



# THE ENFORCER

BY DAVID FINDLING

THE FINDLING LAW FIRM

WITH SPECIAL THANKS TO ERICA J. EHRLICHMAN, ESQ., JOHN W. POLDERMAN, ESQ., AND MARC A. DELDIN, ESQ. FOR THEIR INVALUABLE ASSISTANCE IN PREPARATION.

## WHY CAN'T YOU GET BLOOD FROM A STONE?: REASONS WHY PARENTS DON'T PAY CHILD SUPPORT

I can't pay my child support because:

1. I don't have any money;
2. My business is doing poorly;
3. She locked me up and I lost my job;
4. I have three other children for whom I have to pay to support;
5. She won't let me see the kids;
6. I support them in other ways....

How many times have you heard someone say that to a judge? Given Michigan's economy of late, these excuses are offered all too frequently by delinquent support payers. However, a closer look reveals some surprising answers as to why a parent really isn't paying support.

Studies show that support payers fail to make payments due to a lack of a relationship with their child, and that they are suspicious about where the money is going.<sup>1</sup> In addition, studies recognize that a lack of any perceived penalty is a deciding factor in whether or not a parent will pay.<sup>2</sup>

### ECONOMIC INABILITY

Surprisingly, low income is not the main reason that parents fail to pay.<sup>3</sup> If it were, then the rates of payment would decrease along with a non-custodial parent's income, but one study found this is not the case. In fact, results showed that fathers making less than \$10,000 a year were just as likely to pay as those making \$30,000 - \$50,000 a year.<sup>4</sup> Another study suggests that the custody arrangements and post-divorce or separation relationship, and not the income of the parents, is a much better indicator of whether a parent will pay.<sup>5</sup> This assertion seems to be supported by the 2001 Census Bureau survey, which found that approximately 77.1 % of the custodial parents who had arrangements for

joint child custody or visitation privileges were receiving some support payments.<sup>6</sup>

### EMOTIONAL REASONS Control

Some parents fail to pay child support because they have a lack of control over how the funds are spent. An all too frequent excuse heard at support hearings is that the custodial parent is misusing the payments. Accordingly, the non-custodial parent uses child support payments to exert control over a former spouse or significant other whom they believe is using the money not for the needs of the child, but instead for lavish items on themselves.

One suggestion to alleviate the concerns of paying parents is implementing a system of accountability for child support payments. However, critics of this approach worry that forcing a custodial parent to account for child support payments interferes with their ability to make decisions on behalf of the child, and creates a further burden on the judicial system of resolving disputes regarding individual expenses made by parents.<sup>7</sup>

### Revenge

Parents also withhold child support as a mechanism of revenge for what the non-custodial parent sees as an unfair custody or divorce agreement in which they feel the custodial parent was unjustly enriched. An attitude clients often express in these situations is one of "I'll show him," or "She got everything." These parents are generally angry about financial or other situations that arose during the relationship and see the child support as their only means left to exert control over the custodial parent.

### POOR ENFORCEMENT

Poor enforcement is also cited as one of the main reasons why parents fall behind and ultimately fail to pay support payments. Unsurprisingly, if no one is forcing the parent to pay, he or she will take advantage of the lax oversight. Accordingly, states and courts that enforce jail sentences for non-payment have a substantial deterrent system that is most effective in forcing parents to pay.



## INCARCERATED INDIVIDUALS

A study of fathers jailed for failure to pay child support in Michigan suggests that short jail sentences actually do an effective job of continuing payments post-release.<sup>8</sup> In the study comparing inmates in both Genesee and Macomb County, 53% of inmates who received a short-term sentence continued to make support payments after their release. Interestingly, only 33% of inmates who were jailed for longer periods (more than 31 weeks) continued to pay their support.

Other enforcement methods available include:

- (1) Appointment of a receiver;
- (2) Liens on property;
- (3) Restrictions on licensing; and
- (4) Passport denials.

It is crucial for lawyers to understand the emotional and psychological reasons why parents don't pay child support so they can successfully counsel clients that may be responding inappropriately to a support situation. Understanding the motives of parents who don't pay can help practitioners achieve solutions that will successfully obtain payment of child support.

## ENDNOTES

1. Monica Hof Wallace, *Child Support Savings Accounts: An Innovative Approach to Child Support Enforcement*, 86 N.C.L. Rev. 1155 (May 2007).
2. *Id.*
3. Elaine Sorensen, *A National Profile of Nonresident Fathers and Their Ability to Pay Child Support*, *Journal of Marriage and the Family* 59 (November 1997), pp. 785-797.
4. Wallace, *Supra* at 1171 citing Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* 284 (1985).
5. David Wright & Sharon Price, *Court-Ordered Child Support Payment: The Effect of the Former-Spouse Relationship on Compliance*, *Journal of Marriage and the Family*, Vol. 48, No. 4. (Nov., 1986), pp. 869-874.
6. U.S. Census Bureau
7. Wallace, *Supra* at 1179.
8. David C. Baldus, *Review: Father in Jail*, *Michigan Law Review*, Vol. 78, No. 5, 1980 Survey of Books Relating to the Law. (Mar., 1980).

