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Publication Information

Judith G. McMullen, The Professional Athlete: Issues in Child Support, 12 Marq. Sports L. Rev. 411 (2001)

Repository Citation

McMullen, Judith G., "The Professional Athlete: Issues in Child Support" (2001). *Faculty Publications*. 164.
<https://scholarship.law.marquette.edu/facpub/164>

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THE PROFESSIONAL ATHLETE: ISSUES IN CHILD SUPPORT

JUDITH G. McMULLEN*

I. INTRODUCTION

In today's legal and social environment, it is clear that parents are expected to fulfill certain financial support obligations to their children. With narrow exceptions (such as donors to sperm banks), a biological parent must provide support to his or her child until that child at least reaches the age of majority. Levels of support are normally determined by formulae set by state law, and can be changed only by court order. The support obligation attaches whether or not the parents have ever been married to each other, and whether or not the paying parent has ever lived with the child.

This article will discuss how child support obligations affect the professional athlete. While the general support rules certainly apply to professional athletes, there are certain characteristics of athletic careers and lifestyles that must be considered when representing an athlete¹ in child support matters.

For one thing, athletes need to understand that they may be in a particularly vulnerable position with respect to paternity suits and child support claims. By all accounts, temptations abound in the environments in which professional athletes find themselves. Moreover, the fame and high income associated with sports players makes it far less likely that women will neglect to pursue paternity and child support claims. The high profile nature of the athletic careers, the sometimes wild lifestyle associated with the high-earning athlete, and the tenacity of young fans in seducing glamorous sports figures combine to make some male athletes very vulnerable to unplanned fatherhood and subsequent paternity actions. Some might feel that it is unfair to impose full support responsi-

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1. Financial support obligations for children are imposed on both fathers and mothers, and female athletes can have unplanned pregnancies just as surely as male athletes can participate in causing unplanned pregnancies. Nonetheless, this article will focus on the male professional athlete, and the issues that may arise when he has nonmarital children to support. Most of the cases to date involve male athletes, who remain more numerous and more highly paid on average than professional female athletes. Moreover, a woman facing an unplanned pregnancy has the legal option to terminate that pregnancy, while the father of the unborn child does not have control over that decision once the child has been conceived.

bilities on someone who was "tricked" into fatherhood. However, courts are quite consistent in imposing support obligations on biological parents no matter what the circumstances of conception.

Secondly, the relatively short duration and comparatively high incomes of many professional athletic careers are factors courts must consider in deciding whether or how much to deviate from typical percentage of income standards. Whether dealing with a marital child or a non-marital child, courts have the discretion when applying child support formulae to make adjustments in the amount payable where the payor has a particularly high income. Sometimes this results in the payor being assessed an amount less than the statutory percentage, because straight application of the percentage might result in a ludicrously high monthly payment. However, some courts are less inclined to apply this discretion to make downward adjustments in the case of professional athletes, because the expected duration of many athletic careers is short and other job skills may be lacking.

This article will first discuss the general rules for imposing child support obligations, and will examine how the rules apply to parents who were arguably manipulated into begetting a child. Then the article will discuss the levels of child support awarded, and how unique aspects of the professional athlete's situation may impact the amount of the athlete's child support obligations.

II. THE PARENTAL SUPPORT OBLIGATION

A. *Imposition of support*

The biological parents of a child have a legal duty to provide for his support until he reaches the age of majority, or until the parents' parental rights have been legally terminated. Under early common law rules these duties were imposed solely on fathers who were married to the mothers of their children, and an unmarried father had little or no duty of support (and no custody rights),² however, those days are long gone. In 1973 the U.S. Supreme Court held in *Gomez v. Perez*,³ "that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because

2. LESLIE J. HARRIS & LEE E. TEITELBAUM, FAMILY LAW 982 (2d ed. 2000) (citing WALTER C. TIFFANY, HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS § 114 (1921)).

3. 409 U.S. 535 (1973).

its natural father has not married its mother.”⁴ Thus, since the early 1970s, states have imposed—and enforced—support obligations on married and unmarried parents alike. Neither the existence of a support obligation nor the amount of support due is related to whether the child’s parents have ever married each other.

Although many professional athletes start their careers at comparatively young ages, few if any could honestly contend that they are unaware how babies are produced. In that sense, they have no better claim that they should not be responsible for an unintended pregnancy than does any other unmarried father.

However, by all accounts, professional athletes are surrounded by more temptations. “All professional athletes are inundated with available sex. All of them. There are women who feel a magnetic pull from athletes or rock stars or entertainers or politicians. They are commonly known as groupies.”⁵ “To the athletes who care to indulge them, and many do, these readily available groupies offer pro sport’s ultimate perk: free and easy recreational sex, no questions asked.”⁶ Apparently motivated by the money and glamour associated with professional athletes, women groupies are readily available.

Many athletes succumb to temptation, and later have a paternity action to show for it.

Although there have been no studies on athletes and their out-of-wedlock kids, those who are familiar with the issue say the numbers are staggering. “I’d say that there might be more kids out of wedlock than there are players in the NBA,” estimates one of the league’s top agents, who says he spends more time dealing with paternity claims than he does negotiating contracts.⁷

Some athletes may feel trapped or tricked into fatherhood. “Mention paternity suits to athletes, and the word setup inevitably enters the conversation.”⁸

‘Wherever there’s money, there are going to be women,’ says veteran Sonics guard Nate McMillan, who has no out-of-wedlock children but has friends who do. ‘You find some women who might be a little lazy and don’t want to work, and they’re cute and

4. *Id.* at 538.

5. Steve Jacobson, *A Reminder: The Road Will Make A Bum Of The Best Of Them*, L.A. TIMES, Feb. 26, 1989, § 3, at 1.

6. John Elson, *The Dangerous World of Wannabes*, TIME, Nov. 25, 1991, at 77.

7. Grant Wahl & L. Jon Wertheim, *Paternity Ward*, SPORTS ILLUSTRATED, May 4, 1998, at 62, 64.

8. *Id.* at 67.

have an opportunity to be with some of these players. They're using the kids to take advantage of a situation. If you don't go in as a couple and plan a family, then in a sense I think it's a setup."⁹

In *The Dark Side of the Game: My Life in the NFL*, former football player Tim Green comments on the dangers of groupies. "[T]here exists a particularly virulent form of groupie," Green says, "whose main objective in life is to become impregnated by a plethora of professional athletes, have numerous bastards, and live comfortably off of the various child support payments that she receives. Once caught in her trap, the player can never escape."¹⁰

Many athletes, newly rich and famous, simply do not handle the advances in a self-protective way:

The problem for male stars, of course, does not simply have to do with the wiles of conniving women. Philosophy professor Dallas Willard of the University of Southern California notes that a lot of team athletes are ill-equipped to handle pro sports' off-field pressures. "Many star athletes today," he says, "are from poor backgrounds – poor not only in a financial sense but in terms of education, emotional and social preparation for life. They do not have the wherewithal to deal with the availability of sex, the offers to satisfy almost any gratification." . . . And as both league officials and team executives increasingly admit, at some of the places where groupies trawl, drugs and alcohol are often present in quantity, further impediments to sensible judgment.¹¹

However unscrupulous or irresponsible the behavior of the young mother, athletes must be advised that this does not relieve them of their legal support obligations. "The general rule is that proof of biological parenthood is sufficient for imposing a support duty, and courts and legislatures are extremely reluctant to excuse this duty."¹² This is because the law focuses on the well being of the child, who needs support no matter what the behavior of their parents prior to her conception.

A well-known case illustrates this point. In *L. Pamela P. v. Frank S.*,¹³ a biological father claimed that the mother had lied to him, leading him to believe that she was using contraception when, in fact, she was not. The father argued that the mother's deceit should operate to reduce or eliminate his legal obligation to support a child he had never intended

9. *Id.* at 67-68.

10. TIM GREEN, *THE DARK SIDE OF THE GAME: MY LIFE IN THE NFL* 80 (1996).

11. Elson, *supra* note 6, at 80.

12. HARRIS & TEITELBAUM, *supra* note 2, at 1010.

13. 449 N.E.2d 713 (N.Y. 1983).

to beget. The Family Court, sympathetic to his situation, held that he need only support the child to the extent that the mother was incapable of doing so.¹⁴ However, the appellate court held that the needs and welfare of the child, as well as the financial resources of the parents, were the only relevant considerations in determining child support obligations.¹⁵ Thus, despite the mother's deceit, the father was held to be fully responsible for child support.

Other jurisdictions that have ruled in similar cases are generally in accord with *L. Pamela P. In Faske v. Bonanno*,¹⁶ for example, the defendant contested the payment of child support despite the fact that blood tests showed a 99.8% probability that he was the child's father. The father claimed that the mother had fraudulently stated that she was taking birth control pills when she was not in fact taking them. The defendant argued that it was unfair to place a financial burden on him in light of the mother's misrepresentation.¹⁷ The appellate court disagreed, and affirmed the trial court. "Parents have an obligation to support their children and the circumstances of a child's conception do not give rise to an exception to that rule."¹⁸

An Alabama appellate court reached a similar conclusion in *S.F. v. State ex rel. T.M.*,¹⁹ where the court affirmed an award of child support against an unmarried father. The facts of *S.F.* are somewhat bizarre. An extremely intoxicated S.F. had arrived at T.M.'s house late at night. Testimony revealed that S.F. passed out, and T.M. had sexual intercourse with him while he was passed out. S.F. argued that child support obligations are predicated on voluntary sexual intercourse, and that he was the victim of a sexual assault. The court was unsympathetic to his plight, noting only that the father could have filed criminal charges against the mother. The court stated:

We find S.F.'s argument to be without merit. The child is an innocent party, and it is the child's interests and welfare that we look to under the Alabama Uniform Parentage Act. The purpose of this act is to provide for the general welfare of the child; any wrongful conduct on the part of the mother should not alter the father's duty to provide support for the child.²⁰

14. *Id.* at 715.

15. *Id.* at 716.

16. 357 N.W.2d 860 (Mich. Ct. App. 1984).

17. *Id.* at 861.

18. *Id.*

19. 695 So. 2d 1186 (Ala. Civ. App. 1996).

20. *Id.* at 1189.

Thus, the law emphasizes the well-being of the child, and imposes financial support obligations on the parents, whether or not they were married, planning a child, sober, or even conscious. Arguments that a woman was manipulative or dishonest in engineering a pregnancy will not be viewed sympathetically by most courts, and support obligations will be imposed on the father.

B. Determining the Amount of Support

In general, a child support order is calculated by requiring a parent to pay some set percentage of his income, adjusted up or down depending on certain circumstances. Parents are expected to meet the child's "needs" at a level consistent with the parents' ability to pay. In other words, "needs" does not refer to bare requirements necessary for physical survival. It refers to things reasonably related to a child's care at the standard of living enjoyed by one or both of the parents.

Methods of calculating the exact amount of child support vary somewhat from state to state. Some states assess a percentage of income against the parent who has the lesser amount of physical custody. The percentage is determined by statute or regulation, and increases as the number of children increases.²¹ Other states use the "shared income method." This method totals the mother's income and the father's income, and applies the relevant percentage to the total figure. Each parent is responsible for a proportional amount of the total child support due.²² A few states use the Melson formula, which allows parents to deduct a subsistence amount (determined by the state) from their income before applying the percentage due for child support. If there is any income left over after the basic needs of the parents and children have been covered, the children are entitled to share in this additional income to the extent deemed appropriate by the court.

21. For example, State A might require the payor to pay 25% of his income for the support of two children. If the payor earns \$96,000 annually, his support payments would be \$24,000, or \$2000 per month. *See, e.g.,* WIS. ADMIN. CODE § DWD 40.03 (1999). What counts as income available for child support (i.e. what deductions are allowed from gross income) varies somewhat from state to state.

22. For example, suppose the mother earns \$24,000 per year, and the father earns \$72,000 per year, for a total income of \$96,000. As demonstrated in the previous example, a 25% support obligation would result in required payments of \$24,000 per year or \$2000 per month. However, under the income shares model, the mother would be responsible for one-fourth of that amount, since her income is one-fourth of the parents' total income. Thus the mother's obligation would be \$6000 per year or \$500 per month, while the father's obligation would be \$18,000 per year or \$1500 per month.

Although the percentages applied to income vary somewhat from state to state, they are close in range, with a typical percentage for one child being 17%, for two children between 20-25%, and a maximum of 40-50% of income no matter how many children are in the family. The percentages are at least theoretically tied to what proportion of total income the average family spends on its children.

There are some situations where adjustments are made in calculating the support obligation. One common situation is that of the serial payor: a person who is paying subject to support orders for children from prior relationships. In this circumstance, the payor may be able to deduct the amount of support payable under existing support orders before applying the relevant percentage to his income to determine the amount payable under a new order for children from a subsequent relationship.

Another rationale for adjusting the amount due is that applying the standard may result in results that are unfair or unreasonable if the payor is extremely low-income or extremely high-income. Applying an inflexible percentage to an extremely low-income payor may leave him without the means to support himself—a result courts are loath to impose. Applying a straight percentage to an extremely high income may result in huge payments, far beyond an amount a child might reasonably need. Courts are divided about what constitutes a fair result in this circumstance.

There are two potentially competing values that must be balanced when determining the child support obligations of an extremely high-income payor. One principle is that children are not only entitled to basic support from their parents, but they are also entitled to share in their parents' good fortune. In the divorce context, some courts characterize the objective as setting support at a level that enables children to maintain the standard of living they would have had if the marriage had remained intact. If a child has enjoyed benefits such as private schools, piano lessons, and summer camps, then the child support payments will be set at a level to continue these benefits as long as the paying parent can afford it. The fact that none of these things would be necessities to a lower middle-class child is irrelevant.

Another principle is that child support is supposed to be for the well-being and needs of the children, and should not be appropriated by their custodial parent for their own purposes. While child support can legitimately be used for some things that inevitably improve the quality of life of the custodial parent as well as the child, such as a nice home or furniture, it should not be used for expenses personal only to the custodial parent or third parties. Thus, using part of a child support check to make

a car payment may be permissible, because the child rides in the car. Using child support funds to purchase a leather coat for the custodial parent would not be acceptable.

In ordinary circumstances where the family income is at or below the middle-class range, there is not much difficulty in reconciling these principles. Both the custodial and non-custodial household will likely have to tighten the belt somewhat, and keeping the children at the pre-split standard of living may be impossible. Similarly, when the child support payments do not approximate the real costs of raising the children, there is no money left over for the custodial parent to use for self-indulgence.

However, where one or both of the parents is extremely high income, the objectives of child support may conflict. Applying a straight percentage to an extremely high income may result in enormous monthly child support payments. A parent earning \$1,000,000.00 per year and having one child would pay approximately \$14,000.00 per month in a state applying a seventeen percent formula. On the one hand, it is difficult to see how one child's needs could require that kind of money. On the other hand, if the child had continued to live in the household with the high-earning parent, his lifestyle would most likely have been quite luxurious.

In many circumstances, courts make findings as to the child's "needs," including luxuries the child of wealthy parents might reasonably expect to enjoy. Then the percentage amount is reduced to an amount that covers the "needs," but does not include a windfall likely to be appropriated by the custodial parent.

A leading case in point is *Finley v. Scott*,²³ where the father-payor was a professional athlete, although his career did not appear to influence the decision except insofar as it provided him with an extremely high income. The case was a paternity action with an accompanying request for support. The trial court found Scott to be the father of the child, and ordered him to pay temporary support of \$5000.00 per month from his gross monthly income of \$266,926.00.²⁴ This was ultimately incorporated into a final judgment ordering payments of \$5000.00 per month.²⁵ Florida statutes provided a schedule for computing child sup-

23. 707 So. 2d 1112 (Fla. 1998).

24. *Id.* at 1115.

25. The case was complicated by the fact that evidence showed that between the temporary order and the final judgment, the child's mother had appropriated some of the payments for the use of herself and her other child (who had a different father). Hence, of the \$5000 monthly payment, \$2000 was to be paid directly to the mother, and \$3000 was to be paid to the guardian of the property of the minor child (such guardian was under the supervision of the

port on incomes up to \$10,000.00 per month, and then provided different percentages for any monthly income over \$10,000.00.²⁶ The guidelines also allowed the trial court to deviate from the guideline amounts in appropriate circumstances. Deviations of more than five percent from the guideline amount required written findings as to why the court found that payment of the guideline amount was "unjust or inappropriate."²⁷

The appeals that followed concerned arguments over whether the trial court had properly exercised its discretion in ordering payments of \$5000.00 when the guidelines would have produced an award in excess of \$10,000.00 per month, but the mother's stated monthly expenses for herself and both of her children²⁸ was \$2128.00. The mother claimed that she should have been awarded the full guideline amount, while the father argued that it was an abuse of discretion to order him to pay at least \$3000.00 in excess of the child's actual needs.²⁹

The district court sided with the father, holding that the trial court erred in awarding a "good fortune award" over and above the \$2000.00 needed for the child's support.³⁰ However, the Florida Supreme Court quashed the decision of the district court, and remanded with instructions to affirm the trial court's final judgment. The Court noted that the child should not be limited by the standard of living that her mother, the custodial parent, could afford to provide for her. If she lived with her highly paid father, he would be able to afford nannies, travel, a beautiful house and countless other accoutrements of an upper-class lifestyle. In awarding an amount of child support greater than the expenses of her more modestly situated mother, the trial court properly enabled the child to share somewhat in her father's much higher standard of living.³¹

The concurring opinion further elucidated the Court's reasoning: As a practical matter, it is impossible to believe that any court would award the same amount of child support where the paying parent is a multimillionaire as it would where the paying parent makes a modest living. While technically the child's basic survival needs would be the same in each case, the determination of "need" in awarding child support takes into account more than just the basic necessities of survival. . . . The child of a multimil-

probate court). The Florida Supreme Court approved this method of handling the situation. *Id.* at 1118.

26. *Id.* at 1114.

27. *Id.* at 1116.

28. Only one child was Scott's, and thus subject to the support order.

29. *Finley*, 707 So. 2d at 1115.

30. *Id.*

31. *Id.* at 1117.

lionaire would be entitled to share in that standard of living—for example to attend private school or to participate in expensive extracurricular activities—and would accordingly be entitled to a greater award of child support to provide for those items, even though provision for such items would not be ordered in a different case.³²

Other state courts are in accord with the principle that children are entitled to share in the benefits of their parents' wealth, even when they do not reside with the higher-income parent. For example, in *W.S. f/k/a/ W.R. v. X.Y.*,³³ the court reiterated that "children are entitled to share the benefits accruing to a successful parent," and that "children are entitled to have their 'needs' accord with the current standard of living of both parents, which may reflect an increase in parental good fortune."³⁴ The case went on to extend these principles to paternity cases as well as divorce cases.³⁵

California courts have utilized similar reasoning. *White v. Marciano*³⁶ involved an appeal from an order to pay \$1500.00 in child support for the support of one child. The father-payor stipulated that he had an annual income of \$1,000,000.00 and the mother had an annual income of approximately \$14,000.00.³⁷ In analyzing the appropriateness of the trial court award, the court stated:

Clearly where the child has a wealthy parent, that child is entitled to, and therefore 'needs' something more than the bare necessities of life. It is also clear that the court is required to consider, in a general sense, the noncustodial parent's standard of living. . . . The standard of living to which a child is entitled should be measured in terms of the standard of living attainable by the income available to the parents rather than by evidence of the manner in which the parents' income is expended and the parents' resulting lifestyle. It matters not whether the . . . noncustodial parent mi-

32. *Id.* at 1118 (Anstead, J., concurring) (quoting *Miller v. Scholl*, 616 So. 2d 436, 438-39 (Fla. 1993)).

33. 676 A.2d 179 (N.J. Super. Ct. App. Div. 1996).

34. *Id.* at 182 (quoting *Zazzo v. Zazzo*, 584 A.2d 281 (N.J. Super. Ct. App. Div. 1996)).

35. *Id.*

36. 235 Cal. Rptr. 779 (Cal. Dist. Ct. App. 1987).

37. *Id.* at 783. The main legal issue was the following: "Is detailed evidence concerning a noncustodial parent's lifestyle and net worth relevant in determining what amount of child support is 'reasonable' where the noncustodial parent stipulates that he has an income of \$1 million per year and is able to pay any reasonable amount of child support?" *Id.* at 781. The court answered the question as follows: "Where there is no question of the noncustodial parent's ability to pay any reasonable support order, we conclude that evidence of detailed lifestyle to be irrelevant to the issue of the amount of support to be paid and thus protected from discovery and inadmissible in determining the support order." *Id.* at 782.

serly hoarded his \$1 million per year income and lived the life of a pauper or whether he lived the life of a prince spending every cent of the available income.³⁸

The appellate court upheld the award of \$1500.00 per month, despite the fact that the mother had requested \$3500.00 per month.

As the preceding cases illustrate, courts may deviate from strict application of child support percentage formulas, where application of the percentage would result in unfairness to the child or one of the parties. Even though children of wealthy parents are normally awarded higher support payments than the children of lower income parents, the wealthy children are not entitled to endless amounts of wealth. Exorbitant child support payments, which far exceed the needs of even a wealthy, pampered child are sometimes seen as an unfair appropriation of the payor's income and a windfall to the custodial parent to whom the payment is made. Yet another example of the latter principle can be found in the case of Ron Perelman:

In December 1999, a New York Supreme Court judge ordered billionaire Ron Perelman to pay \$12,825 per month to his millionaire ex-wife as child support for their four year-old daughter. The girl's mother says it's not "'about money,'" but is disappointed that the court did not order Mr. Perelman to pay the \$132,000 per month in child support that she was seeking. The judge said "[t]he mother's argument assumes that. . . if [the child] is denied any imaginable luxury, she will be emotionally damaged. . . . This assumption is rubbish."³⁹

However, the statistically short career span of a professional athlete may motivate a court to order higher child support payments than might be ordered for a parent with a similar income in a more long-lived career. Concerns about the athletes' earning potential after the end of their professional careers are well-founded, despite the continued success of celebrities such as Michael Jordan and Magic Johnson. Numerous cases show a more typical pattern of drastically reduced income. One example is *Jackson v. Presley*,⁴⁰ where the payor-father was a professional football player whose annual salary afterwards was \$24,500.00 as a juvenile probation officer. The payor-father in *Dunbar v. Tart*,⁴¹ was

38. *Id.* at 782, quoted in *Johnson v. Superior Court*, 77 Cal. Rptr. 2d 624, 626 (Cal. Dist. Ct. App. 1998).

39. Kelly M. Dodd, Comment, *Poor Little Rich Kids: Revising Wisconsin's Child Support System to Accommodate High-Income Payers*, 83 MARQ. L. REV. 807 (2000) (citing Marc Peyser, *Newsmakers: Living on \$12,825 a Month*, NEWSWEEK, Dec. 20, 1999, at 84).

40. 586 So. 2d 213, 214 (Ala. Civ. App. 1991).

41. 430 So. 2d 530 (Fla. Dist. Ct. App. 1983).

a former professional basketball player whose self-employment as a contractor in New York had only yielded \$4000.00 in income in 1981. Similarly, in *Dean v. Dean*,⁴² the father had sought reduction of his \$2400.00 per month child support payments, alleging "that he was no longer employed as a professional football player and that his income had been reduced to 'zero.'"⁴³ Where payor incomes are likely to be drastically reduced before the children reach the age of majority, many courts are inclined to assess high child support payments up front, with the explicit requirement, or the implicit expectation, that some will be put aside for later, leaner years.

In *Irvin v. Seals*,⁴⁴ professional football player Raymond B. Seals had admitted paternity of the child whose support was in question. Seals was earning \$800,000.00 per year while the child's mother was an unemployed college student. Although the hearing officer found that the child's needs were more than adequately met with a monthly payment of \$2000.00, the officer recommended that amounts greater than that which would be due under the Child Support Guidelines were to be placed into a trust for the benefit of the child. The trial court adopted the hearing officer's recommendations, and the appellate court affirmed, noting that "[t]he hearing officer's reasoning for this recommendation was a fear that the mother inappropriately might utilize the support money and that the father had a limited number of years to enjoy the level of income that he now enjoys."⁴⁵

Similarly, in *Tukker M.O.:Mary L.O. v. Tommy R.B., Jr.*,⁴⁶ the Wisconsin Supreme Court examined inter alia "whether a family court in a paternity action may award child support according to the percentage standards in order to assure payment throughout the child's minority when the payor currently has a high income, but may soon undergo a substantial loss of income."⁴⁷ The Court answered in the affirmative. *Tukker* involved the child of Mary, a twenty-two year old college student and Tommy, a punter in the National Football League with whom Mary spent an evening. Tommy had been an NFL punter for approximately six years at the time of the court proceedings. "His income has ranged from

42. 516 So. 2d 1178 (La. Ct. App. 1987).

43. *Id.* at 1179. The case cited was an appeal from two judgments: one that found the father in contempt, and a second, which dismissed his request for a reduction of child support. The judgments were reversed and remanded for further proceedings. *Id.* at 1180.

44. 676 So. 2d 436 (Fla. Dist. Ct. App. 1996).

45. *Id.* at 437.

46. 544 N.W.2d 417 (Wis. 1996).

47. *Id.* at 418.

approximately \$70,000 in 1989 to approximately \$430,000 at the time of the [1993] family court proceedings to determine child support.”⁴⁸ The applicable percentage of income for the support of one child in Wisconsin is seventeen percent. Tommy argued, as do many high-income payors, that payment of the full percentage amount would result in an award far exceeding the amount necessary to support Tukker. Mary countered that his high income might suddenly end, leaving him unable to pay necessary support.⁴⁹

Tommy’s financial advisor testified that the average career of an NFL punter is 4.03 years. The advisor also testified that he was not aware of any other skills or abilities on Tommy’s part that would allow him to find employment other than as a football player. Tommy has a four-year college degree in business. Before becoming a punter, he worked as a shoe salesman.⁵⁰

The family court examined the fairness of applying the seventeen percent standard in light of statutory factors to be used in setting a fair and reasonable support amount. The court voiced concern over the likely interruption of Tommy’s income flow, and concluded that a seventeen percent payment was not unfair. The court ordered \$1500.00 per month to be paid to Mary for Tukker’s immediate support, with the balance going into a trust to meet Tukker’s future support needs and post-minority college expenses.⁵¹ The Wisconsin Supreme Court found that “the application of the percentage standard in this case was within the family court’s discretion to fashion an order serving Tukker’s best interests.”⁵²

Not all state courts will exercise their discretion by creating child support trusts, and some courts have held that creation of trusts to provide for college expenses is an improper exercise of discretion, because child support obligations are limited to a child’s minority.⁵³ Nonetheless, when faced with a high-income payor whose income is likely to decrease, courts may award a large amount to the custodial parent, leaving savings for future expenses to the discretion of that parent. In *Hector v. Ray-*

48. *Id.*

49. *Id.* at 419.

50. *Id.* at 418.

51. *Tukker*, 544 N.W.2d at 422. Wisconsin has a statute specifically granting to trial courts the discretion to place support money into trust. WIS. STAT. § 767.25(2) (2000).

52. *Tukker*, 544 N.W.2d at 422.

53. See generally Judith G. McMullen, *Prodding the Payor and Policing the Payee: Using Child Support Trusts to Create an Incentive for Prompt Payment of Support Obligations*, 32 NEW ENG. L. REV. 439, 453-468 (1998).

mond,⁵⁴ for example, the appellate court overturned a family court order that awarded an increase in child support to a payment of \$6000.00 per month in child support, but required that two-thirds of that amount be placed in trust for the child's future needs. The father was an NFL football player earning approximately \$150,000.00 *per month* at the time of the requested increase.

The court recognized the legitimacy of the trial court's concern that the father's NFL career could be cut short, noting however, that while "the length of a professional football player's career is uncertain at best, there is no certainty in anyone's life that they will not be disabled and unable to work in the future."⁵⁵ Therefore, the appellate court refused to uphold the part of the order that required two-thirds of the support payment be placed in trust, finding that that kind of future planning was inappropriate under Louisiana law. However, the court upheld the monthly \$6000.00 award despite the fact that the mother had not presented evidence of a monthly need even close to that amount. The court reasoned that the mother's support estimates "did not take into consideration the standard of living that Cody would be entitled to were he to reside with his father."⁵⁶ The court concluded that \$6000.00 per month was a fair and proper amount of child support under circumstances where the father had such extreme wealth and such a high standard of living.⁵⁷ Thus, the court created a situation where the custodial parent at least had the means to hedge against future reductions in the payor's income by saving part of a large current support award.

As the foregoing cases illustrate, courts will, within the limits of their discretion, work to fashion support orders that will protect a child's right to share in a high-income athlete's good fortune, even after the athlete's income has been reduced. Therefore, athletes cannot necessarily expect as large a downward adjustment in current support obligations as might be made for a high-income payor in a more secure profession.

54. 692 So. 2d 1284 (La. Ct. App. 1997), *cert. denied*, 695 So. 2d 978 (La. 1997). *See also* Frazier v. Daniels, 693 N.E.2d 289, 291-92 (Ohio Ct. App. 1997) (reversing part of a judgment that ordered the father, a former professional basketball player, to fund a \$100,000 trust for the child, to be used if the child's needs could not be adequately met by periodic support payments. The appellate court acknowledged that the trial court had discretion to order a child support trust under Ohio law, but only in lieu of periodic support payments. Both could not be required.).

55. *Hector*, 692 So. 2d at 1287.

56. *Id.* at 1288.

57. *Id.* at 1287-88.

III. CONCLUSION

For the most part, professional athletes are situated the same as any other potential payor in a child support case. As has been discussed, complaints as to the circumstances of conception are not viewed favorably by courts, which tailor their support orders to advance the best interests of the child. Further, while there is some effort made to protect a paying parent from a greedy custodial parent seeking a windfall for herself, generous support orders to advance the best interests of the child can be expected whenever the paying parent's resources allow. Any high-earning athlete can expect to pay a sizeable amount of his income in child support, so as to share his good fortune with any of his children, whether marital or non-marital.

