IN THE SUPREME COURT OF GUAM

DARIUS A. RICHARDSON,
Plaintiff-Appellant,

v.

JEAN L. RICHARDSON,
Defendant-Appellee.

Supreme Court Case No.: CVA08-015
Superior Court Case No.: DM0361-01

OPINION

Cite as: 2010 Guam 14

Appeal from the Superior Court of Guam
Argued and submitted on May 19, 2009
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
Lewis Littlepage, *Esq.*
P.O. Box 2794
Wailuku, HI 96973

Appearing for Defendant-Appellee:
Jean L. Richardson, *Pro Se*
P.O. Box 88944
Honolulu, HI 96830

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; RICHARD H. BENSON, Justice Pro Tempore.

TORRES, J.:

[1] Plaintiff Appellant Darius A. Richardson ("Darius") appeals from a Superior Court order requiring Darius to pay monthly child support in the amount of $3,458.00 retroactive to August 1, 2008, and denying his motion for reconsideration of an earlier order setting the amount owed for arrears for both child support and spousal support. The order also imputed income to Defendant–Appellee Jean L. Richardson ("Jean") and obligated her to pay $472.00 in monthly child support.

[2] The trial court abused its discretion in assigning the entire costs of private school tuition to Darius and erred as a matter of law in granting an upward deviation from the Guam Child Support Guidelines without a prior determination that the upward deviation was based on a factor not already accounted for by the Guam Child Support Guidelines or that the children's circumstances were not within the average presumptions of the Guam Child Support Guidelines. Moreover, while we affirm the trial court's decision not to impute income to Jean based on an earning capacity as a full-time paralegal, the trial court abused its discretion in imputing income to Jean based on a part-time salary as a legal secretary without evidence regarding whether she has the necessary qualifications for a legal secretary, evidence of prevailing employment opportunities for a legal secretary in her geographic location, and a finding that there was reasonable cause for her to work part time. Accordingly, we affirm in part and reverse in part and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Darius Richardson and Jean Richardson were married in 1994, had three children, separated in May 2002 and an interlocutory judgment of divorce was granted in 2006. In August 2001, the Superior Court issued a temporary child support and spousal support order that required Darius to pay to Jean the amount of $5,500.00 per month as well as $850.00 per month in private school tuition for their eldest son. Certified Docket Sheet ("CDS") at 11 (May 14, 2009) (Order, Aug. 30, 2001). In December of the same year, Darius moved to reduce his monthly support. The court later found Darius in contempt for failing to make support payments as ordered and denied his motion to reduce support. Darius sought reconsideration and the Superior Court vacated the contempt finding and set the matter for a full evidentiary hearing before the child support referee.

[4] After the evidentiary hearing, the child support referee determined that Darius should pay $4,500.00 in child support retroactive to November 2002, private school tuition for the two school-aged children, and medical and dental coverage for Jean and their three children. One thousand dollars ($1,000.00) per month in income was also imputed to Jean. Darius objected to the referee's Recommended Findings of Fact and Conclusions of Law and moved to modify custody and visitation.

[5] The Superior Court reviewed the Referee's decision and issued its Findings of Fact and Conclusions of Law in July 2006 establishing, among other things, the child support to be paid by Darius and awarding alternating custody between Darius and Jean. Darius did not appeal the 2006 Findings of Fact and Conclusions of Law. In August 2008, the Superior Court entered an order setting arrears for child support and spousal support.

[6] Darius timely moved the court to reconsider its August 2008 order deciding arrears and also requested the court to address Jean's continued unemployment in calculating the monthly

child support obligation. Jean also filed several motions to revise the child support amount and to increase the tuition payments when she had custody of the children. The Superior Court consolidated all of Jean's various motions as a "motion to modify child support" and addressed Jean's motion for modification along with Darius' motion to reconsider in its November 7, 2008 Findings and Order Re: Child Support, Child Support Arrears, Judgment of Arrears ("November 2008 Order").[1] ER at 274-78 (Findings and Order, Nov. 10, 2008).

[7] In the November 2008 Order, the Superior Court noted that the parties agreed to use the draft 2008 Guam Child Support Guidelines[2] ("2008 Guidelines") and cited the 2008 Guidelines as its legal authority for permitting a motion to modify child support.[3] ER at 274 (Nov. 2008 Order). After imputation of income to Jean based on the salary of a part time legal secretary, the court determined that an upward deviation from the 2008 Guidelines was appropriate and the amount of $3,930.00 per month was reasonable for the children's expenses. *Id.* at 276-77.

[1] The order was dated November 7, 2008 but filed on November 10, 2008.

[2] The draft 2008 Guam Child Support Guidelines did not become law until 2009. Guam Pub. L. 30-16 (Apr. 17, 2009). At the time of trial, the existing monetary "schedule" of the 1996 Child Support Guidelines, were eight years out of compliance with 5 GCA § 34118 and 42 U.S.C.A. § 667(a). Section 34118(e) provides that "[u]ntil a new schedule is promulgated . . . the schedule previously promulgated . . . shall continue to be used in the manner specified by Public Law 18-17 *as a guideline in cases where the court deems it relevant.*" 5 GCA § 34118(e) (2005) (emphasis added). Since the Guam Child Support Guidelines' schedule was out of compliance and in light of the stipulation of the parties, the trial court's use of the 2008 Guidelines was appropriate. *See* 5 GCA § 34118(e); *see also Leon Guerrero v. Moylan,* 2002 Guam 18 ¶¶ 19-20. The language of the Guam Child Support Guidelines which we interpret in this case remains virtually the same as all of the past versions including the 2009 version.

[3] Although three years had not passed since the July 2006 Order, section 1207(3) of Title 19 of the Guam Administrative Rules and Regulations allows review and adjustment "thirty-six (36) months after establishment of the order, or most recent review, or when requested by either parent." See 19 Guam Admin. R. & Regs. § 1207(3) (2009). Such review and adjustment is allowed when the petitioning parent meets the additional requirements of 5 GCA § 34118(f) to show a "substantial or material change of circumstances." 5 GCA § 34118(f) (although this section has been amended twice since the August 2008 order, the then applicable version through the current version still retains the same requirement that there be a showing of a "substantial or material change of circumstances.").

[8] Under the 2008 Guidelines, Jean was responsible for 12% ($472.00) of the children's expenses and Darius responsible for 88% ($3,458.00).[4] *Id.* at 277. The trial court further ordered Darius to pay tuition in the amount of $800.00 per month for each child in private school and to pay for the children's medical and dental insurance. The trial court also denied Darius' motion for reconsideration of its prior determination of child and spousal support arrears, concluding that previous payments by Darius "were primarily: (1) payments made prior to entry of court orders, (2) tuition payments to [children's private school] and (3) payments not made to the defendant directly and claimed in lieu of child support," therefore, not creditable to either child support or spousal support arrears. *Id.* Darius filed a notice of appeal within thirty days of the issuance of the November 2008 Order.

II. JURISDICTION AND STANDARD OF REVIEW

[9] This court has jurisdiction over appeals from child support orders. 7 GCA § 3108(a) (2005); 5 GCA § 34107(b) (2005); *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 5.[5] "An order for child support is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order." 5 GCA § 34107(b) (2005). This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1424-1(a)(2) (2007); 7 GCA §§ 3107(b) and 3108(a) (2005).

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

[4] The court established the combined adjusted gross monthly income for Darius and Jean to be $10,465.00 and support under the 2008 Guidelines (not including private school tuition and before any deviation) would be $2,583.00 with Darius obligated to pay $2,273.00 (88%) and Jean $310.00 (12%).

[5] The Supreme Court in *Leon Guerrero v. Moylan*, 2002 Guam 18, cited to 7 GCA § 34121 which was later repealed and reenacted as 7 GCA § 34107(b) by Guam Public Law 26-148.

2002 Guam 18 at ¶ 16). Interpretation of the Guam Child Support Guidelines is a question of law reviewed *de novo*. *See Mendiola v. Bell*, 2009 Guam 15 ¶ 11 ("A trial judge's conclusions of law . . . are reviewed *de novo.*"); *see, e.g.*, *J.L.P. v. V.L.A.*, 30 P.3d 590, 594 (Alaska 2001); *In re Marriage of Milano*, 936 P.2d 302, 303 (Kan. Ct. App. 1997) ('Interpretation of the child support guidelines is a question of law; therefore, this court's standard of review is de novo.'). A denial of a motion for reconsideration is reviewed for an abuse of discretion. *In re Quitugua v. Flores*, 2004 Guam 19 ¶ 12 (citing *Ward v. Reyes*, 1998 Guam 1 at ¶ 10).

III. DISCUSSION

[11] On appeal, Darius argues that the trial court erred when it made an upward deviation from the 2008 Guidelines for monthly expenses based on routine living necessities such as the cost of housing, food, utilities and clothing. Darius also asserts that the trial court abused its discretion when it failed to attribute adequate income to Jean and assigned the entire private school tuition costs to him. Additionally, Darius believes that the trial court erred in calculating the amount of arrears for both child support and spousal support and in denying his motion for reconsideration of the order establishing these arrearages.

A. Rebuttable Presumptions of the Guam Child Support Guidelines

1. Presumption of Support and Needs

[12] Under Guam law, 5 GCA § 34118, the support amounts established by the Guam Child Support Guidelines:

> [are] based upon the earnings of the parents [and] shall operate as a rebuttable presumption as to the amounts of support which each parent can afford to contribute towards the care of the minor child[ren].
>
> . . . [and the support amounts] showing the average dollar amounts necessary to raise from one (1) to at least fifteen (15) children . . . shall operate as a rebuttable presumption as to the needs of the child[ren].

5 GCA §§ 34118(c)(1) and (2) (2005); *see also* 19 Guam Admin. R. & Regs. § 1202(c) (2009); 45 C.F.R. § 302.56(f) (2008); 42 U.S.C.A. § 667(b)(2).[6] One of the specified purposes of adopting the Guam Child Support Guidelines is "to comply with federal law (42 U.S.C. section 651 et. [sic] seq., 45 C.F.R. section 302.56)." 19 GAR § 1202(a)(4). Therefore, we shall interpret the Guam Child Support Guidelines in a manner that fulfills its stated purpose in section 1202(a)(4) of Title 19 of the Guam Administrative Rules and Regulations to be consistent with the federal laws that regulate the Guam Child Support Guidelines.[7] 19 GAR § 1202(a)(4); *see, e.g.*, *Ley v. Forman*, 800 A.2d 1, 7 (Md. Ct. Spec. App. 2002); *In re Plaisted*, 824 A.2d 148, 150 (N.H. 2003) (observing that one of the purposes for adopting state's child support guidelines was to comply with federal law).

[13] In any child support action, the Guam Child Support Guidelines shall be used. 19 GAR § 1202(c)(1). As a California appellate court aptly stated:

> "Both federal and state law refer to a uniform statewide 'guideline' (or 'guidelines'); and the statutory formula for computing child support . . . is expressly labeled the 'statewide uniform *guideline*.' . . . However, the 'guideline' label is seriously misleading. The applicable statutes . . . are *far more than mere 'guidelines'*; rather, they impose *mandatory requirements* with the intent that application of the statutory formula yield a *presumptively-correct* amount of child support. . . ."

[6] This analysis is to be distinguished from cases where the combined parents' income is outside the scope of the Guam Child Support Guidelines. In such an instance, a court may exercise more discretion to increase child support awards. *See, e.g.*, *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 22 (explaining trial court's ability to exercise discretion when parents' combined incomes exceed the amounts delineated in the child support schedule).

[7] Moreover, we look to states that have also adopted child support guidelines to comply with the same federal laws as persuasive authority when discussing general principles of "child support guidelines". *See* 2B Sutherland Statutory Construction § 52:3 (7th ed.) ("Where the meaning of a statute is in doubt, reference to legislation in other states and jurisdictions which pertains to the same subject matter . . . may be a helpful source of interpretive guidance. . . . There are significant parallels between the different jurisdictions, as a result of a relatively uniform pattern that has emerged to deal with common problems. . . ."); *see, e.g.*, *Martinez v. Enter. Rent-A-Car Co.*, 13 Cal. Rptr. 3d 857, 862 (Cal. Ct. App. 2004) ("Where . . . there is no California case directly on point, foreign decisions involving similar statutes and similar factual situations are of great value to the California courts.") (citing *Estate of Salisbury*, 143 Cal. Rptr. 81, 85 (Cal. Ct. App. 1978)).

In re Marriage of Laudeman, 112 Cal. Rptr. 2d 378, 381 n.2 (Cal. Ct. App. 2001) (quoting Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2001), ¶ 6:131, at 6-56.) (emphasis from Hogoboom & King). Child support guidelines are based on assumptions about economic expenditures in the average family. *See* 19 Guam Admin. R. & Regs. § 1201 (2009) (discussing rationale for Guam Child Support Guidelines); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.02 (2009); Robert G. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 Fam. L.Q. 281, 282-89, 291-95 (1987). However, in some cases the facts will differ materially from the assumptions which inform the guidelines, and a deviation from the guideline amount may be warranted when the circumstances render the application of the guidelines "inequitable", "unjust" or "inappropriate". Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7; *see also* 19 GAR § 1202 (c)(1).

[14] Accordingly, courts may deviate from the Guam Child Support Guidelines whenever a specific application would be inequitable. 19 GAR § 1202(c)(1); 45 C.F.R. § 302.56(g) (2008); 42 U.S.C.A. § 667(b)(2). Regulation 1202(c)(2) further requires that:

> [s]hould a custodial parent request child support in excess of the presumed average needs for the child, direct evidence must be presented at the time of hearing to prove that the actual needs of the child are in excess of the presumed average needs of the child in order to overcome the presumption.

19 GAR § 1202(c)(2). In these circumstances, the presumptions of the Guam Child Support Guidelines are rebutted but the court must "enter appropriate written or specific findings on the record." 19 GAR § 1202(c)(1); 45 C.F.R. § 302.56(g) (2008); 42 U.S.C.A. § 667(b)(2); *see, e.g., In re Marriage of Laudeman*, 112 Cal. Rptr. 2d 378, 381-82 (Cal. Ct. App. 2001); *In re Marriage of Vandervoort*, 185 P.3d 289, 295 (Kan. Ct. App. 2008) ("failure to justify deviations by written

findings is reversible error"); *Margolis v. Steinberg*, 242 S.W.3d 394, 400 (Mo. Ct. App. 2007) ("A trial court that deviates from the presumptive amount of child support without making a mandatory finding that such amount would be unjust or inappropriate commits error that requires reversal and remand."); *Rivero v. Rivero*, 216 P.3d 213, 232 (Nev. 2009).

[15] The trial court is not necessarily required to state specific phrases to meet this standard as long as it is obvious from its findings and reasoning that the decision to deviate and the amount of deviation is supported by sufficient evidence for appellate review. *See* 19 GAR § 1202(c)(1); *see, e.g.*, *Talley v. Bulen*, 193 S.W.3d 881, 885 (Mo. Ct. App. 2006) ("[T]he failure to use the exact terminology (inappropriate or unjust) does not equate to an 'ineffective' deviation . . . ."); *Herring v. Herring*, 532 S.E.2d 923, 927-28 (Va. Ct. App. 2000) (reiterating trial court's duty to identify the factors that justified deviation in enough detail and exactness to allow for effective appellate review of the findings.); *Opitz v. Opitz*, 173 P.3d 405, 410 (Wyo. 2007) (where trial court's decision makes sufficiently clear its determination that applying the presumptive child support guidelines would be unjust or inappropriate use of the exact words 'unjust' or 'inappropriate' is not necessary).

[16] In order to better explain the factors that should be considered by trial judges in determining whether to deviate from the Guam Child Support Guidelines' presumptive amount, it will be helpful to first review the underlying economic principles of the Guam Child Support Guidelines and child support guidelines in general. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7. Section 302.56(h) of the Code of Federal Regulations requires that child support guidelines be based on economic data concerning the cost of raising children, stating:

> As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

45 C.F.R. § 302.56(h) (2008).

[17] Guam, along with thirty-six other states, has adopted the "Income Shares Model" for the Guam Child Support Guidelines. *See* 19 GAR § 1201; Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.02 (2009) (listing all the states that have adopted the Income Shares Model). Originally, the majority of states, including Guam, sought guidance from a 1987 report provided by Dr. Robert Williams who was commissioned by the National Center for State Courts and funded by U.S. Department of Health and Human Services to compile economic research on average national family expenditures. *See* 19 GAR § 1201 (stating sources used in developing Guam Child Support Guidelines); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.02 (discussing Income Shares Model); *see also* Robert G. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 Fam. L. Q. 281, 281-82, 291-94 (1987); Robert Williams, *Development of Guidelines for Child Support Orders Final Report* (1987); Janice T. Munsterman, Claire G. Grim & Thomas A. Henderson, *A Summary of Child Support Guidelines* 11, 14 (1990) (describing Williams' research and the Income Shares Model as the model most widely adopted by United States jurisdictions, including Guam). The Income Shares model attempts to simulate the percentage of parental income that is spent on children in intact families and assumes that the parents are sharing in the child-rearing expenses in proportion to their relative incomes and that those percentages are based on the combined income of the parents. Robert Williams, *Development of Guidelines for Child Support Orders Final Report* II-67 (1987); Laura W. Morgan, *Child Support Guidelines: Interpretation*

and Application § 1.03[b][1].

[18] Serving as the basis for child support guidelines, the economic expenditures in Robert Williams' research include: transportation; food; household goods; recreation; shelter; clothing; healthcare; fuel and utilities; food away from home; and "miscellaneous."[8] Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.02; 19 GAR § 1201 *et seq.*, (1996); Child Support Guidelines, Government of Guam Department of Law Family Division, Ex; B (Dec. 1994). While the economic premises in the Income Shares Model developed in 1987 remains the same, the table of incomes correlating with costs per child referenced in section 1201 has been updated over the years. *Compare* Child Support Guidelines Government of Guam Department of Law Child Support Division, May 1991 *and* Child Support Guidelines Government of Guam Department of Law Child Support Division, Dec. 1994 *and* 19 GAR §§ 1201 *et seq.* (1996) *with* 19 GAR § 1201 *et seq.* (2009). Exhibit B in the 1994 and 1996 versions of the Guam Child Support Guidelines demonstrates additional economic considerations and sources that the drafters have turned to in the past when creating the schedules. *See* 19 GAR § 1201 *et seq.* (1996); Child Support Guidelines, Government of Guam Department of Law Family Division, Ex. B (Dec. 1994).[9] Without indication that the 2008 Guidelines explicitly sought to omit or include certain expenses, the economic expenditures underlying the Income Shares Model mentioned in regulation 1201 and identified in Robert Williams' research remain the same.

[8] What Laura Morgan cites to as "Miscellaneous" and "Household Goods" appears to coincide with what Exhibit B lists as an expense in the 1994 version of the Guam Child Support Guidelines, which includes health and beauty aids, toilet paper, haircuts and aspirin. *See* Child Support Guidelines, Government of Guam Department of Law Family Division, Ex. B (Dec. 1994).

[9] Both 1994 and 1996 versions cite to as sources of economic data: 1) Guam Consumer Price Index Quarterly Report, 1st Quarter, 1994, Table A, Consumer Price for All Items; 2) Guam Consumer Price Index Quarterly Report, 1st Quarter, 1992 for food calculations; 3) and housing calculations based on newspaper advertisements' average rental cost for two (2) bedroom apartments.

[19] One of the major purposes of child support guidelines is to curb judicial discretion and promote uniformity in awards. *See, e.g., County of Stanislaus v. Gibbs*, 69 Cal. Rptr. 2d 819, 823 (Cal. Ct. App. 1997) ("[W]hile the court must necessarily act discretionarily when it comes to statutorily undefined special circumstances, this discretion is not so broad that the court may ignore or contravene the purposes of the law regarding the attempted uniform calculation of child support."); *In re Marriage of Rossi*, 876 P.2d 820, 826 (Or. Ct. App. 1994). As the Kentucky Court of Appeals, in *Keplinger v. Keplinger*, observed:

> We agree with the trial court's assertion that setting an appropriate amount of child support is an art rather than a science. Nevertheless, it is an art as to which the Legislature has every right to make prescriptions and set limitations. Where unusual circumstances exist which are not specifically provided for in the statute, the Legislature has provided that trial courts should exercise their discretion to achieve just results . . . [citing to Kentucky Guidelines]. . . . But a trial court does *not* have the discretion to deviate from the guidelines simply because it thinks the Legislature erred in setting the appropriate levels. Nor does it have the discretion to ignore the guidelines because it feels that important factors were ignored by the Legislature. We must assess the trial court's order with these principles in mind.

Keplinger v. Keplinger, 839 S.W.2d 566, 568 (Ky. Ct. App., 1992) (emphasis from original); *see also Favrow v. Vargas*, 610 A.2d 1267, 1276 (Conn. 1992).

[20] Under 42 U.S.C.A. § 667(a), another purpose of child support guidelines is "to ensure that their application results in the determination of appropriate child support award amounts." 42 U.S.C.A. § 667(a); *see also* 45 C.F.R. § 302.56(f), (h) (2008). The Guam Child Support Guidelines' purpose of promoting uniform and accurate awards and its presumption of correctness is based on the premise that the child support guidelines give courts clear economic information in determining fair and adequate child support awards. *See* 19 GAR § 1202(c)(2); 45 C.F.R. § 30.256(h) (2008); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* §§ 1.02[e] & n.30; 1.03[a]; 4.02. We recognize the wisdom of the Oregon appellate court's application of federal law in *Rossi*, reasoning that:

> [a]ny other reading of the language would render meaningless the requirement that child support be 'determined' in accordance with [the law] and the guidelines. Trial courts would be free to adjust child support awards as they see fit, as long as they have made an "initial" determination in accordance with the law. That is precisely the sort of ad hoc determination of child support awards the current law was designed to prevent. *See* S. Rep. No. 100-377, 100th Cong 2d Sess 17 (1988).

In re Marriage of Rossi, 876 P.2d 820, 826 (Or. Ct. App. 1994). We find that because the drafters of the Guam Child Support Guidelines consulted experts and statistical data regarding the actual needs of average children, the Guam Child Support Guidelines are presumed superior to a court's case-by-case assessment of, for example, food, shelter, transportation and clothing for the average child; otherwise the drafter's presumptions would be meaningless. *See* 19 GAR § 1201 ("The Child Support Enforcement Division has, with the help of Policy Studies Inc., Denver Colorado, worked on developing a Schedule, as required by 5 GCA § 34118, to show the fair and reasonable amount of child support to be paid based on the income of the parties."); 5 GCA § 34118(b) (mandatory presumption); *In re Marriage of Rossi*, 876 P.2d 820, 826 (Or. Ct. App. 1994); *cf. Favrow v. Vargas*, 610 A.2d 1267, 1276 (Conn. 1992) (applying similar analysis and finding that deviation should not be warranted based on a parent's actual expenses when the guidelines already determined what expenses should be allotted to a parent).

[21] The trial court's role is not to recalculate expenses for the average child when the drafters have already sought to cover those expenses in the Guam Child Support Guidelines. *See* 19 GAR § 1201; 5 GCA § 34118; 19 GAR § 1202(c); *see, e.g., In re Marriage of Rossi*, 876 P.2d 820, 826 (Or. Ct. App. 1994); *In re Marriage of Gordon*, 540 N.W.2d 289, 292 (Iowa Ct. App. 1995) ("[E]xpenses for clothes, school supplies and recreation activities are considered under the guidelines, and a separate support order covering such expenses is improper . . . ."); *In re Marriage of Ronen*, 26 P.3d 1287, 1290 (Kan. Ct. App. 2001); *Leeder v. Leeder*, 884 P.2d 494,

497 (N.M. Ct. App. 1994) ("The guidelines are not intended to reflect what the parents have in fact been spending for the care, maintenance, and education of their children. Rather, they set a presumptive figure for what the parents *should* be spending.") (emphasis from original); *Polychronopoulos v. Polychronopoulos*, 640 N.Y.S.2d 256, 257 (N.Y. App. Div. 1996) (court erred in ordering father to make mortgage payments on custodial parent's residence since shelter costs were already a part of the basic child support obligation).

2. Deviation from the Guam Child Support Guidelines

[22] In order to prove that a child's specific needs and circumstances are not already accounted for in any set of child support guidelines, there must be a threshold legal determination whether the requested reason for deviation is a circumstance or expenditure that the drafters already intended for the guidelines to cover and essentially removed from the trial court's discretion. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7. Implicit in regulation 1202 (c)(1) is the understanding that there must be a material difference between the actual facts and the Guam Child Support Guidelines' economic assumptions before any specific application of the Guam Child Support Guidelines may be termed "inequitable". *See* 19 GAR § 1202 (c)(1); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7. Therefore, "one must understand and be able to articulate the underlying economic precepts of a state's child support guidelines in order to be able to argue factors that should be considered by the decision-maker in determining whether to deviate from the guidelines' presumptive amount." Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7. A custodial parent cannot argue for a deviation based on assumptions that are already built into the Guam Child Support Guidelines since only when the assumptions underlying the Guam Child

Support Guidelines are inapplicable in the particular case can deviation be had. *Id.*; *see also* 19 GAR § 1202 (c).

[23] Section 1202(c)(2) of Title 19 of the Guam Administrative Rules and Regulations states that a parent must "prove that the actual needs of the child are in excess of the presumed average needs of the child in order to overcome the presumption." In determining legislative intent, a statute should be read as a whole and, "we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Sumitomo Constr. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (quoting *Kelly v. Robinson*, 479 U.S. 36, 43 (1986). Implicit in regulation 1202(c)(2) is that "actual needs" cannot render the "presumed average needs" already calculated within the Guam Child Support Guidelines superfluous. *See* 19 GAR § 1202(c)(2); *Macris v. Richardson*, 2010 Guam 6 ¶ 15 ("A statute should be construed to give effect to all of its provisions so that no part would be superfluous or insignificant."). Contrary to the trial court's interpretation of "actual needs" (what a parent can prove they actually spent on food, shelter, and transportation), the "actual needs" of a child embody circumstances and expenses that are *not* already provided for in the Guam Child Support Guidelines' provision for "presumed average needs." *See* 19 GAR § 1202(c)(2).

[24] Before a Guam custodial parent can be successful in requesting a deviation, that parent must initially demonstrate that the application of the Guam Child Support Guidelines would be inequitable. To meet the requirements of an "actual needs" deviation under regulation 1202(c)(2), a custodial parent must demonstrate that the reasons for deviation are based on 1) factors not already accounted for by the Guam Child Support Guidelines or 2) that the child's or children's circumstances do not fall within the "presumed average needs" that the Guam Child

Support Guidelines cover. *See* 19 GAR § 1202(c)(2); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.01 at 4-6 through 4-7.

[25] In this case, Jean requested and the court granted an upward deviation based on the costs of: 1) $2,000.00 for rent; 2) $600.00 for food; 3) $150.00 for utilities; 4) $300.00 for clothing (including uniforms); 5) $250.00 for car; 6) $100.00 for entertainment; 7) $200.00 for extracurricular activities; 8) $30.00 for internet; and 9) $300.00 for school lunch. ER at 276 n.4 (Nov. 2008 Order).

[26] Since the Guam Child Support Guidelines include the costs of shelter, food, food away from home, utilities, clothing and transportation, the trial court erred as a matter of law when it recalculated rent, food, utilities, clothing, school lunch and transportation expenses as "actual cost[s]" warranting an upward deviation from the Guam Child Support Guidelines without a preliminary finding that the children or their circumstances were significantly different from those of the average child and the application of the Guam Child Support Guidelines would be inequitable.[10] *See* 19 GAR § 1202(c)(2); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 4.02 (listing expenses guidelines generally cover); 19 GAR § 1201 *et seq.* (1996); Child Support Guidelines, Government of Guam Department of Law Family Division, Ex. B (Dec. 1994) (listing expenses Guidelines cover); Robert Williams, *Development of Guidelines for Child Support Orders Final Report* II-67-68 (1987) (expenses the Guidelines cover); *see, e.g., In re Marriage of Ronen*, 26 P.3d 1287, 1290 (Kan. Ct. App. 2001) (finding average finding extracurricular activities not a 'special need' so as to remove it from what the

[10] Whether or not to deviate from child support guidelines is generally an issue of discretion when: 1) a trial court uses its discretion not to deviate; or 2) when a trial court makes preliminary factual determinations regarding whether the child or child's circumstances fall outside the "average" range that the child support guidelines are intended to cover. However, in the instant matter, absent a preliminary discretionary finding that the child's needs are not average, granting an upward deviation based on the interpretation of "actual needs" in a matter that renders superfluous the "presumed average needs" is an issue of law.

guidelines are presumed to cover); *Polychronopoulos v. Polychronopoulos*, 640 N.Y.S.2d 256, 257 (N.Y. App. Div. 1996); *cf. Favrow v. Vargas*, 610 A.2d 1267, 1276 (Conn. 1992). However, it is not clear whether the entertainment, extracurricular activities and internet expenses which constituted part of the reasonable expenses calculated by the judge should be included within the Guam Child Support Guidelines economic expenditures categories of "miscellaneous" or "recreation." Therefore, we remand the issue for determination by the trial court. We now proceed to address Darius' argument that the court failed to attribute adequate income to Jean based upon her voluntary unemployment and earning capacity.

B. Attribution of Income

[27] In calculating gross income for purposes of child support, a court *may* attribute or impute income to a parent up to full earning capacity if the parent is unemployed or underemployed and that parent's earnings are reduced as a matter of choice and not for reasonable cause. 19 GAR § 1203(a)(5) (2009); *see also Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 30-33.

[28] Both parents have a duty to support their child, and the mere fact that one parent could easily support the child does not relieve the other parent of the duty to earn and contribute to the costs of raising a child. *See* 5 GCA § 34118 (stating that the awards are based on the incomes of both parents); 19 GAR § 1201 (Guam Child Support Guidelines are based on the Income Shares model which is premised on the combined incomes of both parents); *see, e.g., Maloney v. Maloney*, 969 P.2d 1148, 1152 (Alaska 1998); *Bullard v. Briem*, 969 S.W.2d 880, 883 (Mo. Ct. App. 1998). Attributing or imputing income to a parent is a discretionary tool which enables courts to consider earning capacity instead of actual earnings. *See* 19 GAR §§ 1202(c)(1), 1203(a)(5). The imputation of income is reviewed for an abuse of discretion. *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 30.

[29] Attributing income to a parent who is unemployed or working below full earning capacity requires a court to initially consider the voluntariness of a parent's unemployment or underemployment. 19 GAR §§ 1202(c)(1), 1203(a)(5); *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 31-33. If the earnings are voluntarily reduced, then the court applies a balancing test adopted in *Leon Guerrero v. Moylan* to determine if the parent's choice was reasonable. *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 31-35.

1. Voluntariness

[30] The trial court found that Jean "remain[ed] unemployed" and had the "ability to earn $24,000.00 per annum as a part-time legal secretary." ER at 275 (Nov. 2008 Order). Once a trial court determines that a parent is voluntarily unemployed, the Guam Child Support Guidelines allow the trial court to consider the reasons for unemployment. 19 GAR § 1203(a)(5). If Jean was voluntarily unemployed and her unemployment was not for a reasonable cause, the court could impute income up to her earning capacity.

[31] Jean argues that she was not voluntarily unemployed. Instead, she submits that her role as the primary caregiver for the children and the time she devotes to representing herself in this case is the equivalent of being employed. The Guam Child Support Guidelines provide that "caring for children" is a reasonable cause which a court could consider in attributing income to a parent up to his or her earning capacity. 19 GAR § 1203(a)(5). However, "caring for children" does not factor into the first step of the inquiry into a parent's voluntariness. Rather, once a parent is deemed to be voluntarily unemployed or under employed, the court evaluates whether "caring for children" is a "reasonable cause" for the parent's voluntary underemployment or unemployment. *See* 19 GAR § 1203(a)(5).

[32] Generally, if a parent is employable, capable of working, and chooses to remain underemployed or unemployed, the parent's employment status is voluntary. *See* 19 GAR § 1203(a)(5); *see, e.g., In re Rossino*, 899 A.2d 233, 236 (N.H. 2006) (In interpreting its statute, court was required to determine whether parent was physically incapacitated before court could consider whether former husband was voluntarily underemployed for purposes of imputing income); *Marek v. Marek*, 822 N.E.2d 410, 415-16 (Ohio Ct. App. 2004) (court did not abuse its discretion in finding unemployment voluntary where father was employable and physically capable of working). As Jean failed to produce any evidence showing that she was incapable of working, the trial court did not abuse its discretion in finding that her continued unemployment was voluntary.[11] *See* 19 GAR § 1203(a)(5). However, the inquiry does not end there. We must still determine whether there was reasonable cause for her voluntary unemployment.

2. "State of Mind" Balancing Test—Reasonable Cause

[33] After finding Jean's unemployment to be voluntary, Guam law applies a "state of mind" balancing test to determine whether Jean had reasonable cause to be unemployed and, if she did not have reasonable cause, whether attribution of income to Jean would be justified.[12] *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 31-37. Under *Moylan*, we first look at the impact an employment decision has on the children and then consider the "overall reasonableness of a parent's decision, looking at both the nature and reasons" for the decision. *Id.*

[11] Although the trial court did not expressly state that Jean's unemployment was voluntary, in order for a court to impute income, earnings must be reduced as a matter of choice and absent reasonable cause. 19 GAR § 1203(a)(5).

[12] Where unemployment or underemployment is voluntary, there is a split among jurisdictions as to whether a finding of voluntariness is alone sufficient for imputing income (also known as the strict voluntary view) or whether there is an additional "state of mind" requirement. Laura W. Morgan, *Child Support Guidelines: Interpretation and Application*, § 2.04[c][3] at 2-122.1, Table 2-2. In *Leon Guerrero v. Moylan*, we adopted the additional "state of mind" requirement, although the phrase "state of mind" was not used. *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 35.

a. Staying Home to Care for Children

[34] In deciding whether to impute income, the Guam Child Support Guidelines specifically mention that "caring for children" may be a "reasonable cause" for being voluntarily unemployed or underemployed. 19 GAR § 1203(a)(5). It is unclear under what specific circumstances "caring for children" would present a reasonable cause for unemployment or underemployment under regulation 1203(a)(5).

[35] To interpret section 1203(a)(5) of Title 19 of the Guam Administrative Rules and Regulations as permitting the custodial parent under *all* circumstances to remain voluntarily unemployed or underemployed in order to care for children would contradict the underlying principles of the Income Shares Model of child support guidelines, premised on dual parent incomes and a shared duty to financially support children. *See* 5 GCA §§ 34118(c), 34118(d) (2005) (awards based on both parents' incomes); 19 GAR § 1201 (2009) (Guam Child Support Guidelines are based on the Income Shares model); *see also* Robert Williams, *Development of Guidelines for Child Support Orders Final Report* II-67 (1987); Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 1.03[b][1]. Such an interpretation would mean the custodial parent would never be expected to work. Moreover, construing "caring for children" to excuse Jean from her financial responsibility to the children in the alternating years where she does not even have custody of the children cannot constitute "reasonable cause" preventing imputation of income under regulation 1203(a)(5).

[36] Of the "guideline" states that have addressed the issue of imputation for a stay-at-home parent, the majority have determined that it is improper to impute income to custodial parents caring for *non-school-aged* children. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 2.04(c)(2)(ix), App. B (guidelines of the following states

disallow imputation for custodial parents of non-school-aged children: Alabama, Alaska, Colorado, Florida, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Mexico, North Carolina, Vermont, Virginia). However, of the states that impute income to stay-at-home parents *regardless of the child's age*, the majority impute income to custodial parents who choose to remain at home to care for school-aged children who attend school during normal hours. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 2.04(c)(2)(ix) & n.329 (listing the states that impute income to stay-at-home parents regardless of the child's age), App. B (above mentioned states which do not impute income for non-school aged children).

[37] We interpret "caring for children" as not being a reasonable cause for voluntary unemployment under regulation 1203(a)(5) while the children are attending school.[13] *See, e.g.*, *Dees v. Dees*, 887 A.2d 429, 432-33 (Conn. App. Ct. 2006) (imputing income to parent of child with disabilities was not abuse of discretion where child was still able to attend school and parent was unable to show how her obligations were different from parents of any school-aged child); *Mitchell v. Mitchell*, 841 So. 2d 564, 570 (Fla. Dist. Ct. App. 2003) (a court "may refuse to impute income to a primary residential parent if it finds that it is necessary for the parent to stay home with the children."); *Guidry v. Guidry*, 6 So. 3d 845, 847 (La. Ct. App. 2009) ("Although the statute does not specify what is meant by caring for a child under the age of five years, it is our opinion that this language was meant to apply to those who were actually caring for the child during normal working hours. Further, implicit . . . is an expectation that the party seeking this exclusion be voluntarily unemployed or underemployed for the purpose of caring *at home* for a

[13] A case where there is a showing that exceptional circumstances require a custodial parent to remain at home to adequately meet a school-aged child's needs would present a distinguishable set of facts, not present here.

child under five years of age.") (emphasis from original); *Martello v. Martello*, 960 So. 2d 186, 197-98 (La. Ct. App. 2007) (although stay-at-home parent had a child with special needs, because said child attended school full time, trial court erred in failing to consider stay-at-home parent's potential income); *In re Marriage of Thanhouser*, 108 P.3d 667, 670 (Or. Ct. App. 2005) (since nothing in the record indicated that mother could not engage in full-time employment court rejected mother's contention that because her child had special needs, she had to stay at home full-time).

[38] Although the trial court did not explicitly apply the state of mind balancing test, its decision to impute income to Jean does not contradict a proper application of the balancing test to determine whether a "reasonable cause" exists for Jean's unemployment. *See Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 35-37. Under the balancing test this court adopted in *Moylan*, we first look to the impact an employment decision has on the children and then consider the "overall reasonableness" of the parent's decision, looking at both the nature and reasons for the decision. *See id.* Here, under the first prong of the test, the impact on the children is clearly adverse; at the trial level, Jean asserted that under the original child support order, her children's actual needs were not being met (thus necessitating an upward deviation for rent, food, utilities, clothing, transportation, entertainment, extracurricular activities, internet, and school lunches). *See id.* (finding that the trial court failed to address the fundamental issue of whether the parent's employment decision detrimentally impacted the welfare of the children).

[39] Under the second prong, Jean's decision not to work is, overall, unreasonable; as discussed above, Jean's decision to remain unemployed to care for her school-aged children is unreasonable under regulation 1203(a)(5) which embodies the second part of the balancing test. *See id.*. Implicit in section 1203(a)(5) of Title 19 of the Guam Administrative Rules and

Regulations is a reasonable cause exception which applies to custodial parents who are actually caring for the child during normal working hours. *See* 19 GAR § 1203(a)(5); *Guidry v. Guidry*, 6 So. 3d 845, 847 (La. Ct. App. 2009). To read the reasonableness exception in other situations would negate the purpose of the Income Shares Model; to impose upon both parents the duty to financially contribute to the expenses of a child. *See, e.g.*, 5 GCA § 34118 (awards based on both parents' incomes); 19 GAR § 1201 (Guam Child Support Guidelines are based on the Income Shares model). Although Jean admitted that her children's actual needs were not being met, she made the decision to remain unemployed and not contribute to their needs. Her continued unemployment is especially unreasonable in the alternating years when the children are not in her custody.

[40] Consequently, even though the trial court did not explicitly apply the "state of mind" balancing test, its decision to impute income was in line with a proper application of the test, and was not improper. *See Leon Guerrero v. Moylan*, 2002 Guam 18 ¶¶ 35-37.

b. Self Representation

[41] Jean argues that the trial court should not impute any income to her as "[she] is working to represent herself in this divorce action . . . which is a service of value"; Jean later states that "work[ing] to represent herself in court . . . is a full time job." Appellee's Br. at 12, 20 (Apr. 13, 2009). Implicitly, Jean argues that her self-representation in this case should be construed as "reasonable cause" for being underemployed or working below full earning capacity under regulation 1203(a)(5). The Supreme Court of South Carolina rejected a similar argument, holding that the lower court properly imputed income to a mother in calculating child support even though the mother argued that her full-time job was "to get custody of [her] children." *Patel v. Patel*, 599 S.E.2d 114, 123 (S.C. 2004).

[42] Jean's argument is likewise without merit. Even if we were to agree with Jean's premise that self-representation may constitute employment, such a finding would not advance her argument; self-representation in a divorce case obviously does not constitute gainful wage-earning employment. Jean will never receive any outside compensation for her efforts in this case. Just as we have found that it is unreasonable for Jean to remain unemployed, in light of her family's situation it is equally unreasonable to remain voluntarily "underemployed" in order to work full time on self-representation without any hope of the type of regular remuneration achievable through seeking traditional employment elsewhere. *See Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 32 ("employment which may outwardly appear to be involuntary may, in reality, be voluntary and treated accordingly.") *citing In re Marriage of Barnard*, 669 N.E.2d 726, 730 (Ill. Ct. App.1996); *Little v. Little* 975 P.2d 108, 113 (Ariz.,1999) ("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 preference of a parent.") (internal quotation marks omitted). Any potential monetary benefit a favorable decision in this case may result in for Jean would not make her decision to remain "underemployed" any more reasonable. Under the Guam Child Support Guidelines whether or not an activity constitutes "reasonable cause" to remain unemployed or under underemployed is determined in light of the duty of *both* parents to contribute financially to the raising of the children, regardless of any contribution (or lack thereof) from the other parent. 5 GCA § 34118; 19 GAR § 1203(a)(5); *Maloney v. Maloney*, 969 P.2d 1148, 1152 (Alaska 1998); *Bullard v. Briem*, 969 S.W.2d 880, 883 (Mo. Ct. App. 1998).

[43] We hold that the trial court's finding of voluntary unemployment is appropriate despite the time Jean devotes to self-representation. Given a parent's duty to financially provide for

one's children, it is not reasonable for a parent to choose to remain unemployed in order to devote time to self-representation.

3. Earning Capacity

[44] We must now consider whether the trial court abused its discretion in determining Jean's earning capacity. Darius argues that the trial court abused its discretion by refusing to impute an income higher than $24,000.00 annually and further argues that the court was mistaken when it stated that Darius had not presented sufficient evidence of Jean's earning capacity. Appellant's Br. at 28-30 (Mar. 16, 2009).

[45] Under 19 GAR § 1203(a)(5), we interpret earning capacity to be the "amount of income [a parent] would earn by making all reasonable voluntary efforts to maximize income." Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 2.04[c] at 2-86. Generally, courts focus on the following factors in totality to determine earning capacity: 1) work and earnings history; 2) educational background; 3) specific occupational qualifications; 4) specific physical and mental condition; 5) prevailing employment opportunities and prevailing wages in the particular geographic area of the parent. Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 2.04[c] at 2-86 through 2-91; *see also Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 32.

[46] Being out of the workplace for several years significantly diminishes a parent's earning capacity. *See, e.g., Woolsey v. Woolsey*, 904 S.W.2d 95, 99-100 (Mo. Ct. App. 1995) (fact that mother had been out of the workforce for thirteen years and was no longer licensed in her field supported trial court's imputation of an income not higher than $1,000.00 per month); *In re Donovan*, 871 A.2d 30, 35 (N.H. 2005) (responding to a claim that custodial parent could obtain employment as a bookkeeper, the court found that such a claim was speculation and that earning

capacity was depressed from homeschooling children, which prevented pursuit of full-time employment).

[47] Although educational background is relevant, it must be viewed in light of work history and current employment opportunities in the parent's geographical area. *See, e.g., Gilchrist v. Gilchrist*, 660 So. 2d 1005, 1006-07 (Ala. Civ. App. 1995) (lower court erred by imputing income as a registered nurse when mother failed a qualifying exam to work that particular position); *Haflich v. Haflich*, 123 P.3d 698, 704-08 (Haw. Ct. App. 2005) (lower court erred by imputing income based on a job offer in Maine when the parent lived in Hawaii and no evidence was presented as to what type of job she could get in Hawaii.); *State Dep't of Health and Welfare ex rel State of Oregon v. Conley*, 971 P.2d 332, 338 (Idaho Ct. App. 1999) ("In determining whether a parent is voluntarily unemployed or underemployed and whether potential income should be imputed to that parent, the court must look to any or all of the following: employment potential and probable earnings level based on work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community."); *Dennis v. Whitney*, 844 A.2d 1267, 1268-70 (Pa. Super. Ct. 2004) (where father had never worked as an agricultural engineer, there were no jobs available in that field, and father worked as a farmer for nine years before child's birth, declining to impute income based on a degree in agricultural engineering was within the court's discretion); *In re Marriage of Peterson*, 906 P.2d 1009, 1011-12 (Wash. Ct. App. 1995) (It was error to impute a higher income of a traditional practicing attorney when father had "little experience in traditional legal practice").

[48] Moreover, before a court can equitably impute income to a parent, there needs to be competent, substantial evidence that the parent can indeed obtain a specific position given his or her present qualifications. *See, e.g., Wendel v. Wendel*, 805 So. 2d 913, 914 (Fla. Dist. Ct. App.

2001); *In re Marriage of Bardzik*, 83 Cal. Rptr. 3d 72, 85 (Cal. Ct. App. 2008). Such level of proof is necessary to support the underlying purposes of mandatory presumptions to curb discretion and promote uniformity in child support awards. *See In re Marriage of Bardzik*, 83 Cal. Rptr. 3d 72, 79 (Cal. Ct. App. 2008) ("*Without evidence* of ability or opportunity to earn the money, the power to impute income would easily devolve into a trial judge's power to arbitrarily establish a support order at any given level . . . .") (emphasis from original).

[49] Darius' CPA testified that Jean could get $50,000.00-$60,000.00 as a full time paralegal at a law firm, but he failed to introduce any evidence that the particular salary range was applicable to Hawaii, that there were any available paralegal positions, and that Jean could actually obtain a position as a paralegal at one of those firms. Darius' evidence of prevailing salaries for the "Forty-eight states, the Virgin Islands and the District of Columbia"[14] is not relevant to determining the prevailing salaries in Hawaii. *See, e.g.*, *Haflich v. Haflich*, 123 P.3d 698, 708 (Haw. Ct. App. 2005); *Durham v. Durham*, 74 P.3d 1230, 1233-34 (Wyo. 2003). Moreover, the compensation evidence that Darius submitted does not take into account the impact that being out of the work force for over ten years has on Jean's earning capacity. In fact, the National Utilization and Compensation Survey Report that Darius submitted states that "[t]he respondents have about 18 years of legal experience" which is not comparable to Jean's employment experience. ER at 117 (2008 Nat'l Utilization and Comp. Survey Rep.).

[50] The trial court considered that the starting salary for a government law clerk with a law degree was far below the salary cited by the CPA and found the CPA's calculations to be "inordinate." *See* ER at 56 (Finds. Fact & Concl. L., July 19, 2006). Given that Jean received a Bachelor's degree in economics in 1986; received a paralegal certificate in "1987 or 1988"; had

[14] ER at 117 (2008 Nat'l Utilization and Comp. Survey Report).

not been steadily employed since 1990; completed a year and a half of law school before withdrawing in 1992; and was completely out of the workforce since 1994, her earning capacity was clearly diminished. ER at 34-35 (Finds. Fact & Concl. L., July 19, 2006), *See, e.g.*, *Butt v. Schmidt*, 747 N.W.2d 566, 577 n.5 (Minn. 2008); *In re Donovan*, 871 A.2d 30, 35 (N.H. 2005); *Dennis v. Whitney*, 844 A.2d 1267, 1270 (Pa. Super. Ct. 2004).

[51] Contrary to Darius' assertions, having received a paralegal certificate in "1987 or 1988," being out of law school since 1992, and having only taken one and a half years of law school classes, does not automatically translate to being qualified to work as a paralegal. *Compare Walker v. Walker*, 936 S.W.2d 244, 248 (Mo. Ct. App. 1996) (evidence that husband could "weld a little" and that there were welding jobs available paying $7.00 per hour did not establish that he possessed the required qualifications for the advertised jobs); *In re Donovan*, 871 A.2d 30, 35 (N.H. 2005); *cf. Koeppel v. Holyszko*, 643 So. 2d 72, 74-75 (Fla. Dist. Ct. App. 1994) (court did not abuse its discretion by refusing to impute an income higher than minimum wage because although father was college educated, he had not worked in over ten years and thus the court did not have any employment history to consider.). The trial court, therefore, did not abuse its discretion in refusing to impute a higher income as a paralegal to Jean.

[52] However, the trial court abused its discretion in imputing income to Jean based on a part-time legal secretary at $24,000.00 absent evidence regarding (1) prevailing employment opportunities as a legal secretary, (2) prevailing wages for legal secretaries where Jean lives, and (3) whether or not Jean possesses the qualifications that the legal secretary positions require. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* § 2.04[c] at 2-86 through 2-91 & n.269; *see, e.g.*, *In re Marriage of Bardzik*, 83 Cal. Rptr. 3d 72, 85 (Cal. Ct. App. 2008); *Owen v. Owen*, 867 So. 2d 1222, 1223-24 (Fla. Dist. Ct. App. 2004) (insufficient

evidence to support level of imputation of income to mother when father provided only national median salaries for electrical engineers, and did not produce any evidence regarding the prevailing earnings level where the mother resided); *State v. Cunningham*, 200 P.3d 581, 584 (Or. Ct. App. 2009) (trial court erred in imputing income where "[t]he record [wa]s devoid of *any* evidence relating to prevailing job opportunities and earnings levels in the community for the type of work that father [wa]s qualified to do.") (emphasis from original).

[53] Moreover, the trial court abused its discretion in imputing a half-time salary absent a finding that Jean was incapable of working full-time or a finding that her circumstances are such that part-time employment would be for a "reasonable cause" under 1203(a)(5). *See, e.g., In re Marriage of Nelson*, 570 N.W.2d 103, 106 (Iowa 1997) (trial court did not abuse its discretion in considering part-time income rather than imputing a full-time income where mother's decision to stay home was reasonable); *Finn v. Finn*, 517 A.2d 317-319 (Me. 1986) (finding that husband could increase his efforts to find a full-time job was within the court's discretion); *In re Marriage of Dennison*, 132 P.3d 535, 539 (Mont. 2006) (lower court abused its discretion in failing to impute full time income to a mother who "could obtain full-time employment if she wished, and therefore, could earn significantly more income."); *Styka v. Styka*, 972 P.2d 16, 22-23 (N.M. Ct. App. 1998) (trial court abused its discretion in not imputing full-time income to mother who quit part-time job before divorce and did not try to find another job).

[54] Therefore, we remand the issue of Jean's earning capacity for findings consistent with this opinion and leave for the trial court to determine in the first instance whether part-time employment is due to a "reasonable cause" under section 1203(a)(5) of the Guam Administrative Rules and Regulations. We now review the trial court's allocation to Darius of the entire cost of the private school tuition.

C. Allocation of Private School Tuition

[55] Darius argues that the trial court abused its discretion when it assigned the entire cost of private school tuition to him. The trial court's allocation of private school costs was, however, based on an interpretation of the Guam Child Support Guidelines, which we review *de novo* and not for an abuse of discretion. *See Mendiola v. Bell*, 2009 Guam 15 ¶ 11 ("A trial judge's conclusions of law . . . are reviewed *de novo*."); *see, e.g.*, *J.L.P. v. V.L.A.*, 30 P.3d 590, 594 (Alaska 2001); *In re Marriage of Milano*, 936 P.2d 302, 303 (Kan. Ct. App. 1997). Section 1203(e)(2) of Title 19 of the Guam Administrative Rules and Regulations states:

> The total child support obligation shall be determined as follows . . . To the basic obligation, any of the following may be added by the court . . . . Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child when such expenses are incurred by agreement of both parents or ordered by the court . . . .

19 GAR § 1203(e)(2). The private school expenses are therefore added to the basic child support obligation and the refigured amount is the "total child support obligation." Regulation 1203(f) then explains how the "total child support obligation" is to be apportioned between the parents:

> The Total Child Support Obligation shall be divided between the parents in proportion to their Adjusted Gross Incomes. The obligation of each parent is computed by multiplying each parent's percentage of his/her Combined Adjusted Gross Income by the Total Child Support Obligation. The custodial parent shall be presumed to spend his or her share on the children.

19 GAR § 1203(f). A plain reading of regulations 1203(e) and (f) together provides that private school tuition is included in the "Total Child Support Obligation," which is then divided between the parents in proportion to their adjusted gross incomes. 19 GAR §§ 1203(e) and (f). Therefore, the trial court erred when it assigned all of the costs of private school expenses to Darius instead of adding the private school expenses to the basic child support obligation and dividing the resulting total child support obligation between the parents based on their respective

percentage of the combined adjusted gross income. The adjustment should be made when recalculating the Total Child Support Obligation on remand.

[56] We now turn to the denial of Darius' motion for reconsideration of the order establishing the amount of child support and spousal support arrears.

D. Arrears

[57] Darius argues that, "[w]hen the Court determined that [Jean] had chosen not to work, it was an abuse of discretion not to reevaluate all child support arrears." Appellant's Br. at 28. Darius does not direct this court to anything in the record demonstrating that he previously requested the trial court to retroactively impute a higher income to Jean and credit such imputation to "all" of his child support arrears. Darius appears to argue, implicitly, that the trial court abused its discretion in not, sua sponte, retroactively imputing income and crediting this amount to his arrears. No supporting legal authority for this argument is provided.

[58] Moreover, Darius only appealed the August 12, 2008 Order, which set the amount of arrears, and the court's November 2008 Order, which established the amount of support effective on August 1, 2008 and denied the motion for reconsideration of the arrearages. Child support orders are final judgments. 5 GCA § 34107(b) (2005); *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 5. Darius did not appeal the former support orders that established the pre-August 1, 2008 amounts for child support and created the basis for the arrearages. Therefore, claim preclusion bars Darius from requesting the trial court to essentially rewrite past due support orders; Darius may not now attempt to collaterally attack the pre-August 1, 2008 judgments by challenging arrearages that accrued under these previous support orders. *See* 6 GCA § 4209 (2005) (maintaining finality of judgments); *In re Marriage of Stier*, 223 Cal. Rptr. 599, (Cal. App. 1986) (applying statute with the same language as 6 GCA § 4209 to cover principles of both claim

preclusion and impermissible collateral attack in division of property case); *see generally Campbell v. Campbell*, 827 So. 2d 111, 114 (Ala. Civ. App. 2002) (concluding that father's contention that the trial court should have credited to his arrearages payments made directly to his daughter amounted to an impermissible collateral attack upon the trial court's previous judgment.); *Lyons v. Sloop*, 40 S.W.3d 1, 9 (Mo. Ct. App. 2001) (finding impermissible collateral attack on appeal of former judgment that was final on the matter of father's child support obligation); *Tamez v. Tamez*, 822 S.W.2d 688, 692 (Tex. App. 1991) (parent's failure to appeal from prior child support orders precluded his ability to challenge liability under subsequent order to pay arrearages.); *Stein v. Stein*, 800 A.2d 460, 462 (Vt. 2002) (father could not later attack validity of the child support guidelines used to establish his child support obligation in a subsequent enforcement action "given his failure to appeal the original final child support order; it constitutes a collateral attack on that order barred by the principles of [claim preclusion].").[15]

[59] Darius does not distinguish between the standard of review for a denial of a motion for reconsideration and the standard of review for the underlying order determining arrears. Appellant's Br. at 30-31. Darius simply argues that the trial court "erred" in refusing to credit certain checks to his arrears. *Id.* Denial of a motion for reconsideration is reviewed for an abuse of discretion. *Quitugua v. Flores*, 2004 Guam 19 ¶ 12. The trial judge's legal reasons for denying certain checks to be credited to arrearages are reviewed *de novo. See Mendiola v. Bell*, 2009 Guam 15 ¶ 11.

[15] Federal law also prohibits retroactive modification of child support arrearages once the order is due and owing. 42 U.S.C. § 666(a)(9)(C); 45 C.F.R. §§ 303.106(a)(1) and (3) (1989).

[60] The trial court, in its order denying Darius' motion for reconsideration, found that the payments were: "(1) payments made prior to entry of court orders, (2) tuition payments to [private school] and (3) payments not made to the defendant directly and claimed in lieu of child support." ER at 277 (Nov. 2008 Order). Darius maintains that certain checks amounting to $2,810.21, which were written and drawn by Jean from Darius' bank account in 2001, as well as a check in the amount of $443.50 that Darius made to Jean in 2007, should be credited against his arrears. Appellant's Br. at 30-31. However, Darius has neither cited any legal authority to support these assertions nor provided this court with the dates of the checks. Darius has also failed to specify which checks were discredited by the trial court. Therefore, Darius has not demonstrated that the trial court abused its discretion in denying his motion for reconsideration and has failed to show that the trial court erred in its original order calculating child support arrearages. *See* Guam R. App. P. 13(a)(9)(A), (B); *McGhee v. McGhee*, 2008 Guam 17 ¶ 9; *see, e.g.*, *Stonecipher v. Stonecipher*, 963 P.2d 1168, 1173 (Idaho, 1998) (refusing to consider on appeal claim of lower court's error in denying credit to arrearages where parent presented his argument without authority).

IV. CONCLUSION

[61] To meet the requirements of an "actual needs" deviation under section 1202(c)(2) of Title 19 of the Guam Administrative Rules and Regulations, a parent must demonstrate that the reasons for deviation are based on 1) factors not already accounted for by the Guam Child Support Guidelines or 2) that the child's or children's circumstances do not fall within the "presumed average needs" that the Guam Child Support Guidelines cover. Sufficient evidence must be presented at the time of the hearing to prove that the actual needs of the child are in excess of the presumed average needs in order to overcome the presumption. Since the Guam

Child Support Guidelines include the costs of shelter, food, food away from home, utilities, clothing and transportation, the trial court erred as a matter of law when it recalculated these expenses based on "actual cost[s]" warranting an upward deviation absent a preliminary finding that the children or their circumstances were significantly different from those of the average child. However, we remand the issue of whether entertainment, extracurricular activities and internet fall within "miscellaneous" and/or "recreation."

[62] We affirm the trial court's decision not to impute income to Jean based on an earning capacity as a paralegal. However, it was an abuse of discretion for the trial court to impute income based on earnings as a part time legal secretary at $24,000.00 per annum absent competent, substantial evidence that Jean could obtain a legal secretary position, that she was incapable of working full-time, or that part-time employment was for a "reasonable cause" under 19 GCA § 1203(a)(5).

[63] Moreover, we find that the trial court did not abuse its discretion in finding Jean's unemployment to be voluntary. Under the *Moylan* balancing test, it was reasonable for the trial court to conclude that Jean's unemployment adversely impacts the welfare of her children and that caring for her school-aged children is not a "reasonable cause" for unemployment.

[64] Under the *Moylan* balancing test, time devoted to self-representation is not a reasonable cause for unemployment.

[65] The trial court also misapplied sections 1203(e) and 1203(f) of Title 19 of the Guam Administrative Rules and Regulations when it assigned all of the costs of private school to Darius. Regulations 1203(e) and (f) require the court to add private school costs to the basic child support obligation and divide the resulting total child support obligation between the parents based on their respective percentage of the combined adjusted gross income.

[66] Finally, Darius' failure to appeal the original orders setting child support precludes his ability to collaterally challenge the child support amounts on which the arrearages were based. On appeal, Darius failed to demonstrate that the trial court erred in disallowing certain checks to be credited to Darius' arrearages.

[67] The decisions of the trial court are **AFFIRMED** in part and **REVERSED** in part.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Richard H. Benson**
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice