REFERENCE TITLE: child support; supreme court; factors

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1246

Introduced by
Senator Gray

AN ACT

AMENDING SECTION 25-320, ARIZONA REVISED STATUTES; RELATING TO CHILD SUPPORT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 25-320, Arizona Revised Statutes, is amended to read:

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

A. In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct.

B. If child support has not been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount that the parents shall pay for the past support of the child and the manner in which payment shall be paid, taking into account any amount of temporary or voluntary support that has been paid. Retroactive child support is enforceable in any manner provided by law.

C. If the parties lived apart before the date of the filing for dissolution of marriage, legal separation, maintenance or child support and if child support has not been ordered by a child support order, the court may order child support retroactively to the date of separation, but not more than three years before the date of the filing for dissolution of marriage, legal separation, maintenance or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the diligence with which service of process was attempted on the obligor spouse or was frustrated by the obligor spouse. If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid.

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, WHICH IT SHALL CONSIDER COMPREHENSIVELY, including:

1. The financial resources and needs of the child.

2. The financial resources and needs of the custodial parent.

3. The standard of living the child would have enjoyed ~~had the marriage not been dissolved~~ IF THE CHILD LIVED IN AN INTACT HOME WITH BOTH PARENTS TO THE EXTENT IT IS ECONOMICALLY FEASIBLE CONSIDERING THE RESOURCES OF EACH PARENT AND EACH PARENT'S NEED TO MAINTAIN A HOME AND TO PROVIDE SUPPORT FOR THE CHILD WHEN THE CHILD IS WITH THAT PARENT.

4. The physical and emotional condition of the child, and the child's educational needs.

5. The financial resources and needs of the noncustodial parent.

6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.

7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

8. The duration of parenting time and related expenses.

E. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.

2. The child is severely mentally or physically disabled as demonstrated by the fact that the child is unable to live independently and be self-supporting.

3. The child's disability began before the child reached the age of majority.

F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection E of this section. Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.

G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

H. Subsection G of this section does not apply to payments made by means of an assignment.

I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.

J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order to one of the parents and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance according to the child support guidelines. Each parent shall provide information to the court regarding the availability of medical insurance for the child that is accessible and available at a reasonable cost. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the child support enforcement agency in the department of economic security if medical insurance has been obtained or if the child is no longer covered under an insurance plan.

K. If the court finds that neither parent has the ability to obtain medical insurance for the child that is accessible and available at a reasonable cost, the court shall:

1. In a title IV-D case, in accordance with established title IV-D criteria, establish a reasonable monthly cash medical support order to be paid by the obligor. If medical assistance is being provided to a child under title XIX of the social security act, cash medical support is assigned to the state pursuant to section 46-407. On verification that the obligor has obtained private insurance, the cash medical support order terminates by operation of law on the first day of the month after the policy's effective date or on the date the court, or the department in a title IV-D case, is notified that insurance has been obtained, whichever is later. If the private insurance terminates, the cash medical support order automatically resumes by operation of law on the first day of the month following the termination date of the policy.

2. Order one parent to provide medical insurance when it becomes accessible and available at a reasonable cost.

3. Order that medical costs in excess of the cash medical support amount shall be paid by each parent according to the percentage assigned for payment of uninsured costs.

L. In a title IV-D case, if the court orders the noncustodial parent to obtain medical insurance the court shall also set an alternative cash medical support order to be paid by that parent if the child is not covered under an insurance plan within ninety days after entry of the order or if the

child is no longer covered by insurance. The court shall not order the custodial parent to pay cash medical support.

M. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

N. The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal adult minimum wage, whichever is higher. This presumption does not apply to noncustodial parents who are under ~~the age of~~ eighteen YEARS OF AGE and who are attending high school.

O. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

Q. THE SUPREME COURT MAY NOT USE THE FACTORS PRESCRIBED PURSUANT TO SUBSECTION D OF THIS SECTION WHEN MAKING CHILD SUPPORT ORDERS.

~~Q.~~ R. For the purposes of this section:

1. "Accessible" means that insurance is available in the geographic region where the child resides.

2. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.

3. "Date of separation" means the date the married parents ceased to cohabit.

4. "Reasonable cost" means an amount that does not exceed the higher of five per cent of the gross income of the obligated parent or an income-based numeric standard that is prescribed in the child support guidelines.

5. "Support" has the same meaning prescribed in section 25-500.

6. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.