



BACKWATER CASES

Board-certified Fort Myers attorney and active Section member Rana Holz is our guest contributor this month. Rana posits the following:

1. WHO'S THE PAYOR???

Q: Can Parent A, who has more overnights with the child than Parent B, be required to pay child support to Parent B?

A: Yes, and this has been the law even before enactment of the gross-up method. *Clarke v. Clarke*, 619 So. 2d 1046 (Fla. 5th DCA 1993) held that in cases of shared parenting where there is a significant disparity in parental incomes, a higher-earning custodial parent may be ordered to pay child support to a lower-earning noncustodial parent. In *Jones v. Johnson*, 747 So. 2d 1066 (Fla. 5th DCA 2000), Johnson was the primary residential parent, but the timesharing was so generous that it constituted a “rotating custody” award. The Fifth District held it was error for the trial judge to require Jones (gross monthly income -- \$1,500.00) to pay Johnson (gross monthly income -- \$4,298.00) child support in view of the fact that Jones earns far less per month than Johnson and has the child an equal amount of the time. When time is factored into the equation, it would have been more appropriate to require Johnson to pay Jones child support.

2. FOOD FOR THOUGHT!!!

Are last year's changes to Chapter 61 as a result of Chapter 2008-61, Laws of Florida (i.e., the “parenting bill”) remedial? Consider the Fourth District's commentary about the application of the gross-up method in *Arze v. Sadough-Arze*, 789 So. 2d 1141 (Fla. 4th DCA 2001): “Although the petition for dissolution was filed before the amendment [to section 61.30] took effect, we consider the amendment to be remedial legislation that may be retroactively applied because it does not create new rights or liabilities, but instead furthers the remedy or confirms the rights already established by section 61.30 in 1987 when the guidelines were initially enacted.” 789 So. 2d at 1145.

Rana, thanks for these “morsels.” If you have an interesting “backwater case,” send it, along with a brief summary of how the case helped you, and we'll publish it in future editions of FAMSEG. Send your contributions to Jack Moring (jmoring@moringlaw.com).