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Forcing the Heir to Share: The Effect of Cash Inheritance on Child Support Obligations

I. Introduction

“The duty to support one’s child is absolute, and the purpose of child support is to promote the child’s best interests.”¹ While this purpose is easily stated, the practical considerations of how to calculate a child support obligation have long occupied legislatures and courts. Recently, the Pennsylvania Superior Court grappled with the issue of whether an obligor’s cash inheritance is “income” within the definition of Pennsylvania’s child support statute, 23 Pa. C.S.A. § 4302.²

William DeRoss received a cash inheritance upon the death of his mother.³ In determining the effect of the inheritance on DeRoss’s child support obligation, the trial court treated the body of the inheritance as income and simply divided it out over the remaining time until the child’s eighteenth birthday.⁴ The Pennsylvania Superior Court, in affirming the trial court’s decision, looked at the definition of income in 23 Pa.C.S.A. § 4302 and held that cash inheritance was included in the phrase “other entitlements to money or lump sum awards, without regard to source, including lottery winnings.”⁵

This comment contends that the Pennsylvania Superior Court erred in finding cash inheritances as income within the meaning of 23 Pa.C.S.A. § 4302. The court’s decision automatically increased the child support obligation without regard to the needs of the child and the ability of the obligor to pay. This comment suggests that the more appropriate way to factor in a lump-sum cash inheritance

1. *Humphreys v. DeRoss*, 737 A.2d 775, 777 (Pa. Super. 1999) (en banc), *allocatur granted*, 729 A.2d 371 (Pa. 2000) (citing *Depp v. Holland*, 636 A.2d 204, 206 (Pa. Super. 1994)).

2. *See id.* at 775.

3. *Id.* at 776.

4. *Id.*

5. *Id.* at 779.

is through the child support guideline deviation procedure provided for in Pennsylvania Rule of Civil Procedure 1910.16-5.⁶ Rule 1910.16-5 lists several items for the trier of fact to consider in deciding whether to deviate from the guideline amount, including the assets of the parties.⁷

This comment will examine the case of *Humphreys v. DeRoss*, how it was analyzed by the Pennsylvania Superior Court, and how courts of other jurisdictions have treated the issue of cash inheritance and child support obligations. Part II will present the history of the *Humphreys* case and the analyses by the Superior Court. Part III will analyze the development of 23 Pa. C.S.A. § 4302's definition of income, the treatment of inheritance in other jurisdictions, overriding policy concerns inherent in the Superior Court's decision, and the role of Pennsylvania's deviation procedure. Finally, part IV concludes that cash inheritances should not automatically be considered as income, and that Pennsylvania should utilize the deviation procedure expressly provided by the legislature for this purpose.

II. Background

William DeRoss inherited \$83,696.65 from the sale of his mother's residence upon her death in August 1994 as the sole beneficiary of her estate.⁸ DeRoss was paying child support for his daughter, Angela, who lived with her adult sister, Beth Humphreys.⁹ Upon Humphreys's petition for modification of Angela's support order, the trial court amortized all of DeRoss's inheritance over the remaining period between the date of the modification petition until Angela's eighteenth birthday.¹⁰

DeRoss's monthly disposable income was just over \$1000.¹¹ DeRoss used the \$83,696.65 cash inheritance from his mother's estate to purchase a new home for himself and his new family, thus he was not earning any income from the inheritance.¹² The hearing officer imputed to DeRoss an additional \$4,525.00 a month in income, arriving at a monthly support obligation of \$607.45—more than two-thirds of DeRoss's actual monthly income.¹³

6. 231 PA. CODE § 1910.16-5 (2001).

7. *Id.*

8. *Humphreys*, 737 A.2d at 776.

9. *Id.*

10. *Id.*

11. *Id.* at 784-85.

12. *Id.* at 775.

13. *Humphreys*, 737 A.2d at 775-76, 784.

The Pennsylvania Superior Court's majority opinion looked at the statutory definition of income contained in the child support statute, 23 Pa.C.S.A. § 4302, and determined that cash inheritance was included in the phrase "other entitlements to money or lump sum awards, without regard to source, including lottery winnings."¹⁴ The majority then referred to other jurisdictions that held cash inheritance as income, as well as several jurisdictions that had come to the opposite conclusion.¹⁵ Analogizing the lump-sum cash inheritance to a "windfall" such as that received in a lottery, the majority concluded that the trial court properly included DeRoss's inheritance in calculating the child support obligation.¹⁶

Two concurring opinions were filed in this case.¹⁷ The first, written by President Judge McEwen, briefly stated that although he was unable to find abuse of discretion by the trial court in this case, the dissenting opinion illuminated problems caused by such lump-sum receipts.¹⁸ Judge McEwen suggested the need for a formula from the Legislature or the Supreme Court to more fairly and uniformly adjust actual incomes to reflect unusual income receipts.¹⁹ The other concurring opinion, written by Judge Joyce, based the inclusion of cash inheritance as income on another phrase in the statutory definition, "any form of payment due to and collectible by an individual regardless of source."²⁰

The dissenting opinion by Judge Eakin offered two alternatives to treating the entire cash inheritance as income.²¹ First, the court may include the actual or imputed income generated by the cash inheritance to the income used for calculating the initial order.²² Second, the court may calculate the amount of support without considering the cash inheritance, then allow a suitable deviation thereafter based on the inheritance.²³ This casenote will focus on the second alternative offered by the dissenting opinion.

14. *Id.* at 779.

15. *See id.* at 779-80.

16. *Id.* at 780.

17. *See id.* at 781-84.

18. *Humphreys*, 737 A.2d at 784.

19. *Id.*

20. *Id.* at 783.

21. *See id.* at 784.

22. *Id.*

23. *Humphreys*, 737 A.2d at 784.

III. Analysis

A. *Definition of Income*

Pennsylvania's statutory definition of income for child support calculation purposes is contained in 23 Pa.C.S.A. § 4302:

“Income.” Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; **gains derived from dealings in property**; interest; rents; royalties; dividends; annuities; income from 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; workers' compensation; unemployment compensation; **other entitlements to money or lump sum awards, without regard to source, including lottery winnings**; income tax refunds; insurance compensation or settlements; awards or verdicts; and **any form of payment due to and collectible by an individual regardless of source.**²⁴

The phrase of the statute relied on by the *Humphreys* majority, “other entitlements to money or lump sum awards, without regard to source, including lottery winnings,” was added in two separate amendments.²⁵ The first amendment, in 1996, added the phrase “other entitlements to money or lump sum awards, without regard to source.”²⁶ The second amendment was added in 1997 following *Darby v. Darby*, in which the Pennsylvania Superior Court held that the statutory definition of income was not all inclusive, and a lump sum tort settlement was inclusive as income.²⁷ The Pennsylvania legislature then amended 23 Pa. C.S.A. § 4302 to include “bonuses; lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of

24. 23 PA. CONS. STAT. ANN. § 4302 (West Supp. 2000) (emphasis added). Emphasized phrases indicate those discussed by the majority and concurring opinions in *Humphreys v. DeRoss*.

25. *Humphreys*, 737 A.2d at 779, 781-82.

26. Act of October 16, 1996, P.L. 706, No. 124, § 3.

27. See *Darby v. Darby*, 686 A.2d 1346, 1348 (Pa. Super. 1996).

payment due to and collectible by an individual regardless of source.”²⁸

Lump sum cash inheritances do not fit into any of the categories listed under the statutory definition of income found in 23 Pa.C.S.A. § 4302. The majority, concurring, and dissenting opinions in *Humphreys* looked at four of the categories: (1) income from an interest in an estate or trust; (2) gains derived from dealings in property; (3) other entitlements to money or lump sum awards, without regard to source, including lottery winnings; and (4) any form of payment due to and collectible by an individual regardless of source.²⁹

The majority opinion concluded that the first category did not apply to DeRoss’s cash inheritance because “income from an interest in an estate or trust” refers only to income generated by the inheritance, not the body of the inheritance itself.³⁰ Because DeRoss reinvested his inheritance in a residence, it does not generate earnings and therefore DeRoss has no income from his interest in the estate.³¹ The majority also discounted the second category, “gains derived from dealings in property,” because there was no evidence in the record to support the assertion that DeRoss realized a gain by using the cash inheritance to purchase a larger home for himself and his new family.³²

The majority relied on the third category, “other entitlements to money or lump sum awards, without regard to source, including lottery winnings,” in reaching its conclusion.³³ A cash inheritance, however, is clearly distinguishable from this category. First, an inheritance is not an “award,” but rather a gift from someone, usually a family member, to a specific person.³⁴ Second, an inheritance is not based on chance, like the lottery, but rather is intended for the recipient alone.³⁵

In analyzing the remaining portion of the category, “other entitlements to money,” the dissenting opinion suggested that the phrase is a “catchall” that is intended to prevent an inventive obligor from calling his income something else in order to avoid paying support.³⁶ The dissent further asserted that a cash

28. Act of December 16, 1997, P.L. 549, No. 58, § 1.1.

29. See *Humphreys*, 737 A.2d at 778-83.

30. *Id.* at 778.

31. See *id.*

32. *Id.* at 778-79.

33. *Id.* at 779.

34. See *Humphreys*, 737 A.2d at 785, FN 8.

35. See *id.*

36. *Id.* at 785.

inheritance is not an “obscure” concept, but rather common and unambiguous.³⁷ Had the legislature meant to include inheritance in the definition of income, the dissent reasoned, it would have done so outright and not relied on such a broad catchall phrase.³⁸ Because the legislature did not expressly include inheritance, the dissent concluded that the intention must have been to exclude it.³⁹

Cash inheritance also does not fall within the phrase “other entitlements to money” because a person is not “entitled” to an inheritance. An entitlement is defined as “right to benefits, income or property which may not be abridged without due process.”⁴⁰ In the United States, an heir can be disinherited through a will, and therefore has no right to an inheritance at all.⁴¹

Joyce’s concurring opinion relies on the fourth category, “any form of payment due to and collectible by an individual regardless of source.”⁴² However, an heir is not “paid” by an estate—it is not compensation, and is not a discharge of any debt.⁴³ Also, as previously mentioned, an heir is not “due” an inheritance.⁴⁴

B. Treatment By Other Jurisdictions

In attempting to fit inheritance into the statutory definition of income, the majority opinion turned to the decisions of five other jurisdictions on this issue.⁴⁵ However, upon further analysis, the cases relied on by the majority actually do not support the inclusion of inheritance as income.

The majority first cited *Crayton v. Crayton*, an Alaska case which held that a one-time gift (not an inheritance) from the

37. *Id.*

38. *Id.*

39. *Humphreys*, 737 A.2d at 785.

40. BLACK’S LAW DICTIONARY 368 (abr. 6th ed. 1997).

41. See UNIF. PROBATE CODE § 2-101(b)(1990).

A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent’s intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his [or her] intestate share.

UNIF. PROBATE CODE § 2-101(b)(1990). See also RESTATEMENT (THIRD) OF PROPERTY, WILLS AND OTHER DONATIVE TRANSFERS § 2.7 (1999) (“A decedent’s will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession.”)

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

43. *Id.* at 785, n.10.

44. See UNIF. PROBATE CODE, *supra* note 41; see also RESTATEMENT (THIRD) OF PROPERTY, *supra* note 41.

45. See *Humphreys*, 737 A.2d at 779-80.

payor's father was includable as income.⁴⁶ However, the *Crayton* case held that the gift could be included as income only because the court was dealing with a past payment, not indeterminate future payments.⁴⁷ In fact, the *Crayton* court specifically stated that a trial court should not consider gifts when determining income for purposes of calculating a future child support obligation because it would unfairly inflate the obligation.⁴⁸

The majority next relied on *Goldberg v. Goldberg*, a Louisiana case that concerned an alimony award, which is completely different from child support calculations and therefore not useful for comparison purposes.⁴⁹

Ford v. Ford is also unhelpful to the majority's position.⁵⁰ In this case, the Tennessee Court of Appeals held that money received by inheritance can be considered income when it is regularly distributed (which would be equal to Pennsylvania's "income from an interest in an estate or trust"), but a one-time distribution from a life insurance trust is not considered income.⁵¹

In *Forsythe v. Forsythe*, a Virginia case, inheritance was equated with "gift," a term specifically included as income in Virginia's statute.⁵² "Gift" is not included in Pennsylvania's

46. *Id.* at 779 (citing *Crayton v. Crayton*, 944 P.2d 487, 490 (Alaska 1997)).

47. *Crayton v. Crayton*, 944 P.2d 487, 490 (Alaska 1994). In *Crayton*, the father was requesting reimbursement for the expenditures he made supporting the two children during the time they lived with him before primary physical custody was transferred to the mother. *Id.* at 489. The court stated that because the superior court will determine the mother's income only in retrospect when the children lived with their father, it was fair for the court to base the amount of reimbursement on the actual resources available to the mother during that period. *Id.* at 490.

48. *Id.* (citing *Nass v. Seaton*, 904 P.2d 412, 415-16 (Alaska 1995)).

49. *See Goldberg v. Goldberg*, 698 So. 2d 63 (La. App. 4th Cir. 1997). According to the Pennsylvania Supreme Court, "the primary purpose of alimony is to provide one spouse with sufficient income to obtain the necessities of life." *Zullo v. Zullo*, 613 A.2d 544, 545 (Pa. 1992) (citing *Hodge v. Hodge*, 520 A.2d 15 (Pa. 1986)). "It is not intended as a weapon to punish a spouse but rather is an attempt to provide financial assistance to rehabilitate rather than reimbursing a spouse." *Id.* Whereas the purpose of child support, as mentioned previously, is "to promote the child's best interests." *Depp v. Holland*, 636 A.2d 204, 206 (Pa. Super. 1994).

50. *See Ford v. Ford*, No. 01A01-9611-CV-00536, 1998 Tenn App. LEXIS 703, at *11-13 (Tenn. Ct. App. Oct. 21, 1998).

51. *Id.*

52. *Forsythe v. Forsythe*, 41 Va. Cir. 82, 85 (Cir. Ct. of Fairfax County, Va. 1996); *accord Goldhamer v. Cohen*, 525 S.E.2d 599 (Va. Ct. App. 2000). While *Forsythe* was a spousal support case, under the settlement agreement the parties chose to define gross income for spousal support purposes in terms of the gross income definition contained in Virginia's child support statute, section 20-108.2(C) of the 1950 Code of Virginia. *Forsythe*, 41 Va. Cir. at 84. According to the court,

statutory definition of income, thus Forsythe is inapplicable to this situation.

Finally, the majority compares the case before it with *Bryant v. Bryant*, a New York case that uses inheritance in a deviation procedure (calculation of additional child support), but not in the original calculation of the child support obligation.⁵³ The *Bryant* court quotes the Family Court Act § 413 (1)(e), which provides:

[w]here a parent is or may be entitled to receive non-recurring payments from extraordinary sources not otherwise considered as income pursuant to this section, including but not limited to . . . [g]ifts and inheritances . . . the court . . . may allocate a proportion of the same to child support, and such amount shall be paid in a manner determined by the court.⁵⁴

The court then proceeds to qualify this statute, pointing out the precautions a court must take in making such an award.⁵⁵ In fact, the *Bryant* court stated that the “mere fact that [the payor] inherited a sizeable sum of money does not, standing alone, provide an adequate basis for such an award [of additional child support].”⁵⁶ Rather, the court must take into consideration a number of relevant factors, including, inter alia, the parties’ respective standards of

section 20-108.2(C) provides that:

“Gross income” shall mean all income from all sources and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interests, trust income, annuities, capital gains, social security benefits except as listed below, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans’ benefits, spousal support, rental income, gifts, prizes or awards . . .

Id. But cf. *Gardner v. Yrttima*, No. 41A01-0008-JV-282, 2001 Ind. App. LEXIS 202, at *10-16 (Ind. Ct. App. Feb. 8, 2001). While the Indiana Court of Appeals equated an inheritance with “gift,” which is specifically included in gross income under Indiana Child Support Guideline 3(A)(1), it concluded that a court may exclude inheritance from its determination of gross income where sound reasons exist. *Id.* at *11-12, 15. In addition, if the court excludes an inheritance from gross income, it may nevertheless consider the effect of the inheritance on the financial circumstances and net worth of the parent in determining whether to deviate from the Guidelines in determining child support. *Id.* at *14-16.

53. *Bryant v. Bryant*, 235 A.D.2d 116, 119 (N.Y. App. Div. 1997). The court remitted the case to the Family Court after finding that the actual amount awarded as additional child support was inappropriate as it represented a significant portion of the obligor’s inheritance, and the decision to provide for a lump-sum distribution necessary required the obligor to liquidate substantial assets. *Id.* at 120-21.

54. *Id.* at 119.

55. *See id.* at 119, 123.

56. *Id.* at 123, n.5.

living and the actual needs of the children.⁵⁷ The court should also give careful thought to the impact the award would have on the payor and whether the award could be fashioned in such a way as to avoid invading the principal.⁵⁸

None of these cases actually support the majority's position of treating the entire body of a cash inheritance as income for child support calculation purposes. In fact, the two cases dealing directly with inheritance, *Ford* and *Bryant*, actually seem to support the two alternatives advocated by the dissent in holding that inheritance should not be included as income in calculating a child support obligation.⁵⁹ The *Bryant* court used the same option advocated by Eakin in the *Humphreys* dissenting opinion, to take the inheritance into account during a deviation procedure after the original support order has been established, and even voiced some of the same concerns raised by the dissent.⁶⁰

Decisions in other jurisdictions also support the two alternatives offered by the Eakin dissent. These alternatives are either to include real or imputed income generated by the cash inheritance in calculating the original order, or to allow a suitable deviation from the original support order based on the inheritance.⁶¹

Several courts have held that only real income from an inheritance is considered in calculating a child support order.⁶² In *Gainey v. Gainey*, the Washington Court of Appeals noted that, like the Pennsylvania statute, the Washington child support statute did not include "gifts," but did include "interest."⁶³ Accordingly, the court concluded that because an inheritance was essentially a testamentary gift, the corpus of an inheritance is not included in a parent's gross income, but that the interest generated by an inheritance is.⁶⁴

57. *Id.*

58. *Bryant* at 123.

59. *See Ford*, 1998 Tenn App. LEXIS 703, at *11-13; *Bryant*, 235 A.D.2d at 117.

60. *See Bryant*, 235 A.D.2d at 119-23.

61. *Humphreys v. DeRoss*, 737 A.2d 775, 784 (Pa. Super. 1999) (en banc), *allocatur granted*, 729 A.2d 37 (Pa. 2000).

62. *See Stula v. Stula*, No. FA 940544358S, 1998 Conn. Super. LEXIS 2132, at *2 (Conn. Super. July 21, 1998); *Helgeson v. Helgeson*, 528 N.W.2d 91, at *14 (Wis. Ct. App. 1994); *Reech v. Reech*, No. 70241, 1997 Ohio App. LEXIS 318, at *13 (Ohio Ct. App. Jan. 30, 1997); *Gainey v. Gainey*, 948 P.2d 865, 869 (Wash. Ct. App. 1997).

63. *Gainey*, 948 P.2d at 869.

64. *Id.*

Two courts have held that income may be imputed to the inheritance.⁶⁵ In *In re Marriage of Armstrong*, the Colorado Court of Appeals held that the amount of income that the obligor's one-time inheritance could reasonably be expected to generate was properly included as income for purposes of calculating child support.⁶⁶ Similarly, the Arkansas Court of Appeals in *Halter v. Halter* held that while inheritance was not income within the meaning of the child support guidelines, any earnings that might have been generated from the inheritance could have been considered in the support calculation.⁶⁷

In addition to the *Bryant* case cited by the majority, one other court has held that an obligor's inheritance should be considered in a deviation procedure after the original child support obligation has been calculated.⁶⁸ In *Connell v. Connell*, the court held that child support should first be calculated utilizing the gross income of the parties as defined in the guidelines.⁶⁹ Then the court should undertake an analysis of the factors contained in the child support statute, considering the inheritance, to determine an amount to supplement the guidelines award.⁷⁰ The court noted that one of the benefits of this approach is that it "permits the court to reasonably consider the existence of the inheritance, its current form, as well as all the circumstances bearing on the best interests of the children."⁷¹

65. See *In re Marriage of Armstrong*, 831 P.2d 501, 503 (Colo. Ct. App. 1992); *Halter v. Halter*, 959 S.W.2d 761, 762 (Ark. Ct. App. 1998).

66. *Armstrong*, 831 P.2d at 503.

67. *Halter*, 959 S.W.2d at 762.

68. See *Connell v. Connell*, 712 A.2d 1266, 1269-70 (N.J. Super. 1998).

69. *Id.* at 1269.

70. *Id.* at 1270. The factors listed in New Jersey's child support statute include:

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;
- (3) All sources of income and assets of each parent;
- (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;
- (5) Need and capacity of the child for education, including higher education;
- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;
- (8) Responsibility of the parents for the court-ordered support of others;
- (9) Reasonable debts and liabilities of each child and parent; and
- (10) Any other factors the court may deem relevant.

N.J. STAT. ANN. § 2A:34-23a (West 2000).

71. *Id.*

One recent case dealing with this issue of inheritance and modification of a child support obligation touched on all three alternatives—inclusion of actual income, imputed income, or use of a deviation procedure.⁷² In *Kern v. Castle*, the court looked to its own statute, as well as sister-state authority, and concluded that (1) one time gifts or inheritances are not income; (2) interest actually earned from gifts or inheritances is income; and (3) imputation of income based on the inheritance corpus may be considered in the court's discretion.⁷³ The applicable California statute also provided for a deviation procedure that allowed the court to consider reduction in living expenses and other relevant facts at the courts discretion.⁷⁴

The California Court of Appeal pointed to public policy considerations in its statutes which required that children share in the standard of living of both parents, and that the support award is consistent with the child's best interests.⁷⁵ The court then remanded the case because although the trial court did not err by concluding the lump-sum inheritance was not income but interest earned from the inheritance was, the trial court failed to provide reasonable justification why it was in the child's best interests for the court to not use its discretion in imputing interest income to the inheritance or taking the reduction of living expenses into account.⁷⁶

In reviewing all of the court decisions of other jurisdictions on the issue of inheritance and child support, none of them have treated the body of the inheritance as income, as the *Humphreys* majority did. The majority of the courts have either included real or imputed income from the inheritance, or have considered the inheritance during deviation procedures, both positions advocated by the dissent. Those that have not treated inheritance this way

72. See *Kern v. Castle*, 89 Cal. Rptr. 2d 874 (Cal. Ct. App. 1999).

73. *Id.* at 882. The *Kern* court referred to California's Family Code § 4058(a), which provides, in pertinent part: "The annual gross income of each parent means income from whatever source derived . . . and includes, but is not limited to, the following: (1) Income such as . . . interest; . . . (3) In the discretion of the court . . . any corresponding reduction in living expenses, and other relevant facts." *Id.* at 878 (quoting CAL. FAM. CODE § 4058(a) (West 1994)).

74. *Id.* at 878, 880.

75. *Id.* at 882, 884 (quoting CAL. FAM. CODE § 4053(f) (West 1994) and referring to CAL. FAM. CODE § 4056(a)(3) (West 1994)).

76. *Id.* at 822, 884-85. The *Kern* court differentiated cases where the child is being supported by AFDC benefits and the obligor's actual income is insufficient to provide the minimum basic standard, stating that in such cases the trial court would have to consider the inheritance received by the obligor in determining child support. *Id.* at 880. See also *County of Riverside v. Nevitt*, 104 Cal Rptr. 2d 278 (Cal. Ct. App. 2001).

have done so only because of special circumstances, such as past child support calculations or different statutory definitions of income. The policy concerns referred to by the *Humphreys* dissent demand that Pennsylvania join the majority of jurisdictions on this issue.⁷⁷

C. Policy Considerations

First, both the dissent and the majority opinions in *Humphreys* agreed that the underlying goal of the support guidelines is to ensure “persons similarly situated shall be treated similarly.”⁷⁸ However, the position advocated by the majority treated inheritors of cash differently from inheritors of property arbitrarily, without any valid distinction.⁷⁹ Under the majority’s decision, had Mr. DeRoss chosen to inherit his mother’s house and held on to it a few more months until his daughter turned 18, rather than selling it and receiving the cash immediately, the outcome would have been completely opposite. As the dissent pointed out, “[t]his disparate treatment is not logical, and leads to unfairness and absurd results.”⁸⁰

The majority cites *Depp v. Holland* for the proposition that the purpose of child support is to promote the child’s best interests.⁸¹ However, including cash inheritance as income for child support calculation purposes will ultimately result in being detrimental to the interest of the child. By spreading the cash inheritance out over the remaining support period, the court assumes that the heir is going to consume the entire amount of the inheritance within that time. Forcing the heir to use the inheritance would prevent the obligor parent from saving or investing the money, such as putting it into a college fund for the child. This is hardly in the best interests of the child.

Heirs will circumvent this increase in their child support obligations by choosing to inherit property rather than cash, or by delaying settlement of the estate until after the child support period is completed.⁸² Children will get nothing, rather than sharing in the parent’s increased wealth if the circumstances so warrant.

77. See *Humphreys v. DeRoss*, 737 A.2d 775, 785-86 (Pa. Super. 1999) (en banc), *allocatur granted*, 729 A.2d 371 (Pa. 2000).

78. *Id.* at 777, 785 (quoting 23 PA. CONS. STAT. ANN. § 4322(a) (West 1991)).

79. *Id.* at 785.

80. *Id.*

81. *Id.* at 777 (citing *Depp v. Holland*, 636 A.2d 204, 205-06 (Pa. Super. 1994)).

82. *Humphreys*, 737 A.2d at 786.

Also, if a child support obligation automatically increases due to a cash inheritance received by the obligor parent, then the converse must be true when the custodial parent or the child himself inherits. That is, when the custodial parent or child inherits, the child support obligation must automatically decrease.⁸³ It is difficult to discern how this would be in the “best interests of the child.”

The dissent also noted with concern the situation of where an heir elects to take his or her inheritance in kind rather than receiving money, or chooses to renounce the cash inheritance altogether.⁸⁴ Would the court consider such an action to be a renouncement of “income,” and therefore impute income to the obligor anyway?⁸⁵ While this solution might make sense if the obligor’s choice is based solely on the avoidance of increased child support, there are many other reasons for such a decision, such as the desire to keep land or an heirloom in the family, or wanting a larger portion of the cash inheritance to go to a more needy sibling.⁸⁶

The Pennsylvania Supreme Court has stated that “in interpreting statutes, it is axiomatic that the legislature does not intend an absurd or unreasonable result.”⁸⁷ The *Humphreys* majority opinion interpreted the income definition contained in 23 Pa.C.S.A. § 4302 in such a way as to cause an absurd and unreasonable result. By including the entire body of the inheritance in the income calculation, the court more than quadrupled defendant’s monthly income because there was only a year-and-a-half remaining of the child support period. If the defendant had inherited the same amount when his child was a toddler, the effect would be less; while if he had inherited the sum during the last month of the obligation, the impact would be enormous and even more ridiculous than the current result. Such an arbitrary outcome cannot be described as anything less than “absurd and unreasonable.”

An heir whose child support obligation has increased due to the receipt of an inheritance may also have a constitutional challenge based on the Fifth Amendment Takings Clause.⁸⁸ The

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Humphreys*, 737 A.2d at 785-86 (citing *Commonwealth v. Beachey*, 728 A.2d 912, 913 (Pa. 1999)).

88. U.S. CONST. amend. V (“No person shall . . . be deprived of life, liberty, or

Humphreys majority states that a child support order may not be punitive or confiscatory.⁸⁹ However, the majority's decision to include cash inheritance as income in calculating a child support obligation could indeed be seen as confiscatory in that it automatically forces an heir to share his or her gift of inheritance, without regard to the obligor's resources or the child's needs.

By overriding the intent of the decedent as expressed in the will, i.e. that the inheritance should go to a specified person, the court is essentially taking the place of the legislature in altering the testate statutes. As the dissent points out, "Parents of children with support orders (or parents who *worry* their children may one day have an order) must change their wills, or face their legacy being passed through the ex-spouse of their child in the name of support. No grandparent wants to leave their worldly goods to the domestic relations office."⁹⁰

D. Pennsylvania's Deviation Procedure

The Humphreys majority opinion quotes 23 Pa.C.S.A. § 4322(a), which states that "[i]n determining the . . . ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the parties, *with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention.*"⁹¹ It is curious that although the majority chose to emphasize the deviation portion of the statute, they then proceeded to include cash inheritance as income in the regular guideline procedure, completely ignoring possibility of utilizing the deviation

property, without due process of law . . ."); see Sue Nations, *Family Law Symposium: Louisiana Child Support Guidelines: A Preliminary Analysis*, 50 LA. L. REV. 1057, 1067 (1990).

There may even be a basis for a constitutional challenge to the inclusion of inheritances in the broad category of gifts if it can be established that the child support guidelines require divorced couples to pass an inheritance along to their minor children in the form of increased child support payments even when the children are already being maintained at a comfortable financial level. Married couples have no such obligation to share this new-found wealth with their children so long as the children are well enough provided for that a claim of criminal neglect of the family would not lie.

Id.

89. *Humphreys*, 737 A.2d at 779 (citing *Opie v. Richart*, 598 A.2d 1321, 1322 (Pa. Super. 1991)).

90. *Id.* at 786.

91. *Id.* at 777 (quoting 23 PA. CONS. STAT. ANN. § 4322(a) (West 1991) (emphasis added by Humphreys majority)).

procedure. This deviation procedure, advocated by the dissent, provides the best way for a court to take a cash inheritance into account when calculating a child support obligation.⁹²

In 1989, the Pennsylvania Supreme Court adopted the support guidelines found at Pa. R.C.P. 1910.16-1 *et seq.*⁹³ The intent of the guidelines was to do away with individual, case-by-case determinations of what constitutes the reasonable needs and expenses of the parties involved, and thus to limit the trial court's discretion.⁹⁴

There is a rebuttable presumption for all cases that fall within the guidelines (combined monthly income of \$15,000 or less) that the amount of the award which would result from the application of the child support guideline is the correct amount of support to be awarded.⁹⁵ However, the trier of fact may deviate from the guidelines where the facts demonstrate that the award is inappropriate.⁹⁶ The Pennsylvania Supreme Court has limited the use of the deviation procedure to cases where "special needs and/or circumstances are present such as to render an award in the amount of the guideline figure unjust or inappropriate."⁹⁷

The deviation procedure is contained in Pennsylvania Rule of Civil Procedure 1910.16-5.⁹⁸ Section (b) of this statute sets out nine factors that the court can take into consideration in deciding whether to deviate from the amount of support determined by the guidelines.⁹⁹ Two of these factors are particularly applicable to the Humphreys case: (5) assets of the parties; and (9) other relevant

92. *See id.* at 784, 786-87.

93. *Ball v. Minnick*, 648 A.2d 1192, 1195 (Pa. 1994).

94. *Id.* at 1197.

95. 23 PA. CONS. STAT. ANN. § 4322(b) (West 1991); *Ball*, 648 A.2d at 1196.

96. *Ball*, 648 A.2d at 1196.

97. *Id.*

98. 231 PA. CODE. § 1910.16-5 (2001).

99. *Id.*

In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider:

- (1) unusual needs and unusual fixed obligations;
- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) assets of the parties;
- (6) medical expenses not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony pendente lite case, the period of time during which the parties lived together from the date of marriage to the date of final separation; and
- (9) other relevant and appropriate factors, including the best interests of the child or children.

231 PA. CODE. § 1910.16-5(b) (2001).

and appropriate factors, including the best interests of the child or children.¹⁰⁰ While the Supreme Court seems to discourage use of the deviation procedure in *Ball v. Minnick*, this can largely be attributed to the fact that the trial court had used the deviation procedure to decrease the amount of support, rather than increase it.¹⁰¹

Pennsylvania's deviation procedure is perfectly suited to the task of taking the obligor's cash inheritance into account as an asset and adjusting the child support obligation accordingly. By addressing the inheritance in a deviation procedure, the court is able to be more flexible and take individual circumstances into account, such as the child's needs and the obligor's ability to pay. This alternative would avoid the absurd results brought about by the Humphreys majority's decision to automatically include the cash inheritance as income. An heir's child support obligation would not spike to an unreasonable level upon receiving a cash inheritance just before the child turns eighteen; an inheritor of cash would not arbitrarily be treated differently than an inheritor of property; the testator's wishes would be recognized; and, most importantly, the child's best interests would be protected.

IV. Conclusion

Cash inheritance should not automatically be included as income when calculating child support obligations. As other jurisdictions have done, Pennsylvania should either impute income to cash inheritance, rather than use the corpus itself, or consider the entire inheritance in deviation proceedings after the child support obligation has been calculated according to the guidelines. Using either of these methods would be consistent with the stated purpose of child support (to provide for the best interests of the child), would be in line with decisions of other jurisdictions, and would allow the flexibility needed to avoid the policy problems caused by the Pennsylvania Superior Court's decision in *Humphreys v. DeRoss*.

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100. *Id.*; *Humphreys*, 737 A.2d at 787.

101. *See Ball*, 648 A.2d at 1194.