

**COURT OF APPEALS AFFIRMS DECISION FAVORING MARKS CLARE &
RICHARDS CLIENT IN A CASE INVOLVING CALCULATION OF CHILD SUPPORT
WHEN JOINT CUSTODY IS INVOLVED.**

The Nebraska Court of Appeals recently ruled in favor of a father represented by Marks Clare & Richards attorneys Howard N. Epstein and Steven J. Riekes, holding that the father's child support obligation was correctly calculated on the basis of joint custody. This ruling saved the father hundreds of dollars monthly in child support payments. The case is Doeschot v. Doeschot, No. A-07-628.

Child support obligations are, generally speaking, calculated pursuant to guidelines established by the Nebraska Supreme Court. Different guidelines are used depending upon whether a parent has sole custody of the children, or both parents share custody. The support obligations of the noncustodial spouse can be substantially higher than in the situation in which there is joint custody.

In regard to support obligations, the term "joint custody" must be further defined. Even if the parents are considered to have "joint legal custody," support obligations are determined on the basis of "joint physical custody." Joint legal custody has been defined as authority and responsibility for making major decisions regarding a child's welfare. In contrast, joint physical custody has been described as joint responsibility for the minor day-to-day decisions regarding the child and the exertion of continuous physical custody by both parents over a child for significant periods of time.

In elaborating and applying these distinctions, the Nebraska courts have generally regarded fathers who spend alternating weekends and substantial vacation time with their children as not having true joint physical custody. However, if a father has responsibility for his children for at least some time during the school week, especially if they stay overnight with him and he has to get them ready for school the next morning, then he may be regarded as having joint physical custody with the mother.

In this particular appeal, pursuant to a parenting plan, the father and mother were awarded joint legal custody of their children with the mother receiving "primary physical possession of the children." The father's regular parenting time included six days out of a 14-day cycle, which days alternated in any given week.

At trial, on behalf of their client, Marks Clare & Richards attorneys asserted that child support should be based upon a joint custody calculation, and the trial judge agreed. In this case, the six "days" included overnights with the father who had to get the children ready for school the next morning.

The mother appealed the trial court's decision, claiming that she should be receiving substantially more child support from the father, and asserting that the trial court erred by calculating child support under a joint custody calculation rather than a sole custody calculation. The Court of Appeals agreed with the trial court and the Marks Clare & Richards attorneys, holding that the facts in the case supported the trial judge's determination to use the joint custody calculation, sparing the father from excessive child support payments.