



LOUISIANA STATE LAW INSTITUTE

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March 18, 2013

Representative Chuck Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR NO. 140 of 2012

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 House Concurrent Resolution No. 140, relative to dual paternity and child support.

Sincerely,

A handwritten signature in black ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

cc: Representative Neil C. Abramson

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us

LOUISIANA STATE LAW INSTITUTE

Marriage-Persons Committee

**Interim Report to the Louisiana Legislature
In Response to HCR 140 of the 2012 Regular Session Relative to
Dual Paternity and Child Support**

Prepared for the Louisiana Legislature on

March 18, 2013

Baton Rouge, LA

Katherine S. Spaht, Reporter

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March 18, 2013

To: Representative Chuck Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804-9602

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, LA 70804

From: Katherine Spaht, Reporter
Marriage-Persons Committee of the Louisiana State Law Institute

**Interim Report to the Louisiana Legislature
In Response to HCR 140 of the 2012 Regular Session Relative to
Dual Paternity and Child Support**

During the meetings of the Child Support Review Committee prior to the 2012 Regular Session of the Legislature, one of the topics reviewed for potential legislation was the proper treatment of the issue of dual paternity for purposes of application of the child support guidelines. Upon the enactment of the new Civil Code Articles on filiation in 2006 the existence of dual paternity was legislatively recognized and its principles contained in Civil Code Articles 197 and 198. There is a paucity of appellate jurisprudence (contained in a memo attached to this report entitled *Allocation of Child Support Between Legal and Biological Father, Revised March 4, 2013*) applying the child support guidelines to instances of dual paternity. The fact that there is more than a single possibility to consider when deciding the amount of child support due to a child who has both a presumed and biological father recognized under the law, the committee established by La. R.S. 9:315.16 concluded that the subject matter should be studied by the Marriage-Persons Committee. The concern of that statutory Committee in 2012 about how to apply the universally applicable principles of dual paternity to child support also extended to the application of dual paternity to other legal issues such as wrongful death actions, intergenerational support, intestate inheritance, parental authority, and tutorship. The concern expressed was that legislation which resolved the application of principles of dual paternity to child support guidelines might create inferences for other legal issues for which there is no specific legislation. These concerns prompted the introduction and passage of HCR 140 of the 2012 Regular Session, which is attached to this report.

The Marriage-Persons Committee began deliberations with the understood assumption that both the presumed and the biological father, legally recognized as such by applying the principles of Civil Code Articles 197 and 198, shall be responsible with the mother to the child for support under the guidelines. The question becomes, liable *in*

solido or jointly, and to what extent? Even with solidary liability there may be different measures of responsibility. Should one of the two fathers bear primary responsibility, and if so, who? Should that *primary* responsibility be to the child or only as between the two fathers? Necessarily, procedural issues arise depending upon the choice of how the responsibility of the two fathers is to be shared. Those procedural questions may ultimately result in a reexamination by the Committee of earlier decisions concerning the type and scope of the fathers' shared responsibility. Furthermore, with more time and discussion there may be additional questions that arise. The discussions of the Committee have just begun to take shape addressing all of the issues that need to be thoroughly vetted. Only one principal decision has been made by the Committee and it follows:

that the issue of dual paternity in the application of child support guidelines should be resolved by legislation and whatever statutory solution is proposed by the Marriage-Persons Committee it should apply ONLY to the child support guidelines and not to other substantive areas of the law, such as tort or succession law, that may be affected by the issue of dual paternity.

Respectfully submitted,

Katherine Shaw Spaht
Reporter
Marriage-Persons Committee
Louisiana State Law Institute

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 140

BY REPRESENTATIVE ABRAMSON

A CONCURRENT RESOLUTION

To authorize and request the Louisiana State Law Institute to study the potential impact of creating a child support calculation system in cases of "dual paternity" on other areas of the law and to report its findings and recommendations in the form of specific proposed legislation at least sixty days prior to the convening of the 2013 Regular Session of the Legislature of Louisiana.

WHEREAS, in accordance with the provisions of R.S. 9:315.16, the child support guidelines were reviewed by the Child Support Review Committee; and

WHEREAS, the committee considered the subject matter of the application of the guidelines to instances of dual paternity, now legislatively provided for in Articles 197 and 198 of the Civil Code; and

WHEREAS, as part of the research memorandum on the subject, the committee examined and discussed the few appellate cases in which the court applied the guidelines when the child had two legally recognized fathers; and

WHEREAS, the committee was satisfied that the judiciary properly applied the guidelines by considering the income of all three parents resulting in a proportionate responsibility for each, as in *State v. Wilson*, 855 So.2d 913 (La. App. 2nd Cir. 2003); and

WHEREAS, issues presented by "dual paternity" extend beyond child support to such areas of the law as parental authority, tutorship, alimentary obligation owed by ascendants to descendants over the age of eighteen, wrongful death and survival actions, immunity from suit, bars to suit, and successions; and

WHEREAS, the impact of providing specifically by statute for "dual paternity" in child support cases but not in other areas of the law could create results by implication; and

WHEREAS, since the charge of the Child Support Review Committee is to study the child support guidelines and make recommendations for modification and the charge of the Marriage and Persons Committee is to consider all other areas of the law impacted by "dual paternity", the review and consideration of both committees is desirable.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby request that the Louisiana State Law Institute Marriage and Persons Advisory Committee consider statutory proposals in the areas of the law in which "dual paternity" may have an impact not otherwise resolvable and to make specific recommendations for legislation.

BE IT FURTHER RESOLVED that the Marriage and Persons Advisory Committee report its findings to the Child Support Review Committee at least sixty days prior to presentation of the Marriage and Persons Committee report to the legislature.

BE IT FURTHER RESOLVED that the committee report its findings and recommendations in the form of specific proposed legislation to the legislature at least sixty days prior to the beginning of the 2013 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the Marriage and Persons Advisory Committee of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

Allocation of Child Support Between Legal and Biological Father REVISED March 4, 2013

In *Smith v. Cole*, 553 So.2d 847, (La. 1989), the Louisiana Supreme Court held that:

"The issue is whether a biological father is obligated to provide support for his child notwithstanding the child was conceived or born during the mother's marriage to another person and thus the legitimate child of that other person. . . . The court of appeal, applying the concept of dual paternity, held a biological father has an obligation to support his child. . . . 541 So.2d 307 (La.App. 5th Cir.1989). We affirm." [553 So.2d 847, at p. 848.]

* * *

"The [Civil Code] Article 184 [legal] presumption [of paternity] will not be extended beyond its useful sphere. The presumption was intended to protect innocent children from the stigma attached to illegitimacy and to prevent case-by-case determinations of paternity. It was not intended to shield biological fathers from their support obligations. Cf. State, through DHHR v. Hinton, supra; State in interest of Poche v. Poche, supra; State in interest of Guillory v. Guillory, supra. The presumed father's acceptance of paternal responsibilities, either by intent or default, does not enure 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. Starks v. Powell, supra. They are also criminally responsible for their support. LSA-R.S. 46:236.1(F); State, through DHHR v. Hinton, supra; State in interest of Guillory v. Guillory, supra; see also Malek v. Yekani-Fard, supra, and State v. Jones, 481 So.2d 598 (La.1986)." [553 So.2d 847, at p. 854.]

* * *

"In summary, Louisiana law may provide the presumption that the husband of the mother is the legal father of her child while it recognizes a biological father's actual paternity. When the presumptive father does not timely disavow paternity, he becomes the legal father. A filiation action brought on behalf of the child, then, merely establishes the biological fact of paternity. The filiation action does not bastardize the child or otherwise affect the child's legitimacy status. The result here is that the biological father and the mother share the support obligations of the child.

The question of whether the "legal" father in this case also shares the support obligation is not before the court. We decline for now to hold the legal

father will, in all factual contexts, be made to share the support obligations with the biological father and the mother." [553 So.2d 847, at pp. 854-855.]

As a result of **Smith v. Cole**, the biological father of a child shares responsibility with the mother of the child for supporting their child. See also, *State v. Howard*, 898 So.2d 443 (La.App. 1 Cir. 2004); *State v. Washington*, 747 So.2d 1245 (La.App. 2 Cir. 1999); *State v. Guichard*, 655 So.2d 1371 (La.App. 1 Cir. 1995); *State v. Williams*, 605 So.2d 7 (La.App. 2 Cir. 1992); and *State v. Poche*, 368 So.2d 175 (La.App. 4 Cir. 1979).

Although the court in **Smith v. Cole** declined to consider the support obligation of the legal father, the Court of Appeal, Second Circuit, considered this issue in **State v. Drew**, No. 46,337-CA, June 29, 2011:

"In the summer of 2003, Marion Drew, Jr. [legal father], and Lasheka Drew [mother] began a relationship. After Lasheka became pregnant, she and Marion married on December 13, 2003. Six months later, on June 14, 2004, K.D. was born; Marion signed the certificate of live birth as the father of the child. Over three years later, on November 7, 2007, Marion and Lasheka Drew were divorced. The petition for divorce was filed by Marion and in it he alleged that one child was born of the marriage, namely K.D. Nothing was said concerning custody or support." No. 46,337-CA, p. 2.

* * *

"In 2008, Lasheka Drew, the mother of the child, applied for and accepted public assistance from Medicaid. On April 18, 2008, the State of Louisiana, Department of Social Services, Offices of Family Support ("the State"), filed a rule against Marion Thomas Drew, Jr., to establish support on behalf of the minor child. **When Lasheka gave birth to the child, she was married to Drew. La. C.C. art 185 provides that the husband of the mother is presumed to be the father of a child born during the marriage or within 300 days from the date of the termination of the marriage. Marion and Lasheka were divorced on November 7, 2007. Thus, paternity was established by operation of law. On June 6, 2008, Drew was ordered to pay support for the child in the amount of \$489.30 monthly to the Department of Social Services. At this time Drew requested DNA testing. The test results showed that Drew was *not* the biological father of the child.**" No. 46,337-CA, p. 1.

* * *

"At the hearing to disavow paternity, Drew testified that he did not question his biological relationship with the child until the child support rule was filed in April 2008. . . . Lasheka testified that she genuinely believed Marion was K.D.'s biological father. . . . They both testified that K.D.'s conception was a major factor in their decision to get married." No. 46,337-CA, pp. 2-3.

* * *

"The husband of the mother is ***presumed to be the father of a child born during the marriage*** or within three hundred days from the date of the ***termination*** of the marriage. La. C.C. art. 185. (Emphasis added). The husband may disavow paternity of the child by clear and convincing evidence that he is

not the father. The testimony of the husband shall be corroborated by other evidence. La. C.C. art. 187. The time limit for a disavowal by the husband can be found in La. C.C. art. 189, which provides that the action for disavowal of paternity is subject to the liberative prescription of **one year**. This prescription commences to run from the day the husband **learns or should have learned of the birth of the child**. (Emphasis added).

Marion and Lasheka were married on December 13, 2003. The minor child, K.D., was born during that marriage on June 14, 2004. The parties were divorced on November 7, 2007.² Since Marion was the husband of K.D.'s mother, Lasheka Drew, when K.D. was born, **Marion is clearly the presumed father. The only way to disestablish paternity when paternity is presumed is through the disavowal action.**" No. 46,337-CA, p. 3.

* * *

"... The record shows that Drew was at the hospital when K.D. was born. He signed K.D.'s certificate of live birth and is listed as his father. Therefore, Drew knew of K.D.'s birth when he was born on June 14, 2004. Over three years after K.D.'s birth, well past the one-year prescriptive period, Marion and Lasheka Drew divorced. **Marion Drew never during that time instituted an action to disavow paternity; however, the record shows that he never believed that K.D. was not his child.** Only when the state filed a rule for child support in April 2008, did Marion begin to question his biological relationship to the minor child. Marion asked for DNA testing when he agreed to an order for payment of support on June 6, 2008. The petition to annul acknowledgment of paternity and amended petition to disavow paternity were not filed until July 15, 2009, and October 27, 2009, respectively, each over four years after K.D.'s birth and more than one year after Drew first questioned filiation. We note that the DNA test results were rendered on October 31, 2008, and thereafter mailed to both Lasheka and Drew.

In *Modisette v. Phillips*, 31,905, (La. App. 2d Cir. 05/05/99), 736 So. 2d 983, 987, this court said:

The legal tie of paternity will not be affected by subsequent proof of the child's actual biological tie. . . If the presumed father fails to bring a timely disavowal action, disavowal is barred by prescription, and the presumption of paternity is irrebuttable. In the case *sub judice*, Mr. Smith failed to file a timely disavowal action and he is, therefore, the legal father of the child. Furthermore, the fact that (another man) has been proven to be the child's biological father does not affect Mr. Smith's status. (Citations omitted)." No. 46,337-CA, p. 4.

* * *

"Drew cites La. R.S. 9:392(A)(7)(b), which states that acknowledgment of paternity may be voided only upon proof, by clear and convincing evidence, that such act was induced by fraud, duress, material mistake of fact or error, or that the alleged father. . . is not the biological

father. The acknowledgment referred to in this article involves an authentic act of acknowledgment and not the signing of a birth certificate. The trial court correctly found that there was no authentic act of acknowledgment shown.

Drew further relies upon *Faucheux v. Faucheux*, 00-20 (La. App. 5th Cir. 10/31/00), 772 So. 2d 237. However, in *Faucheux*, the child was born before the parties were married, and the acknowledgment was after marriage and by authentic act. *Faucheux* is clearly distinguishable from the present case. Drew was the husband of K.D.'s mother when K.D. was born. Therefore, he is the presumed father, and as a result, there was never a need for an acknowledgment. A certificate of live birth, however, is only a record of birth. It is not an acknowledgment; an acknowledgment is a separate act with its own specific requirements, see La. R.S. 9:392, or it is a *subsequent signing* of a birth certificate acknowledging paternity of a child born illegitimately, see La. C.C. art. 196. An acknowledgment is used when a man marries a woman who has already given birth to an illegitimate child prior to the marriage for the purpose of legitimating that child. *Id.* Since there was no acknowledgment and Drew is the presumed father, the prescriptive period for null acknowledgments does not apply.

The Louisiana legislature has decided through La. C.C. art. 189 that prescription runs from the date the presumed father learned of or should have learned of the "birth" of the child. The statute is clear and unambiguous.

In *Gallo v. Gallo*, 03-0794 (La. 12/03/03), 861 So. 2d 168, 173-74, the Louisiana Supreme Court elaborated on the purpose of the presumption of paternity and the applicable time period for bringing the action found in La. C.C. arts. 185, 187, and 189. The Louisiana Supreme Court stated:

The policy embodied in the restrictive provisions of the Louisiana Civil Code dealing with the action to disavow is to protect innocent children, born during marriage, against scandalous attacks upon their paternity by the husband of the mother, who may be seeking to avoid paternal obligations to the child. Thus, the traditional and historical position of Louisiana jurisprudence was to zealously guard and enforce the presumption created by Article 18[5]. The fundamental ends achieved by such court action were preservation of the family unit, avoidance of the stigma of illegitimacy, and aversion to the disinheritance that resulted from a successful disavowal action. There is a public interest in dispelling doubts as to legitimacy which demands the establishment of a relatively short time for bringing challenges. (Citations omitted).

Further evidence of the legislature's continued intent to protect children over the husband's interest is the repeal of La. R.S. 9:305. Former La. R.S. 9:305(1) provided:

Notwithstanding the provisions of Civil Code Art. 189 and for the sole purpose of determining the proper payor in child support cases, if the husband, or the legal father who is presumed to be the father of the child, erroneously believed, because of misrepresentation, fraud, or deception by the mother, that he was the father of the child, then the time for filing suit for disavowal of paternity shall be suspended during the period of such erroneous belief or for ten years, whichever ends first.

Fontenot v. Fontenot, 00-1057, (La. App. 3d Cir. 12/06/00), 774 So. 2d 330. La. R.S. 9:305(1) was repealed by the legislature by Acts 2006, No. 344, §7, effective June 13, 2006.

Under former La. R.S. 9:305(1), if Marion Drew could prove misrepresentation, fraud, or deception, prescription would have been suspended during the time that he did not know K.D. was not his child. However, it is clear that the legislature had conceived of situations such as Drew's, and the legislature repealed the statute. Further, as ruled by the trial court, we agree that the evidence did not support a finding of misrepresentation, fraud or deception.

Conclusion

For the foregoing reasons, the judgment of the trial court granting the exception of prescription concerning the disavowal action is affirmed. Costs are assessed to appellant, Marion Thomas Drew, Jr." No. 46,337-CA, pp. 6-8.

For cases similar to ***State v. Drew***, see *J.M.Y. v. R.R.*, 1 So.3d 725 (La.App. 3 Cir. 2008); *Smith v. Smith*, 672 So.2d 1075 (La.App. 4 Cir. 1996); and *Smith v. Dison*, 662 So.2d 90 (La.App. 4 Cir. 1995).

***State v. Reed*, 52 So.3d 145 (La.App. 5 Cir. 2010)**, is a recent case which attempted to allocate child support between the mother, the legal presumptive father, and the biological father of a child. The court of appeals remanded the case to the trial court because the record was devoid of competent evidence to make a proper child support determination:

". . . the State of Louisiana, . . . appeals the juvenile court judge's calculation of child support from a biological father in a 'dual paternity' situation. For the following reasons, we reverse and remand. [52 So.3d 145, at p. 146.]

* * *

"In its sole assignment of error, the State argues that the juvenile court judge erred, as a matter of law, in the methodology used to calculate the child support obligation of a biological father in a 'dual paternity' situation. We agree.

'The husband of the mother is presumed to be the father of all children born during the marriage...' La. C.C. art. 185. **A child does, however, have standing to bring a filiation proceeding against her biological father, despite the existence of a presumptive father. La. C.C. art. 197; *Griffin v. Succession of Branch*, 479 So.2d 324 (La. 1985).**

This filiation proceeding does not illegitimate the child, but rather establishes both the child's legal and biological father, which is referred to as 'dual paternity.' *Smith v. Cole*, 553 So.2d 847 (La. 1989)." [52 So.3d 145, at pp. 146-147.]

* * *

"Additionally, La. R.S. 46:236.1(F) gives the State of Louisiana, Department of Social Services standing, under certain circumstances, to bring an action to establish paternity and fix child support. Specifically, the statute authorizes the State to:

... take direct civil action, including actions to establish filiation against an alleged biological parent notwithstanding the existence of a legal presumption that another person is the parent of the child solely for the purpose of fulfilling its responsibility under this Section... A separate and distinct cause of action in favor of the department is hereby created, and suits brought under this provision need not be ancillary to or dependent upon any other legal proceeding.

This statute allows DSS to prove the biological paternity of a child solely for the purposes of acquiring support for the child. *T.D. v. M.M.M.*, 98-0167 (La. 3/2/99), 730So.2d 873, 881-882." [52 So.3d 145, at p. 147.]

* * *

"The trial court's discretion in setting the amount of child support is structured and limited. *State ex rel. D.F. v. L.T.*, 05-1965 (La. 7/6/06), 934 So.2d 687, 690 (citations omitted). **This obligation must be administered and fairly apportioned between parents in their mutual financial responsibility for their children; toward that end, guidelines balance the needs of children with the means available to parents. *Id.*** The standard of review in a child support case is manifest error. Generally, an appellate court will not disturb a child support order unless there is an abuse of discretion or manifest error. *Id.* (citations omitted).

The Guidelines for Determination of Child Support are set forth in La. R.S. 9:315, et seq. ("Guidelines"). In La. R.S. 9:315(A), the Louisiana Legislature set forth the basic principles of the Guidelines as follows:

The premise of these guidelines as well as the provisions of the Civil Code is that child support is a continuous obligation of both parents, children are entitled to share in the current income of both parents, and children should not be the economic victims of divorce or out-of-wedlock birth.

The guidelines mandate that each party provide the Court with proof of his or her income. La. R.S. 9:315.2(A) states:

Each party shall provide to the court a verified income statement showing gross income and adjusted gross income, together with documentation of current and past earnings. Suitable documentation of current earnings shall include but not be limited to pay stubs, employer statements, or receipts and expenses if self-employed. The documentation shall include a copy of the party's most recent federal tax return. A copy of the statement and documentation shall be provided to the other party. [Emphasis added.]

In cases where the record contains inadequate information and documentation upon which to make a child support determination under the guidelines, a remand to the trial court is necessary. *Inzinna v. Acosta*, 623 So.2d 1357, 1359 (La.App. 5th Cir. 1993).

In this situation, which does present a matter of first impression for this Circuit, we would be inclined to render a support order to bring a certain amount of closure to this situation.² Unfortunately, the record is devoid of competent evidence necessary to make a proper child support determination under the guidelines.

Here, the exhibit list³ includes two paycheck stubs from the mother, an unauthenticated list of bank deposits for the biological father, two different LASES worksheets, and a 1099 form for the biological father. It is unclear how the trial judge came upon the amount of income imputed to the legal father. Further, based on the numerous documents listing income for the biological father, it is unclear how the trial judge decided upon the amount of income imputed to him.

The trial court's discretion in setting the amount of child support is structured and limited. *State ex rel. D.F. v. L.T.*, 05-1965 (La. 7/6/06), 934 So.2d 687, 690 (citations omitted). La. R.S. 9:315.2(A) clearly states:

Each party shall provide to the court a verified income statement showing gross income and adjusted gross income, together with documentation of current and past earnings. Suitable documentation of current earnings shall include but not be limited to pay stubs, employer statements, or receipts and expenses if self-employed. The

documentation shall include a copy of the party's most recent federal tax return. A copy of the statement and documentation shall be provided to the other party. (Emphasis added).

Here, the juvenile court judge abused her limited discretion in calculating a child support award without verified income statements, including, but not limited to, paycheck stubs or employer statements and the most recent tax returns, i.e., 2009, from the mother, legal father, and biological father. Accordingly, we vacate the current award, reinstate the temporary support award, and remand to the juvenile court for a hearing to set child support in compliance with the guidelines, including, but not limited to La. R.S. 9:315.2(A).

REVERSED AND REMANDED [52 So.3d 145, at pp. 147-149.]

Relative to the allocation of child support between the mother, the legal father, and the biological father, *State v. Wilson, 855 So.2d 913 (La.App. 2 Cir. 2003)*, provides the best guidance. In this case, the court was required to allocate child support between the mother, the legal father, and the biological father of a child. The court held:

"Louisiana has a long line of jurisprudence recognizing a scenario where a child might have a *biological father as well as a legal presumptive father. The concept of "dual paternity" allows a child to seek support from the biological father notwithstanding that the child was conceived or born during the mother's marriage to another man, and therefore presumed to be the legitimate child of the marriage. State, Dept. of Social Services, Office of Family Support ex rel. Munson v. Washington, 32,550 (La. App. 2d Cir. 12/08/99), 747 So. 2d 1245, citing Warren v. Richard, 296 So. 2d 813 (La. 1974); State, Dept. of Social Services, Office of Family Support v. Williams, 605 So. 2d 7 (La. App. 2d Cir. 1992).*

Smith v. Cole, 553 So. 2d 847 (La. 1989) is the seminal case regarding the duty of a biological father in cases where another person is presumed to be the legal father. In *Smith*, the court reasoned that:

The presumed father's acceptance of paternal responsibilities, either by intent or default, does not enure 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. (Emphasis added).

Id. at 854.³ As we stated previously in *State ex rel Munson*, "[T]he presumption of paternity . . . is not intended to allow biological fathers to avoid their support obligation." *Id.* at 1247.

Additionally, La. R.S. 46:236.1(F)(1) empowers the State, under certain circumstances, as it did in the case *sub judice*, to file a suit to establish filiation and fix child support. Specifically, the statute authorizes the State to:

. . . take direct civil action, including actions to establish filiation against an alleged biological parent **notwithstanding the existence of a legal presumption that another person is the parent of the child solely for the purpose of fulfilling its responsibility under this Section . . .** A separate and distinct cause of action in favor of the department is hereby created, and suits brought under this provision need not be ancillary to or dependent upon any other legal proceeding. (Emphasis added).

The fact that Claude [biological father] has played no role in Carrie's [child's] life as her father is of no moment in the determination of whether he is responsible for her support. **The only pertinent determination is whether Claude is Carrie's biological father, which the DNA testing conclusively bears out. So considering, in this case, it is apparent that Claude, as Carrie's biological father is responsible for at least some share of Carrie's support.** See *Jones v. Rodrigue*, 2000-0899, 2000-0900 (La. App. 1st Cir. 11/03/00), 771 So. 2d 275. On this point the trial court did not err.

Nor do we find that the trial court erred in its determination of the amount of support for which Claude was responsible. At the conclusion of the hearing and after determining that Claude was responsible for a share of Carrie's support, the trial court contemplated various means for calculating that share. **Ultimately, the trial court combined the adjusted gross incomes of Claude and Hollis [legal father], and with that sum, along with Angela's [mother's] income, utilized Louisiana's child support guidelines⁴ to derive the paternal support obligation of \$519.88.⁵ To determine Claude's portion of support, the trial court compared Claude's and Hollis's percentage share of income, and determined that Claude was responsible for 65 percent of the paternal obligation, or \$339.00 per month. We do not believe this amount to be excessive, as argued by Claude.**

In considering the means for calculating Claude's support obligation, the trial court correctly noted that the actual calculation of child support in a dual paternity case is not addressed by the guidelines or in the jurisprudence. Notwithstanding the lack of statutory or jurisprudential guidance, we conclude that the trial court properly determined Claude's share of the paternal responsibility, and moreover, the calculation was performed in the spirit of the guidelines. Notably, La. R.S. 9:315.2 addresses the calculation of the basic child support obligations of mothers and fathers, and subsection C directs that "[t]he parties shall combine the amounts of their adjusted gross incomes. Each party shall then determine by percentage his or her proportionate share of the combined amount. The amount obtained for each party is his or her percentage share of the

combined adjusted gross income." Additionally, we have previously stated that "[c]hild support is to be granted in proportion to the needs of the children and the ability of the parents to provide support."⁶ *Reeves v. Reeves*, 36,259 (La. App. 2d Cir. 07/24/02), 823 So. 2d 1023, 1026. If the intent of the guidelines is to fairly apportion each parent's support obligation as to a mother and father by considering their proportionate incomes, we cannot see how a calculation similarly made where two fathers exist could not be concluded to be equally fair. Such a calculation was in keeping with the spirit of the guidelines. Thus, we conclude that the pro rata child support obligation assigned to Claude by the trial court was within its discretion and, moreover, not excessive.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed, with court costs being assessed to Claude Wilson.

AFFIRMED. [855 So.2d 913, at pp. 914-916.]

Footnote 5:

5. Specifically, this figure was derived by considering Angela's monthly income of \$1,680.00 and the monthly income of a "fictional father," i.e., a combination of Claude's and Hollis's incomes. The "fictional father's" monthly income was derived by taking the sum of Claude's monthly income of \$2,264.00 and Hollis's monthly income of \$1,209.00 for a total of \$3,473.00 a month. Using the combined monthly adjusted gross income of the parents (that being \$5,153.00) and considering the guidelines, the basic monthly child support obligation for Carrie was determined to be \$711.36. After adding in Carrie's health insurance premium, which Angela paid, the total child support obligation for Carrie came to \$771.36, of which the "fictional father" was responsible for 67.40 percent or \$519.88. [855 So.2d 913, at p. 915.]

CONCLUSION AND SUMMARY

Based upon the cases above, parents (the mother, the legal father, and the biological father) are obligated to support their child. Child support shall be allocated or granted in proportion to the needs of the child and the ability of the parents to provide support. See *State v. Wilson* and *State v. Reed* above.