

Survey of Family Law Cases 2004-2013

2008 Family Law Survey

CHILD SUPPORT DETERMINATION/ MODIFICATION

Father appeals from permanent orders awarding child support to Mother in In re the Marriage of Dunkle and Valentine, 194 P.3d 462 (Colo. App. 2008). The parties had a child in May 2003. The court entered a child support order in December 2003 that Father was to pay child support to Mother in the amount of \$625 per month. The parties later married in September 2005, but divorced in December 2006. After the December 2006 hearing, the court ordered Father to pay child support in the amount of \$906 per month.

Father contends that Mother's **overtime pay** should have been included in her gross income for the purposes of the child support calculation. Pursuant to C.R.S. §14-10-115(5)(a)(I)(Z), overtime pay is only includable in gross income "if the overtime is required by the employer as a condition of employment." Father argued that the law of the case should have applied since Mother's income did include overtime pay when child support was first calculated in 2003. But the law of the case only applies to conclusions of law, not factual determinations. Whether overtime pay is includable in gross income is a factual determination. Moreover, the previous child support order was null and void after the parties married in 2005. In this case, Mother's employer did not require her to work overtime; if she chose not to work overtime, another nurse assistant would be asked to work; thus Mother's overtime was not includable in her gross income.

In addition to the couple's child, Mother had one foster child and five adopted children, for which Mother received a foster care payment of \$1200 per month and adoption subsidies of \$5000 per month. Father argued that these payments and subsidies should be included in Mother's gross income. In accordance with In re the Marriage of Quintana, 30 P.3d 870 (Colo. App. 2001), the court held that **foster care payments and adoption subsidies** are income to the child on whose behalf the payments are received, and not includable in the gross income of the parent.

Father also contends that the court should have applied C.R.S. §14-10-122 to modify the existing child support obligation, as the court lacked subject matter jurisdiction to calculate child support in light of the court's previous support order. Despite Father's argument, the court found that the trial court had subject matter jurisdiction pursuant to C.R.S. §14-10-115(2) to determine child support upon dissolution of the parties' marriage. Also, the court found that Father's argument under subject matter jurisdiction was actually a procedural argument that was waived when Father failed to raise the issue before the trial court.