IN THE SUPREME COURT OF GUAM

ZERLYN V. PALOMO,
Plaintiff-Appellant,

v.

ROQUE L. MANGLONA,
Defendant-Appellee.

Supreme Court Case No.: CVA11-002
Superior Court Case No.: CS0028-06

OPINION

Cite as: 2012 Guam 18

Appeal from the Superior Court of Guam
Argued and submitted on August 23, 2011
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Plaintiff-Appellant Zerlyn V. Palomo appeals from a Decision and Order of the Superior Court that ratified recommended findings of the child support referee. Palomo argues that the trial court erred in upholding the referee's ruling that Defendant-Appellee Roque L. Manglona was not responsible for child support payments prior to the commencement of the child support action. Palomo also argues that she was entitled to a twelve percent interest rate on retroactive child support rather than the six percent that was recommended by the referee and ratified by the trial court. Manglona asserts the referee properly exercised her discretion in not awarding child support prior to the commencement of the action and in applying a six percent rate of interest on the retroactive support award.

[2] For the reasons discussed below, we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] According to the record, in late 2002, Plaintiff-Appellant Zerlyn V. Palomo and Defendant-Appellee Roque L. Manglona began an intimate relationship. At the time, Palomo was living with her long-time boyfriend, and Manglona was married to another woman. During the course of Palomo and Manglona's affair, Palomo became pregnant and gave birth to a child ("N.V.D.") in August 2003. Palomo's boyfriend was named as the father on N.V.D.'s birth certificate, and he believed himself to be N.V.D.'s father. Palomo and her boyfriend ended their relationship in early 2005.

[4] In January 2006, the Office of the Attorney General, Child Support Enforcement Division ("AG"), filed a paternity action on behalf of Palomo against Manglona, naming Manglona the

biological father of N.V.D. Palomo sought a determination of paternity, child support and arrears, as well as interest on arrears to accrue at twelve percent per annum. Manglona, appearing *pro se*, denied paternity and requested genetic testing.

[5] Based on the results of the genetic testing, which showed a 99.99% probability of paternity, the child support referee deemed Manglona the biological father of N.V.D. Manglona was ordered to pay future child support in the child support guideline amount of $634.00 per month. Beginning September 2006, Manglona began paying child support through a payroll deduction of $292.62 per pay period. The AG requested that Manglona be ordered to pay retroactive child support of approximately $23,000.00 dating from N.V.D.'s birth in August 2003. The referee instructed the parties to submit income records for the previous three years in order to accurately calculate retroactive support. The referee also referred and encouraged the parties to attend mediation in the hopes that they would resolve issues such as the amount of retroactive support and the rate of interest on retroactive support. After initial reluctance on the part of Manglona, both parties agreed to mediation, but Manglona failed to attend the scheduled mediation session.

[6] At a hearing on November 22, 2006, the referee orally set permanent child support at $661.97 per month, required Manglona to reimburse Palomo for his share of support from N.V.D.'s date of birth, and reduced these arrears to judgment in the amount of $22,858.90 at twelve percent interest, to be paid at $230.00 per month, which is slightly greater than the minimum amount necessary to cover the interest. The AG was asked to report on the status of the ordered wage assignment the following week, and the parties were told that they would not need to appear at that hearing.

[7] At the hearing regarding wage assignment, the AG notified the referee that Manglona "wanted a hearing in two weeks so he could try to consult with, you know, search for an attorney." Tr., tab 5 at 2 (Hr'g Re: AG's Compliance, Nov. 29, 2006). The AG continued, "So maybe he wants to try to argue for lower support; I don't know. But he wanted two weeks . . . ." *Id.* In response, the referee set a hearing for December 13, 2006.

[8] At the December 13 hearing, Manglona informed the referee that while he did not object to paying arrears, he did object to paying twelve percent interest on the reimbursement amount because Palomo had not been under any government assistance during the retroactive period. The referee indicated that this argument was raised by others in the past, stating, "I think the 5 GCA section provides, essentially, only for collection of welfare, and that's where the 12-percent is include [sic]," and that "the argument is . . . is that he isn't delinquent, because there was never a judgment for him or an order for him to pay." Tr., tab 6 at 5, 7-8 (Hr'g Re: Arrears, Dec. 13, 2006). The referee instructed the AG to prepare and file a memorandum regarding interest, and set a hearing date for reconsideration of the matter. Notwithstanding the later scheduled hearing and prior to the filing of the AG's memorandum regarding interest, the referee issued a Findings and Order Re: Child Support, Child Support Arrears, Judgment on Arrears which reduced to writing the November 22, 2006 oral order of future and retroactive support. The AG subsequently filed its memorandum opposing a reduction in the interest rate, styled as a motion for child support arrears to accrue at twelve percent. Manglona filed a Declaration and an Opposition to the AG's motion.

[9] On April 18, 2007, the referee heard argument on the matter of interest and announced an inclination to grant interest at six percent, the rate at which interest on money judgments generally accrues. On January 21, 2010, the referee issued a Recommended Findings and Order,

which vacated the February 16, 2007 Findings and Order, relieved Manglona of reimbursing Palomo for the cost of support for the period of time prior to the filing of the complaint in January 2006, and ordered six percent interest on support that accrued from the filing of the action to the commencement of child support payments in September 2006. The referee reasoned that it would be inappropriate to require Manglona to reimburse Palomo for the cost of support from the date of N.V.D.'s birth because for the first two years of N.V.D.'s life, Palomo had led her boyfriend to believe that he was N.V.D.'s father, and this boyfriend had cared for and supported N.V.D. as though he was his son. The referee concluded that from birth until just prior to the filing of the paternity action, N.V.D. had been supported by two parents. Furthermore, finding that Palomo actively concealed the biological parentage of N.V.D. from both Palomo's ex-boyfriend and Manglona, the referee determined that an award of reimbursement for periods prior to the commencement of the action would constitute a windfall to Palomo. Finally, the referee determined that the statutory interest rate of twelve percent was inapplicable to the retroactive child support award (from commencement of the action to the setting of child support) because Manglona had not defaulted in the payment of any order of support issued by the court.

[10] The AG filed written objections to the referee's January 21, 2010 Recommended Findings and Order, and the referee requested the matter be assigned to a Superior Court judge for review. The Superior Court later issued its Decision and Order affirming the referee's findings as "sound and in accordance with the law." Record on Appeal ("RA"), tab 63 at 4 (Dec. & Order, Jan. 5, 2011). On February 4, 2011, Palomo timely filed her Notice of Appeal.

II. JURISDICTION

[11] This court has jurisdiction over an appeal from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-195 (2012)); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[12] "An award of child support is reviewed for an abuse of discretion, keeping in mind the best interests of the children." *Richardson v. Richardson*, 2010 Guam 14 ¶ 10 (quoting *Lanser v. Lanser*, 2003 Guam 14 ¶ 19).

[13] "When the Superior Court approves or modifies the findings of a referee, and converts the entire matter into a judgment, the opinions of the judge and referee merge into a single judgment which is then reviewable in its entirety by this court." *Lamb v. Hoffman*, 2008 Guam 2 ¶ 43. The trial court's findings of fact after a bench trial are reviewed for clear error while its conclusions of law are reviewed *de novo*. *Mendiola v. Bell*, 2009 Guam 15 ¶ 11. "A factual finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that an error has been made." *Rong Chang Co. v. M2P, Inc.*, 2012 Guam 1 ¶ 13 (citing *Melwani v. Arnold*, 2010 Guam 7 ¶ 11). The trial court's interpretation of a statute is reviewed *de novo*. *People v. Ojeda*, 2011 Guam 27 ¶ 9 (citing *People v. Manley*, 2010 Guam 15 ¶ 12).

[14] In child support cases, the question of whether equitable estoppel is an available defense is an issue of law. *Cf. In re Loomis*, 587 N.W.2d 427, 429 (S.D. 1998) (with regard to equitable defense of laches, availability of such defense in child support cases is an issue of law). Whether equitable estoppel will deny a mother the right to bring an action for reimbursement against a father is a mixed question of law and fact reviewed *de novo*. *Id.*

IV. ANALYSIS

A. Whether the Trial Court, in Upholding the Referee, Improperly Vacated a Prior Decision on Child Support Reimbursement and Interest.

[15] Palomo initially argues that the referee improperly vacated the November 22, 2006 oral order awarding reimbursement to Palomo for the cost of supporting N.V.D. prior to the commencement of the paternity action. She asserts that because the November 22 oral order was not rejected by the Superior Court within ten days of the hearing, it is deemed adopted by the court pursuant to Guam Rules for Expedited Process Rule 6.7. Rule 6.7 provides:

> **Rule 6.7. Legal Effect of Recommendation.**
>
> The referee shall, after hearing any motion or other application for relief, recommend entry of an order and shall make a written recommendation as to each matter heard. The referee's recommendation has the effect of an order of the Court unless it is modified by the Court. The Court must reject the referee's recommendation within ten days of hearing or i[t] shall be deemed adopted by the Court without signature.

Guam R. Exp. Process ("GREP") 6.7.

[16] It is clear that the ten-day period contemplated by GREP 6.7 does not commence before the referee submits a written recommendation to the Superior Court, for if there is no written recommendation, there is nothing for the Superior Court to modify, reject, or adopt with or without signature. Thus, the ten-day clock did not commence from the November 22, 2006 hearing date, because no written recommendation was made to the Superior Court at that time.

[17] Although the referee did reduce the November 22, 2006 oral order to writing on February 16, 2007, *see* RA, tab 31 (Finds. & Order Re: Child Support, Child Support Arrears, Judgment on Arrears, Feb. 16, 2007), GREP 6.7 was not implicated because the order was never submitted as a recommendation to the Superior Court. The February 16, 2007 Findings and Order is more properly classified as an interim order; the referee retained authority over all issues in the case

until such time as she submitted her written recommendations to the Superior Court and the matter was assigned to a Superior Court judge. Indeed, at the time of the February 16, 2007 order, the AG was preparing to submit a memorandum to the referee on the issue of the proper interest rate for the reimbursement award, as requested by the referee at the December 13, 2006 hearing, and the parties were awaiting a hearing on the matter. The hearing regarding the applicable interest rate was held on April 18, 2007. Tr., tab 8 (Hr'g Re: Arrears, Apr. 18, 2007). Clearly, the referee did not intend for her February 16, 2007 order to be a final order of the Superior Court ten days after issuance, unless modified, if the interest issue was pending argument before the referee.

[18] The referee issued a Recommended Findings and Order on January 21, 2010. RA, tab 43 (Recommended Finds. & Order, Jan. 21, 2010). Unlike the February 16, 2007 Findings and Order, the January 21, 2010 Recommended Findings and Order was formally entered into the docket and assigned to a Superior Court judge for review. *See* RA, tabs 44-45 (Notices of Entry on Docket, Feb. 3, 2010); RA, tab 47 (Mem. re: Judge Assignment for CS0028-06, Feb. 4, 2010). However, we do not believe that the submission of the written recommended order to the Superior Court triggered GREP 6.7's ten-day period in which the court must have acted on the recommendation before it is deemed adopted without signature. Instead, we interpret the requirement that the court "reject the referee's recommendation within ten days of hearing or i[t] shall be deemed adopted by the Court without signature," GREP 6.7, to mean that the Superior Court must reject the recommendation within ten days of hearing of the matter before the *Superior Court*, and not within ten days of any hearing before the referee. Otherwise, it would be next to impossible for the Superior Court to conduct a meaningful review of the referee's recommendation, particularly where objections have been filed.

[19] The language of GREP 7.1 further supports our reading of GREP 6.7. GREP 7.1 provides:

> **Rule 7.1. Written Objections.**
>
> (1) Any party objecting to the recommended order shall file a written objection to the recommendations in the form prescribed by the Judicial Council and serve copies of the objections on the referee's office and opposing counsel.
>
> (2) Objections shall be filed within 10 days of the date the recommendation was made in open court or if taken under advisement, 10 days after the date of the subsequent written recommendation made by the referee.
>
> (3) Objections shall be to specific recommendations and shall set forth reasons for the objections.
>
> (4) The referee shall then refer the matter to a Superior Court Judge for review of matters specifically objected to by the parties or certified by the referee.
>
> (5) If no objection or request for review is made within 10 days, the party is considered to have consented to entry of an order in conformance with the referee's recommendation.
>
> (6) *After hearing in the Superior Court*, the Court may award attorney's fees and costs if the appealing party does not prevail and the recommendations of the referee have not been substantially modified by the Court.

GREP 7.1 (emphasis added).

[20] The ten-day period in which a party must object under GREP 7.1 cannot be the same ten-day period under GREP 6.7 in which the Superior Court must review the referee's recommended order before it is deemed adopted without signature. Rather, we read the two rules as contemplating that after a recommendation is made in open court or, if taken under advisement, reduced to writing, the parties have ten days to object to such recommendation. If there is no objection or request for review within ten days of the referee's recommendation, the parties are considered to have consented to entry of an order in conformance with the recommendation. The referee shall then submit her recommended order for review by the Superior Court pursuant to GREP 6.7. Where there has been an objection, the referee submits the objections along with her

recommended order to the Superior Court for review. The referee is not precluded from addressing any objections and reconsidering her earlier order before submitting her recommendations to the Superior Court. Once the referee has submitted her written recommendation to the Superior Court, the court must reject the recommended order within ten days of hearing on the matter or it shall be deemed adopted without signature.[1]

[21] Palomo argues that Manglona failed to comply with GREP 7.1's requirement that an objection to the referee's recommended order of reimbursement and interest be made in writing within ten days of the date the recommendation was made in open court, i.e., within ten days of November 22, 2006, and that in effect, Manglona consented to entry of the recommended order pursuant to GREP 7.1(5). Palomo asserts, "When Father appeared before the referee on December 13, 2006, the Referee's [November 22, 2006] order had already been adopted by the Court under the GREP and he was without recourse without filing a proper motion to set aside, alter or modify the order." Appellant's Br. at 38-39 (May 16, 2011). According to Palomo, the tenth day from November 22, 2006, excluding weekends and holidays, fell on December 7, 2006. Appellant's Br. at 37. The hearing at which Manglona argued against the twelve percent interest rate occurred on December 13, 2006. However, the AG and the referee were aware since at least November 29, 2006, that Manglona, who was appearing *pro se*, was likely planning to object to the referee's November 22 recommendations. At the November 29 hearing regarding wage assignment, the AG notified the referee that Manglona "wanted a hearing in two weeks so he could try to consult with, you know, search for an attorney." Tr., tab 5 at 2 (Hr'g Re: AG's

[1] Where no hearing is held on the matter, the Superior Court must still abide by canons of due diligence and timeliness in rendering its decision whether to affirm or reject the referee's recommendation. We note that notwithstanding any delay on the part of the Superior Court in reviewing the recommended order, the recommendation has the effect of an order of the court, and, thus, the parties are bound thereby unless and until the Superior Court rules otherwise. *See* GREP 6.7.

Compliance, Nov. 29, 2006). The AG continued, "So maybe he wants to try to argue for lower support; I don't know. But he wanted two weeks . . . ." *Id.* In response, the referee set a hearing for December 13, 2006. Furthermore, Manglona voiced his objections to the payment of arrears at the November 22, 2006 hearing at which arrears were awarded.

[22] Manglona requested a hearing within a week of the November 22, 2006 hearing at which the referee set future and retroactive child support. It is clear that both the AG and the referee were aware that Manglona objected to the referee's November 22 oral order and was seeking the assistance of counsel. The referee set a hearing for December 13, 2006, a mere six calendar days past the December 7, 2006 deadline in which the parties must have filed their written objections under GREP 7.1. In that time, the referee did not submit any written recommendations to the Superior Court. Although Manglona did not strictly comply with GREP 7.1's requirement that objections be made in writing, given his *pro se* status at the time of the objection, his efforts to retain counsel, and his request for a hearing before the expiration of the ten-day period in which to object, it was reasonable for the referee to consider his objection despite the lack of a written objection within ten days of the November 22, 2006 oral order. In any event, the only consequence of non-compliance with GREP 7.1's ten-day objection period that is clearly spelled out in the rule is that the party is considered to have consented to entry of an order in conformance with the referee's recommendation. Nothing in the rule precludes the referee from reconsidering her recommendation after the ten-day period, particularly where no written recommendation has been submitted by the referee to the Superior Court.[2] The referee had not

[2] Moreover, nothing in the GREP precludes the referee from extending the ten-day period in which to object, which she implicitly did by setting Manglona's requested hearing outside the ten-day window and requiring the AG to submit a memorandum on the issue of interest.

relinquished jurisdiction over the case to the Superior Court, and was free to entertain the parties' objections and to amend her decisions accordingly.

[23] Moreover, to find that the November 22, 2006 oral order was a final order of the Superior Court and that the referee had no occasion to reconsider this order would undermine the purpose of having a referee as the presiding officer over child support cases. The referee, having heard the evidence and arguments of the parties firsthand, is in the best position to resolve any objections to her orders before she certifies her final recommendations to the Superior Court for ratification. Indeed, as we have recently held, the Superior Court need not conduct an in-depth review of the referee's recommendation before ratification. *Lamb*, 2008 Guam 2 ¶ 41 ("Ten days is not sufficient time [for the Superior Court] to conduct a full appellate review [of the referee's findings]. We therefore adopt the pragmatic approach and require only that the trial court make a good faith effort to supervise the referee and correct any obvious errors."). Thus, if the referee were precluded from reconsidering those orders that have yet to be submitted for Superior Court review, a valid objection, even one that strictly complies with the requirements of GREP 7.1, may not be given due consideration by the Superior Court.[3] Accordingly, we hold that so long as the referee has not relinquished control over a matter by referring the matter to a Superior Court judge for review of matters specifically objected to by the parties or certified by the referee, it is within the referee's authority to consider objections to her orders, even when the form of the objection does not strictly comply with the requirements of the GREP, and to make any adjustments to an order before submitting her final recommendations to the Superior Court.

[3] Although in *Lamb* we stated that we do not require full written review by the Superior Court of every objection considered by the referee, we also cautioned that no supervision at all constitutes error and that "[r]eferees' reports that are summarily converted into judgments without any evidence of review of Rule 7.1 objections may compel this court to remand for proper review." *Lamb*, 2008 Guam 2 ¶¶ 42-43.

[24] Accordingly, the referee was not precluded from reconsidering her November 22, 2006 oral order of retroactive support and interest.

B. Whether Manglona's Obligation of Child Support Began at the Time of Filing of the Paternity Action Rather Than at the Time of N.V.D.'s Birth.

[25] The Guam Legislature has determined that public policy favors establishing paternity, having parents support their minor children, and having fair and equitable support orders. 5 GCA § 34105(a) (2005).[4]

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[4] In furtherance of this policy, 5 GCA § 34105 provides:

> (a) [W]hether or not the minor children have been or are recipients of public assistance, the Department [of Law] acting in the best interests of the children and the Island of Guam, may bring an action in its own name or join in an action already in existence against the person or persons responsible for the support of such children:
>
> (1) to recover such amounts of back support and any other amounts as may be due and owing under an existing court order, whether owed to the Department or to the custodial parent or other person having custody of the minor child;
>
> (2) for a continuing order of support for the benefit of such children;
>
> (3) to establish paternity;
>
> (4) to move to modify existing orders up or down as the circumstances and equity demand;
>
> (5) to obtain orders of wage assignment;
>
> (6) to recover amounts for which a parent is legally liable to Guam as a result of public assistance having been granted due to the separation or desertion of the parent from his or her child or children;
>
> (7) to recover necessary expenses incurred by or for the mother in connection with the birth of her child, for the funeral expenses if the child has died, for expenses incurred in connection with pregnancy of the mother, except as limited by (b) of this Section;
>
> (8) to recover reimbursement of the cost of support for the child before the commencement of the action, determined by using the appropriate Child Support Guidelines currently in effect, except as limited by (b) of this Section; and
>
> (9) to obtain orders requiring the obligor owing back support to pay in accordance with a plan approved by the court or child support enforcement agency, and to seek court ordered job searches as necessary for unemployed or underemployed absent parents; provided, that if an obligor is under an approved payment plan but not working and not incapacitated, the obligor shall be ordered to participate in a job search.

[26] Palomo initiated the action for child support before N.V.D.'s third birthday. Palomo argues that with some exceptions not applicable here, under section 34105, so long as a paternity action is brought prior to a child's sixth birthday, a custodial parent is entitled to recover reimbursement for the cost of supporting the child before the commencement of the action. Appellant's Br. at 12. Manglona, on the other hand, argues that the recovery of reimbursement is not automatic but rather lies within the discretion of the trial court. Appellee's Br. at 10-11 (June 16, 2011). The trial court, relying upon the use of the word "may" in 5 GCA § 34105(a), concluded that the statute "does not establish a per se rule that requires awards of reimbursement for the costs in connection with the support of the child. Instead, the statute vests the Court with discretion to determine whether a parent must reimburse the paying parent for the support." RA, tab 43 at 3-4 (Recommended Finds. & Order).

[27] In deciding this issue, we begin by examining the plain meaning of section 34105. *See Sumitomo Constr. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 ("It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear

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> (b) If an action is commenced after the lapse of more than six (6) years from the birth of the child, an amount shall not be awarded for expenses or support under (a)(7)-(8) of this Section that accrued before the date on which the action was commenced unless one (1) or more of the following circumstances exists:
>
> > (1) Paternity has been acknowledged by the father in writing in accordance with applicable statutes.
> >
> > (2) The non-custodial parent is out of the Island of Guam, was avoiding service of process, or threatened or coerced the custodial parent not to file an action during the six (6) year period. The court may award an amount for expenses or support that accrued before the date the action was commenced if the action was commenced during a period of time equal to the sum of six (6) years and the time the non-custodial parent was out of the Island of Guam, was avoiding service of process, or threatened or coerced the complainant not to bring an action under this Chapter.
> >
> > . . . .

5 GCA § 34105.

legislative intent to the contrary, the plain meaning prevails." (citations omitted)). On its face, section 34105 does not contain an express provision of discretion to the trial court in awarding reimbursement for pre-petition support. Instead, section 34105(a) grants discretion to the Department of Law (i.e., the Child Support Enforcement Division of the Office of the Attorney General) to bring an action to recover such reimbursement. 5 GCA § 34105(a) ("[T]he *Department* acting in the best interests of the children and the Island of Guam, *may bring an action* in its own name or join in an action already in existence against the person or persons responsible for the support of such children: . . . (8) *to recover reimbursement* of the cost of support for the child before the commencement of the action . . . ." (emphases added)).

[28] Likewise, the plain language of section 34105 does not mandate the recovery of reimbursement for pre-petition support even if an action is commenced within the six-year timeframe. Instead, subsection (b) speaks only to what is required if an action is commenced *after* the lapse of more than six years from the birth of the child: reimbursement shall not be awarded for expenses or support that accrued prior to the commencement of the action except in limited circumstances that do not apply in the instant case. There is no express language in the statute that would make reimbursement automatic in actions filed within six years of the child's birth.

[29] Because it is unclear from the face of the statute whether reimbursement for pre-petition support is automatic where the action is commenced within six years of the child's birth, or whether instead reimbursement in these circumstances lies within the discretion of the trial court, we look to legislative intent.

[30] "The ultimate goal in any child support case is to protect the best interests of the children." *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 16; *see also* 5 GCA § 34105(a) ("[T]he

Department acting in the best interests of the children and the Island of Guam, may bring an action . . . against the person or persons responsible for the support of such children."); *Richardson*, 2010 Guam 14 ¶ 42 ("The primary task for a trial court is to decide each case based upon the best interests of the child, not the convenience or personal preferences of a parent." (quoting *Little v. Little*, 975 P.2d 108, 113 (Ariz. 1999))). Section 34105(a) states that the Guam Legislature "has determined there is public policy in favor of establishing paternity, of having parents support their children, and in having fair and equitable support orders." 5 GCA § 34105(a). This obligation of support also underlies 19 GCA § 4105, which provides that "[t]he father as well as the mother of an illegitimate child must give him support and education suitable to his circumstances." 19 GCA § 4105 (2005). In addition to recovering future child support, a custodial parent may bring an action to recover reimbursement of the cost of support for the child before the commencement of the action, determined by using the applicable child support guidelines. 5 GCA § 34105(a)(8). Accordingly, it is clear that Guam's child support laws are designed to maximize support to children from both of their parents.

[31] Given the clear policy that parents, whether married or not, must support their children and that child support awards reflect the best interests of the children, we interpret section 34105 to mean that where the child support action is commenced within six years of the child's birth, reimbursement should normally be granted. In so holding, we join those courts which recognize that a child's needs begin at birth and that the father of a child is under an obligation to support the child whether or not there has been a prior adjudication of paternity. *See, e.g.*, *J.A.W. v. D.M.E.*, 591 A.2d 844, 848 (D.C. 1991) (stating that retroactive support to child's date of birth should be presumed based in part upon recognition that child's right to parental support begins at birth); *Weaver v. Chester*, 393 S.E.2d 715, 716 (Ga. Ct. App. 1990) (awarding support for time

prior to determination of paternity, based on father's pre-existing obligation); *Napowsa v. Langston*, 381 S.E.2d 882, 886 (N.C. Ct. App. 1989) (father's liability for child support exists prior to and independent of adjudication of paternity). "Although there was no legal obligation to support one's illegitimate child at common law, the moral obligation has always existed. The purpose of legislation creating a paternity action is to convert a moral obligation into a legal right." *Ellison v. Walter ex rel. Walter*, 834 P.2d 680, 683 (Wyo. 1992) (quoting *Vigil v. Tafoya*, 600 P.2d 721, 725 (Wyo. 1979)). "The establishment of paternity by judicial decree is merely a procedural prerequisite to enforcement of the duty of support owed to the child: it does not create, but only defines the preexisting duty." *Id.* at 684; *see also Supcoe v. Shearer*, 512 S.E.2d 583, 588 (W. Va. 1998) ("The father's legal duty to support his child existed prior to the entry of an order setting the dollar amount of such duty.").

[32] Notwithstanding, we do not agree with Palomo that the trial court has absolutely no discretion on the issue of reimbursement so long as the action is filed within six years of the child's birth. Although the overriding concern in child support cases is the best interests of the child, the legislature has also expressed a policy that fairness and equity be taken into account when determining support orders. *See* 5 GCA § 34105(a). We cannot read section 34105 as precluding any and all discretion to the trial court without ignoring the express policy "in having fair and equitable support orders." *Id.* Instead, we read the statute as conferring some discretion on the trial court whether or not to grant reimbursement in those actions filed within six years of the child's birth.

[33] Accordingly, we conclude that there is a rebuttable presumption arising from the statutory obligation of support in favor of awarding reimbursement under 5 GCA § 34105(a)(8) where the action is commenced within six years of the child's birth. The trial court has

discretion to deny reimbursement where there has been a satisfactory rebuttal of the presumption by a showing of reasons why a father should be relieved of his statutory obligation to contribute to the support of his child from the moment of the child's birth.[5] Absent such a showing, the court should award reimbursement for support from the date of the child's birth.[6]

[34] Here, the trial court[7] ultimately denied Palomo's request for reimbursement, finding that it would be inequitable to hold Manglona responsible for child support payments prior to the filing of the paternity action. First, the court considered Manglona's allegation that prior to the filing of the paternity action, N.V.D. was fully supported by two parents, Palomo and her then-boyfriend, who believed himself to be N.V.D.'s father. RA, tab 43 at 4 (Recommended Finds. & Order). The court concluded that reimbursement under those circumstances was unwarranted because at all times prior to the action, N.V.D. received support as contemplated by the Guam child support laws. *Id.* at 4-5.

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[5] *See, e.g.*, *Pate v. State ex rel. Corkren*, 526 So. 2d 30 (Ala. Civ. App. 1988) (holding that trial court did not abuse discretion in refusing to order child support retroactive to child's date of birth based on general considerations of equity where father attempted in the past to pay support, which mother refused to accept); *Webb v. Menix*, 90 P.3d 989 (N.M. Ct. App. 2004) (finding that mother waived by acquiescence any right to retroactive support where she denied father's paternity to father and others, destroyed baby clothing once she learned it was from father, told her family that she did not want anything to do with father, and did not take any action to collect child support until approximately twelve years after child's birth); *In re T.K.Y.*, 205 S.W.3d 343 (Tenn. 2006) (finding that father was entitled to equitable relief from child support obligation during time that mother and her husband actively interfered with father's attempt to parent child; father attempted to establish paternity, custody, visitation and support, but mother and husband prevented father from any contact with child and actively opposed father's efforts to establish paternity and support); *State v. Base*, 126 P.3d 79 (Wash. Ct. App. 2006) (finding no abuse of discretion when trial court applied equitable principles to limit father's liability for back support where, among other reasons, father had no knowledge of child's existence and, therefore, could not take action at an earlier period of time to provide support for child and thus reduce amount of his arrearage).

[6] We note that the custodial parent need not present evidence of actual expenses in order to be reimbursed. Rather, 5 GCA § 34105(a)(8) provides that the cost of support be determined by using the appropriate Child Support Guidelines currently in effect. 5 GCA § 34105(a)(8).

[7] Although the findings and conclusions discussed herein stem from the referee's Recommended Findings and Order, the Superior Court judge's approval of the findings and conversion of the entire matter into a judgment merged the opinions of the judge and referee into a single judgment for purposes of appellate review. *See Lamb*, 2008 Guam 2 ¶ 43. Accordingly, we shall refer to each finding and conclusion as that of the trial court rather than that of the referee.

[35] The court also found that reimbursement from N.V.D.'s date of birth would constitute a windfall to Palomo because she actively concealed the biological parentage of N.V.D. from both her former boyfriend and Manglona, and was now seeking support from Manglona for periods during which her former boyfriend provided full support to N.V.D. *Id.* at 5.

[36] In considering whether the trial court abused its discretion, we find persuasive the reasoning in factually similar cases from other jurisdictions. In *Tedford v. Gregory*, the child was born out of wedlock while the mother was married to a man who was not the child's father. 959 P.2d 540, 543-44 (N.M. Ct. App. 1998). Shortly thereafter, the mother's husband filed for divorce. *Id.* at 544. The divorce decree included a finding that the child was born of the marriage and required husband to pay monthly child support. *Id.* When the child was twenty years old, she filed a paternity action against the father, seeking child support from the date of her birth. *Id.* The trial court awarded the child retroactive child support in the amount of $50,000.00 plus post-judgment interest, and $40,900.07 plus post-judgment interest to the mother's ex-husband as partial reimbursement for support paid by the ex-husband. *Id.* The father appealed on the grounds of unjust enrichment and the child's own unclean hands. *Id.* at 547. The court acknowledged that the child first learned of the father's paternity when she was sixteen years old, and concluded that it was not inequitable for the child to wait until the age of majority to file an action on her own behalf. *Id.* The court also held that retroactive support was authorized by state statute and did not amount to double recovery for the child, concluding that the natural father's duty of support was unaffected by any money the child may have received from other sources. *Id.* at 547-48. The court noted that the father had made no effort to support the child and would be rewarded for his nonsupport and for participating in constructive fraud if his support obligation were reduced by the amount of support provided to the child by the

mother's ex-husband. *Id.* at 548 (citing *Mougey v. Salzwedel*, 401 N.W.2d 509, 512 (N.D. 1987) (fact that stepparent provided support does not affect legal obligation imposed upon natural parent to support his or her child)).[8]

[37] Similarly, in *Jones v. Rodrigue*, the appellate court affirmed the lower court's holding that required the biological father to pay retroactive child support, although during the retroactive support period, mother's fiancé, who had signed an acknowledgment of paternity, was presumed to be the father. 771 So. 2d 275, 276, 279-80 (La. Ct. App. 2000). Rejecting the biological father's contention that only one of the recognized fathers of a child can be obligated to provide support at any given time, the court stated:

> The presumed father's acceptance of paternal responsibilities, either by intent or default, does not enure [sic] to the benefit of the biological father. It is the fact of biological paternity or maternity which obliges parents to nourish their children. The biological father does not escape his support obligations merely because others may share with him the responsibility. Biological fathers are civilly obligated for the support of their offspring.

Id. at 279-80 (quoting *Smith v. Cole*, 553 So. 2d 847, 854 (La. 1989)).

[38] In *Rubright v. Arnold*, the court held that an award of child support arrearages against an adjudicated father as of the date of the child's birth seven years earlier was proper, although the mother's former husband was the child's legal father before the adjudication of the biological father's paternity. 973 P.2d 580, 581, 586 (Alaska 1999). At the child's birth, the mother was married to another man, not the child's father, and listed her husband as the child's father on the child's birth certificate. *Id.* at 581. The mother and her husband subsequently separated but were not divorced when the mother's paternity action was filed. *Id.* The biological father argued that his child support obligation could only begin on the date the trial court found him to be the

[8] Moreover, in Guam, a husband is not bound to support his wife's children from a prior marriage, 19 GCA § 4118 (2005); thus, it follows that a parent's duty of support does not end simply because the child may be receiving the support of a stepparent.

child's father, because the mother's husband was the child's legal father before that time. *Id.* at 586. The court rejected that argument, holding instead that a father's liability for child support commenced at the child's birth and not on the adjudication of paternity. *Id.* The court acknowledged the potential for unfairness and large and unexpected child support liabilities resulting from the application of such a rule in cases where a biological father had no notice of his paternity for many years after the child's birth, but concluded that the rule had been well established, and that any relief from its potentially harsh consequences must come from the legislature rather than the court. *Id.*; *see also State ex rel. Salazar v. Roybal*, 963 P.2d 548 (N.M. Ct. App. 1998) (upholding trial court's award of retroactive support despite mother's concealment of child's existence from father, and holding that father's support obligation was not precluded by fact that child's mother and her family had cared for the child, noting the overriding public policy to ensure support for children based on parental responsibility that accompanies sexual activity).

[39] As for the cases relied upon by the trial court, we find each case to be significantly distinguishable from the case at hand. While it may be the case that a mother may "by her actions or representations, or both, preclude herself from recovering past due installments of support money to reimburse her for the money which she has spent for the support of the child," RA, tab 43 at 4 (Recommended Finds. & Order) (quoting *Larsen v. Larsen*, 300 P.2d 596, 598 (Utah 1956)), the actions of the mothers who were precluded from recovering reimbursement in the cases cited by the trial court were meaningfully different from Palomo's actions in the instant case. In *State, Dep't of Human Servs. ex rel. Parker v. Irizarry*, the mother was found to be estopped from claiming reimbursement not only because she left the father's name off the children's birth certificates and received financial assistance from her family, but also because

she plainly refused his offers of support. 945 P.2d 676, 680-81 (Utah 1997). While here Palomo listed her then-boyfriend rather than Manglona as N.V.D.'s father on the child's birth certificate, there is no evidence that Palomo rejected any offers of support from Manglona.

[40] The court in *In re T.K.Y.* found that it would be inequitable to require a father to pay retroactive child support to a mother during the time that she and her husband actively prevented the father from establishing his paternity and taking responsibility for supporting the child. 205 S.W.3d 343, 356-57 (Tenn. 2006). In contrast, however, the court rejected the father's argument that he should also be relieved of support from the time of the child's birth through the date the mother and her husband actively opposed his efforts to establish paternity and support. *Id.* at 357. The court found that although the father acquiesced in the mother's wishes that he cooperate in keeping the affair and the child's true parentage a secret during that time, and that he not pay support, he appeared to have been a willing and equal participant in the arrangement, so equity did not require that he be relieved of support during that time. *Id.* The record in the instant case does not suggest that Manglona faced a similar barrier to establishing his paternity. Indeed, when Palomo eventually sought support from Manglona, he denied rather than acknowledged his paternity. Moreover, the record suggests that like the father in *T.K.Y.*, Manglona was a willing and equal participant in the parties' agreement to keep their affair a secret.

[41] In *In re Loomis*, the mother was equitably estopped from receiving retroactive child support because she did not tell the child's father that he fathered her child until the child was fourteen years old. 587 N.W.2d 427, 430-31 (S.D. 1998). In the instant case, N.V.D. was only two years old at the time of filing of the paternity action, and Palomo had confided to Manglona

her belief that he was N.V.D.'s father beforehand. Accordingly, none of the cases cited by the trial court lend support to a denial of reimbursement to Palomo on equitable grounds.[9]

[42] The trial court found that it would be unfair to order Manglona to reimburse Palomo for the period of time prior to the commencement of the action because N.V.D. presumably was supported by two parents—Palomo and her then-boyfriend—during that period. That fact in and of itself, however, is not sufficient to support a denial of reimbursement as it defeats the clear statutory obligation of biological parents to support their children. Indeed, such a policy would reward non-custodial parents for their nonsupport and would encourage putative fathers to prolong an adjudication of paternity where the mother is aided by another in supporting the child. We disagree with any interpretation of 5 GCA § 34105 "that would create an incentive for men to avoid their obligations by delaying the determination of paternity and that would be contrary to the statutory purposes of providing for the child regardless of the circumstances of birth." *W.M. v. D.S.C.*, 591 A.2d 837, 843 (D.C. 1991) (citing *Cyrus v. Mondesir*, 515 A.2d 736, 738-39 (D.C. 1986)). A construction restricting a father's child support liability to the date when he knows for certain that the child is his would amount to judicial legislation and encourage putative fathers to delay paternity testing in order to minimize the ultimate child support award. *State ex rel. Coleman v. Clay*, 805 S.W.2d 752, 755 (Tenn. 1991); *see also Janssen by Janssen v. Turner*, 685 N.E.2d 16, 17-18, 20 (Ill. App. Ct. 1997) (rejecting father's argument that award of $62,645.00 in child support retroactive to date of child's birth was windfall to mother and concluding that failure to order retroactive support to child's date of birth would encourage delay tactics and defeat legislature's intent relative to support of children). Thus, we hold that support

[9] Additionally, the trial court's reliance upon *Denzik v. Denzik*, 197 S.W.3d 108 (Ky. 2006), is misplaced as the case is completely inapposite to that at hand. *Denzik* was neither a paternity nor a child support case; rather, it involved a former husband suing his former wife for fraudulent misrepresentation after learning that a child born during their marriage was not his biological child.

from a source other than the biological parents of the child has no bearing on the biological parents' duty to support their children from birth. The trial court's denial of reimbursement on the basis of any support that may have been provided by Palomo's ex-boyfriend was an abuse of discretion.[10, 11]

[43] As for the trial court's finding that Palomo actively concealed the biological parentage of N.V.D. from Manglona, this finding appears to have been based primarily on factual allegations made in Manglona's Proposed Recommended Findings of Fact and Conclusions of Law, rather than on any facts entered into the record through testimony or affidavit of the parties.[12] RA, tab 41 (Def.'s Proposed Finds. Fact & Concl. L., Sept. 19, 2007). In fact, the finding is contrary to the admission by Manglona that on more than one occasion, Palomo expressed to Manglona her belief that he may be the father of N.V.D. *See* RA, tab 38 at 2 (Decl. of Roque L. Manglona) ("I believed that [Palomo's ex-boyfriend] was the child's father, although plaintiff sometimes confided that she thought I was the father."). Moreover, when the award of reimbursement was originally set, Manglona requested credit for a $600.00 payment he had voluntarily made to

[10] Palomo contends that there is nothing in the record to support the assertion that N.V.D. was supported by two parents and that the trial court erred in not correcting the referee's reliance on facts not supported by the record. We do not need to address this issue in light of our holding that the denial of reimbursement on the basis of any support that may have been provided by Palomo's ex-boyfriend was an abuse of discretion.

[11] While we hold that support from a source other than the biological parents of the child is not a proper basis to deny reimbursement, we recognize that there may well be other implications of money received from an outside source, such as an upward adjustment of the custodial parent's gross income. *See, e.g.*, 19 Guam Admin. R. & Regs. § 1203(a)(1) (2008) ("Gross income includes income from any source . . . ."). In any event, there is no evidence in the record before us as to the amounts of money allegedly provided to Palomo by her ex-boyfriend. We leave to the trial court to decide what effect any money received by Palomo from her ex-boyfriend, as supported by the evidence, has in the determination of a fair and equitable reimbursement award.

[12] Although in his Declaration Manglona alleged that Palomo identified Diaz as N.V.D.'s father at the time of N.V.D.'s birth and that Palomo repeatedly told Manglona that Diaz was treating N.V.D. as his own child, RA, tab 38 at 1-2 (Decl. of Roque L. Manglona), Manglona did not contend that Palomo attempted to conceal the possibility of Manglona's paternity from Manglona himself.

Palomo in 2005, before the commencement of the child support action.[13] Tr., tab 4 at 3 (Hr'g Re: Arrears, Nov. 22, 2006). Thus, there was some evidence to show that Manglona was at least aware of the possibility that he was N.V.D.'s father, not only because Palomo told him that she thought N.V.D. might be his child, but also because of the simple fact that he was in a sexual relationship with Palomo at the time she became pregnant.[14] Despite this possibility, Manglona took no action to establish his paternity, yet he places the blame for any delay in the adjudication of paternity solely on Palomo. Although it appears that both parties had a vested interest in prolonging a determination of N.V.D.'s true parentage (i.e., keeping their affair a secret from their respective partners), the trial court penalized Palomo and, in effect, the child, for this delay.

[44] Given our holdings today, we believe that Manglona needed to make a better showing of inequity in order to be relieved of his obligation to support N.V.D. from birth. This is not a case

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[13] Palomo disputed the amount and asked that Manglona be credited for only $500.00. Tr., tab 4 at 4 (Hr'g Re: Arrears, Nov. 22, 2006). Splitting the difference, the Referee granted Manglona a credit of $550.00. *Id.*

[14] For this same reason, it is clear that all of the elements of equitable estoppel have not been met. Although the Referee did not specifically mention "equitable estoppel" in her findings of fact and conclusions of law, the ruling makes reference to the elements of estoppel, namely, that Palomo led her ex-boyfriend to believe that he was N.V.D.'s father and named him as such on the child's birth certificate, and that Manglona reasonably relied on this conduct to his detriment. Equitable estoppel has four elements:

> (1) the party to be estopped must be apprised of the facts;
>
> (2) he must intend that his conduct will be acted upon, or act in such a manner that the party asserting the estoppel could reasonably believe that he intended his conduct to be acted upon;
>
> (3) the party asserting the estoppel must be ignorant of the true state of the facts; and
>
> (4) he must rely upon the conduct to his injury.

Mobil Oil Guam, Inc. v. Young Ha Lee, 2004 Guam 9 ¶ 24. Assuming, without deciding, that estoppel of the mother might under some circumstances be appropriate in a paternity case, this defense is legally insufficient under the circumstances of this case. Without discussing each and every element in detail, it is clear that at least as to the third element, Manglona failed to meet his burden of proof. While it may have been true that prior to the results of the paternity testing Manglona did not know with certainty that he was N.V.D.'s father, he was not ignorant of the true state of the facts. He knew that he was in a sexual relationship with Palomo at the time she became pregnant, and their affair continued even after the child was born. Manglona had just as much reason to believe that Palomo named her then-boyfriend as N.V.D.'s father on the child's birth certificate because the boyfriend was actually the father as he had to believe that she did so in order to keep the affair a secret. Finally, Manglona admitted that Palomo sometimes confided to him her belief that he was N.V.D's father.

in which the non-custodial parent presented evidence to show that an award of reimbursement would be inequitable because of his inability to pay as determined by proof of his income and reasonable expenses, which clearly would be proper evidence to take into consideration when making any award of child support. *See Richardson*, 2010 Guam 14 ¶ 14 ("[C]ourts may deviate from the Guam Child Support Guidelines whenever a specific application would be inequitable."). Manglona merely argued that he should be relieved of his obligation to support N.V.D. from birth because Palomo allegedly deceived her ex-boyfriend into believing he was N.V.D.'s father, despite the evidence that Manglona, too, was not an innocent party in this unfortunate situation. In any event, an evidentiary hearing should have been held to determine to what extent, if any, Palomo actively concealed N.V.D.'s parentage from Manglona before the trial court denied reimbursement on this ground.

[45] Because we have not previously articulated that there is a rebuttable presumption in favor of awarding reimbursement under 5 GCA § 34105(a)(8) where the action is commenced within six years from the child's birth, the trial court understandably did not consider the significant magnitude of Manglona's statutory obligation to support N.V.D. from birth or his burden to demonstrate why he should be relieved of this obligation. In light of this opinion, however, the denial of such support is reversed. The case is remanded to the trial court for an appropriate exercise of discretion incorporating the legal principles set forth in this opinion. Should the trial court so desire, it may refer the matter to the child support referee to take testimony and receive evidence for the record and to prepare and submit a recommendation and proposed order to the trial court. *See* GREP 4.2(a), (b)(17).

C. Whether the Interest on Retroactive Child Support Should Accrue at the Rate of Six Percent Per Annum Rather than Twelve Percent Per Annum.

[46] Although the trial court denied Palomo's request for reimbursement of the cost of support prior to the filing of the paternity action, the court did award retroactive child support for the period between the filing of Palomo's complaint on January 26, 2006 and the setting of child support in September 2006. RA, tab 43 at 6-8 (Recommended Finds. & Order). Palomo argues that the trial court erred in awarding six percent rather than twelve percent interest on this award of retroactive child support. In the event the trial court decides on remand to award Palomo child support from the date of N.V.D.'s birth, our decision on this issue applies to the interest rate for the entire retroactive child support award.

[47] When child support was originally set in November 2006, the referee ordered reimbursement support from the date of N.V.D.'s birth, totaling $22,858.90 as of October 31, 2006, and set interest on this amount at twelve percent per annum. Tr., tab 4 at 5 (Hr'g Re: Arrears, Nov. 22, 2006); *see also* RA, tab 31 (Finds. & Order Re: Child Support, Child Support Arrears, Judgment on Arrears). The reimbursement award was to be paid at a rate of $230.00 per month commencing November 1, 2006, which was just slightly over the minimum amount necessary to cover the monthly interest. Tr., tab 4 at 5 (Hr'g Re: Arrears, Nov. 22, 2006). In a subsequent hearing, Manglona opposed the award of interest, which prompted the referee to reconsider the issue. Tr., tab 6 (Hr'g Re: Arrears, Dec. 13, 2006). After briefing by the parties and a hearing on the issue on April 18, 2007, the referee announced an inclination to reduce the interest rate from twelve percent to six percent, the rate at which interest on money judgments generally accrues. Tr., tab 8 at 14 (Hr'g Re: Arrears, Apr. 18, 2007). On January 21, 2010, the referee issued a Recommended Findings and Order which vacated the 2006 reimbursement award, relieving Manglona of the payment of support that had accrued prior to the filing of

Palomo's complaint in January 2006, and ordered six percent interest on the child support that had accrued between the filing of the complaint and the setting of child support. RA, tab 43 at 6-8 (Recommended Finds. & Order).

[48] In reconsidering the interest rate on the reimbursement award, the referee analyzed 5 GCA § 34114(a), which, prior to January 1, 2008, provided:

> Interest shall accrue at the rate of twelve percent (12%) per annum on a non-custodial parent's unpaid balance as of the last day of the previous month. A non-custodial parent's unpaid balance shall be the arrearage shown on the records at the Department of Law, except to the extent monthly unpaid balances may be corrected by the court in the course of reducing arrearages to judgment under 5 GCA § 34129. Payments on arrearages shall be applied to interest first, then to principal.

5 GCA § 34114(a) (2005). On September 29, 2007, section 34114(a) was amended as follows:

> Effective January 1, 2008, interest shall accrue at the rate of six percent (6%) per annum on a non-custodial parent's unpaid balance as of the last day of the previous month. Said balance shall be the arrearage shown on the records at the Office of the Attorney General unless the arrearage is corrected by the court. Payments on arrearages shall be applied to interest first, then to principal.

5 GCA § 34114(a) (as amended by Guam Pub. L. 29-019:5, Sept. 29, 2007) (emphases omitted). Although the referee's Recommended Findings and Order was issued in January 2010, the referee considered the former version of section 34114, requiring twelve percent interest on arrears, rather than the version which became effective in 2008, presumably because the referee's original order for child support was issued in 2006, prior to the amendment of the statute.

[49] Additionally, the referee considered 5 GCA § 34129, which is referenced in former section 34114(a) and provides that "[w]henever the Superior Court makes a finding that an obligor is *delinquent* in child support payments and incorporates that finding in an order, the

order shall be automatically reduced to judgment. . . ." 5 GCA § 34129 (2005) (emphasis added).

[50] The referee found the twelve percent interest rate to apply to situations in which an obligor is in default or behind in payments ordered by the court. RA, tab 43 at 7 (Recommended Finds. & Order). The referee, relying on the definitions of "arrear" and "delinquency" found in Black's Law Dictionary, determined that because Manglona had not defaulted in the payment of any order of support issued by the court, the twelve percent interest rate was inapplicable and instead applied a six percent interest rate, the legal rate applied to money judgments in general. *Id.*

[51] The referee cited to two cases to support her finding that Manglona was not liable for twelve percent interest on the award of support between the commencement of the action and the original order of support. In *Gladysz v. King*, the father was current on a court-ordered payment plan to reimburse the mother for pregnancy and child birth expenses. 658 N.E.2d 309, 310, 312 (Ohio Ct. App. 1995). Nevertheless, the Child Support Enforcement Agency attempted to intercept his federal income tax refund in order to offset his arrears, pursuant to 42 U.S.C. § 664.[15] *Id.* at 310, 311. The court held that although the father had yet to extinguish his debt for

[15] Title 42 U.S.C. § 664 provides, in pertinent part:

> **(a) Procedures applicable; distribution**
>
> (1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes *past-due support* which has been assigned to such State pursuant to section 608(a)(3) of this title or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address)

the expenses of the mother's pregnancy, he was not "delinquent" for purposes of the federal statute permitting collection of "past-due" support from federal tax refunds because he had not defaulted on the payment obligation fixed by the court. *Id.* at 312. The court found that "[a]s applied to a debt or claim, '*delinquent*' means simply 'due and unpaid at the time appointed by law or fixed by contract; as, a delinquent tax.'" *Id.* (quoting *Black's Law Dictionary* 385 (5th ed. 1979)). The court found that as there was no delinquency resulting from a failure to pay according to the payment plan set by the court, there was no past-due child support contemplated by the applicable statute. *Id.*

[52] Similarly, in *Davis v. North Carolina Department of Human Resources*, the court held that the father was not "delinquent" for purposes of intercepting the father's federal tax refund pursuant to 42 U.S.C. § 664 because he was current on his court-ordered repayment plan on debt he had incurred prior to the paternity adjudication. 505 S.E.2d 77, 78-79 (N.C. 1998).

[53] The question here, then, is whether the balance on an award of reimbursement that is to be paid according to a court-ordered payment schedule constitutes an "unpaid balance" or "arrearage" under section 34114(a).

[54] While we do not question the reasoning in *Gladysz* and *Davis*, we do not find that the interpretation of 42 U.S.C. § 664 conclusively resolves the meaning of 5 GCA § 34114(a). First,

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> for distribution in accordance with section 657 of this title. This subsection may be executed by the disbursing official of the Department of the Treasury.
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> . . . .
>
> **(c) "Past-due support" defined**
>
> In this part the term "past-due support" means the amount of a *delinquency*, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.

42 U.S.C.A § 664 (Westlaw through Pub. L. 112-195 (2012)) (emphases added).

neither "past-due support" nor "delinquent" is used in section 34114(a). Instead, section 34114(a) speaks of "unpaid balance" and "arrearage." While section 34114(a) makes reference to 5 GCA § 34129, which uses the term "delinquent," we do not read section 34114(a) to mean that section 34129 shall define what is meant by "unpaid balance" and "arrearage." Rather, "[a] non-custodial parent's unpaid balance shall be the arrearage shown on the records at the Department of Law, *except to the extent monthly unpaid balances may be corrected by the court in the course of reducing arrearages to judgment under 5 GCA § 34129*," simply means that the unpaid balance is either the arrearage shown on the records at the Department of Law or a corrected amount determined by the court in the course of reducing arrearages to judgment pursuant to section 34129. It does not necessarily follow that having an "unpaid balance" or "arrearage" means that the obligor is delinquent in payments under a court order.

[55] Palomo argues that when the amount of reimbursement for past child support is finally determined, it becomes immediately due and payable. Appellant's Br. at 28. She contends that "[u]nless the obligor produces an immediate cash payment for the full amount it becomes an arrearage and interest begins to accrue." *Id.* Manglona retorts that the trial court was correct and that the order awarding reimbursement is a current obligation rather than a past due and outstanding debt that has become "overdue." Appellee's Br. at 17.

[56] We agree with Palomo that once an award is made for retroactive child support, whether it be for the period since the filing of the complaint until the setting of child support or the period prior to the commencement of the action, that amount becomes immediately due and payable. We find the reasoning in *In Interest of R.C.T.*, 294 S.W.3d 238 (Tex. App. 2009), to be persuasive in this respect. In *R.C.T.*, the father was current in making court-ordered monthly payments on retroactive support. *Id.* at 240. Despite the court-ordered payment plan, the

Attorney General filed a child support lien against the father for the amount of the unpaid retroactive support. *Id.* The father alleged that the lien was invalid because he was current on the monthly installments. *Id.* On appeal, the court found that despite the payment plan, the retroactive support amount is "due and owing" under the provisions of the child support lien statute because it is an amount that is presently enforceable and because a balance remains unpaid. *Id.* at 242. The court further explained that "[t]he fact that the [trial] court allowed [the father] to retire the debt by means of a payout schedule does not change the 'due and owing' nature of the debt. The payout schedule is simply one way that [the father] is allowed to satisfy his matured and enforceable debt." *Id.* "The payout schedule simply gave [the mother] two permissible options for collecting the retroactive child support she was entitled to receive under the Order. The existence of a payout schedule does not preclude [the mother] (or the Attorney General) from utilizing any available collection efforts, such as a child-support lien." *Id.* at 243 (citations omitted).

[57] The Supreme Court of Nebraska has even gone so far as to conclude that it is error for a trial court to establish a payment plan for the satisfaction of retroactive support. In *State ex rel. Kayla T. v. Risinger*, the court found that the trial court should have entered judgment for the full amount of retroactive support due with interest to accrue from the date of judgment rather than ordering the father to pay in monthly installments. 731 N.W.2d 892, 897 (Neb. 2007). Explaining that child support payments ordinarily vest as they accrue, the court held that the judgment for child support that should have vested and accrued in prior months is a judgment which was immediately due and collectible upon entry of the decree of paternity and support, and that the trial court abused its discretion in ordering the retroactive support to be paid in future monthly installments. *Id.* While we do not necessarily agree that the trial court is

precluded from establishing payment plans for the satisfaction of retroactive support, we agree with *Risinger*'s assessment that a judgment for retroactive support is immediately due and collectible upon entry of the judgment. This analysis further supports Palomo's argument that despite Manglona's compliance with the court-ordered payment plan, the amount of retroactive support remaining every month is an "unpaid balance" subject to the interest rate set forth in 5 GCA § 34114(a).

[58] To reiterate, regardless of whether a child support order exists, a parent is obligated to support his or her children. A judicial finding of paternity does not establish this duty; it only makes the duty legally enforceable. Thus, retroactive child support, though legally enforceable only upon a judgment of paternity and support, represents the non-custodial parent's support obligation that had accrued and remained unpaid prior to the setting of future child support. Where full payment is not immediately made on this retroactive award, the remainder constitutes an "unpaid balance" subject to the interest rate set forth in 5 GCA § 34114(a), regardless of whether the non-custodial parent is current on a court-established plan to repay the past support obligation. Prior to January 1, 2008, section 34114(a) provided that the interest rate on an unpaid balance was twelve percent.

[59] Should the trial court decide on remand that Manglona is responsible for child support from the date of N.V.D.'s birth, the referee's original order setting retroactive child support shall be reinstated. However, recalculation of the remaining balance is necessary in light of the change of interest rate that went into effect on January 1, 2008, as well as to reflect any adjustments that may arise upon remand. Although neither party raised the issue, we find it imperative to discuss the effect of the amendment to section 34114(a) on this case. Effective January 1, 2008, the interest rate of six percent is to be applied prospectively to all unpaid

balances, regardless of whether the child support award was entered before or after January 1, 2008. Absent express language in the statute that the new interest rate is to apply only to those awards entered after the effective date, the plain meaning of the language is that interest shall accrue at the rate of six percent on the unpaid balance as of the previous month, without regard to the date of the original child support award. Thus, the rate of interest on any unpaid balance of support shall be twelve percent per annum until December 31, 2007, and six percent per annum on any balance remaining thereafter.

V. CONCLUSION

[60] The child support referee retains jurisdiction to reconsider her previous orders setting arrears until such time as she submits her recommended findings and order to the Superior Court for ratification or review of objections. Thus, the referee was not precluded from reconsidering her November 22, 2006 oral order or February 16, 2007 written order because neither order was submitted to the Superior Court for adoption or review.

[61] Given the clear policy that parents, whether married or not, must support their children and that child support awards reflect the best interests of the children, we conclude that there is a rebuttable presumption arising from the statutory obligation of support in favor of awarding reimbursement under 5 GCA § 34105(a)(8) where the action is commenced within six years from the child's birth. The trial court has discretion to deny reimbursement where there has been a satisfactory rebuttal of the presumption by a showing of reasons why a non-custodial parent should be relieved of his or her statutory obligation to contribute to the support of his or her child from the moment of the child's birth. Absent such a showing, the court should award reimbursement for support from the date of the child's birth. Because we have not previously articulated that there is a rebuttable presumption in favor of awarding reimbursement under 5

GCA § 34105(a)(8) where the action is commenced within six years from the child's birth, we remand to the trial court for an appropriate exercise of discretion incorporating the legal principles set forth in this opinion.

[62] Finally, we hold that the balance on an award of retroactive support constitutes an unpaid balance or arrearage for purposes of the accrual of interest under 5 GCA § 34114(a), regardless of whether the obligor parent is current on a court-ordered payment plan to satisfy the award.

[63] For the foregoing reasons, we **REVERSE** and **REMAND** for an evidentiary hearing to determine whether the rebuttable presumption in favor of awarding reimbursement under 5 GCA § 64105(a)(8) has been overcome, to calculate past due support and interest, and for any further proceedings consistent with this opinion.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice