

Child Support Case Update: ***In re the Marriage of Izzo* 2019 IL App (2d) 180623**

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Has your parenting schedule changed since you got divorced? Do you have more time with your child(ren) than you had before? Does your spouse now have less overnight parenting time than at the time your divorce was finalized? You may qualify for a modification in the court order for child support.

Child support is governed by Section 505 of the Illinois Marriage and Dissolution of Marriage Act. Section 505 of the Illinois Marriage and Dissolution of Marriage Act was amended to implement an income-sharing system for calculating child support. The amendment became effective July 1, 2017. Since that date, there have been a few appellate court cases that have provided some guidance regarding parties' attempts to use the new child support statute to modify previous child support court orders.

In order to modify a previous court order for child support, the requesting party must prove to the court that there has been a substantial change in circumstances since the entry of the last court order. The law requires that this substantial change in circumstances must be something other than the fact that the law itself has changed. If the requesting party proves that there has been a substantial change in circumstances, then the court must apply the statutory factors to determine the new child support amount under the new law.

The court *In re the Marriage of Izzo*, was presented with several facts on which the petitioning father relied in order to establish that there had been a substantial change in circumstances. However, the court focused on the single factor that father's overnight parenting time had increased from 15% to approximately 45%. The parties were married in 1988 and their divorce was finalized in 2008. The marital estate of the parties was significant and both parties received substantial assets at the time of the dissolution of marriage.

At the time that the parties were divorced, the parenting time awarded to father was 2 out of every 14 overnights with the youngest child of the parties. The parenting time with the older minor child was split equally between the parties. In 2013, the parties entered an agreement which modified the parenting time schedule. As the other children had emancipated, only one minor child remained. The new parenting schedule provided father with 6 out of every 14 overnights.

After father experienced some health issues and changes in his employment, he petitioned the court in 2017 to reduce his child support obligation. Both parties still owned substantial assets at that time. The mother in *In re the Marriage of Izzo*, argued that the change in the parenting time occurred several years before father filed his petition to modify the child support. She further argued that father had only decided to request a change in the child support now because the statute for calculation of child support had changed. The mother did not dispute that father had significantly more parenting time than he did at the time the parties were divorced.

The appellate court, in reversing the decision of the trial court, determined that the father's increased parenting time alone was enough to constitute a substantial change in circumstances. The appellate court noted that the law does not require that a substantial change in circumstances must be proximate to the petition to modify. Father had been exercising increased parenting time for years. Therefore, since there had been a significant change in the custodial arrangement of the parties, the court considered that to be a substantial change in circumstances requiring the redetermination of child support under the new statute. The court further explained that both parties have an obligation to support their minor child(ren) and child support orders are not meant to be a windfall to the receiving parent.

In re the Marriage of Izzo, focuses on a change in parenting time as a basis for proving a substantial change in circumstances. However, this is not the only factor the court can consider when alleging a substantial change in circumstances. In an upcoming newsletter we will discuss additional court cases that have discussed the issue of substantial change in circumstances for the purposes of modification to the child support statute.