

Survey of Family Law Cases 2004-2013

2011 Family Law Survey

CHILD SUPPORT ENFORCEMENT

Husband appealed a judgment awarding wife child support arrearages, interest, and attorney fees in In re the Marriage of Tognoni, No. 10 CA 1138 (Colo. App. November 11, 2011). Wife cross-appealed the attorney fees amount. The arrearages and interest judgment were affirmed, the attorney fees award was vacated, and the case was remanded for further proceedings.

Wife moved for summary judgment claiming that husband owed her \$399,414.24 in **arrearages and interest on unpaid child support**. Husband objected and requested a hearing. In reply, wife requested attorney fees under C.R.S. §13-17-102(4), contending that husband's position lacked substantial justification. Without conducting a hearing, the trial court entered judgment against husband for \$399,400, and awarded wife one-half her attorney fees. After the court denied husband relief under C.R.C.P. 59, husband appealed, Wife cross-appealed.

Husband first contended that the trial court erred by entering summary judgment on the arrearages and interest. The arrearages amounts determined by the parties differed by \$14.24, assuming a 12% interest rate compounded monthly as provided under C.R.S. §14-14-106. The trial court used husband's expert's calculation in entering judgment. Husband cannot raise on appeal an error which he himself invited. Thus, the Court of Appeals found that there was no dispute of material facts, and summary judgment was appropriate.

Husband also contended that the trial court erred in finding that it lacked discretion under C.R.S. §14-14-106 to determine the appropriate interest rate and compounding period to apply to the child support arrearages. The Court of Appeals disagreed and held that the right to interest, absent an agreement to pay it, is determined by statute. A court has no discretion to modify the interest rate or determine the compounding period, although such interest may be waived by the judgment creditor.

Husband further contended that the trial court abused its discretion by awarding wife one-half her attorney fees without providing him an opportunity to respond to the allegation that his position lacked substantial justification. When deciding whether to award fees under the statute, a court must consider the relevant factors in C.R.S. §13-17-103(1) and make findings explaining how those factors support concluding that the offending party engaged in improper conduct justifying a fee award. Properly considering these factors requires that the trial court hold an evidentiary hearing when one is requested by the party against whom fees are sought. Because the trial court granted summary judgment without a hearing, husband had no opportunity to respond to wife's allegation that his position lacked substantial justification. Thus, the court vacated Wife's award of attorney's fees.