

AUG 18 2016

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TONI L. HELLON  
CLERK, SUPERIOR COURT

ARIZONA SUPERIOR COURT, PIMA COUNTY

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HON. KEN SANDERS

CASE NO.

SP20151168

BRENDA M. ARMENTA  
Petitioner

BY: R. ST. GERMAINE, DEPUTY

DATE:

August 17, 2016

and

JESUS E. ELIZALDE  
Respondent

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## RULING

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### IN CHAMBERS UNDER ADVISEMENT RULING

On August 8, 2016, the Court took under advisement the issues of child support and attorney's fees.

Respondent is a musician who performs in the United States, as well as internationally, particularly in Mexico. According to his 2015 tax returns, Respondent reported \$11,200.00 in income, one-third less than he would have earned working full-time at minimum wage. (Exhibit D) In his 2015 tax returns, Respondent reported being paid by four (4) venues in the United States. (Exhibit D) At trial, however, Respondent acknowledged that he played numerous shows in 2015 throughout Mexico. While Respondent was not required to report income that he earned in Mexico on his U.S. taxes, he clearly made more than \$11,200.00 in 2015. Thus, Respondent's tax returns are essentially meaningless as they do not come close to reflecting his actual financial resources.

Respondent is the surviving brother of Valentin Elizalde ("Elizalde"), a famous and successful Spanish-language singer who was murdered years ago. The United States royalties from Elizalde's music sales and performances are deposited into Chase Bank account 7585. (Exhibit J) Respondent and his wife have exclusive access to that account. (Exhibit I) On February 20, 2015, \$148,416.75 was deposited into account 7585. Subsequently, Respondent and his wife made regular and significant cash withdrawals from and purchases with the funds in account 7585. Frequently, Respondent and his wife would each withdraw hundreds of dollars cash at a time in a single day. For example, in March 2015, Respondent and his wife withdrew \$35,000.00 from account 7585. They withdrew over \$41,000.00 in April 2015, over \$23,000.00 in September 2015, and \$10,000.00 in January 2016. (Exhibit 3)

Patricia Carrillo  
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## RULING

At trial, Respondent and his mother testified that the money used by Respondent and his wife constituted a loan. Respondent's mother testified that she and the family orally agreed to loan Respondent this money with no terms for repayment. In fact, Respondent has not repaid any of the tens of thousands of dollars he has used from account 7585. Moreover, it did not appear from the testimony of either Respondent or his mother that either of them was keeping track of just how much Respondent had thus far borrowed, or that there was an expectation of repayment by Respondent.

The Court finds the testimony of Respondent and his mother to be unpersuasive, self-serving, and lacking credibility. It is highly suspect that a loan would provide Respondent with unfettered and unchecked access to nearly \$150,000.00. The Court does not believe that Respondent's mother (or anyone else) would loan him Elizalde's royalties by providing Respondent and his wife with the only access to the account, without maintaining records of how much was allegedly borrowed, and without any expectations or arrangements for repayment. Respondent's unrestricted access to account 7585 was and continues to be a gift, not a loan. A valid *inter vivos* gift requires "donative intent, delivery, and the vesting of irrevocable title upon such delivery." *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). Respondent's exclusive and unlimited access to Elizalde's royalties, without expectation of repayment, evidences donative intent, delivery, and irrevocable title.

The Arizona Child Support Guidelines broadly define gross income. A.R.S. § 25-320, App., Arizona Child Support Guidelines ("Guidelines") § 5(A). Neither the Guidelines nor Section 25-320 "specify or limit the items that the court may consider in determining a parent's 'financial resources.'" *Cummings v. Cummings*, 182 Ariz. 383, 386, 897 P.2d 685, 688 (App. 1994). Accordingly, "[b]ecause the Guidelines are based on assumptions about spending patterns of families at various income levels, gross income for child support purposes is not determined by the gross income shown on the parties' income tax returns, but rather on the *actual money or cash-like benefits* received by the household which is *available for expenditures*." *Id.* at 385, 897 P.2d at 687 (emphasis added). "[I]ncome received in a lump sum is not necessarily excluded from gross income." *Milnovich v. Womack*, 236 Ariz. 612, 616, ¶ 14, 343 P.3d 924, 928 (App. 2015).

The Court finds that Respondent's unrestricted access to Elizalde's royalties, with no expectation of repayment, falls within the Guidelines' broad definition of gross income. Guidelines § 5(A). Such a finding is consistent with the underlying purpose of the Guidelines and is in the best interests of the child. *See Strait v. Strait*, 223 Ariz. 500, 502, ¶ 8, 224 P.2d 997, 999 (App. 2010) ("Generally, a court may order reasonable and



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necessary child support based upon the parents' financial resources, and may consider all aspects of a parent's income to ensure the award is just and based on the total financial resources of the parents") (internal quotations omitted).

Based on the foregoing, the Court finds that Respondent's gross income for 2015 was \$148,416.75. Determining Respondent's income for two months of 2013, all of 2014, and thus far in 2016, is more challenging. Account 7585 appears to have been opened in February of 2015. There have been no deposits into account 7585 since July of 2015. Pursuant to the Guidelines, however, the Court may attribute to Respondent income up to his earning capacity. Guidelines § 5(E).

For 2014, Elizalde's U.S. digital royalties totaled \$194,210.94. (Exhibit C) Roberto Perez testified, however, that that amount consisted of five (5) years of accumulated royalties and that the 2015 royalties more accurately reflected Elizalde's annual U.S. digital royalties. For the first half of 2015, Elizalde's U.S. digital royalties were \$42,862.49. (Exhibit C) Extrapolating for an annual total, Elizalde's royalties for 2015 would have been approximately \$85,724.98. The Court finds this to be a reasonable amount to attribute to Respondent as his earning capacity, given his unlimited access to Elizalde's U.S. royalties.

Respondent has never exercised any parenting time and has no intention of ever doing so. Pursuant to court orders from Mexico, Respondent pays approximately \$493.00 in child support for two additional children. Guidelines § 6(B). Respondent has an additional child with his current wife. In its discretion, the Court will not deduct any amount from Respondent's gross income for this additional child who is not covered by a court order. Guidelines § 6(D).

Regarding Petitioner, while the Court has income information for her from 2014 and onward, it has no information for 2013. The Court will attribute to Petitioner her 2014 income for 2013, or \$18,193.08. (Exhibit 11) For 2014, Petitioner paid her mother \$4,550.00 in childcare costs. In 2015, she paid her mother another \$2,970.00. (Exhibit 16) Beginning in April of 2015, Petitioner started the child part-time at Ocotillo Learning Center, and switched to full-time in September of 2015. (Exhibit 17) All told, Petitioner paid \$5,447.50 in child care for 2015. (Exhibits 16, 17) Petitioner's income in 2015 was \$35,440.00. (Exhibit 12) Currently, Petitioner earns \$18.83 per hour. (Exhibit 18)

There is no evidence Petitioner paid to provide medical insurance for the child in 2013, 2014, 2015, or thus far in 2016. Petitioner did testify that she anticipates paying \$125.00 per month to insure the child.

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Given, however, that Petitioner is not yet paying anything to insure the child, the Court will not credit her for any insurance costs. Guidelines § 9(A).

Based on the foregoing, and incorporating the attached Child Support Worksheets, the Court finds that Respondent owes past care and support for the following years and in the following amounts: 2013, \$1,706.00 (2 months); 2014, \$13,944.00 (12 months); 2015, \$17,880.00 (12 months); and 2016, \$9,088.00 (8 months). A.R.S. § 25-809(B). All told, Respondent's past care and support obligation from November 1, 2013, through August 31, 2016, is \$42,618.00. Respondent will be credited \$3,350.00 toward that obligation, for an adjusted past care and support obligation of \$39,268.00. Taking into consideration the accrual of interest, the Court finds that a monthly payment of \$500.00 is appropriate. Guidelines § 28(A). Respondent's current support obligation, effective September 1, 2016, is \$1,136.00.

Petitioner seeks an award of attorney's fees pursuant to A.R.S. § 25-324. Petitioner's request for attorney's fees is premised on the income disparity between the parties, as well as Respondent's failure to provide complete and accurate disclosure of his financial information.

The Court "may order a party to pay a reasonable amount" in attorney's fees and costs "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324(A). The purpose of § 25-324 is "to provide a remedy for the party least able to pay." *In re Marriage of Zale*, 193 Ariz. 246, 251, ¶ 20, 972 P.2d 230, 235 (1999). "[A]ttorney's fees under this statute [§ 25-324] are awarded to insure that the poorer party has the proper means to litigate the action ... not to punish litigants." *Garrett v. Garrett*, 140 Ariz. 564, 569-70, 683 P.2d 1166, 1171-72 (App. 1983).

In interpreting A.R.S. § 25-324(A), Arizona courts have held that "consideration for an award [of attorney's fees] has consistently rested solely on a comparison of the parties' resources." *Magee v. Magee*, 206 Ariz. 589, 591, ¶ 12, 81 P.3d 1048, 1050 (App. 2004). Thus, in order to qualify for consideration of an award of attorney's fees, "a spouse must establish some level of financial disparity; *i.e.*, that he or she is financially *poorer* than the other spouse, not that he or she is actually *poor*." *Id.* (Emphasis original). In other words, financial disparity is the threshold requirement for mere *eligibility* for an award of attorney's fees under A.R.S. § 25-324(A).

[R]elative financial disparity between the parties is the benchmark for eligibility. If the court finds such a disparity, it is then authorized to undertake its discretionary function of determining whether an award is appropriate.

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Judicial Administrative Assistant



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*Id.* at 593, ¶ 18, 81 P.3d at 1052.

As set forth above, there is a clear and dramatic income disparity with Respondent earning far more than Petitioner. As such, the Court finds Petitioner is eligible for attorney's fees.

The second consideration is the reasonableness of Respondent's position throughout the proceedings. A.R.S. § 25-324(A). A litigant's reasonableness is evaluated by an objective standard. *In re Marriage of Williams*, 219 Ariz. 546, 548 ¶10, 200 P.3d 1043, 1046 (App. 2008). Respondent's failure to fully disclose his financial information was objectively unreasonable. Rule 49(C)(2), Ariz.R.Fam.L.Pro. (In a case involving child support, parties shall disclose, *inter alia*, "proof of income of the party from *all* sources")(Emphasis added). The Court finds that Respondent was seeking to shirk his legal obligation to support his child by underreporting his income and withholding evidence. Rule 65 (D), Ariz.R.Fam.L.Pro. ("A party's ... knowing failure to timely disclose damaging or unfavorable information ... shall be grounds for imposition of sanctions, in the court's discretion, up to and including dismissal of the claim or defense"). Respondent's attempted avoidance of his support obligation was also objectively unreasonable. *See* A.R.S. § 25-501(A) ("[E]very person has the duty to provide reasonable support for that person's ... children"); *see also* A.R.S. § 25-501(C) ("The obligation to pay child support is primary and all other financial obligations are secondary").

Based on the foregoing, the Court finds Petitioner is entitled to an award for all of her attorney's fees and costs incurred in litigating this matter.

### **IT IS THEREFORE ORDERED** as follows:

1. Respondent owes past care and support in the amount of **\$39,268.00**.
2. Judgment is entered against Jesus Elizalde and in favor of Brenda Armenta in the amount of **\$39,268.00**, with interest to accrue at the statutory rate. A.R.S. § 25-510(E).
3. Respondent shall pay **\$500.00** per month toward his past care and support obligation until it is paid in full.
4. Respondent shall pay **\$1,136.00** in current child support, effective September 1, 2016.
5. Child support payments are due at the beginning of each month and are delinquent at the end of the month.
6. Until such time as an Income Withholding Order takes effect, Respondent is responsible for making

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child support payments directly to the Clearinghouse at the following address: Support Payment Clearinghouse, P.O. Box 52107, Phoenix, AZ 85072, with notation of the Atlas Number. To obtain the Atlas Number for this case, Respondent shall contact the Clerk of the Court, Child Support Unit at (520) 724-3250. Respondent shall notify the Clerk of the Court (110 W. Congress), Tucson AZ 85701), and the Support Payment Clearinghouse (P.O. Box 52107, Phoenix, AZ 85072) in writing of any change in address or employment within 48 hours of such change.

A separate Child Support Order and a separate Income Withholding Order shall issue.

Petitioner is awarded all of her attorney's fees and costs. Counsel for Petitioner shall submit a *China Doll* affidavit within fifteen (15) days of this Ruling. Respondent shall have ten (10) days thereafter to file any objections to the reasonableness of the requested costs and fees.

  
\_\_\_\_\_  
HON. KEN SANDERS, DIVISION 51/C

cc: Hon. Ken Sanders  
Jacob M. Amaru, Esq.  
Rene S. Alcoverde, Esq.  
Brenda M. Armenta  
Jesus E. Elizalde  
Court Interpreter  
Clerk of Court- Exhibits Supervisor  
Clerk of Court- Imaging Supervisor  
Clerk of Court- Legal Records  
Clerk of Court- Under Advisement Clerk  
Clerk of Court - Child Support Unit  
Case Management Services- Family Law



Date: August 16, 2016

NO. SP20151168

BRENDA M. ARMENTA

Petitioner

and

JESUS E. ELIZALDE

Respondent

2013

### Child Support Worksheet

(July 1, 2015 Guidelines)

DOB:	10-26-13				
Age:	2.81				
Youngest Grade Estimated:			Actual Grade:		
Presumptive Termination Date:		May 31, 2032			
Number of Minor Children:		1	Children 12 or Over:		

Primary Residential Parent Is (X):

☐

Father

☒

Mother

☐

Equal

Monthly

Annually

Hourly

Gross Monthly Income:

Father:	85,724.98
Mother:	18,193.08

Father

Mother

\$ 7,143.75 \$ 1,516.09

Court Ordered Spousal Maintenance (Paid) / Received: [Mandatory]

Court Ordered Child Support of Other Relationships Paid By Father: [Mandatory] (493.00)

Custodian of F: ☐ M: ☐ Other Child(ren) Subject of Order [Mandatory]

Support of Other Natural or Adopted Children Not Ordered: [Discretionary]

Father's ☐ Other Child[ren] Deduction Of: ☐

Mother's ☐ Other Child[ren] Deduction Of: ☐

Adjusted Gross Income

\$ 6,650.75 \$ 1,516.09

Combined Adjusted Gross Income

\$ 8,166.84

Basic Child Support Obligation For 1 Child:

\$ 1,048.00

Additions To Child Support Obligation:

Adjustment For 0 Children Over Age 12 at 10 % [Discretionary]

Medical, Dental and Vision Insurance Paid By: [Mandatory]

Monthly Childcare Costs For 1 Child(ren) Paid By: [Discretionary]

Less: Federal Tax Credit Allowed To Custodian of 25%: ☐

Extra Education Expenses Paid By: [Discretionary]

Extraordinary (Gifted or Handicapped) Child Expenses Paid By: [Discretionary]

Total Child Support Obligation

\$ 1,048.00

Each Parent's Proportionate Percentage of Combined Income

81.44% 18.56%

Each Parent's Proportionate Share of Total Support Obligation

\$ 853.45 \$ 194.55

Parenting Time Costs Adjustment

For Father Using

[Mandatory]

Parenting Time Table A For ☐ Days At ☐

Total Additions To Child Support Obligation From Above Paid By Each Parent

Preliminary Child Support Obligation

\$ 853.45 \$ 194.55

Adjustment For Essentially Equal Time With Each Parent

Self Support Reserve Test: Father's Adjusted Gross Income: \$ 6,650.75 [Discretionary]

Less Paid Arrearages Allowed: \$ ☐ [Discretionary]

Less Self Support Reserve Amount: (1,115.00) 1,115.00 \$ 5,535.75

Self Support Reserve Test Not Applied (X): ☐ Max. C.S.

Final Child Support Obligation Payable By Father:

\$ 853.45

~~\$ 853.45~~

KS

Date: August 16, 2016

NO. SP20151168

BRENDA M. ARMENTA

Petitioner

and

JESUS E. ELIZALDE

Respondent

2014

**Child Support Worksheet**  
(July 1, 2015 Guidelines)

DOB:	10-26-13				
Age:	2.81				
Youngest Grade Estimated:			Actual Grade:		
Presumptive Termination Date:		May 31, 2032			
Number of Minor Children:		1	Children 12 or Over:		

Primary Residential Parent Is (X): ☐ Father ☒ Mother ☐ Equal

Gross Monthly Income:

	Monthly	Annually	Hourly
Father:		85,724.98	
Mother:		18,193.08	

	Father	Mother
	\$ 7,143.75	\$ 1,516.09

Court Ordered Spousal Maintenance (Paid) / Received: [Mandatory]

Court Ordered Child Support of Other Relationships Paid By Father: [Mandatory] (493.00)

Custodian of F: ☐ M: ☐ Other Child(ren) Subject of Order [Mandatory]

Support of Other Natural or Adopted Children Not Ordered: [Discretionary]

Father's ☐ Other Child[ren] Deduction Of: ☐

Mother's ☐ Other Child[ren] Deduction Of: ☐

Adjusted Gross Income

\$ 6,650.75 \$ 1,516.09

Combined Adjusted Gross Income

\$ 8,166.84

Basic Child Support Obligation For 1 Child:

\$ 1,048.00

Additions To Child Support Obligation:

Adjustment For 0 Children Over Age 12 at 10 % [Discretionary]

Medical, Dental and Vision Insurance Paid By: [Mandatory]

Monthly Childcare Costs For 1 Child Paid By Mother: [Discretionary]

Less: Federal Tax Credit Allowed To Custodian of 25%: ☐

Extra Education Expenses Paid By: [Discretionary]

Extraordinary (Gifted or Handicapped) Child Expenses Paid By: [Discretionary]

Total Child Support Obligation

\$ 1,427.17

Each Parent's Proportionate Percentage of Combined Income

81.44% 18.56%

Each Parent's Proportionate Share of Total Support Obligation

\$ 1,162.23 \$ 264.94

Parenting Time Costs Adjustment For Father Using [Mandatory]

Parenting Time Table A For ☐ Days At ☐

Total Additions To Child Support Obligation From Above Paid By Each Parent

- (379.17)

Preliminary Child Support Obligation

\$ 1,162.23 \$ (114.23)

Adjustment For Essentially Equal Time With Each Parent

Self Support Reserve Test: Father's Adjusted Gross Income: \$ 6,650.75 [Discretionary]

Less Paid Arrearages Allowed: \$ ☐ [Discretionary]

Less Self Support Reserve Amount: (1,115.00) 1,115.00 \$ 5,535.75

Self Support Reserve Test Not Applied (X): ☐ Max. C.S.

Final Child Support Obligation Payable By Father:

\$ 1,162.23

\$ 1,162.00

KS



Date: August 16, 2016

NO. SP20151168

BRENDA M. ARMENTA

Petitioner

and

JESUS E. ELIZALDE

Respondent

2015

**Child Support Worksheet**  
(July 1, 2015 Guidelines)

DOB:	10-26-13				
Age:	2.81				
Youngest Grade Estimated:			Actual Grade:		
Presumptive Termination Date:		May 31, 2032			
Number of Minor Children:		1	Children 12 or Over:		

Primary Residential Parent Is (X): ☐ Father ☒ Mother ☐ Equal

Gross Monthly Income:

	Monthly	Annually	Hourly
Father:		148,416.75	
Mother:		35,440.00	

	Father	Mother
	\$ 12,368.06	\$ 2,953.33

Court Ordered Spousal Maintenance (Paid) / Received: [Mandatory]

Court Ordered Child Support of Other Relationships Paid By Father: [Mandatory] (493.00)

Custodian of F: ☐ M: ☐ Other Child(ren) Subject of Order [Mandatory]

Support of Other Natural or Adopted Children Not Ordered: [Discretionary]

Father's ☐ Other Child[ren] Deduction Of: ☐

Mother's ☐ Other Child[ren] Deduction Of: ☐

Adjusted Gross Income

\$ 11,875.06 \$ 2,953.33

Combined Adjusted Gross Income

\$ 14,828.40

Basic Child Support Obligation For 1 Child:

\$ 1,457.00

Additions To Child Support Obligation:

Adjustment For 0 Children Over Age 12 at 10 % [Discretionary]

Medical, Dental and Vision Insurance Paid By: [Mandatory]

Monthly Childcare Costs For 1 Child Paid By Mother: [Discretionary] 453.96

Less: Federal Tax Credit Allowed To Custodian of 25%: ☐ (50.00)

Extra Education Expenses Paid By: [Discretionary]

Extraordinary (Gifted or Handicapped) Child Expenses Paid By: [Discretionary]

Total Child Support Obligation

\$ 1,860.96

Each Parent's Proportionate Percentage of Combined Income

80.08% 19.92%

Each Parent's Proportionate Share of Total Support Obligation

\$ 1,490.32 \$ 370.64

Parenting Time Costs Adjustment For Father Using [Mandatory]

Parenting Time Table A For ☐ Days At ☐

Total Additions To Child Support Obligation From Above Paid By Each Parent

- (403.96)

Preliminary Child Support Obligation

\$ 1,490.32 \$ (33.32)

Adjustment For Essentially Equal Time With Each Parent

Self Support Reserve Test: Father's Adjusted Gross Income: \$ 11,875.06 [Discretionary]

Less Paid Arrearages Allowed: \$ ☐ [Discretionary]

Less Self Support Reserve Amount: (1,115.00) 1,115.00 \$ 10,760.06

Self Support Reserve Test Not Applied (X): ☐ Max. C.S.

Final Child Support Obligation Payable By Father:

\$ ~~1,490.32~~

\$ 1,490.00

KS

Date: August 16, 2016

NO. SP20151168

BRENDA M. ARMENTA )

Petitioner )

and )

JESUS E. ELIZALDE )

Respondent )

### Child Support Worksheet

(July 1, 2015 Guidelines)

DOB:	10-26-13				
Age:	2.81				
Youngest Grade Estimated:			Actual Grade:		
Presumptive Termination Date:		May 31, 2032			
Number of Minor Children:		1	Children 12 or Over:		

Primary Residential Parent Is (X):

☐

Father

☒

Mother

☐

Equal

Monthly

Annually

Hourly

Gross Monthly Income:

Father:	85,724.98	
Mother:		18.83

Father

Mother

\$ 7,143.75 \$ 3,263.87

Court Ordered Spousal Maintenance (Paid) / Received: [Mandatory]

Court Ordered Child Support of Other Relationships Paid By Father: [Mandatory] (493.00)

Custodian of F: M: Other Child(ren) Subject of Order [Mandatory]

Support of Other Natural or Adopted Children Not Ordered: [Discretionary]

Father's Other Child[ren] Deduction Of:

Mother's Other Child[ren] Deduction Of:

Adjusted Gross Income

\$ 6,650.75 \$ 3,263.87

Combined Adjusted Gross Income

\$ 9,914.62

Basic Child Support Obligation For 1 Child:

\$ 1,174.00

Additions To Child Support Obligation:

Adjustment For 0 Children Over Age 12 at 10 % [Discretionary]

Medical, Dental and Vision Insurance Paid By: [Mandatory]

Monthly Childcare Costs For 1 Child Paid By Mother: [Discretionary] 570.00

Less: Federal Tax Credit Allowed To Custodian of 25%: (50.00)

Extra Education Expenses Paid By: [Discretionary]

Extraordinary (Gifted or Handicapped) Child Expenses Paid By: [Discretionary]

Total Child Support Obligation

\$ 1,694.00

Each Parent's Proportionate Percentage of Combined Income

67.08% 32.92%

Each Parent's Proportionate Share of Total Support Obligation

\$ 1,136.34 \$ 557.66

Parenting Time Costs Adjustment For Father Using [Mandatory]

Parenting Time Table A For Days At

Total Additions To Child Support Obligation From Above Paid By Each Parent

(520.00)

Preliminary Child Support Obligation

\$ 1,136.34 \$ 37.66

Adjustment For Essentially Equal Time With Each Parent

Self Support Reserve Test: Father's Adjusted Gross Income: \$ 6,650.75 [Discretionary]

Less Paid Arrearages Allowed: \$ [Discretionary]

Less Self Support Reserve Amount: (1,115.00) 1,115.00 \$ 5,535.75

Self Support Reserve Test Not Applied (X): Max. C.S.

Final Child Support Obligation Payable By Father:

\$ 1,136.34

\$ 1,136.00

KS