

Child support findings and child support order

1.1 Fla. Stat. §61.29(1) provides: **“Each parent has a fundamental obligation to support his or her minor or legally dependent child.”**

1.2 Child support calculation The court’s child support calculation is attached as Exhibit A. As required by §61.30, the calculation is based on the following findings of fact:

- (1) the child spending XX days each year, or XX% of the year, with the SSS and the balance of the year with the PPP;
- (2) \$XXX gross income per month for the mother;
- (3) \$XXX gross income per month for the father;
- (4) with the father paying \$XX for his health insurance per month;
- (5) the mother paying \$XX for her health insurance per month;
- (6) the child’s health insurance costing \$XX per month;
- (7) being paid by the [PPP or SSS];
- (8) the parties have a reasonable employment day care expense of \$XX;
- (9) the parent with whom the child lives most of the time under the time sharing schedule ordered qualifying for the dependent’s exemption for the child [and qualifying for the Earned Income Tax Credit];
- (10) the “net income” of each party as determined by §61.30(3), obtained by subtracting allowable deductions from gross income. Allowable deductions include:
  - (a) Federal, state and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
    1. The actual filing status of the mother is: XXXX. The allowable dependents of the mother is: N.
    2. The actual filing status of the father is: XXXX The allowable dependents of the father is: N.
    3. The income tax liabilities of the parties is shown on Exhibit A.
      - (b) Federal insurance contributions or self employment tax is shown on Exhibit A.
      - (c) Mandatory union dues.
      - (d) Mandatory retirement payments.
      - (e) Health insurance payments, excluding payments for coverage of the minor child.
      - (f) Court-ordered support for other children which is actually paid.
      - (g) Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

Resulting in net monthly income of \$XXX for the mother and \$XXX for the father;

all of which the court hereby finds and orders.

1.3 Dependent's exemption order

(1) Regarding the dependent's exemption, at this time the court finds that under the attached time-sharing schedule the child resides with the PPP for XXX days out of the year and with the SSS the balance of the year, so the child is with the QQQ most of the days out of each calendar year.

(2) Therefore, under the Internal Revenue Code, the QQQ is entitled to the dependent's exemption for the child on the federal income tax return.

(3) The court orders that for any calendar year after this date, the parent or other person with whom the child stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent's exemption for the child on the federal income tax return for that year, regardless of what any time-sharing order in this case may say about where the child is ordered to live.

(4) Of course, for any calendar year, the parent or person entitled to the exemption under this order may sign and deliver to the other parent the required I.R.S. form to allow the other parent to claim the exemption. In other words, as allowed by the Internal Revenue Code, the parent or person entitled to the exemption may allow the other parent to claim it if that is what they agree to do for any calendar year. However, if there is no such I.R.S. form signed and delivered by the parent or person entitled to the exemption under this order for any calendar year then the parent or other person with whom the child stayed at least 183 days out of the calendar year is the parent or person who is entitled to the dependent's exemption for the child on the federal income tax return for that year, as ordered above.

1.4 Calculation of child's nights during the year with the SSS

	# overnights per yr.
(1) 3 overnights every other weekend, Thursday to Sunday, 3 x 26 =	78.00
(2) 1 overnight every other week, Wednesday night, 1 x 26 =	26.00
(3) 2 weeks in the summer =	14.00
(4) 16 nights of Winter break, alternating, 1/2 with SSS =	8.00
(5) 5 nights of Spring break, alternating, 1/2 with SSS =	2.50
(6) Xmas eve, alternating	0.50
(7) Labor Day, 4 <sup>th</sup> , & Memorial Day, alternating	2.00
(8) <u>Less</u> duplications:	
(A) Four weeks in summer, mother and father	
1 weekends =	(2.00)
(B) 16 nights of Winter break, 3 weekends,	
1 weekend =	(2.00)

Total nights per year with SSS:	127.00
Percentage of nights each year with SSS:	34.79%

1.5 Monthly current minimum child support amount Therefore, as shown on Exhibit A attached, the monthly amount of the current minimum child support due from the SSS to the PPP is \$XXX, plus a collection fee of \$5.25 or 4% with each payment but not less than \$1.25, whichever is less.

#### 1.6 Retroactive child support

(A) [Pursuant to §61.30(17) the court finds this is an initial determination of child support and that the court has the discretion to order that child support was owed since DDD, which is the first day of the calendar month following the date that the parents did not reside together in the same household that is 24 months or less before the filing of the petition.]

[The court orders that child support was payable from that date, DDD, because there is no competent, substantial evidence that justifies the nonpayment of child support since that date.]

[OR: The court finds (facts justifying the nonpayment of child support beginning DDD) and therefore orders support was owed since Alt DDD.]

[OR: The court finds that this is not an initial determination of child support and that the child support ordered was payable from the filing date of the supplemental petition, which was filed on DDD. ]

[OR: The court finds (facts justifying the nonpayment of child support beginning DDD) and therefore orders support was owed since Alt DDD.]

[The court finds that the child support currently owed under the attached calculation Exhibit A is the amount that was owed monthly since DDD.]

[OR: The court finds that the child support owed on DDD (or at other times since initial petition or supplemental petition was filed) is \$XXX, based on the following findings of fact: (Here make findings for a child support calculation different from Exhibit A for time periods since DDD when any variable in the calculation was different and attach additional calculations as Exhibits B, C, etc.)]

**(B) Retroactive child support is not a delinquency; it is not an arrearage.** *Dept. of Rev. v. Cessford*, 100 So.3d 1199 (Fla. 2d DCA 2012).

(C) “[R]etroactivity is the rule rather than the exception. *See Nierenberg v. Nierenberg*, 758 So.2d 1179, 1180 (Fla. 4th DCA 2000). Although the award of retroactive child support is discretionary, it is an abuse of discretion not to make the award retroactive where the need for the support and the ability of the parent to pay exists at the time the petition for modification is filed. *See Butler v. Brewster*, 629 So.2d 1092, 1093 (Fla. 4th DCA 1994); *Anderson v. Anderson*, 609 So.2d 87, 89 (Fla. 1st DCA 1992); *see also Young v. Young*, 745 So.2d 1074, 1076-77 (Fla. 4th DCA 1999).” *Levi v. Levi*, 780 So.2d 261, 263 (Fla. 3d DCA 2001).

(D) Prejudgment interest cannot be ordered on retroactive child support requested by the former husband. *See, Penalver v. Columbo*, 810 So.2d 563 at FN1 (Fla. 2d DCA 2002); *Harris v.*

*McKinney*, 20 So.3d 400 (Fla. 2d DCA 2009). [ **but post judgment interest at the rate allowed by law for judgments must be ordered. It is so ordered.** ]

(E) Retroactive Child Support Order The total amount of the retroactive child support is \$XX as of the date of this order, which is the number of months since the support was due under the retroactive order above, XX, times the monthly amount of child support, \$XX, less child support payments paid in that time, \$XX.

The retroactive shall be paid at the rate of \$XX per month, which amount is included in the sum paid below.

1.7 [Child Support Arrearage] The total amount of the arrearage is reflected in the case history for this case maintained by the depository [or \$XX as of the date of this order, which is the number of months that the support was unpaid under the prior order, XX, times the monthly amount of child support, \$XX, less child support payments paid in that time, \$XX.]

The arrearage shall be paid at the rate of \$XX per month, which amount is included in the sum paid below.]

1.8 Current Support and Retroactive Amount Per Month Therefore, the SSS shall pay to the PPP the total of:

(1) current child support per month, \$XXX;

(2) an retroactive payment per month, \$XX until the retroactive is paid in full and when it is paid, then this retroactive payment stops; and

[(3) an arrearage payment, ...]

(3) collection fee of \$5.25 or 4% with each payment but not less than \$1.25, whichever is less, if required by law.

**All payments shall be paid to the Department of Revenue in Tallahassee, as provided below.**

The court hereby reserves jurisdiction to modify the interval for which support is payable to weekly, biweekly, bimonthly or any other interval at any time hereafter upon motion by either party or the court's own motion.

1.9 First Payment Due Date The first payment of child support is due DDD and on a like day of each month thereafter.

1.10 Termination of child support; schedule of the amount of child support Pursuant to §61.13(1)(a)1., assuming that no supplemental petition alleging a substantial change in circumstances is filed and taken to trial after this date or that no agreement between the parties is reached modifying the child support after this date, the child support ordered here shall terminate on the 18<sup>th</sup> birthday of CC1, so the last support payment under this order is due on DDD, subject to proceedings under §743.07(2) or §61.13(1)(a)2., as provided below.

The court makes no finding that §743.07(2) or §61.13(1)(a)2. applies in this case because there was no competent, substantial evidence in the record that this statute will apply to this child

as the child turns 18 years old and there is no agreement between the parties that it will apply. This finding is without prejudice to either party to have the court determine whether this statute does apply at any time hereafter by a motion. Therefore, the court reserves jurisdiction over this child support order in order to determine whether this statute applies to the child.

1.11 Income Deduction Order As required by F.S. §61.1301, a separate Income Deduction Order ("IDO") shall be signed by the judge assigned to this case that directs the payor's employer and any future employer to deduct the child support due under this order from any income due to the payor and to forward it to the depository, the "Florida Support Disbursement Unit." The form of the IDO must comply with the form required by the United States Office of Management and Budget. That agency calls an "Income Deduction Order" an "Income Withholding Order" or IWO, but either name refers to the same thing: an order to take the child support out of the payor's pay to the extent allowed by law. The IDO or IWO form shall be prepared by the payee or the payor and sent to the undersigned judge for signing and filing. *The undersigned judge will not prepare the form of IDO or IWO.* Delivering a copy of the IDO or IWO to the payor's employer is the responsibility of the payee and the payor. The court hereby orders the payor to give a copy of the IDO or IWO to his or her employer immediately upon receiving a copy of it, and if the payor does not do so then the payee must give a copy of it to the payor's employer. *It is not the responsibility of the undersigned judge to find the payor's employer from time to time and deliver a copy of the IDO or IWO to that employer.*

1.12 Place of Payment **Child support shall be paid by check or money order payable to and sent to the "Florida Support Disbursement Unit", P.O. Box 8500, Tallahassee, FL 32314-8500. The payor must write on each check (1) the case number of this case and also the words (2) "Lee County case".**

1.13 Addresses and Social Security numbers As required by §61.13(8)(a), F.S., within 30 days of this order both parties are ordered to write to the "State Case Registry", P.O. Box 8500, Tallahassee, FL 32314-8500 and advise that agency of this Case Number in Lee County, Florida, and their current names, addresses, social security numbers, telephone numbers, driver's license numbers, and their employer's name, address, and telephone number, as these presently exist and as they change in the future. A copy of any letter with that information sent to the "State Case Registry" must also be delivered or mailed to the Clerk of the Court, Lee County, Florida, 1700 Monroe Street, Fort Myers, FL 33901.

1.14. Health Insurance

(A) Health Insurance The court finds the health insurance the XXX has on the child is reasonable and affordable to the parties. This coverage shall not be canceled and shall be maintained on the child as long as possible or until the parties agree otherwise. The XXX shall promptly provide the YYY with cards or other proof of the coverage when these are made available by the insurer and when requested by the YYY or any medical provider of the child.

(B) Uncovered Medical Bills The parties shall be responsible for any uncovered reasonable and necessary medical bills of the child incurred since the separation date in an amount equal to the ratio of their net incomes reflected on Exhibit "A" attached. §61.13(1)(b); *Forrest v. Ron*, 821 So.2d 1163 (Fla. 3d DCA 2002); *Morrow v. Frommer*, 913 So.2d 1195 (Fla. 4<sup>th</sup> DCA 2005); *Salazar v. Salazar*, 976 So.2d 1155 (Fla. 4<sup>th</sup> DCA 2008).

**The ratio of their net incomes is: Father XX% and Mother XX%.**

"Medical bills" includes counseling, psychological, psychiatric, orthodontic, dental, optical, prescription, physician, hospital and other medical expenses. If either parent pays for any such treatment or bill, they shall be reimbursed for any amount paid beyond their share of it by the other parent. They shall be reimbursed only for treatments that are reasonable and necessary.

(C) Prompt Request and Prompt Payment If either parent incurs or has incurred a medical bill on the child, he or she shall send a copy of it to the other parent with a cover note asking for payment of the other parent's share of the bill. He or she must keep a copy of the bill and the note asking for payment. Upon receipt of such correspondence, the parent receiving it shall promptly reimburse his or her share of the bill to the other parent, or he or she shall promptly send a written objection or explanation to the other parent explaining why the payment is not being made.

(D) Record Keeping During the minority of the child, each parent must maintain a chronological, serial list of all uncovered medical bills they incur until the child is 18, if he or she expects to be reimbursed for such medical bills, along with copies of each bill on the list, which bill copies shall be attached to the list with a staple in the same order as the items on the list. The list of bills shall be in chronological order and must be serially numbered on the list, that is, "1", "2", "3", and so on until the child is 18. The same number must be written on each copy of the bills attached to the list so that each copy of an attached bill matches the correct item on the list.

Each item on the list shall (1) state the name of the medical provider, (2) the date the treatment happened, (3) what the bill was for, (4) the amount of the bill, and (5) whether it has been paid in full or in part.

The parents shall reimburse the other only by check or money order and shall keep all cancelled checks or money order receipts.

(E) Enforcement; Mediation If either parent hereafter seeks enforcement of this order for reimbursement, they shall first seek mediation with a mediator provided by court administration. They shall bring three copies of the list and each numbered bill for which they seek reimbursement to the mediation for use in the mediation. If mediation is unsuccessful and either parent thereafter files a motion to enforce reimbursement of medical bills on the child, he or she must bring three copies of list and each numbered bill for which they seek reimbursement to the hearing on the motion. The parent claiming payment for a disputed item must bring three copies of his or her proof of payment, such as cancelled checks, money order receipts, or receipts from insurance companies for payments, to mediation and any hearing.