

November 14, 2013 9:45 - 10:45

Hon. David C. Chapleau

Judge St. Joseph Superior Court

Child Support

General Assembly (2013)

SENATE ENROLLED ACT No. 6

SECTION 44. IC 31-16-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) In an action for dissolution of marriage under IC 31-15-2, legal separation under IC 31-15-3, or child support under IC 31-16-2, **or establishment of paternity under IC 31-14**, the court may order either parent or both parents to pay any amount reasonable for support of a child, without regard to marital misconduct, after considering all relevant factors, including:

(1) the financial resources of the custodial parent;

(2) the standard of living the child would have enjoyed if:

(A) the marriage had not been dissolved; or

(B) the separation had not been ordered; or

(C) in the case of a paternity action, the parents had been married and remained married to each other;

(3) the physical or mental condition of the child and the child's educational needs; and

(4) the financial resources and needs of the noncustodial parent.

(b) The court shall order that child support payments ordered under this section be immediately withheld from the income of the parent obligated to pay child support as provided under IC 31-16-15-0.5.

SECTION 45. IC 31-16-6-6, AS AMENDED BY P.L.111-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012 (RETROACTIVE)]: Sec. 6.

(a) The duty to support a child under this chapter, which does not include support for educational needs, ceases when the child becomes nineteen (19) years of age unless any of the following conditions occurs:

(1) The child is emancipated before becoming nineteen (19) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary school or postsecondary educational institution for the prior four (4) months and is not enrolled in a secondary school or postsecondary educational institution; and

(C) is or is capable of supporting himself or herself through employment.

In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the

child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.

(b) For purposes of determining if a child is emancipated under subsection (a)(1), if the court finds that the child:

- (1) is on active duty in the United States armed services;
- (2) has married; or
- (3) is not under the care or control of:
 - (A) either parent; or
 - (B) an individual or agency approved by the court;

the court shall find the child emancipated and terminate the child support.

(c) If a court has established a duty to support a child in a court order issued before July 1, 2012, the:

- (1) parent or guardian of the child; or
- (2) child;

may file a petition for educational needs until the child becomes twenty-one (21) years of age.

(d) If a court has established a duty to support a child in a court order issued after June 30, 2012, the:

- (1) parent or guardian of the child; or
- (2) child;

may file a petition for educational needs until the child becomes nineteen (19) years of age.

....

(e) If:

(1) an order was issued after June 30, 2012, that denied support for educational needs to a child who was less than twenty-one (21) years of age at the time the petition for educational needs was filed; and

(2) support for educational needs was denied based on the fact that the child was older than eighteen (18) years of age; notwithstanding any other law, a parent or guardian of the child or the child may file with the court a subsequent petition for educational needs. The court shall consider the petition on the merits in accordance with this section and may not consider the absence of subsection (c) from law at the time of the initial filing.

Sexton v. Sexton, 970 NE2d 707 (Ind App 2012)

Hirsch v. Oliver, 970 NE2d 651 (Ind 2012)

Williams v. Williams, not for publication (Ind App 5/31/13)

Blake, their only child, was born on October 23, 1992. Blake graduated high school in May 2011, took courses from Ivy Tech over the summer, and started as a freshman at Oakland City University in September 2011, studying human biology with plans to become a nurse practitioner. He received an athletic scholarship from Oakland City University, which pays his full tuition. To pay for his books, room, and board, Blake has obtained student loans, he works eight to ten hours per week at a hardware store during the school year, and he mows lawns in his hometown during the summer. In November 2011, Mother filed a cross-petition, asking the post-dissolution court to “modify” the support order “pertaining to college expenses, medical bills and insurance costs.”

In the oral order denying Mother's request for educational support, the post-dissolution court stated:

The only real relationship between the father and Blake is biological. They are clearly strangers to one another for all intents and purposes. The age of emancipation as of July 1st, 2012, is 19 year[s] of age—not 21 years of age, and Blake is emancipated. There is nothing by law to compel any relationship between the father and son at this point, as Blake was emancipated on July 1st, 2012, under what's commonly referred to as "the new law." Each is an adult man and each should support himself. The Court will not order the father to pay anything more than he has already paid for Blake. The Court is not assessing fault; I don't think that's even important now. I think under the circumstances, with the total lack of relationship throughout the years between the father and the son, it would be an abuse of discretion for the Court to order the father to continue to pay, understanding that his legal obligation to support Blake terminated under the new law as of July 1st, 2012, to order him to pay anything further toward Blake's support regarding college expenses or otherwise. Affirmed.

Toradze v. Toradze, 993 N.E.2d 271 (Ind App 8/22/2013)
APPEAL FROM THE ST. JOSEPH CIRCUIT COURT

The record reflects that both children were emancipated on July 1, 2012 by operation of the statute. Although a child support order had been instituted as part of the dissolution decree in 2002, no separate educational needs order had been requested until Mother's petition of October 17, 2012. When Mother filed her petition for educational expenses, both children had not yet reached twenty-one years of age. Because the trial court had established a duty to support the children in a court order issued prior to July 1, 2012 and the children were younger than twenty-one years of age, Mother was entitled to file her petition for post-educational expenses based on [I.C. § 31-16-6-6\(a\) & \(c\)](#). Therefore, we conclude that the trial court had jurisdiction to decide Mother's request to institute an order for educational needs.

Based on the foregoing, we conclude that the trial court acquired jurisdiction with respect to Mother's request for educational expenses following a dissolution of marriage based on [I.C. § 31-16-6-6\(a\) & \(c\)](#).

Littke v. Littke, 992 N.E.2d 894 (Ind. App. 8/13/2013)

The post-dissolution proceedings resulting in this appeal arose between the legislature's 2012 and 2013 amendments to Indiana Code § 31-16-6-6. In response to the 2012 amendment—which changed the presumptive age for termination of child support from twenty-one to nineteen—Laurie Littke ("Mother") filed a motion to terminate child support for the parties' nineteen-year-old child. Immediately thereafter, Richard Littke ("Father") filed a petition for postsecondary educational expenses for the nineteen-year-old child. Mother then filed a motion to dismiss Father's petition as untimely pursuant to the legislature's 2012 amendment to Indiana Code § 31-16-6-6, which the trial court granted.

After Father commenced this appeal of the trial court's post-dissolution order, the legislature again amended Indiana Code § 31-16-6-6. In the 2013 amendment—which had an emergency retroactive effective date of July 1, 2012—the legislature added subsections to the statute to

address a parent's or child's ability and the time restrictions for filing a petition for educational needs following the changes enacted in the 2012 Amendment. Because the provisions contained in the 2013 amendment to Indiana Code § 31-16-6-6 specifically allow a parent, who had a child support order issued before July 1, 2012, to file a petition for educational needs until the child becomes twenty-one years old, we reverse the trial court's order granting Mother's motion to dismiss Father's petition for postsecondary educational expenses.

Schwartz v. Heeter, 2013 Ind. LEXIS 725 (Ind 9/26/2013) Mother and Father made a seemingly simple agreement: to recalculate their support obligation annually using the Guidelines. But despite their best-laid plans, their agreement went awry. Its terms are silent about which version of the Guidelines applies. As required by law, this Court has reviewed and amended the Guidelines four times in the last 24 years—most recently in 2010, the year after Mother and Father's agreement was finalized. And the 2010 changes significantly increased support obligations for high-income parents like Father.

We therefore face a question of contract interpretation: Does the Agreement incorporate the version of the Guidelines in effect at the time the Agreement was made, or the one in effect for each particular year's income? The trial court interpreted the Agreement as incorporating the version that applied to a particular year's income, and we agree. Since the Guidelines are regularly amended to fit changing economic conditions, we hold that this Agreement anticipates and incorporates those future changes, because it does not specify otherwise.

Turner v. Turner, 983 NE2d 643 (Ind App 2/28/2013) The amended child support statute, Ind. Code § 31-16-6-6, trumps language in a dissolution decree and PSA providing that father was obligated to pay child support until son reached the age of twenty-one.