

Testimony of Stuart Showalter to the Domestic Relations Committee of the Indiana Judicial Center on proposals to amend the Indiana Parenting Time Guidelines. 16 May 2014.

Members of the Committee I will attempt to keep my comments brief. I have provided to you a report consisting of 40 pages that further elaborates on my thoughts and provides some approaches to child support payments that may reduce parenting time conflicts.

My area of expertise is in contested child custody particularly among high conflict parents. It is this perspective from which my lens of child support payments is coloured. Thus, while I profess no expertise in child support I have gleaned from numerous combative relationships the nexus between child support and contested child custody. It is from this experience that I tender the following suggestions.

~ The guidelines should seek to promote rather than inhibit parental involvement;

~ They should ensure support is used on the child;

~ They should be based upon actual expenditures *for the child*;

~ They should seek to reduce parenting time conflict among parents;
and

~ They should provide continuity in the child's standard of living.

Earlier this month I was brought in on a high conflict case that has endured over 12 years. I have two other clients who appear to be on that course despite their attorney's best efforts. Over the years I have had many more where embattled parents perpetuated hostilities through the courts until they were brought to a new realization. The common thread between nearly every case was child support payments - parents falling on opposite ends of sufficiency. Often times a parent behind in support faces unending court appearances and at times incarceration thus inhibiting employment and earnings thereby exacerbating the problem.

Underlying these disputes are a principle that goes back as far as the American Revolution – taxation without representation. In the child support sense it is equated with mandated support payments without influence on their utilization. A parent with IPTG minimums or less with no legal custody rights is in this position – paying the most without a say in how it is spent

In-kind payments, however, can build the parent-child bond and increase support compliance while at the same time reducing the burden

upon the receiving parent. A recalcitrant parent who takes on the responsibility of grocery shopping, fitting the children with new clothes and providing furnishings for the child may realize the value of providing support. This relieves the receiving parent of the position of nanny rather than parent. While push-back may include the accounting objection please consider 12 years of litigation as an alternative.

The incentive for payors – a two-tiered support rate with one being lower for the payor who puts forth the time and effort of providing in-kind support.

The IPTG currently promotes illogical parenting time arrangements. One ridiculous example comes from a case in Southern Indiana. The parents' residences were separated by about a 40 minute commute while the child's school lay near the middle. Yet on Sunday evenings the child passed his school as weekend parenting time ended although logically stopping there Monday morning would have been better. This didn't happen though because the Custodial Parent didn't want the Non-Custodial Parent to receive an overnight parenting time credit and the court simply defaulted to IPTG minimums. I implore you to investigate alternative factors to be considered other than overnights for parenting time credit.

Courts, parents, and practitioners have long grappled with the difficulty in extricating support from parenting time so as to reduce conflict over that connection. This is my greatest concern because a parent seeking a support windfall will attempt to deprive the child of a necessary relationship with the other parent. Unfortunately, this strategy is often successful. Likewise, a parent seeking to avoid paying may procure additional time with the child that does not contribute to the child's growth and well-being. I believe I have a solution - assumed responsibility.

In liability law there is a defense of assumption of risk which allows for a defendant to argue that plaintiff voluntarily accept responsibility for the consequence – often costs – associated with his actions. In the case of child support a court would calculate support based upon income shares assuming 50/50 parenting time. A parent who plead for additional time would not received additional payment if that time is awarded. That is the assumed responsibility. If the court, sua sponte deviates from 50/50 based upon the best interest standard then support would be calculated using the actual parenting time. Thus, the fight over parenting time to effect a support award is eliminated.

I will certainly entertain questions now if that is your desire or I am available another time at your convenience.