



OKLAHOMA STATE COURTS NETWORK

[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#)

FANCHER v. MCDOWELL

2026 OK CIV APP 21

Case Number: 122083

Decided: 06/05/2026

Mandate Issued: 07/02/2026

COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II



Cite as: 2026 OK CIV APP 21, __ P.3d __

EVA MARIE FANCHER, Petitioner/Appellant,

vs.

PETER CHRISTOPHER MCDOWELL, Respondent/Appellee.

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE BARBARA HATFIELD, TRIAL JUDGE

REVERSED IN PART AND REMANDED FOR FURTHER PROCEEDINGS, AFFIRMED IN PART

Steven M. Ditto, STEVEN M. DITTO, P.C., Oklahoma City, Oklahoma for Petitioner/Appellant

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JOHN F. FISCHER, JUDGE:

¶1 Eva Marie Fancher (Mother) appeals the district court's amended order modifying Peter Christopher McDowell's (Father) monthly child support obligation, along with the order awarding her only a portion of her requested award of attorney fees and costs. Because the district court failed to consider the proper factors for determining the amount of Father's child support where his income exceeded the maximum amount indicated by the child support guidelines, we reverse this order and remand for further proceedings consistent with this Opinion. However, the order awarding Mother a portion of her requested attorney fees and costs is affirmed because she has not shown an abuse of discretion occurred.

BACKGROUND

¶2 Mother and Father are the parents of two minor children. Though they were never married, they once lived together. During that time, Father made approximately \$160,000 a year, and Mother stayed home with the children. After they separated in 2010, the district court's docket shows a decree of paternity was entered in Texas, which was then registered as a foreign decree in Oklahoma. ¹ The docket thereafter reflects extensive litigation between the parties, including multiple motions to modify child custody, visitation, and child support. Additionally, the record shows that Father has a history of frequent employment changes, and sometimes underemployment, which he attributes to working in the oil and gas industry. Father has not been significantly

involved with the children, rarely visiting them for several years. Mother is a licensed attorney but changed careers to become a schoolteacher, which she explained was so she could be more available to the children given that Father is largely absent.

¶3 As pertinent to this appeal, the district court entered an agreed order in 2021, awarding Mother sole custody of the children and Father supervised visitation. Pursuant to the 2021 order, Father was ordered to pay monthly child support in the amount of around \$720 based on his then gross income of approximately \$3,600 a month. The 2021 order contained a provision requiring each party to notify the other within seven days if one party obtained employment earning remuneration of more than 25% of their current incomes. The order included instructions for new child support guidelines to be prepared by Mother's attorney for submission to the court without necessitating her filing another motion to modify.

¶4 When Father failed to provide this timely notice, Mother filed another motion to modify in 2022, alleging Father's income had increased by over 25% and seeking a modification of child support. A discovery dispute ensued regarding Father's income, complicated by him frequently changing attorneys, though some of the changes were due to his attorney becoming ill but then recovering and reentering the case. Father also changed jobs two times after Mother filed her motion, each time increasing his income by over 25%. Ultimately, his gross income was more than \$26,000 a month. This amount was significantly above \$15,000, which is the maximum combined gross monthly income amount listed in the child support guidelines. A two-day hearing was held on Mother's motion in August 2023 and December 2023.

¶5 At the hearing, Mother presented evidence of the children's direct and indirect monthly living expenses and asserted that Father's percentage of these expenses was approximately \$4,055 a month, requesting child support in this amount. Mother testified that the standard of living she provided the children based on these expenses was in their best interests. Mother further testified that her gross monthly income was approximately \$4,300 but that this was not enough to cover her and the children's monthly expenses. ² To account for the shortfall, she explained that she was utilizing up to \$2,000 a month from an investment account she inherited.

¶6 Father testified that he did not believe the children's expenses were as much as Mother asserted. He testified that he thought a reasonable amount of the children's expenses was around \$1,700 a month, which is approximately the same amount he would be required to pay applying his percentage share of the parents' combined income to the maximum combined income amount listed in the guidelines. Father did not provide a specific calculation as to how he arrived at this amount but simply thought it sounded reasonable. Moreover, the parties' testimony indicated that Father lacked personal knowledge of the children's expenses, such as their food costs, given he had no overnight visits and had only seen them once in the three-year period before the hearing. Regardless, towards the end of his testimony, Father stated that he would "offer" to pay a monthly amount of \$2,250.

¶7 The district court then ordered Father to pay \$2,250 in monthly child support based on this amount he volunteered to pay, noting it was not following *Archer v. Archer*, 1991 OK CIV APP 28, 813 P.2d 1059 (approved for publication by the Oklahoma Supreme Court). ³ At a hearing to settle the language of the order, the court reiterated that it "accepted the offer made by [Father]" as to the amount of his child support obligation. The court's final order, titled as an "Amended Order of Modification" was subsequently filed. The child support guidelines calculation attached to the order shows Father's gross monthly income as approximately \$26,000, and Mother's income as around \$4,300. The guidelines indicate that the court deviated from the guidelines "[p]ursuant to [Father's] testimony as to amount he would pay."

¶8 Mother then filed an application for attorney fees and costs seeking a total amount of \$14,185.95 incurred during the approximately two years it took to reach a resolution on her motion to modify. At the hearing on her application, Mother emphasized Father's delays during the pendency of the case. She noted that the litigation could have been avoided or limited if Father had complied with the provision in the 2021 order requiring him to timely notify her of a significant change to his income so that her attorney could draft a new child support calculation for submission to the court. Mother also argued that Father was the party with the greater ability to

pay. Father made various arguments against Mother's request, including that she had declined his offers to settle the case and that she could have increased her income if she returned to practicing law as opposed to teaching school.

¶9 The district court concluded that the amount of Mother's requested fees was reasonable. However, the court stated it was only awarding her fees and costs incurred for her discovery efforts, noting the discovery "really was quite out of line from the norm." The court did not award Mother any other fees or costs without elaborating on the reason for this decision. Eventually, the district court entered an order awarding Mother attorney fees and costs of \$4,099.31.

¶10 Mother appeals the order awarding her child support in the amount of \$2,250 a month and the order awarding her fees and costs in the amount of \$4,099.31.

STANDARD OF REVIEW

¶11 The district court's decision on a motion to modify child support will not be disturbed unless the "court's decision is clearly against the weight of the evidence so as to constitute an abuse of discretion." *Williamson v. Williamson*, 2005 OK 6, ¶ 5, 107 P.3d 589, 591.

¶12 Regarding an award of attorney fees and costs, each party ordinarily bears the cost of her legal representation, and courts are without authority to award attorney fees and costs in the absence of a specific statute or specific agreement between the parties. *Metcalf v. Metcalf*, 2020 OK 20, ¶ 27, 465 P.3d 1187, 1195. A district court's award of attorney fees and costs in a proceeding to modify child support in a paternity action is reviewed for an abuse of discretion. See *McKiddy v. Alarkon*, 2011 OK CIV APP 63, ¶ 9, 254 P.3d 141, 144. See also *Childers v. Childers*, 2016 OK 95, ¶ 28, 382 P.3d 1020, 1026-27 (explaining an award of fees in a similar dissolution action is reviewed for an abuse of discretion); *Merritt v. Merritt*, 2003 OK 68, ¶ 20, 73 P.3d 878, 884 (same). An abuse of discretion occurs "when it makes a decision based on an erroneous conclusion of law or when its decision has no rational basis in evidence." *Childers*, 2016 OK 95, ¶ 28.

¶13 When applying an abuse of discretion standard, underlying questions of law are reviewed de novo. See *Shellem v. Grunewald*, 2023 OK 26, ¶ 9, 535 P.3d 1208, 1211. In exercising de novo review, this Court has plenary, independent, and non-deferential authority to examine the district court's legal conclusions. *Walterscheidt v. Hladik*, 2022 OK 57, ¶ 15, 512 P.3d 354, 360.

ANALYSIS

1. Child Support

¶14 Mother alleges the district court abused its discretion by basing Father's monthly child support obligation on the amount he offered to pay at the hearing without considering relevant factors previously articulated in binding precedent.

¶15 Title 43 O.S.2021 § 119(B) provides that if the parents' combined gross income exceeds \$15,000 a month, "the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars (\$15,000.00) and an additional amount determined by the court." (emphasis added). When the parents' income exceeds the amount listed in the guidelines table, "the children's minimum financial needs are set by the guidelines and needs over the minimum are based upon the circumstances of each case." *Kerby v. Kerby*, 2002 OK 91, ¶ 7, 60 P.3d 1038, 1041 (*Kerby I*) (citing section 119(B) and *Archer v. Archer*, 1991 OK CIV APP 28, ¶ 10), 813 P.2d 1059, 1061.

⁴ In cases where the combined income exceeds the table, the Supreme Court has stated that the district court should consider three factors in its initial award: "(1) the children's needs, (2) the parents' ability to pay, and (3) prior standard of living[.]" though these factors are not exhaustive. *Id.* Where the parents' incomes exceed the maximum amount addressed by the table, "a determination of the children's needs and the parents' ability to pay in excess of the tables' standards [is] within the trial court's discretion." *Id.*

¶16 Regarding the prior standard of living, *Archer* explained that a district court "may properly require the children to be maintained in the same style as before the parents' divorce to the extent the parents may reasonably do so, not just at a 'bare bones' level." *Archer*, 1991 OK CIV APP 28, ¶ 11 (internal citations and emphasis omitted). This is because it penalizes the children to deny them "the benefits which they have experienced from an affluent lifestyle simply because the resources to support that lifestyle are in the wallet or purse of the non-custodial parent" *Id.* ¶ 12. It also "places in the hand of the non-custodial parent a potent weapon in the war for affection which all too often follows marital dissolution." *Id.* Though *Kerby I* and *Archer* discussed the factor of the "prior standard of living" in the context of divorce cases, we see no reason for that factor not to apply to the present paternity case. To hold otherwise would unfairly penalize the children simply because their parents never married, a circumstance beyond the children's control. Moreover, as explained in *Archer*, denying the children the benefits of an affluent lifestyle simply because the non-custodial parent has most of the financial resources also penalizes the children and presents the same potential for a "war for affection" as in a dissolution proceeding.

¶17 Additionally, this Court has previously held that even in a paternity proceeding where the parents did not previously live together with the children, the district court does not err "when it allows children to benefit from the affluence of the non-custodial parent simply because the custodial parent receives an incidental benefit," but cautioned that the court "must be careful to tailor that support to maximize the direct benefit to the child." *Griggs v. McKinney*, 2002 OK CIV APP 127, ¶ 10, 61 P.3d 907, 910 (footnote omitted). In *Griggs*, this Court found that the district court erred when it failed to base the child support amount for a parent with income exceeding the guidelines table on "evidence concerning the direct and indirect expenses of the child consistent with a lifestyle which would be appropriate for the child under the circumstances. . . ." *Id.* ¶ 21. Though the district court in *Griggs* calculated the additional amount of child support mandated by statute using a different method than in the present case, we find *Griggs* persuasive. We agree that the district court must consider the factors articulated in *Kerby I* and *Archer* when determining the additional amount of support required by statute.

¶18 In the present case, the record shows that the district court did not consider any of the factors discussed in *Kerby I* and *Archer*. The district court explicitly and mistakenly believed that *Archer* (and effectively *Kerby I*) did not apply and that it had "no authority to order [Father] to assist with any extracurricular activities. . . ." Rather than analyzing the children's needs, the Father's ability to pay, and the prior standard of living or appropriate lifestyle of the children, the record shows the district court simply "accepted" Father's offer to pay \$2,250 a month. This was error.

¶19 Father argues that the district court did not abuse its discretion by computing his child support obligation based on what he offered to pay, pursuant to *Kerby v. Kerby*, 2007 OK 35, ¶ 13, 164 P.3d 1049, 1052 (*Kerby II*). Father misunderstands *Kerby II*, where the Supreme Court affirmed the district court's decision not to allow discovery or to consider evidence of the father's current lifestyle, finding it irrelevant based on the facts of the case. In *Kerby II*, the district court reasoned that "evidence of Father's income, Father's stipulation to the ability to pay any reasonable amount of child support, and evidence of the children's projected needs, were sufficient factors to award an increase in support without hearing evidence of the lifestyles of Father and his new family." *Id.* ¶ 13.

¶20 In the present case, unlike in *Kerby II*, Mother largely did not seek to introduce evidence or base the requested child support amount on Father's lifestyle.⁵ Moreover, the parties entered no stipulation as to Father's ability to pay, but rather Father simply said what he was willing to pay based on what he found to be a reasonable amount for the children's expenses. Father never testified that he was unable to pay the expenses Mother sought for the children and never provided a monthly budget or any other evidence showing he could not afford these expenses, beyond general averments that his income fluctuates due to frequent employment changes. *Kerby II* does not stand for the proposition that the parent earning the high income has the right to dictate the amount of child support he or she owes by entering a "stipulation" about the amount they are willing to pay. It also did not overrule *Kerby I* or *Archer*, either explicitly or by implication, which required the court to consider the children's needs in keeping with their appropriate lifestyle under the circumstances, in addition to Father's ability to pay.⁶

¶21 Because the court's decision was based on an erroneous conclusion of law, an abuse of discretion occurred. We reverse the district court's amended order modifying child support. On remand, the court shall calculate Father's monthly child support obligation using the exhibits and testimony previously submitted at the hearing. The amount shall be calculated by using the monthly child support amount indicated by the guidelines for two children of parents with a combined income of \$15,000 (i.e., \$1,961 a month) plus an additional amount determined by considering the direct and indirect expenses of the children consistent with a lifestyle appropriate for the children under the circumstances and Father's ability to pay. The court shall then multiply this amount by Father's percentage share of income to determine the amount of his monthly child support obligation. The court shall also calculate any arrearage amount Father owes based on what the court determines is his monthly support obligation.

2. Attorney Fees and Costs

¶22 Mother alleges the district court erred by awarding her attorney fees and costs in the amount of \$4,099.31, though she sought a total award of \$14,185.95.

¶23 As a preliminary matter, Mother sought this award pursuant to 43 O.S.2021 § 110(E), which applies to modification proceedings arising from dissolution actions, not paternity actions. See *McKiddy v. Alarkon*, 2011 OK CIV APP 63, ¶ 15, 254 P.3d 141, 146 (finding section 110(E) did not support an award of fees and costs because the parties were never married). However, Father acknowledges that 43 O.S.2021, § 109.2(B) provides statutory authority for a court to assess reasonable attorney fees and costs when modifying child support in the context of a paternity proceeding. See *id.* (providing that in a paternity proceeding, the court may award child support to the parent to whom it awards custody and "may make an appropriate order for payment of costs and attorney fees."). See also *Fletcher v. Kelley*, 2020 OK CIV APP 35, ¶ 23, 467 P.3d 735, 740 (finding section 109.2(B) allows the district court to award attorney fees and costs in a post-paternity decree modification of child support). ⁷

¶24 Though section 110(E) does not supply the statutory basis for awarding attorney fees and costs in this case, the Supreme Court has found that district courts may award fees and costs in dissolution proceedings pursuant to that statute through a "judicial balancing of the equities," which is not dependent on prevailing party status. *Metcalf v. Metcalf*, 2020 OK 20, ¶ 28, 465 P.3d 1187, 1195. The Supreme Court has not articulated every factor that may be considered in analyzing a "judicial balancing of the equities," but has repeatedly stated that each parties' respective "means and property" is a consideration. *Id.* See also *Boatman v. Boatman*, 2017 OK 27, ¶ 17, 404 P.3d 822, 828.

¶25 Oklahoma courts have long looked to *Finger v. Finger*, 1996 OK CIV APP 91, 923 P.2d 1195, as persuasive guidance on awarding fees in dissolution proceedings. In *Finger*, the Court of Civil Appeals stated that the court "should consider the totality of circumstances leading up to, and including, the subsequent action for which expenses and fees are being sought." *Id.* ¶ 14. In the context of a child custody modification, *Finger* stated that the circumstances include, but are not limited to: the outcome of the modification action; whether the action was brought because one of the parties had endangered or compromised the children's health, safety, or welfare; whether one party's behavior showed the most interest in the children's physical, material, moral, and spiritual welfare; whether one party's behavior showed a priority of self-interest over the children's best interests; whether either party unnecessarily complicated or delayed the proceedings or made the litigation more vexatious than it needed to be; and each parties' respective means and property. *Id.* ¶ 14.

¶26 Though section 110 was the statute at issue in *Metcalf*, *Boatman*, and *Finger*, there is nothing in the analysis in those cases that would limit the considerations articulated therein to only divorce actions. We hold that they are equally applicable to paternity proceedings. Issues regarding child custody and child support arise in both types of proceedings. Indeed, at the hearing on Mother's application for fees and costs in the present case, both parties argued the applicable factors discussed in *Finger*, including the outcome of the action, whether one party unnecessarily complicated or delayed the proceedings or made the litigation more vexatious than necessary, and the means and property of the respective parties.

¶27 After hearing these arguments, the district court found that Mother's counsel's hourly rate and the hours expended were reasonable. Thereafter, the record shows the court considered the parties' respective arguments as to vexatiousness. The court determined that Mother should be awarded the portion of her fees and costs pertaining to discovery, noting the discovery "was quite out of line from the norm." However, the court attributed some of the delay in the case to the fact Father's counsel became ill.

¶28 Though the court did not specifically address other applicable factors in articulating its decision, we presume the court considered them in reaching its decision and weighed the factors in a way that supported awarding Mother only the portion of her request attributable to her discovery efforts. See *KMC Leasing, Inc. v. Rockwell-Standard Corp.*, 2000 OK 51, ¶ 13, 9 P.3d 683, 688-89 (explaining that absent the district court's explanation of the ruling and absent a record to the contrary, the court's general order is presumed to be correct, and we presume the court, "found every special thing necessary" to support the general finding (quoting *Monarch Ins. Co. of Ohio v. Rippy*, 1962 OK 6, ¶ 11, 369 P.2d 622, 625)). Even though we may have weighed the factors differently and reached a different conclusion if making the decision in the first instance, the attorney fee and cost award rests with the discretion of the district court. See *Boatman*, 2017 OK 27, ¶ 17 (analyzing the district court's "balancing of the equities" using an abuse of discretion standard).

¶29 Mother directs attention to Father's argument that her failure to agree to settle the case prior to the hearing weighed against awarding her requested fees and costs. She correctly notes that this Court has previously found that the failure to settle is not an appropriate factor when considering the equities of awarding attorney fees and costs. *Shirley v. Shirley*, 2004 OK CIV APP 100, ¶ 7, 104 P.3d 1142, 1144. We agree. The record, however, does not show that the district court based its decision on Mother's alleged failure to settle the case. For this reason and the others articulated above, we cannot say the district court made its decision based on an erroneous conclusion of law or that the court's decision had no rational basis in evidence, which would amount to an abuse of discretion.

CONCLUSION

¶30 The order establishing the amount of Father's monthly child support obligation is reversed. On remand, the district court shall calculate the amount of Father's monthly child support as instructed in this Opinion, along with any arrearage. The order awarding Mother a portion of her requested attorney fees and costs is affirmed.

¶31 REVERSED IN PART AND REMANDED FOR FURTHER PROCEEDINGS, AFFIRMED IN PART.

HIXON, C.J., and WISEMAN, P.J. concur.

FOOTNOTES

JOHN F. FISCHER, JUDGE:

¹ The Court takes judicial notice of the filings included in the district court's docket. See *In the Matter of the Guardianship of G.E.M.S.*, 2025 OK 2, ¶ 8 n.3, 562 P.3d 1085, 1088 n.3 (citing *Green v. Mac's Plating Works*, 1977 OK 71, ¶ 21, 563 P.2d 148, 152 ("The court takes notice of judgment, decrees, records and proceedings pending, and will notice particularly former proceedings to which reference is made in a pending cause.") (emphasis omitted))).

² Mother's adult daughter from another relationship also lives with her. Mother accounted for this other person when calculating the indirect expenses of the children.

³ Because *Archer* was approved for publication by the Supreme Court, it is binding and precedential. See 20 O.S.2021 § 30.5; Okla. Sup. Ct. R. 1.200(d)(2).

⁴ The amount of monthly support for two children of parents with a combined income of \$15,000 a month is \$1,961. See 43 O.S.2021 § 119(A). This amount has not been updated to reflect inflation in over 25 years. As Mother noted in her testimony, "with inflation, food is . . . expensive."

⁵ Mother did note that Father's income tax return indicated he was supporting his current girlfriend as a dependent.

⁶ Father also argues that the district court did not err because it previously modified child support to reflect fluctuations in Father's income and "deviated from the guidelines" to ensure the children benefited from this increase. The district court did not deviate from the guidelines but rather complied with the requirement in section 119(B) to compute child support based on the amount computed for a monthly income of \$15,000 and "an additional amount determined by the court." Moreover, the fact that Father's child support obligation was previously modified is irrelevant to this Court's analysis of whether the district court modified child support based on proper considerations in the instant case.

⁷ The district court's order did not include a statutory basis for the award.

Citationizer[®] Summary of Documents Citing This Document

Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name	Level
Oklahoma Court of Civil Appeals Cases	
Cite	Name Level
<u>1991 OK CIV APP 28</u> , <u>813 P.2d 1059</u> ,	<u>Archer v. Archer</u> Discussed at Length
<u>2002 OK CIV APP 127</u> , <u>61 P.3d 907</u> ,	<u>GRIGGS v. McKINNEY</u> Discussed
<u>2004 OK CIV APP 100</u> , <u>104 P.3d 1142</u> ,	<u>SHIRLEY v. SHIRLEY</u> Discussed
<u>2011 OK CIV APP 63</u> , <u>254 P.3d 141</u> ,	<u>MCKIDDY v. ALARKON</u> Discussed at Length
<u>1996 OK CIV APP 91</u> , <u>923 P.2d 1195</u> ,	<u>Finger v. Finger</u> Discussed
<u>67 OBJ 274</u> ,	
<u>2020 OK CIV APP 35</u> , <u>467 P.3d 735</u> ,	<u>FLETCHER v. KELLEY</u> Discussed
Oklahoma Supreme Court Cases	
Cite	Name Level
<u>1962 OK 6</u> , <u>369 P.2d 622</u> ,	<u>MONARCH INSURANCE COMPANY OF OHIO v. RIPPY</u> Discussed
<u>2002 OK 91</u> , <u>60 P.3d 1038</u> ,	<u>KERBY v. KERBY</u> Discussed
<u>2003 OK 68</u> , <u>73 P.3d 878</u> ,	<u>MERRITT v. MERRITT</u> Discussed
<u>2005 OK 6</u> , <u>107 P.3d 589</u> ,	<u>WILLIAMSON v. WILLIAMSON</u> Discussed
<u>2007 OK 35</u> , <u>164 P.3d 1049</u> ,	<u>KERBY v. KERBY</u> Discussed
<u>1977 OK 71</u> , <u>563 P.2d 148</u> ,	<u>GREEN v. MAC'S PLATING WORKS</u> Discussed
<u>2016 OK 95</u> , <u>382 P.3d 1020</u> ,	<u>CHILDERS v. CHILDERS</u> Discussed at Length
<u>2017 OK 27</u> , <u>404 P.3d 822</u> ,	<u>BOATMAN v. BOATMAN</u> Discussed at Length
<u>2020 OK 20</u> , <u>465 P.3d 1187</u> ,	<u>METCALF v. METCALF</u> Discussed at Length
<u>2022 OK 57</u> , <u>512 P.3d 354</u> ,	<u>WALTERSCHEIDT v. HLADIK</u> Discussed
<u>2023 OK 26</u> , <u>535 P.3d 1208</u> ,	<u>SHELLEM v. GRUNEWELD</u> Discussed
<u>2025 OK 2</u> , <u>562 P.3d 1085</u> ,	<u>IN THE MATTER OF THE GUARDIANSHIP OF G.E.M.S.</u> Discussed
<u>2000 OK 51</u> , <u>9 P.3d 683</u> , <u>71 OBJ 1763</u> ,	<u>KMC Leasing Inc. v. Rockwell-Standard Corp.</u> Discussed

Title 20. Courts

Cite	Name	Level
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Cite Name

Level

<u>20 O.S. 30.5,</u>	<u>Opinions - Publications</u>	Cited
Title 43. Marriage		
Cite	Name	Level
<u>43 O.S. 110,</u>	<u>Orders Concerning Property, Children, Support and Expenses</u>	Cited
<u>43 O.S. 109.2,</u>	<u>Determination of Paternity, Custody and Child Support</u>	Cited
<u>43 O.S. 119,</u>	<u>Child Support Guideline Schedule</u>	Discussed