

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 184
Judiciary

(Delegates Gordon and Simmons)

Family Law - Child Support - Counsel Fees

This bill specifies that in an action for custody, visitation rights, or dispute of a child support amount, any counsel fees incurred on behalf of a child must be added to the basic child support obligation. The fees shall be imposed against either or both parents as ordered by the court.

Fiscal Summary

State Effect: The bill's requirements could be handled within existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: In an action for child custody, visitation rights, or dispute of a child support amount, the court is authorized to appoint counsel to represent the minor child. This counsel is referred to as a "guardian *ad litem*" and may not represent any other party to the action. The fees for the guardian *ad litem* services may be imposed against either or both parents by the court.

The "basic child support obligation" is defined as the base amount due for child support based on the combined adjusted actual incomes of both parents. "Actual adjusted income" means the parents' income (salaries, wages, bonuses, commissions, dividends, pension income, and specified other types of funds), excluding preexisting child support

obligations actually paid, and in certain circumstances, alimony and maintenance actually paid. A schedule of child support obligations is set forth in the Family Law Article and is based on the “income shares” model. Under this model, the basic child support obligation is divided between parents in proportion to their adjusted actual incomes. In addition to the expenses that are understood to be part of the maintenance of a child, extraordinary medical expenses, school and transportation expenses, and work or job-search related child care expenses become part of the basic child support obligation when incurred.

Background: This bill arises out of the case *Miller v. Miller*, 142 Md. App. 239 (2002), which was handed down by the Maryland Court of Special Appeals on January 10, 2002. The parties were involved in a divorce dispute and one of the most contentious issues related to the divorce was the custody of the minor child. The circuit court appointed a guardian *ad litem* to protect the best interests of the child. The court ultimately entered an award of \$21,728.00 in attorney’s fees to the guardian *ad litem*, \$14,340.48 of which was to be paid by the husband. The guardian later petitioned the court to characterize the awarded counsel fees as child support, to facilitate his collection of the fees, which the court agreed to do.

The Court of Special Appeals characterized the principal issue as, “...whether legal fees accrued and owed to the guardian *ad litem* constitute child support or simply legal fees.” The court stated that a designation of legal fees as “child support” provides significant legal recourse not available for other generic debts. Failure to pay a child support obligation could subject the obligor to jail for contempt or garnishment of pension benefits, among other things. (In addition, child support obligations may not be dischargeable in bankruptcy.)

The Court of Special Appeals reversed the trial court, finding that the General Assembly did not intend for legal fees to be treated as child support, and that the characterization of legal fees as child support was therefore inconsistent with Maryland law.

This case was appealed to the Court of Appeals and a ruling was issued in November 2002. In the case *Goldberg v. Miller*, 371 Md. 591 (2002), the Court of Appeals again considered whether the circuit court possessed the authority to treat guardian *ad litem* fees as child support. The court stated that it found no evidence in legislative history that the General Assembly ever intended to treat guardian *ad litem* fees as child support. The court noted that when the General Assembly created the Family Law Article in 1984, the guardian *ad litem* provisions were placed under Title 1, not Title 12, which contains child support provisions. When the General Assembly developed child support guidelines, guardian *ad litem* fees were excluded from the calculus. Legislative history strongly

indicates that the General Assembly chose not to treat guardian *ad litem* fees as child support.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 626 of the 2002 session. HB 626 was referred to the Judiciary Committee, where it received an unfavorable report.

Cross File: None.

Information Source(s): Department of Human Resources, Office of the Public Defender, Department of Legislative Services

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