

Cheryl Howell
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DEFINING INCOME

Self Test

- #1: IV-D attorney offers affidavit of defendant stating income - signed 18 months before hearing; no other evidence of income offered.
 - Can affidavit alone support finding of present income?
 - If not, do you dismiss the child support action?

Self Test

- #2: Obligor received \$50,000 personal injury settlement three months before child support hearing.
 - Can you include entire award as income?

Self Test

- #3: Grandparents provide housing to custodial parent and children.
 - Do you include rental value of housing as income of custodial parent?

Income When?

- Order **MUST** contain finding of **PRESENT** actual income
 - "Parents' current income at time the order is entered"
 - Guidelines
 - Party's actual income at time order is made or modified
 - *Armstrong v. Droessler*, 177 NC App 673 (2006)
 - *Holland*, 169 NC App 564 (2005)

Proof of Income

- Who has burden of proof??????
 - Probably the judge ☺
- "Verified through documentation of both current and past incomes." Guidelines
 - One full month of pay stubs, employer statement, receipts, expenses
 - Most recent tax return "to verify earnings over longer period of time"

Proof of Income

- ☐ Sanctions can be imposed for failure to comply. Guidelines
 - Financial affidavit is binding
 - *Row v. Row*, NC App (2007): trial court correct to use obligor's affidavit rather than testimony of obligor's expert witness at trial
 - ☐ Signed statement by employer is admissible to prove income
 - GS 110-139(c1) – both IV-D and non-IV-D

Using Past Income to Find Present

- "Court must determine gross income at time the support order was originally entered, not as of the time of remand *nor on the basis of the parent's average monthly income over the years preceding the trial.*"
 - *Holland v. Holland*, 169 NC App 564 (2005)

Using Past Income to Find Present

- "Legislature never contemplated the court would select the earnings for a single year in the past and use that as a basis for the award *when that year does not fairly represent defendant's current nor the average of his earnings for several years.*"
 - *Conrad v. Conrad*, 252 NC 412 (1960)

Using Past Income to Find Present

- "While we believe the trial court could have used plaintiff's 2001 income to determine his [2002] income, the order fails to support this approach with the necessary findings of fact."
 - *Holland*

?????????

- Cannot use past to "impute" income or determine earning capacity
- But you can use past to determine present "capacity to continue to earn" the same amount in the future
 - *Hartsell v. Hartsell*, NC App (March 4, 2008)

Examples

- Problems on Appeal
 - *Hodges v. Hodges*, 147 NC App 478 (2001)
 - *Williams*, 635 SE2d 495 (2006)
 - *Glass*, 131 NC App 784 (1998)
 - *Gatlin*, NC App (unpublished Jan. 15, 2008)
- Upheld on Appeal
 - *Hartsell*, NC App (March 4, 2008)
 - *Diehl*, 177 NC App 642 (2006)
 - *Spicer*, 168 NC App 283 (2005)

Self Test

- #1: IV-D attorney offers affidavit of defendant stating income - signed 18 months before hearing; no other evidence of income offered.
 - Can you use amount in affidavit alone to support finding of present income?
 - Not without more - *Williams*
 - If not, do you dismiss the child support action?
 - ????? No clear burden of proof

What is Income?

- Use Gross Income
 - Before taxes, retirement, or any other withholding
- Includes "income from any source"
- Does not have to be income from employment
 - *Squires*, 178 NC App 251 (2006)(all investment income)
 - *But cf. Gatlin*, NC App (unpublished Jan. 15, 2008)
- Includes income from self-employment
 - Gross receipts minus ordinary and necessary business expenses

Income From Any Source

- Long list in guidelines
- Income received on "irregular, non-recurring or one-time basis"
- Court may "average or pro-rate the income over a specified period", or
- "Require obligor to pay a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support."
 - *See Spicer* (settlement proceeds)
 - *Cf. Glass* (bonuses)

Income From Any Source

- Sale of a house?
 - No – not without evidence of gain
 - *McKyer v. McKyer*, 179 NC App 132 (2006)
- Sale of a truck?
 - Of course – must include "income from any source"
 - *Hartsell v. Hartsell*, NC App (March 4, 2008)

Income from Any Source

- Gifts or maintenance from someone other than a party to the action
 - *Spicer*, 168 NC App 283 (\$300 included for rent-free housing provided by parents)
 - *Williams*, 179 NC App 838 (2006)(rent and utility payments paid by parent should be included)
 - *Cf. Easter v. Easter*, 344 NC 166 (1996)(payments from third parties should be factors to consider in deviation)
 - What about "maintenance" from new spouse?

Excluded from Income

- ☐ "Means-tested public assistance programs"
 - Maybe educational loans: *McKyer*
- ☐ Alimony or maintenance received from party to action
- ☐ Income of children
 - *Miller v. Miller*, 168 NC App 577 (2005) (adoption assistance payments are income of children)
 - *See Browne*, 101 NC App 617 (1991)(estates of children not considered)
- ☐ Income of any person who is not a parent of the child
 - *Kennedy*, 107 NC App 695 (1992)(rental income belonging to new spouse)

Self Test

- #2: Obligor received \$50,000 personal injury settlement three months before child support hearing.
 - Can you include entire award as income?
 - Yes – probably
 - See *Spicer*, 168 NC App 283 (2005)(no exception for “pain and suffering” compensation)
 - See *Freeze*, 159 NC App 228 (unpublished 2003)(error not to include lump sum workers’ comp settlement)
 - No mention of when obligor received the payment)

Self Test

- #3: Grandparents provide housing to custodial parent and children.
 - Do you include rental value of housing as income of custodial parent?
 - Yes according to *Williams*
 - Consider deviation ??? *Easter*
