

# Child-Support Cap Would Serve Parents, Judicial System

By Fred Silberberg

California is a state where rags to riches stories are not uncommon: It is a place where people often come to seek fame and fortune, and we certainly have more than our fair share of millionaires and billionaires.

Notwithstanding their fantastic wealth, these people often have the same problems as common folk, including difficulties maintaining marriages. In fact, they may have more difficulty in that department than the average Californian. Nonetheless, Sacramento, our capital seemed no more than a sleepy little hamlet before the Schwarzeneggers moved in. One would certainly think that by-looking at the body of law governing child support, especially when it comes to extraordinary high-earners.

The way the law stands right now, in the child support arena the sky seems to be the limit, and it will remain such until our Legislature realizes that it just isn't reasonable to assume that a toddler's economic needs can exceed the gross national product of many developing nations.

In calculating child support, perhaps common sense should prevail, and we should put a cap on things, as they do in New York.

We do have a uniform child support guideline in this state. It was enacted several years ago to make the treatment of child support equitable from Eureka to

Imperial Beach. It does do that, provided you find more than one family with the same factors to be used in the calculation.

If the income amount, number of children, time-sharing percentages and tax deductions are the same for the family in Eureka as they are for the family in Imperial Beach, then the amount of support to be paid also will be the same. Realistically, that rarely happens. It is more likely to happen if the parents in both families are wage earners, but if they are not, then it is almost certain that the results will be disparate.

The Legislature attempted to address the fact that increased income, at a certain point, shouldn't mean increased child support. In fact, in the case of an extraordinarily high earner, the court is not obligated to follow the child-support guideline as it is in every other case.

What constitutes "extraordinarily high" isn't clear; the guideline does not spell that out. What is spelled out, and what has never been corrected by means of legislative fiat, is the fact that case law allows people to request exorbitant amounts of child support simply because someone has sufficient income to pay it.

This loophole of sorts acts as an incentive to litigation, because people know there's a good possibility that going to court could be more lucrative than winning the state lottery. After all, for those of you who never took Family Law 101, unlike spousal support, child support is nontaxable income.

Cases in which people have tried to use this loophole hit the news every once in awhile. Two years ago, Lisa Kirkorian sought \$320,000 per month for her 3-year-old child fathered by Kirk Kirkorian. This past year, Diane Richie

sought nearly the same amount in combined child and spousal support from her estranged husband, singer Lionel Richie.

A reading of the cases decided by the appeal courts make it clear that the claims made by these women can be legally supportable. While, in the Kirkorian case, Lisa did not get the amount of child support she sought, the courtroom handling her matter was tied up for months disposing of all of the evidentiary objections and pretrial proceedings placed before it.

Although that case may have been the pinnacle of wastefulness of judicial resources, other cases before it also took up significant amounts of judicial time with arguments over extraordinarily ridiculous child-support claims.

Raising a child clearly can be inexpensive undertaking, but it defies logic to assume that anyone needs tens of thousands of dollars a month to raise a child, at least if that child is healthy. Still, our trial courts and our appellate courts hear these requests fairly regularly. And they will continue to do so until the Legislature takes action.

We could, however, borrow a rather logical and simple solution implemented elsewhere. In the state of New York, for example, child support has a legislatively mandated cap of \$80,000 per year, excepting very limited situations. Certainly, one can raise a child comfortably on that amount, especially if the money is used for the child, not for the custodial parent. A guideline formula applies, but once the cap is reached, there is no basis to go further.

The application of such a cap accomplishes numerous goals. It puts an end to overly zealous litigation like that exhibited in the Kirkorian case. If Lisa and her child lived in New York, she never would

have been able to tie up the court system so long.

Such a cap also promotes the supposed California public policy of uniform treatment of children in child-support cases. With a cap, one can be assured that, absent a private agreement by the parents, no child in the state will receive more than the capped amount per year in child support.

A cap also makes a custodial parent more responsible for himself or herself. After all, if the limitation on support is \$80,000 per year, it's less likely the money will be used primarily for the parent, not for the child. Considering the fact that our child support laws do not require the recipient to account for what he or she spends on the child, it is important at least to give the parent who receives support an incentive to be fiscally responsible.

The knowledge that such a cap exists also might promote stability in relationships. After all, it is a lot less enticing to leave a relationship, or to risk having a child from a reckless one-night stand, if there is no payday associated with a child-support-dispute.

The enactment of a child-support cap in California is a concept whose time has come. In this era of over-expanding litigation, it not only will serve the public policy goals of California in curtailing such litigation but also will send a message that parental responsibility applies to finances. 'swell.

After all, for \$80,000 per year, you can buy an awful lot of Pampers.

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