Grunyk & Associates, P.C.

Danya A. Grunyk, Esq., MBA*
Hilary A. Sefton, Esq.
Leah D. Setzen, Esq.
Victoria C. Kelly, Esq.
Katie C. Galanes, Esq..
David J. Zwaska, Esq.

5th Avenue Station
200 East 5th Avenue, Suite 125
Naperville, IL 60563
Phone: (630) 428-3300
Fax: (630) 428-3313

*Also admitted to practice law in New Jersey and Arizona

DUPAGE COUNTY BAR ASSOCIATION
FAMILY LAW COMMITTEE

2015 Family Law Case Updates

February 18, 2016

Prepared by:
Danya A. Grunyk, Esq.
Hilary A. Sefton, Esq.
Leah D. Setzen, Esq.
Victoria C. Kelly, Esq.
Katie C. Galanes, Esq.
David J. Zwaska, Esq.

FAMILY LAW COMMITTEE MEETING

2015 Case Updates

February 18, 2016

Table of Contents

*Rule 23(e)(1) decision

*Rule 23(e)(1) decision

COLLEGE CONTRIBUTION (See also CHILD SUPPORT and PROPERTY)

CONTEMPT (See also CHILD SUPPORT and MAINTENANCE)

CUSTODY

*Rule 23(e)(1) decision

*Rule 23(e)(1) decision

JURISDICTION (See also CUSTODY and COLLEGE CONTRIBUTION)

MAINTENANCE (See also CUSTODY and PROPERTY)

MOTION TO RECONSIDER

MOTION TO VACATE (Section 2–1401) (See also CUSTODY)

*Rule 23(e)(1) decision

NONEXISTENCE OF PARENT-CHILD RELATIONSHIP

ORAL AGREEMENTS

ORDER OF PROTECTION

PARENTAGE

PARENTING TIME (See also CUSTODY)

PLENARY ORDER OF PROTECTION (See also CUSTODY)

POST MARITAL AGREEMENTS

PROPERTY (See also CIVIL UNION and MAINTENANCE)

REMOVAL (See also CUSTODY)

*Rule 23(e)(1) decision

*Rule 23(e)(1) decision

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)
(See also CUSTODY)

VENUE (See also CHILD SUPPORT and CUSTODY)

*Rule 23(e)(1) decision

ADOPTION

In re Adoption of L.J.E. and J.L.E, (Ill.App. 5 Dist.), Sept. 5, 2015

The appellate court held the trial court's denial of the intervening Adoptive Parents' petition for adoption was not against the manifest weight of the evidence because the intervening Adoptive Parents failed to establish by clear and convincing evidence Father was an unfit parent. Father and Mother had twin girls together, but Father was unaware of the children's birth until a day after the children were born. Meanwhile, a couple sought to adopt the children and brought the children home from the hospital after their birth. Father attempted to sign an acknowledgement of paternity, but he could not because father of the children was listed as unknown. Father then filed a petition to establish paternity and custody. In response, the Adoptive Parents filed a petition for adoption and alleged that Father was an unfit parent, and therefore, subject to termination of his parental rights pursuant to the adoption statute. After a hearing on the termination of Father's parental rights, the trial court entered an order denying the Adoptive Parents' petition seeking termination of Father's parental rights.

Adoptive Parents attempted to claim Father was unfit in a variety of ways. Regarding the Adoptive Parents claim of Father's habitual drunkenness or drug addiction, the appellate court found the evidence to be entirely lacking since the most recent evidence was four years prior to the birth of the children. This failed to meet the burden of showing clear and convincing evidence that Father suffered significant impairment in his ability to supervise and parent his children due to the consumption of alcohol. Regarding the children's welfare, the appellate court rejected Adoptive Parents' claim that Father failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. Adoptive Parents alleged that Father failed to request temporary visitation, failed to reach out to the Adoptive Parents, and failed to put effort into obtaining a relationship with his children. However, Father immediately tried to file an acknowledgement of paternity, exercised most of his visitation, and filed a petition for paternity and custody only nine days after his children were born. Additionally, the appellate court found no basis for the claim the trial court to only consider evidence prior to the filing of the petition for adoption. Regarding the depravity claim, the appellate court noted three felony convictions created a rebuttable presumption of depravity. However, Father only had two felony convictions and had rehabilitated himself since his last encounter with law enforcement eight years prior. Thus, the appellate court found Adoptive Parents failed to meet their burden of showing Father was unfit as a parent.

In the Adoption of Z.M.P., 2015 WL 4715972 (Ill.App 4 Dist.), August 7, 2015*

Petitioners appealed the decision of the trial court, denying their petition for adoption. This was a related adoption petition where the Step-Father wanted to adopt the Mother's biological child. The biological Father filed his petition to establish visitation prior to the Petitioners filing of the adoption petition. The court found that the minor child had a desire to be adopted by the Petitioners, but that he also had a desire to establish a relationship with his Father. The minor child did not want his relationship to be terminated with his Father. Therefore, the court did not abuse its discretion in denying the petition. Further, the court did not abuse its discretion when it changed the minor child's last name to the name of his Step-Father. The court found that the Petitioners successfully blended their families, and the court found that the Petitioners showed by clear and convincing evidence that the name change was in the child's best interest.

*Rule 23(e)(1) decision

In re Adoption of J.W., 2015 WL 1774420 (Ill.App. 4 Dist.), April 17, 2015

The appellate court affirmed the trial court's order terminating the parental rights and granting a petition for adoption after finding it was in the best interest of the child and not against the manifest weight of the evidence presented at hearing.

The biological Father appealed, arguing that the termination of his parental rights was not in the best interest of the child. The appellate court reviewed the record, which reflected that the biological Mother testified that the child's step-father cared for the child financially and emotionally, and the child identified her step-father as her father, as the biological Father had no contact with the child for the majority of the child's life. The appellate court rejected the biological Father's arguments that terminating his parental rights would cause the child difficulty because she would not understand her cultural heritage and would not have a link to her biracial family through contact with her biological Father, finding that the biological Mother and step-father were properly equipped to handle these issues facing the child and no evidence existed that the child faced any of those issues at the time of hearing. After review of the record, the appellate court found that the best interest factors were reviewed by the trial court and properly supported granting the adoption and terminating the biological Father's parental rights.

ANNULMENT

In re Marriage of Igene, 2015 WL 3941580 (Ill.App 1 Dist.), June 26, 2015

The Husband appealed the decision of the trial court finding that his marriage to the Wife was invalid pursuant to 750 ILCS 5/301(1).

In this case, the Husband did not disclose to his second Wife that he was previously married; nor did he inform his second Wife that he was divorced from his first wife on July 5, 2007. He was thereafter married to his second Wife on July 23, 2007. The appellate court found that most jurisdictions have determined that the concealment of a prior marriage that dissolved by the death of or divorce from a spouse does not amount to fraud going to the essentials of the marriage contract, even where there have been multiple divorces. Therefore, the court reversed the decision of the trial court.

ASSISTED REPRODUCTION

Szafranski v. Dunston, 2015 WL 122975-B (Ill.App 1 Dist.), June 12, 2015

The parties were dating when the Mother was diagnosed with non-Hodgkin's lymphoma, and was informed that her treatments would cause her to lose her fertility. The Father agreed to donate his sperm for the purpose of creating pre-embryos with the Mother's eggs. The parties signed a document entitled "Informed Consent for Assisted Reproduction." The form stated that neither party could use the embryos without the consent of the other party (if applicable), and that in the case of a separation, the facility would abide by the terms of the court decree or settlement agreement. The parties met with an attorney and reviewed a co-parenting agreement stating that the Father would agree to take on all legal, custodial and other obligations to the child regardless of any change of circumstance between the parties. The agreement further stated that if the parents separated, the Mother would control the disposition of the pre-embryos. The agreement was never signed. Nevertheless, the parties went through the process of creating the pre-embryos and the next day the Mother began her treatment. A few weeks later, the Father broke up with the Mother and filed a petition to permanently enjoin the Mother from using the pre-embryos. Following a hearing on the parties' motions for

*Rule 23(e)(1) decision

summary judgment, the circuit court awarded Mother sole custody and control of the pre-embryos and the right to use them to have children.
On remand from the previous appeal, the circuit court found that Father and Mother had an oral contract allowing Mother to use the pre-embryos without Father's consent, and rejected Father's assertion that the medical informed consent document signed by the parties modified or contradicted their oral contract. Alternatively, the court ruled in favor of Mother under the balancing-of-interests test. Mother was awarded sole custody and control of the pre-embryos. Father appealed from that judgment.

First, Father contends that the circuit court erred in finding that the oral contract "contains the offer and acceptance and meeting of the minds regarding the disposition of the embryos." He argues that "consent to create pre-embryos is not consent to their possible use at some unknown time in the future." The court was asked to decide if Mother's right to use the pre-embryos for implantation without Father's consent was an additional "benefit" separate and independent from the parties' agreement to create pre-embryos, and one which the parties had not bargained for or contemplated when they mutually agreed to create the pre-embryos in the first place. The circuit court rejected this assertion following its consideration of the evidence in the record, and the appellate court found no reason to disturb the findings.

Next, the court looked to the legal effect of the informed consent that the parties signed on March 25. The court again looked to *Szafranski I*, which emphasized the importance of honoring advance agreements between in vitro fertilization participants. Central to the holding in the first case was the idea that advance agreements allow parties to settle their rights and obligations *before* an issue over rights or obligations arise. Here, the parties reached a binding oral contract concerning the use of pre-embryos that, unless modified or contradicted, remained in full force and effect; therefore, the oral agreement is controlling as to disposition on the informed consent issue.

Finally, Father requested that this court review the circuit court's ruling on that issue under a *de novo* standard of review, as opposed to the balancing of interests standard used in *Szafranski I.* Questions of law are reviewed *de novo* while factual issues are reviewed under a manifest weight of the evidence standard. Here, the evidence considered by the circuit court in balancing the parties' interests was entirely factual in nature; therefore, the court decided that the judgment was not against the manifest weight of the evidence. Therefore, this Court again affirmed the order of the circuit court granting Mother, sole custody and control of the disputed pre-embryos.

ATTORNEY FEES

In re Marriage of Alyinovich, 2015 WL 8467157 (Ill.App. 2 Dist.), Dec. 8, 2015*

Wife's former attorney appealed the trial court's award of his fees for services performed as attorney for Wife.

Wife's former attorney filed a petition for final fees and costs pursuant to section 508(c) and sought an award of $24,920 in addition to the $14,530 Wife already paid him. Following an evidentiary hearing, the trial court awarded Wife's former attorney only $6,653 out of the $24,920 the former attorney requested. As attorney for Wife, he filed a lengthy four-count motion to vacate the default judgment for dissolution of marriage. While the motion to vacate was pending, Wife's attorney filed a motion for partial summary judgment that raised many of the same arguments that were made in the motion to vacate. The trial court denied the motion for summary judgment. Wife's attorney filed a motion to reconsider which the trial court also

*Rule 23(e)(1) decision

denied. In response to the former attorney's fee petition, Wife argued the attorney performed unauthorized and unnecessary services. The appellate court agreed, finding that it was not reasonable or necessary for the attorney to file a motion for summary judgment almost immediately after filing a fully briefed motion to vacate for which he already billed Wife $15,000. Additionally, Wife and the attorney had agreed that the legal work performed would be "streamlined" and "the most cost-efficient manner of proceeding." Accordingly, the appellate court affirmed the trial court, finding that the trial court did not abuse its discretion in disallowing fees related to the unreasonable and unnecessary work performed by Wife's former attorney.

In re Marriage of Cicinelli, 2015 WL 8528005 (Ill.App. 2 Dist.), Dec. 10, 2015*

Husband appealed the trial court's ruling arguing the trial court's comments and rulings deprived him of a fair trial and the trial court erred in ordering him to contribute 100% of Wife's attorney's fees in the amount of $163,000.

The parties proceeded to trial in their divorce. Husband also filed a complaint in the chancery division that made the same allegations of dissipation as the made in the divorce case. Once the trial court confronted Husband of this fact he voluntarily dismissed the chancery complaint. On appeal, Husband argued that the judge's remarks and evidentiary rulings deprived him of a fair trial. However, the appellate court noted Husband failed to identify how the outcome would have been different in the absence of the remarks. Regarding the trial court's alleged impatience with Husband, the appellate court found Husband provoked it by hiring multiple attorneys, filing the chancery suit, disobeying several court orders and listing over 80 witnesses. Accordingly, the appellate court rejected Husband's argument the court's remarks denied him a fair trial.

Regarding the award of 100% of Wife's attorney's fees, the appellate court reversed, finding Wife presented no evidence relating to the amount or reasonableness of the fees. In fact, the first mention of contribution to attorney fees was made in Wife's closing argument. On appeal, Wife argued that the court did hold a section 503(j) hearing, but the appellate court rejected this argument because the subject of contribution to fees never arose until after close of proofs and because there no evidence whatsoever introduced as to the specifics of the fees. Accordingly, the appellate court vacated the part of the judgment that held Husband responsible to 100% of Wife's attorney fees and remanded for an evidentiary hearing pursuant to section 503(j).

In re Marriage of Squire, 2015 WL 9024537 (Ill.App. 2 Dist.), Dec. 16, 2015

The law firm representing Wife appealed the trial court's order requiring the firm to disgorge fees in the sum of $60,000 to Husband's attorneys within 14 days and pay a $100 daily fine for each day that the firm failed to pay Husband's attorneys. The appellate court affirmed the trial court's ruling but vacated the trial court's contempt finding against the firm.

The law firm argued that section 5/501(c-1) did not apply to earned retainers and *In re Marriage of Earlywine* (2013 IL 114779) did not apply; the trial court's finding that the payment was necessary to "level the playing field" was against the manifest weight of the evidence and the contempt finding should be vacated. Here, Wife was unemployed but borrowed approximately $130,000 from her Mother to pay her attorneys. Husband earned a six-figure income, owed his attorneys $53,000 at the time of the hearing and argued that the debt-service payments from the parties' bankruptcy exceeded his income and he did not have the money to pay his attorneys. The trial court rejected the law firm's arguments that the fees already belonged to the firm or came from a source other than the marital estate.

*Rule 23(e)(1) decision

The appellate court rejected Husband's argument that the court lacked jurisdiction or that the issue of fees was moot due to the fact that the trial court entered a subsequent order dissolving the parties' marriage and incorporating the interim fee order, which was not appealed. The appellate court expressly found it had jurisdiction to hear the appeal as the interim fee order entered against the law firm was final and appealable, and the subsequent dissolution order entered was not a final dissolution judgment and specifically reserved jurisdiction for final apportionment of attorney fees pending the outcome of the appeal.

Further, the appellate court rejected the firm's argument that the fees could not be disgorged because they were already earned. The appellate court found that the *Earlywine* case was to be broadly construed, such that as long as the funds existed "somewhere" that they could be subject to disgorgement and that disgorgement of attorney fees was not limited to specific types of retainers. Therefore, an advantaged spouse cannot block access to funds or file voluminous pleadings and motions early in a case and protect against disgorgement from the disadvantaged spouse. The appellate court did agree with the law firm that that contempt finding should be vacated as the firm did not willfully disregard the court's authority or the order and only used the contempt finding as a means to appeal the underlying interim order for fees.

In sum, the appellate court affirmed the trial court's award of disgorged fees from Wife's attorneys to Husband's attorneys and vacated the contempt finding against the law firm.

See also **MOTION TO VACATE,** *Cavitt v. Repel*, 2015 WL 1431949 (Ill.App. 1 Dist.), March 30, 2015

See also **CUSTODY,** *In re E.C.,* 2015 WL 3850403 (Ill.App. 4 Dist.), June 19, 2015*

See also **CUSTODY,** *In re Marriage of Geiger*, 2015 WL 3648523 (Ill.App. 4 Dist.), June 12, 2015*

See also **CHILD SUPPORT,** *In re Marriage of Getz*, 2015 WL 5774812, (Ill.App. 1 Dist.), Sept. 30, 2015*

See also **POST-MARITAL AGREEMENTS,** *In re Marriage of Pogue*, 2015 WL 140369-U (Ill.App 2 Dist.), July 16, 2015

See also **MAINTENANCE,** *In re Marriage of Shen*, 2015 WL 130733 (Ill.App. 1 Dist.), June 30, 2015

See also **CHILD SUPPORT,** *In re Marriage of Spitler*, 2015 WL 4507103 (Ill.App. 2 Dist.), July 22, 2015*

See also **CUSTODY,** *In re Marriage of Stegeman*, 2015 WL 5883130 (Ill.App. 4 Dist.), Oct. 6, 2015*

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*

See also **CHILD SUPPORT** *In re Marriage of Weddigen*, 2015 WL 6504800 (Ill.App. 4 Dist.), Oct. 28, 2015*

*Rule 23(e)(1) decision

BUSINESS VALUATION

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*

CHILD REPRESENTATIVE

Davidson v. Gurewitz, 2015 WL 6156099 (Ill.App. 2 Dist.), Oct. 20, 2015

Father appealed the trial court's order granting child representative's section 2-619 motion to dismiss Father's legal malpractice complaint against the attorney as it related to representation of the child in a dissolution of marriage case.

Here, Father's complaint alleged legal malpractice through breach of fiduciary duty and a deviation from the standard of care for a child representative. Father argued the child representative improperly expanded his role in the divorce case and gave recommendations to the court as to financial issues, including cross-examining Father as to his earning potential and financial accounts, prepared a written closing which addressed financial issues, and filed a response to Father's post-trial motion. The appellate court affirmed the trial court's dismissal of Father's malpractice claim against the child representative because the child representative was a court-appointed representative who was immune from civil liability under common law. The appellate court stated the reasoning behind such allowance is due to the fact that court-appointed representatives need to fulfill obligations without the worry of later harassment or intimidation from an unhappy parent.

The appellate court further rejected Father's argument that all of the alleged misconduct occurred outside of his role as the child representative and such immunity should not apply. Here, the appellate court relied on the fact that the trial court never terminated the child representative's appointment, Father never requested termination prior to the close of the proceedings, and never appeared to have objected or alerted the trial court to any alleged misconduct during the dissolution proceedings.

As such, the appellate court affirmed the dismissal of Father's legal malpractice claim against the child representative.

CHILD SUPPORT

In re Marriage of Barbre, 2015 WL 3440267 (Ill.App. 5 Dist.), May 27, 2015*

The Mother appealed the decision of the trial court denying her motion to transfer venue and modifying child support to be paid by the Father. The appellate court reversed and remanded the decision.

With regards to transferring venue, the trial court found that both parties lived in a different county than where the original judgment was entered. However, the trial court found that although venue may have been proper in White County, venue may properly lie in more than one jurisdiction. Further, transfer is permissive and not mandatory. Therefore, the court found that the Mother failed to satisfy her burden of showing that the selection of venue in Gallatin County was improper. The appellate court upheld this decision of the trial court.

However, the appellate court did find that the trial court erred in setting the Father's child support obligation at 11.4% of his net income, as opposed to following the statutory guideline percentage of 28%. At the trial level, the court found that the Father showed compelling reasons

*Rule 23(e)(1) decision

sufficient to overcome the presumption that the guideline support amount of $4,901 per month should be ordered. The trial court found that the children did not have extravagant needs or wants, and that the Mother's travel expenses contributed to her perceived lack of financial resources to meet the children's needs. Further, the court found that the Father paid for golf clubs, golf course membership, greens fees, clothing, etc. The appellate court found that even where the amount paid in child support exceeds the monthly expenses for the entire household, a child's entitlement to a level of support is not limited to the children's "shown needs." Limiting child support to the "shown needs" of a child ignores the standard of living that the child would have enjoyed if the marriage had not been dissolved. The court found that they can increase the award of support based on the ability of the noncustodial parent to pay, regardless of the increase in the needs of the child. Further, the trial court improperly considered the Father's gratuities, *i.e.*, golf clubs, clothes, green fees etc. when it calculated the child support. The case was reversed and remanded to determine the proper amount of child support.

In re Marriage of Berendt, 2015 WL 4709539 (Ill.App. 2 Dist.), Aug. 6, 2015*

On August 20, 2009, the trial court entered a judgment for dissolution of marriage which incorporated a joint parenting agreement that specifically stated, "Husband agrees to pay the Wife 20% of his net income as determined from time to time" and obligated Father to pay to Mother $600 per month in child support. On May 22, 2014, Mother filed petitions alleging that Father failed to comply with the judgment requiring him to turn over financial records annually so that the parties could properly calculate child support and for retroactive child support since entry of the judgment for dissolution of marriage. Father argued that Mother could only seek to modify child support from the date she filed her original petition in March 2014, and that the language in the parenting agreement did not obligate or require him to pay Mother re-calculated support after tendering his financial documentation. The appellate court supported Father's argument due to the unambiguous terms of the parenting agreement that set forth his obligation to pay $600 per month. The appellate court stated that the parenting agreement did not establish a percentage income obligation to pay child support and instead set forth a specific dollar amount of only $600 per month. The appellate court determined that the language "from time to time" suggested that Father was not automatically required to pay Mother 20% of his net income and that the agreement stated the parties "can" recalculate child support so Father was not automatically required to pay 20% of any additional income earned. The appellate court reasoned Mother should have timely filed a petition for indirect civil contempt for Father's failure to provide his financial information, and that the trial court could not award retroactive child support to the date of entry of the judgment. Therefore, the appellate court reversed the trial court's order that he pay $3,715.96 to Mother and remanded the case.

In re Marriage of Gits, 2015 WL 130757-U (Ill.App 2 Dist.), July 17, 2015

On appeal, the appellate court found that Father's increased ability to pay constituted a substantial change in circumstances justifying an increase in child support. At the time of the dissolution, Father earned a base salary of $120,000 per year with further income from commission. The parties agreed that Father would not pay support on any income exceeding $275,000 in a given year. Approximately six months after the judgment of dissolution, Mother filed a petition to modify child support seeking an increase in child support by removing the salary cap from Father's child support obligation. The court found that an increase in the supporting parent's ability to pay, standing alone, may constitute a substantial change in circumstances justifying a modification increasing his or her child support obligation.

*Rule 23(e)(1) decision

Father argued that the Marital Settlement Agreement contemplated that he might earn in excess of the child-support income cap of $275,000. The court rejected this argument, reasoning that, "while we are willing to accept that some income fluctuation was contemplated in the Marital Settlement Agreement, we cannot accept that the Marital Settlement Agreement contemplated that Father would earn more than twice and one-and-a-half times the 100% sales goal income levels in the two calendar years following the dissolution, especially where the income cap was already set at slightly above the 100% sales goal income level."

The court further found that it was not legally necessary that there be a change in the children's needs to justify the trial court's finding of an increase in child support.

Goodrich v. Goodrich, 2015 WL 178451 (Ill.App. 1 Dist.), Jan. 14, 2015*

The appellate court affirmed the trial court's ruling denying the Wife's motion to increase child support.

In this case, the Husband was initially ordered to pay $1,275 per month in child support, which was later decreased to $600 per month. However, each party had filed motions to modify the support for several reasons, including decreases due to decreased income increases due to increased income, and increased expenses related to the children. Here, the appellate court found that the bystander's report does not fully describe the evidence presented at trial or the trial court's ruling, and the appellate court found that the provided bystander's report was insufficient to allow meaningful review of the record on appeal. Further, the appellate court determined that although both parties argued that a substantial change in circumstances had occurred, they did not agree as to whether said change should result in an increase or a decrease in the Husband's child support obligation, and they were not in agreement as to the amount of the Husband's income. Therefore, the appellate court found that the trial court could have concluded that no substantial change had occurred and denied either party's request to change support. As such, the appellate court presumed the trial court's ruling was not against the manifest weight of the evidence.

Griggs v. Price, 2015 WL 9463999 (Ill.App. 1 Dist.), December 23, 2015*

Pro-se Mother appealed an order denying her motion to reduce the amount of child support she was ordered to pay to Father for child support as the children's custodian. In March 2012, the trial court entered a joint custody agreement that designated Father as the primary residential custodian of the children. In 2014, Father petitioned the court for child support and the trial court awarded Father $50 per week from Mother and a retroactive support order of $6,000 dating back to entry of the joint custody agreement. After this order was entered, Mother filed a motion requesting a decrease in child support and the trial court denied the request after hearing. Mother argued that she should not be required to pay child support to Father because the parties share joint legal custody of the children and they spend an equal amount of time at each party's home. The appellate court stated that Mother's status as the non-custodial parent did not relieve her of the duty to pay child support on behalf of the children as ordered by the trial court; the trial court has authority to determine child support and such a ruling will not be overturned on appeal absent an abuse of discretion which was not found here. Further, Mother failed to provide a transcript of the proceedings to support her position. As such, the appellate court affirmed the trial court's ruling.

In re Marriage of Hill, 2015 WL 5677950 (Ill.App. 2 Dist.), Sept. 28, 2015

Husband appealed from the trial court's order setting child support at $19,284.48 per month.

*Rule 23(e)(1) decision

At the time of the divorce, Husband was ordered to pay Wife $4,250 for four years in unallocated child support. After the four-year period, Wife did not return to court, and Husband continued to pay at the same rate. Wife returned to court a few years later seeking a modification in child support. Husband testified he and his business partner had purchased a business and property from his father for $14 million. He further testified his father financed the deal and he was repaying his father at an accelerated rate of $140,000 per month. Husband also purchased a home in Florida, which appeared on the corporation's tax returns as a business asset. Husband further acknowledged he owned two homes in Naperville, one which he rented to his mother-in-law, and another home in Ingleside.

Both parties retained experts to determine Husband's income. Wife's expert testified Husband's income was $653,878 per year. The expert gave Husband a credit for the interest he paid on his business loans. Husband's expert testified his income was $189,531. The expert testified that he gave Husband a credit against his income for both the principal and the interest he paid on his business loans.

The trial court found Wife's expert's analysis was reasonable. However, the trial court found the expert should not have granted Husband deductions against his income for certain depreciation expenses, as well as the expenses associated with the Florida residence and the residence his mother-in-law was renting. Therefore, the trial court found Husband's net income was $826,478 per year and the court set his child support at 28% of his net income.

On appeal, Husband first argued the trial court erred in calculating his net income by not deducting the loan payments that he made to his father. The court found that the loans benefitted Husband financially. The court also found that if the loans were completely deductible, the children would not be able to share in the enhanced earning resulting from the loans. Further, the court found Husband had needlessly accelerated the loan repayments, leaving him with very little money for the payment of his child support obligations.

Husband next argued the trial court abused its discretion by not ordering a downward deviation. The court found that if the parties remained married, the children would have enjoyed a high standard of living. Therefore, the court went on to say the trial court have rationally concluded that adhering to the guidelines was the best way to replicate the standard of living that the children would have enjoyed had the parties stayed married.

Hopper v. Haden, 2015 WL 4132422 (Ill.App. 5 Dist.), July 8, 2015*

The Mother appealed the trial court's decision denying her retroactive child support, ordering her to pay 50% of the minor child's health insurance premiums and changing the child's last name to the Father's last name.

The court found that the trial court did not err when it did not order retroactive child support. The court found that the parties had previously entered into a stipulated agreed order as to what the Father should pay for temporary child support. Further, the court found that the Mother never filed a counter-petition for support, thus waiving the issue of any automatic retroactive child support. The court also found there is nothing in the language of section 505.2(b) of the Illinois Marriage and Dissolution of Marriage Act that prevents a trial court from deciding how insurance premiums will be paid or from ordering the parties to share equally in the cost of the health insurance premiums.

*Rule 23(e)(1) decision

Finally, the court found that the trial court erred when it ordered that the child's last name be changed to that of the Father's last name. Here, the Father never requested the change in the name. The court also found that there must be a finding that the change is in the minor child's best interest. Here, there was no finding.

In re Marriage of Illum, 2015 WL 4642841 (Ill.App. 3 Dist.), August 4, 2015*

Father had two children from a previous marriage. He was awarded custody of both children and was receiving SSDI benefits for his disabled daughter as well as child support. Mother had one child from a previous relationship, and Father adopted the child. The parties agreed that the Mother would be awarded residential custody of the child, but the parties did not agree on the amount of child support because Father was self-employed and his income varied year to year. The trial court determined Father's income for child support purposes by relying on Father's tax returns and his Schedule C deductions. The trial court did not consider deposits made to a secondary business account. The trial court also deducted the child support payments and SSDI that the Father received from Father's income.

The appellate court found that where it is difficult to ascertain the net income of a noncustodial spouse, the court may consider past earnings in determining the noncustodial parent's net income. In this case, the court should have looked at all of the Father's income from 2008-2012. Further, the trial court should have considered all deposits into the Father's business bank account. It was also an abuse of discretion for the trial court to deduct the SSI and child support that he was receiving for the other children. However, it was appropriate for the trial court to subtract the day-to-day operating expenses of the business. The case was thereby remanded to the trial court to determine the Father's properly calculated net income. The Appellate court did find that the trial court did not abuse its discretion when it ordered a downward deviation of child support. A deviation was proper in this instance because the Father had two other children, one with special needs.

In re Marriage of Koch, 2015 WL 136401 (Ill.App. 2 Dist.), Jan. 9, 2015*

The ex-Husband appealed the trial court's decision to award ex-Wife statutory guideline child support after the ex-Wife filed a petition to modify support. During the divorce proceedings, the parties were awarded joint custody of the minor children with a 50/50 schedule. The ex-Husband was ordered to pay $112.84 weekly in child support, which represented 28% of his net income from unemployment. There was language in the marital settlement agreement providing that the ex-Husband would notify the ex-Wife within 24 hours of becoming employed so that support could be recalculated. Upon ex-Husband's re-employment, the ex-Wife filed her petition for modification and the trial court ordered statutory support. With the award of statutory child support, the ex-Wife had a net monthly income of $301 more than ex-Husband.

The appellate court found that the trial court abused its discretion when it ordered the ex-Husband to pay 28% of his net income for child support. The appellate court found that the statutory factors favored a deviation from the statutory guidelines. Although the ex-Wife had fewer resources than the ex-Husband, the record was clear that they both had a tight budget and they shared custody of the children. Therefore, the court should have looked at the statutory factors and found that there should be a deviation in child support.

In re Marriage of Laird, 2015 WL 6446547 (Ill.App. 3 Dist.). Oct. 26, 2015*

Husband filed a motion to modify his child support. The trial court denied the motion and the Husband filed an appeal. The appellate court affirmed the decision of the trial court.

*Rule 23(e)(1) decision

Pursuant to the Judgment for Dissolution of Marriage, Husband was ordered to pay $750 per month for child support. Husband argued that since the entry of the Judgment, a substantial change in circumstances had occurred in that his employment at a bank had been terminated.

The appellate court found Husband voluntarily sought a lower paying position and did not pursue another job in his current field where he would have been able to maintain his current income level. The court further found it was reasonable for the trial court to find Husband could have paid child support considering he owned a vacation home, and Husband was not a credible witness and had suspicious accounting practices. Husband testified that he transferred 50% of the vacation home to his daughter for no consideration, and he failed to depreciate the asset or deduct the mortgage for tax purposes. Further, Husband had done accounting as a "side" job, and he testified he did not record the amount that he charged each of his clients. Therefore, it was appropriate for the trial court to find there was no substantial change in circumstances.

In re Marriage of Mitter, 2015 WL 5047954 (Ill.App. 1 Dist.), Aug. 26, 2015

The appellate court found in a matter of first impression, Husband was entitled to credit against his child support obligation Social Security benefits paid to Wife on behalf of the minor children. The case was reversed and remanded to the lower court.

The parties did not go to trial and agreed to the following at prove up: Husband was to pay $1,942 per month for guideline child support. In addition, Wife was to receive the child's portion of Husband's social security payments in the amount of $1,083. The parties further stipulated the $1,942 was a properly calculated 32% figure of Husband's net income from all sources. The parties stipulated there was a dispute as to whether or not the Social Security benefit of $1,083 should be deducted from the amount because it was earned by Husband. Therefore, the parties agreed this was an appealable issue, and on the record, the trial court found that the Social Security benefit was a gratuity for the children.

The appellate court found that the rights to Social Security benefits are earned. The court further found that Husband worked diligently his entire life and was legally obligated to set aside portions of his wages in order to earn benefits for his dependent children in the event he was unable to support himself. Because Husband was able to work and the benefits were not used, the children's Social Security benefits should have been considered part of Husband's overall income in determining his child support obligation. The appellate court found the Marital Settlement Agreement was unconscionable because Husband was ordered to pay $1,083 above the statutorily required amount once factoring in the children's Social Security dependent benefits.

In re Marriage of Paidi, 2015 WL 4507000 (Ill.App.1 Dist), July 23, 2015*

Father argued that the trial court erred in determining his net income to calculate child support. In its court order, the trial court found that it would not add back into the calculation of Father's net income for purposes of child support sums that were used to purchase office equipment. However, despite its finding, the trial court did in fact add those sums into the calculation for child support. The appellate court found that if the expenses were subject to a repayment plan, the trial court improperly added the expenses to the Father's income. The appellate court went on to state that even if the business expenses were not subject to a repayment plan and the amounts were appropriately added to the Father's income, the court should have considered the

*Rule 23(e)(1) decision

expenses when determining whether to deviate from the guidelines. Therefore, this issue was remanded to the trial court with instructions to conduct such proceedings as may be necessary to determine whether the Father's business expenditures were subject to a repayment plan.

Next, Father argued that it was an abuse of discretion for the trial court to order that he pay child support above the guidelines when Mother never asked for an upward deviation. The appellate court found that Mother did not need to separately request that the court consider an upward deviation from the guidelines. The appellate court went on to say that determining whether a deviation is appropriate is simply a necessary part in the process of determining child support. In this case, it was appropriate for the trial court to award an upward deviation in light of the fact that the parties had a daughter who was special needs and had a number of additional needs.

Father next argued that the trial court abused its discretion in requiring that he pay 55% of college expenses. The reviewing court found that the child's school choice was not unreasonable, that the majority of her college was paid for by a grant she received and a payment made by her uncle, and that although the child did not consult with her Father, there was nothing in the parties' settlement agreement that required the parents to consent to the child's choice of school.

The Mother cross-appealed, arguing that the trial court erred in finding that it lacked jurisdiction to award college expenses incurred prior to filing the petition for contribution. The appellate court agreed with the Mother, finding that the settlement agreement expressly provided that each parent would pay for college expenses "commensurate with his/her ability to do so." Therefore, the parties were already obligated to pay for the children's expenses. It was up to the court to decide how much each of them was to pay.

The Mother next argued that the trial court erred in deducting college expenses that her brother paid, and that her brother's gift should be counted towards Mother's share of the college expenses. The court found that a gift from a parent's family member towards college expenses is not credited towards a parent's obligations to contribute to college expenses.

In re Marriage of Pasquesi, 2015 WL 3626985 (Ill.App. 1 Dist.), June 10, 2015

The appellate court found that the trial court was within its discretion to order replenishment of a 503(g) trust for child support after finding Father willfully refused to pay the non-medical expenses. The appellate court also rejected Father's argument that the trial court abused discretion in setting child support at $1,600 per month where he lost his job, was working as a sole proprietor and had no income during that time. The appellate court affirmed the trial court's decision to continue to base child support on imputed income of $60,000 per year as set forth in the parties' Marital Settlement Agreement, as the court found there was no substantial change in circumstances. At the time Father was employed, he testified that he was operating his business at a loss due to personal responsibility for a number of business expenses, and that had not changed when working as a sole proprietor. Further, the appellate court affirmed the trial court's decision to allocate all four children as dependency exemptions to the Mother, as the parties agreed to this arrangement in their Martial Settlement Agreement, the Mother was receiving less in child support and Mother was the residential custodian of the children. Last, the appellate court affirmed the trial court's finding to use Mother's calculation for past-due child-related expenses because the bystander's report indicated that the court requested both parties to submit their position with respect to past-due child support and disputed items and the trial court heard days of testimony of past-due expenses. Here, the parties submitted a joint spreadsheet of expenses Father agreed to pay and which were disputed, in the absence of a

*Rule 23(e)(1) decision

complete record the appellate court presumed the trial court had a sufficient factual basis to rule as they did, and any doubts would be resolved against the Father.

In sum, the appellate court affirmed the trial court's ruling to replenish the 503(g) trust in the sum of $12,000 per year, set Father's child support and past due child support obligations and allocated all four dependency exemptions to Mother.

In re Marriage of Rocha, 2015 WL 1668572 (Ill.App. 3 Dist.), April 15, 2015

The appellate court reversed the child support order entered by the trial court 15 years prior, as a result of former Husband's fraud upon the court due to concealment of his income, and remanded the case for entry of a new child support order recalculating child support from the date of the fraud plus interest.

The former Husband appealed, arguing that the trial court's ruling was not supported by the evidence, and that the court improperly awarded retroactive child support plus interest prior to the date the former Wife filed her petition to increase child support in 2010. The appellate court upheld the trial court's ruling as to support, based upon the former Husband's failure to disclose his current employment at hearing, as he had been employed at a hospital since 2003. The appellate court rejected the Husband's argument that he was never directly asked about his current employment and other arguments as to why he failed to disclose his current employment at a contempt proceeding for failure to pay support. The appellate court affirmed the trial court's finding that the former Husband's failure to disclose his current employment was a fraud upon the court.

Further, the appellate court affirmed the trial court's award of unpaid support back to 2003 plus interest on the basis that the former Husband should not be rewarded for his fraud and failure to properly disclose his income from employment, and that such a ruling was properly supported by statute. The appellate court found the trial court's ruling properly placed the former Wife in the position she would have been in had he properly disclosed his employment and not committed fraud. As such, the appellate court affirmed the trial court's award of unpaid support in the sum of $32,419 as calculated, based upon the former Husband's accurate income information, and $17,640 in statutory interest. The case was remanded for further proceedings as to a payment plan on the arrearage and interest.

In re Marriage of Samuel, 2015 WL 304923 (Ill.App. 4 Dist.), Jan. 23, 2015*

The Husband appealed the trial court's order denying his motion to strike Wife's motion to dismiss his motion to vacate an order entered regarding a child support arrearage Husband owed to Wife; finding that the same order entered disposed of the Husband's motions to modify support and that the order was a final order; ruling on the Wife's motion to set the child support arrearage before ruling on his motions to modify support; and failing to rule on his motion to vacate pursuant to 2-1401.

The appellate court rejected the Husband's arguments as the trial court's order and the facts of the case supported the trial court's finding that the Husband abandoned his petitions for modification of child support and that he failed to challenge the trial court's judgment through an appeal within the requisite timeframe. Further, the appellate court denied the Husband's argument that the written judgment did not specify the amount of interest awarded to the Wife on the child support arrearage and that this effectively made the judgment non-final. The appellate court held that the issue of interest was ancillary and did not render the judgment non-final. The appellate court also rejected the Husband's argument that his motions to modify support should have been heard and adjudicated prior to the Wife's motion to set the child

*Rule 23(e)(1) decision

support arrearage, because the Wife had alleged a proper reason for her motion to be heard before the Husband's motions, due to the fact that he had abandoned his motions.

The appellate court also rejected the Husband's argument that the court improperly denied his 2-1401 claim that the Wife's attorney had committed fraud by cancelling a hearing date that he scheduled. The appellate court found that the Husband failed to show that he acted with due diligence in pursuing either his motions to modify child support or his 2-1401 claim, and that he failed to claim that a meritorious defense existed; and that he did not file a post-judgment motion challenging the underlying trial court's judgment and any fraud allegedly committed had no impact on the Husband.

In re Marriage of Schlei, 2015 WL 8484155 (Ill.App. 3 Dist.), December 10, 2015.

Child support was set in Michigan, where modification proceedings occurred as well. On April 11, 2012, a Michigan order specifically stated that Husband's petition to terminate child support would be denied but referred the parties to a "referee hearing" to determine support and that any award of support should be retroactive to February 10, 2012. During the time of Illinois proceedings, Husband earned an annual base salary of $278,100 and participated in a short term incentive plan where he was eligible for a performance-based bonus, and a long term compensation plan where he received restricted stock subject to a vesting schedule and performance criteria. The trial court deviated downward and set child support at 15% or $2,483 of Husband's net income but refused to make the child support retroactive. The court further failed to consider Husband's stock for child support purposes until Husband cashed out the stock.

On appeal, Wife argued that the child support of $2,483 should have been retroactive to February 10, 2012 through the Uniform Interstate Family Support Act. The appellate court reversed the trial court's ruling and found Wife should have been granted retroactivity to February 10, 2012 per section 603(c) of the act because the trial court was to enforce, not modify, the Michigan support order previously entered. As such, Wife was granted retroactivity. The appellate court also reversed the trial court's ruling as it related to the restricted stock. The appellate court found that the entire amount of Husband's long term stock compensation should not have been excluded as income, and stated that the vested restricted stock units are to be considered as income for child support purposes. Last, the appellate court held that it was not an abuse of discretion to obligate Wife to be solely responsible for the children's healthcare costs based upon the spousal and child support payments Husband was making to her.

Overall, the appellate court reversed in part the trial court's rejection of Wife's request for retroactive child support and included vested restricted stock options in Husband's income for child support purposes, and affirmed in part the trial court's ruling that Mother be solely responsible for the children's healthcare costs.

In re Marriage of Schoemaker, 2015 WL 1138548 (Ill.App. 5 Dist.), March 13, 2015*

The appellate court affirmed the trial court's decision awarding child support and maintenance to the Wife.

The trial court originally reserved child support and maintenance in the divorce decree with language stating that any future award would be retroactive to the date of entry of the Judgment in May 2012. Over one year later, the issues of child support and maintenance were heard by the trial court. The Husband argued that the trial court miscalculated his net monthly income by averaging his prior two years' income based upon paystubs and tax return information. However, the appellate court affirmed that the trial court could estimate his income for child

*Rule 23(e)(1) decision

support and maintenance purposes and effectively project income for the year of 2013. Further, the appellate court found that the trial court did not err in failing to deduct the maintenance award prior to calculating child support, as the statute was amended after the parties' dissolution therefore not in place at the time the judgment for dissolution of marriage was entered. Ultimately, the appellate court found that the trial court properly reviewed and applied the factors set forth in section 505(a)(2) of the statute in determining that the Husband enjoyed a surplus of income over expenses prior to any payment of support, that the Husband's financial condition improved but the Wife's had diminished, that the Wife was the child's primary caregiver due to the Husband's extensive work hours despite the parties sharing custody 50/50, and in considering the high standard of living established for the child and Wife during the marriage and the relative earning capacities of the parties.

Further, the trial court's order regarding maintenance was also upheld as the court determined that the parties were married for 15 years, the Wife did not work continuously during the final 12 years of the marriage, Wife was the homemaker and caretaker of the parties' child, the Husband had greater earning potential and maintained his residence, paid down his debt, contributed an average of $1,667 per month toward his retirement accounts, paid $915 per month for the benefit of his two adult children, and that the ultimate award of 12.3% of his net income for maintenance to the Wife was not an abuse of discretion. The appellate court also clarified that a party seeking modification or termination of a permanent maintenance award has the burden of proving a substantial change in circumstances, whereas a reviewable award of maintenance requires no such burden and the court simply has the discretion to continue, modify, or terminate maintenance upon review. Ultimately, the appellate court affirmed the trial court's calculation of both child support and maintenance.

In re Marriage of Solomon, 2015 WL 1086390 (Ill.App. 1 Dist.), March 11, 2015

The trial court denied a Wife's petition against her Husband's employer for failing to withhold child support payments from the Husband's wages, which was affirmed by the appellate court, as the employer had not knowingly violated the withholding act and the statutory penalty was not warranted.

The Wife argued that the employer knowingly failed to process the child support payments, but she failed to offer sufficient evidence to rebut a presumption that the employer knowingly violated the withholding act. The appellate court applied a manifest weight of the evidence standard of review. The appellate court found that while the Husband's employer was a governmental entity and would immune from liability in its performance of *discretionary tasks* under the Tort Immunity Act, the employer could not make this same argument and escape through immunity for the improper performance of *ministerial tasks*, including the processing of a support order which did not involve any discretionary decisions. Ultimately, while the appellate court found that the employer was not protected under the Tort Immunity Act, any violation was not made knowingly. The employer testified to the fact that it had complied with the notice to withhold, but incorrectly instituted bi-monthly withholdings rather than bi-weekly withholdings. The appellate court affirmed the trial court's ruling that the statutory penalty should not apply as the employer did not knowingly violate the withholding order, given the facts that the employer immediately corrected the error and paid two missing child support payments to the Wife within two days of being notified by the Wife's attorney.

In re Marriage of Spitler, 2015 WL 4507103 (Ill.App. 2 Dist.), July 22, 2015*

The appellate court held that the trial court did not abuse its discretion in setting child support, modifying college contributions, determining a child support arrearage and ordering attorney fees.

*Rule 23(e)(1) decision

Regarding child support and child support arrearage, the appellate court found that the trial court did not err in considering Father's "Creating Greater Value" plan as income because Father testified that Creating Greater Value is partially a retirement plan and partially a payment plan from his employer. Since Creating Greater Value takes the form of payment distributions, the appellate court found that it is income. Additionally, the appellate court would have upheld the trial court's determination of Creating Greater Value as income because the parties agreed and incorporated into their Marital Settlement Agreement that Creating Greater Value would be considered as income for child support purposes. Furthermore, the appellate court rejected Father's argument that the trial court erred in setting a child support arrearage for a year that was not pled. The appellate court acknowledged that Mother did not specifically request child support for that year, but her pleadings requested that the trial court determine whether Father had underpaid support.

Regarding college contribution, the appellate court affirmed the modification of Mother's contribution to college expenses. The trial court had considered Father's increase in income since judgment, Father's subsequent loss of employment, an increase in the children's needs, a depletion of Mother's resources to pay her share of the college expenses, and Mother's monthly shortfall. The appellate court emphasized the wide latitude that the trial court exercises and the deferential abuse-of-discretion standard that Father must overcome.

Regarding attorney fees, the appellate court affirmed the trial court's order requiring Father to contribute $26,500 toward Mother's attorney fees. The appellate court held that the trial court did not abuse its discretion since it had considered the Father's financial circumstances and even decreased the amount Father was ordered to pay after hearing on Father's motion to reconsider. Additionally, the appellate court rejected Father's argument that Mother "drove" the litigation, finding that the trial court was clearly in the best position to make such an assessment of who drove the litigation.

In re Marriage of Troske, 2015 WL 133652 (Ill.App. 5 Dist.), Jan. 8, 2015*

Husband appealed the trial court's order allocating property and assigning debts, the trial court's decision to accept the parties' stipulation that support would be determined using income figures from 2009 when the hearing took place in 2011, the trial court's 18-month delay in entering an order after the hearings, and the trial court's bias against the Husband.

First, the appellate court denied the Wife's motion to dismiss the Husband's appeal, because the order fully settled the issue of the Husband's past and future obligations to pay child support and maintenance, and did not find that the trial court's reservation of how much support was paid prior to entry of the trial court's order rendered the judgment non-final. The appellate court further affirmed the trial court's unequal distribution of property because review of the record revealed that the Husband's testimony was not credible and that he failed to consistently comply with the trial court's orders. Specifically, the Husband paid his then girlfriend substantial sums of money, allegedly for the repayment of a loan, during a time he owed child support and maintenance to his Wife, and dissipated assets by failing to pay the parties' past-due taxes and mortgage payments associated with the marital residence.

The appellate court also rejected the Husband's argument that the trial court inappropriately relied on the parties' stipulation that 2009 income figures would be used to determine support amounts. Here, the appellate court found that the Husband failed to request that the court reject that stipulation, waived this argument on appeal as a result, and that the stipulation was not unreasonable for the trial court to accept. For the reasons set forth above, after review of the

*Rule 23(e)(1) decision

Husband's arguments for the unequal distribution of property and the use of the 2009 income figures to calculate support, the appellate court rejected the Husband's argument that the trial court abused its discretion in awarding the Wife maintenance in gross. In addition, the appellate court rejected the Husband's argument that the trial court's delay in issuing its order warrants a reversal of the order or that there was judicial bias involved in the case. Instead, the appellate court remanded the case to reassignment to a different judge based upon the fact that the trial court took an extended time to issue its ruling. In sum, the trial court's order was affirmed and the case was reassigned to a different judge.

In re Marriage of Walloga, 2015 WL 7969948 (Ill.App. 1 Dist.), Dec. 4, 2015*

The parties' marital settlement agreement provided for the payment of unallocated support in specific percentages from Husband's bonuses received from his then employer, HSBC. Husband subsequently changed employers and began working for The McGraw-Hill Companies. Once employed, Husband received an incentive bonus of $150,000 in two separate installments of a $60,000 advance and a second installment of $90,000. He also received a signing bonus of $25,000, and all bonuses were conditioned upon his continued employment with the company for a full 12 months (if he voluntarily or involuntarily left the business within that time period, the bonuses would be repaid by him to the company).

The parties disputed whether Husband paid the proper amount in support from the bonuses, whether he was required to make payments from the bonuses and the timing of said payments. On appeal, Husband argued that the trial court erred by treating the $150,000 bonus as two separate incentive plan bonuses, that he did not have a vested interest in the $60,000 bonus advance until he guaranteed employment for one full year, and that the signing bonus did not constitute an annual discretionary cash bonus subject to the unallocated family support payment as set forth in the marital settlement agreement.

The appellate court reversed the trial court's ruling because of the language in the marital settlement agreement. The appellate court stated that the HSBC language ultimately did not allow or provide for payment to Wife from any bonuses received by Husband through any employer other than HSBC. The appellate court found that the language used in the agreement did not obligate Husband to make any payments from his new employer to Wife for unallocated support. Instead, the appellate court held that the trial court would have had to modify the support once Husband changed employers.

Overall, the appellate court reversed the trial court's ruling awarding support payments from Husband's bonuses received from a new employer based upon the specific language set forth in the Marital Settlement Agreement.

In re Marriage of Weddigen, 2015 WL 6504800 (Ill.App. 4 Dist.), October 28, 2015*

Husband appealed trial court's order finding Husband in indirect civil contempt for statements he made on a social networking site, ordering Husband as a purge to post further comments on all social networking sites to apologize, recant, and correct his previous comments, and ordering Husband to pay Wife's attorney's fees.

Wife filed a petition indirect civil contempt, alleging Husband failed to make court-ordered payments toward his child support arrearage. During the hearing, Husband admitted he made comments on a social networking site encouraging people to record the audio of court proceedings. The trial court did not find him in contempt for failing to make payments toward the child support arrearage but did order him to pay Wife's fees because his non-payment

*Rule 23(e)(1) decision

necessitated court action. Additionally, on its own motion the trial court found Husband in indirect civil contempt for this social network posts and ordered him to recant his statements. On appeal, Husband argued this violated his First Amendment rights to free speech. Without reaching the First Amendment argument, the appellate court reversed the trial court's finding that Husband's conduct formed the basis for both criminal and civil contempt sanctions. Since the trial court sought to punish Husband for his past conduct, this was actually criminal contempt in which Husband must be afforded the constitutional and procedural rights afforded to other criminal defendants. Since the proceedings were brought with the intent of pursuing civil contempt Husband was not afforded these rights. Accordingly, the appellate court reversed the trial court's finding of contempt.

Regarding attorney's fees, Husband argued the trial court erred in awarding Wife attorney's fees because the trial court did not find him in contempt for nonpayment toward the child support arrearage. However, the appellate court found that Husband's unilateral reduction in support payments without court order is adequate, by itself, to establish the "without cause or justification" necessary for awarding attorney's fees. Accordingly, the appellate court affirmed the trial court's award of attorney's fees for Husband's nonpayment of his child support arrearage.

Yampol v. Kaskel, 2015 WL 3624125 (Ill.App. 1 Dist.), June 9, 2015.

Mother appealed from the decision of the trial court ordering her to reimburse expenditures for the minor children paid for by the Father without first receiving her consent.

Mother argued that because she was the custodial parent she had plenary authority over the raising of the children. Therefore, she argued that any expenses incurred by Father without her consent must be a gift. The court found that although she was awarded sole custody of the minor children, it did not give her plenary authority over the raising of the minor children to the exclusion of Father, nor did it convert any child-related expenses incurred by Father without her consent into gifts. Therefore, the court found that it was not error to order Mother to reimburse Father for non-agreed-upon expenses.

See also **CUSTODY,** *In re E.C.,* 2015 WL 3850403 (Ill.App. 4 Dist.), June 19, 2015*

See also **COLLEGE CONTRIBUTION,** *In re Marriage of Edelman and Preston*, 2015 WL 2412174 (Ill.App. 2 Dist.), May 21, 2015

See also **CUSTODY,** *In re Marriage of Geiger*, 2015 WL 3648523 (Ill.App. 4 Dist.), June 12, 2015*

See also **CUSTODY,** *In re Marriage of Stegeman*, 2015 WL 5883130 (Ill.App. 4 Dist.), Oct. 6, 2015*

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.) March 31, 2015*

CHILD SUPPORT

In re Marriage of Getz, 2015 WL 5774812, (Ill.App. 1 Dist.), Sept. 30, 2015*

The appellate court affirmed the trial court's modification of the Judgment for Dissolution of Marriage regarding Husband's child support obligation, affirmed the award of attorney's fees to

*Rule 23(e)(1) decision

Wife, reversed the trial court's contempt finding against Husband, and recalculated Husband's current and retroactive child support obligation pursuant to Rule 366(a).

The trial court entered judgment after several days of trial, finding Husband received large cash gifts from his grandparents and financial assistance from his parents, which he attempted to conceal from Wife. Thus, relying on *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004), the trial court determined the proceeds from Husband's loans from his parents and their payment of expenses were income to Husband. On appeal, Husband argued the trial court failed to deviate downward from the statutory guidelines by including these gifts and loans, but the appellate court found Husband failed to request this deviation at the trial level. The appellate court affirmed the trial court's finding related to the gifts since Husband received them regularly. However, the appellate court reversed the trial court's inclusion of the loans in Husband's income since the evidence showed his parents required Husband to pay back the loans pursuant to executed promissory notes. Thus, the appellate court removed the loans from Husband's income and recalculated his support obligation over the three-year period in question on appeal.

The trial court found Husband in indirect civil contempt based on his misconduct throughout the trial, including filing false financial disclosures, making false entries on his job diary, and failing to comply with child support orders. However, the appellate court reversed, finding the trial court sought to punish Husband through the contempt finding rather than coerce him to obey a court order. Therefore, such contempt was criminal in nature and required the trial court to afford Husband procedural rights applicable to criminal proceedings. Since these were not afforded to Husband, the contempt finding must be vacated.

Regarding attorney's fees, the trial court found that each party incurred approximately $90,000 in attorney's fees, yet Husband's parents paid all of his fees through "loans." Accordingly, the trial court ordered Husband to pay $45,000 towards Wife's attorney's fees. The appellate court affirmed, finding that Husband's loan proceeds allowed Husband to have the benefit of legal counsel, while Wife exhausted her resources in paying her attorney's fees. Thus, there was sufficient evidence that Wife lacked the ability to pay her attorney fees and Husband possessed the ability to contribute to her fees.

In re Marriage of Ross and Pruitt, 2015 WL 130961 (Ill.App. 2 Dist.), Feb. 11, 2015

After the death of the former Husband, former Wife filed a claim for child support arrearages against the Husband's estate. The trial court initially denied the petition stating a lack of jurisdiction but later granted Wife's motion to reconsider. The Wife was awarded arrearages totaling $65,976.46, which included back child support plus statutory interest. However, she was denied attorney fees. The Estate appealed challenging the trial court's judgment granting Wife's motion to reconsider and which struck the Estate's affirmative defenses, except for *laches*, and finding, after trial that *laches* did not apply to Wife's claim. Wife then cross-appealed the denial of attorney fees. The appellate court agreed with the Estate's contention that the Wife's claim was time-barred under section 510(e) and section 18-12(b) of the Probate Act as Wife's claim was brought more than two years after Husband's death. Wife did contend that 735 ILCS 5/12-108, cited in Section 2-1602, concerns the enforceability of judgments. However Sections 2-1602 and 12-108 concern child support generally, while 510(e) specifically addresses child support claims against a deceased payor's estate. The appellate court's decision on the issue of Wife's motion to reconsider was dispositive; hence the court did not need to address the Estate's remaining contentions of error, also mooting Wife's cross-appeal

*Rule 23(e)(1) decision

for attorney fees. Therefore the court reversed the decision and remanded the case for dismissal with prejudice.

See also **CUSTODY,** *In re Marriage of Stegeman*, 2015 WL 5883130 (Ill.App. 4 Dist.), Oct. 6, 2015*

CHOICE OF LAW

See also **COLLEGE CONTRIBTUION,** *In re Marriage of Edelman and Preston*, 2015 WL 2412174 (Ill.App. 2 Dist.), May 21, 2015

CIVIL UNION

In re Civil Union of Hamlin and Vasconcellos, 2015 WL 4397699 (Ill.App. 2 Dist.), July 17, 2015*

The parties entered into a civil union in 2002 in Vermont but resided in Illinois throughout their civil union. In June 2011, Illinois first recognized civil unions with the passage of the Illinois Religious Freedom Protection and Civil Union Act. In August 2011, Petitioner petitioned for dissolution of their civil union. After contested hearing in 2013, Petitioner and Respondent received a judgment dissolving their civil union that classified certain of the parties' assets as part of the civil-union estate and distributed those assets 73% to Respondent and 27% to Petitioner. Respondent appealed the judgment, arguing that the trial court erred in classifying certain assets as civil union property because Illinois first recognized unions in June 2011. However, the appellate court found that Illinois law treats their civil union as of the date of their union in Vermont in 2002, not as of the effective date of the legislation in 2011. Thus, it was proper for the trial court to consider property of the civil union as far back the date of the parties' civil union in 2002.

Petitioner cross-appealed on several property distribution issues. The appellate court agreed and reversed the trial court, finding that the trial court's determination that Respondent contributed significantly more to the acquisition of civil union property by owning and operating a business that was the civil union's largest asset was against the manifest weight of the evidence. The appellate court reasoned that the trial court overlooked the purpose of Petitioner's employment, which was to provide a safe environment to allow Respondent to take the entrepreneurial risk of creating and running the business. Additionally, Petitioner earned more than Respondent during the first seven years of the nine-year civil union. Furthermore, the appellate court found that the trial court erred in distributing the business wholly to Respondent based on the court's perception of future risks facing the business because future risks should only have been a factor in determining the value of the business, not in distributing the business.

COLLEGE CONTRIBUTION

In re Marriage of Donnelly, 2015 WL 3645036 (Ill.App. 1 Dist.), June 12, 2015

The appellate court answered a certified question to determine whether a court was precluded from ordering a parent to contribute to college expenses allegedly paid prior to the date a petition is filed where the parties' Judgment for Dissolution of Marriage did not order a specific dollar amount or percentage to be paid, but instead left the issue for determination at a later date.

*Rule 23(e)(1) decision

Here, the parties' Marital Settlement Agreement stated that pursuant to section 513 the parties "shall pay" for a trade school, vocational school, college or university education for the parties' four children but failed to set forth any specific percentage or dollar amount to be paid. Mother previously repeatedly asked the Father to contribute to college expenses, and Mother had spent in excess of $100,000 in education expenses on behalf of the children. Father argued that the decision in *Peterson* (2011 IL 110984) limited the retroactivity of college expenses to the date of filing of Mother's petition, that sanctions were barred by *laches,* that the Marital Settlement Agreement contained conditions precedent that Mother failed to satisfy and that Father actually contributed $70,000 to the children's education expenses. After numerous hearings on Father's motions to dismiss and amendments to Mother's petition, the circuit court denied Father's motion to dismiss Mother's third petition for contribution and certified the question for appeal.

The appellate court found that the language in the Marital Settlement Agreement in this case was factually similar to the language in the agreements of the *Spircoff* and *Koenig* cases where the language "shall pay" expressly obligated the parties to contribute financially to the children's education expenses 2011 IL App (1st) 103189, 2012 IL App (2d) 110503. Unlike the reservation pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act, Mother was not precluded from seeking enforcement of the Marital Settlement Agreement, and she could recover reimbursement to college expenses incurred prior to the date of filing of the petition. As such, the appellate court answered the certified question on appeal and answered that a circuit court was not precluded from ordering either parent to contribute to college expenses allegedly paid prior to the date a petition is filed where the parties' judgment for dissolution of marriage did not order a specific dollar amount or percentage to be paid.

In re Marriage of Edelman and Preston, 2015 WL 2412174 (Ill.App. 2 Dist.), May 21, 2015

The parties were originally divorced in Connecticut and Mother moved to enroll the foreign judgment in Illinois. The trial court applied the Full Faith and Credit Act and found that Connecticut law was controlling where the Mother was seeking to modify the Connecticut judgment. The trial court ultimately granted Father's motion to dismiss the petition for contribution to college on the basis that Connecticut did not have an existing college contribution statute that would apply to him. Instead, the Connecticut statute for college contribution only applied to settlement agreements entered after October 1, 2002, and the settlement agreement was entered before the effective date of the statute. Here, the appellate court found that Connecticut law did in fact apply and affirmed the trial court's dismissal of the mother's petition for college contribution.

While the appellate court agreed with Mother in finding that the trial court erred in applying the Full Faith and Credit Act to the case, the ultimate result was the same because the Family Support Act requires Illinois to apply the law of the issuing state when determining whether the court can modify child support. As such, the appellate court affirmed that Connecticut law was accurately applied by the trial court.

Last, the appellate court reversed the trial court's dismissal of the mother's petition to increase child support and establish adult child Support. The appellate court found that Connecticut law did in fact provide statutory relief to modify the child support due to an increase in income and request adult child support on the basis of disability. As such, the appellate court reversed and remanded these issues to the trial court for further proceedings.

*Rule 23(e)(1) decision

In re M.M., 2015 WL 1361130 (Ill.App. 2 Dist.), March 26, 2015

The Mother appealed the trial court's ruling regarding the allocation of college expenses for the parties' one child pursuant to Section 513. In its ruling, the trial court imputed the income of the Mother's new spouse as a baseline for determining the Mother's contribution toward the college expenses. The appellate court analyzed other cases, including *Drysch* and *Street*, which held that a court may consider a new spouse's income as part of a parent's "financial resources" for purposes of Section 513. However, those cases and their progeny hold that a court may consider a new spouse's income to the extent that it frees up the payee's *own* assets for contribution; the cases do not provide a mechanism for imputing a new spouse's income to the other spouse. The appellate court found those cases to be instructive here for gaining a complete picture of the Mother's financial resources and not allowing the Mother to shield some of her financial resources from the court's consideration. However, the appellate court distinguished those cases because the Mother here was a stay-at-home mother who relied on her new husband for just about all of her financial needs. Additionally, unlike in *Drysch* and *Street*, the Mother did not receive an allowance from her new spouse, did not have any joint bank accounts with her new spouse, and did not have access to her new spouse's accounts. Thus, the appellate court found that the trial court erred when it used the income of the Mother's new spouse as a baseline for determining the Mother's contribution toward college expenses.

The appellate court noted that the *Gosney* case provides a mechanism for imputing income by requiring the court to find that the payee was voluntarily unemployed, was attempting to evade a support obligation, or had unreasonably failed to take advantage of an employment opportunity. However, since the trial court failed to make any of these necessary factual findings, the trial court erred in imputing income to the Mother. Therefore, the appellate court reversed and remanded the case for proper allocation of educational expenses consistent with the rules stated above.

See **CHILD SUPPORT,** *In re Marriage of Paidi,* 2015 WL 4507000 (Ill.App.1 Dist), July 23, 2015*

See also **CHILD SUPPORT,** *In re Marriage of Spitler*, 2015 WL 4507103 (Ill.App. 2 Dist.), July 22, 2015*

See also **PROPERTY,** *In re Marriage of Veile*, 2015 WL 6955372 (Ill.App. 5 Dist.), Nov. 10, 2015

CONTEMPT

In re Parentage of L.S.R., 2015 WL 1455642 (Ill.App. 2 Dist.), March 30, 2015*

The appellate court affirmed the trial court's ruling to review the Father's "Petition for Modification of Custody and Removal of Minor Child" as an initial custody determination, rather than a modification, after the trial court granted the Father's motion to clarify on the date of trial, as well as the court's award of custody to the Father and finding that the removal of the child to the UK was in the child's best interest.

The Mother appealed, arguing that the trial court erred in granting the motion to clarify on the date of trial, in modifying custody as there was no substantial change in circumstances warranting a modification of custody, and in allowing permanent removal of the child to the UK. The appellate court first rejected that the claim that the trial court erred in granting the motion to clarify, as the trial court found there had not been a previously entered custody judgment and reviewed the request for custody as an initial custody proceeding under the legal requirements

*Rule 23(e)(1) decision

set forth in Section 602 of the Illinois Marriage and Dissolution of Marriage Act. The appellate court rejected the Mother's argument that the parties' executed a Parental Responsibility Agreement ("PRA") that met the requirements of a custody judgment, as the PRA failed to establish a support obligation or visitation rights for either party, as required under section 14(a)(2) of the Parentage Act, and was ultimately silent as to an award of custody to either party.

Further, the appellate court rejected the Mother's argument that two temporary orders entered in 2011 for child support from the Father to the Mother constituted judgments of parentage, because neither included a finding of parentage, and also rejected any argument that an order entered in 2013 constituted a judgment of parentage because it included a finding of parentage but lacked an award of support or visitation rights. The appellate court found that the petition to modify custody filed by the Father was properly adjudicated as an initial custody proceeding based upon the substance of the pleading and the fact that no judgment of parentage existed that granted custody to one party or the other.

Next, the appellate court affirmed the trial court's award of custody to the Father and found it was in the child's best interest on the basis that more factors set forth in Section 602 of the Illinois Marriage and Dissolution of Marriage Act weighed in the Father's favor. Specifically, the child's expressed wishes to the guardian *ad litem* to reside with the Father in the UK and the child's adjustment to home, school and the community in the UK were stronger, as the child's ties to home and school in Illinois were weak due to frequent moves throughout the child's life and the child attending three different elementary schools and being home-schooled for a period of time by the Mother. Further, the appellate court stated that the guardian *ad litem* and the Section 604 expert ultimately recommended an award of custody to the Father, which supported a finding that it was in the child's best interest to award custody to the Father.

The appellate court also affirmed the trial court's ruling to remove the child to the UK with the Father. The appellate court rejected the Mother's arguments that the trial court failed to review the necessary *Eckert* factors and that the removal was not in the best interest of the child. The appellate court determined that while the trial court must consider the *Eckert* factors when determining whether removal is in the child's best interest, there is no need for the trial court to make specific findings with respect to each of the factors. The appellate court determined that the *Eckert* factors weighed in favor of removal and removal of the child to the UK was supported by the record and evidence presented at trial. Ultimately, the appellate court affirmed the trial court's ruling awarding custody of the minor child to the Father and granting removal of the minor child to the UK to reside with the Father.

In re Marriage of Sariri, 2015 WL 1019845 (Ill.App. 2 Dist.), March 9, 2015*

The ex-Wife filed a contempt petition against the ex-Husband for his alleged failure to pay certain expenses for the minor children. The appellate court held that the trial court properly denied the ex-Wife's contempt petition as the parties' agreement did not require ex-Husband to pay the expenses at issue.

In this case, the parties entered into an agreed order concerning the payment of various expenses incurred by the parties' three children. The order required the ex-Husband to maintain a bank account for each of the three children. Every month, the ex-Husband was required to deposit $2,000 into each account. The children were to use this money to pay for all of those personal expenses that were not covered by the agreement. The covered expenses included uninsured and deductible medical, dental, optical and dermatological expenses, school expenses for which the school billed the parties directly, school trips, lessons, sports, and other extracurricular activities, including the cost of equipment that the school or lesson provider required, repair and maintenance of the children's vehicles and club memberships. The

*Rule 23(e)(1) decision

agreement also provided that the ex-Husband's obligation to pay for these specific expenses shall not exceed $5,000 in any given month.

The ex-wife argued the ex-husband refused to reimburse her for a top-of-the-line computer that she purchased for her daughter after her daughter spilled soda on her computer, lacrosse equipment (although the son already had equipment that was in good shape), airsoft guns and ammunition, and stationery. The court found that these purchases were not reasonable and were not covered in the parties' agreed order. None of the claimed expenses were expenses that were required by the school or as a requirement for the extracurricular activity. Therefore, the court found that the ex-Wife did not present a *prima facie* case of contempt.

In re Marriage of Stephenson, 2014 WL 7367144 (Ill.App. 2 Dist.), Dec. 26, 2014*

The Husband appealed the trial court's decision finding him in indirect civil contempt of court for failure to turn over certain documents to the Wife. Specifically, the Husband argued that the discovery order should be reversed and remanded because he presented evidence that the binders were not in his control and because the documents requested contained irrelevant and immaterial information. On appeal, the court found that the Husband's attorney did not argue that the binders were not in the Husband's possession prior to the entry of the discovery orders. Therefore, he forfeited such arguments. The court further found that the documents were relevant because, although there was a prenuptial agreement, the agreement was silent as to the issue of maintenance. The alleged documents allegedly provided information with regard to the Husband's interest in multiple corporations. The Wife based her request for the documents on facts known to her from her attendance at family business meetings. The Husband did not provide sufficient information on his ownership interests. Therefore, he was required to turn over the documents. The Husband failed to comply with the court orders to turn over the documents. Therefore, the Wife met her burden.

See also **CHILD SUPPORT,** *In re Marriage of Getz*, 2015 WL 5774812, (Ill.App. 1 Dist.), Sept. 30, 2015*

See also **MAINTENANCE,** *In re Marriage of Thibeau*, 2015 WL 3858124 (Ill.App. 1 Dist.), June 22, 2015

CUSTODY

In re Marriage of Attar, 2015 WL 998906 (Ill.App. 3 Dist.), March 6, 2015*

The Husband appealed the trial court's entry of a joint custody order over the objection of Husband's counsel. The Husband objected from a financial perspective to a provision of the proposed Joint Parenting Agreement that involved the choice of school district for the children. Without citing any authority for his proposition, Husband argued that the trial court erred in granting joint custody without first conducting an evidentiary hearing. The appellate court found that the Husband waived this argument by failing to cite any authority for his proposition. Moreover, the appellate court found that Section 602.1 of the Act does not require an evidentiary hearing prior to entering a custody judgment. Rather, Section 602.1 provides factors for the trial court to consider in making a joint custody determination. Here, the trial court conducted a pretrial conference and heard evidence concerning child custody, including the Guardian ad litem's recommendation for joint custody and Husband's objection to the school district provision. The trial court stated that it was familiar with the case, that it was in the best interest of the children to award joint custody, and that it took into account the ability of the parents to cooperate effectively and consistently. Thus, the appellate court found that the trial court properly considered the factors enumerated in section 602.1(c) of the Act and its decision to award joint custody was not against the manifest weight of the evidence.

*Rule 23(e)(1) decision

In re Marriage of David H.B. and Linda E.B., 2015 WL 9485761 (Ill.App. 2 Dist.), December 28, 2015*

Father appealed the trial court's decision to terminate joint custody and award the Mother sole custody of the children, arguing that the trial court's award of sole custody to Mother was against the manifest weight of the evidence and abused discretion when the trial court refused to admit evidence related to Mother's current mental state. The appellate court affirmed the trial court's decision.

Here, the appellate court found that the trial court's rulings on objections from Mother's attorney were proper and the trial court did not abuse discretion in sustaining specific objections during trial. Specifically, the trial court properly sustained questioning related to the children's counseling as it related to Mother's mental state because Father's counsel did not indicate Mother had a current relationship with the counselor or any other basis that would allow the counselor to weigh in on the Mother's mental state. Father's attorney did not make any offer of proof or otherwise attempt to establish a proper foundation or relevance as to that line of questioning. Further, the appellate court supported the trial court's rulings on objections as related to a line of questioning that one child was aware Mother was keeping secrets because these questions were not found to be relevant to Mother's mental state. Last, the trial court was found to have properly sustained Mother's objection as related to questions to Mother from Father about her belief Father was going to have the director of the "Celebrate Recovery" program that assist children and adults through divorce arrested at an event. While Father made an offer of proof, the appellate court found the offer to be insufficient as he failed to develop why Mother's beliefFather would have someone arrested was unfounded and indicated a questionable mental state.

Next, the appellate court addressed Father's argument the children being homeschooled by him and a child's learning disabilities could not be used as a basis for a substantial change in circumstances warranting a change of custody because such facts existed prior to the dissolution judgment. The appellate court rejected this argument because Mother previously homeschooled the children prior to the divorce and after the divorce Father homeschooled the children, one child tested significantly below her grade level, Father was not providing regular lessons for subjects the child was struggling in, and was unwilling to consider other options to address the child's learning disabilities. The appellate court also found that the child had been subsequently diagnosed with dyslexia and attention deficit hyperactivity disorder after the divorce which could constitute a substantial change of circumstances, regardless of whether such learning disabilities existed prior to the judgment being entered. Last, the appellate court supported the trial court's review of the best interest factors and substantial weight given to the academic performance of the children, even though a majority of the other factors arguably weighed in Father's favor or were neutral. The trial court properly considered Father's unwillingness to consider alternative options to address the children's subpar academic performance as well as one child's learning disabilities, while Mother was open to admitting the children in public or private school and that consideration of such options better suited the children's academic performance.

Overall, the appellate court affirmed the trial court's award of sole custody to Mother and that the trial court properly denied admitting evidence related to Mother's mental state that Father presented.

*Rule 23(e)(1) decision

In re Marriage of Blondin, 2015 WL 1205871 (Ill.App. 2 Dist.), March 16, 2015*

The Husband appealed the trial court's award of sole custody of the parties' two minor children to the Wife and the denial of Husband's motion to reconsider. The trial court conducted a custody trial, heard testimony from both parties, and ruled that the Mother was the children's more active, primary parent. The trial court specifically noted the Husband's use of violence against both the Wife and one of the children, the escalating animosity of the Husband's mother, which interfered with the parties' parenting, and the difficulties with transportation, which made joint custody unfeasible. After the trial court's ruling, the Husband filed a motion to reconsider claiming that the trial court made numerous factual errors and that the Wife threatened to remove the children to another state, which constituted "newly discovered evidence" warranting a new custody trial.

The appellate court noted several deficiencies in the Husband's brief and found that his custody arguments essentially ask the appellate court to retry the case, which the appellate court will not do. The appellate court also noted that the trial court considered all the statutory factors under section 602(a), including the parents' wishes, the relationships between the parents and the children, the children's adjustment to their home and school, the parent's availability to their children, and the parents' living arrangements. Thus, the appellate court found that the trial court's ruling was not against the manifest weight of the evidence because the trial court's findings were properly based on and consistent with the evidence presented in the trial court. Finally, the appellate court affirmed the trial court's denial of the Husband's motion to reconsider, finding that the motion lacked sufficient factual support because it made only a nonspecific and conclusory allegation concerning removal. Thus, the trial court did not abuse its discretion in denying the motion to reconsider.

Cisneros v. Pocius, 2015 WL 5772200 (Ill.App. 1 Dist.), Sept. 29, 2015*

The appellate court affirmed the trial court's ruling granting custody of the three minor children to Father, where Mother failed to provide a transcript or bystander's report of the proceedings.

The appellate court found that Mother failed to provide a record of the evidence presented to the trial court for review because she failed to provide a transcript or bystander's report of the trial court proceeding. As a result, the appellate court accepted the trial court's factual findings and affirmed the trial court's rulings based upon those findings. Upon review, the appellate court reviewed the trial court's order and a home custody report completed by Dr. Kerry Smith. Ultimately, the appellate court affirmed custody should be modified and awarded Father custody of the children.

In re Custody of D.H., 2015 WL 1284069 (Ill.App. 1 Dist.), March 20, 2015*

The Father appealed the trial court's denial of the Father's petition to modify custody of the parties' minor child, the award of sole custody to the Mother, and the denial of his emergency motion to stay judgment pending appeal. The Public Guardian also appealed, claiming that certain findings of the trial court were against the manifest weight of the evidence. Here, the Mother was awarded sole custody by agreement of the parties in 2002. However, the Father was awarded temporary custody in 2012 after an incident in which the Mother harshly disciplined the child after finding bullets in the child's possession. The Father then petitioned the court to award him permanent sole custody, and the trial court conducted a 14-day custody trial involving several witnesses, including the child's therapist and the 604(b) evaluator. The trial court then issued a 39-page order that weighed all the Section 602 factors, concluding that the Father failed to take initiative to address the child's ADHD issues and that the Mother is better able to provide structure, consistency, predictability, and supervision for the child.

*Rule 23(e)(1) decision

The appellate court found that the trial court's decision was not against the manifest weight of the evidence, which had been thoroughly developed in the trial court through 14 days of trial. Furthermore, the Court's own witness, the 604(b) evaluator, recommended that the Mother receive full custody primarily because the Mother's home was a more stable, structured environment for the child. On appeal, the Father also argued that he was denied the right to a fair trial by being denied a continuance to obtain a Section 604.5 evaluation. However, the appellate court found that the trial court did not abuse its discretion in denying the Father's request, especially considering the time restrictions of Supreme Court Rules 901 and 922. Finally, the appellate court held that the trial court did not abuse its discretion in denying the Father's motion to stay judgment, finding that the Father failed to satisfy the burden of justifying the issuance of a stay order.

In re E.C., 2015 WL 3850403 (Ill.App. 4 Dist.), June 19, 2015*

The Father appealed the decision of the trial court's order naming the Mother the residential parent. The parties had agreed to a temporary order in which they had 50/50 parenting over the minor child. During the hearing, the Mother testified that this was not in the best interest of the child as the child was shuffled back and forth too much, and also testified that the child was not sleeping through the night. The Mother acknowledged that when the parties first broke up, she acted in a way that was not in the best interest of the child by arguing with the Father, and by not working with him for the best interest of the child. However, Mother testified that she had learned from her mistakes and that she was now willing to co-parent with the Father. The Father testified that he wanted the current schedule to continue.

The reviewing court found that it was not against the manifest weight of the evidence to order that the Mother be awarded residential custody of the minor child. There was evidence that prior to the temporary order, the child had spent the majority of the time with the Mother and that the transitions were not in the best interest of the child. Further, the court found that it was not error to award the Father every other weekend and one day per week as this schedule provided stability for the minor child.

In re E.U., 2015 WL 8178023 (Ill.App. 2 Dist.), December 7, 2015*

The parties had one minor child but were never married. The parties entered a joint parenting agreement but a year later Father petitioned for sole custody, alleging Mother had coached the child into making false accusations of sexual abuse against Father. A 604.5 evaluation took place and it was reported to the court that there was no convincing evidence the child had been sexually abused, that Mother was abusive by subjecting the minor child to multiple DCFS investigations and physical examinations, and Father was more psychologically stable. The 604.5 evaluator recommended sole custody to Father. However, other evidence at trial showed Father worked as a stagehand often until 2 a.m. each night and Father had only a bucket and toddler toilet seat for the child to use as a toilet. After a three-day trial in which several witnesses testified including the 604.5 evaluator, the trial court concluded that a modification of custody was not in the child's best interests because Father's work schedule made him unavailable for the child's needs.

Father filed a motion to reconsider, which the trial court granted, finding that it had failed to give the appropriate weight to the 604.5 expert and it had erred in finding that a modification was not in the child's best interest. On appeal, Mother argued that the 604.5 evaluator was not properly disclosed, but the appellate court noted that neither party issued written interrogatories requesting the witnesses. Thus, neither party triggered the other party's obligation to disclose the identities and opinions of its expert witnesses. Mother also argued that the trial court failed

*Rule 23(e)(1) decision

to weigh the evidence, but the appellate court found that the trial court properly weighed the thorough report of the 604.5 evaluator that included multiple interviews, psychological testing, and a 28-page report. Accordingly, the appellate court affirmed, finding the trial court's decision was not against the manifest weight of the evidence.

In re Marriage of Geiger, 2015 WL 3648523 (Ill.App. 4 Dist.), June 12, 2015*

The appellate court affirmed the trial court's decision to change the children's residence from Mother to Father, affirmed the trial court's denial of Mother's petition for contribution to attorney's fees, and affirmed the trial court's termination of Father's child support obligation.

The parties were divorced in 2007 and agreed to a Joint Parenting Agreement for their three minor children. In 2013, Father petitioned to modify custody alleging a substantial change of circumstances, and the trial court granted his petition in part by changing residential custody from Mother to Father. At trial, the testimony of Mother, Father, and Guardian ad Litem revealed that Mother changed residences frequently; the children did not have proper sleeping arrangements while at the Mother's home; the children did not finish their homework on time, if at all, while in their Mother's care; Mother's house was such a mess that the children could not locate socks and other clothing in the morning; Mother did not get the children up and ready for school on time; Mother fed the children McDonald's each morning since there was no food in her house; and the children were tardy 97% of the time when they were with their Mother. The appellate court agreed with the trial court that this degree of chaos was abnormal and contributed to a lack of stability in the children's lives.

Regarding Mother's petition for contribution to attorney's fees, the appellate court noted that the ability to pay attorney fees is judged by the relative position of the parties to each other and not by some objective standard. In this case, Father worked full-time earning $110,000 per year, but his monthly expenses and debt service left him without any extra funds each month. Mother worked only part-time, earning a meager salary of approximately $10,000 per year, although her testimony revealed that she was voluntarily underemployed and she could easily work full-time and earn a more substantial salary. As a result, the trial court's denial of Mother's petition for contribution to attorney's fees was affirmed.

Finally, regarding Father's petition to terminate child support, the appellate court noted that Father showed three changes in circumstances: his increased housing expense, his reduction in income, and the contribution to Mother's living expenses received from the Father of Mother's new daughter. Moreover, the appellate court emphasized that Mother sought to have the appellate court retry the case, which the appellate court cannot do.

Grant v. Huskins, 2015 WL 1407878 (Ill.App. 3 Dist.), March 26, 2015*

The appellate court affirmed the trial court's award of custody of the parties' minor child to the Mother and affirmed the trial court's denial of the Father's petition for substitution of judge.

The Mother had been the primary residential custodian of the minor child since birth, and the Father had exercised only sporadic visitation and did not pay child support. The Mother was then arrested on drug charges, and the Father petitioned for and was awarded temporary and permanent custody of the parties' minor child. After serving 180 days in jail, the Mother filed a motion to vacate the order of temporary custody to the Father. In vacating the order and awarding custody to the Mother, the trial court noted that the Mother lived with an extended and supportive family, the Mother was getting the necessary assistance in overcoming her past problems, and the Mother's environment was suitable for children. The trial court noted that the

*Rule 23(e)(1) decision

Father's circumstances were less stable and his job as a truck driver often took him away from home, while the Mother lived near her job and had ready access to the child. The trial court concluded that the biggest impact to the child centered on the relationship of the child with his siblings and the importance of maintaining that stability, which existed in the Mother's family and not the Father's. In weighing this evidence, the appellate court noted the strong presumption in favor of the trial court's custody decision and found here that the trial court's decision was not against the manifest weight of the evidence or an abuse of discretion.

In affirming the denial of the Father's petition for substitution of judge, the appellate court noted that a party cannot "test the waters" by proceeding to a substantive hearing, lose, and then petition for substitution just because he does not like the outcome. Here, the Father filed his initial petition but made no objection to the judge presiding over the case. After he lost his custody case, the Father then petitioned to substitute for cause and offered no reason why he did not petition for substitution at an earlier stage of the proceedings. The appellate court held that by regularly appearing before the judge and waiting until after the ruling, the Father forfeited his claim.

Gorup v. Brady, 2015 WL 8601028 (Ill.App. 5 Dist.), December 11, 2015

The parties married and divorced in Louisiana and had one minor child. Mother was designated as primary custodian pursuant to a joint parenting agreement. Mother moved to North Dakota and Texas for temporary work assignments as a pipefitter but claimed that she always maintained her permanent residence in Louisiana. During her time in Texas, Mother was robbed and beaten during an alleged prescription drug deal with her boyfriend who was murdered during the incident. Father then filed an emergency order of protection in Illinois, which was granted on an emergency basis. At the plenary hearing the parties entered an agreed order to enroll the Louisiana judgment, giving Father temporary custody and assuming jurisdiction of this matter for custody purposes. However, the trial court did not communicate with the Louisiana court or schedule a full hearing on the custody petition within a short period of time. Two years later, Husband petitioned for full custody, and the trial court granted it.

On appeal, Mother argued the court lacked subject matter jurisdiction. The appellate court disagreed, finding that determination of custody is a justiciable matter than falls within the subject-matter jurisdiction of the trial court. The appellate court also disagreed with Mother's argument on appeal the trial court lacked temporary jurisdiction under the UCCJEA because an emergency clearly existed that allowed the Illinois court to exercise its emergency authority. However, the appellate court found that Illinois lacked jurisdiction under the UCCJEA to permanently modify custody because Louisiana retained exclusive, continuing jurisdiction under the UCCJEA. Since Mother was still a Louisiana resident and Father failed to meet his burden of showing Mother was not still a Louisiana resident, Louisiana never lost jurisdiction. The Illinois court failed to communicate with the Louisiana court and never determined whether Louisiana had lost jurisdiction of this case. Accordingly, the appellate court vacated the trial court's order granting Father's petition for permanent modification of custody and remanded with instructions to follow the jurisdictional procedures of the UCCJEA regarding communicating with the Louisiana court to resolve the jurisdiction issue and set a timeline for further action.

In re H.M., 2015 WL 3850610 (Ill.App. 4 Dist.), June 19, 2015*

The appellate court affirmed the trial court's judgment awarding sole custody of the parties' minor child to Mother as not against the manifest weight of the evidence.

The parties had one child together, born in 2009, who suffers from a severe congenital disorder that limits the child's ability to use her limbs and requires extensive care and treatment,

*Rule 23(e)(1) decision

including surgeries and intensive therapies. In 2014, Father filed an amended petition to establish custody and visitation, and Mother was served on February 7, 2012 with the petition. However, five days later, Father filed for an ex parte emergency order of protection against Mother, which the parties later vacated by agreement. The appellate court agreed with the trial court that Father's actions in obtaining this emergency order of protection were an attempt to obtain an advantage in a custody case and were a clear abuse of the order of protection process.

After hearing on the custody petition, the trial court awarded Mother sole custody, finding that Mother has been the primary custodial parent for the child for her entire life and is incredibly dedicated to taking care of her, particularly given the child's special needs. The trial court also found Mother more willing and likely to facilitate and encourage a relationship between Father and the child, especially given that Father's girlfriend videotapes all visitation exchanges in an attempt to catch Mother at fault. Furthermore, the Guardian ad Litem recommended custody to Mother given Mother's dedication to the child's medical needs, the child's adjustment to Mother's home and Mother's overwhelming involvement in the child's life compared to that of Father. The appellate court also noted that Father essentially asked the appellate court to reweigh all the evidence presented at the trial court, which the appellate court cannot do.

Given the significant amount of evidence and the trial court's application of the evidence to the relevant statutory factors, the appellate court concluded that the appellate court's award of sole custody to the Mother was not against the manifest weight of the evidence.

Haley v. Edwards, 2015 WL 4111313 (Ill.App. 4 Dist.), July 7, 2015*

The parties had one child together, born in 2010, and Father signed a Voluntary Acknowledgment of Paternity. In 2011, a support order was entered in favor of Mother, which the appellate court acknowledged as a judgment granting custody to Mother pursuant to Section 14(a)(2) of the Parentage Act. In 2013, Father filed a petition to establish custody and visitation, which the trial court entered by default. Later that month, Mother moved to vacate the default judgment on the grounds that she did not receive notice of the hearing. The trial court vacated the default judgment, entered a temporary order granting custody to Father and ordered the parties to attend mediation to find a temporary visitation schedule. In April 2014, a hearing was held on the issues of custody and visitation in which the trial court heard testimony of the parties and the parties' parents. Based on that hearing, the trial court entered a written order modifying custody from Mother to Father and ordered Mother to pay child support to Father. However, in the first appeal in this matter, the appellate court found that the trial court lacked jurisdiction to *sua sponte* modify custody and support because the only pleading before the court was Father's petition for visitation, not custody. The appellate court vacated the trial court's orders, restored custody to Mother and remanded the case to set a reasonable visitation schedule.

On remand, Father filed a petition to modify custody, and at hearing the trial court advised both parties that he had reviewed the previous transcript, he was taking judicial notice of the testimony presented that day, and the parties were limited to testimony to matters occurring after the previous hearing. After this hearing, the trial court entered an order granting Father's petition for custody and ordering Mother to pay child support. Mother appealed again, and the appellate court held that the trial court erred when it took judicial notice of the previous hearing, and barred the parties from presenting evidence of events that occurred prior to the previous hearing because Mother's due process rights were violated at the previous hearing and much of the evidence on which the trial court relied should never have been presented since no custody pleading was ever filed at that time.

*Rule 23(e)(1) decision

Thus, the appellate court restored custody to Mother and remanded to the trial court for a full custody hearing before a different judge.

In re Marriage of Hawley, 2015 WL 3819071 (Ill.App. 5 Dist.), June 17, 2015*

The Mother appealed the trial court's decision awarding sole care and custody of the minor child to the Father. In reviewing the best interest factors, the court found that a majority of the factors weighed in Father's favor. For example, the Father was going to remain in the residence that the child had grown up in, the child would continue attending private school, and the child had a close relationship with her paternal grandparents and cousins. The evidence reflected that the Mother purchased a new home and her new boyfriend moved in with her. This coupled with the fact that Mother had been married and divorced six times, and that the child did not have a relationship with the Mother's family, was enough evidence for the court to find that the child would have more stability with her Father, and was more adjusted to the community associated with her Father's residence. Further, the Mother had been involved in two instances of physical violence on the Father and Paternal Grandfather. The court went on to find that the respondent's violent attacks on the Father and paternal grandfather would negate any implication of joint custody. Therefore, the decision of the lower court was affirmed by the appellate court.

In re Parentage of JPN, 2015 WL 7288198 (Ill.App. 3 Dist.), November 17, 2015*

Mother appealed trial court's award of custody to Father after finding she removed the child to Florida without Father's consent and was unwilling to encourage or facilitate a relationship between child and Father. The appellate court affirmed trial court's award of custody to Father and found the trial court's order was not against the manifest weight of the evidence.

Mother told Father she was taking the child to Florida for a short vacation and only told Father she was not returning to Illinois with the child once she was in Florida. The trial court reviewed the factors in section 602 of the IMDMA, specifically stating that a majority of the factors favored neither party or were not applicable to the case. Trial court relied heavily on which parent could facilitate and encourage a relationship between the child and other parent. The appellate court reviewed the record and determined Father demonstrated a willingness and ability to encourage a close relationship between the child and Mother, while Mother failed to do so with Father. The appellate court relied on the trial court's finding that Mother lacked credibility in her testimony and Father no longer had issues with alcohol abuse that would adversely or negatively impact his relationship with the child. The appellate court found Mother removed the child to another state under false pretenses then suggested Father use his vacation time to travel to Florida to visit with the child. Mother lacked credibility when testifying as to Father's alleged physical abuse of her, and Father took all necessary steps to establish temporary visitation with the child and visit with the child in Florida.

In re Marriage of Krier, 2015 WL 2232013 (Ill.App. 3 Dist.), May 27, 2015*

During the custody proceedings, the parties stipulated that they could not work together and that sole custody was in the best interest of the child. The court found that it was proper to only determine the best interest of the child because the parties had stipulated to a change in circumstances, and that sole custody was in the best interest of the child.

*Rule 23(e)(1) decision

On review, the Father argued that the trial court erred in denying his request for a substitution of judge. The trial court denied the motion because it was brought as a matter of right, and the court found that substantive issues had already been ruled upon. The Father next argued that the court erred in denying his motion for a default judgment based upon the Mother's failure to respond to his petition in a timely manner. The court found that the Mother's actions were not deliberate, as her response was not filed timely because the trial was continued due to the fact that she had retained new counsel and filed her own petition for custody. The Father also argued that the trial court's decision was against the manifest weight of the evidence. However, the appellate court found that the trial court weighed all of the factors enumerated in section 602 of the Illinois Marriage and Dissolution of Marriage Act.

In re L.S., 2015 WL 6735603 (Ill.App. 2 Dist.), November 3, 2015*

The parties each petitioned for joint custody of their minor child but disagreed over who should be named the primary residential custodian. The court appointed a guardian ad litem, who reported the two primary issues with respect to custody were Mother's alcohol abuse and Father's work schedule which involved significant traveling. The guardian ad litem recommended Father be the primary custodial parent given Mother's alcohol abuse, which included being fired from her employment due to being intoxicated. However, after considering the evidence, the trial court ruled Mother should be the primary custodian, focusing on the fact Mother was the primary caretaker and the child would have to attend a different school if Father were granted residential custody. The appellate affirmed, noting the trial court's decision is afforded great deference on this issue and there was sharply conflicting evidence cutting both ways. Specifically, there was evidence Mother was a stay-at-home parent, lived two minutes from the child's school, was primarily responsible for the child's medical appointments and school registration, and was available to be present for the child on a daily basis. Accordingly, the trial court's decision was not clearly against the manifest weight of the evidence.

In re Marriage of Lamano, 2015 WL 140709-U (Ill.App 3 Dist.), Feb. 6, 2015*

Wife was awarded "emergency temporary custody" during a hearing held on December 5, 2013, a Guardian *ad litem* was appointed and after a number of hearings on custody among other matters, Husband was awarded sole custody on September 10, 2014 with Wife having supervised visitation. Wife appealed, *pro se*, stating that under Section 610, her award of "temporary custody" should not have been modifiable before the two-year mark. With neither party adhering to Illinois Supreme Court Rule 341, the court explained that the hearing on December 5, 2013 was not a final custody hearing, noting that a Guardian *ad litem* was assigned, the parties were ordered to attend mediation, and that the order stated "temporary." The court next addressed the argument that the 602 factors were not properly applied, noting that the trial court did not abuse its discretion and methodically considered the best interest factors, finding more factors than not weighed in favor of Husband. Finally, Wife argued that the court's order for a psychological evaluation without cause or pleadings deprived her of due process. However, the court found it unnecessary to even reach the merits of this issue, due to the Wife's failure to cite to any authority to support her argument, thereby effectively waiving it, affirming the decisions of the trial court.

In re Marriage of Betsy M. v. John M., 2015 WL 5775279 (Ill.App. 1 Dist.), Sept. 30, 2015*

Father appealed the trial court's order granting in part his motion to increase and/or modify parenting time with the children from one to three hours every other week and later order denying the Father's motion to reconsider. The trial court denied any other modification to the previously entered parenting agreement which granted visitation between Father and children

*Rule 23(e)(1) decision

with a third party present to provide "an extra set of hands" for one hour every other Sunday and tennis lessons with the parties' daughter twice a month and granted sole custody of the children to Mother.

On appeal, the appellate court rejected the Mother's arguments the appellate court lacked jurisdiction because the trial court's orders were not final and appealable. The appellate court found it did have jurisdiction because the orders entered modified custody. Next, Father argued the trial court erred by applying a best interests standard to determine whether a modification of the parenting agreement should occur. Father argued the trial court should have applied a serious endangerment standard, and would have to make a finding that restricted visitation was appropriate because unrestricted visitation would seriously endanger the children's physical, mental, moral or emotional health. The appellate court accepted Mother's view that Father stipulated to the supervised visitation in the custody judgment, the trial court did not further restrict his visitation in any way, and Father was seeking to increase visitation with the children, and as a result the standard to apply was the best interests of the children.

Ultimately, the appellate court affirmed the trial court's ruling after determining the trial court applied the appropriate standard of best interests of the children to a modification of parenting time and that there was no abuse of discretion.

Nolan v. Peters, 2015 WL 8528008 (Ill.App. 2 Dist.), Dec. 10, 2015*

The parties had one child and were never married. The child suffered from multiple mental and developmental disorders, including cognitive delay and autistic behaviors. The child was residing with Mother but Father filed a petition to modify custody and for a 604.5 evaluation. During the proceedings Father was granted temporary custody. Through a four-day trial, evidence from the 604.5 and GAL showed Mother was a heavy smoker, unemployed and lived in a filthy house with several other heavy smokers. The second-hand smoke affected the child's health. In contrast, Father was a non-smoker, employed as a full-time project engineer and lived in a clean and orderly house. While in Mother's care, the child was not toilet trained despite being nine years old. During the time Father was granted temporary custody, the child adjusted to his new home with Father and exhibited better health.

In re Marriage of Rogers, 2015 WL 307752 (Ill.App. 4 Dist.), Jan. 26, 2015

The Wife appealed the trial court's decision modifying custody from her being designated the residential parent to the Husband being designated the residential parent of the minor child. Originally, the trial court did not grant the modification, finding that "changed conditions alone do not warrant modification in a child custody judgment without finding that such changes affect the welfare of the children." The court expressed great concern with its decision. The Husband filed a motion to reconsider, and the trial court recognized that it placed too high a burden on the Husband to show that the Wife's actions adversely affected the minor child.

The appellate court found that the evidence is clear that the Wife had multiple psychotic episodes. Although Wife claimed that those events were the result of medication she was taking, the Wife did not stop taking the medication, and did not seek further medical attention. Further, it was by pure luck that the child was not harmed. Further, the court found that the Wife was not a credible witness. The court found that these changes clearly affected the child's welfare insofar as they increased the risk of something bad happening to him. The statute allows the court to modify custody upon a showing that a change in circumstances has occurred which could lead to future harm or otherwise adversely affect the child's welfare. Therefore, the decision of the child court was affirmed.

*Rule 23(e)(1) decision

In re Marriage of Romero, 2015 WL 5011096 (Ill.App. 1 Dist.), Aug. 24, 2015

The Mother appealed the trial court's decision awarding Father sole custody of the minor child. The Mother argued that granting the Father sole custody was improper because, among other things, the Father had requested joint custody. The court found that joint custody requires the "ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child." The evidence reflected that the parties were unable to cooperate and that they had a poor rapport with one another. Because the parties were unable to work together, the court had no choice but to decide who should be awarded sole custody. Based on the evidence presented, the Mother was unable to facilitate a parent-child relationship, and she consistently tried to block the Father's parenting time. Therefore, an award of sole custody to the Father was appropriate.

In re Marriage of Jayme Lynn S. v. Brett S., 2015 WL 4158604 (Ill.App. 3 Dist.), July 9, 2015*

At the time of divorce, a Joint Parenting Agreement was entered awarding the parties joint custody and designating the Father as the residential custodian. The Guardian ad Litem tendered three reports in this case and suggested that a substantial change in circumstances had occurred in that the Father's girlfriend and her three children moved into the Father's home and that the Father and Mother were unable to co-parent. The 604(b) Evaluator involved in the case tendered an evaluation that favored the Mother as the custodial parent. The Mother also alleged the Father was physically abusive toward his girlfriend and her children, and that the Father molested their daughter.

The appellate court found that the trial court accurately terminated joint custody, and awarded sole custody of the children to the Father after review of the factors set forth in 750 ILCS 5/602. The appellate court found that the factors relating to the wishes of the parents, the interaction between the child and his/her parent and siblings and any allegations of physical abuse did not favor either parent. Although the appellate court found the children expressed wishes to reside with the Mother, there were more factors that weighed in the Father's favor – specifically, the children's connection to the Father's community and the fact the Father would facilitate a relationship between the children and the Mother. Here, the Guardian ad Litem's report indicated that there was a concern as to whether the Mother would include the Father in decision-making involving the children, as the Mother previously claimed that she would seek to supervise the Father's visitation with the children. Further, the appellate court rejected the Mother's argument that the trial court failed to adopt the recommendations of the 604(b) evaluator or the Guardian ad Litem, but the appellate court stated that the trial court need not follow or accept the recommendations of its court-appointed experts or witnesses. Ultimately, the appellate court affirmed the trial court's ruling to sever joint custody and award the Father sole custody of the parties' three children, and that this finding was not against the manifest weight of the evidence.

In re Marriage of Schreacke, 2015 WL 9464258 (Ill.App. 4 Dist.), December 24, 2015*

Mother appealed the trial court's ruling terminating joint custody, which was affirmed by the appellate court. Here, an agreed custody order was entered awarding Mother primary physical custody of the children and granting visitation to Father. Subsequently, Father filed a petition to change custody due to reports from the Department of Children and Family Services (DCFS) and the trial court granted Father's request ultimately awarding him sole custody of the children subject to Mother's visitation.

*Rule 23(e)(1) decision

Mother argued that the trial court erred by allowing the DCFS reports into evidence, denying her request for a 604.5 custody evaluator and terminating joint custody and awarding Father sole custody. The appellate court rejected Mother's argument that the trial court improperly admitted the DCFS reports to come into evidence because the parties had previously stipulated that the court could consider the reports either party made to DCFS. The appellate court also rejected Mother's argument that admitting the DCFS reports would violate public policy and the rules of evidence requiring live testimony from the creator of the DCFS reports. The appellate court found Mother waived such a rule by stipulating to the admission of the DCFS reports and that such a stipulation was not a violation of public policy. Further, the appellate court found that the appointment of a 604.5 expert is within the broad discretion of the trial court and no abuse of discretion occurred where the trial court determined that an additional evaluation of the children was not in their best interests and that the trial court would reconsider the decision to deny a 604.5 expert if the guardian ad litem objected within 14 days, which did not occur.

The appellate court also affirmed the trial court's ruling awarding Father sole custody, finding Mother had denied him visitation with the children, contacted the police when he attempted to visit with the children, made unfounded reports to DCFS claiming abuse of the children, wanted to move the children to Oklahoma and spoke disparagingly to the children about Father. The appellate court rejected Mother's arguments that one of the DCFS reports resulted in an indicated finding the children wanted to live primarily with her and were thriving in her custody, and that Father prevented Mother from having contact with the children, where no professional opinion supported a finding of alienation. Ultimately, the trial court found Father presented clear and convincing evidence that a termination of joint custody was in the children's best interests and the appellate court did not find that such a ruling was against the manifest weight of the evidence presented.

In re Marriage of Stegeman, 2015 WL 5883130 (Ill.App. 4 Dist.), Oct. 6, 2015*

The appellate court affirmed the trial court's custody determination awarding custody to Husband, affirmed the trial court's modification of Wife's child support obligation, and reversed the trial court's order requiring Wife to pay Husband's attorney fees and a greater portion of the guardian ad litem fees.

After several days of trial post-decree on the parties' cross-petitions to modify custody and support of the parties' four children, the trial court awarded custody to Husband and increased Wife's child support obligation. On appeal, Wife argues that the trial court erred by failing to consider the children's desires to live with her, the negative environment Husband provided and alleged violence between Father and the children, among other allegations. The appellate court affirmed the trial court, fining that the record showed a change of circumstances for Wife but did not show the requisite change of circumstances for the children or the Husband as custodian. Furthermore, the evidence failed to satisfy the second prong of the modification test of showing that the best interests of the children warranted a modification of custody since the children's wishes seemed heavily coached and scripted by Wife.

Regarding the trial court's modification of child support, Wife argued on appeal the trial court violated her due process rights by *sua sponte* increasing her obligation when no pending pleading was before the court. However, the record showed that Husband's petition to modify child support was still pending and Husband's pretrial memo explicitly raised the child support issue. Thus, the appellate court found that Wife received notice and an opportunity to be heard regarding the issue. Additionally, Wife argued that the trial court improperly imputed income to

*Rule 23(e)(1) decision

her. However, the appellate court found that the trial court properly determined that Wife was voluntarily unemployed to evade a child support obligation since Wife had previously worked as a nurse and had no reason to not be working full-time.

Finally, Wife challenged the trial court's award of $20,000 in attorney's fees to Husband from Wife and requiring Wife to pay 60% of the guardian ad litem fees. The appellate court found the trial court failed to specify the statutory basis for its award of attorney's fees and failed to identify the factual basis for its award of attorney fees. Accordingly, the appellate court held the trial court erred in allocating guardian ad litem fees, which should have been equally divided between the parties. Furthermore, each party should have been required to pay their own attorney's fees without contribution from the other party.

In re Marriage of Tamburo, 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*

On appeal, the court found that the trial court was (1) not personally biased against Husband or his counsel; (2) did not err in setting custody, child support, maintenance, or visitation; (3) set a proper value on Husband's ownership share of a business; (4) did not infringe on Husband's constitutional right of parental autonomy; and (5) properly assessed fees and costs against Husband.

The Husband's first argument that the judge was personally biased against him or his counsel was forfeited because the Husband did not file a motion for substitution of judges while the trial was underway. Further, even if the claim were not forfeited, there was no bias, as the Husband only presented as evidence a handful of unfavorable rulings delivered in a tone that he found objectionable.

The court next found that the trial court did not err in awarding the Wife sole custody of the three minor children. The court noted that the Husband's position as to custody fluctuated throughout the trial. Further, on appeal, the court found that rather than showing that the parents could, in fact, joint-parent, the Husband painted a consistently negative picture of his Wife's parenting and his rapport with her. The Husband never challenged the finding that the parents could not co-parent. The Husband next argued that he should have received more parenting time. However, based upon the circumstances of this case, the court found that the award appropriately balanced the children's need for a stable residence with Husband's vital interest in maintaining regular and meaningful contact with them.

Moving to child support and maintenance, the Husband challenged the court's computation of his income for purposes of setting child support. The court averaged three years of income from 2010-2013. The Husband argued that by employing an average, the trial court unfairly inflated his wages. The appellate court found that in situations where income fluctuates from year to year, income averaging is an approved method to apply in determining income for the purpose of establishing child support. With regards to maintenance, the court found that the maintenance award was not excessive. The court awarded monthly, temporary maintenance, which was reviewable in 48 months. Although the Wife was a licensed attorney, she had not been practicing since becoming a homemaker to raise the children. The appellate court found that this was an appropriate award given the fact that she could eventually become employed again, given her experience and age.

The Husband next argued that the trial court improperly valued his share of his business. On review, the appellate court found that the business evaluator did not unduly diminish expenses nor was he incorrect by attributing only 10% of goodwill to the Husband.

The Husband also attacked the trial court's requirement that "none of the children shall participate in any activity which uses firearms or other weapons of any kind until the child has

*Rule 23(e)(1) decision

attained the age of 16." On review, the appellate court found this was an appropriate order because the parties had stipulated that the children may not train with edged weapons until each child was 16. The court found no fundamental difference in the stipulated prohibition versus the court order.

Finally, the Husband argued that he should not have been ordered to contribute $10,000 to the Wife's attorney fees. The court found that after reviewing the record, the trial court ordered this contribution because of the Husband's multiple changes in position on custody, which increased the cost of litigation. The court found this award to be appropriate.

Williams v. Jodway, 2015 WL 5050213 (Ill.App. 4 Dist.), Aug. 26, 2015*

Father filed a motion to modify child custody and visitation. The appellate court affirmed the trial court's judgment to deny same.

The parents were never married. Mother testified that she opposed Father's motion as the child was prone to "psycho fits" in which she would break things and attempt to harm herself. Further, the child was diagnosed with ADHD and prescribed medication. Mother testified that she addressed the child's academic, social and behavioral issues by seeking medical attention, administering the appropriate medication and alerting school officials so that counseling and curriculum adjustments could be made to facilitate learning.

The trial court found that a change in circumstances had occurred in that the child had a speech impediment and was diagnosed with ADHD. However, the court determined that despite the change in circumstances, the child's welfare was not adversely affected. Specifically, the court determined that the child's changed circumstances did not warrant a change in custody because of the previous 11 years of stability provided by Mother. The evidence demonstrated that Father had done little over the course of the child's life to suggest that he would be a better parent than Mother.

In re Marriage of Woodland, 2015 WL 3852884 (Ill.App. 5 Dist.), June 19, 2015*

The Mother appealed from the trial court's decision that maintaining joint custody was in the best interest of the child. At the time of the divorce, the parties entered an agreement in which they had a 50/50 parenting schedule. The Mother later filed a motion to modify custody, seeking sole custody of the child. The Father filed a motion to set aside the custody judgment pursuant to section 2-1401 of the Code of Civil Procedure. At trial, the Mother argued that pending before the court were cross motions to terminate joint custody. Therefore, she argued that the court should apply a lower standard to the Mother's evidence instead of holding her to the standard of clear and convincing evidence. The Father responded that his motion was not a termination of joint custody but rather to set aside the judgment. Further, he testified that the parenting schedule should remain the same. The appellate court agreed with the trial court that the standard of clear and convincing evidence applied, as the Father did not file a motion to terminate joint custody. Therefore, based on this, the court did not believe that the Mother demonstrated by clear and convincing evidence that a change in circumstances occurred necessitating termination of joint custody.

DISCOVERY SANCTIONS

See also **PROPERTY,** *In re Marriage of Veile*, 2015 WL 6955372 (Ill.App. 5 Dist.), Nov. 10, 2015

*Rule 23(e)(1) decision

DISSIPATION

In re Marriage of Brown, 2015 WL 3745213 (Ill.App. 5 Dist.), June 15, 2015*

After a one-day trial on financial issues, the trial court entered judgment. Wife filed a motion to reconsider various issues, and the trial court granted her motion. Husband appealed, arguing that the trial court erred by not ruling on a pending contempt motion and by failing to compel Wife to provide an accounting of her expenses. The appellate court reversed the trial court and found that Wife dissipated marital assets since she failed to make mortgage payments on the marital home and on the couple's rental property, failed to pay insurance on the home that was subsequently damaged in a fire and collected all income from marital business and rental property. Furthermore, Wife provided only vague and general statements about how the money was spent and admitted that she did not pay monthly mortgage payments for ten months even though she could have done so. Since Wife failed to provide an accounting and her expenditures were not well documented, Wife failed to meet her burden to show by clear and specific evidence how funds were spent. Accordingly, the trial court must find dissipation when the spouse charged with dissipation fails to meet that burden. The appellate court also rejected Wife's argument that Husband waived the dissipation issue for appellate review simply because he did not file a position statement. Since Husband previously filed a petition for rule to show cause and citation for contempt, Wife was put on notice that Husband intended to raise dissipation issues at trial.

See also **GROUNDS,** *In re Marriage of Vaclavicek*, 2015 WL 7568446 (Ill.App. 2 Dist.), Nov. 24, 2015*

EXCLUSIVE POSSESSION

See also **MAINTENANCE,** *In re Marriage of Shen*, 2015 WL 130733 (Ill.App. 1 Dist.), June 30, 2015

EXPERT TESTIMONY

See also **GROUNDS,** *In re Marriage of Vaclavicek*, 2015 WL 7568446 (Ill.App. 2 Dist.), Nov.24, 2015*

GROUNDS

In re Marriage of Vaclavicek, 2015 WL 7568446 (Ill.App. 2 Dist.), November 24, 2015*

The appellate court found the record supported the trial court's considerations of the child's best interest and its determination that a change in circumstances occurred. Accordingly, the order granting Father custody was not against the manifest weight of the evidence.

Wife appealed the trial court's judgment regarding grounds for dissolution of marriage and dissipation, as well as the trial court's decision to barr Wife's expert witness from testifying.

The trial court conducted a three-day hearing on whether grounds existed to dissolve the marriage. While Wife argued for the purposes of grounds the parties had not been living separate and apart for two years, she then took a contrary position during the dissipation portion of the trial by arguing that the marriage had suffered an irretrievable breakdown seven years prior to the trial date. The appellate court noted that many of Wife's assertions on appeal were

*Rule 23(e)(1) decision

conclusory and without proper support. The trial court found the testimony of the parties established they had not had relations with each other for at least two years, which satisfied the two-year requirement. Accordingly, the appellate court affirmed the trial court's findings.

The trial court limited the dissipation time period to the filing of the petition for dissolution and rejected Wife's claim that a breakdown had begun seven years prior even though evidence showed the parties continued to live as Husband and Wife during that period. Regarding the expert witnesses, the appellate court found no abuse of discretion in the trial court's barring Wife's expert witnesses because Wife failed to disclose her witnesses within a reasonable time for Husband to conduct depositions before trial in violation of section 2-1003 of the Code of Civil Procedure.

IMPUTATION OF INCOME

In re Marriage of Budick, 2015 WL 1516470 (Ill.App. 3 Dist.), April 1, 2015*

The appellate court reversed the trial court's ruling to impute $20,000 in income to the Wife and affirmed the trial court's ruling to exclude the custody reports, as the Wife failed to make an offer of proof at trial and failed to argue that the result would have been different had the trial court considered the evidence.

Here, the appellate court found that the Wife failed to make an offer of proof regarding the two custody reports that the trial court allegedly erred in excluding as hearsay. The appellate court affirmed the trial court's exclusion of the evidence because the Wife failed to argue that the outcome of the trial would have been different had the court admitted the custody reports.

Next, the appellate court reversed and remanded the trial court's ruling to impute income to the Wife and found it was an abuse of discretion. To impute income, the court must determine if the payor is voluntarily unemployed, the payor is attempting to evade a support obligation, or the payor has unreasonably failed to take advantage of an employment opportunity. The appellate court found that imputing income was an abuse of discretion based upon the facts that the Wife was a stay-at-home mom for 10 years, the Wife did not earn any income other than from a possible retail job, the Wife had a degree in medical coding but was unable to find a position in this field due to her lack of experience and no evidence was presented as to income the Wife or the Husband had earned during the marriage or each of their earning potentials. The appellate court reversed the imputation of income and remanded the case for hearing to establish the Husband's maintenance obligation to the Wife.

INTERLOCUTORY APPEAL

In re Marriage of Rifken, 2015 WL 141098-U (Ill.App. 2 Dist.), Feb. 18, 2015*

The appellate court affirmed that granting the Husband's preliminary injunction and entering a Qualified Domestic Relations Order were not an abuse of the trial court's discretion. Also, the reviewing court agreed with the Husband that the orders relating to the amount of temporary maintenance were not properly before the court for appellate review.

In a *pro se* interlocutory appeal Wife made multiple arguments as to why the temporary support order that was issued by the trial court and its corresponding preliminary injunction by the Husband to keep her from using marital property was unreasonable. The court only discussed the factors involving whether or not the preliminary injunction was proper, noting that numerous facts in the record support the Husband's need for such an order. The Wife's remaining arguments simply challenged the trial court's temporary orders for support, and they may not be appealed on an interlocutory basis before the entry of a final order. Entry of the Qualified Domestic Relations Order that served to effectuate the provisions of the preliminary injunction was within the trial court's discretion.

*Rule 23(e)(1) decision

JUDGMENT FOR DISSOLUTION OF MARRIAGE

In re Marriage of Dochterman, 2015 WL 140698-U (Ill.App 3 Dist.), Feb. 6, 2015*

After a hearing on all pending matters, Husband appealed the court's order granting the Wife's motion to supplement the record on appeal, the award of sole custody to the Wife, the distribution of marital property, contending it was erroneous, and the finding that Husband shall not be required pay Wife's attorney fees.

First, the Judge's ruling was a part of the trial court record and was referenced in the court's minute entries, including the admonishment to the parties for their immature behavior. Transcripts from this hearing were not evidence of the type that Rule 329 seeks to preclude. The award of sole custody was not against the manifest weight of the evidence, as the correct 602 factors were weighed, and there was no "new standard" adopted by the court as the Husband's appeal stated. Husband also contended that the court never considered "joint-custody." However, the record showed that this was specifically discussed by the trial court with regard to the parties' inability to co-parent and that communication between the parties had irretrievably broken down. Husband also contended that the property distribution was erroneous, stating that he contributed more to the marital estate. However, the trial court did not abuse its discretion when dividing the marital estate or in awarding the statutory guidelines of child support, and Wife was awarded no maintenance. Finally, Husband contended that he did not have the resources to contribute to Wife's attorney fees. However, the court had all the necessary financial information before making the ruling, and there was no abuse of discretion. The ruling of the trial court was affirmed.

JURISDICTION

In re Marriage of Alyinovich, 2015 WL 1291540 (Ill.App. 2 Dist.), March 20, 2015

Wife's former counsel filed a petition for setting final fees and costs pursuant to section 508(c) of the IMDMA. The attorney was awarded $6,653.70 of the $24,920.60 that he sought. The attorney appealed from the court's decision. The appellate court found that the attorney fees award was not appealable without a finding pursuant to Illinois Supreme Court Rule 304(a), and dismissed the appeal for lack of jurisdiction.

It is interesting to note that a split of authority exists among the appellate districts regarding the timing of appeals in post-dissolution proceedings. The Second and Fourth Districts have held that each post-dissolution petition is a new claim within a single dissolution action, such that a final order that disposes of fewer than all of the post-dissolution claims is not appealable without a Rule 304(a) finding. The First and Third Districts have held that each post-dissolution petition is a new action, such that a final order disposing of a post-dissolution petition is appealable without a Rule 304(a) finding even if other post-dissolution claims remain pending.

Anbar v. Anbar, 2015 WL 140219-U (Ill.App 2 Dist.), Feb. 3, 2015*

The appellate court vacated and remanded the decision holding that the trial court had jurisdiction over ex-Husband's "Amended Petition for Declaratory Relief, or, in the Alternative, for Reformation of the Marital Settlement Agreement. Also, the amended petition was not barred on *res judicata* grounds because both the amended post-trial motion and the amended petition were heard in the same proceeding; therefore no "subsequent action" occurred. Finally, the trial court erred in granting the ex-Husband's amended petition without holding an evidentiary hearing because the terms of the marital settlement agreement were ambiguous. The judgment of the trial court was vacated and remanded for an evidentiary hearing.

*Rule 23(e)(1) decision

Here, Wife first argued that the trial court erred in granting Husband's "Amended Petition for Declaratory Relief, or, in the Alternative, for Reformation of the Marital Settlement Agreement," because the trial court did not have jurisdiction to entertain the petition. The record reflected that Husband timely filed a motion to reconsider the trial court's order granting Wife's motion to dismiss his petition to commence maintenance. He also requested and was granted an extension to file an amended motion to reconsider. When he filed his original declaratory relief/reformation petition on the same day that he filed his amended motion to reconsider, the trial court still retained jurisdiction over this matter as the trial court had not ruled on the amended motion to reconsider, and 30 days had not passed since such a ruling. The trial court also retained jurisdiction over this matter when Husband filed his amended declaratory relief/reformation petition. Husband's amended declaratory relief/reformation petition was not barred by *res judicata* because the amended petition and the amended motion to reconsider were heard as part of one proceeding; therefore, the required "subsequent action" element of *res judicata* was missing. Finally, since the marital settlement agreement contained ambiguous terms, the trial court erred in failing to hold an evidentiary hearing on Husband's amended declaratory action/reformation petition before making their ruling.

Fleckles v. Diamond, 2015 WL 141229 (Ill.App 2 Dist.), June 23, 2015

On appeal, the appellate court found that the trial court had subject matter jurisdiction over petition. Further in a custody proceeding, the child's home state must be deferred until the child's birth. Under the Uniform Child Custody and Jurisdiction Enforcement Act, the child's birth state becomes the home state for jurisdictional purposes, and thus Illinois was not the proper jurisdiction for the custody petition.

Purported Father of unborn child petitioned to establish paternity and to obtain joint custody and visitation in Illinois. Mother moved to strike and dismiss Father's petition, arguing that the court did not have subject matter jurisdiction over the matter because Mother resided in Colorado, the court did not have jurisdiction over an unborn child (as of the date father filed his petition), and the child was born in Colorado. Mother argued that the trial court erred in denying her motion to strike and dismiss for lack of subject matter jurisdiction.

The appellate court found that the trial court erred in denying Mother's motion with respect to custody. Mother's motion was brought pursuant to section 2–619(a)(1) of the Code of Civil Procedure. The subject matter jurisdiction issue was not argued, although the court did address the issue due to the fact that Father's petition presented claims for paternity, custody and visitation under the Parentage Act and the Uniform Child Custody and Jurisdiction Enforcement Act and these were justifiable matters, to which the trial court's constitutionally granted jurisdiction extended.

The court concluded that the trial court erred in denying the portion of the petition related to custody. In doing so, the court found that when Father filed his petition, the child was not yet born. The court held that the Father's claims to establish paternity and obtain joint custody should be bi-furcated and that the child custody determination should be made in Colorado. Colorado was found to be the child's home state because the child was born in Colorado. Home-state determination must be deferred until birth, and upon birth, the birth state becomes the home state.

*Rule 23(e)(1) decision

McCormick v. Robertson, 2015 WL 1255025 (Ill.), March 19, 2015

The Supreme Court affirmed the judgment of the appellate court when it found that the circuit court had possessed subject matter jurisdiction, and that the circuit court erred when it subsequently vacated its earlier ruling as void and dismissed the father's complaint.

In 2010, the parties entered into a Joint Parenting Agreement, which was incorporated into the "judgment of parentage, custody [and] related matters" by the court. The judgment was entered in Illinois, as the Father resided in Illinois. The Mother resided in Missouri with the child. Father left the military in June 2012 and had frequent vistiation with the child until November 2012, when the Mother moved with the child to Nevada. At that time, Father filed a motion to establish visitation and asked the court to order the Mother to show cause why she should not be held in contempt of court for violating the terms of the court's 2010 judgment. The Mother initiated a separate legal action in Nevada in which she asserted that the judgment entered in Illinois was "void due to lack of UCCJEA subject matter jurisdiction." Mother also filed a similar motion in the Illinois court. Prior to a hearing on the issue, the presiding judges of the courts in Nevada and Illinois conducted a telephone conference pursuant to the statute. Following said conference, both courts entered orders stating that the provisions of the UCCJEA had not been satisfied with respect to Illinois and that the 2010 order was void. Both orders held that the State of Nevada had continuing and exclusive jurisdiction pursuant to the UCCJEA and, among other things, holding that all further proceedings concerning the parties and subject matter would take place in Nevada. The appellate court reversed the decision of the lower court. On appeal to the Supreme Court, the Supreme Court found that under Section 9 of Article VI of the Illinois Constitution, the jurisdiction of the circuit court extends to all "justiciable matters." The Supreme Court determined that the custody of the minor child was clearly a "justiciable matter" falling within the subject matter of the jurisdiction of the circuit court. Therefore, the circuit court erred in vacating Father's complaint for lack of subject matter jurisdiction.

In re Marriage of Robinson, 2015 WL 2329956 (Ill.App. 1 Dist.), May 14, 2015

The appellate court vacated the trial court's order finding that Husband consented to personal jurisdiction and modifying an order allocating 25% of the marital portion of a former military member's pension to Wife. The appellate court remanded the case for an evidentiary hearing as to whether the Husband was a resident or domiciliary of Illinois under the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA).

Here, the appellate court found that federal law was applicable and that Illinois' long-arm personal jurisdiction statute did not apply because the trial court modified the Michigan divorce decree by expanding the division to disposable retirement pay (instead of "marital portion") and changed the award from 25% to 20%. Since the trial court's orders went beyond enforcement and served as an out-of-state modification, the appellate court held that federal law, specifically FUSFSPA would apply. Therefore, the appellate court held that the Illinois personal jurisdiction statute was preempted by the federal statute as the long-arm statute of Illinois' personal jurisdiction requirements were different from the FUSFSPA's personal jurisdiction requirements. Instead of applying a minimum contacts test through the Illinois long-arm statute, the appellate court found that FUSFSPA applied and limited the reach of state courts to retirees who reside in the state, are domiciled in the state or consent to the court's jurisdiction.

Next, the appellate court reversed the trial court's finding that Husband consented to personal jurisdiction. Here, the appellate court found that whether Husband had minimum contacts with the state of Illinois was irrelevant under the applicable federal law. Further, the appellate court found that Husband had not consented to jurisdiction as he initially filed a section 2-1301 motion

*Rule 23(e)(1) decision

alleging that the court lacked personal jurisdiction over him to modify the existing Michigan divorce decree. However, the appellate court did state that Wife could establish personal jurisdiction over Husband under FUSFSPA if he was a resident or domiciliary of Illinois. Here, Wife had previously provided retirement account statements and a vehicle registration card with an Illinois address and stated that Husband had two children living in the state of Illinois; however, Husband claimed the address was temporary during his move from Virginia to Georgia and that the trial court did not have personal jurisdiction over him under federal law. As such, the case was remanded for an evidentiary hearing regarding the Husband's residence and domicile under FUSFSPA.

See also **COLLEGE CONTRIBUTION,** *In re Marriage of Edelman and Preston*, 2015 WL 2412174 (Ill.App. 2 Dist.), May 21, 2015

See also **CUSTODY**, *In re Marriage of Betsy M. v. John M.,* 2015 WL 5775279 (Ill.App. 1 Dist.), Sept. 30, 2015*

See also **CUSTODY,** *In re Marriage of Stegeman*, 2015 WL 5883130 (Ill.App. 4 Dist.), Oct. 6, 2015*

MAINTENANCE

In re Marriage of Benecke, 2015 WL 6089761 (Ill.App. 4 Dist.). Oct. 15, 2015*

Husband appealed from the trial court's decision ordering him to pay maintenance in the amount of $2,000 per month, finding him in contempt for his failure to pay support and from the trial court's determination that a condo was marital property.

Wife testified that she was a stay-at-home mom for 16 years. She was able to find employment during the divorce proceedings and was earning $37,000. Husband testified that he had previously earned $225,000 per year but that he began drinking heavily and lost his employment due to his drinking issues. Further, Husband's father testified that he paid for a condo and that Husband and his brother agreed to repay him for the condo. Husband's brother repaid his share, but Husband did not. The father of Husband testified that he did not expect his son to be able to repay him.

In this case, the court found that Husband's future earning capacity was greater than Wife's future earning capacity. The court did not find Husband's testimony persuasive that it was his alcoholism and depression that led to his job loss, especially since this coincided with the timing of the divorce proceedings. Further, his efforts to find new employment were "anemic." Husband had testified that he could find employment earning $100,000 per year. Therefore, the award of maintenance of $2,000 per month was reasonable.

With regards to the contempt finding, Husband argued that his actions were not willful because he lacked the ability to pay. The court found that Husband had sufficient income to spend $500 per month in entertainment, $682 per month to visit his sons and $900 on airfare despite being ordered to pay maintenance. Therefore, the court found Husband chose to pay discretionary expenses instead of his court-ordered expenses. Therefore, the contempt finding was proper.

Husband next argued the trial court erred by classifying the condo as marital property. The court found that the condo was not a gift as Husband's Father testified, but rather he purchased the condo with the intention that his sons would repay him. Even though the father no longer

*Rule 23(e)(1) decision

expected repayment, the court classified this as loan forgiveness as opposed to a gift. Therefore, it was appropriate for the court to classify the condo as marital property.

In re Marriage of Kuyk, 2015 WL 5721630, (Ill.App. 2nd Dist.), Sept. 30, 2015

The appellate court reversed the trial court's determination that Wife's petition to review maintenance was barred because maintenance had terminated pursuant to the terms of the parties' Marital Settlement Agreement (MSA). The language of the MSA stated Husband shall pay Wife a certain sum of maintenance "for a period of 60 months at which time the maintenance shall be reviewable upon the filing of a petition prior to the termination of the maintenance." Husband claimed this provision indicated that maintenance terminated at the 60th month mark, while Wife argued that maintenance became reviewable at the 60th month mark. The appellate court found that this provision was ambiguous as to whether maintenance terminated or was reviewable at the 60th month mark. Since Husband drafted the agreement, the provision was construed against him. Accordingly, maintenance was reviewable after 60 months and did not terminate.

In re Marriage of Lederer, 2015 WL 121150-U (Ill.App 2 Dist.), Jan. 29, 2015*

After a trial on the issues, the Husband appealed from the trial court's decision. The appellate court affirmed in part, vacated in part, and remanded the case.

The first issue on review was whether the Wife was engaged in a resident, continuing, conjugal cohabitation. The evidence showed that Wife and third party did not spend much time at each other's residences, only occasionally staying at Wife's house; and following the third party's move to a different state, would come to Wife's home state twice per year for one to two weeks at a time, to take care of his property, and he would not stay with Wife. They did not engage in household activities together, such as cooking, cleaning, laundry, or yard work. They rarely went out to dinner together and their social activities were almost exclusively business-related. They did not spend many holidays together, give each other gifts, or travel together for vacation. Friends and business contacts thought that they were business partners rather than a couple. They maintained separate financial accounts. However, they did hold various properties in joint tenancy but, as stated, much of these were arguably business and/or conservation related. Based on this evidence, the appellate court concluded that the trial court's determination that no *de facto* Husband and Wife relationship existed was not against the manifest weight of the evidence.

The Husband next argued that the trial court erred by ordering him to pay a maintenance arrearage and accrued interest totaling $164,908.31. The appellate court affirmed the decision of the trial court finding that the Husband failed to pay maintenance as required under an order entered in July 2005. However, the Court vacated the trial court's imposition of compound interest on the total maintenance arrearage. In doing so, the appellate court found that interest on maintenance is calculated the same as interest on child support, with both calculated under the formula provided by section 12-109(b). The Court found that maintenance awards should accrue 9% simple internet, rather than compound interest. Therefore, the case was remanded for the court to impose simple interest.

In re Marriage of Novak, 2014 WL 7343320 (Ill.App. 2 Dist.), Dec. 23, 2014*

The Husband appealed the trial court's judgment awarding $22,000 per month in maintenance to the Wife when the Husband's gross average income for the prior three years was $62,250 per month. The Husband also appealed the trial court's ruling that the parties shall file joint tax

*Rule 23(e)(1) decision

returns, that he shall continue to maintain life insurance, and that he shall pay an award of attorney fees to the Wife.

The appellate court affirmed the trial court's ruling because the appellate court found that the trial court properly addressed each of the statutory factors set forth in 504(a). Specifically, the appellate court found that the trial court properly held that the Wife was entitled to the approximate standard of living during the marriage as long as the Husband continued to earn his present income, that the parties spent a considerable amount on home remodels and saved a significant amount in retirement funds, that the Wife's earning capacity was low in comparison to the Husband's earning capacity, and that the Wife stayed home to raise the parties' children. The appellate court rejected the Husband's argument that the maintenance award of $22,000 per month exceeded the Wife's reasonable needs and the standard of living established during the marriage. This was because the trial court had already considered and rejected this argument by acknowledging that the Wife overstated her living expenses on her financial affidavit but nevertheless found that the maintenance award was appropriate. Further, the appellate court rejected his argument that the expenses listed on the Wife's financial affidavit were one-time expenditures based upon the fact that the expenditures raised the parties' standard of living. The appellate court further considered that the financial affidavit did not take into account taxes on the maintenance, and that the net amount the Wife would be receiving of approximately $14,740 did not meet the Wife's stated monthly expenses of $20,049 per month. The appellate court also rejected the Husband's argument that the trial court failed to consider the Wife's potential to earn income, because the maintenance award was reviewable in 3 years and the Wife lacked a college degree and indicated she would be taking college courses to pursue an education. The appellate court did not find that the trial court was required to determine a rate of return or determine the amount of income the Wife would receive from the awarded assets, because her income would never be on par with the Husband's.

The appellate court did reverse and remand the trial court's ruling that any taxes owed or refunds received would be allocated 65% to the Husband and 35% to the Wife. Ultimately, the appellate court affirmed the trial court's award of maintenance to the Wife, the award of attorney's fees to the Wife and that the Husband was required to continue to maintain life insurance.

In re Marriage of Shen, 2015 WL 130733 (Ill.App. 1 Dist.), June 30, 2015

First, Wife argued that the court erred in ordering that her maintenance would terminate on her 66th birthday. The court found that it was improper for the trial court to terminate maintenance with knowing the parties' financial resources upon Wife reaching the age of 66.

Next, Wife argued that the court erred when it entered an order that interim attorney fees be paid from Husband's 401(k) account. The court held that the trial court improperly ordered the liquidation of the 401(k) to pay interim attorney fees, in contravention of *Radzik. (In re Marriage of Radzik,* 2011 WL-100374 (Ill. App 2 Dist.), 955 N.E.2d 591) and section 12–1006 of the Code of Civil Procedure, and reversed the trial court's decision.

Third, Wife argued that the court erred in denying any contribution to her attorney's fees. The Court found that Wife was unable to show Husband had an ability to pay attorney fees as his monthly expenses also exceeded his income. Therefore the decision of the trial court was not against the manifest weight of the evidence.

Fourth, Wife argued that the court erred when ordering her to pay half of the child representative's fees. Wife argued that the trial court ordered her to liquidate the 401(k) for the

*Rule 23(e)(1) decision

payment of the child's representative's fees. The appellate court found that the trial court actually ordered liquidation of the 401(k) for payment of child's counseling and for interim attorney fees, and there was no error. The trial court merely ordered that each party pay half of the child representative's fees and ordered that any remaining money held in escrow—*after* the withdrawal from the retirement account pursuant to the qualified domestic relations order—was to be applied toward the child representative's fees.

Fifth, Wife argued that the court erred in ordering the sale of the Florida time-share to pay the child representative's fees. However, the appellate court found that the trial court merely ordered that the proceeds of the sale be applied first to the payment of the child representative's fees. The court found that section 506(b) specifically provides that child representative fees can be paid from the marital estate. Therefore, the trial court did not err when it ordered that the proceeds from the sale of the Florida time share apply first to satisfy the child representative's fees.

Sixth, Wife argued that the court's award of permanent and exclusive possession of the former marital home to Husband should be reversed. The appellate court found that Wife provided no facts concerning the status of the marital home, therefore the court declined to exercise supervisory power to reverse the award of the marital home to Husband.

Husband's only argument on appeal is that the court erred in denying his petition to modify maintenance because the court did not consider all of the statutory factors, and instead only focused on his change in employment status. The court found that Husband made the choice to demote himself from his previous employer to a position earning far less income. The Court found Husband's claim that his former job caused him physical pain to be questionable. The court concluded that Husband's decision to voluntarily resign was made in bad faith, and the fact that he was willing to take this measure to reduce his maintenance obligation, notwithstanding the loss of his own son's medical insurance, was further evidence of bad faith. The trial court did not err in its consideration of statutory factors for modification of maintenance.

In re Marriage of Thibeau, 2015 WL 3858124 (Ill.App. 1 Dist.), June 22, 2015

The Marital Settlement Agreement specifically stated that Husband was to pay a minimum of $3,000 per month to Wife regardless of his income. The Husband liquidated and transferred retirement funds to his new Wife in order to avoid maintenance payments to his former Wife. The appellate court rejected Husband's argument that his request to modify was a post-decree action, and not a new proceeding; therefore it could not have been dismissed by Wife's 2-619 motion because Husband had entered into an agreed order allowing Wife to file a motion to dismiss in response to his petition to modify maintenance. Further, the appellate court rejected Husband's argument that a reduction in his income warranted a modification of the maintenance because a paragraph of the Martial Settlement Agreement specifically prohibited such a request, and both parties contractually agreed that the maintenance order would not be modifiable if Husband earned less income.

The appellate court also rejected Husband's argument that the retirement funds should not be considered as income or as security for payment of future maintenance, because he purposefully liquidated the funds and transferred $55,262 to his new Wife to avoid paying maintenance to his former Wife. The appellate court was not convinced by Husband's arguments that no debt or arrearage existed at the time of the liquidation of funds, that Wife agreed under the Marital Settlement Agreement to waive any right, title or interest in the retirement funds, the court did not enter a Qualified Domestic Relations Order and the Marital

*Rule 23(e)(1) decision

Settlement Agreement contained no provision that the funds from the retirement funds had to be reserved or used for maintenance. The appellate court upheld the contempt finding as it found Husband remarried knowing he had an obligation to pay maintenance and executed the Marital Settlement Agreement knowing he would have to pay $3,000 at a minimum per month regardless of income. He purchased a car for $18,000 while his maintenance obligation was in arrears, took vacations with his new Wife with money from her account when she was listed on joint income tax returns as a student at the time and continued to maintain essential and non-essential personal monthly expenses (i.e., a monthly mortgage of $6,281, credit card debt, a cigar account and an account at ancestry.com) at the time he was failing to pay monthly maintenance.

In re Marriage of Tuke, 2015 WL 5690909 (Ill.App. 1 Dist.), Sept. 28, 2015*

The original opinion of *In re Marriage of Tuke,* 2015 WL 5472554, was withdrawn and superseded by this opinion. Two appeals were consolidated in this case after Husband appealed the trial court's order modifying permanent maintenance to Wife from $35,000 per month to $27,500 per month and the trial court's subsequent order awarding prospective attorney's fees to Wife in the sum of $160,000 to defend the appeal. The appellate court found no error in the trial court's continuance of permanent maintenance; however, the appellate court remanded the case for recalculation of the maintenance amount and reversed the trial court's decision to award contribution from Husband to Wife for attorney's fees.

Husband argued the trial court erred in awarding continued permanent maintenance to Wife after she failed to make a reasonable efforts to become financially self-sufficient, made an error in calculating the modified permanent maintenance award and erred in requiring Husband to contribute to Wife's attorney's fees. The appellate court reviewed the trial court's decision regarding modification of a permanent maintenance award under an abuse of discretion standard and found the trial court properly modified the support amount as Husband met his burden of proof regarding a substantial change in circumstances. Next, the appellate court referenced the list of factors set forth in section 510(a-5) of the statute and found that the trial court's decision to continue permanent maintenance was not in error simply because Wife's efforts to become financially self-sufficient were lacking. The appellate court found the trial court considered Wife's efforts to become self-supporting as a factor and that there is no single determinative factor the trial court is bound by. The appellate court found Wife's efforts since entry of the divorce judgment to be reasonable, as she did make some effort to make her business more profitable, applied to a job as a librarian, made inquiries into temporary librarian positions and enrolled in a class to obtain certification to prepare income taxes, which allowed her to get seasonal employment at $9 per hour. The appellate court found the trial court did not err in refusing to terminate or further reduce Wife's permanent maintenance award based upon the evidence presented.

The appellate court also addressed Wife's argument that the question of whether she was capable of financial self-sufficiency was previously determined by the trial court in the divorce case in 2006 when addressing her ability to earn sufficient income to support herself at the same level established during the marriage, such that argument related to that same issue was barred by *res judicata.* The appellate court clarified and stated arguments related to Wife's ability to support herself at the same level established during the marriage and her efforts to do so were allowed as long as the issues have arisen since entry of the 2006 judgment due to Husband's request for modification.

*Rule 23(e)(1) decision

Further, Husband argued the trial court intended to make the award of modified permanent maintenance in the sum of 25% of Husband's cash flow and erred in calculating said award based upon the figures presented. Husband determined after using Wife's financial expert's figures that 25% of his cash flow was only $25,745, not $27,500 as ordered by the trial court. After reviewing Husband's calculations and the trial court's statements supporting the maintenance amount, the appellate court did remand the case to the trial court for recalculation of the modified permanent maintenance award. The appellate court could not determine how the trial court calculated the $27,500 maintenance amount and found that this figure did not represent 25% of Husband's income, and instead was 3.5% higher than 25% of Husband's income after review of the record. As a result, the appellate court found that it was a reasonable conclusion the trial court made a calculation error and remanded the case for recalculation of the modified permanent maintenance amount.

Last, the appellate court found the trial court erred in awarding attorney's fees to Wife due to Wife's failure to meet the legal burden of showing that she lacks the ability to pay her own fees. The appellate court determined that Wife had assets of approximately $1.5 million and received $330,000 per year in permanent maintenance and therefore failed to establish she had an inability to pay her own attorney fees.

See also **PROPERTY,** *In re Marriage of Johnson*, 2015 WL 7777193 (Ill.App. 5 Dist.) Dec. 2, 2015*

See also **CUSTODY,** *In re Marriage of Schoemaker*, 2015 WL 1138548 (Ill.App. 5 Dist.), March 13, 2015*

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015,*

See also **PROPERTY,** *In re Marriage of Veile*, 2015 WL 6955372 (Ill.App. 5 Dist.), Nov. 10, 2015

MOTION TO RECONSIDER

In re Marriage of Harris, 2015 WL 3942616 (Ill.App. 2 Dist.), June 29, 2015*

The parties went to trial over several days on cross petitions for custody of their child. On November 20, 2013, the trial court entered an oral ruling that granted full custody to Father. Five days later, on November 25, 2013, the trial court entered a written order conforming to the November 20 order. Mother filed a motion to reconsider the oral judgment of November 20, and the trial court ruled that this was not a proper post-judgment since the November 25 order temporary. However, the appellate court found that although the trial court referred to the November 25 order as "temporary," this characterization is inaccurate given the actual substance of that order, as it specifically provided for a final custody determination and contemplated an immediate change in custody. Pursuant to Supreme Court Rule 304(b)(6), custody judgments are immediately appealable. The appellate court also noted that although Mother's motion sought to reconsider the "oral" judgment of November 20 and not the subsequent written judgment of November 25, this did not change the effectiveness of her motion since the substance of a proper post-judgment motion is simply a request for relief from the judgment. Thus, the fact that Mother's motion sought reconsideration of the oral ruling was inconsequential since her motion was directed against the final custody determination.

*Rule 23(e)(1) decision

MOTION TO VACATE (Section 2–1401)

In re Marriage of Ardelean, 2015 WL 1137665 (Ill.App. 2 Dist.), March 12, 2015*

The parties' judgment for dissolution of marriage incorporated a Marital Settlement Agreement. The appellate court overturned the trial court's denial of a Section 2-1401 petition to vacate the judgment for dissolution of marriage where the agreement transferred the Husband's non-marital retirement funds to the Wife. The appellate court found that the Husband diligently raised his claim of unilateral mistake and that a non-modification clause within the agreement did not necessarily bar his claim.

Here, counsel for the Wife represented to the trial court that the overall property division would be 55/45. The Wife's attorney drafted the settlement agreement, but the QDROs entered reflected a 55% transfer of the entirety of the Husband's two pensions which included 10 years of non-marital pension credits. The appellate court applied a de novo standard of review, as the appeal related to a review of a dismissal for failure to state a claim. The appellate court held that the petition filed by the Husband adequately allowed the court to infer that the Wife was aware of the Husband's confusion and unilateral mistake of fact with respect to the agreement because it did not reflect the negotiated terms as represented to the trial court, and that the Wife effectively committed a fraud upon the Husband.

The appellate court also found that the Husband met all requirements of due diligence in pursuing his fraudulent misrepresentation claim, as he only needed to show that he was non-negligent, lacked bad faith, and that he filed his petition approximately 6 months after entry of the settlement agreement (and 5 months after entry of the QDROs). The appellate court rejected the Wife's argument that the non-modification clause of the agreement barred a court from making changes to the agreement or granting immunity when such an agreement can otherwise be set aside under 2-1401. Ultimately, the appellate court overturned the trial court's dismissal of a 2-1401 petition based upon unilateral mistake of fact.

Cavitt v. Repel, 2015 WL 1431949 (Ill.App. 1 Dist.), March 30, 2015*

The appellate court affirmed the trial court's order granting the Father's motion to dismiss the Mother's Section 2-1401 petition to vacate the parties' Judgment for Parentage.

In 1997, the parties entered into a Judgment for Parentage of their one child, which granted the Mother sole custody. In 2000, the Mother filed a petition to modify child support and thereafter engaged in years of extensive discovery, 11 substitutions of attorneys, issuance of 73 subpoenas and nine depositions. Then, on the eve of trial in 2008, the Mother voluntarily dismissed her petition to modify support. Subsequently, the Mother filed another petition to modify support and a Section 2-1401 petition to void the parties' Judgment based on fraud. During discovery, the Father filed a request for admission pursuant to Supreme Court Rule 216, and at hearing on the request, the Mother changed 12 of her previous answers from denials to admissions, specifically admitting that she had previously accused the Father of fraud with respect to the parties' Judgment. The Father moved to dismiss the 2-1401 petition as time-barred since the Mother had admitted that she was aware of the supposed "fraud" more than two years prior to the filing of the 2-1401 petition. The trial court granted the motion, and the Mother appealed.

On appeal, the appellate court found that the trial court correctly determined that the Mother's claim was time-barred due to her knowledge of the fraud more than two years prior. The appellate court also found that the Mother could not sufficiently plead or prove that she exercised due diligence in presenting the 2-1401 petition. Since the Mother's arguments involved her judicial admissions, not questions of fact, the appellate court found that the trial

*Rule 23(e)(1) decision

proper was not required to conduct a full evidentiary hearing prior to dismissing the 2-1401 petition.

The appellate court also affirmed the trial court's order awarding the Father approximately $32,000 in attorney fees and costs, finding that the trial court did not abuse its discretion in imposing this award based on the Mother's failure to properly answer the Father's requests for admission. The appellate court found that the Mother deliberately prevaricated her answers, which needlessly increased the cost of litigation.

In re Marriage of Hora, 2015 WL 3939617 (Ill.App. 1 Dist.), June 26, 2015*

The Marital Settlement Agreement provided for unallocated family support and later specifically stated that maintenance to Wife was non-modifiable. Husband filed three petitions to modify the support provisions of the Marital Settlement Agreement based upon the fact that his income would decline substantially upon his retirement, that the children emancipated and he was unable to continue to pay. Husband also filed a number of petitions to modify the Martial Settlement Agreement on the basis of mutual mistake and unjust enrichment. Wife represented that she suffered from scleroderma at the time of entry of the divorce, and Husband argued that Wife's life expectancy was to be greatly reduced as a result and that Wife fraudulently concealed her misdiagnosis (after later finding she did not suffer from the disease). The trial court granted a number of Wife's motions to dismiss the Husband's petitions.

The appellate court rejected Husband's argument that the non-modifiable maintenance portion of the unallocated support payments rendered the Marital Settlement Agreement void under section 502(f). The appellate court distinguished between void and voidable through case law analysis of *Blum v. Kostner*, 235 Ill.2d 21 (2009), *Semonchik*, 315 Ill.App.3d 395 (Ill.App. 1st Dist. 2000), *Doermer*, 2011 IL App (1st) 101567 and *Mitchell*, 181 Ill.2d 169 (1998). Here, the appellate court understood that the trial court reviewed Husband's amended petition to modify support as only requesting a reduction or termination in maintenance which was non-modifiable pursuant to the terms of the Marital Settlement Agreement. Ultimately, the appellate court held that the trial court had jurisdiction over the parties and the divorce in this case and therefore had authority over the award of child support and maintenance. Further the appellate court found that any error in providing for non-modifiable maintenance as included in unallocated support would only render that aspect of the Marital Settlement Agreement voidable, not void, and Husband's request to modify was an untimely collateral attack of the judgment. As a result, the appellate court affirmed the trial court's decision to dismiss Husband's amended petition to modify the Marital Settlement Agreement.

Illinois Dept. of Healthcare and Family Services ex rel. Lawrence v. Richmond, 2015 WL 1515194 (Ill.App. 1 Dist.), March 31, 2015 *

The appellate court affirmed the trial court order dismissing the Father's Section 2-1401 petition to vacate the parties' Judgment for Parentage.

On appeal, the Father claims that the trial court lacked subject matter and personal jurisdiction and that his procedural and due process rights were violated because he had no notice of the child support hearing. Specifically, the Father argued that he did not receive proper substitute service of summons as he was not residing at the address where service was made. The appellate court rejected all of the Father's arguments, noting that he was present in court at the hearing, he filed an appearance in the matter, he signed the order entered in court that day, and he signed the Voluntary Acknowledgment of Paternity (VAP). Furthermore, the Father never contested the trial court's jurisdiction at the time of the hearing in 2004 and never filed a motion to dismiss or to quash service of process. Instead, he waited eight years later to file his Section

*Rule 23(e)(1) decision

2-1401 petition to vacate in 2012. Accordingly, the appellate court held that the Father voluntarily submitted to the trial court's jurisdiction at that time.

In re Marriage of Lyman, 2015 WL 132832 (Ill.App. 1 Dist.), Feb. 2, 2015

The appellate court affirmed in part, reversed in part, vacated in part, and remanded with directions. Wife and Husband entered into a marital settlement agreement, which was incorporated into a divorce judgment. The Wife filed petitions arguing that she was fraudulently induced to enter into the marital settlement agreement. Husband moved to dismiss Wife's amended Section 2–1401 petition pursuant to Sections 2–619(a)(4) and (a)(9). Husband also moved for sanctions against Wife under Illinois Supreme Court Rule 137. The trial court granted Husband's motion to dismiss and motion for sanctions.

On Appeal, the court found that Wife's second amended Section 2–1401 petition did not cure any defect from her initial petition. Therefore, she had not satisfied Section 2–616(a), finding as a matter of law that the trial court properly dismissed Wife's amended and second amended Section 2–1401 petitions pursuant to Code Sections 2–619(a)(4) and 2–619(a)(9). The appellate court concluded that the trial court properly applied the doctrine of *res judicata.* The court rendered a final judgment of dissolution, which incorporated the marital settlement agreement. An identity between the causes of action existed because they arose from a single group of operative facts stemming from the marital settlement agreement, the same parties were involved in the judgment of dissolution and the post judgment litigation, and the parties negotiated and bargained for the amount the Wife would receive in exchange for the Husband receiving 100% of his interest in business entities. As such, *res judicata* applied not only to the judgment of dissolution, but also to matters that could have been decided. The appellate court held that the trial court committed error by granting Wife leave to replead the exact same breach of marital settlement agreement claim in her second amended Section 2–1401 petition without any amendment to cure the defective pleading. As such, the issue was forfeited. Finally, the order entered by the trial court suggested that no evidence was taken on the issue of sanctions, as the court did not base its determination upon evidence taken at a hearing or matters of record that justify foregoing an evidentiary hearing. Therefore, the appellate court concluded that the trial court must vacate its order granting respondent's motion for sanctions. In so doing, noting that awarding sanctions on this novel issue is probably unwarranted, and accordingly remanded this matter for a hearing to determine the propriety of awarding attorney fees to Husband under Section 508(a).

McMullen v. Miller, 2015 WL 4064942 (Ill.App. 2 Dist.), July 1, 2015*

The appellate court affirmed the trial court's finding that an order for child support was an agreed order and denial of Father's 2-1401 Motion to Vacate an agreed order. In addition, the appellate court found that the trial court did not err by failing to grant expeditious relief related to Father's petition for visitation.

The appellate court rejected Father's argument that the child support order entered was not by agreement in the paternity case. The appellate court found that the trial judge orally cited the contents of what would have been a bystander's report of the proceedings, as there was no transcript, and that this refuted Father's claim that the child support order was not entered by agreement. Further, the appellate court reviewed Mother's motion to strike and dismiss Father's motion to vacate the child support order, and the motion clearly set forth that the trial court repeatedly stated in open court and in various settlement discussions that all court orders entered as to the child's expenses were agreed upon by the parties. Based upon Father's failure to provide a sufficient record to support his allegation as to the child support order, the appellate court presumed the trial court's order was in conformity with the law and there was a

*Rule 23(e)(1) decision

sufficient basis to enter the order. Further, the appellate court found that Father failed to allege any misrepresentation, fraud, coercion, incompetence or gross disparity in the position or capacity of either party involved in the case.

Last, the appellate court rejected Father's arguments that the trial court failed to grant expeditious relief as it related to his petition for visitation where the trial court allegedly unreasonably prolonged the proceedings by allowing Mother's attorney to withdraw and failed to set an evidentiary hearing to resolve the visitation issue. The appellate court found that Father failed to include this claim in his notice of appeal or 2-1401 motion and therefore the appellate court lacked jurisdiction to hear the issue and the parenting agreement subsequently entered rendered his argument moot. Overall, the appellate court affirmed the trial court's ruling.

In re Marriage of Schwertfeger and Regan, 2015 WL 966150 (Ill.App. 2 Dist.), March 5, 2015*

Wife filed a petition for relief pursuant to Section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401) seeking to vacate her judgment for dissolution of marriage, which incorporated a Marital Settlement Agreement. Wife alleged that Husband misrepresented his ownership interests in two properties. The Husband filed a motion to dismiss the petition pursuant to Section 2-619.1. The trial court granted the Husband's Motion to Dismiss. On review, the court found that the Husband did in fact assert a proper affirmative matter as his defense to her allegations. Further, the court found that the Wife's allegations were conclusory and not supported by well-pleaded facts. Further, the court found that the Wife had waived a number of arguments on appeal because they were waived at the trial level. Therefore, the decision of the lower court was affirmed.

See also **CUSTODY,** *In re Marriage of Krier*, 2015 WL 4739977 (Ill.App. 3 Dist.), Aug. 5, 2015*

NONEXISTENCE OF PARENT-CHILD RELATIONSHIP

In re A.A., 2015 WL 7295437 (Ill.), Nov. 19, 2015

The presumed Father appealed trial court's order declaring the nonexistence of a parent-child relationship between him and the child, vacated the voluntary acknowledgement of paternity (VAP) signed by him, declared a parent-child relationship between the child and a deceased biological Father after court-ordered DNA testing, and granted the deceased Father's parent's petition to intervene. The appellate court affirmed and remanded the case. The Illinois Supreme Court affirmed the case and found that a court need not consider the best interests of the child when determining the nonexistence of a parent-child relationship.

The State filed an initial petition for adjudication of wardship in juvenile court following a DCFS investigation for neglect and an injurious environment for the children then residing with the presumed Father and Mother. After court-ordered DNA testing, the court determined that the presumed Father living with Mother was not the biological Father of the child and that the actual biological Father was deceased. The court granted the Guardian ad litem's petition to declare the nonexistence of a parent-child relationship between the presumed Father and child and granted the child's biological grandparent's petition to intervene after the DNA results were determined. On appeal, the presumed Father argued that it would not be in the child's best interests to vacate the VAP or declare that he was not the legal father of the child.

The Illinois Supreme Court found that the presumed Father had spent time with the child, intended to raise the child as his own, assisted in parenting the child, and provided financially for the child. In addition, the court-appointed special advocate and caseworker with DCFS

*Rule 23(e)(1) decision

testified that it would not be in the child's best interests to remove the presumed Father as the child's legal Father. The Illinois Supreme Court found that the court did not need to review or consider the best interests of the child when determining the nonexistence of a parent-child relationship pursuant to the Parentage Act. The Court held that parentage must be established before the best interest standard can be applied to determine the rights of a parent as to a child under the statute, and here the presumed Father was not the biological parent of the child following DNA testing.

Overall, the Illinois Supreme Court affirmed the trial court and appellate court rulings that the court need not determine the best interests of the child prior to determining the nonexistence of paternity between a party and child.

ORAL AGREEMENTS

In re Marriage of Stone, 2015 WL 8772907 (Ill.App. 1 Dist.), Dec. 14, 2015*

The appellate court affirmed the trial court's ruling denying Husband's motion to vacate a judgment for dissolution of marriage and upholding an oral settlement agreement reached by the parties.

After a trial had begun, the trial court conducted a pretrial conference on June 4, 2013. The case was then continued for further pretrial conference on June 6, 2013 and the trial court made additional recommendations to settle the case. The judge instructed counsel for both Husband and Wife to e-mail the court if the parties had reached an agreement. On June 11, 2013, counsel for both parties e-mailed the court indicating that the parties had accepted the court's pretrial recommendations. Additional court appearances occurred to clarify a discrepancy regarding a settlement payout, and the trial court set the case for prove-up on several occasions, ordering Husband to provide a court reporter. However, Husband failed to have a court reporter and the trial court had an additional pretrial conference to clarify language disputes between counsel on July 22, 2013. The case was finally set for prove-up on July 26, 2013, and counsel continued to exchange drafts of the marital settlement agreement. On this date, after counsel for Husband filed a motion to withdraw and Wife filed an emergency motion to enforce the oral settlement agreement between the parties, the judge entered a judgment for dissolution of marriage and the marital settlement agreement was signed by Wife only.

On appeal, Husband argued that the parties had not reached a valid and enforceable oral settlement agreement. Husband argued that the court did not have authority to enter the agreement as it was only signed by Wife, that there was no meeting of the minds by the parties and no agreement was formed, and his attorney did not have authority to settle the case on his behalf.

The appellate court rejected all of Husband's arguments. The appellate court found the trial court had authority to enter the marital settlement agreement due to the underlying petition for dissolution of marriage and counter-petition for dissolution of marriage, regardless of whether the underlying emergency motion to enforce filed by Wife was withdrawn. Further, the appellate court found there was a meeting of the minds given the e-mails exchanged with the judge whereby both attorneys indicated that the parties accepted the judge's pretrial recommendations. The fact that the parties had other nonessential items to resolve did not nullify the agreement reached or render the oral agreement reached unenforceable. The appellate court also accepted Wife's argument that she was entitled to a presumption that the judgment and agreement entered on July 26, 2013 was correct and in conformity with the law

*Rule 23(e)(1) decision

due to Husband's failure to provide a court reporter as ordered. Due to the e-mails sent to the trial court indicating that the parties accepted the judge's pretrial recommendations, Husband's attorney sending an e-mail on July 22, 2013 stating that he made some "nits and nats" redline adjustments to the draft and overall involvement in the finalizing of details within the marital settlement agreement, as well as the additional resolution of the settlement payout and language issues in the marital settlement agreement by the court, the appellate court found that a valid and enforceable oral settlement agreement existed between the parties.

ORDER OF PROTECTION

Lovestrand v. Levoy, 2014 WL 7344163 (Ill.App. 2 Dist.), Dec. 24, 2014*

The Mother appealed the trial court's order denying a plenary order of protection against the Father, but the appellate court affirmed the trial court's ruling.

Here, the Mother argued that the Father concealed the child and threatened the Mother with a gun. The Father argued on appeal that the Mother failed to meet her burden of proof and that he was acting under the belief that the Mother was prohibited from visitation with the minor child due to findings by DCFS. Further, the Father argued that the Mother was using an order of protection to bypass the proper procedural requirements to file and request visitation with the minor child, as DCFS had found that the Mother neglected the child. The appellate court held that the trial court was warranted in finding that the Father's testimony was more credible than the Mother's testimony as the Father had legal custody of the child and was under a reasonable impression that he was not supposed to allow visitation between the Mother and the child. Further, the Mother was not honest in regards to other aspects of the proceedings. In particular, she was not honest during a mental health assessment, failed to undergo an ordered psychological examination, and attempted to hide the results of the mental health assessment from the Guardian *ad item* assigned to the case. In addition, the appellate court found that the Father admitted he sent a threatening text to the Mother but that any threat of a gun by the Father was an isolated incident, as he did not own any guns at the time of the threat and was under a reasonable impression that he was not supposed to allow visitation between the Mother and the child due to the DCFS finding. Ultimately, the appellate court affirmed the trial court's ruling.

PARENTAGE

In re Marriage of Ostrander, 2015 WL 130755 (Ill.App. 3 Dist.), Feb. 25, 2015

Wife appealed from a denial of her motion to reconsider where the court stated that finding of no paternity through a DNA test performed eight years after the child's birth was sufficient to terminate his parental rights and child support obligations. The issue on appeal was whether the statute of limitations barred the Husband from bringing the action. The statute of limitations issue was raised for the first time in the Wife's motion to reconsider. Husband argued that since the issue was not raised in her original response to his "motion regarding finding no paternity," the issue had been waived. However, the appellate court stated that the trial court misconstrued the statute. The trial court improperly placed the burden of proof on the Wife as to why the paternal relationship existed since birth, where the statue states that, as an affirmative defense, the burden was the Husband's to establish that he had only "obtained knowledge of relevant facts" within the two year period before bringing the motion. The record showed that the Husband had knowledge since the child's birth that the child may be his. In addition, Husband offered no evidence that he had only recently learned that he was not the biological father, other than the new DNA test. The court quoted the Fourth District in stating, "It is wrong to make a child a part of a family unit and pass over substantial concerns regarding the child's paternity

*Rule 23(e)(1) decision

only to raise them years later in an attempt to avoid child support." *In re Marriage of O'Brien*, 247 Ill. App. 3d 745, 750 (1993).

The appellate court stated that the trial court erred in not appointing a Guardian *ad litem*, as the minor child's interests were not adequately represented. Therefore the appellate court reversed the order of non-paternity and remanded the matter for setting of child support.

In re Parentage of Scarlett Z.-D., 2015 WL 1255024 (Ill.), March 19, 2015

The minor child had been previously adopted by the adoptive Mother. Adoptive Mother's Boyfriend's petition in the trial court seeking a declaration of parentage, custody, visitation, and child support was ultimately rejected by both the trial court and the appellate court, as the Boyfriend lacked standing because he had never been married to the adoptive Mother or never sought to adopt the child legally within Slovakia or Illinois.

The Supreme Court upheld the appellate court's rejection of the Boyfriend's argument that the adoptive Mother forfeited arguments relating to the Boyfriend's lack of standing. The Supreme Court found that the adoptive Mother did not waive such a challenge because she had properly brought her challenge to the Boyfriend's standing in a Section 2-619 motion and as an affirmative defense to the Boyfriend's claims to the child.

Further, the Supreme Court upheld the appellate court's rejection of the Boyfriend's argument that equitable estoppel prevented the adoptive Mother from challenging the Boyfriend's standing. The Supreme Court found that the adoptive Mother made no misrepresentations to the Boyfriend that he was the child's biological or adoptive Father and that, despite his requests to formally adopt the child and the promise between the parties to pursue his adoption of the child in Illinois, neither one of them ever initiated such proceedings. Further, the Supreme Court found that the Boyfriend's relationship with the child was contingent and dependent upon his relationship with the adoptive Mother. The Supreme Court also determined that the adoptive Mother alone had a statutory parent-child relationship with the child based upon the language of the statute, as the Boyfriend lacked statutory standing and was defined as a nonparent where the adoptive Mother always retained physical custody of the child.

The Boyfriend argued that he was a "de facto" parent of the child and he served as a functional parent, despite the fact that he had never adopted the child. While the Supreme Court presented analysis regarding the varying positions and tests with respect to a "de facto" parent, the Court ultimately rejected such arguments as Illinois does not recognize functional parent theories and found that the Boyfriend lacked statutory standing as a result. Further, the Supreme Court rejected the Boyfriend's argument and the appellate court's finding that the equitable adoption doctrine applies to this case. The Supreme Court rejected the appellate court's holding and determined that the doctrine only applies in determining an inheritance and does not apply to family law proceedings involving parentage, custody, or visitation. The Supreme Court held that the doctrine is merely an equitable remedy and is not meant to create a parent-child relationship for legal purposes. Ultimately, the Supreme Court rejected the appellate court's application of the equitable adoption doctrine and affirmed the remaining appellate court and trial court rulings that the Boyfriend lacked standing.

PARENTING TIME

Cole v. Shaffer, 2015 WL 6930010 (Ill.App. 4 Dist.), Nov. 6, 2015*

Mother appeals the trial court's reduction of Mother's visitation and the trial court's admission of the child's medical records, arguing that the trial court applied the incorrect standard in restricting her visitation.

*Rule 23(e)(1) decision

Mother had visitation with the parties' one minor child from Monday through Thursday from 8 a.m. to 3 p.m and on alternate weekends. Father then petitioned to modify Mother's visitation time with the minor child, arguing that the child suffered physical harm due to Mother's neglect and lack of supervision. The trial court granted Father's petition, finding Mother did not provide the child with adequate supervision during visitation and that the current visitation schedule was not in the child's best interests. The court then reduced Mother's visitation to Wednesdays from 4 to 8 p.m and alternate weekends from 10 a.m. Saturday to 4 p.m. Sunday.

On appeal, the appellate court found that the trial court utilized the wrong standard in reducing Mother's visitation time because the serious endangerment standard applied rather than the best interest standard. However, the appellate court still affirmed the trial court's decision because the evidence indicated that the child was returned to Father on several occasions with marks on her head and body, including bumps, bruises and scratches, and the child had been taken to the hospital twice for injuries suffered in Mother's care. Thus, based on the record the trial court could conclude that continuing the same visitation schedule could seriously endanger the child. Accordingly, the appellate court found that the trial court's reduction in visitation was not against the manifest weight of the evidence and did not constitute an abuse of discretion.

Miller v. Miller, 2015 WL 1515456 (Ill.App. 5 Dist.)

The trial court denied the Wife's petition to modify visitation because it found that the Wife had failed to prove by clear and convincing evidence that the children faced serious endangerment when they were with the Husband. The appellate court vacated the decision of the trial court and remanded for further proceedings. The court found that the trial court applied the incorrect burden of proof to the evidence. The burden of proof that the trial court should have applied should have been the preponderance of the evidence standard and not the higher burden of the clear and convincing evidence standard.

In re Marriage of Perez, 2015 WL 1510780 (Ill.App. 3 Dist.), April 3, 2015

The appellate court affirmed the trial court's decision that established a 50/50 parenting schedule between the Wife and Husband, without any designation as to which parent was the primary residential custodian.

The appellate court found that the Wife and Husband both lived in close proximity to one another, exhibited an extraordinary level of cooperation with respect to joint parenting, were heavily involved in the child's life and wished to continue that involvement, and that it was in the best interest of the child to continue to maximize each parent's involvement in the child's life. In addition, the appellate court held that both Wife and Husband were capable, both Wife's and Husband's residences were suitable, the parties were cooperative and able to make shared decisions with respect to the child, the parenting schedule took into account both parents' work schedules, the shared schedule had been partially implemented with success on a temporary basis, and there was no indication that the child could not handle or cope with a 50/50 parenting schedule.

Further, the appellate court rejected the Wife's argument that the trial court erred by not designating a residential custodian. The appellate court held that Section 602.1 of the Illinois Marriage and Dissolution of Marriage Act did not preclude equal parenting time or require the designation of a primary residential custodian. The appellate court found that the trial court met the requirements set forth in Section 602.1 for determining the physical residence of the child by setting forth in the judgment for dissolution of marriage which parent with whom the child would reside.

*Rule 23(e)(1) decision

Strohmeyer v. Richarson, 2015 WL 5511135 (Ill.App. 2 Dist.), Sept. 16, 2015

Father filed a petition seeking visitation. The trial court dismissed the petition on the basis that Section 607(e) of the Illinois Marriage and Dissolution of Marriage Act prohibited visitation when the petitioner was incarcerated for convictions of predatory criminal sexual assault of a child. On appeal, Father argued that Section 607(e) is unconstitutional. The appellate court affirmed the decision of the lower court.

On appeal, Father argued that Section 607(e) of the Act is unconstitutional as applied to him because it prohibits him from visitation absent obtaining sex-offender treatment, which he was not ordered to undergo. The court found that Father was ineligible for visitation because he was incarcerated. The court noted that Father did not make an argument that the portion of Section 607(e) pertaining to incarcerated parents was unconstitutional. Instead, he argued only that the requirement of sex-offender treatment after discharge renders Section 607(e) unconstitutional as applied to him because the child will reach the age of majority before he can obtain treatment. The court noted that the child will reach the age of majority long before Father finishes his term of incarceration. Thus, only the incarceration provision, not the treatment provision, applied to Father. Therefore, by challenging only the treatment provision, Father has not shown that Section 607(e) violates the constitution as applied to him.

See also **CUSTODY**, *In re Marriage of Betsy M. v. John M.,* 2015 WL 9269969 (Ill.App. 1 Dist.), Dec. 17, 2015

See also **CUSTODY**, *In re Marriage of Tamburo*, 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*

PLENARY ORDER OF PROTECTION

In re Marriage of Covello, 2015 WL 133478-U (Ill.App 1 Dist.), Feb. 11, 2015*

Here, the Wife appealed the trial court's finding that she failed to meet her burden for a plenary order of protection, and that the trial court was required to make specific findings of fact in dismissing the petition. The events giving rise to this appeal took place while the dissolution proceedings were still pending. After a miscommunication about parenting time, the Husband took both children on a trip out of state. When Wife found out, she immediately went filed an emergency order under section 750 ILCS 60/201. Husband was notified by his attorney about the order and immediately returned the children. After a hearing two weeks later, where testimony from both sides was heard, the trial court dismissed the order. The appellate court held that due to all of the testimony that led to the order of protection being hearsay at best, and unsubstantiated by any evidence in the record, the trial court's order dismissing the petition was not against the manifest weight of the evidence. Alternatively, Wife contended the trial court committed reversible error by failing to specifically address the statutory factors listed in section 214(c) of the Act in dismissing her petition for a plenary order of protection and denying her motion to vacate. The court stated, "Nothing in the statutory language imposes an obligation on the trial court to enter findings of fact when, as here, the trial court dismisses an order of protection. Thus, the trial court did not err by dismissing her petition and denying her motion to vacate without making specific findings of fact."

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*, above.

*Rule 23(e)(1) decision

POST-MARITAL AGREEMENTS

In re Marriage of Pogue, 2015 WL 140369-U (Ill.App 2 Dist.), July 16, 2015

On appeal, Wife argued that the trial court erred in denying her interim fee petition, asserting that even as a *pro se* litigant, she was entitled to an interim award of attorney fees to "level the playing field." The court denied Wife's claim for an interim fee award because these types of awards provide only temporary relief during dissolution proceedings, and are therefore treated as interlocutory orders and are not subject to appeal.

Next, Wife challenged the trial court's decision to grant Husband's motion to invalidate the post marital agreements. In this case, Wife had Husband sign a number of typed documents that she claimed were post-marital agreements between the parties.

The court found that the post-marital agreements did not contain a bargained-for exchange of promises or performance. Rather, as the trial court determined, they imposed obligations solely upon the Husband and benefits solely upon Wife. The post-marital agreements fail for a lack of consideration as well as on the grounds of procedural and substantive unconscionability. The court also found that they were so one-sided as to oppress Husband.

PROPERTY

In re Marriage of Johnson, 2015 WL 7777193 (Ill.App. 5 Dist.) Dec. 2, 2015*

The parties were married 27 years, in their late forties and had two children. Wife was the primary caretaker of the children, was unemployed at the time, and had several health problems. Husband owned and operated his own investment management business where Wife had worked and helped contributed to the business through marketing and entertaining clients. The parties took an annual eight-day vacation to San Diego each year, bought luxury goods, and Wife wore fine clothes. At trial, two experts testified regarding the value of Husband's business, which was the major marital asset. The trial court then divided the marital assets roughly equally between the parties, but Husband was solely awarded the business as valued by the trial court.

The appellate court found the trial court's valuation of Husband's business to be against the manifest weight of the evidence because the trial court valued its enterprise goodwill at $196,000 when it had $75 million in assets under management despite Husband purchasing accounts from another firm for $366,000 with only $35 million in assets under management. Because this was the largest asset and affected the overall property distribution, the appellate court remanded for a new trial to properly value the enterprise goodwill and distribute the marital property in light of the valuation error.

Regarding maintenance, the appellate court reversed and remanded for a new trial because the ultimate distribution of marital property affected the determination of the maintenance award. The trial court had awarded rehabilitative maintenance to Wife for 30 months, but the appellate court ordered that permanent maintenance be awarded on remand due to the time Wife devoted to domestic duties and having forgone education, training, employment and career opportunities due to the marriage.

Similarly, regarding attorney fees, the appellate court also reversed and remanded for a new trial because the ultimate distribution of the marital property affected the determination of whether attorney fees should be awarded. Additionally, the appellate court found the trial court in ruling on the issue of attorney fees failed to consider all of the relevant statutory factors and, instead, based its decision on its disapproval of Wife's attorney.

*Rule 23(e)(1) decision

In re Marriage of Kehrer, 2015 WL 3883990 (Ill.App. 5 Dist.), June 23, 2015*

The parties proceeded to trial solely on financial issues, and the trial court entered judgment dividing the parties' retirement accounts, family business and credit card debt. Husband appealed several aspects of the property division. The appellate court noted that the trial court has broad discretion in the distribution of marital assets and its division and distribution will not reversed unless it has clearly abused its discretion. Husband objected to the trial court's award of one half of the marital portion of two of his retirement plans, while not awarding him any of Wife's pension. However, Husband failed to note that his entire third pension was awarded solely to him. Additionally, Husband objected to the division of the marital business to Wife, but he specifically testified he wanted nothing to do with the business and that Wife could have it. Furthermore, the division of assets and debts was reasonable in light of Husband's larger earning capacity, evidence of Husband's financial security given his several bank accounts and new career as a nurse practitioner and Wife's limited earning capacity given her efforts to nurture Husband's career during the marriage.

In re Marriage of Platt, 2015 WL 6785611 (Ill.App. 2 Dist.), Nov. 6, 2015*

Ex-Wife appealed the trial court's denial of her motion to enforce the pension provisions of the marital settlement agreement signed by the parties that was incorporated into a judgment for dissolution of marriage. The appellate court reversed and remanded the trial court's denial of the ex-Wife's motion to enforce.

Ex-Wife sought enforcement of the marital settlement agreement, which equally divided the marital portion of her ex-Husband's government pensions. Third party respondent, ex-Husband's new Wife, filed a motion to dismiss under 2-619, arguing the trial court lacked personal jurisdiction over the matter after ex-Husband's death, that judgment was abated after ex-Husband's death and that judgment was not final and appealable due to the absence of a Qualified Domestic Relations Order being entered. The appellate court disagreed with ex-Husband's new Wife and found that the judgment was a final order despite the Qualified Domestic Relations Order not being entered and that ex-Wife was entitled to seek enforcement of the judgment as it related to her awarded interest in the pension. The appellate court held the judgment was final when ex-Husband died and as a result the action did not abate, and would have only abated had ex-Husband died prior to entry of the dissolution judgment. The appellate court also rejected ex-Husband's new Wife's argument that federal regulations applicable to the pensions would not allow a posthumous order to be entered to divide the pension. The appellate court held that even if this assertion was correct and judgment had become impossible to carry out due to ex-Husband's death, that ex-Wife was still entitled to relief through enforcement of the judgment and to her awarded share of the pensions. In sum, the appellate court reversed the trial court's denial of ex-Wife's motion to enforce the judgment and remanded the case.

In re Marriage of Veile, 2015 WL 6955372 (Ill.App. 5 Dist.), November 10, 2015

Wife appealed the trial court's judgment regarding the assignment of Husband's closely-held corporation accounts as non-marital property, her award of temporary maintenance, her obligation to pay college expenses and the denial of her request for discovery sanctions.

The parties were in their late fifties and married 28 years. Wife was a homemaker for most of the marriage and Husband was a civil engineer for a family construction company. Wife had a high school education, and the parties had one college-age child. Husband received shares of stock in a closely-held family construction company as gifts from his parents. The parties lived

*Rule 23(e)(1) decision

a lavish lifestyle funded primarily by corporate distributions Husband received based upon his gifted stock shares. Throughout the marriage Husband would withdraw retained earnings in one corporate account and place them in other accounts that had Wife's name on them. In its judgment the trial court classified the stock shares and Husband's investment accounts as non-marital property. On appeal, Wife argued that Husband's portion of the retained earnings and his distributions from the investment accounts should be classified as marital property because they were attributable to his personal efforts in managing the family company. However, the appellate court disagreed and found Husband was gifted the stock, which was a fully developed asset that did not expand or increase due to Husband's efforts.

The trial court awarded Wife $650 a month in maintenance with a possible termination date in as early as five years. The appellate court found that the trial court abused its discretion in ordering only rehabilitative maintenance at such a small amount given the length of the marriage, Wife's age and devotion to domestic duties and the fact that Husband was awarded $1.2 million in non-marital assets. Accordingly, the appellate court reversed and remanded for recalculation of a just award of permanent maintenance.

The trial court awarded the parties' daughter her college fund accounts but did not make any provisions for the daughter once those accounts were exhausted. The appellate court found the trial court failed to consider the vast discrepancy in the parties' incomes and assets in denying post majority educational support. Accordingly, the appellate court remanded the case for the trial court to determine and award an appropriate amount of post majority support for the daughter.

Finally, the trial court denied Wife's motions against Husband for discovery abuse. The appellate court agreed Wife had incurred substantial attorney fees in attempting to obtain documents that should have been turned over immediately in discovery. Husband turned over hundreds of pages of documents immediately before the trial setting. Nevertheless, the appellate court deferred to the trial court's discretion and found that it was not an abuse of discretion to deny discovery sanctions given Husband's conduct.

See also **CIVIL UNION,** *In re Civil Union of Hamlin and Vasconcellos*, 2015 WL 4397699 (Ill.App. 2 Dist.), July 17, 2015*

See also **MAINTENANCE,** *In re Marriage of Shen*, 2015 WL 130733 (Ill.App. 1 Dist.), June 30, 2015

REMOVAL

In re Marriage of Bushert, 2015 WL 3903112 (Ill.App. 4 Dist.), June 24, 2015*

Mother and Father had three minor children and divorced in 2012. After the parties separated, they lived within a few blocks from each other, and Father regularly exercised his visitation of every other weekend as well as visitation mid-week. In 2014, Mother petitioned to remove the two remaining minor children (ages 6 and 10) to Wisconsin, arguing that her life and the children's lives would be improved since her new Husband lives in Wisconsin and she has extended family there. However, the Guardian ad Litem recommended against the removal, finding that the children lived in Illinois their entire lives, attended the same schools, had the same friends and both parents lived near each other. The Guardian ad Litem also found that Mother's quality of life would be enhanced by moving to Wisconsin to live with her new Husband, but the children's quality of life would not be enhanced other than their Mother being happier. While Mother proposed every other weekend visitation and longer summer visitation for Father, this schedule would require six hours of car travel each way, and the extended summer visitation was not feasible given Father's work schedule. The evidence also revealed that there

*Rule 23(e)(1) decision

was not much difference in the school districts, the housing or the neighborhoods between Illinois and Wisconsin. Additionally, the evidence showed that Father has a close relationship with the children and losing the midweek visitation would significantly affect his interaction with the children. Thus, the trial court found that Mother failed to establish removal of the minors to Wisconsin was in their best interest, and the appellate court found that this was not against the manifest weight of the evidence.

In re Marriage of Gowan, 2015 WL 1516547 (Ill.App. 3 Dist.), April 3, 2015*

The Husband appealed from the trial court's order allowing the removal of the minor children to Iowa. The appellate court found that the trial court's removal order was not against the manifest weight of the evidence.

The court found that the trial court properly weighed each of the *Eckert* factors. The court found that removal would enhance the quality of life for the parties' children as they were moving from a three-bedroom apartment above an auto parts store to a four-bedroom home with a backyard. Further, the children would be living with their soon to be step-father and step-siblings, their home would be located in a family neighborhood that was close to the school, and the children had established friendships in the community. Further, the distance was not so onerous as to prevent a reasonable visitation schedule. The children were moving approximately 45 minutes away from the Husband.

In re Marriage of Grasse, 2014 WL 7466099 (Ill.App. 3 Dist.), Dec. 30, 2014

The Husband appealed from the judgment of the circuit court granting the Wife's petition for removal. Wife moved from Florida to Illinois after the Husband was incarcerated. She then divorced the Husband and became employed as a teacher. The children's grandparents have been helping her raise the children and have helped to financially support the family. As the children are older, they testified *in camera.* All three children stated that they did not want to move as they would miss their school, family, and friends. The appellate court found that the trial court did not consider the paramount question presented in a removal case: whether removal is in the best interest of the children. It is clear that the trial court also failed to apply the statutory factors in reviewing the removal case. The appellate court found that the trial court granted the petition solely because it found that the removal would not interfere with the Husband's visitation rights (he didn't have any while he was incarcerated.) Therefore, the case was reversed and remanded.

Hedrich v. Mack, 2015 WL 141126 (Ill.App 2 Dist.), Feb. 17, 2015

Father appealed from the decision to allow Mother to remove the minor child from the State of Illinois before a paternity action had been filed. Father filed an emergency petition for injunctive relief four days after Mother removed the child. The trial court granted Father's motion, finding that section 13.5 of the Parentage Act did not apply once the minor child had been removed, stating "the only right that could be protected by 13.5 is the right to enjoin removal, not to return a child when there was no case pending." The appellate court reasoned that forcing the Father to have filed a petition before the child was removed would be against the statutory intent of Section 13.5, and that 13.5 was the only way the court was able to order the return of a minor child in situations where the parents were never married and no proceedings whatsoever existed prior to the custodial parent leaving the state with the minor child. Therefore, the appellate court reversed and remanded the decision with directions.

In re Marriage of Johnston, 2015 WL 140919-U (Ill.App 2 Dist.), Feb. 10, 2015*

Wife petitioned the trial court for removal and was denied. The appellate court affirmed the decision. The appellate court closely examined how the trial court analyzed the *Eckhart* factors,

*Rule 23(e)(1) decision

and specifically looked at the motives of each parent in how they viewed what was in the children's' best interest. The Wife was not forthcoming with her specific future plans with the children during a deposition and with conversations before trial with the Guardian *ad litem*. Although the court did not find this tantamount to improper motive, it was questionable. Wife was planning on marrying her fiancé who lived out of state and the benefit of her happiness did not outweigh the costs to the children. After discussing the motives of both parties, relying on the Guardian *ad litem's* recommendations after interviews with the children, examining both locations and the benefits thereof, and looking at how a new parenting schedule might affect the children, the court found that denying the petition for removal was not against the manifest weight of the evidence.

In re Marriage of Krol and Kubala, 2015 WL 895230 (Ill.App. 1 Dist.), March 2, 2015

The Wife appealed the trial court's ruling that Poland was the habitual residence of the child pursuant to the Hague Convention and the order for the child to be immediately returned to Poland after she had filed a motion to voluntarily dismiss her petition for dissolution of marriage. The appellate court affirmed the trial court's ruling.

Here, the Wife and Husband were married and had a child in Poland. Prior to the Husband filing a petition for dissolution of their marriage in Poland, the Wife traveled with the child to the United States. While in the United States, the Wife filed a petition for dissolution of marriage. The Husband filed a "request for return" of the child pursuant to the Hague Convention, and the trial court found that Poland was the habitual residence of the minor child and due to the wrongful removal of the child by the Wife, the minor child should be returned to Poland. Following this order, the Wife filed a motion for voluntary dismissal of her petition for dissolution and a motion to reconsider. The Wife appealed arguing that the trial court improperly allowed the Husband's Hague petition to "stand alone" after the voluntary dismissal of the petition for dissolution of marriage, that the courts orders after dismissal were void *ab initi,* that a substantial change in circumstances had occurred, and the child should have remained in the U.S.

The appellate court affirmed the trial court's order finding that a Hague petition is an independent action and that the International Child Abduction Remedies Act provides original and concurrent jurisdiction to trial courts to hear Hague petitions, separate from any underlying complaint. The appellate court also considered the goal of promptly returning children wrongfully removed and preventing parents who remove children from forum shopping. As a result of the trial court's original and concurrent jurisdiction over the Hague petition, all orders entered after the underlying petition for dissolution was voluntarily dismissed were not void *ab initio*. Finally, the appellate court found that any substantial change in circumstances that might warrant an order for the child to stay within the United States were due to the Wife's failure to comply with court orders and that such a defense to the return of the child did not exist within the legislative terms of the Hague Convention. In sum, the appellate court affirmed the decision of the trial court.

Pate v. Sochotsky, 2015 WL 140835-U (Ill.App. 4 Dist.), Feb. 5, 2015*

Father appealed the trial court's decision allowing Mother to move the minor child out of state after her new husband received a promotion at work outside of Illinois. In going through the *Eckhart* factors, the appellate court reasoned that the trial court viewed the improvement of the financial situation of the parties based on speculation, neglecting to take into consideration additional travel expenses with the new visitation schedule. The trial court abused its discretion when allowing either party's' testimony regarding the quality of the schools in either area. Father had always diligently exercised his visitation rights and the new schedule would reduce his visitation time with the minor child by 35%. The Mother did not meet the burden proving by the

*Rule 23(e)(1) decision

manifest weight of the evidence standard that the move would enhance the minor child's quality of life. Therefore, the appellate court reversed the decision granting the residential parent permission to remove the child.

In re Marriage of Soulon, 2015 WL 140453-U (Ill.App 5 Dist.), Feb. 17, 2015*

Wife appealed that the court's ruling that it did not have subject matter jurisdiction over an agreed joint parenting agreement, which was incorporated into their dissolution of marriage, allowing for her son to live with the Husband out of state. This was predicated on the fact that no formal removal petition was before the court when the agreement was entered. In the alternative, she pled that she was coerced or misled by counsel into taking the agreement and therefore it should be voided. The law does not support Wife's argument that the trial court erred in approving the parties' agreement, as the courts promote post decree settlement agreements. The parties here agreed to the removal of their child, creating an unrefuted presumption that removal was in the child's best interests. By seeking the court's approval for the stipulated agreement, the parties invoked the trial court's subject matter jurisdiction. Finally, the appellate court viewed the transcript in pertinent part where Wife was specifically asked if she was satisfied with the services of her counsel, to which she responded, "yes." Finding no facts in the record to support her claim that she was coerced into entering into the agreement, the appellate court affirmed the decision.

In re Marriage of Tedrick, 2015 WL 377050 (Ill.App. 4 Dist.), Jan. 29, 2015

The appellate court reversed and remanded the trial court's denial of a petition for removal filed by the Wife, who had previously been awarded residential custody of the child, and found the trial court's decision was against the manifest weight of the evidence.

Here, the appellate court found that the motivation for the removal was not dubious and instead resulted in a better job for Wife, positively impacted the Wife's health, increased time spent between the child and the Wife, and increased support of the Wife's immediate family. Further, the Wife made considerable effort to facilitate continued contact between the Husband and the child. The appellate court held that concerns related to the child traveling alone via airplane was not a sufficient reason to deny removal, based upon the fact that the child was accompanied by both parents to the departure and arrival gates, was in the care and custody of flight attendants during the flight, had traveled alone at least two times by the time of the hearing before the trial court, and the child had not expressed concerns about traveling alone. The appellate court found that the Husband had not diligently exercised his visitation rights as he had not opted to use two weeks of summer time with the child in 2013 and in 2014, and he sent the child to his Wife's daycare from Monday through Friday during both weeks. The appellate court found that adjusting the parenting schedule to make the Husband's visitation less frequent but for longer periods of time, particularly in the summer, would not negatively affect the Husband's relationship with the child. In sum, the appellate court reversed the trial court's judgment and remanded the case for the trial court to create a new visitation schedule.

In re T.R.M., 2015 WL 2170037 (Ill.App. 4 Dist.), May 6, 2015*

In a previous appeal, the appellate court affirmed the trial court's suspension of all contact between Father and child, finding that any further contact would seriously endanger child based on numerous allegations of profanity, threats, and emotional and sexual abuse by Father. The trial court initially ordered supervised visits, but child's condition deteriorated as the supervised visitation continued, with child becoming angry, aggressive, anxious and depressed to the point of becoming suicidal.

*Rule 23(e)(1) decision

Mother filed petition to remove the child to California. At the removal trial, three experts – the child's treating psychologist, physician and psychiatrist – all testified that there was no evidence of parental alienation by Mother and that the child suffered from post traumatic stress disorder based on Father's conduct toward the child. The child's clinical psychologist testified that the child's continued difficulties were the direct result of relentless psychological and emotional abuse by the father during the supervised visits. Father represented himself during the removal trial and repeatedly interrupted witnesses with improper objections and commentary, despite numerous admonitions and the threat of contempt by the trial court. Father called only one witness, a sexual abuse evaluator, but he was not able to elicit more than a single opinion from her since he could not lay a proper foundation. In his closing argument, Father could only make arguments based on evidence not within the record. Nevertheless, the trial court denied the petition for removal, finding that Mother and her family engaged in disparaging and inappropriate comments about Father that caused severe damage to the child's psyche. In applying the *Eckert* factors, the trial court expressed concern over Father's visitation rights and that Father should have a healthy and close relationship with the child. The trial court also found Mother's motives in seeking the removal were a calculated move to "further sabotage" the child's relationship with Father.

The appellate court applied the *Eckert* factors and found that the evidence overwhelming favored removal of the child to California. First, undisputed evidence from all three of the child's treating doctors showed that removal would directly benefit the child and Mother by removing the child from the threats of Father. Second, in considering Mother's motives for seeking removal, the appellate court found no evidence of coaching or disparagement by Mother or her family and no attempt to sabotage Father's visitation rights. More importantly, there was no ongoing visitation to sabotage anyway since the trial court had already suspended Father's visitation due to his refusal to abide by any supervised visitation guidelines. Third, in considering Father's motives in opposing removal, the appellate court found that Father did not have a healthy relationship with the child and his inability to control himself harmed the child. Fourth, the appellate court found that removal would not have an impact on visitation because Father currently has no visitation. Finally, the appellate court found that the fifth factor of whether a realistic and reasonable visitation schedule could be worked out is basically irrelevant at this time considering the complete suspension of Father's visitation.

Accordingly, the appellate court reversed the trial court's denial of Mother's petition to remove the parties' minor child to California.

See also **CUSTODY,** *Grant v. Huskins*, 2015 WL 1407878 (Ill.App. 3 Dist.), March 26, 2015*

See also **CUSTODY**, *In re Marriage of Tamburo,* 2015 WL 1482580 (Ill.App. 2 Dist.), March 31, 2015*

RES JUDICATA

In re Marriage of Carter, 2015 WL 224025 (Ill.App. 4 Dist.), Jan 15, 2015

On appeal, the Husband appealed from the trial court's order granting the petition to remove the minor children. The Husband claimed that the issue was barred by the doctrine of *res judicata*.

The appellate court found that the Wife did file an earlier petition for removal and that petition was denied. The appellate court further found that the Wife's later petition for removal, which was granted, was in fact different from the original petition as it alleged additional facts. For example, the newer petition alleged that the Husband had lost his job and was not able to pay child support, that she had remarried, that her living situation in Illinois had changed, and that

*Rule 23(e)(1) decision

she would be teaching in the same school district that the children would be attending. Therefore, the appellate court affirmed the decision of the trial court.

RETIREMENT ACCOUNTS

In re Marriage of Branit, 2015 WL 5360757 (Ill.App. 1 Dist.), Sept. 14, 2015

The appellate court held that Husband's funds in an inherited Individual Retirement Account (IRA) were not exempt from Wife's collection to recover an award of contribution and attorney's fees entered against Husband. Wife filed three citations to discover assets to the custodians and trustee of Husband's inherited IRA. Husband argued that the funds in his inherited IRA were exempt from collection pursuant to section 12-1006 of the Code of Civil Procedure, but the appellate court found that this exemption applied to interests in retirement plans held by debtors subject to bankruptcy proceedings. Furthermore, the appellate court found that inherited IRAs have literally nothing to do with "retirement" because once a retirement account becomes inherited the beneficiary can use it as a discretionary fund no different from a checking account. Additionally, the appellate court found that Husband's inherited IRA was not intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986, particularly Section 408, which specifically distinguishes an "IRA" from an "inherited IRA." Finally, the appellate court ruled that Wife could not obtain relief under the Income Withholding for Support Act because she failed to serve a trustee or custodian of Husband's inherited IRA with an income withholding notice.

RIGHT TO FAIR TRIAL

See also **ATTORNEY FEES,** *In re Marriage of Cicinelli*, 2015 WL 8528005 (Ill.App. 2 Dist.), Dec. 10, 2015*

RULE 137 SANCTIONS

In re Marriage of Pappas, 2015 WL 4716169 (Ill.App. 1 Dist.), Aug. 7, 2015*

During the divorce proceedings, Husband's attorney issued subpoenas for deposition and documents to Wife's paramour and the mother of Wife's paramour. After a hearing on a motion to quash these subpoenas, the circuit court granted the motions to quash in part by striking the broader requests for "all correspondence" between the parties. Six months after the issuance of the subpoenas, one of Husband's attorneys sent a profane text message denigrating Wife's paramour and the mother of Wife's paramour. Wife then filed a Rule 137 motion for sanctions, claiming that this text message demonstrated that the subpoenas sent six months earlier were issued only to embarrass Wife's paramour about the affair. However, the circuit court denied the motion, finding that Rule 137 requires that an attorney take responsibility for her filings, but the attorney here who sent the text message was not the attorney who signed the subpoenas. Also, the circuit court reasoned that the fact that something occurred six months later does not retroactively apply to the reasonableness standard at the time the subpoenas were issued.
On appeal, Wife's only claim is that the circuit court erred in not holding an evidentiary hearing on the motion for Rule 137 motion for sanctions. The appellate court noted that Rule 137 is intended to prevent counsel from making assertions of fact or law without support, and the standard for evaluating this conduct is reasonableness under the circumstances existing at the time the motion was filed. The appellate court concluded that the circuit court does not engage in hindsight, and the fact that something occurred six months later does not retroactively apply to the reasonableness standard at the time the subpoenas were issued. Furthermore, the

*Rule 23(e)(1) decision

appellate court found that the record reflected that the subpoenas were objectively reasonable at the time they were signed because neither party disputed that Wife was involved in an affair and it was reasonable to inquire whether Wife had been receiving money from her paramour or his mother. Finally, it was reasonable for Husband to request information through his subpoenas relating to the interactions between Wife's paramour and the parties' children because custody was at issue and evidence bearing on the stability of the children's environment is relevant.

SOCIAL SECURITY

In re Marriage of Mueller, 2015 WL 3777955 (Ill.), June 18, 2015

The Supreme Court affirmed the circuit court and appellate court decisions that failed to consider Social Security benefits when determining property distribution under section 503(d) of the Illinois Marriage and Dissolution of Marriage Act.

Here, the court determined that a spouse who participated as a police officer in a pension program instead of Social Security did not need to be placed in the same position financially as the other spouse who participated in social security. Husband presented testimony from a representative from Equitable Solutions, a "self-described pre-divorce planning business," and a prepared report of his total pension benefits and the value of what he would have received in Social Security if he were to have participated. Husband argued that Wife should receive a reduced portion of his pension because Husband would not be receiving Social Security income since he was a non-participant, while the Wife would receive Social Security income in addition to the awarded portion of his pension. The court found that Social Security benefits are exempt by federal law from equitable distribution pursuant to the Illinois Marriage and Dissolution of Marriage Act. The court had previously rejected an offset approach to Social Security to equalize property distribution in divorce where the monetary value of one spouse's Social Security benefits that would be received are taken from that spouse and given to the other spouse to compensate in the division of property. The Court rejected Husband's valuation method because it considered the existence of Wife's anticipated Social Security benefits in determining an award of Husband's pension, which relied on speculation and a non-contractual interest in Social Security.

In re Marriage of Roberts, 2015 WL 3439284 (Ill.App. 3 Dist.), May 29, 2015*

The parties had three children, all emancipated adults at the time of trial. Wife was 62 years old and working as a middle school teacher, while Husband was 61 years old and receiving $2,386 per month in disability benefits after having worked as a pharmacist for 35 years. When Wife retires, her Teachers' Retirement System pension would pay her $2,056 per month, while her Social Security income would be only $282 per month. At trial, Wife requested that her Teachers' Retirement System pension be awarded solely to her and that all of the parties' other retirement accounts be equally divided. However, the trial court ruled that all of the parties' retirement accounts, which had a value of over $300,000, should be equally divided between the parties. Wife filed a motion to reconsider, arguing that according to the trial court's equal division of all of the retirement accounts, Wife will receive $1,310 per month from her Teachers' Retirement System pension and Social Security, while Husband will receive $3,414.90 from half the Wife's Teachers' Retirement System pension and his full Social Security disability payments.

*Rule 23(e)(1) decision

The trial court denied Wife's motion to reconsider. On appeal, Wife argued that the trial court should have awarded her entire pension to her to equalize the parties' incomes after she retires. The appellate court agreed and found that the trial court abused its discretion by awarding Husband one-half of Wife's Teachers' Retirement System pension. The appellate court noted that while most other states permit a trial court to consider a spouse's current or anticipated Social Security benefits in making an equitable distribution of marital assets, Illinois prohibits courts from considering Social Security benefits when dividing marital property. The appellate court here, however, found that a different rule should apply in cases such as this when one party is receiving Social Security benefits and the other party participated in a pension system in lieu of Social Security. The appellate court reasoned that since individuals receiving Social Security enjoy an exemption of those benefits from equitable distribution, individuals participating in a pension system in lieu of Social Security should be treated in the same way. Otherwise, an equitable result will occur such as the case here where Husband received more than twice what Wife was awarded in retirement benefits.

On remand, the trial court must determine the value of the Social Security benefits Wife would have received if she had participated in Social Security instead of Teachers' Retirement System. The trial court must then grant Wife that portion of her pension equal to what she would have received under Social Security. The portion of Wife's pension that *exceeds* the value of what she would have received under Social Security would then be subject to equitable distribution.

STANDING

In re Visitation of J.T.H., 2015 WL 5693043, (Ill.App. 1 Dist.), Sept. 28, 2015

The biological Mother's former, same sex partner brought an action to seek visitation with the Mother's child. The trial court dismissed the visitation action, and the appellate court affirmed the decision of the trial court.

The parties were in a relationship from 2002 to 2006 and again from 2006 to 2009. During their brief break up in 2006, the biological Mother became pregnant. The parties reconciled and the partner attended all doctor's appointments and the birth of the child. The parties lived together and shared in the caretaking responsibilities. In 2009, the relationship ended and the partner moved from the residence. However, she continued to care for the child for a few hours on a daily basis, had parenting time every other weekend and spent holidays with the child. In 2013, the parties discussed adoption, but agreed to wait until they had more money. In January of 2014, the biological Mother informed the partner that she no longer wanted the partner to have parenting time with the child. The partner filed her motion and alleged that based on her intent to adopt and her parent-child relationship, she had standing to seek visitation with the child under the equitable adoption doctrine.

The court found that the Illinois Supreme Court has definitively held that the equitable adoption doctrine is a probate concept to determine inheritance and does not apply to parentage, child custody or visitation proceedings. Further, even though the partner had been a part of the child's life for seven years and there was a long-standing parenting agreement, there was never a consent agreement entered by the court.

*Rule 23(e)(1) decision

SUBSTITUTION OF JUDGE

In re Marriage of Hamlin, 2015 WL 4550246 (Ill.App. 1 Dist.), July 28, 2015*

The appellate court reversed the trial court's denial of Wife's motion for substitution of judge, holding that a judge setting a briefing scheduled is not a "substantial ruling" that would preclude a litigant from seeking a substitution of judge as a matter of right. The parties divorced in 2009, and a new post-decree judge heard the matter in 2010 on Husband's emergency motion for relief. However, the judge's order simply declared the matter was not an emergency and set a briefing schedule. Wife then filed a timely motion for substitution of judge as a matter or right, but the judge denied it. Once a final order was entered three years later, Wife filed a timely notice of appeal of all previous orders entered by the trial judge. The appellate court found that since a new post-decree judge was assigned to the case and a trial or hearing had not yet commenced with any substantial ruling, Wife was entitled to a new judge as a matter of right. Accordingly, the appellate court reversed the trial court's denial of Wife's motion for substitution and voided every order entered in the three years after the denial of Wife's motion.

See also **CHILD CUSTODY,** *In re Marriage of Krier,* 2015 WL 2232013 (Ill.App. 3 Dist.), May 27, 2015*

TERMINATION OF PARENTAL RIGHTS

In re M.E., 2015 WL 8466927 (Ill.App. 3 Dist.), Dec. 8, 2015*

Mother appealed the trial court's order that terminated her parental rights, arguing the trial court's finding that she was unfit was against the manifest weight of the evidence.

Mother had three children with three separate fathers, one of whom was Mother's own Father. The State filed petitions alleging the three minors were neglected and the trial court also found the minors to be neglected. After a dispositional hearing, Mother and the three Fathers were found to be unfit parents. Thereafter, the State filed petitions to terminate the parental rights of Mother. The trial court heard evidence from a clinical psychologist, Court Appointed Special Advocate, therapist and caseworker who all testified that Mother was unable to properly parent the children. Furthermore, Mother had an I.Q. of 61, was developmentally at a third grade level and failed to make any progress toward the return of the minors during the nine-month period after they were adjudicated as neglected. Thus, the appellate court found that that the State proved by clear and convincing evidence that Mother was unable to discharge her parental responsibilities and that inability would extend beyond a reasonable time period. Accordingly, the appellate court affirmed the trial court's termination of Mother's parental rights as to the three minors.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

See also **CUSTODY,** *Gorup v. Brady*, 2015 WL 8601028 (Ill.App. 5 Dist.), Dec. 11, 2015 (May be changed or corrected pending petition for rehearing).

VENUE

See also **CHILD SUPPORT,** *In re Marriage of Barbre,* 2015 WL 3440267 (Ill.App. 5 Dist.), May 27, 2015

*Rule 23(e)(1) decision