

MEMORANDUM

TO: Advisory Committee on Child Support Guidelines and Enforcement

FROM: Subcommittee on Non-parent Custodian Income and Child Support Calculation

RE: Explanatory Memorandum for Non-parent Custodian Child Support Calculation

DATE: October 25, 2024

Rule 32 provides rebuttable guidelines for the calculation of child support and is applicable to all proceedings for the establishment or modification of a child-support order. Rule 32 defaults to situations in which one of the parents is the physical custodian of the child(ren), however, other parental custody arrangements are also addressed. Split custody, situations in which each parent has primary physical custody of one or more children, is addressed at (B)10). Shared physical custody of the child(ren), situations in which each parent retains physical custody 50% (or approximately 50%) of the time, is addressed at both (A)(1)(a) and (C)(7). Rule 32 does not address how to calculate support when a non-parent has physical custody of the child(ren).

Income is of paramount importance when calculating child support. The definition of income in Rule 32 (B)(1) is focused upon the parent's income and states as follows: "For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed." (Underline added). Rule 32 does not address whose income should be used to calculate support when a non-parent has physical custody of the child(ren).

Case law has addressed non-parent custodian child support. In Ex parte Lipscomb, 660 So.2d 986 (Ala.1994) the maternal grandfather and step-grandmother had legal custody of the grandfather's grandchild. The grandfather filed a complaint for divorce against the step-grandmother, requested that she be given custody of the grandchild, and that the court order support. The Court of Civil Appeals found that although the parents' rights had not been terminated, the grandfather had legal custody of the grandchild, consequently had a duty to support that child, and could be ordered to pay support to the step-grandmother custodian.

In Pruitt v. Pruitt, 669 So.2d 931 (Ala.Civ.App.1995) the Court of Civil Appeals found that because there is no distinction between biological children and adopted children, grandparents who adopted their grandchildren were legally the parents and would be treated as such for the purposes of calculating child support.

In O.L.D. v. J.C., 769 So.2d 299 (Ala.Civ.App.1999) the child's mother was deceased, the maternal grandmother sought to retain custody of the grandchild, and requested that the father pay her support. The Court of Civil Appeals found that the grandmother's income could be used when calculating the amount of support that the father would pay to her.

In T.T.T. v. R.H., 999 So.2d 544, 559 (Ala.Civ.App.2008) the mother was deceased, the father had relinquished his parental rights, and the maternal grandparents had physical custody of the child. The Court of Civil Appeals found that the grandparents' combined gross income and the father's gross income could be used when calculating the amount of support the father would pay to the grandparents.

Based upon the limited case law and to promote uniformity throughout the state, judges and members of the public requested that Rule 32 provide guidance on this issue. Therefore, to address how support should be calculated when a non-parent has physical custody of the child(ren), the Subcommittee proposes that the Advisory Committee on Child Support Guidelines and Enforcement recommend to the Supreme Court of Alabama that subsection (8) be added to Rule 32 (C) to address the calculation of child support when a non-parent has custody of the child and that a new subsection be added to Rule 32 (A)(1) to create a deviation to allow a non-parent custodian to include child-care expenses when calculating child support in instances when the child-care is not work or job search related. These changes support the public policy that parents have a duty to support their children even if they themselves do not have custody and that non-parent custodians should not be discouraged from assuming custody because of lack of financial support from the parent(s). The proposed text is set out in a separate memorandum.