

PDC

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

DERRY FAMILY DIVISION

DOCKET # 2000-M-0407

IN THE MATTER OF

JENNIFER JOHNSON AND DAVID JOHNSON

**MOTION FOR GUIDELINES CHILD SUPPORT ORDER  
MOTION TO HOLD CHILD SUPPORT OWING IN ABEYANCE**

NOW COMES David W. Johnson, Respondent in the above-captioned case, and respectfully moves this honorable Court for A PERMANENT CHANGE of the child support ORDER to REFLECT THE NEW HAMPSHIRE CHILD SUPPORT GUIDELINES:

In support of said MOTION, Respondent states the following:

1. The last child support ORDER, effective March 1, 2006, ordered the father to pay the mother \$400 in child support. Prior to that ORDER, the father was required to pay the mother varying amounts of child support for a period of years, despite the fact that for all but the first months or years after the separation and divorce, he had more custodial time with his daughter, Marissa.<sup>1</sup>

2. RSA 458-C:4 states, in relevant part:

II. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support. **A written finding or a specific finding by the presiding officer on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in RSA 458-C:5, shall be sufficient to rebut the presumption in such case.**

In addition, RSA 458-C:5 states, in relevant part:

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<sup>1</sup> Undersigned has heard several times in Court from Attorney Jonathan Ross that the mother was the primary custodian. This is incorrect. RSA 193:12 states: 193:12 Legal Residence Required. -

I. Notwithstanding any other provision of law, no person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board except as otherwise provided in this section or in RSA 193:28.

II. For purposes of this section, the legal residence of a pupil shall be as follows:

(a) In the case of a minor, legal residence is where his or her parents reside, except that:

(1) If the parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.

(2) In a divorce decree where parents are awarded joint decision making responsibility or joint legal custody, the legal residence of a minor child is the residence of the parent with whom the child resides.

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I. Special circumstances, including, but not limited to, the following, if raised by any party to the action or by the court, shall be considered and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:

(d) Reasonable expenses incurred by the obligor parent in exercising parental rights and responsibilities, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment;

(e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child;

(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.

The Court in this case has not, for at least a period of years, and possibly from the beginning of the case, made findings that the correct amount of child support as calculated by the child support guidelines is correct, that a deviation from that amount is fair or necessary or fair or that it considered the factors in the Child Support Guidelines at all, because there are no child support guideline worksheets completed for the court to make any findings.

3. In addition, the case of In the Matter of Jennie A. Rohdenburg (Louzan) and Brad D. Rohdenburg, 149 N.H. 276 (2003), the NH Supreme Court states:

While marital masters are granted broad discretion in matters relating to child support determinations, see Giles, 136 N.H. at 544, **they must have all information relevant to that determination before exercising that discretion**, see Logan v. Logan, 120 N.H. 839, 843 (1980). Emphasis added.

Undersigned attorney went to the Derry Family Division on Friday, March 23, 2007 in order to search for the Child Support Guideline Worksheets used in this matter and to find evidence that there were any specific findings that the application of the guidelines would be unjust or unfair or inappropriate in this particular case.

4. Undersigned attorney instead found **NO child support guideline worksheets in the file going back through 2004**. A written finding that the application of the guidelines is unjust or unfair would be impossible in the first instance in the absence of the completion of the child support guideline worksheets. The assumption that the support amount is correct in the absence of any child support guidelines completed in the course of the custody case cannot be presumed. In fact, the presumption that the support ordered is correct must be rejected.
5. The child support ORDERS ordering the father to pay \$400 per month are contrary to statutory intent, and constitute an abuse of discretion by the marital master in originally

ordering that amount to be paid by the father to the mother in light of the fact that he is the custodial parent.

6. In this case, it is clear that the marital master and this Court abused its discretion in making the Respondent's child support orders since it failed to make the parties complete the "Child Support Guidelines Worksheets" for a period of years in this matter, or to make findings on the record why a deviation from the guidelines child support amount in order to make the father the obligor when he was the custodial parent was necessary for the welfare of the child.
7. The Respondent has been claiming for years that his child support amount is unfair, that he cannot pay it **because he is already supporting the child**. In fact, he has every reason to complain since the Court did abuse its discretion over a lengthy period of time with respect to ordering him to pay child support absent the court's calculation of what the amount of child support is according to the NH Child Support Guidelines or any findings in the record as to why a deviation from the Guidelines is necessary.
8. Abuse of discretion in the calculation of child support is grounds for immediate consideration of new child support absent a three year review.
9. Attorney Ross has been contacted and has not replied as to whether or not he assents to this motion. It may be presumed that he does not assent.

WHEREFORE, Respondent respectfully requests the following relief:

- A. That the parties complete new financial affidavits.
- B. That the Court make orders concerning child support that properly reflect not only the current child support guidelines, but that take into account the fact that the custodial parent has been ordered to pay child support to the non-custodial mother over a period of years when he has had the primary residential responsibility, higher residential costs because of housing his daughter in the marital home until the sale last year.
- C. That the mother's child support be credited to the father's arrearage through the Office of Child Support Enforcement, until such time as the arrearage is zero.
- D. That the arrearage in child support, because it was accrued in the absence of a child support order considering factors under RSA 458-C:4 and 5, **be held in abeyance until the arrearage is reduced to zero by applying credits from child support that will be credited by application of the child support guidelines.**
- E. For other and such relief as may be just.

Respectfully submitted,

28 March 2007

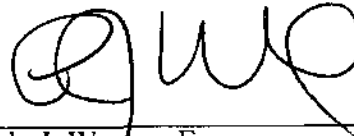
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David Johnson

Paula J. Werme, Esq.  
83 N. Main St.  
Boscawen, NH 03303

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been forwarded to L. Jonathan Ross, Esq. Wiggin & Nourie, and to the NH Office of Child Support Enforcement, Salem District Office, 154 Main Street, Suite 1, Salem, NH 03079-3180, and John Williams, Esq., OCSE, 129 Pleasant St., Concord, NH 03301 this 26 March 2007. Courtesy copies made available at Werne.8m.net to the world.



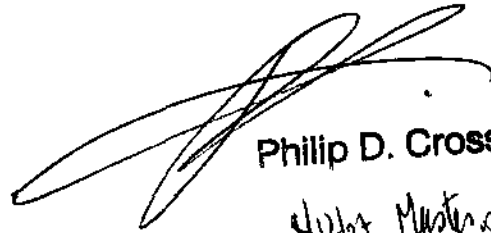
Paula J. Werne, Esq.

28 March 2007

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4/10/07

Dec: Motion denied and the Court notes that the New Hampshire Supreme Court has affirmed this Court's decision about child support.



Philip D. Cross

Harbor Masters re.  
approved - advised.  
SADLER

Lucinda V. Sadler