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Annual Survey of Virginia Law: Domestic Relations

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DOMESTIC RELATIONS*

*Peter N. Swisher***

I. 1986 LEGISLATION

A. *Virginia Premarital Agreement Act*

The Virginia Premarital Agreement Act¹ was reenacted during the 1986 legislative session of the Virginia General Assembly and became law effective July 1, 1986.²

B. *Equitable Distribution Statutory Modifications*

The 1986 General Assembly made three important changes in the Virginia equitable distribution statute.³ First, the duty of the court in determining legal title, ownership, and value of property is now further clarified to include "all property,⁴ real and personal, tangible or intangible."⁵ Under the previous statute, the duty of the court was to determine legal title, ownership, and value "of all real and personal property" upon the request of either party.

Second, there is a new definition of marital property. Under the previous statute, all property acquired by either spouse during the marriage, but before the filing of a bill of complaint stating a ground for divorce, was presumed to be marital property in the absence of satisfactory evidence that it was separate property.⁶

* Child custody, child support, juvenile delinquency, paternity, and abused and neglected children will all be addressed in the article on Legal Issues Involving Children, *infra* at 903.

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1. VA. CODE ANN. §§ 20-147 to -154 (Cum. Supp. 1986).

2. For an analysis of the Virginia Premarital Agreement Act, see Swisher & Bucur, *Domestic Relations*, 19 U. RICH. L. REV. 731, 731-36 (1985).

3. VA. CODE ANN. § 20-107.3 (Cum. Supp. 1986).

4. *Id.* § 20-107.3 (Repl. Vol. 1983).

5. *Id.* § 20-107.3(A) (Cum. Supp. 1986). Arguably, this duty could now include intangible property such as patents and copyrights, professional goodwill, and professional degrees or licenses. See, e.g., *Gold v. Gold*, Chancery No. 631-1983 (Cir. Ct. Roanoke County, Nov. 10, 1983), reprinted in 1 Va. Cir. 390 (1985) (professional goodwill, but not a professional degree, included as marital property).

6. VA. CODE ANN. § 20-107.3(A)(2) (Repl. Vol. 1983).

The new amendment now defines marital property as all property acquired by either spouse during the marriage "and before the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent."⁷

The third amendment to the statute deals with the right of the court to retain jurisdiction over the parties' property interests upon the granting of a divorce. The court, on the motion of both parties, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section "when the court determines that such action is clearly necessary because of the complexities of the parties' property interests, and all decrees heretofore entered retaining such jurisdiction are validated."⁸ This amendment was presumably the result of justifiable concern resulting from the *Parra v. Parra*⁹ and *Shaughnessy v. Shaughnessy*¹⁰ cases, which determined whether a Virginia circuit court could reserve jurisdiction to hear equitable distribution matters subsequent to rendering a divorce decree.¹¹ The statutory amendment, which also expressly validates prior decrees, has undoubtedly been greeted with a collective sigh of relief from many Virginia family law practitioners and their professional malpractice insurers. There is a *caveat*, however. This new amendment still requires the motion of *both* parties in order for the court to retain jurisdiction over the parties' property interests.

C. *Statutory Spousal and Child Support Modifications*

The relevant factors for determining child support upon divorce under Virginia Code ("Code") section 20-107.2¹² now include the tax consequences to the parties.¹³ Additionally, section 20-108.1¹⁴

7. *Id.* § 20-107.3(A)(2) (Cum. Supp. 1986).

8. *Id.* § 20-107.3(A).

9. 1 Va. App. 118, 336 S.E.2d 157 (1985).

10. 1 Va. App. 136, 336 S.E.2d 166 (1985).

11. The *Parra* court, recognizing the split of authority in other jurisdictions regarding this question, held that a Virginia circuit court could indeed retain jurisdiction to make an equitable distribution award under VA. CODE ANN. § 20-107.3 twenty-one days after the entry of a divorce decree when a specific reservation of jurisdiction was contained in the decree. This decision, however, was strongly objected to in a dissenting opinion by Judge Baker. 1 Va. App. 118, 130, 336 S.E.2d 157, 163 (1985) (Baker, C.J., dissenting). The statutory amendment apparently supports the *Parra* majority decision. *See also infra* notes 33-37 and accompanying text.

12. VA. CODE ANN. § 20-107.2(2) (Cum. Supp. 1986).

13. *Id.* § 20-107.2(2)(h).

14. *Id.* § 20-108.1.

has been adopted to guide the court in the determination of child and spousal support. This section provides as follows:

In any proceeding on the issue of determining child or spousal support, the court shall consider all evidence presented relevant to any issues joined in the proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case. Any use of a mathematical formula in the computation of such support shall be restricted to its use as a general guideline only.¹⁵

This statute may have been adopted in anticipation of a recommendation by the Virginia Governor's Commission on Child Support to apply an "Income Shares Formula" to monthly basic child support obligations, as advocated by Dr. Robert G. Williams,¹⁶ or another like mathematical formula. The statute also may have an effect on certain county and city courts in Virginia which have previously applied mathematical tables and formulas in determining *pendente lite* and other child and spousal support obligations.

Other statutory changes involving child and spousal support jurisdiction include: (1) the juvenile and domestic relations court jurisdiction regarding Revised Uniform Reciprocal Enforcement of Support Act appeals;¹⁷ (2) the juvenile and domestic relations court jurisdiction regarding child support appeals;¹⁸ (3) the juvenile and domestic relations court jurisdiction concerning a parent's duty to support a child;¹⁹ and (4) sanctions a juvenile and domestic relations court may impose on an employer for failure to comply with a court-ordered child support payroll deduction.²⁰

15. *Id.*

16. An excerpt of the Virginia Governor's Commission on Child Support recommending the adoption of the "Income Shares Formula" for determining monthly child support obligations appears in Appendix A following this article. This formula is already familiar to many Virginia circuit court and juvenile and domestic relations court judges. Under VA. CODE ANN. § 20-108.1 (Cum. Supp. 1986), this formula could still arguably be utilized as a general "ball park" guideline, in addition to other relevant evidence in each individual case.

17. *Id.* § 16.1-296.

18. *Id.* § 63.1-267.1.

19. *Id.* § 16.1-241.

20. *Id.* § 16.1-279. For further statutory amendments on the enforcement of child and spousal support through payroll deductions, see *Id.* §§ 20-60.3 -60.5 -79.1, and §§ 63.1-53, -250 to -250.3, -271, -287, and § 63.1-250.4.

D. *Other Procedural Changes*

Formerly, Code section 8.01-293(2) provided that no person eighteen years of age or older would be eligible to serve process in a divorce or annulment unless authorized to do so by the court. The new statutory amendment now allows any person eighteen years of age or older who is not a party to the controversy to serve process in any divorce or annulment action.²¹

Section 20-121.02 formerly provided that attorneys could orally amend a divorce based on cruelty or desertion grounds under section 20-91(6) to become a divorce based on separation grounds under section 20-91(9) without filing an amended bill of complaint or cross-bill. The amendment to section 20-121.02 now allows adultery, sodomy, buggery, and conviction of a felony as additional grounds for this oral amendment.²²

E. *Pending Legislation and Other Statutory Matters*

Various bills of interest to the Virginia family law practitioner were carried over to the 1987 legislative session.

House Bill 567²³ seeks to amend Code section 20-107.2 to provide for joint legal custody of minor children on divorce if it is in the best interests of the child or children. Additionally, House Joint Resolution 31 was passed by the 1986 legislature to establish a joint House and Senate subcommittee to study the Model Joint Custody Act.²⁴

Senate Bill 108²⁵ seeks to protect the best interests of the child or children in a contested child custody action by allowing the court, in its discretion, to appoint a separate guardian *ad litem* to

21. VA. CODE ANN. § 8.01-293(2) (Cum. Supp. 1986).

22. *Id.* § 20-121.02.

23. H. 567 (1986). This bill seeks to reenact and amend VA. CODE ANN. § 20.107.2 (Repl. Vol. 1983 & Cum. Supp. 1986), providing for joint legal custody of children. This bill was offered January 21, 1986, and carried over to the 1987 legislative session.

24. H.R.J. Res. 31, 1986 Va. Acts 1929 (establishes a joint subcommittee of the House and Senate Courts of Justice Committees to study the Model Joint Custody Act). Thirty-three states presently have some form of joint custody law. See, e.g., Freed & Walker, *Family Law in the Fifty States: An Overview*, 19 FAM. L.Q. 331, 402 (1986).

25. S. 108 (1986). This bill seeks to reenact and amend VA. CODE ANN. §§ 20-107.2, -134 (Repl. Vol. 1983 & Cum. Supp. 1986) and add § 16.1-244.1 (relating to the discretionary appointment of a guardian *ad litem* in child custody controversies). The bill was carried over to the 1987 legislative session.

represent such child or children. Also, Senate Bill 14²⁶ seeks to enact the Uniform Parentage Act into law in Virginia and will be debated in the 1987 legislative session.

Senate Bill 11²⁷ failed to pass in the House. The purpose of this bill was to prohibit any absolute statutory bar to spousal support unless the needy spouse was guilty of adultery, sodomy or buggery.²⁸ Senate Bill 11 was thus a wise attempt to make marital fault one of many factors in determining alimony or spousal support rather than acting as an absolute bar to alimony or spousal support.²⁹ A similar bill, treating all categories of marital fault only as factors in determining spousal support rather than acting as an absolute bar, should be enacted in a subsequent legislative session.³⁰

Finally, the family law practitioner should be aware of new legislation in the criminal law area regarding spousal abuse³¹ and marital sexual assault.³²

26. S. 14 (1986).

27. S. 11 (1986). This bill seeks to amend VA. CODE ANN. § 20-107.1 (Cum. Supp. 1986) to prohibit an absolute bar of spousal support to a needy spouse unless he or she was guilty of adultery, sodomy or buggery under VA. CODE ANN. § 20-91(1) (Cum. Supp. 1986).

28. Virginia is currently one of only eight states in which marital misconduct constitutes a bar to spousal support or alimony. See Freed & Walker, *supra* note 24, at 368-69.

29. As one factor in determining spousal support under § 20-107.1(8)(a), the bill provided for the consideration of "[t]he circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of § 20-91(1), (3) or (6) or § 20-95." This provision was later amended to further provide that "no permanent maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground for divorce under the provisions of § 20-91(1) [adultery, sodomy or buggery]."

30. In 30 states, marital fault is no longer considered in awarding alimony or spousal support. In another 12 states, marital fault is only one of many factors in determining alimony or spousal support. See, e.g., Freed & Walker, *supra* note 22, at 367-70. Various authors have demonstrated that there is little correlation between societal norms and traditional "fault" grounds that would justify retaining such absolute bars. See, e.g., M. RHEINSTEIN, MARRIAGE STABILITY, DIVORCE, AND THE LAW (1972).

31. See VA. CODE ANN. § 18.2-57.2 (Cum. Supp. 1986) (dealing with penalties for subsequent spousal abuse offenses).

32. For new statutes dealing with preliminary hearings, judgment, and penalties regarding marital sexual assault, see *id.* §§ 18.2-67.2:1, 19.2-218.1, -218.2. For amendments dealing with preliminary hearings, judgment, and penalties regarding marital sexual assault, see *id.* §§ 18.2-61, -67.1, -67.2.

II. JUDICIAL CASES

A. *Equitable Distribution of Marital Property on Divorce*

1. Jurisdiction over Marital Property Matters Subsequent to Rendering a Divorce Decree

In *Parra v. Parra*,³³ the Virginia appellate court upheld a circuit court's right to retain jurisdiction to hear equitable distribution matters subsequent to rendering a divorce decree. The *Parra* court, however, reversed the circuit court's equitable distribution award, holding that this award was not inconsistent with the parties' property settlement agreement in the absence of any proof that the agreement was invalid.³⁴ However, in *Shaughnessy v. Shaughnessy*,³⁵ the court held that when adequate evidence was introduced at trial to make a requested determination of equitable distribution at that time, the circuit court abused its authority by reserving a determination of equitable distribution until after the divorce decree.³⁶

The justifiable concern of Virginia family law practitioners over the proper interpretation of the *Parra* and *Shaughnessy* decisions has largely been settled by a subsequent legislative amendment to Virginia's equitable distribution statute.³⁷

2. Determining Equitable Property Division Upon Divorce

In the case of *Papuchis v. Papuchis*,³⁸ the wife who received an equitable distribution award of less than fifty percent of the value of the parties' marital property upon divorce argued that Virginia courts should adopt a rebuttable presumption favoring equal division of marital property.³⁹ However, the Virginia appellate court rejected the wife's argument and held that the applicable statute⁴⁰

33. 1 Va. App. 118, 336 S.E.2d 157 (1985).

34. *Id.* at 120, 336 S.E.2d at 158.

35. 1 Va. App. 136, 336 S.E.2d 166 (1985).

36. *Id.* at 140, 336 S.E.2d at 169.

37. VA. CODE ANN. § 20-107.3(A) (Cum. Supp. 1986); *see also supra* notes 8-11 and accompanying text.

38. 2 Va. App. 130, 341 S.E.2d 829 (1986).

39. *Papuchis*, 2 Va. App. at 131-32, 341 S.E.2d at 830. Although the courts in equitable distribution states such as Oregon, Wisconsin, Arkansas, North Carolina, and Tennessee "use this presumption where statutory language directs it, the courts in most other equitable distribution states do not use this presumption." *Id.*

40. VA. CODE ANN. § 20-107.3 (Cum. Supp. 1986).

requires the trial court to determine the amount of the award and the method of its payment after considering eleven specific factors. The court stated that this approach followed the recommendation of a legislative subcommittee which expressly rejected "any presumption in favor of an equal distribution of marital property."⁴¹

The distinction between separate and marital property was analyzed in *Rexrode v. Rexrode*,⁴² where the appellate court held that if certain funds were acquired prior to the marriage but contributions were made into the funds during the marriage, the party claiming these funds as separate property must overcome the presumption that they are marital property.⁴³ The husband failed to overcome this presumption, thus the circuit court erred in characterizing the joint savings account in question as separate property. The court also emphasized that if a divorce court determines that an equitable property award is appropriate, then all of the provisions of Virginia Code section 20-107.3 must be followed.⁴⁴

Pension plans and retirement benefits as marital property were discussed in *Sawyer v. Sawyer*⁴⁵ and *McGinnis v. McGinnis*.⁴⁶ In *Sawyer*, a military pension was acquired during the marriage. The court interpreted section 20-107.3 and concluded that the legislature intended "all pensions, including military pensions, to be personal property and subject to equitable distribution."⁴⁷ The *McGinnis* case held that under section 20-107.3 the trial court erred in allotting to the wife personal property that was titled in the husband's name.⁴⁸ Since marital property provisions were to be reconsidered on remand, the trial court also was instructed to reexamine spousal support "in the light of whatever new or different considerations flow from the additional proceedings."⁴⁹

In the case of *Venable v. Venable*,⁵⁰ the appellate court held that the circuit court's order to convey title in jointly owned

41. *Papuchis*, 2 Va. App. at 132, 341 S.E.2d at 830-31 (citing *Report of the Joint Subcommittee Studying Section 20-107 of the Code of Virginia to the Governor and the General Assembly of Virginia*, H. Doc. No. 21, at 8 (1982)).

42. 1 Va. App. 385, 339 S.E.2d 544 (1986).

43. *Id.* at 394, 339 S.E.2d at 548-49.

44. *Id.* at 394, 339 S.E.2d at 550.

45. 1 Va. App. 75, 335 S.E.2d 277 (1985).

46. 1 Va. App. 272, 338 S.E.2d 159 (1985).

47. *Sawyer*, 1 Va. App. at 78, 335 S.E.2d at 280.

48. *McGinnis*, 1 Va. App. at 276, 338 S.E.2d at 161.

49. *Id.* at 277, 338 S.E.2d at 161.

50. 2 Va. App. 178, 342 S.E.2d 646 (1986).

properties was not authorized under section 20-107.3 when certain statutory requirements had not been met.⁵¹

B. *Spousal Support Decisions*

Again, in the case of *Venable v. Venable*,⁵² the wife was seeking to modify a *pendente lite* support decree. The wife was allowed to present evidence justifying this modification even though the husband's attorney became ill and the husband appeared at the hearing without counsel and requested a continuance. The wife had traveled at her cost and inconvenience from Nashville, Tennessee for the hearing. Under these circumstances, the trial court did not abuse its discretion when it received the wife's evidence but also continued the case in order to permit the husband's counsel to cross-examine the wife at a later date.⁵³

In *Boyd v. Boyd*,⁵⁴ the wife filed a cross-bill for divorce which included a general prayer "for such other and further relief as to equity may seem meet and the nature of her case may require," but she did not specifically request spousal support.⁵⁵ The appellate court held that this general request was not sufficient to plead or claim any right to spousal support.⁵⁶ In *D'Auria v. D'Auria*,⁵⁷ the court reaffirmed the Virginia rule that it is reversible error for a court to fail to make a reservation of spousal support when requested to do so by a party. In the absence of any such request, however, the court is under no obligation to insert reservation of spousal support language in the decree *sua sponte*.⁵⁸ Thus, the silence in the final divorce decree as to spousal support has the effect of foreclosing a spouse from petitioning the court under sec-

51. The court stated that

under the statute's mandate [§ 20-107.3] the court must first identify the marital property and determine its value. Upon consideration of the factors enumerated in Code § 20-107.3(E), the court may grant a monetary award to one party. Jointly owned marital property may be partitioned. Code § 20-107.3(C). Once a monetary award has been made, the party against whom it was made may satisfy the award by conveyance of property with the court's approval. Code § 20-107.3(D).

Id. at 185, 342 S.E.2d at 650-51.

52. 2 Va. App. 178, 342 S.E.2d 646 (1986).

53. *Id.* at 182, 342 S.E.2d at 648-49. "Under these circumstances, there was no abridgment of Mr. Venable's due process rights." *Id.*

54. 2 Va. App. 16, 340 S.E.2d 578 (1986).

55. *Id.* at 18, 340 S.E.2d at 579.

56. *Id.* at 19, 340 S.E.2d at 580-81.

57. 1 Va. App. 455, 340 S.E.2d 164 (1986).

58. *Id.* at 462, 340 S.E.2d at 168.

tion 20-109 for a future support award in light of changed circumstances.⁵⁹

An alleged change of circumstances meriting a reduction or elimination of spousal support was argued by the payor husband in *Floyd v. Floyd*,⁶⁰ where the husband testified that the financial condition of his business was "deteriorating," and causing him "great difficulty in making spousal support payments."⁶¹ However, there was also testimony that the husband's business had remained stable and, although his salary had decreased, the husband had made cash withdrawals from the company which were characterized as loans rather than as salary.⁶² The *Floyd* court held that the husband had not proven a change of circumstances by a preponderance of the evidence and that the trial court's findings "would not be disturbed on appeal unless plainly wrong or without evidence to support them."⁶³

Spousal support related to marital fault was analyzed by the appellate court in *Dukelow v. Dukelow*⁶⁴ and *Wallace v. Wallace*.⁶⁵ In *Dukelow*, the payor husband argued on appeal that the evidence was sufficient to find the wife guilty of desertion and therefore the trial court had erred in awarding her *any* spousal support, much less an increase in spousal support. However, the appellate court affirmed the spousal support increase since the husband had not filed any exceptions to the Commissioner's report. A party "may not raise a question for the first time on appeal, except when there is error appearing on the face of the report."⁶⁶

59. *Id.*

60. 1 Va. App. 42, 333 S.E.2d 364 (1985).

61. *Id.* at 44, 333 S.E.2d at 365.

62. *Id.*

63. *Id.* at 45, 333 S.E.2d at 366.

64. 2 Va. App. 21, 341 S.E.2d 208 (1986).

65. 1 Va. App. 183, 336 S.E.2d 27 (1985).

66. *Dukelow*, 2 Va. App. at 24, 341 S.E.2d at 209-10 (citing *Watson v. Brunner*, 128 Va. 600, 105 S.E. 97 (1920)). *But see Zinkhan v. Zinkhan*, 2 Va. App. 200, 342 S.E.2d 658 (1986) (where desertion was proved by the husband, spousal support to the wife was barred). The *Zinkhan* decision further held that where dual grounds for divorce exist, separation and desertion, the trial judge is not required to grant a divorce under the one-year separation statute. *Id.* at 210, 342 S.E.2d at 663. Thus, the trial court judge, by choosing a fault or "no fault" divorce ground, can effectively determine whether or not spousal support will be required.

In *Clephas v. Clephas*, 1 Va. App. 209, 336 S.E.2d 897 (1985), a September 12, 1984, support arrearage order was held to be not appealable under VA. CODE ANN. § 17-116.05:4 (Cum. Supp. 1986). The September order was not modified by the court's October 3rd telephone conference because a court "may only speak through its written orders." Similarly it

In *Wallace*, the question raised was whether the wife was barred from receiving spousal support when her husband alleged she had committed adultery fifteen years after the parties separated and where the evidence showed that the husband was, in fact, responsible for the termination of the marriage.⁶⁷ The wife had refused to answer any questions regarding her alleged adulterous conduct, but the court held that this would not bar the husband's support obligation:

The trial court did not err in denying Mr. Wallace's motion to require Mrs. Wallace and Rogers to answer the questions posed to them regarding adultery. The record amply supports the court's opinion that it was Mr. Wallace's own fault and misconduct that caused the termination of the marriage. Assuming *arguendo* that her answers would have been incriminatory, Mrs. Wallace, nonetheless, could have asserted the doctrine of recrimination and prevented her husband from obtaining a fault divorce. The questions posed were simply immaterial. With neither party entitled to a fault divorce, the obligation to support a spouse continues.⁶⁸

It should be noted that the common thread in almost all of these spousal support decisions is the appellate court's reaffirmation of the trial court's broad discretion in ultimately determining any spousal support award. That is to say, "in fixing spousal support a trial court has broad discretion which should not be interfered with by an appellate court unless it is clear that some injustice has been done."⁶⁹

Nevertheless, in determining any spousal support award, the trial court still must have adequate jurisdiction. In the case of *Stephens v. Stephens*,⁷⁰ the former wife registered a Florida divorce decree in Virginia pursuant to RURESA⁷¹ and served the defend-

was not modified by an October 13th written order since it could only be modified under Rule 1:1 within 21 days after entry.

67. *Wallace*, 1 Va. App. at 184, 336 S.E.2d at 27.

68. *Id.* at 187, 336 S.E.2d at 29 (citing *Bwoker v. Bwoker*, 218 Va. 12, 13, 235 S.E.2d 309, 310 (1977)).

69. *Papuchis v. Papuchis*, 2 Va. App. 130, 133, 341 S.E.2d 829, 831 (1986) (citing *Oliver v. Oliver*, 202 Va. 268, 272, 117 S.E.2d 59, 62 (1960)); see also *Sawyer v. Sawyer*, 1 Va. App. 75, 81, 335 S.E.2d 277, 281 (1985) ("considering the needs of the wife, and the resources of the husband, we cannot say that the trial court abused its discretion").

70. 229 Va. 212, 313 S.E.2d 484 (1985).

71. Revised Uniform Reciprocal Enforcement of Support Act, VA. CODE ANN. § 20-88.12 to -88.30:6(a) (Repl. Vol. 1983).

ant former husband who was residing in Tennessee. The court held that this action was not sufficient to create *in personam* jurisdiction over the former husband in Virginia in order to collect spousal support arrearages.⁷²

C. Divorce Grounds and Defenses

1. Adultery

In *Venable v. Venable*,⁷³ the husband contended that the wife should be barred from obtaining a divorce because of her admission during the *ore tenus* hearing of an adulterous relationship subsequent to the parties' separation. However, the husband did not seek a divorce based upon the ground of adultery nor was there any corroborating evidence independent of the wife's admission of adultery. Therefore, the wife's adulterous conduct "had no bearing upon [the husband's] cruelty which caused the dissolution of the marriage."⁷⁴ Likewise, in *Wallace v. Wallace*,⁷⁵ the wife refused to answer any questions regarding her alleged adulterous conduct fifteen years after the parties separated. Since the husband had been responsible for the termination of the marriage, he was not relieved of his support obligation to the wife.⁷⁶ Finally, in *Dodge v. Dodge*,⁷⁷ the husband asserted that the wife had presented insufficient evidence to support the trial court's finding of adultery. The appellate court stated that in order to establish a charge of adultery, the evidence must be clear, positive, and convincing, and that a divorce may not be awarded on the uncorroborated testimony of the parties.⁷⁸ Nevertheless, a review of the transcript "disclose[d] that husband made statements to wife and to an independent witness from which it can be inferred that husband admitted to having sexual intercourse with [another]."⁷⁹

72. *Stephens*, 229 Va. at 212, 313 S.E.2d at 484.

73. 2 Va. App. 178, 342 S.E.2d 646 (1986).

74. *Id.* at 184, 342 S.E.2d at 650.

75. 2 Va. App. 183, 336 S.E.2d 27 (1985).

76. See *supra* notes 67-68 and accompanying text.

77. 2 Va. App. 238, 343 S.E.2d 363 (1986).

78. *Id.* at 242, 343 S.E.2d at 365 (citing *Painter v. Painter*, 215 Va. 418, 420, 211 S.E.2d 37, 38 (1975)).

79. *Id.* at 244, 343 S.E.2d at 366 (oral statement by the husband to his wife and to a former co-worker that "Mrs. Nobles was pregnant, . . . it was his baby," and evidence of husband and Mrs. Nobles sharing a home). The *Dodge* court stated that "the main object of . . . the statute requiring corroboration is to prevent collusion. Where it is apparent that there is no collusion, the corroboration needs to be only slight." *Id.* at 245, 343 S.E.2d at 367 (citing *Graves v. Graves*, 193 Va. 659, 661-62, 70 S.E.2d 339, 340-41 (1952)).

2. Cruelty and Desertion

In *Venable v. Venable*,⁸⁰ a charge of cruelty was sufficiently supported and corroborated by: (1) the wife's testimony; (2) the wife's mother's corroboration of bruises and bite marks on the wife's body and face; and (3) the fact that the husband had a violent temper.⁸¹

In *Collier v. Collier*,⁸² the physical act of the husband moving from the marital home, coupled with a note he left his wife of his clear intent to leave (which was corroborated by the wife's sister), justified an absolute divorce to the wife on the ground of desertion.⁸³ Likewise, in *Rexrode v. Rexrode*,⁸⁴ the court found the wife was guilty of desertion because she did not have sufficient legal justification for leaving the marital home and could not sufficiently prove the husband's alleged cruelty and constructive desertion.⁸⁵

In the case of *Brawand v. Brawand*,⁸⁶ however, the court held that although the husband's conduct did not constitute cruelty amounting to constructive desertion, that fact, *standing alone*, would not necessarily establish that the wife was without legal justification in leaving the marital abode. Thus, the wife will not be guilty of desertion if she leaves the marital abode without intending to desert her husband, reasonably believing that her health or well-being is endangered, even though she is unable to prove cruelty or constructive desertion on the part of the husband.⁸⁷

80. 2 Va. App. 178, 342 S.E.2d 646 (1986).

81. *Id.* at 186, 342 S.E.2d at 650. The court held that where "it is apparent that there is no collusion, as in this case, the corroboration needs to be only slight." *Id.* at 184, 342 S.E.2d at 650 (citing *Graves*, 193 Va. at 662, 70 S.E.2d at 340).

82. 2 Va. App. 125, 341 S.E.2d 827 (1986).

83. *Id.* at 128, 341 S.E.2d at 828.

84. 1 Va. App. 385, 339 S.E.2d 544 (1986).

85. *Id.* at 388-90, 339 S.E.2d at 546-47; see also *Zinkhan v. Zinkhan*, 2 Va. App. 200, 342 S.E.2d 658 (1986). In *Zinkhan*, the court stated:

To constitute a defense to the husband's prima facie showing of desertion, the wife must prove misconduct on the part of the husband sufficient in scope to constitute a ground of divorce in her favor against the husband. The Supreme Court has consistently held that one spouse is not justified in leaving the other unless the conduct of the wrongdoer could be made the foundation of judicial proceeding for divorce. Nothing short of such conduct will justify a willful separation or a continuance of it.

Id. at 205, 342 S.E.2d at 661; see also *D'Auria v. D'Auria*, 1 Va. App. 455, 340 S.E.2d 164 (1986) (on corroborating evidence from the husband and from the wife's physician, the trial court properly found that the wife had the intent to desert the marriage without any legal justification for leaving the marital home).

86. 1 Va. App. 305, 338 S.E.2d 651 (1986).

87. *Id.* at 310, 338 S.E.2d at 653.

3. Living Separate and Apart

In the circuit court case of *Doggett v. Doggett*,⁸⁸ the question presented was whether the wife was entitled to a divorce on the ground of having lived separate and apart without cohabitation or interruption for one year pursuant to Code section 20-91(9)(a).⁸⁹ The parties' depositions indicated that the parties resided at the same address, and supplemental depositions revealed that the parties had lived in the same house since September, 1981. However, the parties worked different hours of the day, did not sleep in the same room, and did not "spend any time together as husband and wife." The parties "definitely had not reconciled or spent the night together" during this time period and, according to the plaintiff, "neither party had moved out because of financial hardship."⁹⁰ Based upon this fact situation, and citing *Hooker v. Hooker*⁹¹ and *Chandler v. Chandler*⁹² for support, Judge Hughes granted the divorce by finding that the parties had lived "separate and apart" for one year although they resided under the same roof.⁹³

D. Separation Agreements Interpreted

In *Barnes v. Barnes*,⁹⁴ the husband sought to rescind a separation agreement based upon the wife's alleged marital infidelity which the wife had failed to disclose to him prior to signing the agreement. The trial court allowed the husband to rescind the separation agreement but the Virginia Supreme Court reversed. The court held that when the husband and wife separated and employed attorneys to negotiate a property settlement agreement, they became adversaries dealing at arm's length and their former

88. 5 Va. Cir. 349 (Richmond 1986).

89. VA. CODE ANN. § 20-91(9)(a) (Cum. Supp. 1986).

90. *Doggett*, 5 Va. Cir. at 349-50.

91. 215 Va. 415, 211 S.E.2d 34 (1975).

92. 132 Va. 418, 112 S.E. 856 (1922).

93. *Doggett*, 5 Va. Cir. at 350. Judge Hughes stated that: "Abandonment—desertion—[and, by analogy, living separate and apart] may be as complete under the same shelter as if oceans rolled between." *Id.* (citing *Graves v. Graves*, 88 Miss. 671, 41 So. 384 (1906)); see also *Robertson v. Robertson*, Case No. 77 C 331 (Cir. Ct. Henrico County, Nov. 3, 1977), reprinted in 6 Va. Cir. — (1986) (people can live separate and apart though under the same roof). *But see* Brinig, *Living Separate and Apart in Virginia*, 5 VA. FAM. L. NEWS 25 (1984). Professor Brinig contends that requiring parties seeking a "no-fault" divorce to live under separate roofs "has two bases, one of which is substantive and the other evidential." *Id.*

94. 231 Va. 39, 340 S.E.2d 803 (1986).

fiduciary or confidential relationship ended at that time.⁹⁵

In *Parrillo v. Parrillo*,⁹⁶ a court decree which modified a unitary child and spousal support sum was allowed to increase the sum for child support but could not abrogate, supplant, or modify the parties' contractual agreement regarding spousal support.⁹⁷

In *Troyer v. Troyer*,⁹⁸ the husband sued his former wife and others for specific performance or, alternatively, to reform a deed which conveyed marital property to his former wife alone. However, in a deposition, the husband had stated under oath that he gave his wife "everything." The court held that this was a sufficient memorandum to satisfy the statute of frauds regarding the husband's conveyance to the wife of realty acquired during the marriage.⁹⁹

An ambiguous agreement in *Thompson v. Thompson*¹⁰⁰ provided that the husband would "withdraw or refrain from legal action to remove [the wife] from the house." The husband then brought a suit to partition the marital domicile, but the wife argued that "she could remain in the house for the rest of her life"¹⁰¹ pursuant to the agreement. Admitting parol evidence to resolve this ambiguity, the Virginia Supreme Court affirmed the trial court decision in favor of the husband.¹⁰²

Finally, in *Tiffany v. Tiffany*,¹⁰³ a former wife sought an order to show cause why the former husband should not be held in contempt for failing to pay an older son's college expenses. The college expenses were to be paid by the husband pursuant to the terms of a separation agreement which was incorporated in the divorce decree. The agreement provided that "[the] [h]usband shall be entitled to participate in the decision making process as to the college to be attended."¹⁰⁴ The husband refused to pay for the college ex-

95. *Id.* at 41-42, 340 S.E.2d at 804-05.

96. 1 Va. App. 226, 336 S.E.2d 23 (1985).

97. *Id.* at 230, 336 S.E.2d at 26; see also *Cass v. Lassiter*, 2 Va. App. 273, 343 S.E.2d 470 (1986) (unitary award where divorce decree was inconsistent with the incorporated separation agreement provisions).

98. 231 Va. 90, 341 S.E.2d 182 (1986).

99. *Id.* at 91-93, 341 S.E.2d at 184-85.

100. 231 Va. 161, 162, 343 S.E.2d 53, 53 (1986).

101. *Id.* at 162-63, 343 S.E.2d at 54.

102. *Id.* at 163, 343 S.E.2d at 54.

103. 1 Va. App. 11, 332 S.E.2d 796 (1985).

104. *Id.* at 13-14, 332 S.E.2d at 795.

penses because he objected to his son's choice of college.¹⁰⁵ On review, the appellate court stated that: (1) it was not bound by the trial court's construction of the contract provisions at issue;¹⁰⁶ (2) in construing such contracts, ordinary words are to be given their ordinary meanings; and (3) the "plain language of the agreement does not require that [the former wife] or the son select a college acceptable to [the former husband]."¹⁰⁷

E. *Related Federal Decisions*

In *Doe v. Duling*,¹⁰⁸ two unmarried adults filed a suit challenging the constitutionality of Virginia's fornication¹⁰⁹ and cohabitation¹¹⁰ statutes. The district court held that: (1) the unmarried adults had standing to bring the suit; (2) there was a sufficient threat of prosecution to render the case ripe for review; and (3) these statutes violated the constitutional right to privacy that extends to an unmarried adult's decision to engage in private, nonprostitutional, heterosexual activities.¹¹¹ However, the Fourth Circuit Court of Appeals vacated the lower court opinion,¹¹² holding that plaintiffs

failed to show even a remote chance that they are threatened with prosecution under these provisions. . . . We therefore vacate the judgment of the court below and remand with directions to dismiss for want of a justiciable case or controversy. We express no view on the merits of the constitutional questions addressed by the district court.¹¹³

In *Stewart v. Hall*,¹¹⁴ a former client brought a legal malpractice action against an attorney. The plaintiff alleged that the attorney had negligently represented him in a child custody matter and had intentionally concealed certain material facts with respect to the

105. The husband wanted his son to attend a Virginia college, but the son enrolled in the University of Hartford, Connecticut. *Id.* at 14-15, 332 S.E.2d at 798-99.

106. *Id.* at 15, 332 S.E.2d at 799 (citing *Wilson v. Holyfield*, 227 Va. 184, 187, 313 S.E.2d 396, 398 (1984)).

107. *Id.* at 17, 332 S.E.2d at 800.

108. 603 F. Supp. 960 (E.D.Va. 1985), *vacated*, 782 F.2d 1202 (4th Cir. 1986).

109. VA. CODE ANN. § 18.2-344 (Repl. Vol. 1982).

110. *Id.* § 18.2-345.

111. *Duling*, 603 F. Supp. at 964-69.

112. *Duling*, 782 F.2d at 1204.

113. *Id.*

114. 770 F.2d 1267 (4th Cir. 1985).

attorney's preparation of the child custody case.¹¹⁵ The Fourth Circuit Court of Appeals vacated the lower court decision against the attorney because, under Virginia law, the court was convinced "that the case was tried on the wrong theory of legal malpractice and that it would be fundamental error to allow the judgment to stand."¹¹⁶ Although the court stated that it "ordinarily will not consider issues raised for the first time on appeal," in very limited circumstances it would consider such an issue "if the error is 'plain' and if our refusal to consider such would result in the denial of fundamental justice."¹¹⁷

A unique issue was raised in the case of *Head v. Head*,¹¹⁸ where the wife, in a December 1981 property settlement agreement, released any claim she might have had against her husband in exchange for \$1,525,000. Four months after the husband had satisfied his property settlement obligations, he sold all of his shares of stock in a corporation for \$45,000,000. The wife thereafter brought suit in the United States District Court for the District of Maryland alleging that the December 1981 property settlement agreement constituted a fraudulently induced "sale" of her alleged interest in the shares of stock in violation of section 10(b) of the Securities of Exchange Act of 1934; SEC Rule 10(b)(5); and section 17(a) of the Securities Act of 1933.¹¹⁹ The Fourth Circuit Court of Appeals affirmed the district court's decision that the wife, by virtue of the December 1981 property settlement agreement, was not a "seller" of the shares of stock and therefore lacked standing to sue.¹²⁰ Although the court defined and interpreted marital property according to the Maryland Marital Property Act,¹²¹ it is worth noting that Maryland and Virginia¹²² apparently are the only two states where a judge on divorce "is given no authority to transfer title to marital property" but may "grant a discretionary cash award to the less pecunious spouse."¹²³ Therefore, *Head* is persuasive authority under Virginia law.

115. *Id.* at 1268.

116. *Id.* at 1269.

117. *Id.* at 1271.

118. 759 F.2d 1172 (4th Cir. 1985).

119. *Id.* at 1173.

120. *Id.* at 1174.

121. *Id.*

122. See VA. CODE ANN. § 20-107.3 (Cum. Supp. 1986).

123. *Head*, 759 F.2d at 1174. Virginia is in accord with this statutory rule. See VA. CODE ANN. § 20-107.3(B) (Cum. Supp. 1986).

Parental kidnapping immunity was discussed in *United States v. Boettcher*,¹²⁴ where the Fourth Circuit Court of Appeals held that immunity under the federal kidnapping statute¹²⁵ in favor of a parent kidnapping his or her own minor child extends to aiding and abetting by the parent and to the parent's participation in a conspiracy with others to kidnap the child. In *Boettcher*, a mother hired two men to kidnap her daughter from the father in West Virginia and return her to the mother's custody in Illinois. The court held that the mother was immune from prosecution under the statute, just as the father had been when he had previously kidnapped the daughter from the mother.¹²⁶

Two recent bankruptcy cases may also be of interest to the Virginia family law practitioner. In *Sumy v. Schlossberg*,¹²⁷ a case dealing with a voluntary Chapter 7 bankruptcy, the court held that to the extent a debtor and a non-filing spouse are indebted jointly, property owned as tenants by the entirety could not be exempted from an individual debtor's bankruptcy estate and the trustee could therefore administer such property for the benefit of the joint creditors. Although Maryland law was applied in order to determine the extent of any available exemption,¹²⁸ the court stated that Virginia law and Maryland law in this area are "identical in all relevant respects."¹²⁹

The second bankruptcy case is *Tilley v. Jessee*.¹³⁰ Interpreting section 523(A)(5) of the federal bankruptcy code,¹³¹ the *Tilley* court restated the prevailing view that a property settlement "debt" is dischargeable in bankruptcy, while "alimony" or "support and maintenance" is not. Applying this rule, the district court found that a "property interest" provision in a postnuptial agree-

124. 780 F.2d 435 (4th Cir. 1985).

125. 18 U.S.C. § 1201(a) (1983).

126. *Boettcher*, 780 F.2d at 436-37.

127. 777 F.2d 921 (4th Cir. 1985).

128. *Id.* at 924-28.

129. *Id.* at 928-29.

130. No. 85-0255-A (W.D. Va. Abingdon Div. Sept. 10, 1985) (Williams, J.), reprinted in 7 VA. FAM. L. NEWS 17 (1985-86).

131. 11 U.S.C. § 523(a)(5) (1981) provides in pertinent part:

(a) A discharge under 727 . . . of this title does not discharge an individual debtor from any debt—

(5) to a spouse [or] former spouse . . . for alimony to, maintenance for, or support of such spouse . . . in connection with a . . . divorce decree, or property settlement, but not to the extent that—

(b) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

ment between the wife and her debtor ex-husband¹³² constituted "alimony" or spousal support for bankruptcy purposes.¹³³

However, the Fourth Circuit Court of Appeals reversed the lower court's decision, holding that the court's characterization of the property interest as alimony was clearly erroneous.¹³⁴ The circuit court stated that a "mutual intent to create support obligation . . . clearly remains the threshold that must be crossed before any other concerns become relevant" in classifying a separation agreement provision as alimony or a property settlement.¹³⁵ The circuit

132. The relevant postnuptial agreement provision read as follows:

5. *Property interest of Wife in Husband's property and estate.* Husband will execute and deliver to Wife a note in the form of Exhibit 1 hereto payable to her order in the principal amount of \$125,000 with interest at the rate of 7% per annum, payable quarter-annually. Interest only shall be paid on this note during the 7-½ years after its date, and thereafter payments of principal and interest payable quarter-annually. Interest only shall be made for a period of 7-½ years so that at the end of fifteen years after the date of the note, the entire principal and interest shall have been paid. To secure the payment of this note, Husband shall assign a life insurance policy or policies on his life aggregating \$125,000. When payments of principal begin on this note, then the portion of the life insurance policy or policies assigned as security shall automatically recede [reduce] by the amount of such principal payment as they are made.

133. Arthur E. Smith, Esquire, of Roanoke, who submitted this opinion, adds the following analysis:

Judge Williams has relied primarily upon the testimony of the wife concerning how she used the money paid to her on the note, i.e., for her support and maintenance; but should have considered that the property settlement note continued to be payable upon the death of the husband or the death or remarriage of the wife.

It is well to note that Judge Williams . . . did not consider the life insurance as a "security" to be a factor but it was noted that the insurance would pay only the unpaid balance of the debt.

Another question arises since the United States District Court has declared the property settlement "debt" not dischargeable and in reality alimony, is the Internal Revenue Service bound by the decision since Tilley, upon advice of his accountants, had deducted only the interest? [sic] Likewise, the wife had not paid income taxes on the principal payments.

In spite of the fact that the property settlement agreement . . . required the wife to execute special warranty deeds to her interest in the husband's real estate, both titled in his name and jointly owned, lawyers in the case have told me that there was no jointly-owned real estate. Accordingly, the only release of property could have been that of inchoate dower. . . .

In view of the monetary award rather than a division in kind which we have in our statutes, it seems to me that this decision requires the practitioner to secure properly the award or at least to insist that the court require proper security for any deferred payments. Malpractice could certainly be charged if an award were in fact subsequently bankrupt and discharged

7 VA. FAM. L. NEWS 17, 17 (1985-86).

134. *Tilley v. Jessee*, 789 F.2d 1074, 1078 (1986).

135. *Id.* at 1078 n.4.

court found no evidence that the parties to the separation agreement mutually intended an obligation different from the property settlement obligation expressly stated in their written separation agreement.¹³⁶ Therefore, the husband's obligation was not in the nature of alimony and was dischargeable in bankruptcy.¹³⁷

136. *Id.* at 1078. In reaching its decision, the court placed great emphasis on the fact that the document exhibited a structured drafting which dealt with the issues of alimony and property settlement in totally distinct segments of the document. The court noted that "as one member of this panel observed at oral argument, if this agreement does not reveal an intent to separate alimony from a property settlement, it is virtually impossible to envision a written agreement that could do so." *Id.*

137. *Id.* at 1075.

APPENDIX A

Explanation of the "Income Shares" Concept*

The kind of standard for determining child support obligations which this commission is recommending — the "income shares" approach — has been developed for the U.S. Office of Child Support Enforcement by Robert G. Williams of the National Center for State Courts.¹ Such an approach is in effect now in the state of Washington, has just been adopted for the state of New Jersey, and is expected to be adopted for the state of Michigan at about the time this report becomes public. The approach is also being recommended currently by the child support commission of Colorado.

Many of the developments in these several states — Washington is the exception — were set in motion by federal legislation last year. One of the requirements of the Child Support Amendments of 1984 is that each state have a commission to study that state's child support system. It is noteworthy that so many of the states now researching the issues have been attracted to the income shares concept.

The central idea in the income shares approach is to make it possible for the child to receive the proportion of parental income which the child would have received had the child's parents continued to live together.

Is it possible to determine what American parents spend on their children? It is, although the results will sometimes be surprising. As Thomas Espenshade observes, "Current evidence suggests that parents vastly underestimate the amount of money they spend on their children."²

One of the reasons for this underestimation of expenditure on children is that, in an intact household, it is not possible directly to observe all of the spending on children. Such spending, as Robert Williams observes, "is commingled with spending on behalf of

* Excerpt from the Report of the Virginia Governor's Commission on Child Support; text and notes are reprinted verbatim.

1. Williams, *Development of Formulas for Establishing and Updating Child Support Orders: Interim Report* (1331 17th Street, Denver, Colorado 80202: Institute for Court Management of the National Center for State Courts, June 7, 1985), page 64-75.

2. Thomas J. Espenshade, *Investing in Children: New Estimates of Parental Expenditures* (Washington, D.C.: The Urban Institute Press, 1984), page xiii.

adults for the largest expenditure categories (e.g., food, housing, and transportation).”³

From a number of sophisticated studies which Williams analyzes (including the 1984 study by Espenshade just cited), it appears that in intact households of equal gross income American parents tend to spend the *same proportion of their income* on their children if they have the same number of children. There is a two fold pattern here — a pattern which can be seen in Table 2 below:

1. The percent of American parents' income spent on their children goes up *as the number of their children goes up* — which means that the parents are spending a smaller and smaller percent of their income on themselves;
2. The percent of American parents income spent on their children goes down somewhat, for any given number of children, *as parental income rises* — which does *not* necessarily mean, however, that the parents are spending larger percentages of their income on themselves.⁴

A hypothetical case will demonstrate how the income shares approach works. Start with an *intact* family with two children. The father's gross income is \$1,200 per month, and the mother's income is \$800, for a total family income of \$2,000 per month. From Table 2, at this \$2,000 per month gross income level, an American family is spending approximately 25.1% of its gross income on these two children, not counting child care or extraordinary medical expenses. (See below).

When the parents separate, if the children are to have a material standard of living similar to that which they had before the separation, the share of *each* parent's gross income devoted to these chil-

3. Williams, *Development of Formulas*, p. 64.

4. It is a mistake to say that, because wealthier parents are spending smaller fractions of income on their children, they are spending larger fractions of income on themselves. Looking only at spending for consumption, American parents of a given number of children spend *about the same fraction of their income* on those children, no matter how wealthy they are. (Williams, *Development of Formulas*, p. 65.) As income increases, wealthier people devote smaller and smaller fractions of their income to consumption, whether for themselves or for their children.

Thus, as income increases, the fraction of income spent on children is dropping because *nonconsumption* use of income is going up. Nonconsumption use of income includes such purposes as saving, investment and taxes. Sooner or later, most of this saving and investment goes to the children in the form of college education, weddings, loans, and finally, through inheritance.

dren is still going to be 25%. If the mother becomes the custodian, she will of necessity be spending her share directly on the children. (This is calculated as 25% of \$800, or \$200 per month.) The father's share will be provided as child support payments. (They will be 25% of \$1,200, or \$300 per month.)⁵

TABLE 2

Child Support as a Percent of Gross Income⁶

Number of Chil- dren	Yearly income: first two lines across Monthly income: second two lines across						
	\$ 0 - \$9,999	\$10,000- 14,999	\$15,000- 19,999	\$20,000- 24,999	\$25,000- 34,999	\$35,000- 49,999	\$50,000+ 41,67+
	\$0 - \$833	\$834- 1249	\$1250- 1666	\$1667- 2082	\$2083- 2916	\$2917- 4166	
1	23.5%	19.5	17.5	16.1	15.2	14.2	11.6
2	36.5	30.3	27.2	25.1	23.5	22.1	17.9
3	45.7	38.0	34.1	31.4	29.5	27.7	22.4
4	51.5	42.9	38.4	35.4	33.3	31.2	25.3
5	56.2	46.7	41.9	38.6	36.3	34.1	27.5
6	60.1	49.9	44.8	41.3	38.8	36.4	29.4

(The percentages stated above exclude work related child care costs and extraordinary medical and dental expenses. In the income shares formula, these costs or expenses are divided between the parents in proportion to income and added to the child support determined in the table.)

Work-related child care expenses is treated separately because *before the child support percentages were put into Table 2, they were systematically lowered* in a way based on the finding that expenditures for work-related child care amount to 3.9% of consumption in an average household where the wife works full or part time.⁷ In the hypothetical case, the parents' incomes are in the ratio of 60-40 (\$1,200 to \$800). Thus, if child care is necessary for the mother to work, 60% of the cost is added to the father's support payments. The mother pays the rest directly.

If the child has any extraordinary medical or dental expenses,

5. As is obvious, child support calculated in this way totals \$500. This differs slightly from the \$494 child support which is shown in Table 1 in the main body of this report, because the larger Table 1 has "smoothed out" the changing percentage obligations so that they rise or fall gradually rather than "jumping" suddenly as one moves from one income bracket to the next. As combined income rises, the percentage of child support obligation slowly declines. Thus, since the hypothetical family's \$2,000 income is at the very high end of the \$1,667-2,082 income bracket, the amount they spend on children is less than 25%.

6. This table is taken from Robert Williams, *Development of Formulas*, page 71, with a few editorial modifications, but no change of substance.

7. Williams, *Development of Formulas*, page 66.

these hypothetical parents would pay those expenses on the same 60-40 basis as they do the child care.

A final word is needed concerning the relationship between the table shown in this appendix and the larger table (Table 1) which is found in the main body of this Commission's report. Table 2 in this appendix is more useful in explaining the *concept* of income shares than is Table 1. The Commission recommends that child support amounts be taken from Table 1 because the percentages of income on Table 2 "jump" suddenly as one moves from one income bracket to the next. Thus, obligors with more income could owe less in child support than obligors with less income.

