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IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CASE NO. 91-0431-FMCI  
DIVISION "35" (J. Graham)

IN RE: The Marriage of  
JANET C. OVERBEY,  
Petitioner/Former Wife,



and  
DANIEL L. OVERBEY,  
Respondent/Former Husband.

Doc#: 0407117211  
Eugene "Gene" Moore Fee: \$28.50  
Cook County Recorder of Deeds  
Date: 03/11/2004 01:27 PM Pg: 1 of 3

IN RE: The Interest of:  
DANIELLE OVERBEY,  
a minor.

CASE NO: 01-10662-P RDL  
DIVISION: "41"

## ORDER GRANTING SUPPLEMENTAL PETITION FOR UPWARD MODIFICATION OF CHILD SUPPORT AND MOTION FOR ATTORNEY'S FEES AND DENYING FORMER HUSBAND'S ALTERNATIVE RESPONSE AND RELIEF

THIS CAUSE was before this court on September 13, 2002, on (a) the Former Wife's Supplemental Petition for Upward Modification of Child Support, dated February 19, 2003; (b) the Former Wife's Motion for Attorney's Fees dated July 31, 2002; (c) the Former Husband's Alternative Response and Relief dated June 24, 2002, and (d) the parties' stipulation as to the percentages of their combined parental income as determined for child support guideline calculations (after the court's determination that the student loan of the Former Husband was an appropriate deduction). Based on the testimony of the parties, the parties' stipulation as to income, and the parties' respective witnesses, this court finds as follows:

1. The parties' daughter, Danielle, was out of control in 2001. She was not making it in the mainstream of life. It was necessary for her to be placed in a restrictive environment based upon her behavior. Both parties agreed that Cross Creek Manor was the appropriate place for Danielle to reside and receive treatment.
2. Each of the parties has tried to provide for the best interest of their minor child, Danielle Overbey. Neither of the parties is engaging in extravagant living.
3. The issue before the court is the payment of Danielle's expenses. There are currently funds held in a guardianship account for Danielle Overbey, which were the result of the settlement of a personal injury claim on behalf of Danielle. These funds belong to

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Danielle, who may need these funds for future medical treatment. The court is concerned of Danielle's ability to obtain any of these funds prior to her eighteenth (18) birthday, since these funds should not to be used for the living expenses of Danielle during her minority while one or both of her parents are still living and capable of providing for her financial support.

4. The Former Husband's child support is determined to be \$1,061. An upward deviation in child support is required, because of the special needs of the Danielle to attend Cross Creek Manor, the limited duration of her attendance at Cross Creek Manor, and the prepayment of the Cross Creek Manor tuition until Danielle attends the age of eighteen (18) years. Hence, it is necessary to deviate from the child support guidelines and adjust the minimum child support award based upon the extraordinary psychological needs of Danielle. Each parent's percentage share of Danielle's needs shall be determined by dividing each parent's net income by the combined net income of both parties. The modification of child support shall be from the period of September 22, 2001, i.e., the date of filing the Supplemental Petition for Upward Modification of Child Support, to present.
5. In determining the amount of child support each party is required to pay, the Former Husband is entitled to a deduction for his student loan to arrive at his net income. This deduction is strengthened by the appellate court's refusal to provide any child support reduction to the Former Husband while he attended law school. Thus, the Former Husband's share of the child support need is reduced by his law school loan payments of \$860.
6. The Former Wife has paid \$42,207.92 toward the tuition and related expenses of Danielle from September 22, 2001 to February 19, 2003. The Former Husband's share of such payment is 80.60%, or \$34,019.58. The Former Husband has paid \$17,900 during the period of September 22, 2001 to February 19, 2003. The Former Husband is current in his monthly child support payments as of February 19, 2003, and he is not in arrears in those payments nor ahead in such payments.
7. The Former Wife had to borrow funds on credit cards and obtain a secured loan to pay the \$42,207.92. She has had to incur significant interest on such borrowings. Accordingly, \$2,400 in interest is sufficient to provide recovery to the Former Wife for such payments until the Former Husband has paid his pro rata share of the \$42,207.92.
8. The Former Wife has preserved a substantial asset for the guardianship based upon her filing and prosecution of the supplemental petition. In doing so, the Former Wife has incurred attorney's fees and costs. The Former Husband, an attorney, has not had to incur attorney's fees in this post-judgment proceeding since he has represented himself.
9. The Guardianship of Danielle Overbey shall pay one-half (1/2) of the reasonable attorney's fees and costs incurred by the Former Wife. The remaining one-half (1/2) of the attorney's fees and costs shall be divided between the parties based upon the percentages set forth in paragraph 6 above.
10. The parties stipulated that the Former Husband is in arrears in the payment of \$1,100.00 of medical and dental expenses for the parties' minor child, which expenses do not include extraordinary psychological expenses of the minor child.
11. The Former Husband has the present ability to pay monthly child support and arrears in the amount of \$1,300.

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Diane M. Matousek  
Volusia County, Clerk of Court

12. The Former Wife withdrew (without prejudice) her request for the extension for support of the child beyond the age majority during opening arguments at the hearing.

Based upon the foregoing findings and facts is ---

**ADJUDGED** as follows:

a. The Former Wife is awarded \$26,119.58 (which includes the \$22,619.58 in unreimbursed payment of the Cross Creek tuition which has been paid through the Minor Child's 18<sup>th</sup> birthday and related expenses as of the date of trial), \$2,400 interest, and \$1,100 medical and dental expenses), which shall be repaid by the Former Husband at the rate of \$1,300.00 per month commencing October 1, 2002, until paid.

b. The Former Wife is entitled to an award of attorney's fees and costs. The amount of the attorney's fees and costs is \$12,177.75 as stipulated to by the parties.

c. The Former Husband shall pay 80.60% of one-half (1/2) of such reasonable attorney's fees and costs and the Former Wife shall pay 19.40% of one-half (1/2) of such reasonable attorney's fees and costs. The Guardianship of Danielle Overbey shall pay one-half (1/2) of the attorney's fees and costs. The funds remaining in the Guardianship of Danielle Overbey after the payment of such attorney's fees and costs shall be transferred by the Guardian, as grantor, to a trust for the benefit of Danielle Overbey, and the Former Husband and the Former Wife shall each serve as co-trustees of the Trust. The Former Wife and the Former Husband shall enter into a mutually binding trust agreement which shall name Danielle Overbey as the sole beneficiary of the Trust, permit the disbursement of the funds in the Trust for the education, psychological and living expenses of Danielle Overbey until such time as the funds are depleted, and provide for alternate co-trustees in the event one of the parties is physically or mentally unable to continue to serve as the co-trustees.

d. The parties shall continue to provide the medical and dental insurance required by the 1999 mediation agreement.

e. The Former Husband's Request for a Downward Modification of Child Support is denied.

f. The Former Wife's extension for support of the child beyond the age is deemed withdrawn, without prejudice to the Former Wife to file the request at a later date.

g. This court reserves jurisdiction of the parties, the minor child and the subject matter for purposes of the enforcement and modification of this order and the Final Judgment as modified.

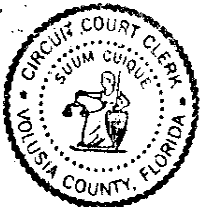
**SO ORDERED** at Daytona Beach, Florida, this 25 day of February, 2003.

*[Signature]*  
Circuit Judge

Conformed copies to:

Catherine G. Swain, Esquire  
Daniel L. Overbey, Esquire  
Richard D'Amico, Esquire

*Catherine G. Swain P.A.  
149 S. Ridgewood Ave Ste 500  
Daytona Beach FL 32114*



STATE OF FLORIDA VOLUSIA COUNTY  
HEREBY CERTIFY the foregoing is a true copy  
of the original filed in this office. This  
18 day of June 2003  
Clerk of Circuit and County Court

By *[Signature]*  
Deputy Clerk

