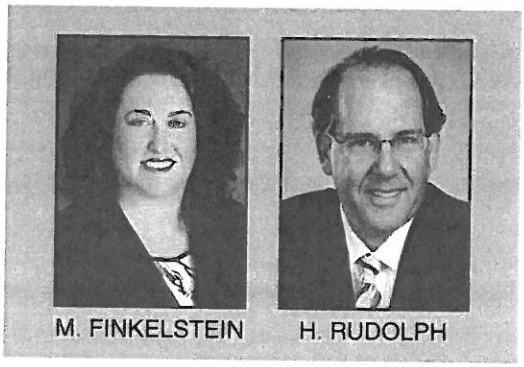
Child Support and the Professional Athlete

By Marci Finkelstein, Esq., and Howard Rudolph, Esq., West Palm Beach, Florida

With contribution by Allison Kapner, Esq.

Fathering out of wedlock children is an issue in the world of professional athletes, many of whom fail to understand the legal and financial consequences of fatherhood until served with a petition for paternity and child support. The professional athlete spends a substantial amount of time (in fact perhaps a majority of time) traveling from city to city and state to state with their team, practicing and playing on the road. While the professional athlete rarely needs to look far to find companionship, fathering a child out of wedlock at the beginning or height of a professional athlete's career can lead to enormous, and sometimes financially devastating effects on their financial future.



M. FINKELSTEIN H. RUDOLPH

Athletes deal with "boredom, peer group pressure, team loyalty, opportunity, a sense of self-importance, and the availability of women who seem to be irresistibly attracted to professional athletes."[1] While there are no studies on the number of athletes with out of wedlock children, those individuals knowledgeable with this issue say that the number of out of wedlock children born to athletes are overwhelming. "I'd say that there might be more kids out of wedlock than there are players in the NBA," says one of the NBA's top agents, who claims to spend more time addressing paternity claims than negotiating contracts.[2] These paternity and child support issues can lead not only to issues for the athlete off the field, but can also spill over into performance problems for the player.

Parents are legally required to support their children, regardless of whether the parents were married, maintained a relationship or simply engaged in a one-time encounter. No matter the circumstances that lead to fatherhood, the Courts are consistent that the best interests and welfare of a child is given the utmost priority and parents are required to financially support their children. Once paternity is established, the athlete, like any other parent, will not be relieved of his financial obligation to support his child, even after his professional career comes to a close. However, it is important for those representing the professional athlete to keep in mind the unique and challenging aspects associated with the mindset, lifestyle and career of the professional athlete when representing him in an action for paternity, custody, timesharing and child support.

When you have an athlete client, who is typically a high income parent, this poses unique issues in the initial determination and subsequent modification of child support. Should the Court deviate from the presumptive guidelines amount, which often can be well in excess of the needs of the child? Should the Court enter an award beyond the actual needs of the child? What happens when the athlete's career comes to end and the athlete's earnings are no longer comparable to his income during his professional career? Was this change in the athlete's financial circumstances anticipated? These are just some of the issues being addressed by Courts across the country when faced with high income parents such as professional athletes.

Florida, like most states across the country, has adopted child support guidelines pursuant to the income shares model; in Florida, child support is a function of the net income of both parents from all recurring sources (less certain deductions), as well as the timesharing each parent spends with the child or children. *See* § 61.30(2)(a) *Florida Statutes*. In establishing the child support guidelines, the legislature expressed a strong public policy of emphasizing the importance of protecting children, by assuring that their parents provide them with adequate financial support. Gross v. Zimmerman, 197 So.3d 1248 (Fla.4th DCA, 2016). An award of child support includes costs associated with child care, health insurance and apportionment of responsibility for uncovered health costs.[3] In addition to their basic child support obligation, the Court may also order a parent to contribute to additional expenses for a child such as private school[4], travel expenses[5] and extracurricular activities.[6]

As an initial step in determining child support in all cases, the Court is required to calculate the presumptive child support amount in accordance with the child support guidelines. *See* § 61.30(2)(a), *Florida Statutes*. *See also* Migliore v. Migliore, 792 So.2d 1276, 1277 (Fla. 4th DCA 2001); Hauser v. Hauser, 778 So.2d 309, 310 (Fla. 1st DCA 2000); Burkhart v. Burkhart, 620 So.2d 225, 226 (Fla. 1st DCA 1993). Section 61.13, *Florida Statutes* instructs the court on the format of the support order and Section 61.30, *Florida Statutes*, sets forth the manner in which the amount of

the award is determined. For high income parents such as the professional athlete, this amount includes a percentage of the net income of the parties that exceeds the parties' combined net income of $10,000 per month. *See* § 61.30 *Florida Statutes*. However, when the presumptive child support amount no longer bears a relation to the actual needs of the minor child, the Court has the authority to deviate from the presumptive child support guidelines amount. Miller v. Schou, 616 So.2d 436 (Fla. 1993).

The seminal case involving a professional athlete and deviation from the child support guidelines is the Supreme Court decision in the matter of Finley v. Scott, 707 So.2d 1112 (Fla. 1998). Finley v. Scott involved a paternity action against professional basketball star, Dennis Scott, who spent the majority of his ten year NBA career with the Orlando Magic. At the time, Scott was earning a gross monthly income in excess of $260,000 per month. Following the hearing on the issue of temporary child support, the Court entered an order of temporary support in the amount of $5,000 per month. The Court acknowledged that this amount was less than the presumptive guidelines amount of $10,011 per month, but reasoned that the amount ordered was "a more reasonable adjustment, and therefore, achieves a more equitable result..." Finley v. Scott, 687 So.2d 338, 340 (Fla. 5th DCA, 1997). At trial, the court was presented with evidence that the Mother had not been spending the entirety of the temporary child support award on the minor child, but had saved $12,000 during that period and had deposited the funds into her own bank account. The testimony elicited from the mother also demonstrated that she had used some of the child support for her own benefit, including monies for the purchase of a new car, payment of credit card bills that included her personal expenses and payment of a full time housekeeper and nanny, despite the fact that she was not working. The Court found that, although the guidelines support amount would have exceeded $10,000 per month, the mother and child's living expenses only totaled approximately $2,000 per month. Following trial, the court awarded the mother $5,000 per month in child support, $3,000 of which was to be paid into a guardianship trust for the benefit of the minor child. In its order, the Court found that the mother's request for the guidelines child support had "no economic relevance to the bona fide actual needs of the child." Supra at 1114.

The mother appealed the trial court's decision arguing that the court should have awarded the full guidelines amount. The father cross-appealed, arguing that the $3,000 per month ordered to be paid to the guardianship trust was an abuse of discretion as this amount was in excess of the child's actual needs. The Appellate Court found that the trial court had erred in awarding child support in excess of the day-to-day living requirements of the child and reduced the award to $2,000 per month. Finley v. Scott, 687 So. 2d 338, 342 (Fla. 5th DCA 1997). Following certification to the Supreme Court, the Supreme Court quashed the appellate decision and reinstated the trial court's award of $5,000 per month in child support. In affirming, the Supreme Court explained:

> "To assist trial courts in making this fact-intensive decision in future cases, we expressly point out that a trial court is to begin its determination of child support by accepting the statutorily mandated guideline as the correct amount. The court is then to evaluate from the record the statutory criteria of the needs of the child, including age, station in life, and standard of living, the financial status and ability of each parent, and any other relevant factors. If the trial court then concludes that the guideline amount would be unjust or inappropriate and also determines that the child support amount should vary plus or minus five percent from the guideline amount, the trial court must explain in writing or announce a specific finding on the record as to the statutory factors supporting the varied amount. Absent an abuse of discretion as to the amount of the variance, the trial court's determination will not be disturbed on appeal if the calculation begins with the guideline amount and the variation is based upon the statutory factors."

Finley v. Scott, 707 So.2d 1112, 1115-1116 (Fla. 1998). Further, the Court explained "the actual expenditure for the needs of the child is evidence the trial court should weigh in determining whether to vary the amount from the guideline formula." Id. at 1116. As such, the presumed child support guidelines amount is clearly rebuttable. Even if one parent earns substantially more than that which is necessary to meet the actual and bona fide needs of the child, the Court may not necessarily require the payment of child support in excess of those actual and bona fide needs. Crouch v. Crouch, 898 So.2d 177 (Fla. 5th DCA 2005). The burden of persuasion to demonstrate that the presumptive guidelines support amount is inappropriate is on the obligor. Gross v. Zimmerman, 197 So.3d 1248 (Fla. 4th DCA, 2016). *See also* Ferraro v. Ferraro, 971 So.2d 826 (Fla 3 DCA 2007). However, when parents of a child have never lived together, the question becomes, which parent's standard of living determines the needs of the child? In Florida, the Courts have recognized that a minor child is entitled to share in the "good fortune" of his or her parents, which needs to be considered in addition to the needs of the child. Finley v. Scott, 707 So.2d 1112 (Fla. 1998); Sarnoff v. Daily, 925 So.2d 391 (Fla. 4th DCA 2006). It should also be noted that in ordering temporary support, the Court must employ the same analysis as when entering a final order on child support. Elias v. Elias, 168 So.3d 301(Fla. 4th DCA, 2015).

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If the payor has failed to support his child prior to the commencement of the action for paternity and child support, the court, in making an initial determination of child support, has discretion to award child support retroactive to the date when the parents did not reside in the same household with the child. However, this retroactive period cannot exceed 24 months preceding the filing of a petition for support. See § 61.30 (17) Florida Statutes. In determining the retroactive award, the Court considers: (a) the guidelines in effect at the time of the hearing subject to the obligor's establishment of his or her actual income during the retroactive time period in question. If the obligor fails to demonstrate his or her actual income during the retroactive period, the obligors income at the time of the hearing shall be used; (b) the actual payments made by the obligor for the benefit of the child during that period of time and (c) whether it is appropriate to enter an order providing for an installment plan for payment of the retroactive support. See § 61.30 (17) Florida Statutes.

One of the most significant differences between the professional athlete and the majority of child support obligors is the duration of their career and consistency of their income. Many athletes have an unrealistic understanding of the brevity of both their professional career and their considerable income. When an athlete's child support obligation is established during their professional career, the end of that career during the child's minority will necessarily require the athlete to petition the Court for modification of his child support obligation. The athlete will then have the burden of proving that there has been a substantial change in circumstances since the entry of the last order of support, which substantial change must be significant, material, involuntary and permanent in nature. Overbey v. Overbey, 698 So.2d 811 (Fla. 1997), Bingemann v. Bingemann, 551 So.2d 1229 (Fla.1st DCA 1989); Hale v. Hale, 567 So.2d 527 (Fla.2d DCA 1990); Amoroso v. Phister, 689 So.2d 1172 (Fla.2d DCA 1997), Jane v. Fero, 678 So.2d 496 (Fla. 5th DCA 1996). The requirement of permanency is met when demonstrating that the change continues for a prolonged period of time. Given the fact that a professional athlete's career is one that has a finite period, it is important for those representing the professional athlete to anticipate the end of that athlete's career and plan accordingly.

While a professional athlete is treated like any other parent in their obligation to support their child, the lawyer representing that athlete needs to understand the uniqueness of the athlete's circumstances and educate their athlete clients about their rights and responsibilities to ensure that he is protected now and in the future.

***Marci E. Finkelstein**, is an attorney at Rudolph & Associates, LLC, where she practices exclusively in the area of marital and family law. Previously, Ms. Finkelstein was an associate at the Law Offices of Gary I. Cohen, P.C. and a partner at the Law Offices of Cohen & Finkelstein in Stamford, Connecticut, where she also practiced in the area of marital and family law. Ms. Finkelstein was admitted to the Florida Bar in 2015. Ms. Finkelstein has been a member of the Connecticut Bar since 1998, the New York Bar since 2002 and the Tennessee Bar since 2008. Ms. Finkelstein received her Juris Doctor from Touro College, Jacob D. Fuchsberg Law Center and her Bachelor of Arts from the University of Florida*

***Howard M. Rudolph** is the managing partner at Rudolph & Associates, LLC, practicing exclusively in the area of marital and family law with additional focus on more complex matters such as post/prenuptial agreements, child support & custody, domestic relations, relocation and professional sports and entertainment industry individuals with the focus on their family law issues. Mr. Rudolph received his Juris Doctor from Hofstra University where he was Editor and Research Editor on Law Review and received his undergraduate from Rutgers University. Mr. Rudolph has been admitted to the New York Bar since 1988 and the Florida Bar since 1990 where he is Board Certified in Marital and Family Law.*

Endnotes

1 Why Athletes' Wives Must Cope with "Adultery Culture". By Leonard Holmes, March 26, 2016.

2 Where's Daddy? Sports Illustrated, May 4, 1998.

3 Section 61.30, *Florida Statutes*. *See also Harris v. Harris*, 114 So.3d 1095 (Fla.2nd DCA 2014); *Chaney v. Fife*, 18 So.3d 44 (Fla. 1st DCA, 2009) and *Salazar v. Salazar*, 976 So.2d 1155 (Fla.4th DCA 2008).

4 The Court may also order a parent to contribute to a child's private schooling if the Court finds (1) the parties have the ability to pay; (2) the expense is in accordance with the customary standard of living of the parents; and (3) it is in the best interest of the child to attend private school. Brennan v. Brennan, 122 So.3d 923 (Fla. 4th DCA, 2014). Gelman v. Gelman, 24 So.3d 1281 (Fla.4th DCA 2010).

5 Hindle v. Fuith, 33 So.3d 782(Fla. 5th DCA 2010).

6 Additionally if the parents agree to contribute to expenses such as summer camp, extracurricular activities and the like, the Court has no authority to order the payment by either party for these extraordinary additional expenses unless the parents contract to share of the payment of those costs. Cole v Cole, 95 So.3d 369 (Fla. 3rd DCA 2012).

7 Extended period of time has been found to be at least one year. Freeman v. Freeman, 615 So.2d 225 (Fla.5th DCA 1993).