

Time is money, at least when figuring out which parent is responsible for paying child support in New York. As a result, a wealthy parent, who has custody of the children a majority of the time, does not have to pay child support to the other poorer parent.

In the case of *Rubin v. Della Sella*, though the father was granted custody of a child 56% of the time and the wife 44%, the trial court opined that the mother was not precluded from seeking to have the father to pay child support. The Appellate Division reversed the trial court's decision.

According to the court, New York's child support statute make it clear that despite any economic disparity between parents, only the "custodial parent," defined as the parent who has the child for the majority of the year, is entitled to receive child support. In order to identify which parent has the child the majority of the time, the test is to simply count the number of overnights each parent spends with the child.

Income has been the decisive factor in cases where the parties have the children an "equal" amount of time. It has long be the common law rule, that the parent with the higher income was deemed to be the noncustodial parent for child support purposes. Since the father had the child 56% of the time, the parties did not have equal time with the child and the father was the custodial parent.