IN THE SUPREME COURT OF GUAM

RODRICK M. WILSON, II,
Plaintiff-Appellant,

v.

JENNIFER J.V. WILSON,
Defendant-Appellee,

and

THE OFFICE OF THE ATTORNEY GENERAL,
CHILD SUPPORT ENFORCEMENT DIVISION,
Interested Third Party.

Supreme Court Case No. CVA19-010
Superior Court Case No. DM0381-09

OPINION

Cite as: 2023 Guam 17

Appeal from the Superior Court of Guam
Argued and submitted on December 4, 2020
Via Zoom video conference

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.[1]

MARAMAN, J.:

[1] Plaintiff-Appellant Rodrick M. Wilson, II. ("Father") appeals a Decision and Order of the Superior Court ordering him to pay child support and child support arrears for his minor child ("Child"). The Office of the Attorney General, Child Support Enforcement Division ("OAG") appears in this appeal as an interested third party on behalf of Defendant-Appellee Jennifer J.V. Wilson, the Child's mother ("Mother"). Father presents three arguments on appeal. First, Father argues that the Superior Court abused its discretion by overruling his objections to the OAG's standing to request an order of retroactive support. Second, Father argues that if the OAG had standing to seek such an order, the Superior Court abused its discretion by ordering child support between the June 2009 complaint for divorce and the entry of the first temporary child support order in October 2014, in violation of 5 GCA § 34116.1. Third, Father argues that the Superior Court abused its discretion by ordering child support arrears between October 20, 2014, and October 2017, in violation of 5 GCA § 34121.

[2] We reverse the Superior Court's April 2019 Decision and Order and the hearings officer's September 2019 Findings and Order to the extent they ordered Father to pay child support between the date of the divorce complaint in June 2009 and the entry of the first temporary child support order in October 2014. We also reverse these orders to the extent they modified Father's monthly child support obligation for the period between October 2014 and the first motion to modify filed on October 26, 2017.

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was argued and submitted.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Father and Mother married in 2006 and separated after less than a year of marriage. In December 2007, after Father and Mother were already separated, Mother gave birth to the only child of the marriage.

[4] In June 2009, Father filed a complaint for divorce ("Complaint"). The Complaint requested that Father and Mother be granted "joint legal and physical custody on an alternating six (6) month basis until the minor child begins school," and that "[n]either party shall pay the other child support, as the parties will be responsible for the maintenance and support of the . . . child while under the care and custody of the custodial parent . . . ." Record on Appeal ("RA"), tab 1 at 2 (Compl. Divorce, June 11, 2009).

[5] The next day, Father submitted a "Request and Notice of Child Support Hearing," which the Superior Court filed on June 18, 2009, setting the hearing for July 24, 2009. RA, tab 2 (Req. & Notice Child Supp. Hr'g, June 18, 2009). An "Order After Hearing" filed by the court on July 24, 2009, indicates that besides Father's counsel, Assistant Attorney General "C. Baulos" appeared pursuant to 5 GCA § 34101. RA, tab 6 (Order After Hr'g, July 24, 2009). The hearing was continued to August 14, 2009, presumably because Mother had not been served notice of the hearing. *See* RA, tab 5 at 2 (Min. Entry, July 24, 2009) (noting "case called; non service").[2] Mother was neither present nor represented by counsel at the August hearing, and the matter was continued a second time at the request of Father's attorney. *See* RA, tab 7 (Min. Entry, Aug. 14, 2009); RA, tab 8 (Order After Hr'g, Aug. 14, 2009) (continuing hearing to September 25, 2009). A declaration of service was filed a week later, declaring that on August 18, Mother was served a copy of the Summons and Complaint and a copy of the Notice of Hearing.

[2] This court is without the benefit of transcripts of these earlier proceedings and can only glean what transpired at these hearings from the limited notes provided in the Superior Court's minute entries.

[6] At the continued hearing on September 25, Mother did not appear, and Father's attorney informed the court that he had filed a request for entry of default and asked the court to deal with the child support issue when it hears the request for default judgment. RA, tab 10 (Min. Entry, Sept. 25, 2009).

[7] Mother retained counsel the night before the default hearing. RA, tab 16 (Min. Entry, Nov. 5, 2009). During the default hearing, Father's attorney expressed that the only issue was child custody, and he requested that the court enter divorce. *Id.* The court noted that the parties were together for less than a year, that the community property was divided, and that the court would "grant divorce and retain jurisdiction on custody." *Id.* The court further stated it would order a custody study and order mediation. *Id.* The court ordered mediation about a week later. RA, tab 18 (Order Mediation, Nov. 13, 2009).

[8] The court filed both an Interlocutory Judgment of Divorce and a Final Decree of Divorce on November 27, 2009. In the Interlocutory Judgment, the Superior Court "retain[ed] jurisdiction over the determination of custody and order[ed] that an investigation and report concerning the care, welfare and custody of the minor child . . . be conducted by the Department of Public Health and Social Services to assist the Court in making a decision [on] custody." RA, tab 21 at 2 (Interlocutory J. Divorce, Nov. 27, 2009). The court ordered that the custody report be filed by May 6, 2010. Neither the Interlocutory Judgment nor the Final Decree addressed child support.

[9] Because Father was not living in Guam, the parties could not mediate. RA, tab 25 (Letter from Inafa' Maolek, Dec. 9, 2009). For the same reason, the Department of Public Health and Social Services ("DPHSS") could not conduct a custody study on Father and recommended that he obtain a home study from a social service agency where he lived. RA, tab 29 (Letter from BOSSA, Mar. 23, 2010) (noting that Father might be stationed in Germany or the United States

because of his active-duty military status). DPHSS submitted a custody study on Mother. RA, tab 30 (BOSSA Report, May 5, 2010).

[10] At a custody hearing on May 26, 2010, Father's counsel informed the court that Father was in Iraq and asked for the custody hearing to be continued. RA, tab 32 (Min. Entry, May 26, 2010). The court informed counsels that it would not entertain a hearing on custody until Father's return, instructing Father's counsel to inform the court upon Father's return. *Id.*

[11] The next year, Father submitted a "Request and Notice of Further Proceedings Hearing" asking the court to schedule trial because Father had returned from military deployment. RA, tab 33 (Req. & Notice Further Proceedings Hr'g, Aug. 30, 2011). The court scheduled a hearing for July 18, 2011, *id.*, but it is unclear from the record whether this hearing took place; there is no minute entry for this hearing date, and the notice of the hearing date was not filed until August 30, 2011—six weeks after the hearing date of July 18.

[12] The case remained dormant for three years. After retiring from the military and returning to Guam, *see* RA, tab 221 at 3 (Dec. & Order, Apr. 29, 2019), Father hired new counsel and asked for a further-proceedings hearing to set trial on custody, RA, tab 35 (Req. & Notice Further Proceedings Hr'g, Aug. 5, 2014). The court scheduled the hearing for August 13, 2014. At the hearing, Mother's counsel expressed to the court that no child support had been paid. RA, tab 36 (Min. Entry, Aug. 13, 2014). Father's counsel responded that there was an "understanding that was done," *id.*, presumably alluding to an informal agreement between the parties about child support. Later that day, the Child Support Enforcement Division of the Office of the Attorney General ("OAG") entered its appearance "as attorney of record for Guam . . . for the sole purpose of establishing paternity and/or providing child support enforcement services under Federal and Guam law." RA, tab 37 (Entry of Appearance, Aug. 13, 2014). The OAG also submitted a "Notice

of Hearing for Child Support and Related Orders"; the court set the hearing for October 20, 2014. RA, tab 38 (Notice Hr'g Child Supp. & Related Orders, Sept. 3, 2014).

[13] At the October 20, 2014 hearing, Mother asked the child support referee to order a temporary amount for child support, which could then be adjusted upwards. RA, tab 41 (Min. Entry, Oct. 20, 2014). Father responded:

> Your Honor, we request that—that Mr. Wilson resume payments on the two, on two hundred dollars monthly. He's been paying that amount at the very least since 2008, or about 2009, Your Honor, once he left Guam, and that was at the request of Ms. Wilson. He's not, he just moved back to Guam and he does not have employment yet. He would like to begin school over at UOG in January. So, we're just asking right now that the temporary amount be two hundred dollars, which he can begin in November. And we also need time to review this information. We've also seen no documents to support any income information for Ms. Wilson.

RA, tab 221 at 3 (Dec. & Order).

[14] Mother replied that Father's monthly payments of $200.00 "were very sporadic over the years" and asked the referee to order Father to provide income documents from 2007 to his most current income. *Id.* Father disputed that his payments were sporadic and told the referee he had been paying it monthly until April of that year. *Id.* The referee ordered the parties to exchange income documents and announced it would continue the hearing to November 10, 2014. *Id.* Mother then asked the referee, "So Your Honor, temporary child support, is there a chance we could get some kind of payment started?", to which the referee responded, "I think at this point we'll leave it at the two hundred. I—with no income, I don't know what the proper imputations should be. So we'll see. That's just three weeks." *Id.* at 4. At the end of the hearing, the referee asked Mother how far back she was requesting child support arrears, RA, tab 41 (Min. Entry), and Mother responded she wanted arrears retroactive to the birth of the child, *id.*; RA, tab 221 at 4 (Dec. & Order). The referee ordered the parties to exchange income information for the previous seven years. RA, tab 221 at 4 (Dec. & Order).

[15] At the November 10, 2014 hearing, Father's counsel informed the court that Mother's counsel had moved to the CNMI and was requesting a continuance. RA, tab 44 (Min. Entry, Nov. 10, 2014). Father also informed the court that Mother provided no income information to him, while he had provided his retirement income information to her. *Id.* The court continued the hearing to January 2015. *Id.*

[16] Because of multiple continuances at the request of both parties and varying degrees of participation by Mother, the temporary child support amount of $200.00 per month remained unchanged over the next three years. During that time, DPHSS conducted a custody study, and the court held several hearings on child support, custody, and visitation. In August 2015, Father moved to dismiss the claim for arrears, arguing, among other things, that this request came after the six-year limitations period under 5 GCA § 34105(b). The OAG opposed the motion. The evidentiary hearing on the motion to dismiss was heard by three different judicial officers on three separate days over the course of a year, with several continuances in between. *See* RA, tab 109 (Min. Entry, Feb. 15, 2016) (heard by Referee Linda Ingles); RA, tab 124 (Min. Entry, Oct. 24, 2016) (heard by Magistrate Benjamin Sison); RA, tab 146 (Min. Entry, Feb. 6, 2017) (heard by Administrative Hearings Officer B. Ann Keith); *see also* RA, tab 148 at 1-3 (Finds. & Recommended Order, June 21, 2017).

[17] In June 2017, the Administrative Hearings Officer issued a Findings and Recommended Order concluding that child support "must be calculated back to the date of birth" and permitting the parties to address the effect of the October 2014 temporary support order. RA, tab 148 at 9 (Finds. & Recommended Order, June 21, 2017). At a hearing in September 2017, the Administrative Hearings Officer entered a new temporary order of support at $430.70 per month. *See* RA, tab 168 at 3 (Min. Entry, Sept. 22, 2017).

[18] After further briefing, the Administrative Hearings Officer held an evidentiary hearing in October 2017. The hearings officer issued a Findings and Recommended Order on June 18, 2018. In the June 2018 order, the hearings officer disagreed with Father's argument that child support could not be awarded for the period between filing the complaint for divorce and the referee's first child support order in October 2014. RA, tab 187 at 3-10 (Finds. & Recommended Order, June 18, 2018). The hearings officer rejected Father's reading of 5 GCA § 34116.1 and found that the statute was not a limitation on how far back a court can order retroactive support but merely allows the obligor to show that he would not have been able to pay the guideline amount during that period. *Id.* at 10. The hearings officer determined that Father owed retroactive support from the divorce complaint in 2009 to the first child support order of $200.00 per month in October 2014. The hearings officer further determined that the October 2014 temporary amount of $200.00 remained in effect until October 2017, when the OAG filed a "Submission of Statement of Retroactive Support" and sought for the first time a higher amount of child support post-October 2014. *Id.* at 15. The hearings officer determined that from October 2017 onward, Father was liable for the guideline amount. *Id.* at 16. The matter was scheduled for a further hearing to allow the parties to submit income documents. *Id.*

[19] At a hearing in January 2019, Father's attorney informed the hearings officer that she had not been served the June 2018 Findings and Recommended Order and only learned of the order that day. RA, tab 209 at 1 (Min. Entry, Jan. 25, 2019). The hearings officer acknowledged that counsel was not served and informed counsel that Father had ten days to appeal from the order. *Id.*

[20] Father filed a written objection to the June 2018 Findings and Recommended Order finding him responsible for child support for the time between the filing of the divorce complaint in June

2009 and the first order of child support in October 2014. RA, tab 212 (Pl.'s Objs. to Finds. & Recommended Order, Feb. 8, 2019). Father also objected to the OAG's standing to seek the child support order. *Id.*

[21] The matter was submitted to a Superior Court judge for review. On April 29, 2019, the court issued a Decision and Order overruling Father's objections. RA, tab 221 (Dec. & Order). Contrary to the hearings officer's June 2018 Findings and Recommended Order, the court ordered retroactive child support for the period between October 2014 and October 2017. RA, tab 221 at 17 (Dec. & Order). The court remanded the matter to the hearings officer to make a proper calculation of child support "arrears" that included the period between October 2014 and October 2017. *Id.*

[22] On remand, the hearings officer entered two orders. The first ordered Father to pay temporary child support for $444.60 per month, effective September 1, 2017.[3] RA, tab 237 (Finds. & Order re Child Supp., June 21, 2019). In the second order, the hearings officer set permanent child support for $460.45 per month, effective August 1, 2019,[4] and found that Father owed Mother child support "arrears" for $49,709.19 as of December 31, 2014, and ordered him to pay monthly installments of $239.55. RA, tab 257 at 2 (Finds. & Order re Child Supp., Child Supp. Arrears, Sept. 23, 2019).

[23] Father filed timely notices of appeal from the trial court's April 29, 2019 Decision and Order and the hearings officer's September 23, 2019 Findings and Order re Child Support and Child Support Arrears.

[3] Father does not appeal the Findings and Order re Child Support filed on June 21, 2019.

[4] Father does not appeal the permanent child support amount of $460.45 per month.

II. JURISDICTION

[24] This court has jurisdiction over appeals from final orders and judgments of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-22 (2023)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[25] "An award of child support is reviewed for an abuse of discretion, keeping in mind the best interests of the children." *Palomo v. Manglona*, 2012 Guam 18 ¶ 12 (quoting *Richardson v. Richardson*, 2010 Guam 14 ¶ 10).

[26] "When the Superior Court approves or modifies the findings of a referee, and converts the entire matter into a judgment, the opinions of the judge and referee merge into a single judgment which is then reviewable in its entirety by this court." *Palomo*, 2012 Guam 18 ¶ 13 (quoting *Lamb v. Hoffman*, 2008 Guam 2 ¶ 43). We review the trial court's findings of fact for clear error and its conclusions of law *de novo*. *Id.* (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). "A factual finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that an error has been made." *Id.* (quoting *Rong Chang Co. v. M2P, Inc*., 2012 Guam 1 ¶ 13). We review the trial court's interpretation of a statute *de novo*. *Id.* (citing *People v. Ojeda*, 2011 Guam 27 ¶ 9).

IV. ANALYSIS

[27] Three distinct periods are presented by the facts, two of which are at issue here. The first period begins with the child's birth on December 20, 2007, and runs up to the filing of the divorce complaint on June 11, 2009, during which period Father owes reimbursement of the cost of support for the child under 5 GCA § 34105(a)(8). This is uncontested by Father. The second period runs between the filing of the divorce complaint on June 11, 2009, and the date of the first temporary

child support order on October 20, 2014, which set support at $200.00 per month. Father argues the trial court erred in ordering retroactive support for this period; Father asserts that under Guam law, the October 2014 temporary child support order cannot be retroactively effective. The third period is between October 20, 2014, and October 26, 2017, the uncontested date of the first motion to modify the October 2014 temporary child support order. Father argues the October 2014 monthly child support amount of $200.00 could not be modified retroactively as to those payments between October 2014 and the motion to modify in October 2017.

[28] Before turning to these issues, we address Father's contention that the OAG lacked standing to seek retroactive child support.

A. The Office of Attorney General, Child Support Enforcement Division, Has Standing to Seek an Order of Retroactive Child Support

[29] Father argues that the OAG lacked standing to seek an order for child support nunc pro tunc to a date exceeding one year because such an order is not enumerated in 5 GCA § 34105(a).[5] Appellant's Br. at 19-20 (Sept. 23, 2019). In *In re A.B. Won Pat International Airport Authority*, we clarified that traditional constitutional standing must be established along with statutory standing. 2019 Guam 6 ¶ 18 ("We clarify today that constitutional standing and finding a basis for establishing standing under a specific statute should not be thought of as distinctly separate inquiries."). We held that standing jurisprudence has two strands of inquiry: (1) constitutional standing, and (2) prudential standing. *Id.* ¶ 26. Though Father asserts no prudential standing arguments, the OAG has both constitutional and prudential standing.

[5] The trial court's Decision and Order was filed in April 2019, before our decision in *In re A.B. Won Pat Int'l Airport Auth.*, 2019 Guam 6, which clarified the requirements for pleading standing. The trial court found that the OAG had standing—even with no specific grant of standing in 5 GCA § 34105(a)—because of the policy against interpretations of 5 GCA § 34105(a) that encourage delay, as announced in *Palomo v. Manglona*, 2012 Guam 18 ¶ 42.

1. The Attorney General has constitutional standing to seek a retroactive child support order

[30] Generally, "[t]o establish constitutional standing, a party must show: (1) it has suffered an injury in fact; (2) that the injury can be fairly traced to the challenged action taken by the defendant; and (3) that it is likely and beyond mere speculation that a favorable decision will remedy the injury sustained." *Id.* ¶ 17 (quoting *Guam Mem'l Hosp. Auth. v. Superior Court*, 2012 Guam 17 ¶ 10) (internal quotation marks omitted). With limited exceptions, "injury in fact is a necessary prerequisite to all suits filed in our courts." *Id.* ¶ 22. "[T]he legislature may 'elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *Id.* ¶ 20 (second alteration in original) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 578 (1992)).

[31] Title 5 GCA § 34105(a) authorizes the OAG to bring its own action or to join an existing action against a person responsible for the support of a child. The statute states in part that:

> (a) *I Liheslaturan Guåhan* [The Guam Legislature] has determined there is public policy in favor of establishing paternity, of having parents support their children, and in having fair and equitable support orders. Therefore, whether or not the minor children have been or are recipients of public assistance, the Department acting in the best interests of the children and the Island of Guam, may bring an action in its own name or join in an action already in existence against the person or persons responsible for the support of such children:
>
> > (1) to recover such amounts of back support and any other amounts as may be due and owing under an existing court order, whether owed to the Department or to the custodial parent or other person having custody of the minor child;
> >
> > (2) for a continuing order of support for the benefit of such children;
> >
> > . . . ;
> >
> > (4) to move to modify existing orders up or down as the circumstances and equity demand;
> >
> > . . . ;

> (8) to recover reimbursement of the cost of support for the child before the commencement of the action, determined by using the appropriate Child Support Guidelines currently in effect, except as limited by (b) of this Section . . . .

5 GCA § 34105(a) (2005).

[32] Father argues that the OAG lacked standing to seek an order of child support for the period between the filing of the divorce complaint in June 2009 and the entry of the first child support order in October 2014 because this authority was not provided under any of the provisions of 5 GCA § 34105(a). Appellant's Br. at 19-20. We do not view the authority of the OAG so narrowly. As discussed in Part IV(B) below, Father correctly characterizes the time between the filing of the divorce complaint and the entry of the first child support order as a period of retroactive support under 5 GCA § 34116.1, rather than reimbursement under 5 GCA § 34105(a)(8) or a continuing order of support under subsection 34105(a)(2). Notwithstanding this distinction, several provisions of Chapter 34 demonstrate that the OAG's authority for child support enforcement is not limited to the list provided in 5 GCA § 34105(a).

[33] First, and perhaps most telling, 5 GCA § 34103 broadly states that the Child Support Enforcement Office—i.e., the OAG—"shall carry out the provisions of *this Chapter*." 5 GCA § 34103 (2005) (emphasis added). Thus, the OAG's enforcement powers in child support cases extend to the entire child support Chapter, not merely the provisions in 5 GCA § 34105(a).

[34] Second, the Guam Legislature has authorized the OAG to act in the "best interests of the children" and "bring an action in its own name or join in an action already in existence against the person or persons responsible for the support of such children." 5 GCA § 34105(a). And the Legislature "has determined there is public policy in favor of establishing paternity, of having parents support their children, and in having fair and equitable support orders." *Id.*; *see also Palomo*, 2012 Guam 18 ¶ 30 ("[I]t is clear that Guam's child support laws are designed to

maximize support to children from both of their parents."). We have held that a "child's needs begin at birth and that the father of a child is under an obligation to support the child whether or not there has been a prior adjudication of paternity." *Palomo*, 2012 Guam 18 ¶ 31.

[35] Child support benefits awarded to a custodial parent belong to the child, and not the custodial parent. *See, e.g., Edmonds v. Edmonds*, 935 So. 2d 980, 986 (Miss. 2006) ("Though child support is typically awarded to the custodial parent, such an award is 'for the benefit and protection of the child' and the benefits 'belong to the child, and not the parent who, having custody, receives such benefits under a fiduciary duty to hold and use them for the benefit of the child.'" (quoting *Caldwell v. Caldwell*, 579 So. 2d 543, 547 (Miss. 1991))); *Seeger v. Lanham*, 542 S.W.3d 286, 298 (Ky. 2018) ("Child support is a statutory duty intended to benefit the children, rather than the parents. The right to child support belongs to the child[,] not the parents." (alteration in original) (quoting *Gibson v. Gibson*, 211 S.W.3d 601, 609 (Ky. Ct. App. 2006))). Thus, the OAG can seek an order of retroactive support under 5 GCA § 34116.1 to protect the child's interest in receiving the support amount to which the child is entitled and prevent injury to the child.[6] The first element of constitutional standing is satisfied.

[36] The second and third elements of constitutional standing are also satisfied. Father, as the non-custodial parent, is the obligor for the support of the child. Father's failure to support the child causes an actionable injury. A favorable decision on the OAG's request for retroactive support for the time between the filing of the divorce complaint and the first support order in 2014 would provide relief to the child.

[6] This conclusion is reinforced by 5 GCA § 34105.1, which states, "The court may, upon its own motion or the motion of a party, order the entry of the Attorney General in any case where the interests of a minor child so require." Although no such motion was made here, section 34105.1 suggests the OAG's authority in child support actions is not limited to those circumstances enumerated in subsection 34105(a).

2. The Attorney General had prudential standing to seek an order of retroactive child support

[37] "Under the doctrine of prudential standing, a court could refuse to adjudicate some claims even where the constitutional standing requirements had been satisfied." *In re A.B. Won Pat Int'l Airport Auth.*, 2019 Guam 6 ¶ 26. Thus, "a plaintiff may still lack standing under the prudential principles by which the judiciary seeks to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to . . . courts to those litigants best suited to assert a particular claim." *Id.* The doctrine of prudential standing encompasses three broad principles: a prohibition on raising the grievances of others, a prohibition on raising generalized grievances that should be remedied in the representative branches, and a requirement that a party's claims be within the "zone of interest" protected by the statute sued under. *Id.* ¶ 28 (citation omitted).

[38] The OAG has prudential standing to seek an order of retroactive child support because the Legislature broadly granted child support enforcement powers to the OAG, *see* 5 GCA § 34103 ("There shall be in the [Office of the Attorney General] a Child Support Enforcement Office which shall carry out the provisions of *this Chapter*." (emphasis added)), and authorized the OAG to act in the "best interests" of the children of Guam and join in an action against the persons responsible for the support of the child, 5 GCA § 34105(a). The Legislature also pronounced that "[t]he mandate of the Attorney General in child support cases is to take all steps necessary to obtain fair and equitable child support from all persons liable therefor, and to represent the interests of the government of Guam." 5 GCA § 34106(f) (2005).

[39] Moreover, this is not a case where "no individual rights would be vindicated." *In re A.B. Won Pat Int'l Airport Auth.*, 2019 Guam 6 ¶ 26. The child's potential right to retroactive support

is at stake. Chapter 34's broad grant of authority to the OAG in child support matters demonstrates the Legislature's determination that the OAG is "best suited to assert" this claim. *See id.*

[40] Finally, the OAG's request for retroactive child support is within the "zone of interest" protected by the child support enforcement statutes. The seeking of a retroactive support order is within the OAG's authority to act in the best interests of the child and is within the OAG's mandate to obtain fair and equitable child support.

[41] The trial court did not err in finding that the OAG had standing.

B. The Trial Court Erred by Ordering Retroactive Child Support for the Time Between the Filing of the Divorce Complaint and the Entry of the First Order of Child Support

[42] Father next contends that the trial court erred in ordering him to pay retroactive child support for the period between the filing of the June 11, 2009 divorce complaint and the first temporary child support order filed on October 20, 2014. The trial court ordered that "[Father] is responsible to pay arrears from the time of the child's birth to the present day, receiving credit for the [$200.00] per month payment or any other payments he has made." RA, tab 221 at 16 (Dec. & Order).

[43] Father argues that the trial court's order amounts to a retroactive modification of a child support order in violation of 5 GCA § 34116.1. We agree. The trial court rejected Father's interpretation of 5 GCA §§ 34105 and 34116.1, finding that such an interpretation would contradict the policy announced in *Palomo v. Manglona*, 2012 Guam 18. RA, tab 221 at 12 (Dec. & Order). We disagree that the application of 5 GCA § 34116.1 is against the policy announced in *Palomo*. We find that 5 GCA §§ 34105(a)(8) and 34116.1 do not conflict and may co-exist without creating absurdity. These two statutes apply to different periods and offer different types of relief that may be granted in a child support order.

[44] The trial court ordered that Father is responsible for arrears[7] from the child's birth to the filing of the court's April 29, 2019 Decision and Order. For this section of the opinion, we focus on the period between the child's birth in 2007 and the filing of the first temporary child support order in 2014. The court rejected Father's argument that 5 GCA § 34105(a)(8) does not apply to the entry of an order under 5 GCA § 34116.1 and instead determined that section 34116.1 was inapplicable. We interpret these statutes *de novo*.

[45] "It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear legislative intent to the contrary, the plain meaning prevails." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17.

[46] Title 5 GCA § 34105(a)(8) allows for the recovery of "reimbursement of the cost of support for the child before the commencement of the action." 5 GCA § 34105(a)(8). This "reimbursement" is to be "determined by using the appropriate Child Support Guidelines currently in effect," subject to the limitations of 5 GCA § 34105(b). 5 GCA § 34105(a)(8). Subsection 34105(b) restricts an award of reimbursement under subsection 34105(a)(8) if the action is commenced after the child's sixth birthday, unless paternity has been acknowledged by the father in writing, among other exceptions. 5 GCA § 34105(b). Father filed a complaint for divorce well before the child's sixth birthday, and paternity has not been disputed, so the limitations under subsection (b) do not apply. Father is liable under subsection (a) and concedes he must reimburse Mother for the cost of support before the commencement of the divorce proceedings, as provided under 5 GCA § 34105(a)(8).

[7] There has been some contention over the trial court's use of the term "arrears." While there is some basis for the court's use of this term, *see Palomo v. Manglona*, 2012 Guam 18 ¶¶ 46-58, the term itself is immaterial to the issues in this case. The more important distinction is between the type of award recoverable under 5 GCA § 34105(a)(8) and that recoverable under 5 GCA § 34116.1.

[47] Title 5 GCA § 34116.1 concerns a period distinct from that found in 5 GCA § 34105(a)(8). Section 34116.1 provides:

> As to cases filed after the effective date of this section, in any action for paternity, guardianship, child support, divorce, or separate maintenance, in which there is a minor child or minor children and for which there is no previous order (temporary or permanent) for child support, the court may in such cases enter an order for child support effective nunc pro tunc to the date of the filing of the complaint but not exceeding one (1) year; provided, however, that reasonable provisions shall be made for payment of such amounts, if paid as ordered. The obligor may raise as a defense to such entry nunc pro tunc that the obligors [sic] income between the time of filing the complaint and the date of the order was such that during such period the obligor would have been unable to pay such child support or could only have reasonably paid reduced child support during such period.

5 GCA § 34116.1 (2005). This section was added by Public Law 22-099:16, which was enacted in 1994, so it applies here. Section 34116.1 allows the trial court to enter a first child support order in a case effective nunc pro tunc to the date of the filing of the complaint but not exceeding one year. This differs from an award of "reimbursement" under subsection 34105(a)(8), which allows recovery for the cost of support *before* the commencement of the action. Section 34116.1 permits an award of retroactive support for a period *after* the commencement of the action.[8]

[48] The trial court rejected Father's argument that subsection 34105(a)(8) does not apply to the entry of an order under section 34116.1. Instead, the court determined that because the divorce action was commenced before the child's sixth birthday, section 34116.1 did not apply, and that under section 34105 and this court's opinion in *Palomo v. Manglona*, 2012 Guam 18, Father was liable for support from the child's birth in 2007, with no limitations for any period between the filing of the divorce complaint in 2009 and the entry of the first temporary child support order in 2014. The trial court examined earlier Superior Court decisions where those courts had struggled

[8] Both reimbursement under subsection 34105(a)(8) and retroactive child support under section 34116.1 are distinct from prospective child support—child support which an obligor must pay for periods of time in the future, after the issuance of the child support order.

to harmonize 5 GCA §§ 34105(a)(8) and 34116.1. RA, tab 221 at 11 (Dec. & Order) ("Various conflicts between the two statutes remain unresolved, including the issues that appear in the instant case. The Supreme Court has yet to weigh in."). The trial court did not offer its own interpretation but disregarded the limitations of 5 GCA § 34116.1 when applied to these facts. *Id.* at 12.

[49] While the trial court correctly determined that reimbursement of the cost of support is recoverable under section 34105 because the divorce action was filed before the child's sixth birthday and paternity was not disputed, the court erroneously ruled that filing the action before the child's sixth birthday put the case outside the application of section 34116.1. Under the plain meaning of the two statutes, 5 GCA §§ 34105(a)(8) and 34116.1 not only describe different types of child support that may be recovered, but apply to different periods as demarcated by the initial filing in a domestic matter or child support case. Subsection 34105(a)(8) allows reimbursement for the cost of support of the child *before* the commencement of the action; section 34116.1 allows retroactive support for a period *after* the commencement of the action, subject to certain limitations. Thus, the two statutes are not directly in conflict, and their mutual application does not result in absurdity.

[50] Title 5 GCA § 34116.1 places two limitations on the award of retroactive child support. First, 5 GCA § 34116.1 applies only in the instance of the first child support order where there has been "no previous order (temporary or permanent) for child support." 5 GCA § 34116.1; *cf.* Cal. Fam. Code § 4009 (West) ("An original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading."). Second, 5 GCA § 34116.1 provides that the first order of child support can be made retroactively effective up to one year, as measured from the date that the order was issued and not going past the date the complaint was filed.

[51] Applying 5 GCA § 34116.1 to cases where the action is commenced before the child's sixth birthday does not conflict with this court's opinion in *Palomo*. The trial court expressed concern that Father's interpretation of the statute did not align with this court's holding in *Palomo* that where an action is commenced within six years of the child's birth, the child support obligation dates back to the birth of the child. RA, tab 221 at 9, 12-15 (Dec. & Order).

[52] In *Palomo*, this court interpreted 5 GCA § 34105 "to mean that where the child support action is commenced within six years of the child's birth, reimbursement should normally be granted." 2012 Guam 18 ¶ 31. This discussion in *Palomo* concerned the trial court's denial of the mother's request for *reimbursement*, where the trial court found it would be inequitable to hold the father responsible for child support payments *before* the filing of the paternity action. *See id.* ¶ 34. As the issue in *Palomo* concerned a request under subsection 34105(a)(8) for reimbursement for the cost of support before the commencement of the action, and neither party appealed the award of retroactive support between the filing of the action and the first child support order, this court did not analyze 5 GCA § 34116.1.

[53] Both statutes can be read harmoniously because one concerns reimbursement for support before the commencement of the action, and the other concerns retroactive support from the commencement of the action to the entry of the first support order. By passing 5 GCA § 34116.1, the Legislature limited a retroactive child support award for the period after the commencement of the action to either the filing date of the complaint or one year before the first child support order is filed, whichever period is shorter.

[54] The trial court also expressed concern this interpretation would lead obligor parents to delay the entry of child support orders "because the longer the delay, the more money the obligor parent would save." RA, tab 221 at 12 (Dec. & Order). Such a concern is unwarranted. The court

controls the cases before it and can—and should—set child support as soon as possible. Despite delay tactics by one or both of the parties, the trial court can enter the first child support order—even if only for a temporary amount—within one year of the filing of the complaint to avoid any loss of retroactive support. The system of child support in Guam encourages—if not requires—expeditious child support orders. For example, under 5 GCA § 34153:

> No summons for personal service in Guam in any action for divorce or separate maintenance may be issued if there are minor children of the marriage located on Guam, without the clerk of court at the time the summons is issued setting a hearing for temporary child support in the matter. . . . [T]he defendant or other responding party shall be given at least five (5) days notice of the hearing in order to have time to prepare, and the summons or order to show cause shall at least require that both parents shall bring copies of their last three (3) pay check stubs for all employment, and copies of their last two (2) income tax returns and any other evidence of income which is relevant to the establishment of child support. . . .

5 GCA § 34153 (2005). Under Guam law, temporary child support orders are to be entered soon after the commencement of a divorce action, and the court need not wait for the parties to set a hearing and must require parties to provide income documents at that hearing. Any fear that our interpretation of section 34116.1 would encourage delay tactics by obligor parents is unfounded because the first child support order should be entered as soon as possible, notwithstanding a party's efforts to delay the process hoping to reduce their liability for retroactive support.

[55] With these considerations in mind, we agree with Father that under the plain meaning of 5 GCA §§ 34105(a)(8) and 34116.1, the trial court could not enter an award of support for the period between the June 2009 divorce complaint and the first temporary child support order made in October 2014. The October 2014 order could have included an award of retroactive support for a one-year period before the issuance of the order, but the child support referee did not include such an award. Under the plain meaning of section 34116.1, the court could not in a subsequent order award retroactive support between the filing of the complaint and the October 2014 order. We

reverse those parts of the trial court's April 2019 Decision and Order and the hearings officer's September 2019 Findings and Order which awarded a child support amount for periods between June 11, 2009, and October 20, 2014.[9]

C. The Trial Court Erred by Retroactively Modifying the October 2014 Temporary Child Support Order as to Father's Support Obligation for the Period between October 2014 and October 2017

[56] We next address Father's argument that the trial court erred when it retroactively modified the October 2014 temporary child support amount of $200.00 and instead found him liable for the amount he would have owed under the child support guidelines for the period between the October 2014 temporary support order and the first motion to modify in October 2017. Appellant's Br. at 22-26. According to Father, under Guam's statutes and caselaw, the October 2014 order was a final judgment that could not be modified absent a timely appeal. We hold that temporary orders of child support are final judgments within the meaning of 5 GCA § 34107(b), which may be amended only under 5 GCA § 34121 or by the trial court's express reservation of jurisdiction to modify the order.

1. Temporary orders of child support are final judgments subject to the limitations of 5 GCA § 34121

[57] For the period between October 2014 and October 2017, the trial court ordered Father liable for the amount he would have owed under the child support guidelines rather than the $200.00 temporary support amount ordered in October 2014. RA, tab 221 at 17 (Dec. & Order). In so deciding, the trial court departed from the child support hearings officer's June 2018 Findings and

[9] We do not opine as to Mother's entitlement to recover support that may be due under the parties' apparent agreement—pre-October 2014—that Father would pay $200.00 per month to Mother. While neither party appears to dispute the existence of this agreement, the record shows the parties disagree over the frequency of Father's payments, and that the trial court credited those payments for which Father provided documentary evidence. *See, e.g.*, RA, tab 221 at 16 (Dec. & Order) (crediting Father for the $200.00 monthly payments or any other payments he has made). In any event, we have not been asked in this appeal to resolve a question on this agreement.

Recommended Order, which found that the October 2014 amount of $200.00 could not be modified until the filing of the OAG's first motion to modify in October 2017. *See* RA, tab 187 at 14-16 (Finds. & Recommended Order, June 18, 2018). The trial court held that the October 2014 temporary support order was not an "adjudication of child support that requires a motion to modify based on a showing of substantial change in circumstances." RA, tab 221 at 15 (Dec. & Order). The court reasoned that the "Referee made the order knowing and expecting the order would be superseded within three weeks at a hearing that was already scheduled, without the need for a motion to modify" and that the temporary support ordered was only an "ephemeral stopgap."[10] *Id.* at 15-16. The trial court remanded the matter to the hearings officer to make an appropriate calculation of child support "arrears" that included the period between October 2014 and October 2017. *Id.* at 17.

[58] Father argues that Guam law does not differentiate between types of temporary support orders, and all temporary support orders are final judgments under 5 GCA § 34107(b) and are subject to limitations on retroactive modification. Appellant's Reply Br. at 14 (Nov. 14, 2019). We agree.

[59] Under 5 GCA § 34107(b), "[a]n order for child support is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order." 5 GCA § 34107(b) (2005). This subsection was formerly the first sentence of 5 GCA § 34121 before it was repealed and reenacted as 5 GCA § 34107(b). Title 5 GCA § 34121 provides: "The provisions of any order respecting maintenance or support may be modified *only as to installments accruing subsequent to the motion for modification* and only upon

[10] The OAG argued in its briefing that it agreed with the trial court that the October 20, 2014 support order was merely a stopgap that was intended to be immediately replaced and not a final adjudication of child support. But during oral argument, the OAG conceded it was, in fact, a final order, despite being advised that they had provided briefings to the contrary. *See* Digital Recording at 1:06:24–1:10:40 (Oral Arg., Dec. 4, 2020).

a showing of a substantial and material change of circumstances." 5 GCA § 34121 (2005) (emphasis added).

[60] Read together, the plain language of 5 GCA §§ 34107(b) and 34121 means that child support orders cannot be retroactively modified. A motion for modification affects only installments of support which accrue after the motion is made; any child support installments which have accrued before the motion to modify are effectively converted into a final judgment. In this case, the court determined that the OAG first moved to modify the October 2014 temporary support order on October 26, 2017. Thus, under sections 34107(b) and 34121, only child support installments that accrue after October 2017 were subject to modification.

[61] The OAG argues that 5 GCA § 34119.2 supports the trial court's decision to retroactively modify the October 2014 temporary support order because subsection (b) of that statute states that a temporary support order "does not prejudice the rights of a person and child that are adjudicated at subsequent hearings in the proceeding." Appellee's Br. at 16 (quoting 5 GCA § 34119.2(b) (2005)). Section 34119.2 appears intended to apply to those temporary orders issued during paternity actions and does not suggest it applies to temporary support orders generally. The statute states:

> **§ 34119.2. Temporary Support Orders.**
>
> (a) The Court shall issue a temporary order of support pending a judicial determination of paternity if
>
> (1) genetic testing affixes at least a ninety-five percent (95%) probability of paternity;
>
> (2) a notarized statement is signed by both parties acknowledging paternity or separate substantially similar notarized statements are signed acknowledging paternity and filed with the Department of Public Health and Social Services, Vital Statistics; or

> (3) there is other clean and convincing evidence as determined by a court.
>
> (b) A temporary order of support does not prejudice the rights of a person and child that are adjudicated at subsequent hearings in the proceeding.
>
> (c) A temporary order of support may be revoked or modified and terminates when the final support order is entered or when the petition for support is dismissed.

5 GCA § 34119.2.

[62] Title 5 GCA § 34119.2 was enacted to bring Guam's child support laws and administration into compliance with federal mandates. The legislature expressed the following intent:

> **Section 1. Legislative Intent.** The recently enacted welfare reform act, officially known as the Personal Responsibility and Work Opportunity Act of 1996 ("PRWOA"), mandates that states, including Guam, pass legislation to comply with PRWOA by January 1, 1998. The Guam Legislature, therefore, finds that this legislation will bring Guam's laws into compliance.
>
> These laws grant the Office of the Attorney General more administrative power to enhance their child support enforcement efforts, to *establish procedures for the acknowledgment of paternity*, and to provide access to a delinquent child support payor's financial records. These laws also address health care for minor children, require parents of minor parents to support their grandchildren, provide for support of liens, and mandate the use of social security numbers on support orders, marriage, birth and death certificates. This legislation will also create a child support enforcement registry and disbursement unit.

Guam Pub. L. 24-129:1 (Feb. 16, 1998) (emphasis added). This contains the entire legislative intent stated for Bill No. 460, which amended the existing 5 GCA § 34119 (entitled "Establishment of Paternity") and added 5 GCA §§ 34119.2–34119.5. *Id.* From the lack of contrary statements in the legislative intent, we hold that 5 GCA § 34119.2 applies only to those temporary support orders issued in paternity actions.[11]

[11] The placement of 5 GCA § 34119.2 reaffirms our holding, as the surrounding provisions pertain to matters concerning paternity. *See* 5 GCA § 34119 (2005) (entitled "Establishment of Paternity"); 5 GCA § 34119.1 (2005) (entitled "Judgment of Paternity"); 5 GCA § 34119.3 (2005) (entitled "Voluntary Acknowledgment of Paternity"); 5 GCA § 34119.4 (2005) (entitled "Hospital Paternity"); 5 GCA § 34119.5 (2005) (entitled "Evidence of Bills"); 5 GCA § 34119.6 (2005) (entitled "Genetic Testing").

[63] Our statutory construction accords with our child support caselaw. In *Leon Guerrero v. Moylan*, 2002 Guam 18, this court applied 5 GCA § 34121—which at the time had the clause that is now 5 GCA § 34107(b)—to a temporary support order, impliedly treating the order as a final judgment and acknowledging that modification can be retroactive to the date of the motion to modify. *See Moylan*, 2002 Guam 18 ¶¶ 5, 44-47; *cf. Richardson*, 2010 Guam 14 ¶ 58 ("Child support orders are final judgments. 5 GCA § 34107(b) (2005); *Leon Guerrero v. Moylan*, 2002 Guam 18 ¶ 5. [Richardson] did not appeal the former support orders . . . . Therefore, claim preclusion bars [him] from requesting the trial court to essentially rewrite past due support orders; [he] may not now attempt to collaterally attack the [prior] judgments by challenging arrearages that accrued under these previous support orders.").

[64] Father argues that California has also held that temporary support orders are final judgments and are subject to the limitations placed on retroactive modification. Appellant's Br. at 23. He cites *In re Marriage of Gruen*, where a California appellate court found that the trial court erred in granting a retroactive reduction of a temporary order of support—which the court called an "interim order" of support—because the obligor did not move to modify the temporary order. *Id.* (citing *In re Marriage of Gruen*, 120 Cal. Rptr. 3d 184, 194-95 (Ct. App. 2011)). The *Gruen* court held that the temporary order was a final judgment that the obligor had failed to appeal, and thus was not later subject to collateral attack. 120 Cal. Rptr. 3d at 193. The court stated that "[o]nce a temporary support order is entered, a party seeking a modification of the order must follow the statutory procedure." *Id.* at 194. The *Gruen* court cited an earlier case from a sister division, *In re Marriage of Tavares*, 60 Cal. Rptr. 3d 39 (Ct. App. 2007), in which that court explained, "[The] Legislature has established a bright-line rule that accrued child support vests and may not be adjusted up or down. If a parent feels the amount is too high—or too low—he or

she must seek prospective modification." *Gruen*, 120 Cal. Rptr. 3d at 192 (quoting *Tavares*, 60 Cal. Rptr. 3d at 42). The court noted, "'The Legislature . . . has determined *equity is not served by retroactive modification of support orders* . . . .'" *Id.* (first omission in original) (quoting *Tavares*, 60 Cal. Rptr. 3d at 43).

[65] We find the reasoning in these California cases to be persuasive. While Guam's child support statutes do not mirror California's, several provisions are substantively similar, including those on retroactive modification of a support order. *See, e.g.*, Cal. Fam. Code § 3653(a) (Westlaw current with Ch. 1 of 2023-24 1st Ex. Sess. and urgency legislation through Ch. 2 of 2023 Reg. Sess.) ("An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date . . . ."); Cal. Fam. Code § 3603 ("An order made pursuant to this chapter may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate."); Cal. Fam. Code § 3604 ("An order made pursuant to this chapter does not prejudice the rights of the parties or the child with respect to any subsequent order which may be made."). Like the courts in *Gruen* and *Tavares*, we conclude that by adopting 5 GCA §§ 3107(b) and 34121, the Guam Legislature has determined that child support orders—whether temporary or permanent—should not be subject to retroactive modification.

2. While a trial court may expressly reserve jurisdiction to amend a temporary child support order, no such reservation of jurisdiction was made when the child support referee issued the October 2014 temporary support order

[66] Sometimes, to provide immediate support to the custodial parent and allow time to gather adequate financial information on which to calculate temporary support orders, a trial court may reserve jurisdiction over parts of a temporary support order to be retroactively amended. We find

support for this proposition in California caselaw. One year after deciding *Gruen*, the same court issued its opinion in *In re Marriage of Freitas*, 147 Cal. Rptr. 3d 453 (Ct. App. 2012), which distinguished certain circumstances where a trial court could reserve jurisdiction to retroactively amend parts of a temporary support order without violating the prohibition against retroactive modification of child support orders.

[67] In *Freitas*, the appellant-wife filed for dissolution of the marriage in April 2010, and the appellee-husband filed an order to show cause seeking child support and spousal support in August 2010. 147 Cal. Rptr. 3d at 456. Upon making the support award after a hearing on the order to show cause, the trial court ruled that it would reserve jurisdiction over whether to amend a portion of the initial support award and ordered the husband to submit additional evidence of the wife's income to support his contentions that the wife misrepresented her income. *Id.* at 455. In an oral pronouncement, the court reserved jurisdiction to amend the spousal and child support award for September and October 2010. *Id.* at 457. The trial court specified that the husband's counsel had until January 2011 to file the additional evidence. *Id.* The court stated that the principles espoused in *Gruen* did not "preclude[] amendment of the trial court's original spousal support award in [the *Freitas*] case." *Id.* at 465. Because "the trial court expressly reserved jurisdiction to amend its original support awards as to September and October 2010[,] . . . the parties' clear expectation was that the original support awards *were not* final as to these months." *Id.* at 466. *Freitas* remains good law but was not addressed by either party in the submitted briefs.

[68] Here, the trial court acknowledged that neither party had moved to modify the temporary support order until October 2017. RA, tab 221 at 15 (Dec. & Order). The court, however, held that a motion to modify was not required to amend the October 2014 temporary support order because the order was merely an "ephemeral stopgap" that the "Referee made . . . knowing and

expecting the order would be superseded within three weeks at a hearing that was already scheduled." *Id.* at 15-16.

[69] During the October 20, 2014 hearing on child support, the child support referee set an oral order of child support effective immediately. RA, tab 221 at 3-4 (Dec. & Order). The referee ordered that Father pay $200.00 per the earlier arrangement between the parties, though Mother stated that Father had only made sporadic payments and was "clearly underpaying." *Id.* Mother asked for income documentation from Father from 2007 to 2014, and Father requested that Mother produce tax returns. *Id.*

[70] The referee ordered the parties to exchange documentation and set a date for November 10, 2014, to continue the hearing. Responding to Mother's request for immediate support, the referee replied, "I think at this point we'll leave it at the two hundred. I--with no income, I don't know what the proper imputations should be. So we'll see. That's just three weeks." *Id.* at 4. The referee here did not make a reservation of jurisdiction like that in *Freitas*, where the trial court made a reservation to amend the support order as to a certain period, and the parties had limited timeframes to produce the requested evidence. Instead, the referee understood that Mother contended that the $200.00 monthly payments were infrequent and sporadic, and the referee sought to verify whether these contentions were correct with further financial documentation. Yet at Mother's prompting, the referee granted a temporary child support award without making the award nunc pro tunc under 5 GCA § 34116.1 or making any jurisdictional reservation to revisit the order at the later scheduled hearing.[12]

[12] Though we do not find the Referee made a reservation of jurisdiction here, we agree that a trial court may retain jurisdiction for a finite period to modify a temporary order of child support, to enable the parties to provide financial information to accurately set the amount of child support, without violating the limitations against retroactive modification. *See, e.g.*, *In re Marriage of Freitas*, 147 Cal. Rptr. 3d 453 (Ct. App. 2012). Such a reservation of jurisdiction may be set out orally or in written form, and must explicitly state the reason for the reservation, a finite length of time that the reservation will be in effect, and a defined period for which the amount of child support may be amended under the reservation.

[71] Because the first child support order, when entered in October 2014, was not made effective nunc pro tunc as allowable under 5 GCA § 34116.1 and did not include a reservation of jurisdiction to later modify the order, the order was final under 5 GCA § 34107(b) and could not be retroactively modified under 5 GCA § 34121. We reverse the trial court's April 2019 Decision and Order and the hearings officer's September 2019 Findings and Order to the extent those orders modified the temporary child support amount of $200.00 for the period between October 2014 and the first motion to modify on October 26, 2017.

V. CONCLUSION

[72] We hold that under 5 GCA § 34116.1, the trial court erred in ordering child support "arrears" for the time between the filing of the divorce complaint on June 11, 2009, and the date the first temporary support order issued on October 20, 2014. We **REVERSE** this portion of the trial court's April 29, 2019 Decision and Order and the child support hearings officer's September 23, 2019 Findings and Order calculating arrears owed for this period. Father is not liable for child support during this period except for any potential liability under the parties' agreement that Father would pay Mother $200.00 per month.

[73] We hold that under 5 GCA §§ 3107(b) and 34121, the trial court erred in modifying Father's child support obligation for the period between the first temporary child support order issued on October 20, 2014, and the OAG's first motion to modify filed on October 26, 2017. We **REVERSE** this portion of the trial court's April 29, 2019 Decision and Order and the child support hearings officer's September 23, 2019 Findings and Order calculating arrears owed for this period. For the period between October 20, 2014, and October 26, 2017, Father is responsible for the $200.00 monthly support obligation in the October 2014 temporary support order, and for any arrearages and interest that may have accumulated under that order.

[74] As Father did not appeal the trial court's order that he is responsible for reimbursement of the costs for the support of the child from the child's birth in December 2007 to the filing of the divorce complaint in June 2009 under 5 GCA § 34105(a)(8), the trial court has continued authority to address reimbursements of the costs of child support for this period.

[75] We **VACATE** the September 23, 2019 Findings and Order to the extent it included prohibited periods and modifications in its judgment of arrears. This does not preclude the recovery of any reimbursement for costs of child support between the birth of the child and the filing of the Complaint, nor does this decision preclude the recovery of any arrearages accrued under the temporary support order of October 20, 2014. We **REMAND** to the trial court to recalculate the reimbursement, arrearages, and related interest Father owes based on this opinion, and for any further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Chief Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

TORRES, J., concurring:

[76] I concur with the court's opinion. I write separately to draw attention to the many shortcomings in the trial court's handling of this case and the potential disparate treatment between married and unmarried parents when the system fails.

[77] First, I respectfully disagree with the majority's use of the terms "Father" and "Mother" when referring to the parties. For nearly 20 years, this court has preferred to refer to parties in family law cases by their first name. *See Mano v. Mano*, 2005 Guam 2 n.1 ("We refer to the parties by their first names rather than Husband or Wife . . . for ease of reference, to assist the reader and because such is the preferred practice in family law cases." (citing *Courtright v. Courtright*, CVA03-028 (Order at 1 n.1, Feb. 12, 2004))). We should continue this practice. The terms "father" and "mother" are not gender-neutral descriptors of a child's parents and do not encapsulate the different families and parental relationships recognized today.

[78] While I agree with the outcome in today's opinion based on the interpretation of the relevant child support statutes, the trial court's delay in setting the initial child support order ultimately failed the child. Guam law provides for the expeditious entry of temporary child support orders. Under 5 GCA § 34153, the court shall set a hearing on temporary child support soon after a divorce action is filed. Rodrick requested such a hearing the day after filing his complaint for divorce, and the court set the hearing for the following month. RA, tab 2 (Req. & Notice Child Supp. Hr'g, June 18, 2009). The hearing was continued multiple times, seemingly because of issues concerning service upon Jennifer. When the court finally heard the divorce matter on November 5, 2009, it did not address child support—temporary or otherwise. And neither the interlocutory nor final decrees of divorce included a provision for child support. Presumably, this was because the court granted the parties' divorce while retaining jurisdiction over child custody.

However, custody was not dealt with for years. While I understand that part of this delay resulted from Rodrick's military deployment, the trial court still should have addressed the matter of child support during the November 5, 2009 hearing. Even if it had yet to determine custody and wished to conduct custody studies on the parties, the court should have entered a temporary support order to provide immediate support for the child during the interim. Had it done so, the child could have been awarded child support from the date of the commencement of the action.

[79] When the court finally addressed child support in October 2014, it again failed the child when it did not make the temporary support order effective nunc pro tunc to October 2013 as allowed under 5 GCA § 34116.1 or reserve jurisdiction to revisit the order at a later scheduled hearing. As a result, the child lost one year of support.

[80] Finally, I draw attention to the potential disparate treatment between married and unmarried parents when the child support system fails. Had the system worked the way it was intended and a temporary support order was entered soon after the divorce action was filed, the child would have received support effective from the filing of the complaint in June 2009, and Jennifer would have received reimbursement for the cost of support before the commencement of the divorce action. In the early stages of this case, the court was quick to dissolve the parties' marriage but allowed child support to fall by the wayside. When child support was finally returned to the attention of the court in 2014, the court at most could go back only one year from the entry of the October 2014 temporary support order. The delay in addressing the matter caused the loss of several years' worth of support for the child. This is because, in divorce actions, the trigger date under 5 GCA § 34116.1 is the filing of the divorce complaint. Had the parties instead been an unmarried couple who separated in 2009 and first brought a child support action in 2014, Jennifer could have recovered reimbursement of the cost of support for the child before the

commencement of the action under 5 GCA § 34105(a)(8), subject to the limitations of 5 GCA § 34105(b).[13] The child would have received several years' more support.

[81] More often than not, the separation of married couples soon leads to filing a divorce complaint to deal with the division of assets and debt. This would then serve as the triggering event for how far back the initial child support award can be effective under 5 GCA § 34116.1. Because unmarried couples who separate do not dissolve their relationship in court, they can wait years to seek child support and eventually receive reimbursement for the cost of support before the commencement of a child support action, so long as they commence the action within the limitations of 5 GCA § 34105.

[82] Because of this potential for disparate treatment, it is important for the trial court to address child support promptly to avoid running into the one-year cap imposed by 5 GCA § 34116.1. Temporary support should be ordered as soon as practicable, even if custody has yet to be determined. If the court wishes to allow the parties to gather financial information and retroactively amend the temporary support order, it can do so by properly reserving jurisdiction as discussed in the court's opinion above. While this case may be an anomaly and not represent the usual manner in which child support is handled by the trial court, the child must unfortunately suffer the consequences of the system's failure.

/s/
ROBERT J. TORRES
Associate Justice

[13] Jennifer would not have been limited by the six-year period under 5 GCA § 34105(b) if there had been satisfactory acknowledgment of paternity by Rodrick, *see* 5 GCA § 34105(b)(1), or if she relied on Rodrick's years-long absence from Guam to extend the six-year period, *see* 5 GCA § 34105(b)(2).