

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DOCKET NO. 2010-CA-00377

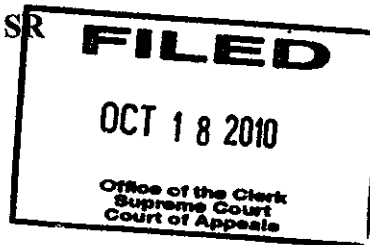
CORDELL K. KNIGHTEN, SR

APPELLANT

VS.

SHIMBERELY HOOPER

APPELLEE



**BRIEF OF APPELLANT
PAMPHLET (M.R.A.P. 28 (F))**

ORAL ARGUMENT IS NOT REQUESTED

**ON APPEAL FROM THE CHANCERY COURT OF
WASHINGTON COUNTY, MISSISSIPPI
HON. VICKI BARNES, PRESIDING**

PRESENTED BY:

**DERWIN B. GOVAN
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ATTORNEY FOR APPELLANT

§ 43-19-101. Child support award guidelines.

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Mississippi Statutes**Title 43. PUBLIC WELFARE****Chapter 19. Support of Natural Children****CHILD SUPPORT AWARD GUIDELINES***Current through 2009 Legislative Session***§ 43-19-101. Child support award guidelines**

(1) The following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number Of Children Percentage Of Adjusted Gross Income

Due Support That Should Be Awarded For Support

1 14%

2 20%

3 22%

4 24%

5 or more 26%

(2) The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

(3) The amount of "adjusted gross income" as that term is used in subsection (1) of this section shall be calculated as follows:

(a) Determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self employment; income

from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an individual retirement account (IRA); any other payments made by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse;

(b) Subtract the following legally mandated deductions:

(i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

(ii) Social security contributions;

(iii) Retirement and disability contributions except any voluntary retirement and disability contributions;

(c) If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support;

(d) If the absent parent is also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children;

(e) Compute the total annual amount of adjusted gross income based on paragraphs (a) through (d), then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of paragraphs (a) through (e), multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsection (1) to arrive at the amount of the monthly child support award.

(4) In cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars (\$50,000.00) or less than Five Thousand Dollars (\$5,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

(5) The Department of Human Services shall review the appropriateness of these guidelines beginning January 1, 1994, and every four (4) years thereafter and report its findings to the Legislature no later than the first day of the regular legislative session of that year. The Legislature shall thereafter amend these guidelines when it finds that amendment is necessary to ensure that equitable support is being awarded in all cases involving the support of minor children.

(6) All orders involving support of minor children, as a matter of law, shall include reasonable medical support. Notice to the noncustodial parent's employer that medical support has been ordered shall be on a form as prescribed by the Department of Human Services. In any case in which the support of any child is involved, the court shall make the following findings either on the record or in the judgment:

(a) The availability to all parties of health insurance coverage for the child(ren);

(b) The cost of health insurance coverage to all parties.

The court shall then make appropriate provisions in the judgment for the provision of health insurance coverage for the child(ren) in the manner that is in the best interests of the child(ren). If the court requires the custodial parent to obtain the coverage then its cost shall be taken into account in establishing the child support award. If the court determines that health insurance coverage is not available to any party or that it is not available to either party at a cost that is reasonable as compared to the income of the parties, then the court shall make specific findings as to such either on the record or in the judgment. In that event, the court shall make appropriate provisions in the judgment for the payment of medical expenses of the child(ren) in the absence of health insurance coverage.

Note:

Sources: *Laws, 1989, ch. 439, § 1; Laws, 1990, ch. 543, § 2; Laws, 2000, ch. 530, § 3; Laws, 2004, ch. 582, § 1, eff from and after July 1, 2004.*

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§ 43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

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Mississippi Statutes

Title 43. PUBLIC WELFARE

Chapter 19. Support of Natural Children

CHILD SUPPORT AWARD GUIDELINES

Current through 2009 Legislative Session

§ 43-19-103. Criteria for overcoming presumption that guidelines are appropriate

The rebuttable presumption as to the justness or appropriateness of an award or modification of a child support award in this state, based upon the guidelines established by Section 43-19-101, may be overcome by a judicial or administrative body awarding or modifying the child support award by making a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined according to the following criteria:

(a) Extraordinary medical, psychological, educational or dental expenses.

(b) Independent income of the child.

(c) The payment of both child support and spousal support to the obligee.

(d) Seasonal variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.

(h) Total available assets of the obligee, obligor and the child.

(i) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.

Note:

Sources: *Laws, 1989, ch. 439, § 2, eff from and after October 1, 1989.*

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