IN THE CIRCUIT COURT OF THE [redacted] JUDICIAL CIRCUIT
IN AND FOR [redacted] COUNTY, FLORIDA

In re: the Former Marriage of

[redacted],
Petitioner/Former Wife,

and

[redacted],
Respondent/Former Husband.
_____/

CASE NUMBER: [redacted]

FAMILY DIVISION [redacted]

FORMER HUSBAND'S MEMORANDUM OF LAW REGARDING GOOD FORTUNE CHILD SUPPORT

COMES NOW, the Former Husband, [redacted], by and through his undersigned counsel and hereby files his *Memorandum of Law Regarding Good Fortune Child Support,* which he believes will assist this Court in its ultimate determination of the Former Wife's request for modification of child support, and states as follows:

MEMORANDUM OF LAW

In 1993, the Florida Supreme Court decided *Miller v. Schou,* 616 So.2d 436 (Fla. 1993), a good fortune child support case in which the former wife was seeking a supplemental modification of the former husband's child support obligations. The *Miller* case involved a former husband who had earned a modest income as a medical resident during the original action and who, seven years later, was earning a substantial income as a practicing anesthesiologist. The former husband acknowledged that he had the ability to increase his child

support obligation from the $500.00 per month prior award to *any* amount needed to pay for the child's needs.

In view of his admission that he had the ability to pay *any* amount of child support for the child's needs, the former husband argued that his financial condition was not pertinent and sought protection from any financial disclosure and discovery. The trial court denied the former husband's motion and ordered him to provide a financial affidavit. The former husband filed a petition for certiorari with the Third District Court of Appeal, which granted certiorari and quashed the order compelling former husband to provide a financial affidavit, essentially finding that, because the former husband stipulated his ability to satisfy his child's needs, the ordering of a financial affidavit was a departure from the essential requirements of the law.

On further appeal, the Florida Supreme Court reviewed the decision and, in doing so, made two pertinent rulings. First, the Court expressly held that "an increase in ability to pay is in itself sufficient to warrant an increase in child support. . ." Second, the Court made it clear that, in good fortune cases, the child is entitled to share in the parent's good fortune. As to what this may mean, the Florida Supreme Court stated:

> "The child is only entitled to share in the good fortune of its parents consistent with an appropriate lifestyle. We believe that Florida's trial courts are fully capable of making the determination of an appropriate amount of support in these cases and will not . . . create a class of children who are unduly pampered in the name of sharing in the non-custodial parent's good fortune."

Miller v. Schou, 616 So.2d 436, 439 (Fla. 1993).

Five years later, the Florida Supreme Court in *Finley v. Scott*, 707 So.2d 1112 (Fla. 1998) laid out the steps to follow for determining the "appropriate lifestyle" mentioned in *Miller,* and discussed a process to follow for managing the child's share of his or her parent's good fortune.

Finley was a paternity action in which strict application of the child support guidelines would have required the father, a professional basketball player, to pay $10,011.00 per month in child support. The trial court deviated downward from the child support guidelines by awarding child support in the amount of $5,000.00, of which $2,000.00 per month was to be paid directly to the mother to meet the child's immediate financial needs and $3,000.00 per month was to be held in trust by a guardian of the child's property.

On appeal, the Fifth District Court of Appeal reversed and found that the trial court abused its discretion when it awarded child support that was in excess of the child's actual needs. In essence, the 5th DCA would have required the trial court to enter a judgment awarding only $2,000.00 per month for child support.

On further appeal, the Florida Supreme Court disagreed with the 5th DCA, and remanded the case with directions to affirm the trial court's final judgment of paternity and child support determination of $5,000.00 per month, notably below the guideline amount of $10,011.00 per month. In doing so, the Florida Supreme Court did two significant things. First, the Florida

Supreme Court laid out the steps to be followed for ascertaining the "appropriate lifestyle" that had been discussed in general terms in *Miller v. Schou.* More specifically, the Florida Supreme Court stated:

> "To assist trial courts in making this fact-intensive decision in future cases, we expressly point out that the trial court is to begin its determination of child support by accepting the statutorily mandated guideline as the correct amount. The court is then to evaluate from the record the statutory criteria of the needs of the child, including age, station in life, and standard of living. If the trial court then concludes that the guideline amount would be unjust or inappropriate and also determines that the child support amount should vary plus or minus five percent from the guideline amount, the trial court must explain in writing or announce a specific finding on the record as to the statutory factors supporting the varied amount. Absent an abuse of discretion as to the amount of the variance, the trial court's determination will not be disturbed on appeal if the calculation begins with the guideline amount and the variation is based upon the statutory factors."

Finley v. Scott, 707 So.2d 1112, 1117 (Fla. 1998). Second, the Florida Supreme Court suggested that there should be some mechanism in place for managing the child's share of his or her parent's good fortune. More specifically, the Court intimated that if the trial court awards a sum for paying the expenses needed for the minor child's immediate custodial maintenance plus an additional sum essentially representing the child's share of the parent's good fortune (e.g., a "good fortune" sum for funding future expenses such as post-minority education and the like), then some provision should be made for managing the additional "good fortune" sum not needed for the child's immediate custodial maintenance.

In *Finley,* the Court specifically found that because the child's custodial parent had not used temporary support payments totally for the benefit of the child it was appropriate to file a probate action and appoint a guardianship of the child's property in order to protect the portion of the child support payment not needed for the child's day-to-day custodial expenses. In this way, according to the Florida Supreme Court, "the probate court will supervise through the guardian, the use of any money not required for the child's immediate custodial needs." *Finley,* 707 So.2d at 1118.

These types of "good fortune" cases should be limited to situations in which the child support guideline amount greatly exceeds the amount needed for the minor child's immediate custodial maintenance. *See, e.g., Krufal v. Jurgensen,* 830 S.2d 228 (Fla. 4th DCA 2002). As stated in *Miller v. Schou,* 616 So.2d 436, 438-39 (Fla. 1993), courts need not "ensure that the child of a wealthy parent will own a Rolls Royce" . . . or "be driven to school every day in a chauffeured limousine" as an excessive guideline amount may enable. Instead, if the court determines the guideline amount is unjust or inappropriate, the court should deviate downward and award only the amount needed for the child's needs, plus an additional sum representing the child's share of the parent's good fortune. Good fortune child support is not, as the Former Wife has suggested throughout this litigation, an amount *above* child support guidelines.

It is important to note that Florida Law does not, as a matter of public policy, preclude parents from making contracts or agreements concerning their child's support, so long as the best interests of the child are served. *Gentry v. Morgan,* 83 So.3d 924, 926 (Fla. 3rd DCA 2012). In this case, the parties clearly negotiated and agreed within their Mediated Settlement Agreement that the Former Husband would, by way of an annuity, pay the Former Wife $5,000.00 per month for the benefit of the parties' minor child, C.S. $5,000.00 per month is, and has always been (according to the Former Wife's prior financial affidavits), sufficient to meet the minor child's needs, and the best interest of the child is served with the parties' negotiated child support amount. [1]

Where, as here, a trial court has approved the parties' agreement, including its provisions for the minor child, the court is *presumed* to have determined that the amount of agreed-upon child support was, as of that moment, in the best interest of the child. *Essex v. Ayres,* 503 So.2d 1365, 1367 (Fla. 3rd DCA 1987); *see also Rose v. Rose,* 8 So.3d 1251, 1252 (Fla. 4th DCA 2009). In this case, the parties' Mediated Settlement Agreement was approved by the Court's *Final Judgment of Dissolution of Marriage*, and pursuant to paragraph 2 of the Final Judgment, it was "accepted and held to be fair and reasonable, and is hereby ratified and adopted by the Court, and the parties are ordered to comply with it."

[1] In fact, $5,000.00 per month is arguably in excess of the child's needs, as the Former Wife testified during the fee hearing on August 27, 2015 that she has utilized some of the child's support for attorney's fees and costs.

The parties have, in fact, complied for over a decade with the terms of the Mediated Settlement Agreement concerning support for the minor child. The Former Husband purchased an annuity paying the Former Wife $5,000.00 per month for child support, which payments continue today. The parties' agreed (and the Former Wife asserted) that the $5,000.00 monthly annuity payments were clearly understood to be child support by the parties, that the payments should be non-taxable to the Former Wife and non-deductible by the Former Husband as they are child support payments, and the parties subsequently entered into an Agreed Order on May 11, 2005 reiterating that the payments were non-taxable, non-deductible child support payments. Further, the Former Wife has asserted in her UCCJEA that the Former Husband was ordered to pay $5,000.00 per month in child support, and the Former Wife cannot dispute that the payments have been consistently made.

While the guideline amount has admittedly increased since the entry of the Final judgment, pursuant to the case of *Castellano v. Castellano,* 563 So.2d 142 (Fla. 4th DCA 1990), if the child's needs are being met, the court does not have to modify child support. Here, the Former Husband is paying $5,000.00 per month for one child, and he has also funded a college fund in the amount of $100,000.00 for the child. Certainly, the needs of the child are being met by amount of agreed-upon child support that is in the child's best interest. Not only is the immediate custodial maintenance of the child being met, but the child is already by design of the parties themselves receiving "good fortune"

support. The Court in the case at hand does not need to modify child support as the Former Wife wishes to "ensure that the child of a wealthy parent will own a Rolls Royce" or that the child will "be driven to school every day in a chauffeured limousine."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via e-service to: [redacted] on this ___ day of [redacted].