

Split and Shared Custody Agreements

To Reflect Modern Society, the CSSA Needs Adjustment

Part Three of a Three-Part Article

By Jerome A. Wisselman and Lloyd C. Rosen

As we discussed in the first two installments of this article, the uniform application of the Child Support Standards Act (CSSA) to all families' situations can have some apparently unintended consequences, especially now that many fathers are taking a more active role in their children's lives. Because of changing societal norms, it is becoming ever more clear that the way the CSSA delegates financial responsibility to parents in shared custody arrangements — those in which one is deemed the "custodial parent" and the other the "non-custodial parent" — is not always logical or equitable. In extreme cases, it can even compel non-custodial parents to spend less time with their children than they would like to, in order not to incur greater child support obligations.

Does the CSSA generate better results when parents split custody?

SPLIT CUSTODY

The concept of "split custody" presents us with a different challenge. Here, we have a situation where there are multiple children shared by the parties. Rather than all of the children residing primarily with one of the parents, the children are divided between the two households, with each party being designated the custodial parent of at least one child. The child support statute provides no explicit guidance on how this situation should be handled. Its language is, again, silent with regard to this arrangement. The CSSA, more generically,

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differentiates only between the "custodial" and the "noncustodial" parent, and provides for the payment of support from the noncustodial parent to the custodial parent. It does not explicitly address a situation where both parents are at once custodial and noncustodial parents.

The courts have simply applied the CSSA to both parents with regard to each child in the other's custody and offset one's obligation against the other's, directing payment of only the net amount. See, e.g., *Matter of Scomello v. Scomello*, 260 AD2d 483 (2d Dept. 1999); *Riseley v. Riseley*, 208 AD2d 132 (3rd Dept. 1995).

Let's consider a hypothetical situation in which the parties have three children together. Two of the children reside primarily with the mother, who earns \$25,000 per year. One child lives primarily with the father, who earns \$100,000 per year. The couple's combined adjusted gross income is approximately \$115,438 per year, after the required CSSA deductions from their combined gross of \$125,000 per year. Here is what would happen in their situation.

1. The parties' combined basic support obligation for the one child residing with the father is approximately \$1,635 per month (17% [applicable percentage for one child] × \$115,438 [combined adjusted annual income] ÷ 12 [months per year]);
2. The mother's support obligation pursuant to CSSA for one child (her pro rata share of the basic support obligation for one child) in the father's custody is approximately \$327 per month (20% of \$1,635 per month);
3. The parties' combined basic support obligation for the two children residing with the mother is approximately \$2,405 per month (25% [applicable percentage for one child] × \$115,438 [combined adjusted annual income] ÷ 12 [months per year]);
4. The father's support obligation pursuant to CSSA for two children (his pro rata share of

the basic support obligation for two children) in the mother's custody is approximately \$1,924 per month (80% of \$2,405 per month); so

5. The father's obligation of \$1,924 is offset by the mother's \$327 obligation, resulting in the father being ordered to pay \$1,597 to the mother each month in child support.

In concept, this offset seems logical and easy, but it also results, mathematically, in a basic inconsistency with the CSSA formula. Pursuant to the CSSA, the parties' total basic child support obligation for the support of the three children is 29% of their combined adjusted gross income. However, because of this offset method, their combined obligation is being calculated at 42% (17% plus 25%) of their combined adjusted gross income. In the above illustration, using the offset method commonly employed by the courts, the parties are sharing a combined monthly support obligation of \$4,040 per month (paragraphs 1 and 3 above). If all three children were in the custody of one parent, they would instead be sharing a combined support obligation of approximately \$2,790 per month (29% [applicable percentage for three children] × \$115,438 [combined adjusted annual income] ÷ 12 [months per year]). The offset method of calculating support for the three children in this illustration results in a 45% increase in the parents' combined support obligation, without, necessarily, any increase in housing and other expenses for the children than would have otherwise occurred.

The simple solution would be to calculate the parties' respective support obligations for all three children and then to allocate that between the two households based on their pro rata income, and then offset the difference. In our illustration above, the mother's obligation for one child would thus be \$186 per month (29% [applicable percentage for three children] × \$115,438 [combined adjusted annual income] × 20% [pro rata share of combined

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income] \times 33.33% [for one of the three children] \div 12 [months per year], and father's would be \$1,488 per month (29% [applicable percentage for three children] \times \$115,438 \times 80% [pro rata share of combined income] \times 66.67% [two of the three children] \div 12 [months per year]), with a net result of father paying to mother the sum of \$1,302 per month in child support. This ensures that both parties have sufficient resources to maintain a household and meet the needs of the children in their respective custody rather than awarding to the mother a disproportionate share of the parties' combined basic child support obligation.

However, the court in *Buck v. Buck*, 195 AD2d 818 (3rd Dept. 1993), specifically held that pursuant to a strict reading of the CSSA, it would be improper to determine each parent's basic support obligation for all children, and then divide it by the number of children. The court instead declared that CSSA requires the child support obligation for each household to be calculated separately, using the three-step process outlined above, and then — if there is a finding that the result would be unjust or inequitable if the factors were applied — the court may deviate. This results in the same dilemma encountered in custody arrangements: The language of the statute does not specifically identify a split custody arrangement and only refers

to a "custodial" and a "noncustodial" parent. Therefore, the court considers itself bound to consider each parent as a custodial parent of the child in their residence, and the noncustodial parent for the child in the other's residence, notwithstanding that this formula results in a higher combined support obligation than that set forth in the statute.

CONCLUSION

With both shared and split custody arrangements, we propose that the legislature consider a modification of the language in the statute, with more specific direction to provide for the changing realities of our society with regard to custodial arrangements.

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