Resurrecting the Manheim Declaration

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The Child Support Standards Act ("CSSA") is the perfect tool to resolve child support issues where the parties' joint income is less than the current statutory mandatory minimum amount of income to which the CSSA must be applied.[1] Provided the attorneys involved can perform simple mathematical calculations, child support awards in such cases are effectively self-evident.

Equally self-evident is the fact that a court's only real challenge in making child support determinations is likely found in those situations where the non-custodial parent earns over $500,000 per year. Explaining how the non-custodial parent earns several million dollars per year is often an intoxicating part of the banter that takes place with the court. The statutory objective, however, in all child support proceedings, is to calculate an amount of child support that is sufficient to accommodate the child's reasonable needs. Whether the high earner's annual income is $1 million or $10 million does not pragmatically impact what constitutes the child's reasonable needs, which can be easily gleaned from the child's then existing standard of living.

The Child's Actual Needs Are Paramount

In *Doscher v. Doscher*, 137 A.D.3d 962 (2d Dept. 2016), the Second Department succinctly stated that the standard to be applied in such cases involving a very rich non-custodial parent must not be a disguised effort in income reallocation. The appellate court held:

> In high income cases such as this one, the appropriate determination under Domestic Relations Law §240 (1-b) for an award of child support where parental income exceeds the statutory income threshold of $136,000 should be based on the child's actual needs and the amount that is required for the child to live an appropriate lifestyle, rather than the wealth of one or both parties.[2]

In divorce actions involving the very wealthy, the exchange of comprehensive financial disclosure is largely inevitable. Absent a Pre-Nuptial Agreement that excludes a business owner's business from being equitably distributed, a rampant and costly disclosure process is virtually unavoidable when the non-custodial parent boasts a seven figure annual income. On the other hand, in those cases where a business owner or, perhaps, a celebrity, is not married to the birth mother, the disclosure to be produced would be for child support purposes only, and not for business valuation purposes. Accordingly, limiting the custodial parent's entitlement to disclosure may be the most important goal to be achieved by the high earner's attorney. One way of doing that is to convince the court to shift the order of disclosure from the payor parent's finances to the child's actual needs.

Easier to Compute

The task of determining a child's actual or reasonable needs in high income cases normally requires little more than the submission of a completed Statement of Net Worth, together with bank or credit account back-up information supportive of the monthly expenses. On the other hand, the task of determining the income of a celebrity and business owner like 50 Cent[3] could require a week of depositions before a trial even takes place. Although those depositions will be purportedly focused on drilling down into the voluminous business records of

the payor parent to compute how much income is derived therefrom, in reality the litigation goal will be designed to identify tax reporting irregularities.

Not surprisingly, submitting to the disclosure process that precedes a hearing on child support in either Family Court or Supreme Court is frequently a nightmare for high income earners, especially for those who own or have an interest in a significant privately held business. Once that business owner's business records are placed under the microscope of a forensic accountant, hired to calculate the business owner's actual—as opposed to reported—income, the potential cost of disclosure can increase exponentially. The ultimate question is whether there is a procedural mechanism available to reduce that cost and negate the peril to which a rich client might be otherwise exposed.

In those courtrooms where a few wealthy unmarried litigants tend to monopolize an individual judge's time and calendar, proactively promoting the expeditious progression of those cases can be liberating. Toward that end, a fresh look should be taken at the holdings in such cases as *Doscher v. Doscher* and *Brims v. Combs*, where a creative approach to determining child support could obviate the seemingly endless exchange of disclosure and the costly motion practice that too often elongate high income cases.

No one disputes the fact that a child's actual needs can be easily computed on an ad hoc basis, compared to the enormous amount of time spent on the disclosure process that high income earners would otherwise have to endure. In light of the foregoing, a wealthy payor parent would be best off refusing to comply with disclosure requests and accept a prudent determination from the court as to the amount of support that needs to be paid to accommodate the subject child's actual needs. That was what was precisely done in *Brims v. Combs*. In response to the non-custodial parent's refusal to furnish or to testify as to his finances at the hearing held in Family Court, the Support Magistrate disregarded the child's actual historical expenses as the proper yardstick for a support award and, instead, punitively awarded child support in the exact amount that the custodial parent requested. In modifying that order of support, that was essentially based on the mother's child support wishlist, the Second Department properly honed in on the child's actual needs, as opposed to the mother's attempt to reallocate the father's substantial income. *See also Anonymous v. Anonymous,* 286 A.D.2d 585 (1st Dept. 2001).

Supported by Historical Analysis

Relying on what was once termed the Manheim Declaration,[4] decided decades before the *Brims v. Combs* case, attorneys had historically sought to avoid the vicissitudes of the frequently precarious disclosure process that necessarily increases the cost of litigation and the payor parent's blood pressure. In its most filtered down version, a Manheim Declaration was deemed an admission that the non-custodial parent could afford to pay for the child's reasonable needs and was willing to stipulate to a child support obligation sufficient to afford those needs. That declaration accomplished two critical goals of support litigation. First, it guaranteed that the noncustodial parent's support obligation would be set in accordance with the child or children's actual and reasonable needs as defined by the standard of living established prior to separation. Second, it eliminated the costly, convoluted, and often completely unnecessary disclosure process that often expanded the parties' attorneys' investment portfolios but did nothing worthwhile to better achieve the desired outcome of a support proceeding. The Manheim Declaration became the ideal cost savings solution to a problem that is all too frequently the primary driver of the escalation of counsel fees.

By resurrecting the Manheim Declaration, celebrities, professional athletes, and wealthy business owners can save on the cost, exposure, and irritation of the proctology exams that the

custodial parents want their attorneys to conduct. Once the support figure is determined, a wealthy non-custodial parent is permitted to simply agree to pay that amount to resolve the child support issue and thereby bypass the horrid disclosure process that lurked in the shadows. In cases where a child is born out-of-wedlock, the Manheim Declaration is a veritable panacea for the anxiety of defending against open court accusations of tax evasion or, worse yet, criminal tax fraud.

Absent a Manheim Declaration, not so subtle acts of extortion often permeate support cases involving a celebrity or successful business owner. Examining a business owner's tax return often exposes tax return reporting irregularities that could be seen as arguably criminal. Not knowing whether a particular judge will view herself a mandatory reporter of such crimes is a highly perilous proposition. The Mannheim Declaration, along with a judge willing to allow a child's reasonable needs to be set before compelling the exchange of disclosure, stands to avoid much of the litigious nonsense and intimidation that all too frequently accompany such cases.

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1. Presently that minimum amount is $148,000.
2. Consonant with the holding in *Doscher v. Doscher*, where the non-custodial spouse is a high income earner, the actual needs standard is dispositive in all child support proceedings. *See Levesque v. Levesque*, 73 A.D.3d 990 (2d Dept. 2010); *Williams v. Rodriguez*, 66 A.D.3d 914 (2d Dept. 2009); *Ansour v. Ansour*, 61 A.D.3d 536 (1st Dept. 2009); *Vladlena B. v. Mathias G*., 52 A.D.3d 431 (1st Dept. 2008); *Brims v. Combs*, 25 A.D.3d 691 (2d Dept. 2006).
3. *Leviston v. Jackson*, 43 Misc.3d 229 (Sup. Ct. Suffolk Court 2013).
4. *Manheim v. Manheim*, 29 A.D.2d 532 (1st Dept. 1967).