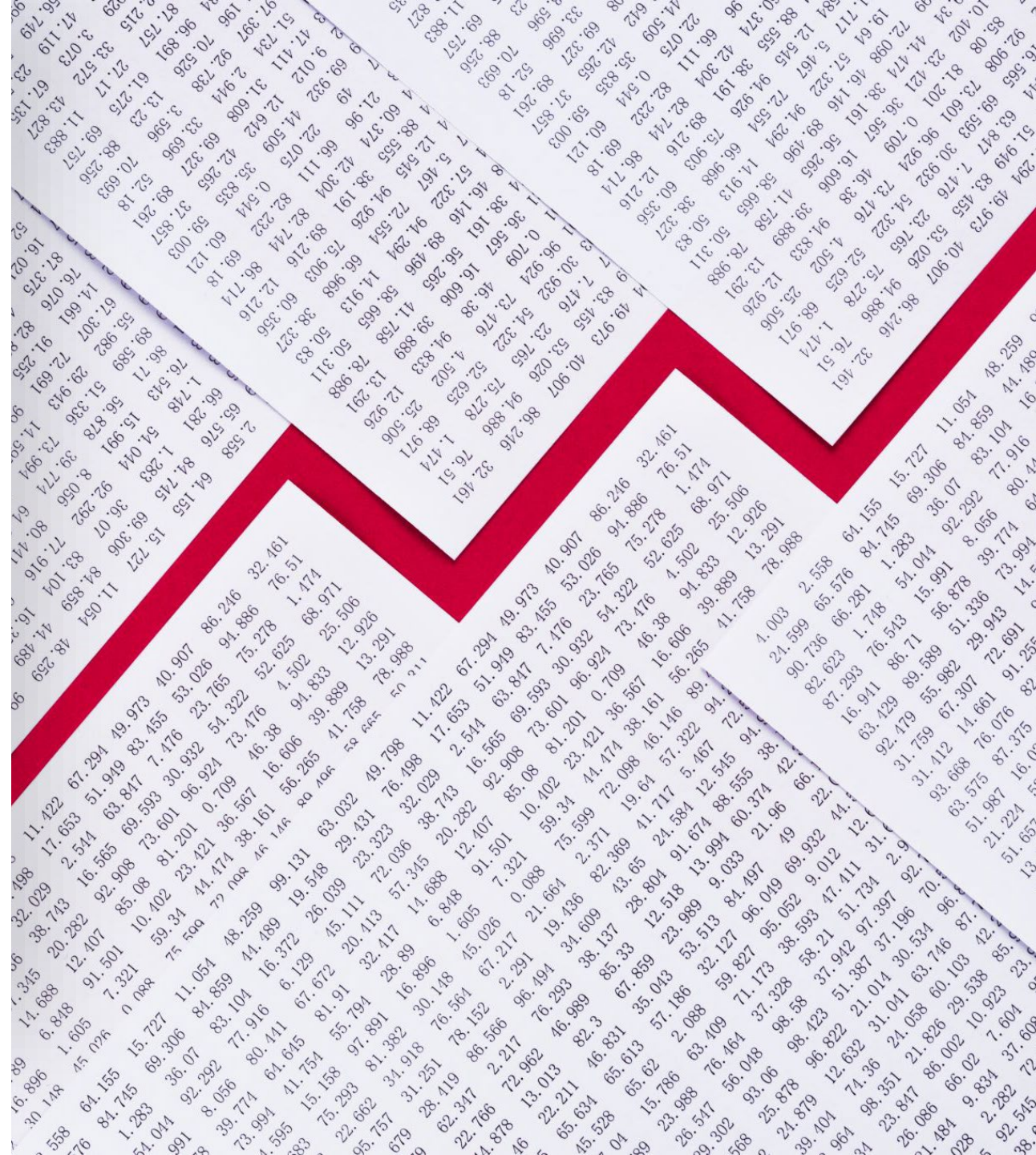


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Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income.

Generally, the basic child support, spousal support, or alimony *pendente lite* obligation is based on the parties' monthly net incomes.

- (a) **Monthly Gross Income.** Monthly gross income is ordinarily based on at least a six-month average of a party's income. The support law, 23 Pa.C.S. § 4302, defines the term "income" and includes income from any source. The statute lists many types of income including, but not limited to:
- (1) wages, salaries, bonuses, fees, and commissions;
 - (2) net income from business or dealings in property;
 - (3) interest, rents, royalties, and dividends;
 - (4) pensions and all forms of retirement;
 - (5) income from an interest in an estate or trust;
 - (6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation, and unemployment compensation;
 - (7) alimony if, in the trier-of-fact's discretion, inclusion of part or all of it is appropriate; and

[Note: In determining the appropriateness of including alimony in gross income, the trier-of-fact shall consider whether the party receiving the alimony must include the amount received as gross income when filing federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the trier-of-fact may include in the party's monthly net income the alimony received, as appropriate. See Pa.R.C.P. No. 1910.16-2(c)(2)(ii).

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.]

- (8) other entitlements to money or lump sum awards, without regard to source, including:
 - (i) lottery winnings;
 - (ii) income tax refunds;
 - (iii) insurance compensation or settlements;
 - (iv) awards and verdicts; and
 - (v) payments due to and collectible by an individual regardless of source.

[Note: The trier-of-fact determines the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or averaged over a shorter or longer period depending on the case's circumstances. The trier-of-fact may require all or part of the lump sum award escrowed to secure the support obligation during that period.]

The trier-of-fact shall not include income tax refunds in a party's income, if the trier-of-fact factored in the tax refund when calculating the party's actual tax obligation and monthly net income.]

- (b) **Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement, and Foster Care Payments.**
 - (1) **Public Assistance and SSI Benefits.** Neither public assistance nor Supplemental Security Income (SSI) benefits shall be included as income for determining support.
 - (2) **Child's Social Security Derivative Benefits.**
 - (i) If a child is receiving Social Security derivative benefits due to a parent's retirement or disability:
 - (A) The trier-of-fact shall determine the basic child support obligation as follows:
 - (l) add the child's benefit to the monthly net income of the party who receives the child's benefit;

- (II) calculate the parties' combined monthly net income, including the child's benefit;
 - (III) determine the basic child support obligation set forth in the **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-3 schedule; and
 - (IV) apportion the basic child support obligation between the parties based on the party's percentage of the combined monthly net income.
- (B) If the obligee receives the child's benefit, the trier-of-fact shall deduct the child's benefit from the basic child support obligation of the party whose retirement or disability created the child's benefit.
 - (C) If the obligor receives the child's benefit, the trier-of-fact shall not deduct the child's benefit from the obligor's basic child support obligation, even if the obligor's retirement or disability created the child's benefit. To illustrate for the parties the impact of the obligor receiving the benefit instead of the obligee, the trier-of-fact shall provide the parties with two calculations theoretically assigning the benefit to each household.
 - (D) The trier-of-fact shall allocate the expenses in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-6(a)—(e) based on the parties' monthly net incomes without considering the child's benefit.
 - (E) In equally shared custody cases, the party with the higher monthly net income, excluding the child's benefit, is the obligor.
- (ii) If a child is receiving Social Security derivative benefits due to a parent's death, the trier-of-fact shall determine the surviving parent's basic child support obligation as follows:
 - (A) The non-parent obligee's monthly net income shall include only those funds the obligee is receiving on the

child's behalf, including the Social Security derivative benefit.

(B) If the surviving-parent obligor receives the Social Security derivative benefit, the benefit shall be added to the parent's monthly net income to calculate child support.

(3) **Foster Care Payments.** If a party to a support action is a foster parent or is receiving payments from a public or private agency for the care of a child who is not the party's biological or adoptive child, the trier-of-fact shall not include those payments in the party's monthly net income for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

[Example 1. The obligor has monthly net income of \$2,000. The obligee's monthly net income is \$1,500 and the obligee, as primary custodial parent of the parties' two children, receives \$700 per month in Social Security derivative benefits on behalf of the children as a result of the obligor's disability. Add the children's benefit to the obligee's income, which now is \$2,200 per month. At the parties' combined monthly net income of \$4,200, the basic child support obligation for two children is \$1,372. As the obligor's income is 48% of the parties' combined monthly net income, the obligor's preliminary share of the basic child support obligation is \$659. However, because the obligor's disability created the children's Social Security derivative benefits that the obligee is receiving, the obligor's obligation is reduced by the amount of the benefit, \$700. As the support obligation cannot be less than zero, the obligor's basic child support obligation is \$0 per month. If it were the obligee's disability that created the benefit, the obligor's basic child support obligation would remain \$659. If the obligor were receiving the children's benefit as a result of the obligor's retirement or disability, the obligor's monthly net income would include the amount of the benefit and total \$2,700, or 64% of the parties' combined monthly net income. The obligor's share of the basic child support obligation would then be \$878 and would not be reduced by the amount of the children's benefit because the obligor, not the obligee, is receiving the benefit. Therefore, the obligor's basic child support obligation is less if the obligee is receiving the benefit created by the obligor.]

Example 2. Two children live with Grandmother who receives \$800 per month in Social Security death benefits for the children as a result of Father's death. Grandmother also receives \$500 per month from a trust established by Father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$2,000 net per month. For purposes of calculating Mother's basic child support

obligation, Grandmother's income will be \$1,300, the amount she receives on the children's behalf in Social Security derivative benefits and the trust income. (If Mother were receiving the benefit on the children's behalf, the benefit would be added to Mother's monthly net income and would be \$2,800. Grandmother's monthly net income would be \$500.) Therefore, Mother's and Grandmother's combined monthly net income totals \$3,300. The basic child support obligation at the \$3,300 monthly net income level for two children is \$1,137. As Mother's monthly net income of \$2,000 is 61% of the parties' combined monthly net income of \$3,300, Mother's basic child support obligation is \$694. Since Mother's retirement or disability did not generate the child's derivative benefit, the benefit amount is not subtracted from Mother's basic child support obligation, and Mother owes Grandmother \$694. If Grandmother was not receiving the children's derivative benefits or trust income, Grandmother's monthly net income for purposes of calculating Mother's basic child support obligation would be zero, and Mother would pay 100% of the basic child support obligation because Grandmother has no duty to support the children.

Note: Care must be taken to distinguish Social Security from Supplemental Security Income (SSI) benefits. Social Security benefits are income pursuant to subdivision (a) of this rule.]

(c) Monthly Net Income.

- (1) Unless these rules provide otherwise, the trier-of-fact shall deduct only the following items from monthly gross income to arrive at monthly net income:
 - (i) federal, state, and local income taxes;
 - (ii) unemployment compensation taxes and Local Services Taxes (LST);
 - (iii) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;
 - (iv) mandatory union dues; and
 - (v) alimony paid to the other party.
- (2) In computing a spousal support or alimony *pendente lite* obligation, the trier-of-fact shall:
 - (i) deduct from the obligor's monthly net income child support, spousal support, alimony *pendente lite*, or alimony amounts

paid to children and former spouses, who are not part of this action; and

- (ii) include in a party's monthly net income alimony *pendente lite* or alimony received from a former spouse that was not included in the party's gross income, as provided in subdivision (a).

[Note: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.]

(d) **Reduced Income or Fluctuating Earnings.**

- (1) **Voluntary Income Reduction — Existing Orders.** The trier-of-fact shall not downwardly adjust a party's net income **from an existing order** if the trier-of-fact finds that:

- (i) the party's income reduction resulted from the party willfully attempting to favorably affect the party's basic support obligation; or
- (ii) the party voluntarily assumed a lower paying job, quit a job, left employment, changed occupations, changed employment status to pursue an education, or employment is terminated due to willful misconduct.

- (2) **Involuntary Income Reduction. Incarceration. Earnings Fluctuations — Existing Orders.**

- (i) **Involuntary Income Reduction.** The trier-of-fact shall adjust a party's monthly net income **from an existing order** for substantial continuing involuntary decreases in income due to an employment situation over which the party has no control, including, but not limited to, illness, lay-off, termination, or job elimination.

- (ii) **Incarceration.**

(A) Except as set forth in subdivision (d)(2)(ii)(B), the trier-of-fact shall:

(I) consider an incarcerated party's income reduction as an involuntary income reduction as set forth in subdivision (d)(2)(i); and

(II) adjust the incarcerated party's monthly net income accordingly.

(B) Exception.

(I) A party's incarceration shall not constitute an involuntary income reduction when the incarceration is due to support enforcement purposes or a criminal offense in which the party's dependent child or the obligee was the victim; and

(II) The trier-of-fact makes a written finding that downwardly adjusting the incarcerated party's monthly net income would be unjust or inappropriate and, in a child support action, takes into consideration the child's best interest.

(iii) **Earnings Fluctuations.** The trier-of-fact shall not adjust a party's monthly net income from an existing order due to normal or temporary earnings fluctuations.

(3) **Seasonal Employees.** Generally, the trier-of-fact shall base a seasonal employee's monthly net income on a yearly average.

(4) **Earning Capacity – Initial Orders.**

(i) When calculating an initial order, if a party willfully fails to obtain or maintain appropriate employment, the trier-of-fact may impute to the party an income equal to the party's earning capacity.

(A) **Earning Capacity Limitation.** The trier-of-fact:

- (I) shall not impute to the party an earning capacity that exceeds the amount the party could earn from one full-time position; and
 - (II) shall determine a reasonable work regimen based upon the party's relevant circumstances, including the jobs available within a particular occupation, working hours and conditions, and whether a party has exerted substantial good faith efforts to find employment.
 - (B) The trier-of-fact shall base the party's earning capacity on the subdivision (d)(4)(ii) factors.
 - (C) After assessing a party's earning capacity, the trier-of-fact shall state the reasons for the assessment in writing or on the record.
 - (D) When the trier-of-fact imputes an earning capacity to a party who would incur childcare expenses if the party were employed, the trier-of-fact shall consider reasonable childcare responsibilities and expenses **for the purpose of discretionary allocation pursuant to Pa.R.Civ.P. 1910.16-6(a)(1)(ii).**
- (ii) **Factors.** In determining a party's earning capacity, the trier-of-fact shall consider the party's:
- (A) child care responsibilities and expenses;
 - (B) assets;
 - (C) residence;
 - (D) employment and earnings history;
 - (E) job skills;
 - (F) educational attainment;
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- (I) health;
- (J) criminal record and other employment barriers;
- (K) record of seeking work;
- (L) local job market, including the availability of employers who are willing to hire the party;
- (M) local community prevailing earnings level; and
- (N) other relevant factors.

[Note: See 45 C.F.R. § 302.56(c)(1)(iii) regarding earning capacity factors.]

(e) Net Income Affecting Application of the Support Guidelines.

(1) Low-Income Cases.

(i) Self-Support Reserve (SSR).

- (A) The SSR is the minimum monthly net income reserved to the obligor to meet the obligor's basic needs.
- (B) The SSR amount is \$1,063 per month.

(ii) Action for Child Support Only. When the obligor's monthly net income and the number of children in the action intersect in the Basic Child Support Schedule's shaded area as set forth in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-3, the trier-of-fact shall determine the obligor's basic child support obligation utilizing the lesser of the two calculated amounts from the following methodologies.

- (A) The initial calculation is determined by using the obligor's monthly net income only, the schedule set forth in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-3, and the number of children.
- (B) The second calculation is determined by using the parties' combined monthly net income and the basic

child support formula in **[Pa.R.C.P. No.] Pa.R.Civ.P. 1910.16-4(a)**.

- (C) If the obligor's monthly net income is at or below the SSR, the trier-of-fact may award support only after consideration of the parties' actual financial resources and living expenses.

[Example 1: The parties have two children. The obligee has monthly net income of \$2,500. The obligor has monthly net income of \$1,500, which falls into the shaded area of the schedule for two children. The initial calculation is made using only the obligor's monthly net income. The basic child support obligation for two children would be \$397. The second calculation uses the parties' combined monthly net income. The parties' combined monthly net income is \$4,000. The basic child support obligation for two children is \$1,340. The obligor's proportionate share of the parties' combined monthly net income is 38% with a basic child support obligation of \$509. The obligor's basic child support obligation using only the obligor's monthly net income is less than the calculated amount using the parties' combined monthly net income. As a result, the trier-of-fact should award the lesser amount, and the obligor's basic child support obligation is \$397.]

(iii) Action for Spousal Support/Alimony *Pendente Lite* Only.

- (A) After calculating the spousal support or alimony *pendente lite* obligation as provided in **[Pa.R.C.P. No.] Pa.R.Civ.P. 1910.16-4**, the spousal support obligation shall not reduce the obligor's monthly net income below the SSR.
- (B) If the obligor's monthly net income after subtracting the spousal support or alimony *pendente lite* obligation is less than the SSR, the trier-of-fact shall adjust the spousal support or alimony *pendente lite* obligation downward by an amount sufficient for the obligor to retain the SSR amount.

[Example 2: The obligor has \$1,200 monthly net income, and the obligee has \$300 monthly net income. The formula in Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) would result in a monthly spousal support obligation of \$276 (($\$1,200 \times 33\% = \396) minus ($\$300 \times 40\% = \120)) for a total of \$276)). Since this amount leaves the obligor with only \$924 per month, the trier-of-fact should adjust the support obligation so the obligor retains at least \$1,063 per month. Therefore, the spousal support obligation is \$137 per month ($\$1,200 - \$1,063$).]

(iv) **Action with Child Support and Spousal Support or Alimony *Pendente Lite*.**

- (A) The trier-of-fact shall calculate the spousal support or alimony *pendente lite* obligation as provided in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-4.
- (B) The trier-of-fact shall subtract the calculated spousal support or alimony *pendente lite* obligation from the obligor's monthly net income to determine the obligor's adjusted monthly net income.
- (C) When the obligor's adjusted monthly net income and the number of children in the action intersect in the Basic Child Support Schedule's shaded area as set forth in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-3, the trier-of-fact:
 - (I) shall not award spousal support or alimony *pendente lite*; and
 - (II) shall calculate child support as provided in subdivision (e)(1)(ii).

[Example 3: Obligor and obligee have monthly net incomes of \$2,000 and \$165, respectively, and have two children. Calculating spousal support under subdivision (e)(1)(iv)(A) results in a spousal support obligation of \$450 (\$2,000 x 25% minus \$165 x 30%). Obligor's adjusted monthly net income (\$2,000 minus \$450) is \$1,550. Obligor's adjusted monthly net income of \$1,550 with two children is in the shaded area of the Basic Child Support Schedule, and as a result, the trier-of-fact shall not award spousal support. Instead, the trier-of-fact should award child support only as provided in subdivision (e)(1)(ii).]

- (D) When the obligor's monthly net income and the number of children in the action do not intersect in the Basic Child Support Schedule's shaded area as set forth in **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-3, the trier-of-fact shall calculate child support consistent with **[Pa.R.C.P. No.] Pa.R.Civ.P.** 1910.16-4.
 - (I) The combined spousal support or alimony *pendente lite* and basic child support

obligations shall not reduce the obligor's remaining monthly net income below the SSR.

- (II) If the obligor's monthly net income after subtracting the spousal support or alimony *pendente lite* and basic child support obligations is less than the SSR, the trier-of-fact shall adjust the support obligation downward by an amount sufficient for the obligor to retain the SSR amount.

- (2) **High-Income Cases.** If the parties' combined monthly net income exceeds \$30,000, the trier-of-fact shall calculate child support, spousal support, or alimony *pendente lite* pursuant to **[Pa.R.C.P. No.] Pa.R.Civ.P. 1910.16-3.1.**

[Note: See *Hanrahan v. Bakker*, 186 A.3d 958 (Pa. 2018).]

- (f) **Child Tax Credit.** In order to maximize the total income available to the parties and children, the trier-of-fact may award, as appropriate, the federal child tax credit to the non-custodial parent, or to either parent in cases of equally shared custody, and require the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C. § 152(e). The trier-of-fact shall consider the tax consequences associated with the federal child tax credit in calculating the party's monthly net income available for support.

Comment: Concerning subdivision (a)(7), in determining the appropriateness of including alimony in gross income, the trier-of-fact shall consider whether the party receiving the alimony must include the amount received as gross income when filing federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the trier-of-fact may include in the party's monthly net income the alimony received, as appropriate. See Pa.R.Civ.P. 1910.16-2(c)(2)(ii).

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

Concerning subdivision (a)(8), the trier-of-fact determines the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or averaged over a shorter or longer period depending on the case's circumstances. The trier-of-fact may require all or part of the lump sum award escrowed to secure the support obligation during that period.

The trier-of-fact shall not include income tax refunds in a party's income, if the trier-of-fact factored in the tax refund when calculating the party's actual tax obligation and monthly net income.

Concerning subdivision (b), care must be taken to distinguish Social Security from Supplemental Security Income (SSI) benefits. Social Security benefits are income pursuant to subdivision (a).

Subdivision (b) Example 1. The obligor has monthly net income of \$2,000. The obligee's monthly net income is \$1,500 and the obligee, as primary custodial parent of the parties' two children, receives \$700 per month in Social Security derivative benefits on behalf of the children as a result of the obligor's disability. Add the children's benefit to the obligee's income, which now is \$2,200 per month. At the parties' combined monthly net income of \$4,200, the basic child support obligation for two children is \$1,372. As the obligor's income is 48% of the parties' combined monthly net income, the obligor's preliminary share of the basic child support obligation is \$659. However, because the obligor's disability created the children's Social Security derivative benefits that the obligee is receiving, the obligor's obligation is reduced by the amount of the benefit, \$700. As the support obligation cannot be less than zero, the obligor's basic child support obligation is \$0 per month. If it were the obligee's disability that created the benefit, the obligor's basic child support obligation would remain \$659. If the obligor were receiving the children's benefit as a result of the obligor's retirement or disability, the obligor's monthly net income would include the amount of the benefit and total \$2,700, or 64% of the parties' combined monthly net income. The obligor's share of the basic child support obligation would then be \$878 and would not be reduced by the amount of the children's benefit because the obligor, not the obligee, is receiving the benefit. Therefore, the obligor's basic child support obligation is less if the obligee is receiving the benefit created by the obligor.

Subdivision (b) Example 2. Two children live with Grandmother who receives \$800 per month in Social Security death benefits for the children as a result of Father's death. Grandmother also receives \$500 per month from a trust established by Father for the benefit of the children. Grandmother is employed and earns \$2,000 net per month. Grandmother seeks support from the children's mother, who earns \$2,000 net per month. For purposes of calculating Mother's

basic child support obligation, Grandmother's income will be \$1,300, the amount she receives on the children's behalf in Social Security derivative benefits and the trust income. (If Mother were receiving the benefit on the children's behalf, the benefit would be added to Mother's monthly net income and would be \$2,800. Grandmother's monthly net income would be \$500.) Therefore, Mother's and Grandmother's combined monthly net income totals \$3,300. The basic child support obligation at the \$3,300 monthly net income level for two children is \$1,137. As Mother's monthly net income of \$2,000 is 61% of the parties' combined monthly net income of \$3,300, Mother's basic child support obligation is \$694. Since Mother's retirement or disability did not generate the child's derivative benefit, the benefit amount is not subtracted from Mother's basic child support obligation, and Mother owes Grandmother \$694. If Grandmother was not receiving the children's derivative benefits or trust income, Grandmother's monthly net income for purposes of calculating Mother's basic child support obligation would be zero, and Mother would pay 100% of the basic child support obligation because Grandmother has no duty to support the children.

Concerning subdivision (c)(1)(v), because the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

The consideration of child care expenses if the party were employed in subdivision (d)(4)(i)(D) is not for purposes of reducing imputed income when calculating the party's basic child support obligation. The child care expenses that would be payable if a party were employed are subject to discretionary allocation pursuant to Pa.R.Civ.P. 1910.16-6(a)(1)(ii).

Concerning subdivision (d)(4)(ii), see 45 C.F.R. § 302.56(c)(1)(iii) regarding earning capacity factors.

Subdivision (e)(1)(ii) Example: The parties have two children. The obligee has monthly net income of \$2,500. The obligor has monthly net income of \$1,500, which falls into the shaded area of the schedule for two children. The initial calculation is made using only the obligor's monthly net income. The basic child support obligation for two children would be \$397. The second calculation uses the parties' combined monthly net income. The parties' combined monthly net income is \$4,000. The basic child support obligation for two children is \$1,340. The obligor's proportionate share of the parties' combined monthly net income is

38% with a basic child support obligation of \$509. The obligor's basic child support obligation using only the obligor's monthly net income is less than the calculated amount using the parties' combined monthly net income. As a result, the trier-of-fact should award the lesser amount, and the obligor's basic child support obligation is \$397.

Subdivision (e)(1)(iii) Example: The obligor has \$1,200 monthly net income, and the obligee has \$300 monthly net income. The formula in Pa.R.Civ.P. 1910.16-4(a)(1)(Part B) would result in a monthly spousal support obligation of \$276 ($(\$1,200 \times 33\% = \$396)$ minus $(\$300 \times 40\% = \$120)$ for a total of \$276). Since this amount leaves the obligor with only \$924 per month, the trier-of-fact should adjust the support obligation so the obligor retains at least \$1,063 per month. Therefore, the spousal support obligation is \$137 per month $(\$1,200 - \$1,063)$.

Subdivision (e)(1)(iv) Example: Obligor and obligee have monthly net incomes of \$2,000 and \$165, respectively, and have two children. Calculating spousal support under subdivision (e)(1)(iv)(A) results in a spousal support obligation of \$450 $(\$2,000 \times 25\%$ minus $\$165 \times 30\%)$. Obligor's adjusted monthly net income $(\$2,000$ minus $\$450)$ is \$1,550. Obligor's adjusted monthly net income of \$1,550 with two children is in the shaded area of the Basic Child Support Schedule, and as a result, the trier-of-fact shall not award spousal support. Instead, the trier-of-fact should award child support only as provided in subdivision (e)(1)(ii).

Concerning subdivision (e)(2), see *Hanrahan v. Bakker*, 186 A.3d 958 (Pa. 2018).

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—2010

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits, Social Security derivative benefits, and foster care payments.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Pa.R.C.P. No. 1910.16-6, it is not deductible from gross income. However, part or

all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Pa.R.C.P. No. 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) relates to spousal support or alimony *pendente lite* awards when there are multiple families. In these cases, a party's monthly net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony *pendente lite* or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income and the imputing of earning capacity. Statutory provisions at 23 Pa.C.S. § 4322, as well as case law, are clear that a support obligation is based upon the ability of a party to pay, and that the concept of an earning capacity is intended to reflect a realistic, rather than a theoretical, ability to pay support. Amendments to subdivision (d) are intended to clarify when imposition of an earning capacity is appropriate.

Subdivision (e) has been amended to reflect the updated schedule in Pa.R.C.P. No. 1910.16-3 and the increase in the Self-Support Reserve ("SSR"). The schedule now applies to all cases in which the parties' combined monthly net income is \$30,000 or less. The upper income limit of the prior schedule was only \$20,000. The support amount at each income level of the schedule also has changed, so the examples in Pa.R.C.P. No. 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's monthly net income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Pa.R.C.P. No. 1910.16-3. There is no need to use the formula in Pa.R.C.P. No. 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Pa.R.C.P. No. 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Pa.R.C.P. No. 1910.16-6.

Since the schedule in Pa.R.C.P. No. 1910.16-3 sets forth basic child support only, subdivision (e)(1)(ii) is necessary to reflect the operation of the SSR in spousal support and alimony *pendente lite* cases. It adjusts the basic guideline obligation, which would otherwise be calculated under the formula in Pa.R.C.P. No. 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the SSR required that the obligor retain at least \$748 per month. The SSR now requires that the obligor retain income of at least \$867 per month, an amount equal to the 2008 federal poverty level for one person. When the obligor's monthly net income is less than \$867, subdivision (e)(1)(iii) provides that the trier-of-fact must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Pa.R.C.P. No. 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the trier-of-fact may deviate from that amount under Pa.R.C.P. No. 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Pa.R.C.P. No. 1910.16-6. If, for example, the obligor earns only \$900 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the trier-of-fact may consider an upward deviation under Pa.R.C.P. No. 1910.16-5(b)(3) or may order the party to contribute to the additional expenses under Pa.R.C.P. No. 1910.16-6. Consistent with the goals of the SSR, however, the trier-of-fact should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also has been amended to eliminate the application of *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), in high-income child support cases. In cases in which the parties' combined net monthly income exceeds \$30,000, child support will be calculated in accordance with the three-step process in Pa.R.C.P. No. 1910.16-3.1(a).

Explanatory Comment—2013

The SSR has been increased to \$931, the 2012 federal poverty level for one person. Subdivision (e) has been amended to require that when the obligor's income falls into the shaded area of the basic child support schedule in Pa.R.C.P. No. 1910.16-3, two calculations must be performed. One calculation uses only the obligor's income and the other is a regular calculation using both parties' incomes, awarding the lower amount to the obligee. The two-step process is intended to address those cases in which the obligor has minimal income and the obligee's income is substantially greater.

Explanatory Comment—2015

The rule has been amended to provide that a party's support obligation will be reduced by the child's Social Security derivative benefit amount if that party's retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most

cases, payment of the benefit to the obligee's household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child's benefits be paid to the obligee.

Explanatory Comment—2021

The Self-Support Reserve is determined by the Federal Poverty Guideline for one person converted to a monthly amount—currently \$1,063—for the year the Basic Child Support Schedule was derived.

Subdivision (e)(1) addresses low-income cases and has been completely rewritten and identifies the current monthly Self-Support Reserve (SSR) amount as \$1,063. The SSR is the amount of the obligor's monthly net income that is reserved to meet the obligor's basic needs. Subdivisions (e)(1)(ii)—(iv) adjust the methodology for calculating support when the obligor's monthly net income is at or near the SSR amount.

Rule 1910.16-6. Support Guidelines. Basic Support Obligation Adjustments. Additional Expenses Allocation.

The trier-of-fact may allocate between the parties the additional expenses in subdivisions (a)—(e). Even when a basic support order is inappropriate under the facts of the case, the trier-of-fact may allocate between the parties the additional expenses.

Except for the subdivisions (b)(4) and (e) expenses, the trier-of-fact shall calculate the parties' proportionate share of the additional expenses after adjusting the parties' monthly net income by the spousal support or alimony *pendente lite* obligation received or paid, and dividing each party's adjusted monthly net income by the parties' combined monthly net income. However, the trier-of-fact shall not adjust the parties' monthly net incomes when apportioning the expenses in child support only cases.

(a) **Child [care expenses] Care Expenses.**

- (1) The trier-of-fact:
 - (i) shall allocate reasonable child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income.
 - (ii) may allocate reasonable child care expenses **that would be** paid by the parties when the trier-of-fact imputes an earning capacity to a party **[as provided in Pa.R.C.P. No.] pursuant to Pa.R.Civ.P. 1910.16-2(d)(4)(i)(D)**.
- (2) The trier-of-fact may require that the obligor's share be added to the basic child support obligation, paid directly to the service provider, or paid directly to the obligee.
- (3) When a party is receiving a child care subsidy through the Department of Human Services, the expense allocated between the parties is the amount actually paid by the party receiving the subsidy.
- (4) The party seeking allocation of child care expenses shall provide to the other party the expense's documentation, such as a receipt or an invoice, promptly after receipt unless the service provider invoices the parties separately for the party's proportionate share of the expense.

- (5) The trier-of-fact shall have the discretion to not allocate expenses if documentation is not timely provided to the other party.
- (6) Except as provided in subdivision (a)(7), the total child care expenses shall be reduced to reflect the federal child care tax credit available to the eligible party, regardless of whether the credit is actually claimed by that party, up to the maximum annual cost allowable under the Internal Revenue Code.
- (7) If the eligible party is not qualified to receive the credit, the federal child care tax credit shall not be used to reduce the child care expenses subject to allocation between the parties.

[Example. Mother has primary custody of the parties' two children and Father has partial custody. The parties' respective monthly net incomes are \$2,000 and \$3,500. At the combined monthly net income of \$5,500 for two children, the basic child support obligation is \$1,567. As Father's income represents 64% of the parties' combined monthly net income, Father's basic child support obligation is \$1,003. Mother incurs monthly child care expenses of \$400, and Father incurs \$100 per month. The total child care expenses, \$500, will be apportioned between the parties, with Father paying 64%, or \$320. As Father is paying \$100 for the children's child care during in his partial custody, he would pay the remaining \$220 to Mother for a total child support obligation of \$1,223 (\$1,003 + \$220).]

(b) Health Insurance Premium.

- (1) The trier-of-fact shall allocate the health insurance premium paid by the parties, including the premium attributable to the party paying the premium, provided that a statutory duty of support is owed to the party or child covered by the health insurance.
 - (i) If the party paying the health insurance premium is the obligor, the obligee's share is deducted from the obligor's basic support obligation.
 - (ii) If the obligee is paying the health insurance premium, the obligor's share is added to the obligor's basic support obligation.
 - (iii) A health insurance premium allocated between the parties shall also include health insurance that is provided and paid

by a third-party resident of a party's household (e.g., step-parent) for a child who is the subject of the support order.

- (2) The trier-of-fact shall not allocate an employer-paid premium or a premium paid for a party, person, or child to whom no statutory duty of support is owed.
 - (i) If the parties present evidence of the excluded premium's actual amount—the amount attributed to a party, person, or child not owed a statutory duty of support—the trier-of-fact shall deduct the actual amount excluded from the total premium before allocating the health insurance premium between the parties.
 - (ii) If the parties do not present evidence of the excluded premium's actual amount, the trier-of-fact shall calculate the excluded amount as follows:
 - (A) determine the premium's cost per person by dividing the total premium by the number of persons covered under the policy;
 - (B) multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of, the support action; and
 - (C) the resulting amount is excluded from allocation.

[Example 1. If the parties are separated, but not divorced, and Husband pays \$200 monthly for employer-provided health insurance for himself, Wife, the parties' child, and two additional children from a previous marriage, the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total premium to arrive at the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, Husband's percentage share would be added to his basic support obligation.]

Example 2. If the parties are divorced and Father pays \$200 monthly for employer-provided health insurance for himself, the parties' child, and two additional children from a previous marriage, the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the premium attributable to Father and the two other children is \$150 (\$200 premium divided among four covered persons equals \$50 per person multiplied by three) and that amount is deducted from the total premium, leaving \$50 (\$200 - \$150 = \$50) to be allocated between the parties.

Example 3. The parties are divorced, and Mother is the obligee of a child support order. Father, the obligor, pays \$200 monthly for employer-provided health insurance for himself and the parties' child. Mother pays \$400 per month for her employer-provided health insurance that covers only herself. The premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective monthly net incomes. The premium that covers Father will not be allocated because the parties are no longer married, and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.]

- (3) Pursuant to 23 Pa.C.S. § 4326(a), in every support proceeding, the trier-of-fact shall ascertain a parent's ability to provide medical support for the parties' child and the support "order shall include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."
 - (i) The obligor bears the initial responsibility of providing the child's health care coverage if it is available at a reasonable cost.
 - (A) "Reasonable cost" to an obligor shall be defined as an amount that does not exceed 5% of the obligor's monthly net income and, when added to the basic child support obligation plus additional expenses the obligor is ordered to pay, does not exceed 50% of the obligor's monthly net income.
 - (B) If the obligee is providing the coverage, the "reasonable cost" of the obligor's share shall be defined as an amount that does not exceed 5% of the obligor's monthly net income and, when added to the basic child support obligation plus additional expenses

the obligor is ordered to pay, does not exceed 50% of the obligor's monthly net income.

- (iii) Unless the child's health care coverage is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 Pa.C.S. § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed.
 - (A) The notice shall direct the employer to enroll the obligor's child who is the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor.
 - (B) However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object.
 - (C) Concurrent with the issuance of the National Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact, or availability of alternative health care coverage for the child.
 - (D) If there is more than one employer-provided health care coverage option, the obligor shall select the coverage, subject to the obligee's right to seek a court order designating a different option.
- (iv) Absent the availability of health care coverage to the obligor for the parties' child at a reasonable cost, the court shall order the obligee to provide health care coverage for the child if it is available at a reasonable cost. "Reasonable cost" to the obligee shall be defined as an amount not to exceed 5% of the obligee's monthly net income.
- (v) If health care coverage is not available to the parties at a reasonable cost, the court may order the **[the]** party having primary custody to apply for government-sponsored coverage, such as the Children's Health Insurance Program ("CHIP"), with any co-premium or other cost apportioned

between the parties in proportion to the parties' respective monthly net incomes.

- (vi) Within 30 days after the entry of the support order, the party ordered to provide health care coverage shall provide written proof to the other party that medical insurance has been obtained, including insurance cards and all other materials set forth in the form order in **[Pa.R.C.P. No.] Pa.R.Civ.P. 1910.27(e)**. There shall be a continuing obligation to provide the other party and the domestic relations section with proof of any changes in coverage.
- (vii) The trier-of-fact shall give preference to health care coverage that is readily accessible to the child, as defined by geographic coverage area, access to local treatment providers, or other relevant factors.

[Note: The maximum amount of any attachment for child and medical support is set forth by the federal Consumer Credit Protection Act (15 U.S.C. §§ 1601 et seq.).]

- (4) If the obligor is paying for the health insurance, the obligee has no income or minimal income, and the obligor will bear 90% or more of the health insurance premium:
 - (i) the trier-of-fact may, as fairness requires, deduct part or all of the premium actually paid by the obligor to provide coverage for the other party or the child from the obligor's gross income to determine monthly net income for support purposes.
 - (ii) If such a deduction is taken from the obligor's gross income, the premium allocation as set forth in subdivision (b)(1) shall not be applied.

[Note: Subdivision (b) does not apply to Medical Assistance. See 23 Pa.C.S. § 4326(l).]

- (c) **Unreimbursed Medical Expenses.** The trier-of-fact shall allocate the obligee's or child's unreimbursed medical expenses. However, the trier-of-fact shall not allocate unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The trier-of-fact may require that the obligor's expense share be included in the basic support obligation, paid directly to the health care provider, or paid directly to the obligee.

(1) **Medical Expenses.**

- (i) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person.
- (ii) Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia.
- (iii) Medical expenses do not include cosmetic, chiropractic, psychiatric, psychological, or other services unless specifically directed in the order of court.

[Note: While cosmetic, chiropractic, psychiatric, psychological, or other expenses are not required to be apportioned between the parties, the trier-of-fact may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.]

- (2) The trier-of-fact may impose an annual limitation when the burden on the obligor would otherwise be excessive.
- (3) Annual expenses shall be calculated on a calendar year basis.
 - (i) In the year in which the initial support order is entered, or in any period in which support is being paid that is less than a full year, the \$250 threshold shall be pro-rated.
 - (ii) The party seeking allocation for an unreimbursed medical expense shall provide to the other party the expense's documentation, such as a receipt or an invoice, promptly upon receipt, but not later than March 31st of the year following the calendar year in which the final bill was received by the party seeking allocation.
 - (iii) For purposes of subsequent enforcement, unreimbursed medical bills need not be submitted to the domestic relations section prior to March 31st.

- (iv) The trier-of-fact shall have the discretion to not allocate an expense if documentation is not timely provided to the other party.
- (4) If the trier-of-fact determines that out-of-network medical expenses were not obtained due to medical emergency or other compelling factors, the trier-of-fact may decline to assess the expenses against the other party.

[Note: If the trier-of-fact determines that the obligee acted reasonably in obtaining services that were not specifically set forth in the order of support, payment for such services may be ordered retroactively.]

- (d) **Private School Tuition or Summer Camp. Other Additional Expenses.** Expenses outside the scope of typical child-rearing expenses, such as private school tuition, summer camp fees, and other additional expenses as set forth in subdivision (d)(2), have not been factored into the Basic Child Support Schedule.
 - (1) **Private School Tuition or Summer Camp.** If the trier-of-fact determines that private school or summer camp is reasonable under the parties' circumstances, the trier-of-fact shall apportion the expense to the parties.
 - (2) **Other Additional Expenses.** The trier-of-fact shall apportion an additional expense to the parties, if the trier-of-fact determines that the expense:
 - (i) is related to the child's educational, extra-curricular, or developmental activities; and
 - (ii) is reasonable under the parties' circumstances.
 - (3) The trier-of-fact may require that a party's proportionate share of a subdivision (d)(1) or (d)(2) expense is:
 - (i) included in or excluded from the basic child support obligation;
 - (ii) paid directly to the service provider; or
 - (iii) paid directly to the other party.
 - (4) **Documentation.**

- (i) The party seeking allocation of an expense shall provide the other party with the expense's documentation, such as a receipt or an invoice, promptly upon receipt, but not later than March 31st of the year following the calendar year in which the party incurred the expense, unless the service provider invoices the parties separately.
 - (ii) For subsequent enforcement purposes, a party does not need to submit the expense's documentation to the domestic relations section before March 31.
 - (iii) The trier-of-fact shall have the discretion to not allocate an expense if documentation is not timely provided to the other party.
- (e) **Mortgage Payment.** The support guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the trier-of-fact shall assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise.
- (1) If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's monthly net income (including amounts of spousal support, alimony *pendente lite*, and child support), the trier-of-fact may require the obligor to assume up to 50% of the excess amount in the obligor's support obligation.
 - (2) If the obligor is occupying the marital residence and the mortgage payment exceeds 25% of the obligor's monthly net income (less any amount of spousal support, alimony *pendente lite*, and child support the obligor is paying), the trier-of-fact may downwardly adjust the obligor's support obligation.
 - (3) This rule shall not be applicable after a final resolution of the outstanding economic claims in the parties' divorce action.
 - (4) For purposes of this subdivision, "mortgage" shall include a first mortgage, real estate taxes, and homeowners' insurance and may include a subsequent mortgage, a home equity loan, and other marital obligations secured by the marital residence.

Comment: Subdivision (a)(1)(i) Example: Mother has primary custody of the parties' two children and Father has partial custody. The parties' respective monthly net incomes are \$2,000 and \$3,500. At the combined monthly net income of \$5,500 for two children, the basic child support obligation is \$1,567. As Father's income represents 64% of the parties' combined monthly net income, Father's basic child support obligation is \$1,003. Mother incurs monthly child care expenses of \$400, and Father incurs \$100 per month. The total child care expenses, \$500, will be apportioned between the parties, with Father paying 64%, or \$320. As Father is paying \$100 for the children's child care during in his partial custody, he would pay the remaining \$220 to Mother for a total child support obligation of \$1,223 (\$1,003 + \$220).

Subdivision (b) does not apply to Medical Assistance. See 23 Pa.C.S. § 4326(l).

Subdivision (b)(1)-(b)(2) Example 1: If the parties are separated, but not divorced, and Husband pays \$200 monthly for employer-provided health insurance for himself, Wife, the parties' child, and two additional children from a previous marriage, the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total premium to arrive at the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, Husband's percentage share would be added to his basic support obligation.

Subdivision (b)(1)-(b)(2) Example 2: If the parties are divorced and Father pays \$200 monthly for employer-provided health insurance for himself, the parties' child, and two additional children from a previous marriage, the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the premium attributable to Father and the two other children is \$150 (\$200 premium divided among four covered persons equals \$50 per person multiplied by three) and that amount is deducted from the total premium, leaving \$50 (\$200 - \$150 = \$50) to be allocated between the parties.

Subdivision (b)(1)-(b)(2) Example 3: The parties are divorced, and Mother is the obligee of a child support order. Father, the obligor, pays \$200 monthly for employer-provided health insurance for himself and the parties' child. Mother pays \$400 per month for her employer-provided health insurance that covers only

herself. The premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective monthly net incomes. The premium that covers Father will not be allocated because the parties are no longer married, and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

Concerning subdivision (b)(3), the maximum amount of any attachment for child and medical support is set forth by the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq.

Concerning subdivision (c), if the trier-of-fact determines that the obligee acted reasonably in obtaining services that were not specifically set forth in the order of support, payment for such services may be ordered retroactively.

Concerning subdivision (c)(1), while cosmetic, chiropractic, psychiatric, psychological, or other expenses are not required to be apportioned between the parties, the trier-of-fact may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By generally referencing the Tax Code, rather than incorporating current Code provisions in the rule, further amendments will be incorporated into the support calculation.

Explanatory Comment—2005

Pa.R.C.P. No. 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C. § 21. By referring to the Tax Code in general, rather

than incorporating current Code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subdivision (b)(1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subdivision (b)(2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subdivision (b)(2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier-of-fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule

presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier-of-fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the trier-of-fact's discretion based upon the circumstances of the case.

Explanatory Comment—2006

A new introductory sentence in Pa.R.C.P. No. 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of either formula Pa.R.C.P. No. 1910.16-4 results in a basic support obligation of zero, the trier-of-fact may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment of subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

Explanatory Comment—2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

Explanatory Comment—2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

Explanatory Comment—2018

The amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. Previously, the Rules of Civil Procedure apportioned the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)—(d), with the exception of subdivision (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment did not consider the amount of support paid by the obligor or received by the obligee.

The amended rule adjusts the parties' monthly net incomes, upward or downward, by the spousal support/APL amount paid or received by that party prior to apportioning the expenses. This methodology is not new to the Rules of Civil Procedure. In Pa.R.C.P. No. 1910.16-6(c)(5)(rescinded), the parties' monthly net incomes in spousal support/APL-only cases were similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the support obligation for purposes of determining a mortgage deviation. As the new procedure adopts the methodology in former subdivision (c)(5), that subdivision has been rescinded as delineating the spousal support only circumstance is unnecessary.

Lastly, the amendment consolidates Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1).

311 A.3d 618 (Table)
Unpublished Disposition
**NON-PRECEDENTIAL DECISION -
SEE SUPERIOR COURT O.P. 65.37**
Superior Court of Pennsylvania.

Ashley SULTZBACH, Appellant

v.

Ronald SULTZBACH

No. 1683 MDA 2022

I

Filed: December 28, 2023

Appeal from the Order Entered November 4, 2022, In the Court of Common Pleas of Lancaster County, Domestic Relations, at No(s): 2022-0737, Pacses No. 591301478

BEFORE: PANELLA, P.J., MURRAY, J., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.:

*1 Ashley Sultzbach (“Mother”), appeals from the order entered in the Lancaster County Court of Common Pleas which applied a downward deviation that totally eliminated Ronald Sultzbach’s (“Father”) obligation for child and spousal support. Specifically, Mother challenges the trial court’s deviation from the support guidelines, the calculation of her earning capacity, and the determination of Father’s income. We affirm in part and reverse and remand in part.

The parties are husband and wife who are currently separated and in the process of divorce proceedings. They were married on October 3, 2009, and separated on August 29, 2021. On April 26, 2022, Mother filed a complaint for support against Father, seeking support for herself and the parties’ two minor children.

Following a conference, at which the parties were unable to reach an agreement, the conference officer entered recommended findings. Relevantly, the conference officer assessed Mother an earning capacity of \$15 per hour, working 30 hours a week, for an average weekly gross earning capacity of \$450. The officer noted Mother lived in her father’s home, where the parties had lived while together, and that Mother continued to live there rent and mortgage free. The officer also noted Mother’s father had given the couple \$3,000 per

month since December 2016, and Mother continued to receive this gift money after the parties separated. The conference officer calculated Mother’s combined monthly gross income from the gift money and the earning capacity to be \$4,955.36. The conference officer utilized an average of Father’s adjusted net profit from 2018 until 2021 to calculate Father’s monthly net income at \$6,221.36.

Based on the above findings, the conference officer found that although the guidelines warranted a monthly support amount of \$498.13 combined for child and spousal support, that a downward deviation of \$842 a month was appropriate “in consideration of the ongoing monthly payments made by [Father] for [Mother]’s car and car insurance. Additionally, a downward deviation is appropriate in consideration of [Mother]’s lack of expenses while residing in her father’s home rent/mortgage free and in consideration of [Mother]’s withdrawals from [Father]’s business account since the date of filing.”

The trial court subsequently entered an order on June 28, 2022, dismissing the complaint for support and mirroring the support findings of the conference officer.

Mother filed a demand for a *de novo* hearing. Mother argued the conference officer erred by imputing the monthly gift received by Mother from her father as income and by applying a downward deviation in consideration of Mother’s “lack of expenses”. Mother argued this constituted a form of “double-dipping”. Mother also argued it was error to apply a downward deviation for a “lack of expenses” in the home, as she stated she is responsible for the payment of normal living expenses such as food, clothing, cable/internet, electric, gas, lawn services, and other personal needs for her and the children. Finally, Mother challenged the conference officer’s calculation of Father’s income, and assessment of downward deviations for alleged withdrawals made by Mother from Father’s business checking account.

*2 The court subsequently held a *de novo* hearing and heard testimony and argument from both parties. On November 3, 2022, the trial court entered a non-financial support order providing for a downward deviation to \$0.00 for Father’s support obligation due to the expenses paid directly by Father and the “additional income in [Mother]’s household” based on the \$3000 per month gift Mother receives from her father. Order, 11/3/2022, at 1-2. The order also assessed Mother an earning capacity of \$45,000 gross annually, in consideration of her prior employment and having no medical condition

affecting her ability to be gainfully employed. The order assessed Father at an average of his self-employment income from 2018-2022, calculated at \$135,191 annually. This timely appeal followed.

Mother raises the following issues on appeal:

A. Did the trial court err by applying a downward deviation of 100% to all tiers of the monthly guideline support amount when the totality of the evidence presented did not justify a downward deviation pursuant to Pa.R.C.P. 1910.16-5?

B. Did the trial court err by assessing Mother an earning capacity of \$45,000 gross annually when the totality of the evidence presented did not support this determination after a review of the factors enumerated in Pa. R.C.P. 1910.16-2(d)(4)(ii)?

C. Did the trial court err by assessing Father's income at an average of his self-employment income from 2018-2022, or \$135,191 gross annually, as the totality of the evidence presented justified a three-year average of Father's income, not a five-year average, as a three-year average more accurately reflects Father's current income under the support guidelines[?]

Appellant's Brief, at 4-5.

Before addressing the above issues, we must first determine the appealability of the November 3, 2022 support order. Questions concerning appealability of an order go to the jurisdiction of the court to hear the appeal and may be raised *sua sponte*. See *Interest of Z.V.*, 158 A.3d 665, 669 (Pa. Super. 2017).

If an order addresses both child support and spousal support, the child support issue is immediately appealable. See *Capuano v. Capuano*, 823 A.2d 995, 998 (Pa. Super. 2003). In contrast, the appealability of the spousal support issue depends on whether the economic aspects of a divorce are still being litigated:

A spousal support order entered during the pendency of a divorce action is not appealable until all claims connected with the divorce action are resolved. The rationale behind this rule is that, for purposes of judicial efficiency, in the event that an initial award of interim relief is granted in error, the court has the power to make adjustments in the final settlement via the equitable distribution of marital property. Thus, when all economic matters involved in a

divorce are resolved, any support order can be reviewed and corrected when the court finalizes the equitable division of the property.

Id., at 998-99 (citations omitted).

Here, it is undisputed that the non-financial support order was entered during the pendency of a divorce action and a divorce decree had yet to be entered. Although the support order is unallocated, it is clear a portion of the calculated guideline amount is child support. Accordingly, the child support portion of the trial court's November 3, 2022 order is final and appealable. However, because a divorce action was pending between the parties during the time of this appeal, we are constrained to find the spousal support portion of the order interlocutory and unappealable. See *id.*

And, in fact, Mother concedes that we do not have jurisdiction to address her spousal support claims. See Appellant's Brief, at 18, n.8. Nonetheless, she highlights that her arguments all apply equally to the spousal and child support portions of the order. See *id.* While we recognize the salience of Mother's observation, we simply do not have jurisdiction to review the spousal support portions of the order at this time. We will therefore address Mother's arguments only as they relate to child support.

*3 Our standard of review for a child support order is deferential:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

Kimock v. Jones, 47 A.3d 850, 854 (Pa. Super. 2012) (citations omitted).

First, Mother argues the trial court erred in deviating from the support guidelines. In particular, she contends it was error to consider the monthly gift of \$3,000 she receives each month from her father as household income in order to justify a 100% downward deviation.

The amount of support calculated pursuant to the guidelines is presumed to be the correct amount of child support. *See Pa.R.C.P. 1910.16-1(d)*. This presumption can be rebutted where the fact finder determines that the award “would be unjust or inappropriate.” *Id.* The presumption that the guideline support amount is correct is a strong one. *See Ball v. Minnick*, 648 A.2d 1192, 1196 (Pa. 1994). Here, the court deviated from the presumptive amount.

A trial court has discretion to deviate from the guideline amount in a support case if the record supports the deviation. *See Silver v. Pinsky*, 981 A.2d 284, 296 (Pa. Super. 2009); *see also Pa.R.C.P. 1910.16-5(a)* (“[T]he trier of fact shall specify, in writing or on the record, the guideline amount of support, and the reasons for, and findings of fact justifying, the amount of the deviation.”). In determining whether to deviate from the guidelines, the trier of fact must consider the following factors:

- (1) unusual needs and unusual fixed obligations;
- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) the relative assets and liabilities of the parties;
- (6) medical expense not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony pendent lite case, the duration of the marriage from the date of marriage to the date of final separation; and
- (9) other relevant and appropriate factors, including the best interests of the child or children.

Pa.R.C.P. 1910.16-5(b). “The trier of fact is to consider all the relevant factors in determining whether a deviation is warranted; any one factor is not necessarily determinative.” *Suzanne D. v. Stephen W.*, 65 A.3d 965, 972-73 (Pa. Super. 2013) (citation omitted).

Mother argues it was error for the trial court to consider the gift from her father as “other income in the household”. Father, on the other hand, argues it was proper to consider the cash gift as household income.

*4 At the hearing, Mother testified that she graduated in 1992 from Ohio University with a bachelor's degree in general studies. *See N.T., Support Appeal Hearing, 10/4/2022*, at 7-8. She was last employed in 2010 at Neiman Marcus, where she sold cosmetics on a commission basis. *See id.* at 8. Mother stated she had to drive an hour and twenty minutes each way to get to this job. *See id.* at 9. Mother acknowledged that her highest earnings with Neiman Marcus was \$70,000 in 2006 “when the economy was great.” *See id.* at 21. However, she testified that her approximate earnings were \$42,000 in her last year of employment. *See id.* Mother testified that she got let go in August of 2010 because she was not producing enough sales. *See id.* Mother stated that this was intentional because Father wanted her to collect unemployment. *See id.* Mother was pregnant with the parties’ second child at the time and planned to be a stay-at-home mother. *See id.* at 8-9.

Mother has not worked outside of the home in any capacity since 2010. *See id.* at 9. Mother stated that since the separation she had sent two applications to schools to work as a teacher's aide. *See id.* at 9-10. Mother clarified that she had sent in the applications a couple days prior to the hearing but denied doing so in preparation for the hearing. *See id.* at 20. Mother acknowledged that she does not have a teaching degree but expressed her desire to go into the education field. *See id.* at 10. Mother stated that she did not want a job, she wanted a career – in teaching. *See id.* at 21. Mother testified that their children had never been in a day care or left with a childcare provider. *See id.* Mother testified that she had been approached about going back to modeling and going on QVC. *See id.* at 20. However, Mother stated she did not know if she wanted to do that. *See id.* She also was not sure she wanted to go back into retail because “it kinda robs you of life.” *Id.* at 20-21.

Mother disputed the conference officer's finding that she did not pay for any living expenses. *See id.* at 11. Specifically, Mother entered an expense sheet, showing she paid for electric, gas, oil, cable, water, and food. *See id.* Mother acknowledged that Father owned the car that she drove, and that Father continued to pay for the car and the car insurance. *See id.* at 11-12. Mother had discussed with Father that she planned to give the car back to Father as soon as possible and she would obtain her own car. *See id.* at 12. Mother also acknowledged that Father paid for her cell phone. *See id.* Mother asserted that she tried to get off the phone plan but claimed that Father had to be the one to remove her from the account. *See id.* at 13.

Finally, Mother agreed that her father had been gifting her \$3,000 per month since 2016. *See id.* Mother stated that the money was gifted to the “family” or the “household”. *Id.* Mother acknowledged that she continued to receive this gift money. *See id.* Mother stated she would love for the gift to stop due to not wanting her father at his age to have to take care of her. *See id.* at 24.

Mother testified that the current custody schedule was “two days on, three days off.” *See id.* at 15.¹ Mother stated that she would require childcare for both children during the school year as well as the summer if she were to work 40 hours a week. *See id.* at 15-16. At the current time, Mother was staying home with the children during her custodial times. *See id.* at 16.

*5 Mother testified that she did not pay for rent or a mortgage on the home she lives in, which is owned by her father. *See id.* at 26. During questioning about the conference officer's finding that a downward deviation was proper due to Mother's “lack of living expenses”, both parties agreed on the record that Mother did pay for normal living expenses other than rent and mortgage. *See id.* at 30-31.

Father testified that he is self-employed in the financial services industry. *See id.* at 54. His income in 2021 was eighty percent commission and twenty percent advisory. *See id.* at 57. He stated that his income is never predictable. *See id.* Father explained that his income spiked in 2021 because of repurposing of client's assets. *See id.* at 56. Father was not sure if the spike would continue in 2022, so he had to anticipate lower numbers similar to prior years because of the unpredictability of being self-employed. *See id.* at 58-60. Father testified that he pays for the health insurance premium for himself, Mother, and one of the children.² *See id.* at 70-71. Due to the spike in Father's income, the health insurance premium went up from \$664.97 to \$1,248 per month. He also pays for car insurance for the car Mother drives and for the cell phone plan that includes Mother's phone. *See id.* at 72.

Father confirmed that he shares custody 50/50 with Mother and that he is able to spend all of his time with the children because he works from home. *See id.* at 79. He stopped renting office space earlier in the year because of finances. *See id.* at 79, 81.

In its opinion, the trial court made the following observations in support of the downward deviation in support obligations:

The court should further elaborate on what it initially characterized as a deviation. The court's analysis under Pa.R.C.P. 1910.16-5(b), and particularly its analysis of Pa.R.C.P. 1910.16-5(b)(3) “other income in the household” constrained the court to make the finding that [Mother] receives \$3,000.00 every month from her father, and that this is likely to continue. Further, [Mother] uses this money to cover virtually all her expenses and lives in a home that her father owns and does not pay rent or cover the mortgage. The court considered all factors under Pa.R.C.P. 1910.16-5(b), and finds that this factor of “other income in the household” significantly offsets what would ordinarily fall within the guideline.

In its November 2, 2022 order, the Court delineated its findings into three separate time periods: from 4/26/2022-6/3/2022, from 7/1/2022-8/30/2022, and finally from 9/1/2022 to present. The court initially made the downward deviation because [Father] made monthly payments for [Mother]'s car and car insurance, amounting to \$842.00 per month. Additionally, the Court made a downward deviation because [Mother] does not have housing expenses as she was residing in her father's home and not paying her father any rent. While the court did not construe this exclusively as income, the court considered this amount of money as household income received that is significant enough to warrant deviation from the guidelines. This gift money, while not counted as income, should be considered as other household income while analyzing the Pa.R.C.P. 1910.16-5(b) factors. As such, the amount of other household income in [Mother]'s home warrants a deviation from the guidelines from all the relevant time periods. Finally, the Court considers this as not a simple so-called “100% deviation,” as there is an interplay between [Mother]'s earning capacity and the fact that throughout relevant periods, [Mother]'s assets and household expenses have been paid by [Father] or [Mother]'s father, thus warranting a reduction.

*6 Trial Court Opinion, 4/13/2023, at 4-5 (citations omitted). The support order itself indicates that a downward deviation to \$0.00 for Father's support obligation was proper due to the expenses paid directly by Father and the “additional income in [Mother]'s household” based on the \$3,000 per month gift Mother receives from her father. Order, 11/3/2022, at 1-2.

In *Suzanne D.*, one of the primary issues was whether the substantial monetary gifts that the father received from his grandfather should be considered income for child support

purposes. [65 A.3d at 969](#). The record indicated that the father's monthly income was almost doubled by his grandfather's gifts. *Id.* at 973. In deciding the monetary gifts could not be considered income for child support purposes, we observed the domestic relations statute does not define gifts as income. *Id.* at 972. We explained: "Monetary gifts from family members are a common practice, and would not have been unknown to the drafters of the statute. Had the General Assembly wished to include gifts as income for support, it would have done so." *Id.*

However, this Court reasoned the monetary gifts could be considered in awarding an upward deviation under [Pa.R.C.P.1910.16-5\(a\)](#). There, the trial court determined these substantial monetary gifts had been made regularly for almost a decade, and based on grandfather's testimony, the gifts would continue. In addition to the disparity in income between the father and mother, the court also noted grandfather paid for other expenses incurred by the children: medical expenses, extracurricular activities, private school tuition, as well as the father's legal expenses. *Id.* at 973. The trial court concluded an upward deviation of \$500 per month was called for. We found no abuse of discretion in increasing father's child support obligation.

Initially, we note that there is an important difference between considering monetary gifts to increase a child support obligation and considering monetary gifts to decrease a child support obligation. This distinction is perhaps best encapsulated by this Court's observation that

[a]bove all, we are mindful of the general principle that a parent's duty to support his minor children is absolute, and the purpose of child support is to promote the children's best interests. The court has no legal authority to eliminate an obligor's support obligation, where the obligor can reasonably provide for some of the children's needs.

[Silver](#), 981 A.2d at 296 (citation omitted). In other words, the primary concern is the best interest of the child; that concern is then mediated by the parties' abilities to provide for themselves and the child.

Here, Father has made no claim that he cannot afford to pay his child support obligation, or that any change in his circumstances hinders him from doing so. Similarly, there is no evidence of record capable of supporting a finding that a reduction in Father's child support obligation is in the children's best interest. Accordingly, we conclude the trial court abused its discretion in decreasing Father's child support obligation due to the monetary gifts received by Mother. We

therefore vacate the child support award and direct the court to calculate Father's obligation without considering Mother's gift income.

Mother next argues the trial court erred by assessing her an earning capacity of \$45,000 pursuant to the factors enumerated at [Pa.R.C.P. 1910.16-2\(d\)\(4\)\(ii\)](#). With respect to earning capacity, [Rule 1910.16-2\(d\)\(4\)\(ii\)](#) provides the trier-of-fact shall consider the following factors:

*7 (A) child care responsibilities and expenses;

(B) assets;

(C) residence;

(D) employment and earnings history;

(E) job skills;

(F) educational attainment;

(G) literacy;

(H) age;

(I) health;

(J) criminal record and other employment barriers;

(K) record of seeking work;

(L) local job market, including the availability of employers who are willing to hire the party;

(M) local community prevailing earnings level; and

(N) other relevant factors.

[Rule 1910.16-2\(d\)\(4\)\(ii\)](#).

The trial court chose to impute to Mother a \$45,000 earning capacity after considering the following findings of fact:

For all tiers of the order, [Mother]s assessed at an earning capacity of \$45,000.00 gross annually in consideration of her prior employment and having no medical condition affecting her ability to be gainfully employed.

Order, 11/3/2022, at 1. The trial court expanded on its reasoning in its 1925 opinion as follows:

In determining [Mother]'s earning capacity, the court notes that [Mother] is not of retirement age, both of her children are attending school, and she is in good health. [Mother] does not have a criminal record, nor does she have any

unusual employment barriers. [Mother] has a history of employment in selling beauty products and earned upwards of \$70,000.00 a year while she was working. [Mother] is college-educated and has job skills relating to her work in selling beauty products and modeling.

Trial Court Opinion, 4/13/2023, at 6-7.

After a review of the record, we cannot conclude this reasoning is an abuse of discretion. Mother complains the court's reasoning appears to be mostly based on conjecture. But this is almost always the case when addressing an earning capacity as opposed to actual income. A court must evaluate the party's income history, which, as in this case, is often not reflective of current market salaries.

Further, we note the court found that Mother had not made a serious job search. While Mother applied for part-time jobs as a teacher's aide, the court found that only working part-time as a teacher's aide would not be reflective of her earning capacity. *See id.* at 7. These findings are also supported by the record.

We note, however, “[w]hen the trier-of-fact imputes an earning capacity to a party who would incur childcare expenses if the party were employed, the trier-of-fact shall consider reasonable childcare responsibilities and expenses.” Pa.R.C.P. 1910.16-2(d)(4)(i)(D). Here, it is undisputed Mother has been a stay-at-home mom for the past twelve years. Despite the children being in school, Mother testified that if she were required to work forty hours a week, she would require childcare for after school and during the summer months. *See* N.T., Support Appeal Hearing, 10/4/2022, at 15-16. The court did not address this in its reasoning. *See* Order, 11/3/2022.

Accordingly, as we are already vacating the child support obligation, we hereby direct the trial court to explicitly consider Mother's need for childcare to attain her imputed earning capacity. The court may, but is not required to, entertain additional evidence on this issue before reaching its conclusion. If the court finds that Mother would reasonably incur childcare expenses in attaining her earning capacity, the court must recalculate Father's child support obligation with this in mind.

Footnotes

* Former Justice specially assigned to the Superior Court.

*8 Finally, Mother argues the trial court erred by assessing Father's income. Specifically, Mother claims it was error to average Father's self-employment income over a five-year period. Rather, Mother argues a three-year average would more accurately reflect Father's current income under the support guidelines.

The trial court credited Father's testimony that his income fluctuated and spiked significantly in 2021, and that this was not indicative of Father's typical yearly income. *See* Trial Court Opinion, 4/13/2023, at 7-8. Our rules of civil procedure bar a trier-of-fact from adjusting a party's monthly net income due to normal or temporary earnings fluctuations. *See* Pa.R.C.P. 1910.16-2(d)(2)(iii). Accordingly, we cannot say it was error for the trial court to average Father's income on a longer time scale so as not to increase his average income disproportionately due to an atypical spike in his earnings.

Under these circumstances, we cannot conclude the trial court erred in calculating Father's income. However, we have determined the trial court abused its discretion regarding its deviation from the support guidelines. Further, we have concluded that the trial court erred in failing to explicitly address Mother's claim that she would require to pay for childcare to achieve the earning capacity the court imputed to her.

On remand, we direct the trial court to set Father's support obligation without consideration of the gift income received by Mother. Furthermore, the court must explicitly consider Mother's claim about childcare. If the court determines that childcare would reduce Mother's earning capacity, it is to recalculate Father's child support obligation pursuant to the modified earning capacity.

Appeal quashed with respect to spousal support. Order vacated with respect to child support. Case remanded for further proceedings with regard to Mother's earning capacity and setting child support without consideration of gift income received by Mother. Jurisdiction relinquished.

All Citations

311 A.3d 618 (Table), 2023 WL 9016519

- 1 In her appellate brief, Mother further explains this is a 2-2-3 custody schedule. **See** Appellant's Brief at 9. While the record is not clear about this, we presume this indicates a biweekly schedule where, in week one, one parent gets 5 days of physical custody interrupted by a two-day period of physical with the other parent. In week two, the parents switch their roles. **See B.T.M. v. J.N.F.**, 1734 MDA 2018 (Pa. Super. filed March 14, 2019) (unpublished memorandum).
- 2 The other child is on Medicaid due to unspecified health issues. **See id.** at 70.

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321 A.3d 1047
Superior Court of Pennsylvania.

Alicia M. HALL, Appellant

v.

Stark BARTRON III

No. 1686 MDA 2023

|

Submitted: June 10, 2024

|

Filed: August 8, 2024

Synopsis

Background: Mother filed motion to modify child support. Domestic relation officer recommended that father's child support obligations be modified from \$867 per month to \$3,434 per month. Father filed exceptions. Following a hearing, the Court of Common Pleas, Wyoming County, Civil Division, No. 2017-40074, Russell D. Shurtleff, J., departed from domestic relation officer's recommendation and ruled that father's obligation should remain \$867 per month. Mother appealed.

Holdings: The Superior Court, No. 1686 MDA 2023, [Kunselman, J.](#), held that:

mother was entitled to three-year review of child support obligation, and thus she was not required to show proof of a change in circumstances necessitating modification of support;

evidence was sufficient to support trial court's finding that father's business practices were not an effort to shield income, for purposes of determining whether modification of child support was warranted;

trial court acted within its discretion in determining corporation's business decisions were necessary to maintain or preserve the business, as opposed to an effort to shield income from father's child support obligations;

remand was warranted for recalculation of father's income, specifically with regard to payments made by his corporation for his vehicle and cellular phone;

evidence was insufficient to support finding that the value of professional services paid by corporation be included as income for father;

remand was warranted to determine whether father's contribution to corporation's pension program was mandatory or optional, for purposes of determining whether father's contributions should have been included in his monthly net income; and

trial court acted within its discretion in annualizing mother's personal injury settlement until child turned 18, as opposed to over her lifetime.

Affirmed in part, vacated in part, and remanded with instructions.

***1051** Appeal from the Order Entered November 20, 2023, In the Court of Common Pleas of Wyoming County, Civil Division, at No(s): 2017-40074, PACSES No. 690116604, [Russell D. Shurtleff, J.](#)

Attorneys and Law Firms

[Raymond W. Ferrario](#), Scranton, for appellant.

[Brian J. Cali](#), Dunmore, for appellee.

BEFORE: [OLSON, J.](#), [KUNSELMAN, J.](#), and [STEVENS, P.J.E.](#)*

Opinion

OPINION BY [KUNSELMAN, J.](#):

****1** Alicia M. Hall (Mother) appeals the order establishing the amount she is owed from Stark Bartron, III (Father) to support their 11-year-old child. Mother argues, *inter alia*, that Father, who is the owner of a closely-held corporation, shielded income by reinvesting the profits back into the company. She maintains the court should have set Father's monthly net income at a much higher level. Moreover, she argues her monthly net income should have been lower than what the court established. After review, we conclude the trial court largely acted within its discretion; however, we must find that the court erred when it failed to attribute, as income to Father, the benefit of the personal perquisites he receives through the company. We therefore affirm in part, vacate in part, and remand with instructions.

The record provides the following background. Prior to the instant litigation, Father had been paying Mother \$867 per month in child support pursuant to a domestic relations order entered in August 2020. In March 2023, Mother sought an upward modification. She believed that Father experienced a substantial change in circumstances – namely, an increase of his income from two sources: 1) additional income from gas leases; and 2) additional income from his self-owned business. *See* 23 Pa.C.S.A. § 4352(a). Moreover, Mother sought a modification because it had been three years since the entry of the prior order. *See* § 4352(a.1).

Mother's petition was initially heard by the domestic relations officer, who agreed with Mother on all issues. The officer noted that Father was the majority owner (75%) of his business, Bartron Supply, Inc. (the Corporation); Father's sister was the owner of the other 25%. The Corporation sells agricultural and construction equipment. The domestic relations officer determined that Father's monthly net income was far greater than the salary he claimed on his tax return (approximately \$80,000 annual gross¹). Instead, the officer imputed to Father 75% of the Corporation's profits, which excluded the Corporation's depreciation deductions. The officer ultimately recommended that Father's monthly obligation be set at \$3,434 per month. Exceptions were filed, and the trial court held a hearing *de novo*.

***1052** At the hearing, Father called his accountant as a witness to explain Father's personal and corporate tax returns. The Corporation, a C-Corp, is family business started by Father's grandfather. It operates out of three sites and employs 37 individuals. It does not make distributions to shareholders. Father takes a salary from the Corporation. The Corporation pays for Father's cell phone, health insurance, and vehicle.

Mother is not employed. She was injured in a car accident in 2019, and as a result, she received a monetary settlement in the amount of \$1.2 million after attorneys' fees and costs. After buying a home and making other real estate investments, approximately \$250,000 remained from the settlement. Mother said she cannot receive social security disability because she received too much income in child support and survivor benefits.² Mother receives survivor benefits, amounting to \$2,800 per month, because the father of Mother's other children is deceased.

****2** Father exercises partial physical custody – approximately 5 overnights out of 14 during the school year,

and 50/50 during the summer months. Upon consideration of the testimony and evidence, the trial court departed from the domestic relation officer's recommendation and ruled that Father's obligation should remain \$867 – the amount set forth in the prior obligation from 2020.

Mother timely filed this appeal. She presents the following 11 issues for our review, which we reorder for ease of disposition:

1. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, because it failed to properly consider and calculate his net profit from his business, Bartron Supply, Inc. in which he had 75% ownership and control?
2. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, because it failed to properly consider the net profit of his corporation, available to him as income for purposes of child support?
3. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, because it failed to consider the income available to Father that had been the depreciation deduction by Bartron Supply, Inc. of which Father had a 75% ownership interest for purposes of calculating his income for child support?
4. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, because it failed to consider the income available to Father that had been retained earnings for the corporation, of which Father had a 75% ownership interest for purposes of calculating his income for child support?
5. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father for purposes of child support because it failed to consider the rental income benefit derived by Father from his ownership of the real estate in Tunkhannock, where his corporation, Bartron Supply, Inc., is located? That rental income was used to directly reduce his mortgage obligation and increase his equity in his real estate.

***1053** 6. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, for purposes of child support because it failed to consider the rental income benefit derived by Father from his ownership of the real estate in Honesdale? That rental income was used to directly reduce his

mortgage obligation and increase his equity in his real estate. Moreover, Bartron admitted that he derived a benefit because his corporation paid the downpayment and closing costs for the purchase of the real estate for which Father directly benefitted and owned.

7. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father for purposes of child support because it failed to consider the potential rental income of other real estate in Tunkhannock which he owns?
8. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father, for purposes of child support because it failed to consider the direct benefits he received from the personal use of his cell phone?
9. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father for purposes of child support because it failed to consider the direct benefits he received from the personal use of his truck and the payment by his corporation, Bartron Supply, Inc., of the monthly purchase funds, vehicle insurance, vehicle gasoline expenses and vehicle maintenance?
- **3 10. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father for purposes of child support because it failed to consider the direct benefits he received from the personal use of his pension?
11. Did the trial court err at law and abuse its discretion when it improperly calculated the income of Father for purposes of child support because it failed to consider the lack of the earning capacity of Mother? Did the trial court err at law and abuse its discretion when it improperly calculated the net proceeds she received from settlement of a personal injury claim that she will need to use to support herself for the remainder of her lifetime, and not just for the time period prior to her child reaching 18 years of age or graduating from high school? Mother's Brief at 5-9 (style adjusted).

Our standard of review in matters concerning child support orders is well-settled:

When evaluating a support order, this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not

interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

*1054 *Sichelstiel v. Sichelstiel*, 272 A.3d 530, 534 (Pa. Super. 2022) (quoting *Silver v. Pinskey*, 981 A.2d 284, 291 (Pa. Super. 2009) (*en banc*) (further citation omitted)).

A. Business Profits

Mother collapses her first four issues into a singular argument, which forms the crux of her appeal. *See generally* Mother's Brief at 15-26. The essence of her claim is that Father shielded his income by claiming a salary of only \$80,000, while the business, which he owns and controls, retains its profits and lowers its taxable income by claiming depreciation deductions.

Child support awards are calculated in accordance with specific statutory guidelines, using a complex system that accounts for the obligor's capacity to pay and the reasonable needs of the particular children. *Sichelstiel v. Sichelstiel*, 272 A.3d 530, 535 (Pa. Super. 2022) (citing *Commonwealth v. Hall*, 622 Pa. 396, 80 A.3d 1204, 1216 (2013)). The guidelines provide detailed instructions for calculating support awards based on the obligor's monthly net income. *Id.*; *see also* 23 Pa.C.S.A. § 4322(a); *and see* Pa.R.C.P. 1910.16-2.

Relevant here, the statutory definition of "income" includes "income derived from business;" "gains derived from dealings in property;" "rents;" "dividends;" and "distributive share of partnership gross income." *See* 23 Pa.C.S.A. § 4302. To arrive at the monthly *net* income, the court shall deduct specific items from the monthly gross income – e.g., federal, state, and local income taxes; F.I.C.A. payments, and non-voluntary retirement payments. *See* Pa.R.C.P. 1910.16-2(c) (1).

The question posed by the instant appeal is how to calculate an obligor's monthly net income, when that obligor is a business owner who controls how much salary he takes from the business. The Supreme Court has adopted the reasoning that an obligor's income "must reflect the actual

available financial resources and not the oft-time fictional financial picture” created by the application of federal tax laws. *Fennell v. Fennell*, 753 A.2d 866, 868 (Pa. Super. 2000) (citing *Labar v. Labar*, 557 Pa. 54, 731 A.2d 1252, 1255 (1999) (“Otherwise put, *cash flow* ought to be considered and not federally taxed income.”)). It is possible that a person could use a corporation to shelter income from the support obligation calculation by improperly retaining cash flows within the corporation rather than disbursing them to the shareholders. *Labar*, 731 A.2d at 1255. “The owner of a closely-held corporation cannot avoid a support obligation by sheltering income that should be available for support by manipulating salary, perquisites, corporate expenditures, and/or corporate distribution amounts.” *Sichelstiel*, 272 A.3d at 536 (citing *Fennell*, 753 A.2d at 868).

****4** In situations where the individual can control the retention or disbursement of funds by the corporation, he or she still will bear the burden of proving that such actions were “necessary to maintain or preserve” the business. *Fennell*, 753 A.2d at 869 (quoting *Labar*, 731 A.2d at 1255). If the individual can demonstrate that the retention of corporate earnings is “necessary for the continued operation and smooth running of the business,” then the court should not include these earnings when calculating the individual's income available for support. *See id.*

Returning to the instant matter, Mother's first four claims largely concern two notions: 1) the business retained too much net profit, which should have been considered income for purposes of calculating Father's support obligation; and 2) there would have been more business profit, available to Father, if the Corporation did ***1055** not make so many unnecessary expenditures, as evidenced by the Corporation's use of depreciation.

The trial court disagreed. It determined that the Corporation's retention of earnings was necessary to sustain the business, which is a C-Corp and pays corporate taxes.³ In reaching this determination, the court relied on the testimony of Father and the accountant who prepared the company's tax return. Critically, the Corporation has a contract with John Deere, which is a major part of its business. Per the contract, the Corporation must maintain an equity interest of 25% or it will forfeit the contract. *See* N.T., 9/25/23, at 20.⁴ The accountant testified that the Corporation clears that threshold by a little over \$100,000 – approximately 3% over the mandatory 25%. *See id.* at 70. However, the accountant explained that having some wiggle room was important, because if the company had

a bad year and operated at a net loss, the company would need to dip into that reserve to stay at the 25% ratio. *See id.*

As for the depreciation issue, as it pertains to the facts of this case, the court acknowledged that the question turns on whether the Corporation's expenditures were discretionary and used to expand the business or whether they were necessary to maintain and preserve the business. *See Labar*, 731 A.2d at 1258-59 (“If the source of the funds used to make these capital expenditures is identified as cash flows which could have instead been distributed to the shareholders, then and only then does the question arise whether the expenditures were unnecessary and therefore properly included in the calculation of the [obligor's] disposable income.”). The trial court was persuaded by the accountant's testimony that the items listed in the depreciation schedule were all consistent with the historic operation of the business and the business's ability maintain its position in the market. *See generally* Trial Court Opinion (T.C.O.), 1/8/24, at *6 (not paginated). In other words, the court found that the Corporation's use of depreciation was not indicative of unnecessary expenditures, which in turn could have suggested that Father was attempting to shield income.

****5** On direct examination, Father's counsel confronted the accountant with the domestic relation officer's recommendation. The domestic relations officer excluded the depreciation deductions from the Corporation's profits, and then used those profits to calculate Father's annual net income. The accountant testified that if those profits (\$393,493.00) were actually paid to Father then “[the Corporation] would not be able to continue business. They would not have the current assets available to pay their current liabilities. Their vendors would not supply them anymore. They would essentially bankrupt the company.” *See* N.T. at 43.

To resolve Mother's claims, we begin by observing the parties' shifting burdens. As the party seeking modification, Mother would typically shoulder the ***1056** burden of establishing a change in circumstances necessitating a modification of support. *See Summers v. Summers*, 35 A.3d 786, 789 (Pa. Super. 2012); *see also* 23 Pa.C.S.A. § 4352(a); *and see* Pa.R.C.P. 1910.19. Here, however, Mother was entitled to a review of the support obligation, given that it had been three years since the prior order, and therefore she was not required to show proof of a change in circumstances. *See* 23 Pa.C.S.A. § 4352(a.1) (discussed *infra*); *see also Krebs v. Krebs*, 944 A.2d 768 (Pa. Super. 2008). Father bore the burden – as the majority owner of his business – of establishing that the

Corporation's retention of profits was necessary to maintain or preserve the business. *See Fennell*. The trial court determined Father met that burden. In the court's view, the Corporation's retention of earnings and use of depreciation schedules were necessary to the viability of the company. Now on appeal, Mother must establish that the trial court abused its discretion. *See Sichelstiel*.

We will not find an abuse of discretion simply because we might have reached a different result. Rather, “we may only reverse the trial court's determination where the order cannot be sustained on any valid ground.” *Silver*, 981 A.2d at 291. It is not our role to second-guess the trier-of-fact or substitute its judgment for our own. “We will not interfere with the broad discretion afforded the trial court absent an abuse of the discretion or insufficient evidence to sustain the support order.” *Id.*

Upon review, we conclude that the trial court's determinations were supported by the record, particularly the accountant's expert testimony. Of course, the law of child support recognizes that the financial picture depicted on a tax return does not always reflect actual dollars available to the obligor. *See Labar*, 731 A.2d at 1255. To that end, the trial court is not required to accept the testimony of an accountant in the employ of an obligor. As the trier-of-fact, the court is free to accept all, part, or none of the testimony, and we will not reverse unless such a determination was manifestly unreasonable. Here, the court determined that Father's business practices were above board and were not an effort to shield income. Mother largely argues for a recalculation, or a reassessment of Father's business practices, but she does not demonstrate why the court's findings were manifestly unreasonable – except to explain that she would receive considerably more support if we ruled in her favor. As such, Mother's first four claims merit no relief.

B. Rental Properties.

In her fifth and sixth appellate issues, Mother argues the trial court erred when it failed to include Father's income from his rental properties. *See* Mother's Brief at 27-31; *see also* 23 Pa.C.S.A. § 4302 (including as income proceeds from rent). The Corporation operates out of three physical locations. Two of those three properties are owned by Father and his sister; one was acquired so recently that it had yet to appear on a tax return. The properties are encumbered by a mortgage; Father and his sister received a loan from the Corporation to finance the purchase. The Corporation then pays rent to Father and his sister to operate out of these locations. Father and his sister use

the entirety of the rent money received from the Corporation to pay the mortgage. The accountant testified that, from a cash-flow perspective, it was a wash.

****6** Mother argues that the court abused its discretion by not including the rental income in its calculation of Father's monthly net income. She maintains that Father is trying to have it both ways: on one hand, ***1057** the Corporation's margins were supposedly so thin, that it couldn't possibly pay Father any more income; but on the other hand, the company was able to come up with \$150,000 for a downpayment to help Father and his sister secure these properties. *See* Mother's Brief at 29.

Our analysis of these issues mirrors the analysis of the Corporation's profits. The trial court believed the testimony that the investment into these properties was a proper business decision to lower the Corporation's longterm costs. Again, the court had discretion to decide whether the business decision was necessary to maintain or preserve the business, or whether it was an effort to shield income from Father's support obligation. The court ruled in Father's favor, and we cannot conclude that such a determination was manifestly unreasonable. The testimony indicated that the Corporation pays less rent than it did before the purchase. Father receives no additional income on top of what is paid to satisfy the mortgage; and the accountant testified that, from a cash-flow perspective, the acquisition of the rental properties was a wash. We conclude Mother's fifth and six appellate issues merit no relief.

In her seventh issue, Mother raises another claim relating to one of Father's properties. By way of background, Father owns one vacant property, and Mother owns two vacant residential properties, which she purchased with her settlement money. The trial court mentioned, in passing, that Mother could rent these properties out as a source of income, although the court acknowledged that Mother would have to make necessary improvements first. *See* T.C.O. at 6. Presumably, the trial court mentioned Mother's potential rental income, because Mother said she cannot work. However, Mother suggests that the trial court improperly determined that she was not entitled to additional support, because of the existence of this potential stream of income. In Mother's view, if the trial court was going to penalize her for her unrented property, then the court should also penalize Father for his unrented property. *See* Mother's Brief at 38-39.

Mother merits no relief on this point. Whatever the reason for the trial court's remark, the court clearly did not factor into its analysis the potential rental income from either party. Mother's seventh issue warrants no relief.

C. Father's Perquisites

Comprising her eighth, ninth, and tenth appellate issues, Mother argues the trial court erred when it failed to include as income certain perquisites Father receives through the business. Specifically, Father drives a company truck, which is paid for and maintained (*i.e.*, fueled and insured) by the Corporation. Additionally, the Corporation pays for Father's cell phone. The Corporation matches Father's pension contribution (3%, or \$2,400). Lastly, Mother alleges that the Corporation paid for Father's personal professional services (*i.e.*, legal and accounting services). Mother concludes that all these personal perquisites should have been included as income. Although the Rules of Procedure exclude from income a party's non-voluntary retirement payments, Mother claims that Father's pension contribution should be included, because it is not mandatory and thus not deductible from Father's monthly net income. *See* Mother's Brief at 31-37; *see also* Pa.R.C.P. 1910.16-2(c)(1)(iii) (providing that monthly net income shall not include "non-voluntary retirement payments").

****7** As noted above, the statutory definition of income is expansive. *See* ***1058** 23 Pa.C.S.A. § 4302 (*supra*).⁵ In addition to the aforementioned examples, Section 4302 also defines income as "compensation in kind." Moreover, our Supreme Court has held ruled that "[p]ersonal perquisites, such as entertainment and personal automobile expenses paid by a party's business must be included in income." *Mascaro v. Mascaro*, 569 Pa. 255, 803 A.2d 1186, 1194 (2002).

Our decision in *Murphy v. McDermott*, 979 A.2d 373, 379-380 (Pa. Super. 2009) provides guidance on how to calculate the value of these perquisites. There, the obligor's employer paid \$16,798.65 per year for the vehicle. The obligor used the vehicle 40% of the time for personal use; 40% of the gross amount (\$16,798.65) was \$6,719.46. Thus, \$6,719.46 was the figure which would have been attributable to him as a personal perquisite income. *Id.* Notably, however, the obligor in that case actually paid the employer for use of the vehicle, in the amount of \$1,820.00. We said that that the obligor's expense should be deducted from the attributable perquisite income – *i.e.*, \$6,719.46 minus \$1,820.00 equals

\$4,899.46 – this being his ultimate perquisite benefit to be imputed as income. *Id.*

In the instant case, the accountant testified that he could not opine how much Father's use of the truck and cell phone were personal versus business related. *See generally* N.T. at 24-29; 54-55. The truck was purchased new, by the Corporation, in November 2022. Father testified that he uses it mostly for business, and that other employees have access to the vehicle and are authorized to drive it. *Id.* at 103. Father said he would estimate that the cell phone was mostly used for business, but that he does not keep track. *Id.* at 101. Ultimately, Father testified that he used the truck and the phone between 60%-70% for business and the rest for personal use. *Id.* at 103.

The trial court noted in its opinion that the domestic relations officer included the full value of Father's perquisites when calculating his monthly net income. *See* T.C.O. at 3, 6. The court did not explicitly address the perquisites in its ruling, but evidently believed that any inclusion of these perquisites was unwarranted. We presume the court determined that there had been no change in circumstances, as Father argued. This was an error of law. Section 4352(a.1) provides:

(a.1) Automatic review. -- Upon request of either parent...each order of support shall be reviewed at least once every three years from the date of establishment or the most recent review. The review shall be for the purpose of making any appropriate increase, decrease, modification or rescission of the order. During the review, taking into the account the best interest of the child involved, the court shall adjust the order, ***without requiring proof of a change in circumstances***, by applying the Statewide guidelines or a cost-of-living adjustment in accordance with a formula developed by general rule.

****8** 23 Pa.C.S.A. § 4352(a.1) (emphasis added).

In her petition for modification, Mother actually alleged a change in circumstances, but she also noted that the parties' case was ripe for a three-year review. Why ***1059** these personal perquisites were not considered in the parties' prior support order is of no moment.

On remand, we direct the court to ascertain the value of the personal benefit of Father's use of the truck and cell phone, and then include that value as income for purposes of support computation. *See* *Murphy*, 979 A.2d at 379-380 (Pa. Super. 2009) (calculating the value of the obligor's perquisite income); *see also* *Mackie v. Mackie*, 2019

WL 4864073, at *6-7 (Pa. Super. 2019) (non-precedential decision) (discussing the valuation of perquisite flights).

As for the professional services, we would agree with Mother that the value of these services, paid by the Corporation, might be included as income. Here, however, it does not appear that Father was the actual beneficiary of the services. Both the accountant and Father testified that the professional services expense listed on the corporate tax return was solely for the benefit of the Corporation. In other words, there was no evidence to suggest the Corporation paid for Father's professional services relating to his personal life. For instance, we do not see record support for the inference that the Corporation paid for his attorney to litigate this child support action.

As for Father's contribution to the Corporation's pension program, we remand for the trial court to ascertain whether the Corporation's pension program is mandatory to all other employees or whether it is optional. If the Corporation mandates that all qualifying employees participate in the pension program, then we would conclude that Father's participation is "non-voluntary" for purposes of Rule 1910.16-2(c), notwithstanding the fact that he is the owner and operator of the business. However, if the pension program is optional, then we agree with Mother that Father's contributions should be included in his monthly net income.⁶

D. Calculation of Mother's monthly net income

In her final appellate issue, Mother argues the trial court erred when it calculated her income. Specifically, the court annualized her personal injury settlement until such time as the Child turned 18; Mother argues that the settlement was for her inability to work, and thus the court should have annualized the lump sum over her lifetime.

Footnotes

* Former Justice specially assigned to the Superior Court.

1 Father's salary is the highest in the company.

2 The court determined that Mother presented no evidence of her inability to work.

3 "In the case of a Pennsylvania C-corporation, income is taxed at the corporate level through the imposition of corporate net income tax, and again at the shareholder level when the C-corporation makes distributions to its shareholders. By contrast, income of a Pennsylvania S-corporation is passed through directly to its shareholders, who are subject

On this point, the Rules of Procedure provide the following guidance:

Note: The trier-of-fact determines the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or averaged over a shorter or longer period depending on the case's circumstances. The trier-of-fact may require all or part of the lump sum award escrowed to secure the support obligation during that period.

****9 Pa.R.C.P. 1910.16-2(a)(8).**

In other words, the trial court had discretion as to how Mother's settlement should be considered. On appeal, Mother has not demonstrated how the court's method was so manifestly unreasonable that it constituted an abuse of discretion. Mother's final issue merits no relief.

In sum, we conclude that the trial court did not abuse its broad discretion when it failed to include the Corporation's profits ***1060** in its calculation of Father's monthly net income, when it failed to consider the rental incomes paid by the Corporation to Father, or when it annualized Mother's settlement until such time as when the Child turned 18. However, the trial court erred when it failed to include as income the value of the personal perquisites Father receives through the Corporation. Accordingly, for the reasons discussed above, we affirm in part, vacate in part, and remand for further proceedings.⁷

Order affirmed-in-part and vacated-in-part. Jurisdiction relinquished.

All Citations

321 A.3d 1047, 2024 WL 3711126, 2024 PA Super 172

to personal income tax based on their distributive interest in the Pennsylvania S-corporations.” **See *DelGaizo v. Commonwealth***, 8 A.3d 429, 433 (Pa. Cmwlth. 2010).

- 4 The accountant explained that “assets minus liabilities equals your equity. So, John Deere is telling us that we need equity of twenty-five percent or greater to maintain that franchise.” **See** N.T. at 20-21.
- 5 Notwithstanding that the definition of income also includes “royalties,” the trial court did not include as income Father’s gas royalties. The court’s basis for excluding the royalties was that the amount fluctuated too much. Mother did not appeal the court’s decision on this issue. Although she mentions it in her Brief, she did not raise it in her concise statement of matters complained of on appeal. **See Pa.R.A.P. 1925(b)(4)(vii)**. Therefore, any argument pertaining to the gas royalties was waived.
- 6 It is unclear whether the pension program is mandatory. The testimony was that the company pays pensions of “[a]ll of the ones who are – they match all of the ones who are participating in the plan.” **See** N.T. at 52; **see generally id.** at 29-30.
- 7 The trial court has discretion how best to conduct remand proceedings. In our view, the record contains sufficient evidence to enable the trial court to establish the attributable value of the vehicle and the cell phone. Whether Father’s pension contribution is mandatory may require further testimony and evidence.

We are conscious of the possibility that whatever increase in support Mother might receive for the benefit of the Child may be offset by the cost of litigating after remand. While this is not a basis to affirm an erroneous support order, we encourage the parties and the trial court to resolve the pending issues efficiently and economically.