

2002

## Inheritance Corpus Excluded from Child Support Obligations under the Pennsylvania Support Guidelines' Definition of Income: *Humphreys v. DeRoss*

Sarah Eckel

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Sarah Eckel, *Inheritance Corpus Excluded from Child Support Obligations under the Pennsylvania Support Guidelines' Definition of Income: Humphreys v. DeRoss*, 41 Duq. L. Rev. 241 (2002).

Available at: <https://dsc.duq.edu/dlr/vol41/iss1/9>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

## Inheritance Corpus Excluded From Child Support Obligations Under the Pennsylvania Support Guidelines' Definition of Income: *Humphreys v. DeRoss*

FAMILY LAW- CHILD SUPPORT - CALCULATION - INHERITANCE - The Pennsylvania Supreme Court held that the corpus of an inheritance is excluded from child support calculations under the Support Guidelines definition of income. However, the court noted that the best interest analysis can allow for an upward deviation from the guideline amount when the fact finder determines that the inheritance is a factor which makes more income available for support.

*Humphreys v. DeRoss*, 790 A.2d 281 (Pa. 2002).

William DeRoss's ("DeRoss") mother died in 1997, leaving DeRoss the sole beneficiary of her estate, which resulted in his receipt of \$83,696.50 from the proceeds of the estate's sale of her home in 1999.<sup>1</sup> DeRoss receives \$858.00 in Workers' Compensation benefits per month, of which twenty percent goes to his attorney and \$355.00 in social security disability per month.<sup>2</sup> DeRoss owes child support to his daughter, Angela, who lives with her adult sister, Beth Humphreys ("Humphreys").<sup>3</sup> Humphreys brought an action against DeRoss in August of 1997, citing DeRoss's inheritance as a change in circumstance that required modification of DeRoss's child support obligations.<sup>4</sup>

A hearing officer reviewed the modification petition and determined that DeRoss's inheritance was a receipt of income, which should be prorated for the remainder of Angela's minority for an upward deviation of DeRoss's child support obligations.<sup>5</sup> The trial court adopted the hearing officer's summary and set the child support obligations of DeRoss at \$615.45, retroactively applicable

---

1. *Humphreys v. DeRoss*, 790 A.2d 281, 283 (Pa. 2002) DeRoss used the inheritance to purchase a home for his new family. *Id.*

2. *Id.* at 283.

3. *Id.*

4. *Id.*

to August of 1997.<sup>6</sup> The court ordered DeRoss to pay \$700.00 in child support to Angela for arrear adjustment.<sup>7</sup> DeRoss requested a *de novo* review of the child support assessment, and received an adjustment to \$609.45 due to Angela's receipt of additional Social Security payments not accounted for in the trial court's order.<sup>8</sup> DeRoss appealed to the Superior Court, which upheld the trial court's appraisal that the inheritance received by DeRoss qualified as income for child support modification.<sup>9</sup> The Superior Court determined that the statutory definition of income is not an all inclusive express list of items to be considered when making a child support calculation, and ability to pay from all resources available to a parent is a factor in the determination.<sup>10</sup> The majority noted that even if the imputed income from the inheritance was more than the actual monthly income of DeRoss, the parental duty to provide for the needs of a minor dependent child will sometimes result in parental sacrifice to follow a support order.<sup>11</sup> The duty includes, according to the court, the obligation to give the child the full reality of the parent's financial security, and this duty has been uniformly upheld by Pennsylvania courts.<sup>12</sup> The majority concluded that a lump sum cash inheritance must be considered income as a part of the complete financial resources available for support, and that the statutory definition of income includes "entitlements to money without regards to source" which is broad enough to properly include the inheritance as income.<sup>13</sup>

The Supreme Court granted *allocatur* to determine whether receipt of inheritance is income under the Domestic Relations Code

---

5. *Id.*

6. *Humphreys*, 790 A.2d at 283. The determination was based in the Support Guidelines, 23 PA. CONS. STAT. § 4302 using PA.R.CIV.P. 1910.16-2 (Support Guidelines. Calculation of Net Income), to determine that \$4,525.00 per month in income was available in addition to the Social Security and Worker's Compensation DeRoss receives for determining the amount of child support Angela should receive based on DeRoss's gross income. *Humphreys*, 790 A.2d at 283.

7. *Humphreys*, 790 A.2d at 283. Arrear is defined as "an unpaid or overdue debt." BLACK'S LAW DICTIONARY 83 (7th ed. 2000). PA.R.CIV.P. 1910.16-2 allows child support obligations to be under the court's discretion for lump sum income receipts payment arrangements under the facts and circumstances of each case. *Humphreys*, 790 A.2d at 283 n. 2.

8. *Humphreys*, 790 A.2d at 283. A *de novo* hearing is "an appeal in which the appellate court uses the trial court's record, but reviews the evidence and law without deference to the trial court's rulings." BLACK'S LAW DICTIONARY 74 (7th ed. 2000).

9. *Humphreys v. DeRoss*, 737 A.2d 773, 776 (Pa. Super. Ct. 1999).

10. *Id.* at 778.

11. *Id.* at 779.

12. *Id.*

for the purposes of calculating child support obligations.<sup>14</sup> The majority determined that the Superior Court had abused its discretion in concluding that an inheritance fit the definition of income provided by Section 4302 of the Domestic Relations Code.<sup>15</sup> The Supreme Court reversed and remanded to the trial court for a further evaluation of a deviation from the presumptive amount of support set by the Support Guidelines through a review of the impact of the inheritance on the payor's cost of living expenses.<sup>16</sup>

The Supreme Court began its discussion of the issue in *Humphreys* by reestablishing the general rule that a review of child support matters is determined by the abuse of discretion standard.<sup>17</sup> The majority then began its analysis by reviewing the statutory definition of income instituted by the Domestic Relations Code.<sup>18</sup> The Court also established that the plain meaning of statutory construction of the definition of income provides that only items that fit reasonably into an enumerated category of the

---

13. *Id.*

14. *Humphreys*, 790 A.2d at 282. Domestic Relations Code, 23 PA. CONS. STAT. § 4302 defines income as including:

[C]ompensation for services, including but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains from dealing in property; interest; rents; royalties; dividends; annuities; income from all life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; worker's compensation; unemployment compensation; other entitlements to money or lump sum awards, without reference to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectable by an individual regardless of source.

23 PA. CONS. STAT. § 4302 (1985).

15. *Humphreys*, 790 A.2d at 288.

16. *Id.* P.A.R.CIV.P. 1910 16-5(b)(5),(9) allows the trier of fact to deviate from the Support Guidelines presumptive amount through review of relevant factors including assets of the parties and best interest standard for the minor. *Humphreys*, 790 A.2d at 287-288. The court reasoned that inheritance is not income, but it still might allow a deviation from Support Guidelines to benefit the child, if the trier of fact can justify reasons for finding an upward deviation of child support in writing, which would be a procedural adjustment of child support independent from the statutory definition of income under P.A.R.CIV.P. 1910.16-5(a). *Humphreys*, 790 A.2d at 287-88.

17. *Humphreys*, 790 A.2d at 283. Abuse of discretion standard is "[n]ot merely an error of judgement, but if in reaching a conclusion the law is overridden or misapplied, or the judgement exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused." *Id.* (quoting *Blue v. Blue*, 616 A.2d 628, 631 (Pa. 1992)).

18. *Id.* at 283-84.

statute can be deemed income for child support purposes.<sup>19</sup> The next section of the analysis outlined four categories of the statutory definition of income that an inheritance might reasonably fit.<sup>20</sup>

The majority opinion included the examination of four statutory categories within the definition of income: "income in respect of a decedent;" "income from an interest in an estate or trust;" "other entitlements to money or lump sum awards, without regard to source, including lottery winnings;" and "any form of payment due to and collectable by an individual regardless of source."<sup>21</sup> The first category appraised was "income in respect of a decedent", which was determined not to apply to an inheritance by the terminology of the definition alone.<sup>22</sup> Next evaluated was "income from an interest in an estate or trust" which was resolved to be inapplicable to inheritances in general because the statute specifically provides for the interest in an estate or trust, but not the estate or trust's corpus, so that the plain meaning of the statute was to exclude the corpus of an estate from income.<sup>23</sup> Then the majority reviewed "other entitlements to money or lump sum awards, without regard to source, including lottery winnings," for which the court illustrated that when the legislature allowed a specified category dealing with estates that omitted any reference to inheritances, then the intent could not reasonably be to mass inheritances in with other lump sum settlements.<sup>24</sup> Lastly the "any form

---

19. *Id.* at 284. (reviewing 23 PA. CONS. STAT. § 4302, *supra* note 14; and distinguishing *Darby v. Darby*, 686 A.2d 1346, 1348 (Pa. Super. Ct. 1996)), *allocatur denied*, 698 A.2d 594 (Pa. 1997), in which the Superior Court's conclusion that "income" is not an all-inclusive list due to language of *including, but not limited to*. The court establishes that the language was exclusive to the types of compensation for services that would constitute income, but not the entire statutory definition of income). *Id.*

20. *Id.* at 284-85.

21. *Id.* (citing 23 PA. CONS. STAT. § 4302, *supra* note 14.)

22. *Humphreys*, 790 A.2d at 284-285. The court does not go beyond this statement in their opinion. *Id.* The definition of decedent is, "[a] dead person, especially one who died recently." BLACK'S LAW DICTIONARY 333 (7<sup>th</sup> ed. 2000). The definition of income in respect of a decedent has no further explanation of the phrase in the statute. See 23 PA. CONS. STAT. § 4302.

23. *Humphreys*, 790 A.2d at 285. The court reasoned that an inheritance is such a common means to transfer wealth that to not specifically include an inheritance and to only provide for an interest in an estate showed legislative intent to exclude the corpus of the estate from income. *Id.* Corpus is Latin for body, defined as "the principle, as opposed to an interest or income". BLACK'S LAW DICTIONARY 280 (7<sup>th</sup> ed. 2000). The court expressed legislative intent for the separation of interest from the corpus of an estate, due to the specific language used. *Humphreys*, 790 A.2d at 285.

24. *Humphreys*, 790 A.2d at 285. The court stated that any other interpretation of legislative intent would "defy logic". *Id.* This section of the statute was added to the definition on December 16, 1997, while *Humphreys* was being decided, and was retroactively

of payment due to and collectable by an individual regardless of source" category, in the majority's view, only applied to compensation or discharge of debt and does not incorporate a common form of transfer through an inheritance by the general phrase "regardless of source."<sup>25</sup>

The Pennsylvania Supreme Court, after determining that inheritance did not fit in any category of income provided in the Domestic Relation Code, evaluated the definition of income in the context of the Support Guidelines to determine if legislative intent was to include inheritances as income available for child support.<sup>26</sup> The Support Guidelines' 1998 Amendment discusses income, defined by the Domestic Relations Code, as an average of at least six months "including income from any source."<sup>27</sup> The Court reestablished that the purpose of the Support Guidelines is that "persons similarly situated, shall be treated similarly" and applied this principle to resolve the issue of whether an inheritance as income would reflect the purpose of the Guidelines.<sup>28</sup> Illustrating DeRoss's circumstance in contrast to another person with an actual monthly cash flow of the amount calculated by the trial court to be available to DeRoss, the court determined that the purpose of the guidelines was not to ignore the economic reality of two differently situated persons.<sup>29</sup> Citing an earlier Pennsylvania Supreme Court case, the majority stressed that the primary importance of the Guidelines is the reasonableness of the amount of support based on affordability and the necessity of the amount to

---

applied in this case because it only affected remedies, and did not disturb any vested right which is required to have a retroactive law pass constitutional scrutiny. *Id* at 284 n.3.

25. *Id.* at 285 n. 6. (citing Justice Eakin's, then Judge Eakin, dissenting opinion in the Superior Court's prior judgment of *Humphreys*). Justice Eakin did not participate in the Supreme Court's review of *Humphreys*. *Id.* at 288.

26. *Id.* at 285. The context of the Support Guidelines is found in 23 PA. CONS. STAT. § 4322(a), which provides in part:

Child... support shall be awarded pursuant to a statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child...the ability of the obligor to provide support... plac[ing] primary emphasis on the net incomes and earning capacities of the parties, with allowable deviation for unusual needs... and other factors, such as party's assets.

23 PA. CONS. STAT. § 4322(a) (1985).

27. *Humphreys*, 790 A.2d at 285-286.

28. *Id.* at 286. (reviewing 23 PA. CONS. STAT. § 4322(a), *see supra* note 25). The court uses the amendment to show the significance of the relationship between the Statutory Guideline and the Domestic Relation code's statutory definition of income, which before the amendment was not directly linked. *Id* at 286 n.7. *But see*, PA.R.CIV.P. 1910.16-2. (the amendment also underscores the inclusion of income from any source).

29. *Humphreys*, 790 A.2d at 286.

further the welfare of the child.<sup>30</sup> The majority also concluded that disparity results by treating an inheritance as income when typically intact families do not use inheritances to meet living expenses and, as a result, treating inheritances as income available for support is not aligned with the purpose of the Guidelines.<sup>31</sup>

The majority's analysis then turned to other jurisdictions' treatment of inheritance as income by reviewing cases in Alaska, Arkansas, Colorado, Connecticut, Montana, New Jersey, Washington, and Wisconsin, because *Humphreys* was a case of first impression in Pennsylvania.<sup>32</sup> Many courts have ruled that inheritance itself is not income, but interest generated from inheritance is income for child support classifications.<sup>33</sup> Other courts cited in the Superior Court's analysis supporting an inheritance as income were disposed of by the majority through determining that the courts were dealing with either a fact-specific finding, a different statutory definition of income or a different subject matter.<sup>34</sup>

The conclusion of the court, after reviewing the statutory definition, the Support Guidelines, and the treatment of the issue in other jurisdictions, was that the difference between the corpus of an estate and the interest from an estate was applicable to the facts of DeRoss's inheritance which only consisted of a corpus of an inheritance.<sup>35</sup> Furthermore, the majority noted that any issues surrounding the Support Guidelines presumptive amount could be appropriately dealt with through deviation based on factors such as assets of the parties and best interests of the minor.<sup>36</sup> The inheritance could allow an upward modification of support, not under the definition of income, but by a factual examination that concludes that the financial obligations of the payor are decreased

---

30. *Id.* (citing *Ball v. Minnick*, 648 A.2d 1192, 1197 (Pa. 1994)). *Ball* also states that reasonable expenses of the payor and reasonable needs of the child are factors in determining the appropriate amount of support. *Ball*, 648 A.2d at 1197. See *infra* note 72.

31. *Humphreys*, 790 A.2d at 286. *but see*, dissenting opinion at 290.

32. *Id.* at 286-87.

33. *Id.* at 286. (citing *Robinson v. Robinson*, 961 P.2d 1000 (Alaska 1998); *Halter v. Halter*, 959 S.W.2d 761 (Ark. 1998); *Armstrong v. Armstrong*, 831 P.2d 501 (Colo. 1992); *Stula v. Stula*, 1998 WL 457694 (Conn. Super. Ct. 1998); *Connell v. Connell*, 712 A.2d 1266 (N.J. Super. Ct. App. Div. 1998); and *Gainey v. Gainey*, 948 P.2d 865 (Wash. 1997). See also *Gal v. Gal*, 937 S.W.2d 391 (Mo. 1997) and *Lenderman v. Lenderman* 460 N.W.2d 781 (Mo. 1990)).

34. *Humphreys*, 790 A.2d at 287. (citing *Crayton v. Crayton*, 944 P.2d 487 (Alaska 1997); *Goldberg v. Goldberg*, 698 So. 2d 63 (La. 1997); *Forsythe v. Forsythe*, 41 Va. Cir. 82 (Va. Cir. Ct. 1996)).

35. *Humphreys*, 790 A.2d at 287.

36. *Id.* at 287-88. (citing P.A.R.Civ.P. 1910.16-5(b)(5),(9)). The court notes that Rule 1910.16-5(a) has requirements of written justification for deviation. *Id.* at 288.

by the inheritance, making more of the payor's income available for child support.<sup>37</sup> The resulting rule of law from the majority opinion is that the corpus of an estate is not income for child support purposes, however, it can be a factor for an upward modification of support obligations if the fact finder can justify a finding that more income is available for child support to allow a deviation from the presumed amount.<sup>38</sup>

The dissent of Justice Castille, joined by Justice Nigro, focused not on a general issue of exclusion of the term inheritance from the statutory definition of income as the majority did, but instead reviewed the rules of statutory construction in reference to the definition of income as applied to the specific facts of the case.<sup>39</sup> Justice Castille began his analysis by focusing on the appropriate reading of the statute and distinguishing the majority's reading as "contrary to [its] plain meaning and creates an unnecessary conflict between the statute and [the court's] procedural rules."<sup>40</sup> According to the dissent, the plain language of the pertinent provisions control during statutory interpretation, and the facts of the case must be applied to the statute under its plain language which results in the inheritance reasonably fitting within the statutory definition of income.<sup>41</sup>

The minority analysis reestablished the fact that the inheritance received was a *cash* distribution to DeRoss, reviewed the statutory definition of income in general, developed the specific sections to which DeRoss's inheritance could reasonably fit within and cited the flaws of the interpretation of the majority.<sup>42</sup> The general statutory analysis of Justice Castille, concluded that the "definition of income is varied and intentionally broad."<sup>43</sup> The statute, according to the dissent's interpretation, comprises specific conventional sources of income, less ordinary specific catego-

---

37. *Id.* at 288.

38. *Id.* The court also stated that a finding for upward deviation must follow P.A.R.CIV.P. 1910.16-5, which was adopted while this case was pending and became effective in 1999 through gleaning former rule 1910.16-4 that was in effect during the original trial. *Id.* at 288 n. 8.

39. *Id.* at 288. (Castille, Nigro, JJ., dissenting).

40. *Humphreys*, 790 A.2d at 287. (Castille, Nigro, JJ., dissenting).

41. *Id.* (Castille, Nigro, JJ., dissenting). The plain meaning rule is defined as, "[t]he rule that if a writing, or provision in a writing, appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence." BLACK'S LAW DICTIONARY 938 (7th ed. 2000).

42. *Humphreys*, 790 A.2d at 289-91. (Castille, Nigro, JJ., dissenting).

43. *Id.* at 289. (Castille, Nigro, JJ., dissenting).



ries of income, and non-specific, expansive categories of income.<sup>44</sup> After reviewing the statutory definition of income in general, the minority concluded that the facts of DeRoss's inheritance could reasonably fit into either "income from an estate or trust", "other entitlements to money or lump sum awards, without regard to source," or "any form of payment due to and collectable by an individual... regardless of source."<sup>45</sup>

The minority's analysis continued with the overview of the three categories, the application of majority's analysis to these categories, and the resulting inconsistencies with the majority's rationale.<sup>46</sup> The first category reviewed was "an interest in an estate or trust," which Justice Castille noted "does not read interest income from a corpus of an estate," as the majority interpreted, but broadly applies to any income that results from an interest in an estate.<sup>47</sup> The minority concluded that the interest referred to in the statute is not interest income, but an interest in an estate according to the plain reading of the statute, which removes the necessity of the General Assembly to use the specific word inheritance to make clearer the meaning behind the intention to include inheritances within the definition of income.<sup>48</sup> The majority's treatment of the absence of the word inheritances, based on the unsupported conclusion that inheritances are commonly used to transfer income, was problematic for the dissent because the minority noted that inheritances often include items of no economic value that are properly left out of the Code's definition of "interest in an estate that produces income."<sup>49</sup> Further, the dissent argued

---

44. *Id.* (Castille, Nigro, JJ., dissenting). The dissent cited 23 PA. CONS. STAT. § 4302 to show that "compensation for services", "interest income", and "social security" as traditional income sources, "income from an interest in an estate or trust" as a less common source of income, and "other entitlements to money...without regard to source" and "any form of payment due to and collectable by an individual...without regard to source" are non-inclusive general definitions of income. *Id.* at 288.

45. *Id.* at 288. (citing 23 PA. CONS. STAT. § 4302) (Castille, Nigro, JJ., dissenting).

46. *Humphreys*, 790 A.2d at 289-291. (Castille, Nigro, JJ., dissenting). The dissent noted that using the word inheritances might bring additional problems due to the different ways a person might inherit. *Id.*

47. *Id.* at 289. (Castille, Nigro, JJ., dissenting).

48. *Id.* (Castille, Nigro, JJ., dissenting). Interest is defined as an, "[a]dvantage or profit, especially] of a financial nature [or]...[a] legal share in something; all or part of a legal or equitable claim to or right in property." BLACK'S LAW DICTIONARY 652 (7th ed. 2000).

49. *Humphreys*, 790 A.2d at 289. (Castille, Nigro, JJ., dissenting). The dissent also noted that DeRoss used the interest in the estate to purchase a home for his new family, which presumes that the interest produced income that was also available for the support of his daughter, Angela. *Id.*

that even if the majority's interpretation of a significant difference between the corpus and the interest in an estate were substantiated, the fact that DeRoss's inheritance included the corpus which was the house and the interest which was the proceeds from its sale, resulted in an erroneous resolution that DeRoss's inheritance was not income under the majority analysis.<sup>50</sup>

The next sections of the statutory definition of income reviewed were the inclusive sections of the definition of income, from entitlements and any payments due, both from any source, which were broad enough, according to Justice Castille to include inheritances due to the terminology, "regardless of source", in both categories of income.<sup>51</sup> The majority's dismissal of these options based on the lack of the word *inheritance* is contrary to the plain meaning of the statutes inclusive terminology and, according to the dissent, resulted in a "unilateral creation of an inheritance exception to the broad, plain statutory language."<sup>52</sup> In addition to the unfounded creation of the inheritance exception, the justification for the exception is groundless to the dissent because of the majority's assumption of how intact families use inheritances versus non-intact families, is directly rebutted by the treatment of DeRoss's inheritance with his current intact family for purchases of a basic living expense, a new house.<sup>53</sup>

The dissent illustrated that the effect of the majority's rule upon the current law of child support undermines the legislative intent by judicial procedure.<sup>54</sup> The dissent argued that "whether this Court's procedural rules can, or should, establish a substantive support consequence where the Code itself, under the majority's conclusion, has not," also results in an "unnecessary discrepancy between the statute and this Court's procedural Rules" due to the majority's failure to follow the plain meaning of the statute.<sup>55</sup> The conclusion reached by the minority was that no error resulted in the recognition that the specific facts of DeRoss's inheritance was

---

50. *Id.* at 289-290. (Castille, Nigro, JJ., dissenting). *But see, Id.* at 285 n. 4.

51. *Id.* at 290. (Castille, Nigro, JJ., dissenting).

52. *Id.* (Castille, Nigro, JJ., dissenting). The dissent noted that the majority's approach "turns statutory construction on its head." *Id.*

53. *Id.* at 290. (Castille, Nigro, JJ., dissenting). The dissent also challenged how the unfounded presumption has any bearing on the correct interpretation of the Code. *Id.*

54. *Humphreys*, 790 A.2d at 291. (Castille, Nigro, JJ., dissenting).

55. *Id.* (Castille, Nigro, JJ., dissenting).

income available for a modification of support and an inheritance is income under the Code's definition.<sup>56</sup>

Although the common law duty of parents to support their children "is well nigh absolute," the appropriate calculation of child support has long been a controversy in Pennsylvania.<sup>57</sup>

The duty of parents to provide for the maintenance of their children is a principle of natural law... laid on them, not only by nature herself, but by their own proper act, in bringing them into the world... By begetting them, therefore, they have entered into a voluntary obligation to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have the perfect right of receiving maintenance from their parents....<sup>58</sup>

The basis of a support obligation to children rests squarely upon well-established rules of child support that are reiterated in depth through Pennsylvania common law.<sup>59</sup> The Pennsylvania Supreme Court stated that parents are subject to make personal sacrifices to provide for their children; the primary purpose of support is the best interest and the welfare of the children; awards are not to be unjust or expropriate to the parent; and both parents share an equal responsibility to provide support to their children financially, which is based in the capacity of a parent and determined by extent of property available, actual income, earning capacity and standard of living which the parent enjoys through the decision of *Conway v. Dana*.<sup>60</sup> The Superior Court of Pennsylvania further established that the evaluation of parental support obligations begins with the parent's income from whatever source, or their earning capacity, and then continues with a review of the full reality of the parent's assets and financial resources in the

---

56. *Id.* (Castille, Nigro, JJ., dissenting). The dissent noted that the calculation of support under a lump sum payment is under the discretion of the trial court and saw no abuse of discretion with respect to the support award under the facts of the case. *Id.* at 291 n.1., *supra* note 7.

57. Commonwealth ex rel. v. Ribikauskas, 68 Pa. D.&C. 336 at 338 (1949) (quoting Judge Arnold's often cited statement in Commonwealth ex rel. v. Firestone, 45 A.2d 913 (1946).

58. *Ribikauskas*, 68 Pa. D.&C. 336 at 337. (1949). (quoting 1 BLACKSTONE COMMENTARIES 446, Lewis ed., 1922.)

59. *Conway v. Dana*, 318 A.2d 324 (Pa. 1974); *Hagerty v. Eyster*, 429 A.2d 665 (Pa. 1981); and *Butler v. Butler*, 488 A.2d 1141 (Pa. 1984) (These cases restate basic principles that are used in determining child support obligations).

60. 318 A.2d at 325-26 (Pa. 1974). (re-establishes that the parents' responsibility is to support their children) *Id.*

case of *Hagerty v. Eyster*.<sup>61</sup> Lastly, the Superior Court held that the review of financial resources includes all assets, regardless of source, and that a tort award is properly included in the assessment of support, because "it would, indeed, call into question the sanity of the law if this court was to rule that the tort award is available to pay debts to 'the butcher the baker and the candlestick maker' but not debts to...[the] child for support."<sup>62</sup>

The generalized rules of Pennsylvania support law were without guidelines until the 1984 judgment of *Melzer v. Witsberger*.<sup>63</sup> The issue in *Melzer* was whether both parents had failed to prove an entitlement to the other for child support, but the Supreme Court instead established a uniform guideline for child support calculations and remanded the issue to be determined under the guidelines the court had devised.<sup>64</sup> The *Melzer* court determined that although the amount of support is fully under the discretion of the fact finder, the court is guided by a conglomerate of well established rules and principles that lack a general organization for their application and interaction.<sup>65</sup> By what is now referred to as the *Melzer* guidelines, the court created a formula for determining the calculation of child support: the needs of the child calculated by the reasonable expenses of raising the child; the respective abilities of each parent to pay which is dependent upon property, income, earning capacity, and resources minus reasonable living expenses, and a formula in which these classifications fit within for the calculation of support.<sup>66</sup> The *Melzer* decision also finalized issues of subsequent families sharing expenses with the child support obligor, which is used only for consideration of a non-parental spouse's income off-setting the payor spouse's cost of living, not as additional money available for support.<sup>67</sup> With the black letter of the law firmly in place regarding the calculation of child support, Pennsylvania then adopted the statutory Support Guidelines for calculation of income for child support within a year of *Melzer*, limiting *Melzer's* current application to cases with joint spousal income higher than the guideline amounts.<sup>68</sup>

---

61. 429 A.2d at 668.

62. *Butler*, 488 A.2d at 1143.

63. 480 A.2d 991 (Pa. 1984).

64. *Id.* at 994, 998.

65. *Id.* at 994.

66. *Id.* at 994-96.

67. *Id.* at 998.

68. PA.R.CIV.P. 1910.16-2(c)(2) (1981).

In 1985, Pennsylvania adopted the Support Guidelines that encompass both statutory provisions for child support and Rules of Civil Procedure for the application of the guidelines in support matters, which became effective in January of 1986.<sup>69</sup> The Support Guidelines' purpose is to ensure that, "persons similarly situated shall be treated similarly" which is accomplished by focusing primarily on the reasonable needs of the children and ability of the parent to provide support by emphasizing the net incomes and earning capacities of both spouses and allowing standards for deviation when necessary.<sup>70</sup> The current statute provides a definition of income, which was amended in 1996 and 1997 to expand the statutory definition of income.<sup>71</sup> The current Rules of Civil Procedure refer directly to the calculation of support including income as defined by the statute, what deductions from income are allowed to arrive at the monthly net income, and specific treatment of low, high and fluctuating income for support calculations.<sup>72</sup> The Pennsylvania Support Guidelines are based on an Income Shares Model which provides that the support of a child should be based on the extent of separated parents' joint income that would have been available for the child if the parents lived together.<sup>73</sup> Therefore, the amount the obligor can afford and the amount needed by the child to further the child's welfare is presumed to be the same for parties that have the same level of income.<sup>74</sup> The current Rules of Civil Procedure also specifically allow for deviation in accordance with the statutory purpose by listing considerations, in addition to "all relevant factors including

---

69. 23 PA. CONS. STAT. § 4322(1998), and PA.R.CIV.P. No. 1910.16-1 to 16-5. See 23 PA. CONS. STAT. § 4302 (1998).

70. 23 PA. CONS. STAT. § 4322(a).

71. 23 PA. CONS. STAT. § 4302. The 1996 amendment made "or other entitlements to money or lump sum awards, without regard to source" a part of the statutory definition of income. October 16, P.L., 706 No. 124, §3, effective, December 16, 1996. The 1997 amendment added "bonuses and lottery winnings, income tax refunds, insurance compensation or settlements, awards or verdicts, and any form of payment due to and collectable by an individual regardless of source." December 16, P.L., No. 58, §1.1, effective January 1, 1998.

72. PA.R.CIV.P. 1910.16-2. See, subsection (a) listing that gross monthly income is a six month average of income as defined by the support law, 23 PA. CONS. STAT. § 4302, but stating specifically: "The statute lists many types of income including, but not limited to:" and then lists the categories of income defined by §4302. *Id.* (Therefore, some inconstancy remains between the statute and the rules of civil procedure for calculating income due to the recent *Humphreys* analysis. See *Humphreys*, 790 A.2d 281 at 285-286.)

73. *Ball v. Minnick*, 648 A.2d 1192, 1197 (Pa. 1994). This portion of *Ball* was cited in *Humphreys* to support the economic reality of intact and non-intact family portion of the majority's decision. *Humphreys*, 790 A.2d at 286.

74. *Ball*, 648 A.2d at 1197.

the best interests of the child," to be taken into account when calculating if the amount of support under the guidelines is inapplicable to either the child's needs or the parent's ability to pay.<sup>75</sup>

The statutory development of the support guidelines helped to solidify the well-established child support rules of the common law, and the interpretation of the statutory definition of income has recently been explored in the 1996 determination of *Darby v. Darby*.<sup>76</sup> The issue in *Darby* was whether a lump sum payment for a tort award is income available for child support awards.<sup>77</sup> The superior court determined that lump sum awards were included in the statutory definition of income due to the statutory phrase, "including but not limited to" as an indication that the definition was not intended to be an exclusive list of all possible sources of income.<sup>78</sup> The court also relied on the inclusion of lump sum awards prior to the adoption of the statute demonstrated in prior case law.<sup>79</sup> The result of *Darby* was that the court determined lump sum awards to be income, although the statute does not specifically provide for its inclusion as an enumerated item in the definition because the statute was not intended to be an exclusive list.<sup>80</sup> The legislative approval of the inclusion of lump sum awards was thereafter codified through the adoption of the 1996 amendment to the statutory definition of income that specifically provides for "or other entitlements to money or lump sum awards, without regard to source."<sup>81</sup>

Although Pennsylvania's only case regarding the treatment of inheritances on the obligations of child support was the 2002 hold-

---

75. PA.R.CIV.P. No. 1910.16-5.(b), *See*, 1910.16-5(b)(9).

76. 686 A.2d 1346 (Pa. Super. Ct. 1996).

77. *Darby*, 686 A.2d at 1348.

78. *Id.* (*But See supra* note 17, where this interpretation is reversed by the Supreme Court in *Humphreys*). *See supra* note 79, (listing other cases that have made inclusions on the statutory definition of income under the same rationale).

79. *Darby*, 686 A.2d at 1349. *See Butler*, 488 A.2d 1141 (Tort award is income, even to extent that award covered pain and suffering).

80. *Id.* *See also* *Fichthorn v. Fichthorn*, 533 A.2d 1388 (Pa. Super. Ct. 1987) (Bonuses were included as income available for child support awards, although not provided for in statute); *Babish v. Babish*, 521 A.2d 955 (Pa. Super. Ct. 1987) (Lump sum worker's compensation awards were income for determining child support, although not listed in statute); *Hyde v. Hyde*, 618 A.2d 406 (Pa. Super. Ct. 1992) (Alimony payments to wife were available income for determining child support, although not an enumerated item); *Alexander v. Armstrong*, 609 A.2d 183 (Pa. Super. Ct. 1992) (Military allowance and variable housing allowance were income for child support purposes, although not provided for in the statute); and *Melley v. Schuster*, 20 Pa. D.&C.4th 89 (1993) (Public assistance is income for child support calculation, although not listed in the statutory definition).

81. October 16, P.L., 706 No. 124, §3, effective December 16, 1996.

ing in *Humphreys*, foreign jurisdictions have specifically dealt with the effect of inheritances on child support obligations over the past decade.<sup>82</sup> Foreign decisions regarding child support and inheritances has resulted in a split authority of treatment, resulting in the inclusion of inheritance as imputed income, inclusion for deviation purposes, or inclusion of actual or imputed interest on the inheritance as income available for child support.<sup>83</sup> Missouri, Louisiana, Tennessee, Alaska, and Virginia have held that inheritances can be imputed or included as income available for child support obligations.<sup>84</sup>

The Missouri Court of Appeals held that an inheritance can be imputed as income under the discretion of the court, in *Gal v. Gal*.<sup>85</sup> The issue in *Gal* was whether an inheritance was income available for support.<sup>86</sup> The court determined that imputing income to a parent was under the discretion of the court, and the mother who was living off of the inheritance was continuing her education and therefore making an attempt to improve her earning potential.<sup>87</sup> The controlling rule of law, according to the Missouri court, was that imputing income when calculating child support was based on considerations of past, present and future earning ability, and the inheritance was used to improve future earnings and, therefore, was not required to be imputed for child support purposes.<sup>88</sup> The purpose of imputing income applies when a parent is underemployed or unemployed to prevent escaping financial responsibilities to provide child support, and the facts of *Gal*, according to the court, clearly demonstrated that the inheritance was used to aid future support and, as a result, not required to be imputed.<sup>89</sup>

The Louisiana court held that inheritances are properly included in determining alimony awards, and that the custodial spouse's receipt of an inheritance is properly used to defeat a claim for a larger amount for child support from the non-

---

82. *Humphreys*, 790 A.2d at 286-87.

83. *Id.* at 286-87.

84. See *Gal*, 937 S.W.2d 391 (Mo. 1997); *Goldberg v. Goldberg*, 698 So.2d 63. (La. 1997); *Ford v. Ford*, 1998 WL 730201 (Tenn.Ct.App. 1998); *Crayton v. Crayton*, 944 P.2d 487 (Alaska 1997); and *Forsythe v. Forsythe*, 1996 WL 1065613 (Va. Cir. Ct. 1996).

85. 937 S.W.2d 391 (Mo. App. 1997).

86. *Id.* at 397.

87. *Id.*

88. *Id.*

89. *Id.*

inheriting spouse, in the 1997 case *Goldberg v. Goldberg*.<sup>90</sup> The facts of *Goldberg* are extraordinary in that the husband lost a \$160,000 a year job and the wife, who had never been employed during the marriage, had inherited in excess of one million dollars.<sup>91</sup> The assessment of whether the child support award from the father should be based on the prior standard of living to which the children had been accustomed to had been resolved by the court through the use of an expected future salary amount that the father could reasonably be expected to generate, a review within six months of the award, and the conclusion that the inheritance is the only source that could maintain the standard of living to which the children had been previously afforded.<sup>92</sup> The balance struck in the Louisiana court was to not eliminate the father's responsibilities, although he was currently without employment, but to shift the primary responsibility of the child support maintenance on the mother due to her inheritance while imputing income on the father based on the reasonable amount he could be expected to earn.<sup>93</sup> The conclusion in the *Goldberg* court was not that an inheritance is income directly, but the effect of the decision was that the parent receiving the inheritance was to be the substantial provider until future circumstances allowed for a modification of the support order based on the actual earnings of the father in the six month review period.<sup>94</sup>

The Tennessee court held that it was proper to impute income to a recipient of an inheritance for child support obligations, in the 1998 case of *Ford v. Ford*.<sup>95</sup> The inheritance was placed in a trust that provided annual payments that the court determined was income under the statute.<sup>96</sup> The statute was broad enough to include all funds received from the trust, according to the court, because the statute provided that income is "all income from any source... whether earned or unearned."<sup>97</sup> The conclusion of the *Ford* court was that the payor spouse received income in both the corpus and the interest of the trust, but the court specifically found that life insurance proceeds should not be included as in-

---

90. 698 So. 2d 63 (La. App. 1997).

91. *Id.* at 67-68.

92. *Id.* at 68.

93. *Id.*

94. *Id.*

95. 1998 WL 730201.

96. *Id.* at 4.

97. *Id.* at 4-5 Tenn.Comp. R & Regs r124Q2-4-.03(3)(a).



come because it was a one-time distribution.<sup>98</sup> The *Ford* court's holding was dependent upon the stability of the item's continued receipt for determining whether it is available for support, to ensure that speculation by the court will not increase obligations, but where receipt is not speculative it will be included.<sup>99</sup>

The Supreme Court of Alaska determined that retroactive support obligations could be based on the income available at the time support was sought which includes gifts from third parties to the obligor spouse, in the 1997 holding of *Crayton v. Crayton*.<sup>100</sup> The issue resolved in *Crayton* was whether gifts should be included as income for past due child support calculations.<sup>101</sup> The court's concern surrounding the inclusion of inheritances and one-time gifts as income was that it would unfairly inflate prospective obligations beyond ascertainable resources.<sup>102</sup> The facts of *Crayton* distinguish a support obligation for a past time frame from policy concerns of the court regarding continuous future awards, which resulted in the inclusion of gifts as income for determining past due support.<sup>103</sup>

Virginia resolved the issue of whether an inheritance was income for purposes of determining the correct amount of spousal support owed to an inheriting spouse when the spouses agreed to use the child support statutory definition of income, in the 1996 decision of *Forsythe v. Forsythe*.<sup>104</sup> The Virginia statute provided that income is broadly defined under child support statutory definition, and that the definition of child support income is intentionally more inclusive than the statute governing spousal support.<sup>105</sup> The *Forsythe* court's inclusion of inheritance as income under the child support statute was because the statute speci-

---

98. *Id.* at 4-5. (See, 23 PA. CONS. STAT. § 4302 specifically provides for life insurance proceeds to be included as income, and the interest payments from trusts would be provided for in the income from an interest in an estate or trust category of the Pennsylvania statutory definition of income. 23 PA. CONS. STAT. § 4302).

99. *Id.* at 4.

100. 944 P.2d 487 (Alaska 1997).

101. *Id.* at 490.

102. *Id.*

103. *Id.* The dissent noted that the statute specifically provides that only interest from gifts or inheritances can be considered as income for future child support obligations, but the majority's analysis was based on policy considerations, not statutory language. *Id.* at 490-491. The differential treatment between child support and past due child support clearly lacks the applicable policy rule in Pennsylvania that "persons similarly situated are treated similarly." 23 PA. CONS. STAT. § 4322.

104. 1996 WL 1065613 at \*2.

105. *Id.* at 2-3.

cally named gifts as income.<sup>106</sup> The Court concluded that inheritances are testamentary gifts because the principle from an inheritance can be used without limitation by an heir.<sup>107</sup> The Court came to this conclusion by comparing the statutory definition of income that includes only the income from a trust, because the principle of a trust cannot be reached without restrictions by a trustee, with an inheritance that has no restrictions on use of the principle by the beneficiary.<sup>108</sup> This distinction led the *Forsythe* court to hold that an inheritance is income for determining spousal support when using the child support statutory definition of income.<sup>109</sup>

Other jurisdictions in New York, New Jersey, and California have held that inheritances allow a deviation from the amount of child support obligation required by statute, although inheritances are not treated as income for determining the initial amount of support a parent owes, but is used to supplement that amount or to justify the award of a lump sum payment of support to the child.<sup>110</sup> The New York appellate court held that a lump sum award for child support based upon a parent's receipt of a lump sum inheritance was under the discretion of the trial court, although the amount awarded was inappropriate due to the effect the award would have on the inheriting spouse, in *Bryant v. Bryant*.<sup>111</sup> The issue in *Bryant* was whether the children of a parent who receives an inheritance should be awarded a share of the inheritance as additional child support, and whether the interest generated from the inheritance is income for the calculation of the basic child support amount.<sup>112</sup> The New York statute, according to the court, provides specifically for the treatment of inheritances as not income, but grounds for deviation for basic child support obligations due to their nature as "non-recurring payments from extraordinary sources not otherwise considered as income...", but the interest generated from an inheritance is used to determine the basic parental obligation of support.<sup>113</sup> The court reasoned

---

106. *Id.* at 3.

107. *Id.*

108. *Id.*

109. *Forsythe*, 1996 WL 1065613 at \*3.

110. See *Bryant v. Bryant*, 235 A.D.2d 116 (N.Y. App. Div. 1997); *Connell v. Connell*, 712 A.2d 1266 (N.J. 1998); and *Kern v. Castle*, 75 Cal.App.4<sup>th</sup> 1442 (Cal. App. 1999), 89 Cal. Rptr. 2d 874 (Cal. 1999).

111. *Bryant*, 235 A.D.2d at 116.

112. *Id.* at 118-19.

113. *Id.* at 120.

that, although the statute prohibits the treatment of inheritances as income for the calculation of basic support, it also specifically provides for an additional award over the basic support obligations that results in the determination resting with the trial court if a lump sum distribution is appropriate.<sup>114</sup> The trial court in *Bryant* awarded a lump sum portion of the inheritance to the child for additional support, but the amount of the award was one fourth of the inheritance which would require the parent to sell assets to be able to maintain the obligation of the lump sum support amount.<sup>115</sup> The holding of the *Bryant* court was that a lump sum distribution is under the trial court's discretion and can be fairly imposed if circumstances are such that considering whether the combined income, pro rata share of basic support, reduction of payor spouse's income to poverty, and additional award would be unfair or unjust based on the support amount previously imposed.<sup>116</sup> Specifically, the *Bryant* court directed the trial court, in its remand, to determine if another way to fashion the support award could avoid the necessity of selling assets to fulfill the support obligation, although the trial court could, upon reviewing all facts and circumstances, uphold the initial award amount if the determination is based on the standard of review asserted by the appellate court.<sup>117</sup>

The New Jersey court also allowed a supplemental award of child support in addition to a basic support obligation due to an inheritance received by the payor spouse in the case of *Connell v. Connell*.<sup>118</sup> The issue in *Connell* was whether an inheritance received by the payor spouse is considered in determining child support calculations.<sup>119</sup> The trial court concluded that children have a right to inherited money to be included in the support calculation even if the money had been invested in property that did not produce interest and this determination was upheld on review.<sup>120</sup> The appellate court, however, disagreed with how the inheritance was factored into a support obligation, and determined that imputing income based on the inherited funds is applicable, as well as assets and other financial resources, when reviewing the actual cir-

---

114. *Id.*

115. *Id.*

116. *Bryant*, 235 A.D.2d at 123.

117. *Id.*

118. 712 A.2d 1266 (N.J. Super. 1998).

119. *Id.* at 1267.

120. *Id.*

cumstances of the parents and no distinction exists between earned and unearned income.<sup>121</sup> The inheritance was voluntarily placed in non-income producing property which does not remove it from child support calculations, and therefore, interest will be imputed when no actual interest is generated through the election of a parent to spend the inheritance.<sup>122</sup> The *Connell* court concluded that all of the principle or a portion of the principle can be used to impute income to the parent with a support obligation depending upon the facts and circumstances surrounding the inheritance, to supplement the base support award with additional available sums.<sup>123</sup>

California has held that an inheritance should be treated differently under the facts and circumstances of each case, under the decision of *Kern v. Castle*.<sup>124</sup> The issue in *Kern* was whether the trial court abused its discretion when after in excess of one million dollar inheritance was received by the obligor parent, the child support obligation was only increased twenty dollars a month by only factoring in the rental income received from inherited property.<sup>125</sup> The statutory definition of income was silent as to the treatment of inheritances and the appellate court held that the trial court could not consider inheritance when determining child support when the payor spouse's base child support obligation was in excess of the minimal basic support amount required by statute.<sup>126</sup> The *Kern* court, however, specified that the trial court had the discretion to determine that the lump sum cash distribution under the inheritance was not income, but the interest that could have been earned on the sum should be imputed as income for basic child support calculations.<sup>127</sup> The court also specified that the only basis for not including the lump sum cash distribution as income was based on the trial court's undocumented conclusion that the cash distribution was property and therefore an asset that did not have to be considered in child support calculations.<sup>128</sup> The holding of the *Kern* court was that the trial court had discretion due to the fact that the child support obligation was set at a level

---

121. *Id.* at 1269.

122. *Id.*

123. *Connell*, 712 A.2d at 1270.

124. 89 Cal.Rptr.2d at 874.

125. *Id.* at 875.

126. *Id.* at 879-80.

127. *Id.* at 882.

128. *Id.* at 883.

higher than the minimal amount provided by statute due to the payor spouse's actual income level.<sup>129</sup> However, the *Kern* court also held that the trial court had abused its discretion by failing to at least consider the amount of the reduction on the cost of living by the inheritance when determining income available for support, and, therefore, the trial court failed to provide any rationale for failing to consider the inheritance as income, imputed income, or any other calculation.<sup>130</sup> The child not sharing in the wealth created by the inheritance is against public policy and the trial court on remand must consider if the inheritance, the imputed interest from the inheritance, the underemployment caused by the inheritance, and/or the reduction in the cost of living due to the inheritance should be included as income for the purposes of child support calculation and state its reasons if any should not be included.<sup>131</sup>

Courts in Colorado, Arkansas, and Washington have held that only the amount of interest that the principle inheritance could have generated can be imputed as income for child support, or that the actual interest generated from an inheritance is income for child support obligation purposes.<sup>132</sup> Colorado held that income includes an amount an inheritance could reasonably be expected to generate for child support calculations, in the 1992 case of *Armstrong v. Armstrong*.<sup>133</sup> The policy consideration in *Armstrong* was that if the marriage was intact the children would benefit from the inheritance, and therefore, imputing income to the amount that an inheritance could reasonably generate, was income for purposes of child support calculations.<sup>134</sup> The statute in Colorado includes payments from a financial resource as income, and the further reduction in cost of living expenses would be considered for increasing income available for support.<sup>135</sup> Therefore, the *Armstrong* court concluded that interest could be imputed to the inheritance to increase the income of the parent for child support calculations.<sup>136</sup>

---

129. *Kern*, 89 Cal.Rptr.2d at 883.

130. *Id.* at 884.

131. *Id.* at 884-85.

132. See *Armstrong v. Armstrong*, 831 P.2d 501 (Colo. 1992); *Halter v. Halter* 959 S.W.2d 761 (Ark. 1998); and *Gainey v. Gainey*, 948 P.2d 865 (Wash. 1997).

133. 831 P.2d 501 (Colo. App. 1972).

134. *Id.* at 502.

135. *Id.* at 503.

136. *Id.*

The Arkansas court held that income did not include inheritances as a basis for determining child support, but that interest could be imputed on the inherited sum for purpose of arriving at an appropriate amount of support, in the 1998 decision in *Halter v. Halter*.<sup>137</sup> The statutory definition of income for support obligations was based on the tax laws definition of income, which excludes inheritances from income for both tax and support calculations.<sup>138</sup> Although specifically excluded from income calculations, inheritance interest is income under the definition in the tax code, and should be included in a child support determination.<sup>139</sup> Lastly, *Halter* determined that any interest that might have been earned on the principle amount of the inheritance could have been imputed to the income of the obligor spouse, which was under the court discretion to impute.<sup>140</sup> The conclusion was only based on the statutory definition of income, and no consideration was made regarding the appropriateness or availability of any deviation from the support amount due to the inheritance.<sup>141</sup>

The Washington court held that gifts and inheritances are not income, but interest earned on the gift or inheritance is income for child support purposes in *Gainey v. Gainey*.<sup>142</sup> The issue was whether the custodial parent's inheritance should affect the payor spouse's support obligation.<sup>143</sup> The determinative factor was that the language of the statutory definition of income for child support did not include gifts, but included interest, and therefore an inheritance is a testamentary gift and not included as income for child support purposes.<sup>144</sup> The *Gainey* court held that the corpus of an inheritance is not income, but the actual interest generated from an inheritance is income for purposes of child support calculations.<sup>145</sup> The court also noted that the trial court is not obligated to include the corpus of an inheritance as income, but is obligated to include interest generated as income for child support determinations, and clarified that the current issue was not whether an inheritance will allow deviation from the support scheduled

---

137. 959 S.W.2d 761 (Ark. App. 1998).

138. *Id.* at 762.

139. *Id.*

140. *Id.*

141. *Id.* at 761.

142. 948 P.2d 865 (Wash. App. 1997).

143. *Id.* at 869.

144. *Id.*

145. *Id.*

amount.<sup>146</sup> Therefore, *Gainey* held only that the interest actually generated by an inheritance is income under the statutory definition, but no determination was made regarding the corpus of the inheritance's effect on child support calculations for deviation from the guideline amount.<sup>147</sup>

In analyzing the statutory definition of income, the rules of statutory construction, Pennsylvania case law regarding the statutory definition of income, and the decisions in foreign jurisdictions, it is clear that the Pennsylvania Supreme Court's treatment of an inheritance only changing the payor spouse's cost of living as a basis for deviation is too narrow to properly allow a correct calculation of the effect of an inheritance on a child support obligation. The outright exclusion of inheritances from the definition of income is based on a questionable statutory construction scheme that is against all prior case law, the purpose of the child support guidelines, and public policy.

The Supreme Court interpreted the statutory definition of income as an express list in which an item must reasonably fit within to be considered when making a child support order.<sup>148</sup> This interpretation, as applied to lump sum cash inheritances, is dealt with in the blanket statement, "inheritance is one of the most common means by which wealth is transferred, it defies logic that the legislature would not have clearly provided for an inheritance within the statutory definition of income if that were its intent."<sup>149</sup> The rules of statutory interpretation do not include dicta as a matter to be considered when the words of the statute are not explicit, and in fact deal with specific considerations that the Supreme Court failed to incorporate into their interpretation of the statute.<sup>150</sup> The first rule of statutory construction is that the object of the interpretation of the court is to give all provisions effect and to pinpoint and carry out the intention of the legislature.<sup>151</sup> The Supreme Court's blanket exclusion of inheritances as income negates the purpose of the statutory definition of income's generalized phrases like: "other entitlements to money or lump sum awards *without regard to source*, including lottery winnings" or "*any form of payment due to and collectable by an individual re-*

---

146. *Id.*

147. *Gainey*, 948 P.2d at 865.

148. *Humphreys*, 790 A.2d at 284.

149. *Id.* at 285

150. 1 PA. CONS. STAT. § 1921 (1995).

151. 1 PA. CONS. STAT. § 1921(a).

*regardless of source*” nor the more specific “income in respect of a decedent” or “interest in an estate or trust” which are both given generalized statements of non-applicability by the Supreme Court.<sup>152</sup> The Court, by ignoring what seemed clear to the general rules of child support calculations, created a category of income that is now unavailable to meet the reasonable needs of minor dependent children. Assuming that there is some basis for the Supreme Court’s conclusion that the common means to transfer wealth by way of inheritances proves the intent of the General Assembly to exclude inheritances as income, then the general inclusionary clauses of *regardless of source* would most likely be followed by specific exclusionary clauses that would make clear the intent to expressly exclude inheritances, due to the overlapping generalized inclusionary phrases that under the plain meaning of the statute could be reasonably construed to include inheritances as income. Without the express exclusion of inheritances through the language of the statute, the court is left only with the ‘common transfer of wealth’ explanation to show absent an express inclusion, inheritances were intended to be excluded. *DeRoss*, decided in 2002, is the first Pennsylvania case to deal with lump sum cash inheritances and the impact on child support calculations since the creation of the statutory definition of income in 1985. Therefore by the cases very existence, it seemingly debunks the “common occurrence” theory of the Supreme Court in regards to child support obligations. The plain meaning of the statutory definition of income cannot be facially determined through the inclusion or exclusion of any category to exclude inheritances. Furthermore, the plain meaning is more likely to produce the inclusion of inheritances through the *regardless of source* catchall categories in absence of express inheritance exemption.

The rules of statutory construction list factors to be considered when the intent of the General Assembly is not explicit, including: “occasion and necessity for the statute;” “mischief to be remedied;” “object to be attained;” “former law if any...” and “consequences of a particular interpretation.”<sup>153</sup> The application of these factors to a lump sum cash inheritance lead to the conclusion that such an inheritance is income for the purposes of child support calcula-

---

152. 23 PA. CONS. STAT. § 4302, See *Humphreys*, 790 A.2d 281, at 285. The court merely states that the inheritance received by DeRoss is not applicable to these categories without further analysis. *Id.*

153. 1 PA. CONS. STAT. § 1921(c) (1995).



tions. The "occasion and necessity" of the definition of the statute was to create a formula for calculating child support to alleviate the differential treatment of people who are otherwise correspondingly situated while putting the primary focus on the needs of the child and each parent's ability to pay.<sup>154</sup> Part of the "necessity" for the statute was to make both parents equally responsible for the maintenance of their children. Pennsylvania's Support Guideline is an Income Shares Model that focuses on the extent of income between both parents that would have been available if the parents were still together.<sup>155</sup> This focus negates the Supreme Court's application of how intact verses non-intact families spend inheritances which results in an arbitrary classification of minor children's rights to be maintained based upon how their parent decides to spend an inheritance.<sup>156</sup> The Supreme Court suggests that if a parent invests an inheritance, the minor child has rights. If the parents reduce their cost of living through an inheritance, the minor child has rights. However, if a parent gambles, purchases assets (whether basic living or not), or spends the inheritance on non-necessities, then the minor child does not have rights to additional support.

The "mischief to be remedied" includes the ability of a parent to make financial resource choices that would reduce the amount of money that is available for support. The court is situated to be able to make determinations based on the economic reality of the parent and to be able to prevent a parent from hiding income in what might otherwise be viewed as an asset.<sup>157</sup> The uniformity of obligations cannot be escaped by moving income into assets or other avoidance techniques that would affect the court's determination of what is available for support. These concepts attach directly to the Supreme Court's determination that the corpus of an estate is not income. When ignoring if the corpus is cash or property, the obligor parent has the ability to practice avoidance of his or her duty by either holding the asset until the child reaches majority or holding the cash in a non-interest bearing account or converting it into a non-interest bearing asset.<sup>158</sup> This cannot be the legislative object to be attained by not expressly listing the corpus

---

154. 23 PA. CONS. STAT. § 4322(a).

155. *Ball*, 648 A.2d at 1197.

156. *Humphreys*, 790 A.2d at 286.

157. 23 PA. CONS. STAT. § 4302. See "compensation in kind"; "pensions"; and "gains from dealings in property."

158. *Humphreys*, 790 A.2d at 288.

of an inheritance as an express provision of the statutory definition of income.

The former law is not statutory, but based on the well-established common law principles, which set up the inescapable duty to provide to the best of the parent's ability for the reasonable needs of the child.<sup>159</sup> Once the Support Guidelines were established, prior case law was used to determine the intent of the General Assembly, and the codification of *Darby* demonstrated the proper analysis of the statutory definition of income.<sup>160</sup> Judge Joyce, in the Superior Court's treatment of *Humphreys*, rightly states:

[t]his court has construed...section 4302 as providing examples...(the statutory definition of income) list is not intended to be inclusive...Following *Darby*, the General Assembly essentially codified this court's decision by amending the statute... the General Assembly had the opportunity to overturn *Darby* if it disagreed with (the) interpretation of section 4203. The fact that it did not do so, but incorporated our holding, suggests the General Assembly approved of this court's interpretation.<sup>161</sup>

Joyce's overview of former law, its application, and the General Assembly's response to the Superior Court's prior treatment of the statutory definition of income as non-exclusive makes clear that the principles of common law child support obligations are the basis for the legislature's statutory definition of income. The duty of a parent to support his or her child cannot be avoided through a narrow statutory interpretation scheme, hiding income in assets, nor treating inheritances as an express exclusion from income when a lump sum cash distribution has in fact occurred.

The consequences of the Supreme Court's interpretation are severe when applied generally and uniformly to all parents who receive an inheritance as the purpose of the Support Guidelines require.<sup>162</sup> A ten million-dollar lump sum cash distribution would be treated the same as DeRoss's eighty thousand plus distribution. Under the same facts, a parent with only income from Social Security and Worker Compensation could feasibly enjoy an extrava-

---

159. See *supra* note 56-61.

160. *Darby*, 686 A.2d at 1346.

161. *Humphreys*, 737 A.2d at 783.

162. 23 PA. CONS. STAT. § 4322(a).

gant standard of living while his minor child remains in need, as long as he practiced avoidance of interest and the purchase of non-income producing assets. This reality would indeed call into question the Supreme Court's interpretation of excluding the corpus on an inheritance as income and viewing only any reduction in the cost of living, a reduction that most likely occur through an outright purchase of a basic living necessity. The court seems to encourage parents to buy assets after a cash inheritance so that the cash is not invested or available outright for child support payments which allows the parent's asset to receive a higher level of protection than the minor child.<sup>163</sup>

The other disturbing consequence of the court's holding is that a blanket exclusion of inheritances removes the trial court's discretion to view the facts and circumstances of each case individually to make the best determination for all parties involved. For example, if DeRoss's inheritance was not spent until after the deviation procedure, then the trial court could have awarded a lump sum payment due to Angela that would have allowed DeRoss to invest the remaining portion in his new home, a fair result to both parties. In addition, the Supreme Court decision, by allowing deviation only for the reduction in the cost of living resulting from the inheritance, could also result in an asset based inheritance increasing the cost of living for the inheriting parent through property and other taxes as well as maintenance costs, which could feasibly be used to reduce a child support obligation under the court's interpretation. This result also seems clearly against public policy, the purpose of the guidelines, and all prior case law regarding the duty to provide for the reasonable needs of a minor child.

The Supreme Court could have held the inheritance as income under the statutory definition of income under either of the "regardless of source" catchall clauses, and the effect would have been that when a parent receives an inheritance they would first be obligated to determine the impact the inheritance has on their duty of support before investing in assets or frivolously spending the lump sum award. The court could have also imputed income on the inherited amount to either encourage the parent to make a supplemental lump sum payment of support or to invest and pay a supplemental amount over time, before the parent could invest in

---

163. See *Humphreys*, 737 A.2d at 785. The court stated that it was unreasonable that DeRoss might have to sell (or refinance) his home to comply with the last months of the support order. *Id.*

an non-interest producing asset. Allowing the trial court the discretion to serve both the parent and the minor child's reasonable needs would not be unfair or confiscatory but would be in line with the intent of the legislature to promote the duty of a parent to provide in the support of their minor child's reasonable needs.

The majority instead removes the trial court's discretion for determining whether an inheritance should have an effect on child support obligations, depending upon the facts and circumstances of each support case. The majority's treatment of inheritances exempts parents from the tax of parenthood, unless the inheritance is invested or substantially reduces the parent's cost of living, which is clearly contrary to the intent of the General Assembly's purpose in creating a statutory definition of income specifically for child support determinations which includes general "regardless of source" categories. The majority's exclusion of inheritances results in a clear violation of the well established rule that children have a right to share in a parent's standard of living which, as the Superior Court noted in *Butler*, "indeed, calls into question the sanity of the law...to rule that the (lump sum award) is available to pay debts to 'the butcher, the baker, and the candlestick maker' but not the debt to...the child for support"<sup>164</sup> The court has failed its *parens patriae* duty to both hold a parent accountable to the imposed obligations of parenthood and to provide for the child's best interest and welfare. It now remains up to the General Assembly to not do the same by rightfully returning the discretion to the trial court to ensure the best interests and welfare of the child are obtained though the enforcement of the parent's duty to provide for the reasonable needs of their dependent children, by expressly including inheritances in the statutory definition of income.

*Sarah Eckel\**

---

164. *Butler*, 488 A.2d at 1143.

\* The author would like to thank the following people for their help in the preparation of this casenote: Valerie S. Champlin-Kahm, Linda J. Eckel, Deborah A. Hartman, and Associate Recent Decisions Editor Suzanne Ruschak.

