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Should the Support Guidelines Revert to Reasonable Needs?

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A bill was entered into the Pennsylvania legislature in 2017, House Bill 1215, which would introduce into the support and alimony pendente lite (APL) guidelines the concept of reasonable needs and exceptions. The current guidelines, promulgated by the state, require that the guidelines “place primary emphasis on the net incomes and earning capacities of the parties.”

Pennsylvania guidelines are based on a model of net income. Net income is gross income less actual taxes paid. Does it include rental income, for example? After payment of legitimate expenses on the income? Is that an issue for determination in support or does that get deferred to equitable distribution? Should it?

The fact is that support guidelines are basically mandated by federal law, based on the Child Support Enforcement Amendments of 1984, 42 USCA 667, which required that all states adopt child support guidelines by Oct. 1, 1987. Pennsylvania

Guidelines were ultimately established by the Supreme Court of Pennsylvania and became effective on Dec. 20, 1989. They are reviewed every four years and, often, the numbers change.

At the time that the guidelines were promulgated, many of us practicing were concerned about how this would impact our practices due to the fact we thought that there would be nothing to do since the guidelines would do it all. Nothing could have been further from the truth. As a practical matter, the focus shifted from arguing over what is “reasonable” as to the needs of parties, to what numbers to plug into the guidelines calculations. Reasonable needs are in the eyes of the beholder.

The Pennsylvania Support Guidelines are derived from the income shares model which was created by the Child Support Guidelines Project of the National Center for Safe Courts. They are “based upon the assumption that separated parents should provide the same proportion of their income to meet the needs of their children, that they would have made available if



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they were living together and that parties with similar incomes have similar support needs,” see “West Pennsylvania Practice” by Joanne Wilder.

How different, then, is the practice before and after the guidelines? Arguing a spousal support case or alimony pendente lite case could take hours, days and even weeks to discuss reasonable needs and exceptions. (By the way, there are legislative exceptions already in the guidelines) Arguing what was reasonable within a marriage can be a costly and lengthy

proceeding. The courts were held up for many, many months because of lengthy hearings on what is reasonable and necessary during the divorce process. Some families saved a lot of money during their marriage and spent little despite the fact that they had the financial ability to spend more on their families. Others focused on special needs for their children such as ballet lessons or snowboarding lessons. (Snowboarding was the basis for the claim leading to this proposed legislation since one man claimed he did not have sufficient money to support his wife because he had to prepare his son to be a champion snowboarder).

In other marriages, the parties spent all of their money on their families. Should the courts now look to see how and why the parties lived as they lived prior to litigation? Under the guidelines, the answer is, “no.” A frugal earner could not restrict his or her spouse’s expenditures once the parties separated since the guidelines came into play and the APL obligation is now set forth in the guidelines. Courtroom to courtroom, the rulings change based on the same facts if “what is a reasonable need,” is the issue. In some courts, a Judge might find a two week vacation at the shore reasonable while others would not. If nothing else, the guidelines certainly cleaned up the court schedule because the litigation was limited to how much each party made, rather than whether or not the obligation was reasonable in terms of the lifestyle that had been lived. There can be deviations from the guidelines amount; “reasonable needs” is not one of the deviation factors. APL

is 40% of the difference between the net incomes of the parties or 40 percent of the difference if there is a child support obligation.

The guidelines specifically overruled *Mascaro v. Mascaro*, which set forth procedure to determine what is reasonable. This is no longer the law and, frankly, should not be the law again.

The courts have the power to deviate from the guidelines based on specific factors. This is where lawyering comes in and, if there are reasons to deviate, they will be raised in the litigation. There was no requirement that the parties live on bare necessities and a return to the litigation over what is reasonable would take us back to the dark ages. If the family was living on 25 percent of the family income, is that reasonable to maintain that standard? That case has been litigated in many forms in Pennsylvania since the guidelines were adapted.

How does it help to return to a time where there were no guidelines (Assuming that we could do that in light of the federal statute)? The proposed legislation has so many exceptions that, effectively, the exceptions have swallowed the rule. Many paying spouses believe that they are paying too much and feel that if they could show that the guidelines were not reasonable and the amount paid to the spouse was not reasonable, they could be reducing their support obligation. That’s what this is all about. How to reduce what is paid. Payees often believe they are paid too little. Payors think it’s too much, despite the fact that APL is deductible to the payor. Should there be a difference between families with

young children as opposed to teenage children? Does it cost the same to raise an older teen as opposed to a toddler? Perhaps some parents think it is more important to provide extracurricular activities for the children than it is to pay a former spouse who stayed home to raise the children.

One of the arguments for getting past the guidelines is the fact that people living in two separate houses spend a lot more money than they do in one house. Is it fair to the paying spouse to pay a percentage of his or her income to a separate residence? The guidelines do not take that into consideration. •

Special to the Law Weekly Lynne Z. Gold-Bikin, partner at Weber Gallagher Simpson Stapleton Fires & Newby, is a veteran practitioner of family law who has appeared on major networks and been quoted in prominent newspapers and magazines discussing domestic issues.