

The following is a summary of the child support issues of those cases regarding the application of Rule 32(B)(6):

Hunt v. Garcia, 865 So. 2d 1203, (Ala.Civ.App. 2003) Involves a “divorce” of a common law marriage. Father files to dissolve marriage and for custody of parties’ child. Custody was awarded to wife and husband ordered to pay child support of \$616.00 per month. Husband requested a deduction for support he was paying to support two other children he had prior to the marriage. The support was being paid pursuant to a Florida court order, which he produced. Citing Rule 32(B)(6), Court of Civil Appeals reversed the trial court on this issue.

“We conclude that the trial court, in its computation of the father’s child-support obligation, should have allowed a deduction for the father’s preexisting child-support obligation and that that court erred in failing to do so.”

“The trial court’s judgment is reversed as to the issue of child support, and the cause is remanded for the trial court to recalculate the father’s child-support obligation after allowing a deduction from the father’s income based upon the father’s preexisting child-support obligation.”

Nelson v. Landis, 709 So.2d 1299, (Ala.Civ.App. 1998) Mother appealed trial court’s support order in this paternity and support action. Paternity was established and a hearing held to determine child support. Trial court ordered child support of \$450 per month. Trial testimony established the father worked for his parents’ business and that his mother paid his child support obligation for two children of a previous marriage as part of compensation. Trial court’s order was unclear as to whether this obligation paid by a third party was included or excluded from father’s gross income. “It was also unclear whether the prior obligation was deducted from the trial court’s finding regarding the father’s gross income pursuant to Rule 32(B)(6).” (Other issues involved health care and work-related childcare costs).

The appellate court was unable to determine how the trial court determined the child support obligation. No guideline forms were included in the record and the method by which the trial court determined its child support award was unclear. The case was remanded for the trial court to enter an order in compliance with Rule 32 guidelines.

Neither of these cases involve the issue of other children for whom there is no court order and I found nothing providing guidance on examples of what constitutes “legally responsible” as used in Rule 32(B)(6). Those are the kinds of cases I was hoping to find.

As to modification cases, there were a few cases providing guidance to trial courts for considering “other children” for whom there was no court order, but, as I recall, only involve children who were living in the obligor’s home.

The following is a summary of those cases:

Loggins v. Houk, 595 So. 2d 488 (Ala.Civ.App. 1991); Ex parte Wesley Loggins, 1992 A.a. LEXIS 354 Cert. Denied. In this often-quoted case, the trial court was reversed when it failed to consider evidence of father’s additional expenses associated with children from a second marriage to rebut the guideline recommendation.

This is a modification case wherein mother filed to increase an eleven-year-old child support order. The non-custodial parent had remarried and had three additional dependents from that marriage – two born and one adopted. The trial court found that evidence of the father’s increased expenses would not be an effective matter for consideration in determining his child support obligation, “because the guidelines do not permit a deduction for children born or adopted after the initial award of support unless paid pursuant to another order of support.”

The appellate court cited Rule 32(A), wherein it states:

“Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record that the application of the guidelines under the following criteria would be unjust or inappropriate shall be sufficient to rebut the presumption:

“ ...

“(ii) Upon a finding of fact, based upon evidence presented to the court, the court determines the application of the guidelines would be manifestly unjust or inequitable.”

Rule 32(B)(6) provides as follows:

“The amount of child support actually paid by a parent pursuant to an order for support of other children shall be deducted from that parent’s gross income... If the proceeding is one to modify an existing award of support, no deduction should be made *for other children born or adopted after the initial award of support was entered except for support paid pursuant to another order of support.*”

First, the father challenged the constitutionality of the Rule 32, stating it changed substantive law - that the rule removed the trial court’s discretion in comparing the child’s needs to the parent’s ability to pay and other relevant factors. He argued the trial court erred in adhering to Rule 32(B)(6) by refusing to consider the expense of raising the children of his second marriage and his working expenses. He argued the trial court misconstrued Rule 32(B)(6) and that if it did not misconstrue it, then the rule is constitutionally infirm.

The appellate court agreed that clearly no deduction can be made from gross income for children born or adopted after the initial award of support unless it is pursuant to a court order. The appellate court did not agree that Rule 32 (B)(6) prohibits the consideration of the evidence of the increased expenses because of the additional children in determining whether “the application of the guidelines would be manifestly unjust or inequitable.” “The trial court has been given the authority to make this determination “based upon evidence presented to the court,” and there is no limitation on the type of evidence that may be considered. In addition, we note that the rules are procedural and are not to be interpreted so that it may modify substantive law. ...Substantive law allows the introduction of evidence regarding the obligations and expenses of remarriage and of the children born of that marriage; however, the primary responsibility of the father is to the obligations assumed with his first marriage. *Argo v. Argo*, 467 So. 2d 258 (Ala.Civ.App. 1985); *Prestwood v. Prestwood*, 344 So.2d 509 (Ala.Civ.App. 1977).”

“We further note that, although actions concerning child support are guided by the mandatory application of Rule 32, such actions are still within the sound discretion of the trial court, and its decision will not be disturbed absent a finding of abuse of that discretion...”

“Therefore, based on the above, we find that the father has the right to offer evidence of expenses of the children of the second marriage, not as a deduction from his gross income, but, rather, in an attempt to rebut the presumption that the amount of the award resulting from the application of the guidelines is the correct amount of child support to be awarded.”

“The judgment is due to be reversed and the cause remanded with instructions for the trial court to consider whether the application of the guidelines would be manifestly unjust or inequitable based upon further evidence to be presented and considered by the court.”

Dinkel v. Dinkel, 598 So.2d 918, (Ala.Civ.App. 1991) The appellate court affirmed the trial court’s application of the guidelines in this modification case for two reasons: (1) the mother had put forth enough evidence to merit a finding of change of circumstances and (2) there wasn’t enough evidence of the father’s expenses to overturn the trial court.

“The evidence is undisputed regarding the increase in the husband’s income and in the needs of the child. There exists a potential for the application of the guidelines to result in an inequitable amount due to the inability of the trial courts to consider subsequent support obligations. A trial court may overcome this potential inequity and rebut the presumptive correctness of the guidelines by determining “that the application of the guidelines would be manifestly unjust or inequitable... As previously indicated, this case was submitted to the trial court on a stipulation of facts that is not a part of the record. The husband’s brief references the wife’s petition as the stipulation of facts. There is no answer from the husband in the record and no transcript of any proceedings. The trial court’s order indicates that both parties were present with counsel and that it amended the final decree after “considering the matters presented.” The law is settled that the appellant bears the burden of ensuring that the record contains sufficient evidence to warrant reversal. ... In the scant record before us, there is no evidence to indicate that the trial court abused its discretion in applying the guidelines. Clearly, once a trial court determines to apply the Child Support Guidelines, consideration of children born or adopted subsequent to the initial award of support is not allowed.”

Low v. State, 602 So. 2d 435 (Ala.Civ.App. 1992). The appellate court reversed the trial court’s child support order which deviated from the guidelines. This case began at trial court as a contempt and modification filed on behalf of the mother. The father had appealed on issues involving arrearages judgments. The Rule 32(B)(6) issue litigated was a cross-appeal by the mother after the trial court lowered the support amount from the guidelines amount because of father’s other children.

At trial, the parties initially came to an agreement on support and arrearages amounts based on submissions of the father. Submissions turned out to be false. Trial court reconsidered and entered an order different than the agreement based on a Rule 60(b) motion. In that order the trial court lowered the amount of support. “The parties stipulated at the hearing that \$547.23 was the proper amount of child support. However, the trial court stated at the hearing that it was not inclined to grant that much

child support from someone who made \$51,000 a year and had two other children to support. It then awarded \$307.16 per month in child support, using a child support guideline form that indicated that the father had a monthly gross income of \$3,463 (or a yearly gross income of \$41,556) and that he should pay one-third of \$921.48 for the child in question (or \$307.16). This form was signed by the trial judge.”

Citing Loggins v. Houk: “In the present case the trial court apparently made a deduction from the father’s gross monthly income, as well as applying the guidelines using three children. This is not allowed by Rule 32. Although it could have considered evidence of the expenses because of the father’s two additional children in determining whether application of the child support guidelines would be manifestly unjust or inequitable, such evidence was not before the court. Therefore, we find the trial court incorrectly applied the child support guidelines and erred in ordering the father pay \$307.16 in child support. We reverse and remand for the trial court to determine the correct amount of child support, using \$4,259.25 (\$51,000 divided by twelve months) as the father’s gross monthly salary and applying the guidelines for one child.”

Rolen v. Pickering, 628 So. 2d 850 (Ala.Civ.App. 1993) Father appealed trial court’s decision to deny his requested relief for modification. Trial court affirmed.

“The dispositive issue on appeal is whether the father met his burden of proving a material change in circumstances ...warranting a decrease in his support obligation.”

“Our review of the record reveals that the father failed to present any evidence of a diminished income or a decrease in his earning ability since the last order. The father’s request for a reduction in child support appears to be based upon his increased debts due to a new family, a new home, and his tax liability. Absolutely no evidence was presented regarding the needs and expenses of the minor child.”

Father claimed his ability to pay based on the expenses of his remarriage and subsequent children wasn’t considered by the trial court.

Citing Loggins v. Houk: It is well settled that no deduction in calculating the child support obligation shall be made for children born or adopted after the initial award of support unless pursuant to another order of support when determining the amount of support to be paid pursuant to the guidelines.... Evidence regarding the obligations of remarriage, however, are not prohibited from being considered in determining whether application of the guidelines would be manifestly unjust or inequitable. ... The primary responsibility of the parent, however, is to the obligations assumed with the earlier marriage...”

“The trial court permitted the father to testify at length regarding his current financial position and his obligations, in conjunction with other evidence presented on his behalf. Apparently, that evidence did not satisfactorily rebut the presumption established by Rule 32 that the guideline amount is the proper amount of child support. The trial court found that the application of the guidelines was appropriate in this case, and in light of the ore tenus presumption, we support the trial court’s decision. ...”

“We further note that the trial court has continuing jurisdiction over matters of child support, and its judgment may be modified in the future due to changed circumstances...”

State ex rel. O'Neal v. Jones, 646 So. 2d 150 (Ala.Civ.App. 1994) Trial court deviated downward from the guidelines, finding that the children didn't need the increased support provided by the guidelines. Reversed. "It was error for the trial court to fail to apply the guidelines or to properly deviate from them."

"Father's new family unit included three other children for which he is not allowed a deduction when calculating his obligation to the children of this case... Expenses for a subsequent family can affect one's financial condition and may be considered by the trial court as a factor in determining a child support obligation... (citing Loggins). Regardless, the father's primary legal and moral duty to these children is not diminished by his duties to his subsequent "new family." The father's new family is inadequate justification for deviating from the guidelines, and the trial court's decision in that regard is error. "

"The trial court's finding that the guideline amount exceeded the needs of the children is likewise error. The record contains evidence regarding the expenses of the children and evidence that the family subsists on the mother's income and the present child support. The mother manages the home on a very limited budget, and she testified that the current household income was inadequate to meet the needs of the children. She testified that she needed money for the children's medical bills and transportation because she could not afford a car. She also specifically testified regarding the needs of one of the children to visit the dentist, and that she did not have the funds for this. There is a rebuttable presumption that the application of the guidelines results in the proper amount of support for the children, i.e., the amount of the guideline award is rebuttably presumed to be the children's needs... In this case, the mother sought an increase, based on the guidelines, and she presented evidence regarding the expenses of the children. The father presented nothing to rebut the evidence regarding the needs of the children that was presented to the court, nor to rebut the presumption that the application of the guidelines results in the appropriate amount for his child support obligation."

State ex rel. English v. Troisi, 659 So. 2d 658 (Ala.Civ.App.1995) Began as a petition to modify filed by the mother for an increase in support. Father requested credit for after-born child. Trial court awarded it. Court of Civil Appeals reversed and remanded. The defendant didn't put forth evidence from which trial court could make a finding that applications of the guidelines would be unjust or inequitable.

The trial court required both parties to submit guidelines. The father's guidelines deducted \$318.00 from his gross income to account for another child of whom he had custody. The custody order for that child did not require the mother of that child to pay support.

The mother's guidelines, submitted by the State, no credits were given for the after-born child.

After consideration, the trial court accepted the submission of the Defendant and signed the Form CS-43 "Notice of Compliance" indicating it had complied with guidelines. State's guidelines were rejected and returned to the State.

Appeals court findings: "[T]he record discloses that the parties informed the trial court that the father had custody of a child born after the entry of the original order of support for these parties' child, and that the mother of this younger child had not been ordered to pay child support. The record contains no evidence to indicate the expenses of supporting that younger child in the father's home, and no

evidence indicating that the father has sought support from the child's mother or that that child's mother could contribute to her support."

Citing Rule 32(B)(6): The trial court allowed the father a credit of \$318.00 per month against his gross income for the support of the younger child now residing in his home, by imputing a support obligation contained in the guidelines. Such an allowance was error. This court has already determined that "clearly, no deduction may be made for children born or adopted after the initial award of support unless pursuant to another order of support when determining the amount of child support to be paid pursuant to the guidelines." (*Loggins v. Houk*). This court went on to state, however, that a trial court may consider evidence of a parent's increased expenses because of other children in determining whether the application of the child support guidelines would be manifestly unjust or inequitable. Here, the trial court simply gave the father a deduction as if the younger child's mother had been awarded custody and as though the father had been ordered to pay \$318.00 each month as child support. Under the circumstances, this was clearly contrary to the guidelines. Such an error requires reversal...."

"This court addressed the proper calculation of the guideline amount on remand in a case such as this in *Low v. State ex rel. Waltman*...wherein we stated that "although [the trial court] could have considered evidence of the expenses because of the father's two additional children in determining whether application of the child support guidelines would be manifestly unjust or inequitable, such evidence was not before the court."...Likewise, the trial court here could have considered evidence regarding the father's additional expenses incurred in supporting the younger child, but as in *Low*, no such evidence was before the court from which it could make a finding that the application of the guidelines would be unjust or inequitable. Accordingly, the judgment must be, and it hereby is, reversed, and this cause is remanded with directions to the trial court to determine the correct amount of child support, using \$2,000 as the father's gross monthly salary, allowing no deductions from that salary for the younger child in his home, and applying the guidelines for one child."

Hudson v. Hudson, 178 So. 3d 861 (Ala.Civ.App. 2014) Father filed to modify child support downward. Appellate court upheld challenge regarding trial court's imputation of \$4,000.00 per month income to father and upheld trial court's denial of credits for after-born children.

"The record shows that, besides the parties' minor child, the father has three other children – one son by his second wife and two daughters by a paramour. The father testified he pays child support of \$250.00 per month for the two daughters." In his brief to the appellate court, he also stated he paid \$279.00 per month in child support for a son by his second wife, but there was no cite to the record to support that contention. Appellate court found one reference of this in the record, but it didn't describe the payment as child support. Thus, the appellate court didn't consider it in its opinion.

Citing Rule 32(B)(6), the appellate court added: "By its plain language, Rule 32 (B)(6) requires a court in a child-support-modification proceeding to deduct from a parent's gross income amounts paid for children other than the child or children at issue made pursuant to other existing child-support orders..."

"In this case, the evidence indicates that the father is paying child support of \$250.00 per month for his two daughters, but the father did not present any evidence indicating that he is doing so pursuant to any court orders. In the absence of such evidence, we cannot place the trial court in error for failing to credit

the monthly \$250 child-support payment when calculating the child support due for the parties' minor child."