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MODIFICATION OF CHILD SUPPORT AWARDS UNDER NEW YORK CHILD SUPPORT STANDARDS ACT

Barbara Gonzo*

INTRODUCTION

In New York, the primary hurdle in modifying existing child support awards has been satisfying a threshold change of circumstances test. In the landmark case of *Boden v. Boden*,¹ the New York Court of Appeals held that where the prior child support award was based upon a separation agreement, the party seeking additional support must establish either a substantial change in circumstance which was “unanticipated and unreasonable,” or that the agreement was not fair or equitable when entered into.² Thereafter, the New York Court of Appeals, in *Brescia v. Fitts*,³ eased that standard somewhat, holding that modification could also be justified if the combination of the custodial parent’s income and the child support award was insufficient to meet the child’s needs.⁴

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1. 42 N.Y.2d 210, 366 N.E.2d 791, 397 N.Y.S.2d 701 (1977).

2. *Id.* at 213, 366 N.E.2d at 794, 397 N.Y.S.2d at 703.

3. 56 N.Y.2d 132, 436 N.E.2d 518, 451 N.Y.S.2d 68 (1982).

4. *See id.* at 140, 436 N.E.2d at 521, 451 N.Y.S.2d at 71; *see also* *Michaels v. Michaels*, 56 N.Y.2d 924, 926, 439 N.E.2d 321, 321, 453 N.Y.S.2d 605, 605 (1982) (stating that it is sufficient to establish that “a change in circumstances has occurred warranting the increase in the best interests of the child”).

The change in circumstances test is not limited to New York; it is also implemented in other states.⁵ The existence of such a test in New York and other states has merited attention from Congress. In the Federal Family Support Act,⁶ Congress mandated that each state establish guidelines for child support awards and apply those guidelines, except in cases where there was a written finding that

5. See Child Support Enforcement Programs, 57 Fed. Reg. 61,559, 61,560 (1992) (to be codified at 45 C.F.R. §§ 302-03); see, e.g., *Burson v. Burson*, 608 So. 2d 739, 741 (Ala. Civ. App. 1992) (holding that child support shall be modified upon a showing of a material change of circumstances that is substantial and continuing); *Brown v. Brown*, No. 90-2465SI, 1992 WL 10783, at *2 (Conn. Super. Ct. Jan. 10, 1992) (stating this court is authorized to modify a child support order upon a substantial change in circumstances of either party); *Kirchen v. Kirchen*, 595 So. 2d 129, 131 (Fla. Dist. Ct. App. 1992) (finding that husband's increased earnings and wife's increased needs as children became older were substantial changes in circumstances warranting an upward modification of child support); *In re Marriage of Riegel*, 611 N.E.2d 21, 23 (Ill. App. Ct. 1993) (stating an increase in average monthly cost of raising two children was substantial change of circumstances); *In re Marriage of Chmelicek*, 480 N.W.2d 571, 574 (Iowa Ct. App. 1991) (stating that where inflation provision was within original decree, cost of living should not be considered as contributing to material and substantial change in circumstances); *Blackburn v. Blackburn*, 638 So. 2d 252 (La. Ct. App. 1994) (holding that even though no change of circumstances occurred, the trial court's modification of support was not in error); *Foster v. Foster*, 843 S.W.2d 404, 405 (Mo. Ct. App. 1992) (holding that although there was a change in parties' income it was not substantial enough to justify upward modification of father's child support obligation); *Schuett v. Schuett*, No. A-92-499, 1993 WL 460553, at *1 (Neb. App. Nov. 9, 1993) (stating applicant must prove a material change of circumstances has occurred since the dissolution to obtain a modification of child support award); *Olmer v. Olmer*, 507 N.W.2d 677, 678 (Neb. App. 1993) (holding "modification of a child support award is not justified unless the applicant proves a material change of circumstances has occurred since the dissolution"); *Parzynski v. Parzynski*, 620 N.E.2d 93, 99 (Ohio Ct. App. 1992) (upholding finding of change in circumstances warranting upward modification where proper calculation of child support based on current combined annual gross income of former spouse would result in greater than ten percent deviation from current support order); *Payne v. Dial*, 831 S.W.2d 457, 458 (Tex. Ct. App. 1992) (determining that "[i]n order to modify a child support order, the movant must show that there has been a material change in the circumstances of the children or of the parents since the time the order was entered").

6. 42 U.S.C. § 666 (1989).

application of the guidelines would be “unjust or inappropriate.”⁷ Further, the Federal Family Support Act contains provisions which require that states enact procedures to provide for periodic adjustment of child support orders “not later than 36 months after the establishment of the order or the most recent review . . . in accordance with” specific guidelines.⁸

In order to comply with federal law, the New York State Legislature enacted the Child Support Standards Act [hereinafter the CSSA],⁹ which went into effect on September 15, 1989, for the purpose, in the words of the New York State Legislature, of establishing “guidelines that permit judicial discretion, and establish minimum and meaningful standards of obligations that are based on the premise that both parents share the responsibilities for child support.”¹⁰ What follows is an examination of how the CSSA, as amended, can be harmonized with other statutory provisions governing modification of child support awards, and the case law interpreting those provisions.

I. THE STATUTORY FRAMEWORK

Provisions of the Domestic Relations Law and Family Court Act state that an application to modify an award of child support in a matrimonial action must be based upon a “substantial change in

7. 42 U.S.C. § 667(b)(2) (1989). “A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.” *Id.*

8. 42 U.S.C. § 666(a)(10)(B) (1989). The United States Department of Health and Human Services has indicated that the existence of a change of circumstances test “has frequently meant the need for an adversary proceeding and protracted litigation to demonstrate the occurrence of a sufficient change in circumstances” and has “contributed to many awards remaining unchanged throughout the life of the order and thus, inadequate or inappropriate with the passage of time.” Child Support Enforcement Programs, 57 Fed. Reg. 61,559, 61,560 (1992) (to be codified at 45 C.F.R. §§ 302-03).

9. See 1989 N.Y. Laws 567; see also N.Y. DOM. REL. LAW § 240 (McKinney 1986); N.Y. FAM. CT. ACT § 413 (McKinney 1983).

10. 1989 N.Y. Laws 567.

circumstance.”¹¹ The Family Court generally has concurrent jurisdiction to “entertain” applications to modify awards of child support made by “order of the supreme court or of another court of competent jurisdiction,” but only where “changed circumstances require such modification.”¹²

When the CSSA first went into effect, its application to all new child support orders entered after its effective date, September 15, 1989, was mandatory, but in modification proceedings, its application was only permissive.¹³ Then, effective July 25, 1990, the CSSA was amended to make its application mandatory in all cases where a court deemed it necessary to modify an existing child support award.¹⁴

The courts held that, as a matter of public policy, the CSSA should be applied, not only to new applications for child support made on or after its effective date, September 15, 1989, but retroactively to new applications brought prior to the effective date which have not been “finally decided” on direct appeal.¹⁵ When

11. N.Y. DOM. REL. LAW § 236(B)(9)(b) (McKinney 1986). Matrimonial actions are defined as actions for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, or for a declaration of the validity or nullity of a foreign judgment of divorce. *Id.* § 236(B)(2).

12. N.Y. FAM. CT. ACT § 461(b)(ii) (McKinney 1983).

13. *See* 1989 N.Y. Laws 567; *Steel v. Steel*, 152 Misc. 2d 880, 579 N.Y.S.2d 531 (Sup. Ct. N.Y. County 1990). “All orders for child support, entered after September 15, 1989, must be made pursuant to the Child Support Standards Act, which amended [Domestic Relations Law] § 236(B)(7), DRL 240 and § 413 of the Family Court Act to provide a method by which courts are to determine the amount of child support.” *Id.* at 881, 579 N.Y.S.2d at 532.

14. 1990 N.Y. Laws 818. *See Howard v. Howard*, 186 A.D.2d 132, 587 N.Y.S.2d 950 (2d Dep’t 1992).

The 1990 amendment . . . changed the character of the Act from permissive to mandatory with respect to modification applications, and we have held . . . that the tenor of the legislation and the public policy behind it dictated the application of the Act to appeals pending on July 25, 1990, the date of the 1990 amendment.
Id. at 134, 587 N.Y.S.2d at 951.

15. *See, e.g., Fetherston v. Fetherston*, 172 A.D.2d 831, 834, 569 N.Y.S.2d 752, 755 (2d Dep’t 1991) (stating that “the paramount interests” of children in need of support and the “important public policy” of the CSSA justify this retroactive application to suits commenced prior to the effective date but not

the CSSA was amended to make its application mandatory in all cases where a court deemed it necessary to modify an existing child support award, that amendment was also applied retroactively to applications brought prior to the effective date of the amendment, July 25, 1990, which, as of that date, had not been “finally decided” on direct appeal.¹⁶

Although the CSSA provides that “where the circumstances warrant modification” the guidelines “shall” apply in setting the new award,¹⁷ the same paragraph specifically states that “[i]n any action or proceeding for modification of an order of child support existing prior to [its] effective date” the enactment of the CSSA itself “shall not constitute a change of circumstances warranting modification.”¹⁸ In 1993, the CSSA was amended to provide that where a child receives public assistance or services from the

“finally decided”); *Gelb v. Brown*, 163 A.D.2d 189, 191, 558 N.Y.S.2d 934, 937 (1st Dep’t 1990).

16. *Howard*, 186 A.D.2d at 134, 587 N.Y.S.2d at 951 (stating that CSSA must be applied to appeals pending on the date of the amendment); *Borgio v. Borgio*, 186 A.D.2d 131, 131, 587 N.Y.S.2d 951, 952 (2d Dep’t 1992) (stating the important public policy justifies application of CSSA to pending appeals even though the matter was commenced prior to the effective date of the Act); *Maddox v. Doty*, 186 A.D.2d 135, 135, 587 N.Y.S.2d 948, 949 (2d Dep’t 1992) (stating the “remedial nature” of the CSSA justifies retroactive application); *Rathbun v. Winchell*, 183 A.D.2d 948, 949, 583 N.Y.S.2d 314, 315 (3d Dep’t 1991) (stating that the 1990 amendment applies to matters not only pending before trial court on effective date of amendment, July 25, 1990, but also to appeals pending on that date); *Valek v. Simonds*, 174 A.D.2d 792, 793, 570 N.Y.S.2d 711, 711 (3d Dep’t 1991) (applying act where appeal has not reached final judgment); *Weber v. Weber*, 172 A.D.2d 901, 902, 568 N.Y.S.2d 882, 882 (3d Dep’t 1991) (remanding for reconsideration under the 1990 amendment); *Squires v. Squires*, 171 A.D.2d 990, 991 n.1, 567 N.Y.S.2d 931, 932 n.1 (3d Dep’t 1991) (applying amendment on remittal where Hearing Examiner’s decision was rendered subsequent to amendment).

17. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(l) (McKinney Supp. 1994). *See Contino v. Ryan*, 193 A.D.2d 1057, 1058, 598 N.Y.S.2d 619, 620 (4th Dep’t 1993) (holding that where the petitioner failed to show “a change of circumstances warranting modification,” the CSSA does not apply).

18. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(l) (McKinney Supp. 1994).

Support Collection Unit,¹⁹ a party may apply for modification every thirty-six months. Additionally, it provided that “[a] new support order shall be issued” if the old award deviates at least 10% from the amount calculated pursuant to the CSSA, or “the last permanent support order does not provide for the health care needs of the child through insurance or otherwise.”²⁰

An exception to this rule arises where the old award was made after the effective date of the CSSA and did not comply with the guidelines at the time, “due to a finding by the court that such

19. N.Y. SOC. SERV. LAW § 111-h(1) (McKinney 1992). This section provides that “[e]ach social services district shall establish a support collection unit . . . to collect, account for and disburse funds paid pursuant to any order of child support or child and spousal support” issued under Domestic Relations Law article 3-a, Domestic Relations Law §§ 236 or 240, or Family Court Act article 4, 5, or 5-a. Payments made to the Support Collection Unit on behalf of a petitioner who does not receive public assistance “shall . . . be deemed for all purposes to be the property of the person for whom such money is to be paid.” *Id.*

20. N.Y. DOM. REL. LAW § 240(4) (McKinney 1992); N.Y. FAM. CT. ACT § 413(3)(a) (McKinney Supp. 1994); 1993 N.Y. Laws 59. Under the CSSA, all new child support orders “shall prorate each parent’s share of future reasonable health care expenses of the child not covered by insurance in the same proportion as each parent’s income is to the combined parental income.” N.Y. DOM. REL. LAW § 240(1-b)(c)(5) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(c)(5) (McKinney Supp. 1994). *See Slankard v. Chahinian*, 204 A.D.2d 529, 530, 611 N.Y.S.2d 300, 302 (2d Dep’t 1994) (stating it was error to “deduct the [son’s] psychiatric care expenses from the basic child support amount and to direct that the former husband and the former wife to pay 60% and 40% of this expense, respectively”); *Gibbons v. Gibbons*, 199 A.D.2d 1085, 608 N.Y.S.2d 901 (4th Dep’t 1993) (stating that the court “erred in failing to . . . direct[] respondent to pay his pro rata share of future reasonable health care expenses of the children not covered by insurance”). Other statutory provisions permit a court to direct a party in a matrimonial action to “purchase, maintain or assign a policy of insurance providing benefits for health and hospital care and related services.” N.Y. DOM. REL. LAW § 236(B)(8)(a) (McKinney Supp. 1994). Other statutory provisions require

that if any legally responsible relative has health insurance available through an employer or organization that may be extended to cover any persons on whose behalf the petition is brought and such employer or organization will pay for a substantial portion of the premium on any such extension of coverage, the order of support shall require such responsible relative to exercise the option of additional coverage.
N.Y. FAM. CT. ACT § 416 (McKinney 1992).

application was unjust or inappropriate.”²¹ In that situation, “the support collection unit shall consider, in establishing such adjustment, whether the factors” which originally justified deviation from the guidelines “still exist.”²²

The 1993 amendments relating to modification track the language of the federal regulations, which provide that, effective as of October 13, 1993, the states, when providing child support enforcement services, must have in place “a process for review and adjustment of child support orders,”²³ “[n]otify each parent subject to a child support order in the State of the right to request a review,”²⁴ “publicize the right to request a review as part of its support enforcement services,”²⁵ and “[r]eview child support orders at 36 month intervals . . . unless” neither parent asks for the review, or, if the child is not on public assistance, review would not be in the best interests of the child.²⁶ These regulations permit the states to require that a petitioner establish that the original child support deviates from the guidelines by a “reasonable quantitative standard” before an adjustment is necessary.²⁷ In New York, the “reasonable quantitative standard” is ten percent.²⁸ Deviations from the guidelines are permitted where,

21. N.Y. DOM. REL. LAW § 240(4) (McKinney 1992); N.Y. FAM. CT. ACT § 413(3)(a) (McKinney Supp. 1994).

22. N.Y. DOM. REL. LAW § 240(4) (McKinney 1992); N.Y. FAM. CT. ACT § 413(3)(a) (McKinney Supp. 1994).

23. 45 C.F.R. § 303.8(c)(1) (1993).

24. 45 C.F.R. § 303.8(c)(2).

25. 45 C.F.R. § 303.8(c)(3).

26. 45 C.F.R. § 303.8(c)(4).

27. 45 C.F.R. § 303.8(d)(1)(i).

28. See *supra* note 20 and accompanying text; cf. CONN. GEN. STAT. ANN. § 46b-86 (West 1986) (rebuttable presumption that a deviation from guidelines by amounts of 15% or more justifies modification); MO. ANN. STAT. § 452.370(1) (Vernon 1986) (deviation from guidelines by amounts of 20% is prima facie proof of a change in circumstances justifying modification); Schuett v. Schuett, No. A-92-499, 1993 WL 460553, at *2 (Neb. App. Nov. 9, 1993) (deviation from guidelines of 10% or more which have lasted six months and can reasonably be expected to last an additional six months establishes a rebuttable presumption of a material change in circumstances which could warrant modification).

the inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount [i.e., a finding that application of the guidelines would be unjust or inappropriate] and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount.²⁹

Moreover, under the regulations, the “need to provide for the child’s health care needs . . . through health insurance or other means, must be an adequate basis under State law to petition for an adjustment of an order to provide for the children’s health care needs.”³⁰

Under the CSSA, a finding that application of the guidelines would be “unjust or inappropriate,” must be based upon consideration of a variety of factors.³¹ Where the prior award was

29. 45 C.F.R. § 303.8(d)(1)(ii) (1993).

30. 45 C.F.R. § 303.8(d)(3). “In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child’s health care needs in the order.” *Id.*

31. See N.Y. DOM. REL. LAW § 240(1-b)(f) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(f) (McKinney Supp. 1994). The factors provided include:

(1) The financial resources of the custodial and non-custodial parent, and those of the child; (2) The physical and emotional health of the child and his/her special needs and aptitudes; (3) The standard of living the child would have enjoyed had the marriage or household not been dissolved; (4) The tax consequences to the parties; (5) The non-monetary contributions that the parents will make toward the care and well-being of the child; (6) The education needs of either parent; (7) A determination that the gross income of one parent is substantially less than the other parent’s gross income; (8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income [in determining the guidelines amount] provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action; (9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent’s expenses are substantially reduced as a result thereof; and (10) Any other factors the court determines are relevant in each case.

based upon “a validly executed separation agreement or stipulation of settlement,” the court “may consider,” in determining whether a new award based upon the guidelines would be “unjust or inappropriate,” provisions of the agreement or stipulation relating to the equitable distribution of property and maintenance.³² The CSSA further provides that a “validly executed agreement or stipulation” must contain a provision acknowledging that the parties have been advised of the terms of the CSSA.³³ In 1992, that provision was strengthened to provide that if the CSSA amount is not used in the agreement or stipulation, the amount of child support which would have been awarded under the CSSA must be set forth, as well as the reasons for deviating from that amount, and the court, in the order awarding child support, must reiterate the reasons for deviating from the CSSA amount.³⁴

In 1993, Social Services Law section 111-h was also amended, in conformity with the federal regulations, to require the Support Collection Unit to notify persons receiving its services of “their right to seek an adjustment,”³⁵ and to require the Support Collection Unit to “initiate an adjustment review,” unless (1) the child is on public assistance and there has been a finding that review would not be in the best interest of the child, or (2) the child is not on public assistance and neither party has requested it.³⁶ Further, the provisions of the CSSA specifically relating to modification of old awards were amended in 1993 to provide that

Id.

32. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(l) (McKinney Supp. 1994).

33. N.Y. DOM. REL. LAW § 240(1-b)(h) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(h) (McKinney Supp. 1994).

34. 1992 N.Y. Laws 41. *See* Contino v. Ryan, 193 A.D.2d 1057, 1058, 598 N.Y.S.2d 619, 620 (4th Dep’t 1993) (“[P]etitioner acknowledged that she was aware that the Child Support Standards Act was in existence at the time she entered into the original oral stipulation [and thus], there is no merit to her contention that the stipulation is invalid.”); Sloam v. Sloam, 185 A.D.2d 808, 809, 586 N.Y.S.2d 651, 653 (2d Dep’t 1992) (“A finding that either party was unaware of the CSSA will . . . invalidate an agreement which does not comply with its mandates”).

35. N.Y. SOC. SERV. LAW § 111-h(17) (McKinney Supp. 1994).

36. N.Y. SOC. SERV. LAW § 111-h(12); 1993 N.Y. Laws 59.

modification may be had not only where the court finds that the "circumstances warrant modification," but also (1) where the adjustment is sought by the Support Collection Unit or, (2) if the child receives public assistance or services from the Support Collection Unit, upon the request of "either of the parties."³⁷

Thus, under the 1993 amendments, once a party receives services from the Support Collection Unit, the periodic adjustment of child support awards is guaranteed, unless the old award only varies from the guidelines amount by less than ten percent or application of the guidelines would be "unjust or inappropriate." In New York, a person who is not receiving aid to families with dependent children may seek support enforcement services from the Support Collection Unit by filing an application prescribed by the Department of Social Services or an application in court in a proceeding for the "establishment of paternity and/or establishment and/or enforcement of a support obligation."³⁸ Further, any application for child support, or for modification or enforcement of an order awarding child support

for persons not in receipt of aid to dependent children must contain either a request for child support enforcement services, [under Social Services Law section 111-g, i.e., services of the Support Collection Unit] . . . or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, and has declined them.³⁹

The regulations promulgated by the Department of Social Services state that the services of the Support Collection Unit "must be made available to any individual not otherwise eligible" upon the receipt of such an application.⁴⁰ Where a party is delinquent in his or her child support payments, the other parent is entitled to the services of the Support Collection Unit, since services available upon application include collection and

37. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(f) (McKinney Supp. 1994).

38. N.Y. SOC. SERV. LAW § 111-g (McKinney 1992).

39. N.Y. DOM. REL. LAW § 236(B)(7)(b), (9)(c) (McKinney Supp. 1994).

40. N.Y. COMP. CODES R. & REGS. tit. 18, § 347.17(a) (1992).

enforcement of child support obligations.⁴¹ However, in addition to “assistance in the preparation and filing of support, paternity, [and] violation” petitions, another service available upon application is assistance in the preparation and filing of “modification petitions as required.”⁴² Thus, even where a parent is current in his or her child support payments, the other parent can apply for services from the Support Collection Unit, and obtain upward modifications under the liberal 1993 standards.

II. THE CASE LAW ON MODIFICATION

A question arises as to whether these statutory amendments can be reconciled with older provisions in the Domestic Relations Law and Family Court Act relating to modification, and the case law interpreting those provisions. In the landmark decisions of *Boden v. Boden*⁴³ and *Brescia v. Fitts*,⁴⁴ the initial award of child support was made in a matrimonial action and modification was sought in family court pursuant to the Family Court Act section 461, which permits the family court to modify an award of another court based upon “changed circumstances.”⁴⁵ However, to further complicate matters, the principles enunciated in those cases have been extended to cases where the initial child support award was based upon a stipulation of settlement in family court,⁴⁶ and no “matrimonial action,” and therefore no *quid pro quo* over equitable distribution of property, was involved.

41. N.Y. COMP. CODES R. & REGS. tit. 18, § 347.17(c)(2), (3), (4), and (5).

42. N.Y. COMP. CODES R. & REGS. tit. 18, § 347.17(c)(2).

43. 42 N.Y.2d 210, 366 N.E.2d 791, 397 N.Y.S.2d 701 (1977).

44. 56 N.Y.2d 132, 436 N.E.2d 518, 451 N.Y.S.2d 68 (1982).

45. See *Brescia*, 56 N.Y.2d at 140, 436 N.E.2d at 521, 451 N.Y.S.2d at 71 (holding that a change in circumstances may require a modification of child support); *Boden*, 42 N.Y.2d at 213, 366 N.E.2d at 794, 397 N.Y.S.2d at 708 (stating that absent a change in circumstances, the agreement should not be modified).

46. See *Panic v. Hert*, 200 A.D.2d 748, 607 N.Y.S.2d 86 (2d Dep’t 1994) (granting modification of a support order because of a change in circumstances even though order was based on a stipulation); *Dinkins v. Mabry*, 194 A.D.2d 787, 599 N.Y.S.2d 620 (2d Dep’t 1993) (modifying a stipulation agreement based on a change in circumstances).

Under the change in circumstances test, the common circumstances warranting modification are: (1) a change in the financial status of the noncustodial parent, (2) a change in the financial status of the custodial parent, and (3) a change in the needs of the child. When establishing that the needs of the child have increased, generalized claims of increases due to the child's maturity or inflation are insufficient.⁴⁷ Rather, "specific increases in the costs related to the child's basic necessities of food, shelter, clothing, and medical and dental needs, as well as to the expenses associated with the child's varied interests and school activities" must be established.⁴⁸ A custodial parent's testimony as to

47. *Tuchrello v. Tuchrello*, 613 N.Y.S.2d 86, 87 (4th Dep't 1994) (stating that "[d]efendant failed to offer proof that the children are not being provided with adequate food, clothing, shelter, and medical and dental care"); *Panic*, 200 A.D.2d at 748, 607 N.Y.S.2d at 87 (stating that the party seeking upward modification "must show more than a generalized claim of increased need based on inflation"); *Healey v. Healey*, 190 A.D.2d 965, 968, 594 N.Y.S.2d 90, 92 (3d Dep't 1993) (stating that although there was an increase in respondent's income since the divorce it did not warrant upward modification); *Miller v. Davis*, 176 A.D.2d 945, 946, 575 N.Y.S.2d 681, 682 (2d Dep't 1991) (upholding upward modification where petitioner provided specific dollar amounts of the increases for many items of basic necessity as well as expenses associated with varied interests and school activities); *Labita v. Labita*, 147 A.D.2d 535, 536, 537 N.Y.S.2d 835, 836 (2d Dep't 1989) (stating "defendant's claim of increased need is based entirely on the impact that inflation has had on the economy in general since support payments were first fixed and not at all on the specific needs of the child"); *Deacutis v. Cuomo*, 79 A.D.2d 595, 433 N.Y.S.2d 566 (2d Dep't 1980) (noting that "[n]either a significant increase in the supporting spouses income, nor the generalized claim that the children's needs have increased as they have matured and/or because of inflation..." warrants upward modification).

48. See *Tyler v. Minott*, 614 N.Y.S.2d 768, 769 (2d Dep't 1994) (upholding Hearing Examiner's determination that mother had established change in circumstances warranting upward modification of father's support obligation for daughter where mother testified previous robberies justified moving to more expensive and safer apartment); *Hulik v. Hulik*, 201 A.D.2d 909, 909, 607 N.Y.S.2d 801, 802 (4th Dep't 1994) (stating the general rule that to justify upward modification the petitioner must show "specific increases in the costs related to the child's basic necessities of food, shelter, clothing, and medical and dental needs, as well as to the expenses associated with the child's varied interests and school activities"); *Dinkins*, 194 A.D.2d at 788, 599 N.Y.S.2d at 621 (upholding upward modification where mother had made specific showing

increased needs may not be enough, “without documentary or other supporting proof.”⁴⁹ Further, if the custodial parent is claiming

of increased costs of basic necessities, varied interests and educational expenses as well as an increase of the father’s income six years after the stipulated agreement); *Tribley v. Tribley*, 178 A.D.2d 819, 820, 577 N.Y.S.2d 538, 539 (3d Dep’t 1991) (stating that petitioner’s testimony that child’s needs had increased due to growth and increased participation in school and social activities did not constitute change in circumstances warranting upward modification as “petitioner failed to submit proof detailing the specific items of increased expense and demonstrating that the combination of his income and the current support payments made by respondent did not adequately meet the child’s needs”); *Miller*, 176 A.D.2d at 946, 575 N.Y.S.2d at 682 (upholding upward modification where petitioner “provided the specific dollar amounts of the increases for many items, rather than relying on generalized claims of increases due to the child’s maturity or inflation”); Certain increased expenses relating to the child’s interests may not be considered sufficient, if they are not necessities, and are attributable to the fact that the child’s interests have changed with increased maturity. *See, e.g., Koczaja v. Koczaja*, 202 A.D.2d 849, 609 N.Y.S.2d 365 (3d Dep’t 1994) (holding minor changes in parental income during a ten month period, standing alone, is not sufficient to demonstrate a change in circumstances warranting upward modification of child support); *Healey*, 190 A.D.2d at 965, 594 N.Y.S.2d at 90 (skating lessons merely attributable to increased needs of a growing child); *Griffin v. Janik*, 185 A.D.2d 635, 636, 586 N.Y.S.2d 49, 50 (4th Dep’t 1992) (holding summer camp elective not sufficient to justify upward modification). *But see Zucker v. Zucker*, 187 A.D.2d 507, 508, 589 N.Y.S.2d 908, 910 (2d Dep’t 1992) (holding that increased expenses related to music lessons, karate lessons, football, Hebrew School, Bar Mitzvah lessons, and summer camp justify increase in child support); *McFarlane v. McFarlane*, 182 A.D.2d 1024, 583 N.Y.S.2d 58 (3d Dep’t 1992) (holding that increased expenses relating to scouting, church activities, school trips, and enrollment of an academically talented child in an enrichment program at a local community college justified increased child support).

49. *See Kinsella v. Kinsella*, 614 N.Y.S.2d 832, 833 (4th Dep’t 1994) (stating “[t]he conclusory assertions of plaintiff of increased costs related to basic necessities of food and clothing for the child resulting from his maturing, without documentary or other supporting proof, are insufficient . . .”); *Webb v. Webb*, 197 A.D.2d 847, 848, 602 N.Y.S.2d 275, 275 (4th Dep’t 1993) (stating that plaintiff failed to meet burden where her testimony consisted of “generalized claims” without documentary proof that child’s needs increased with maturity); *cf. Vitek v. Vitek* 170 A.D.2d 908, 566 N.Y.S.2d 738 (3d Dep’t 1991). In *Vitek*, a mother was able to support her claims of increased need with the corroborative testimony of her daughter, and her testimony that she required

increased costs of shelter, the courts may examine whether the increase was necessary. Some courts have held that “the fact that the petitioner has moved into a more expensive home does not warrant an increase in child support.”⁵⁰

Where the prior child award is not based upon an agreement, and the *Boden* test⁵¹ is not applicable, a “substantial improvement” in the noncustodial parent’s income and financial condition “is, in and of itself, a sufficient ground to sustain an increase in child support.”⁵² However, where the prior award was set by an agreement, and the *Boden* test is applicable, an increase in the noncustodial parent’s income is not sufficient.⁵³ In order to establish that the child’s needs are not being met, the custodial parent must present specific monetary proof of the needs of the child, and that the income of the custodial parent together with the child support award are insufficient to meet those needs.⁵⁴ That

financial assistance from her father and brother to meet her children’s needs. *Id.* at 909, 566 N.Y.S.2d at 740.

50. *Tripi v. Faiello*, 195 A.D.2d 958, 600 N.Y.S.2d 876 (4th Dep’t 1993) (stating that “[a]n increase in child support is not warranted simply because respondent is now making more money or because petitioner has moved into a more expensive home”); *Rogers v. Bittner*, 181 A.D.2d 990, 990, 581 N.Y.S.2d 945, 946 (4th Dep’t 1992) (stating that increase in child support not warranted by fact that petitioner has moved into a more expensive home); *cf.* *Popp v. Raitano*, 167 A.D.2d 404, 405, 561 N.Y.S.2d 813, 814 (2d Dep’t 1990). In *Raitano*, the court held that an increase in child support was warranted where the mother was “forced” by her former landlord to move out of her \$250 per month apartment, and moved into an apartment costing \$800 per month. *Id.*

51. *See supra* note 1-2 and accompanying text.

52. *See Sorrentino v. Sorrentino*, 203 A.D.2d 829, 829, 611 N.Y.S.2d 357, 358 (3d Dep’t 1994) (citing *Chariff v. Carl*, 191 A.D.2d 795, 796, 594 N.Y.S.2d 377, 377 (3d Dep’t 1993)). In *Sorrentino*, the initial award, set by agreement, was later modified upward by a California court. Thus, the mother sought modification yet again in New York, where the rules applicable to awards set by agreement were not applied. *Id.*

53. *See, e.g., Brooker v. Brooker*, 615 N.Y.S.2d 156 (4th Dep’t 1994) (stating that although there was a 44% increase in defendant’s income plaintiff failed to make specific showing of increased needs of children).

54. *Dinkins v. Mabry*, 194 A.D.2d 787, 788, 599 N.Y.S.2d 620, 621 (2d Dep’t 1993) (stating that mother demonstrated change in circumstances and that the original child support in addition to her income did not meet child’s needs); *Berg v. O’Leary*, 193 A.D.2d 732, 733, 597 N.Y.S.2d 733, 734 (2d Dep’t 1993)

burden may be met by showing either increased needs of the child or a “substantial” decrease in the custodial parent’s income.⁵⁵

Loss of employment by the noncustodial parent is generally a sufficient ground to decrease child support, whether or not the initial award was set by agreement.⁵⁶ Similarly, loss of employment by the custodial parent may warrant upward modification.⁵⁷ However, the party seeking modification based upon a loss of employment will have to show that the loss of employment was involuntary,⁵⁸ and the position lost cannot be replaced with another.⁵⁹ Similarly, a reduction in salary or other

(stating that mother was awarded upward modification where she testified to increased expenses as a result of growing children and an increase in the cost of living as well as substantial improvements in father’s financial condition); *Murrin v. Murrin*, 186 A.D.2d 567, 569, 588 N.Y.S.2d 371, 373 (2d Dep’t 1992) (stating that father’s increase in income and increased costs of growing children did not justify upward modification absent showing of need).

55. See *Michael N.G. v. Elsa R.*, 199 A.D.2d 81, 604 N.Y.S.2d 957 (1st Dep’t 1993) (finding father’s modest increase in earnings and mother’s substantial reduction in earnings constituted a “change in financial circumstances” warranting upward modification).

56. See *Meyer v. Meyer*, 205 A.D.2d 784, 785, 614 N.Y.S.2d 42, 43 (2d Dep’t 1994) (stating that where father lost job through no fault of his own and diligently sought reemployment, a downward modification of his child support obligation was warranted).

57. See *Valek v. Simonds*, 174 A.D.2d 792, 793, 570 N.Y.S.2d 711, 712 (3d Dep’t 1991) (finding mother’s loss of employment, resulting in a reduction in income from \$22,000 per year to \$184 per week constituted a substantial change in financial circumstances warranting upward modification).

58. See case cited *supra* note 56; see also *Monroe County Dep’t of Social Servs. v. Bennett*, 178 A.D.2d 974, 578 N.Y.S.2d 733 (4th Dep’t 1991) (noting that “[t]he CSSA expressly provides for imputing income where a former spouse unilaterally attempts to diminish the obligation to support children by voluntarily ceasing employment”) (citations omitted); *Ms. B. v. Mr. K.*, 158 Misc. 2d 817, 601 N.Y.S.2d 980 (Fam. Ct. Ulster County 1993) (downward modification not justified where husband took advantage of “involuntary termination package”).

59. See *Patten v. Patten*, 203 A.D.2d 441, 441, 610 N.Y.S.2d 575, 577 (2d Dep’t 1994) (possibility that custodial parent would lose part-time job did not justify upward modification until it was clear the job could not be replaced); *Lantz v. Lantz*, 147 Misc. 2d 100, 103, 553 N.Y.S.2d 609, 612 (Sup. Ct. Nassau County 1990) (custodial parent’s unsupported allegation that she was unable to obtain part-time work for six months was insufficient to justify upward

income can constitute a change of circumstances. But where the reduction was caused by a change of employment, there must be evidence that the loss of the higher-paying employment was involuntary,⁶⁰ and the party seeking modification “made a good faith effort to obtain [new] employment commensurate with his [or her] qualifications and experience.”⁶¹ The CSSA permits imputation of income to a parent “if the court determines that a parent has reduced resources or income in order to reduce or avoid [his or her] obligation for child support.”⁶² Nevertheless, when opposing downward modification, a motive “to reduce or avoid” a

modification); *see also* N.Y. DOM. REL. LAW § 240(1-b)(b)(5) (McKinney Supp. 1994); N.Y. FAM. CT. ACT § 413(1)(b)(5) (McKinney Supp. 1994). If the parent received workers’ compensation, disability benefits, unemployment insurance benefits, social security benefits, or a pension or retirement benefits in lieu of a salary, those benefits count as income. *Id.* Social Security disability payments paid to the children are credited against the parent’s child support obligation. *See, e.g.,* Graby v. Graby, 196 A.D.2d 128, 131, 607 N.Y.S.2d 988, 990 (4th Dep’t 1994) (noting that the majority view in New York is that social security payments made to the children should be credited to non-custodial parent’s obligation).

60. *See* Westwater v. Donnelly, 204 A.D.2d 467, 468, 612 N.Y.S.2d 58, 59 (2d Dep’t 1994) (stating that where father brought expensive gifts for son, paid for luxury automobile in cash, went on three trips to Hawaii, and left higher-paying job to start his own business did not justify downward modification); Alfano v. Alfano, 151 A.D.2d 530, 531, 542 N.Y.S.2d 313, 314 (2d Dep’t 1989) (stating that change in father’s financial condition brought about by his own action or inaction warrants denial of downward modification).

61. *See* Stempler v. Stempler, 200 A.D.2d 733, 734, 607 N.Y.S.2d 111, 112 (2d Dep’t 1994) (stating that lawyer’s adverse financial condition created by a decision to abandon practice of law to pursue a career in real estate speculation did not constitute “good faith effort to work in employment commensurate with qualifications and experience”) (citations omitted); Davis v. Davis, 197 A.D.2d 622, 623, 602 N.Y.S.2d 672, 673 (2d Dep’t 1993) (stating that husband turning down food service work to landscape and be outdoors did not constitute “good faith effort to obtain employment commensurate with his qualifications and experience”) (citations omitted).

62. N.Y. DOM. REL. LAW § 240(1-b)(b)(5)(v) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(b)(5)(v) (McKinney 1983). *See* Berg v. O’Leary, 193 A.D.2d 732, 597 N.Y.S.2d 733 (2d Dep’t 1993) (imputing \$16,000 to the custodial parent); Monroe County Dep’t of Social Servs. v. Carpenter, 178 A.D.2d 974, 578 N.Y.S.2d 733 (4th Dep’t 1991) (recognizing the provision giving the capability to impute income).

child support obligation need not be shown, since the cases hold that a reduction in income “brought about solely by the party’s own action or inaction” does not constitute a ground for downward modification.⁶³

A change in custody can also be considered a change of circumstances warranting modification. Furthermore, if the initial award of custody and child support was made in one agreement, the change of custody would probably be considered “not anticipated.”⁶⁴ If a change in custody results in a split custody arrangement, with each parent retaining custody of one or more children, then each parent’s “child support obligation must be determined on a per household basis,”⁶⁵ “with the controlling percentage for each such home determined according to how many children are living with the same custodial parent.”⁶⁶

Further, the birth of additional children in a second family can also constitute a change of circumstances warranting

63. See *Alfano*, 151 A.D.2d at 531, 542 N.Y.S.2d at 314 (stating that adverse change in party’s financial condition brought about by party’s own action or inaction warrants denial of downward modification); see also *Westwater*, 204 A.D.2d at 468, 612 N.Y.S.2d at 59 (stating a downward modification would have the effect of making the child subsidize his father’s financial decisions).

64. *Alice C. v. Bernard G.C.*, 193 A.D.2d 97, 110, 602 N.Y.S.2d 623, 631 (2d Dep’t 1993) (stating that addition of son to mother’s household after son left father’s household due to argument was deemed a material change in circumstances not anticipated by the stipulation of settlement warranting modification of father’s child support).

65. *Griffin v. Janik*, 185 A.D.2d 635, 636, 586 N.Y.S.2d 49, 50 (4th Dep’t 1992) (stating that “[t]he basic child support obligation must be determined on a per household basis ‘with the controlling percentage for each such home determined according to how many children are living with the same custodial parent’”) (citations omitted).

66. *Commissioner of Social Servs. of N.Y. v. Raymond S.*, 180 A.D.2d 510, 513, 581 N.Y.S.2d 1, 3 (1st Dep’t 1992). Thus, if one child resides with each parent, each parent’s child support obligation is based upon 17% of income (the “child support percentage” for one child), rather than 12.5% (one-half the “child support percentage” for two children). See N.Y. DOM. REL. LAW § 240(1-b)(b)(3) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(b)(3) (McKinney 1983).

modification.⁶⁷ However, in that case, the deviation from the guidelines amount must be based upon a finding that the guidelines amount is “unjust or inappropriate.” Such a finding may only be made if “the resources available to support” the children in the second family are less than the resources which are available to support the children who are the subject of the child support proceeding.⁶⁸ In determining the resources available to support the second family, the assets of the children of the second family and the assets of other members of the household may be considered.⁶⁹

A parent’s entry into a written agreement to support another child “for whom the parent has a legal duty of support” or the entry of a child support order against the parent for such a child could be considered a change in circumstances. This results because the CSSA provides that child support actually paid pursuant to such an agreement or court order shall be deducted from income in determining the basic child support obligation.⁷⁰ However, this provision should not apply where a parent enters into an agreement or consents to entry of a court order to support a child living in his or her current household.⁷¹ In such a case, it would appear that the

67. See *Michael M. v. Judith M.*, 148 Misc. 2d 712, 561 N.Y.S.2d 870 (Fam. Ct. Bronx County 1990) (stating that the birth of twins constitutes a “significant change of circumstances”).

68. N.Y. DOM. REL. LAW § 240(1-b)(f)(8) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(f)(8) (McKinney 1983). See *Cox v. Cox*, 181 A.D.2d 201, 585 N.Y.S.2d 841 (3d Dep’t 1992) (stating that the needs of an extra child are only considered if allocation of child support is unjust or inappropriate).

69. See *In re Josephine M.*, 151 Misc. 2d 1010, 754 N.Y.S.2d 492 (Fam. Ct. N.Y. County 1991). The family court stated that in determining “resources” available to the second family, one must take the “income,” as defined in the CSSA, of both parents and deduct the “self-support reserve.” *Id.*; N.Y. DOM. REL. LAW § 240(1-b)(b)(6) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(b)(6) (McKinney 1983); see also *Farley v. Farley*, 114 A.D.2d 703, 494 N.Y.S.2d 546 (3d Dep’t 1985) (stating that the court could consider the income of the father’s female companion as a factor); *Boden v. Luccese*, 83 A.D.2d 636, 441 N.Y.S.2d 539 (2d Dep’t 1981); *Felisa L.D. v. Allen M.*, 107 Misc. 2d 217, 433 N.Y.S.2d 715 (Fam. Ct. Bronx County 1980).

70. N.Y. DOM. REL. LAW § 240(1-b)(b)(5)(vii)(D) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(b)(5)(vii)(D) (McKinney 1983).

71. *Fantanzo v. Decker*, 614 N.Y.S.2d 671 (Fam. Ct. Monroe County 1994) (stating that to give a deduction for the amount of child support would be against the intent of the legislature).

parent is attempting to circumvent the intent of the CSSA; that is, the needs of the children of a noncustodial parent's new intact family only warrant reduction of child support obligations where application of the CSSA would be "unjust or inappropriate."⁷²

III. HARMONIZATION OF THE CSSA WITH PRIOR CASE LAW AND STATUTES

The 1993 amendments to the CSSA and Social Services Law permit a parent receiving services from the Support Collection Unit to seek an adjustment every three years. The amendment also requires adjustment of the guidelines amount if the award no longer conforms to the guidelines by at least ten percent or if the last permanent child support order does not provide for the health care needs of the child.⁷³ Where the old award deviates from the guidelines by at least ten percent, the only clear exception from applicability of the guidelines arises where the prior award deviated from the guidelines based upon a finding that application of the guidelines would be unjust or inappropriate. This provision tracks the language of the federal regulations, which provide that an inconsistency between the child support award and the amount which would be awarded under the guidelines would not warrant adjustment if "the inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change in the circumstances which resulted in the rebuttal of the guideline amount."⁷⁴

72. *Id.* at 672.

73. *See supra* note 20 and accompanying text.

74. 45 C.F.R. § 303.8(d)(1)(ii) (1993). *See also* 57 Fed. Reg. 61,559, 61,565 (1992) (to be codified at 45 C.F.R. §§ 302-03). As was noted in the Federal Register:

This exception recognizes the existence of cases in which the amount of child support was initially established using guidelines, but the court or administrative authority determined that the amount presumed to be correct was unfair or inappropriate, and set an amount which varies from the guideline amount. Consequently, reapplication of the guidelines in such cases may always reflect inconsistency simply because the amount

If a party receiving services from the Support Collection Unit applied for modification before the three-year hiatus was up, a court would then have to find “a change of circumstances warranting modification.”⁷⁵ Presumably, in such cases, the case law concerning what constitutes a change of circumstances would apply. However, once an award based upon an agreement was modified by court order, any subsequent modification would no longer have to satisfy the stringent *Boden* test, because the child support would no longer be based upon an agreement.⁷⁶

Under the 1993 amendments, a safeguard does remain to preserve the effectiveness of separation agreements and stipulations of settlement. In any application to modify an award based upon an agreement, even one made pursuant to the 1993 provisions, which permit such applications every three years, the court still may consider any provisions in the agreement concerning distribution of property or maintenance in determining whether application of the guidelines would be “unjust or inappropriate.”⁷⁷ Presumably, if the separation agreement or stipulation of settlement contains no provisions relating to property or maintenance, once three years have passed, then its existence will not serve as any bar to the modification of the child support award. If there are provisions relating to property and maintenance, the fairness of child support provisions in a separation agreement or stipulation of settlement will be subject to review every three years, based upon the new circumstances arising in that time

of the current support award was established as a rebuttal of the guideline amount.

Id.

75. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(l) (McKinney 1983).

76. See *Sorrentino v. Sorrentino*, 203 A.D.2d 829, 611 N.Y.S.2d 357 (3d Dep’t 1994) (sustaining the Hearing Examiner’s modification of an agreement that was previously modified by the court without specifically holding that there was a change in circumstances); cf. *Lenigan v. Lenigan*, 159 A.D.2d 108, 110, 558 N.Y.S.2d 727, 728 (3d Dep’t 1990) (holding that because plaintiff was not seeking modification of a separation agreement or judgment of divorce, it was not necessary to show a change in circumstance).

77. N.Y. DOM. REL. LAW § 240(1-b)(l) (McKinney 1986); N.Y. FAM. CT. ACT § 413 (1)(l) (McKinney 1983).

period. Further, if the separation agreement or stipulation of settlement makes no provision for the health care needs of the child, the child support award will be modified to provide for those needs.

The periodic examination of the fairness of old agreements will generally serve the best interests of the child. Although the less stringent *Brescia* test permits the modification of child support set by agreement if the combination of the custodial parent's income and the child support is insufficient to meet the child's needs,⁷⁸ some cases have distinguished between needs and luxuries,⁷⁹ and necessary increases in costs versus unnecessary increases in costs.⁸⁰ What constitutes a need or a luxury, except for the barest necessities of food and shelter, is dependent on the standard of living. The reexamination of the fairness of old agreements in light of current circumstances would help to ensure that an increase in the noncustodial parent's income and standard of living would result in an increase in the child's standard of living. However, a problem does arise when the noncustodial parent has acquired a second family. In such cases, the reexamination of an old agreement based upon an increase in income could mean an increase in standard of living of children by a former spouse, to the detriment of children by the current spouse.

78. *Brescia v. Fitts*, 56 N.Y.2d 132, 436 N.E.2d 518, 451 N.Y.S.2d 68 (1982). The court held that several factors are to be used in determining whether the combination of custodial income and child support is adequate. See *Michaels v. Michaels*, 56 N.Y.2d 924, 439 N.E.2d 321, 453 N.Y.S.2d 605 (1982) (stating that it is not necessary to show a change in circumstances that is unanticipated and unreasonable to justify an increase in child support).

79. See *Koczaja v. Koczaja*, 202 A.D.2d 849, 609 N.Y.S.2d 365 (3d Dep't 1994) (stating that cost of gifted and talented program is insufficient to justify increase in child support); *Healey v. Healey*, 190 A.D.2d 965, 594 N.Y.S.2d 90 (3d Dep't 1993) (stating that the cost of skating lessons is insufficient to justify increase in child support); *Griffin v. Janik*, 185 A.D.2d 635, 586 N.Y.S.2d 49 (4th Dep't 1992) (holding that it must be shown that summer camp is a form of child care and not an elective luxury).

80. See cases cited *supra* note 47 and accompanying text.

CONCLUSION

The 1993 amendments to the CSSA encourage use of the Support Collection Unit, since the applicability of the more liberal modification provisions is contingent upon whether the parties are using the services of the Support Collection Unit. However, the use of such services can mean a bureaucratic delay in forwarding child support payments to the custodial parent.⁸¹ A petitioner seeking modification must weigh such disadvantages against the advantages of liberal 1993 standards for modification. Requiring a petitioner who does not need enforcement services and wants only a reexamination of an old award to seek the services of the Support Collection Unit may seem like a bureaucratic hurdle which makes little sense. But it only underscores the fact that the 1993 amendments were enacted, not in response to perceived inequities in prior New York law, but in response to federal mandate.

81. *See, e.g.,* B.S. v. M.S., 160 Misc. 2d 627, 610 N.Y.S.2d 717 (Fam. Ct. N.Y. County 1994) (recognizing an inexplicable delay by the Support Collection Unit in forwarding payments).