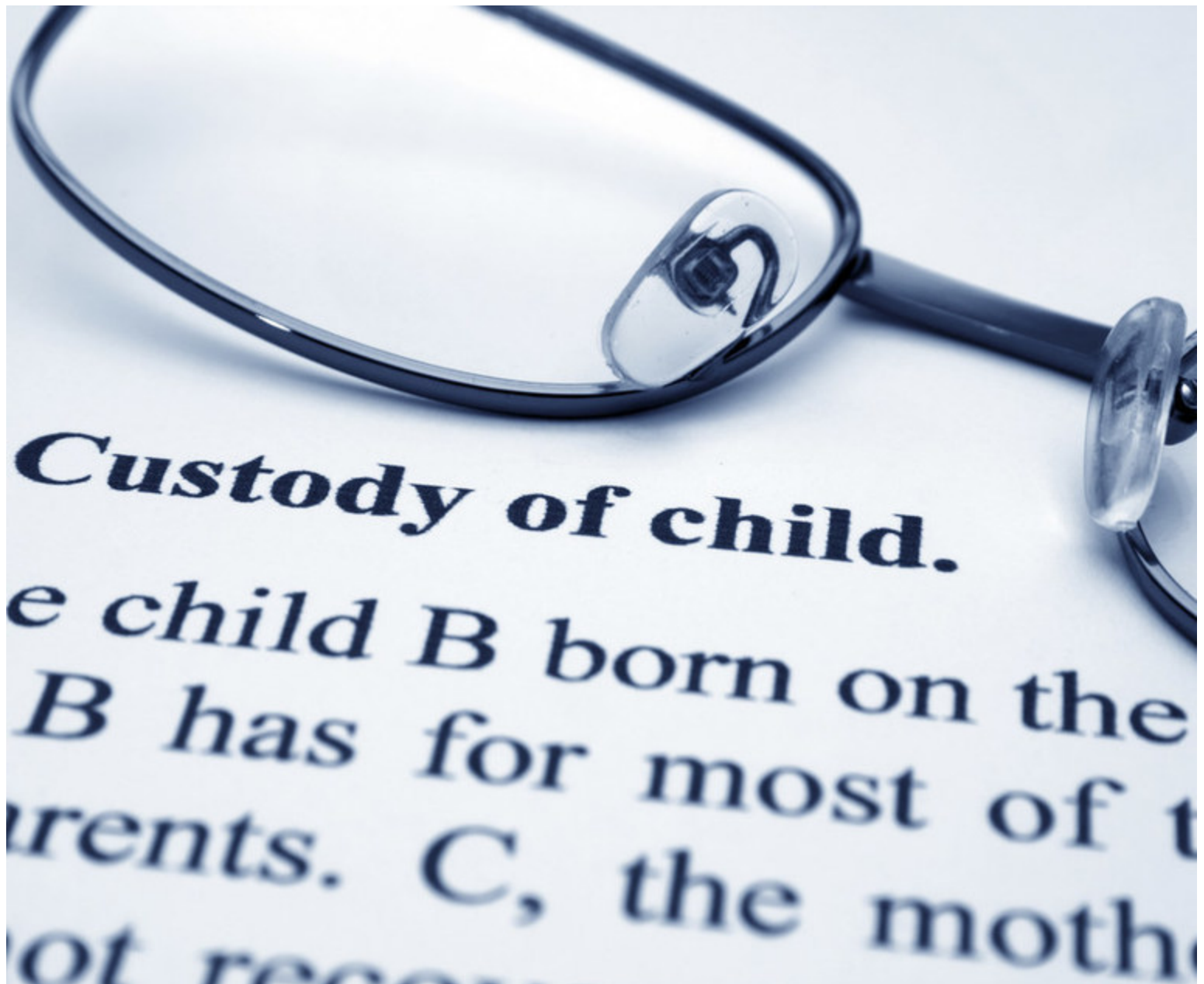


Commentary **Family Law**

More Guidance Is Needed on Shared Custody Child Support Awards

In his commentary, Peter Galasso encourages the Judiciary and the Legislature to consider and act upon the need for a formulaic approach in setting the so-called 'non-custodial' parent's child support obligation in shared custody cases.

October 15, 2025 at 01:43 PM By **Peter J. Galasso**



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In his article entitled *Shared Custody Child Support Awards* (NYLJ Aug. 8, 2025), Joel R. Brandes explains that in a shared custody arrangement, such as in those cases where the children spend

alternate weeks with each parent, the parent with the higher income is to be denominated as the “non-custodial” parent for the purpose of paying child support pursuant to the Child Support Standards Act (CSSA).

However, the CSSA also provides that a strict application of the CSSA’s three-step statutory formula need not be applied if the court finds that requiring the so-called ‘non-custodial’ parent to pay the presumptive CSSA amount would be “unjust or improper.”

Given that more and more couples are looking to share custody, the amount of support to be awarded, if any, has become an emerging conundrum for the matrimonial bar that needs to be meaningfully addressed.

Based upon its consideration of the “paragraph (f)” factors of Domestic Relations Law §240 (1-b) (f), which are a list of 10 discretionary considerations a judge can weigh to adjust child support upward or downward from the presumptive amount, the trial court is effectively empowered to set a parent’s direct child support obligation as it deems just and proper.

The problem with that exception to the CSSA is that the trial judge is arguably accorded far too much discretion, without any pragmatic or identifiable guardrails, in deciding how much to order the more affluent parent to pay. Not surprisingly, the unbridled discretion conferred upon the trial court all too frequently leads to costly litigation that is in large part predicated on a spouse’s wishful thinking or a jurist’s unpredictable decisional bent.

For example, assume one parent makes \$100,000 in CSSA income each year and the other parent makes \$120,000, and further assume that there are two children alternating between parents every other week. The trial judge, in exercising its broad discretion under paragraph (f), can order the parent earning \$120,000 to pay the other parent anywhere between zero and \$30,000 per year, which represents the presumptive 25% of the ‘monied’ spouse’s \$120,000 that should be awarded in a situation where one spouse has sole residential custody of the children.

Following the reasoning behind why child support is awarded in the first place, which is to “realize the maximum benefit of [the children’s] parent’s resources and continue, as near as possible, their pre-separation standard of living in each household,” [*Ball v. Ball*, 150 AD 3d 1566 (3d Dept. 2017)], the legislative or the Appellate Division needs to establish hard and fast rules that will limit the lower court’s discretion and thereby instill a sense of predictability in how child support will be set in a shared custody scenario, which will inevitably reduce the parties’ incentive to litigate.

One rule that could be set in cases where the parties’ income is relatively comparable, as in the above example, is to ensure that the “monied” spouse is not ordered to pay child support to the non-monied spouse in an amount that would transform the non-monied spouse into the monied

spouse. That scenario would clearly happen in the example discussed above if the presumptive CSSA amount of child support is awarded to the non-monied spouse.

In cases where a substantial disparity exists between the parents' respective incomes, a second rule that could be established is to apply the pertinent CSSA percentages only to that part of the monied spouse's income that exceeds the non-monied spouse's income, but which also imposes a minimum mandatory cap on the income to be considered, in accordance with the CSSA.

In the above example, if the difference in the parties' respective incomes was \$50,000, the parent with the lower income would be awarded \$25,000 per year in child support.

Unfortunately, some litigants and a handful of trial judges seem to believe that the Court of Appeals in *Bast v. Rossoff*⁹¹ NY 2d 723 (1988), held that the monied spouse in a shared custody situation should be ordered to pay the presumptive CSSA child support amount which is routinely applied in cases where one parent is clearly the custodial parent.

If, instead, the Legislative or the Judiciary establishes a presumptive child support guideline or formula for shared custody cases, like the CSSA has done in cases where one parent is clearly the primary caretaker, shared custody cases can be settled at the same pace as non-shared custody cases, which would clearly benefit the parties, their children, and the court.

It would also benefit a sea of attorneys who are intent on resolving shared custody cases with alacrity and confidence, but who are presently navigating such cases in uncharted waters.

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