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FAMILY LAW CASE UPDATES
MEGA MEETING ---JANUARY 30, 2010

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ABATEMENT OF CHILD SUPPORT OBLIGATION

In re Marriage of Reimer, -- N.E.2d ---, 2009 WL 160915 (Ill. App. 3 Dist.) January 14, 2009

The Petitioner, Lorianne Reimer, was ordered to pay the Respondent, Thomas Reimer, child support arrearages in the amount of $59,299.42 and attorneys fees in the amount of $1,775.00. Lorianne appeals under the doctrines of equitable estoppel and laches and further contends that the trial court erred in relying upon Rule 296(f).

On October 20, 1992, the Petitioner was ordered to pay the Respondent $85 per week in child support. On March 2, 1994, an order was entered abating Petitioner's obligation to pay child support to the Respondent due to unemployment. In 2006, the Respondent filed a pro se pleading seeking to collect child support arrearages owed pursuant to the October 20, 1992 order. Said petition was granted as the trial court applied Rule 296(f) to a six month limitation on an abatement order.

Under Rule 296(n), this Rule is clearly only applicable "in counties in which both the chief circuit judge and the clerk of the circuit court have agreed to undertake the experimental use of the procedures contained herein, and have jointly sought the Court's permission to do so by filing a petition with the Administrative Director." Because Will County had not adopted Rule 296 and it was not in effect at the time the abatement order was entered, nor at the time the Respondent filed his pro se motion, the appellate court held that the trial court erred in relying on said Rule.

The appellate court refrained from taking any position on whether the doctrines of equitable estoppel or laches bar the Respondent's claim. Remanded with instructions to conduct a hearing to determine what, if any, effect the March, 1994, abatement order had upon the support order entered in October, 1992, absent any consideration of Rule 296.

ATTORNEY'S FEES

In re: Marriage of Haken, -- N.E.2d ---, 2009 WL 2903569 (Ill. App. 4 Dist.) September 8, 2009

When a party is seeking interim attorneys' fees under 750 ILCS 5/501(c-1), the party must allege and prove an inability to pay his or her own fees and the ability of the other party to pay. However, inability to pay fees is not a prerequisite for a discretionary award of attorneys' fees to a party seeking contribution to his or her fees under 750 ILCS 5/503(j). Rather, the court looks to the property division and maintenance factors and may also consider whether a party needlessly increased the cost of litigation in awarding fees.

In *Haken*, the court did not abuse its discretion in ordering the husband to pay a portion of the wife's fees due to his needlessly increasing the cost of litigation by retaining an

expert forensic psychiatrist, whom he paid over $71,000, as well as a licensed clinical psychologist, whom he paid over $15,000, and then settled without using the experts.

In re Marriage of Harrison, -- N.E.2d ---, 2009 WL 222677 (Ill. App. 1 Dist.) January 28, 2009

The Respondent, James Harrison, Jr., filed a petition to transfer custody of the parties' youngest daughter, Jenna, from the Petitioner to himself. After a hearing, the court found that the Respondent had taken actions to alienate the child from the Petitioner and his petition was denied. The Petitioner filed a petition for attorney fees and costs which was denied. The Petitioner appeals asserting the circuit court abused its discretion denying her petition for attorneys' fees and costs.

The circuit court order denying the Petitioner's petition for attorneys' fees was issued pursuant to 750 ILCS 5/508(b) and 610(c) where the court did not find James' filing of the petition to be vexatious nor did it constitute harassment. James had filed two prior petitions where he obtained custody of the parties' two older children and further, the court's appointed expert agreed with James' request that the child be permitted to reside with James during high school and that he be named residential parent. Considering all of the surrounding circumstances, the court could not find an objective basis to conclude that James' petition was vexatious or constituted harassment. Further, nothing in these sections require the court to consider James' prior involvement with the court regarding the parties' children or visitation, but the court should, and did, caution James against repeated attempts at modification which would be found to be vexatious and to constitute harassment. The appellate court held that there was no abuse of discretion by the circuit court and affirmed the judgment.

Kasny v. Coonen and Roth, Ltd., -- N.E.2d ---, No. 2-08-0220 (Ill. App. 2 Dist.) November 13, 2009.

Client's default judgment for failure to appear in small claims collection action for fees from divorce, filed by his former attorney, did not preclude him under res judicata from suing law firm for legal malpractice related to divorce.

CHILD REPRESENTATIVE

In re Marriage of Bhati and Singh, -- N.E.2d ----, 2009 WL 4893300 (Ill. App. 1 Dist.) December 15, 2009

Trial court did not err in refusing to strike child representative's closing statement in which child representative asked the court to deny the removal petition. Closing statement was based upon inferences from testimony presented, and even if statements were inappropriate, no prejudice resulted.

CHILD SUPPORT

Illinois Department of Healthcare and Family Services ex rel. Black v. Bartholomew, --- N.E.2d ---, 2009 WL 4757079 (Ill. App. 4 Dist.) December 8, 2009

Workers' compensation benefits are not exempt from judgment of child support arrearages. Even though the Worker's Compensation Act, 820 ILCS 305/21 (West 2008), prohibits worker's compensation award from being "held liable in any way for any lien, debt, penalty or arrearages", section 15(d) the Income Withholding for Support Act, 750 ILCS 28/15(d) (West 2008), defines income to include workers' compensation. As a result, the provisions of 15(d) of the Income Withholding for Support Act override conflicting provisions of the Worker's Compensation Act.

Illinois Department of Healthcare and Family Services ex rel. Wiszowaty v. Wiszowaty, --- N.E.2d ---, 2009 WL 2581709 (Ill. App. 1 Dist.) August 14, 2009

Interest on child support arrearages incurred prior to the January 1, 2000 amendment to section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505) is discretionary. In so deciding, the appellate court considered numerous decisions that characterized divorce proceedings as chancery proceedings, in which the award of interest is discretionary.

In re Marriage of Davenport, -- N.E.2d ---, 2009 WL 503469 (Ill.App. 2 Dist.) February 27, 2009.

In the parties' 1972 divorce judgment, the Respondent was ordered to pay child support for the parties' three minor children. In 1979 the Respondent was found in contempt for failure to meet his child support obligation, and in 1981, the Respondent's support account had a positive balance of $1,261. On August 30, 2007, the Petitioner filed an emergency petition for injunctive relief alleging the Respondent had accrued an arrearage in his child support obligation since the 1979 contempt order and seeking the court to prevent the Respondent from dissipating his proceeds from his brother's sale of family property. The trial court entered a preliminary injunction against the Respondent. The Respondent filed a motion to vacate the preliminary injunction against him which was denied. The Respondent appealed asserting that the trial court erred in denying his motion based upon the criterion of an award of a preliminary injunction, the statute of limitations and a refusal of the trial court to apply the doctrine of laches.

The appellate court held that the Petitioner had a clearly ascertainable right in need of protection, she would suffer irreparable injury without the injunction and her eventual success on the merits was evident from the trial court's eventual judgment in her favor on the child support issue. Further, the appellate court held that statutory amendments that modify procedural laws may be applied retroactively; therefore, the 1997 amendment to the statute of limitations governing enforcement of child support orders was correctly applied to this case. Lastly, the appellate court held that the decision as

to whether to apply laches to a case is within the discretion of the trial court, and they would not disturb that decision absent an abuse of discretion.

In re Marriage of Sanfratello, --- *N.E.2d.* ---, 2009 WL 2357093 (Ill. App. 1 Dist.) July 27, 2009

Husband was ordered to pay child support in the amount of $3,446 per month based on an imputed annual income of $130,000, and husband was also ordered to pay the three children's full parochial school tuition. There was uncontested evidence that the husband had a steady flow of cash available to him at all times, far above his represented income, and further, the parties used cash in several of their transactions during the marriage. The appellate court held that the train court may draw inferences from the evidence that a party earns substantially more than their declared income in setting child support. In coming to this conclusion, the appellate court looked to 750 ILCS 5/505(a)(5) and determined that the amount was reasonable when the husband's net income could not be determined in accordance with statute.

CONFIDENTIALITY ACT

In re Marriage of Slomka, --- N.E.2d ----, 2009 WL 5125246 (Ill. App. 1 Dist.) December 23, 2009

Father sought preliminary injunction to enjoin mother from taking children to therapy with psychologist who testified on behalf of mother in hearing on mother's emergency petition for order of protection. Father also claimed that psychologist's testimony violated the Illinois Mental Health and Developmental Disabilities Confidentiality Act ("Confidentiality Act"), 740 ILCS 110/1 *et seq.* (West 2006), in that father did not waive privilege under the Act.

With regard to father's allegation that the psychologist violated the Confidentiality Act, the appellate court found that while father was a "recipient" within the meaning of the statute, the privilege must be asserted by either the patient or therapist or it is waived. Because father failed to assert the privilege at trial, he waived his right to invoke the privilege. The appellate court also found that the trial court acted appropriately in denying the preliminary injunction, in that his request would have changed the status quo of the parties and he presented no factual basis for his allegation of irreparable harm.

Johnston v. Weil, -- N.E.2d ----, 2009 WL 4547844 (Ill. App. 1 Dist.) December 2, 2009

Evaluations, communications and related information obtained pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act are not confidential where the 604(b) witness is a mental health care provider. The purpose of section 604(b) is to make information available to the court; the expert is therefore the court's witness. Consequently, the therapist is an evaluator whose client is the court, not the parties. Further, plaintiffs were aware from the beginning of the 604(b) appointment that the

evaluator would relate her findings and conclusions to the court and the parties. The Confidentiality Act specifically exempts confidentiality as to such disclosures. 740 ILCS 110/10(a)(4) (West 2006). court's written order appointmin

CONTEMPT

***In re Marriage of Samuel*, --N.E.2d ---, 2009 WL 2992573 (Ill. App. 4 Dist.) September 16, 2009**

When a court made an attorney apologize for having made a false statement about how he obtained the judge's calendar book, the "punishment" was coercive and thus amounted to a finding of indirect civil contempt (not criminal contempt).

CONTRIBUTION TO EDUCATIONAL EXPENSES

***In re Marriage of Baumgartner*,** -- N.E.2d ---, No. 01-08-2820 (Ill. App. 1 Dist.) July 20, 2009

This case presents question as to whether trial court properly terminated father's obligation to contribute to his son's educational expenses where 20-year-old son was incarcerated and would, upon release, be prohibited from being in vicinity of any public or private school due to his status as sex offender. Appellate Court, in reversing trial court order, found that placement of son with Dept. of Corrections did not relieve parents of their obligation for support, and that son's incarceration was not self-emancipating event that would terminate father's obligation to contribute to son's educational expenses. (Dissent filed.)

DISSOLUTION OF MARRIAGE/FRAUD

***Minch v. George*,** -- N.E.2d ---, No. 1-08-1826 (Ill. App. 1 Dist.) October 30, 2009

Wife alleged fraud by former husband in not disclosing worth of stock, valued at $66,000 at time of settlement agreement, and 14 years later was valued at nearly $1 million. Wife failed to establish reasonable reliance, where she had access to several key documents and could have done further investigation and discovery worth of stock and had attorney review settlement agreement before signing; and failed to prove that husband intended to induce wife to agree to give him the stock.

FAILURE TO WITHHOLD AND REMIT CHILD SUPPORT FROM EMPLOYEE WAGES

***In re Marriage of Gula*,**--- N.E.2d. ---, 2009 WL 1578521 (Ill.) June 4, 2009

Judgment was entered against ex-husband for the lump sum of $123,140.63 for past due child support. The Court entered a Uniform Order for Support and a Notice to Withhold Income for Support was issued to Knobias, ex-husband's employer, directing

them to withhold $3,000 per month from ex-husband's pay until the Judgment was paid in full, effective immediately.

Husband's employer, Knobias, Inc., a Mississippi company, withheld 50% of ex-husband's paycheck, the maximum the company was allowed to withhold under Mississippi law. The company refused to withhold all of ex-husband's net monthly wages, totaling $2,244,16. Judgment was entered against Knobias for $7,854.56, the amount the company should have withheld, and additionally they were fined $369,000.

Under 750 ILCS 28/35(a) if a payor knowingly fails to withhold the property amount under the Order, they will be fined $100 per day per violation. Under Mississippi law, the payor is liable for no more than $500. Under the Uniform Interstate Family Support Act, an "employer who willfully fails to comply with an income-withholding order issued by another State and received for enforcement is subject to the same penalties that may be imposed for non-compliance with an order issued by a tribunal of this State". Therefore, the Mississippi company should have regarded the Income Withholding Order as though it had been issued from a Mississippi court.

The Supreme Court affirmed the appellate court's findings and the cause was remanded to the circuit court with directions to recalculate the penalty fee based on section 93-11-117(1) of the Mississippi Income Withholding Statute.

FITNESS, TERMINATION OF PARENTAL RIGHTS

In re Aaron R., -- N.E.2d ---, 2009 WL 294814 (Ill. App. 4 Dist.) January 30, 2009

The minor, Aaron R, was adjudicated a neglected child based on "lack of care" on January 21, 2005, and in March, 2005, a dispositional order was entered finding both parents unfit and placing Aaron in the custody of DCFS and under DCFS guardianship. Aarons' grandparents were given physical custody of Aaron. On April 23, 2007, Aaron's father filed a petition for the immediate return of Aaron to his custody. The State subsequently filed a petition for supplemental relief seeking Aaron be declared a neglected minor for additional reasons. On June 27, 2007, the court held an evidentiary hearing on the State's supplemental petition and found that the allegations were not proved by a preponderance of the evidence. The father's custody petition was granted.

On November 5, 2007, the grandparents filed petitions to intervene and to obtain custody of Aaron. The father subsequently filed a motion to dismiss based on a lack of standing as the court had already determined custody.

The appellate court held that the proceedings before the trial court did not satisfy the statutory requirements under 705 ILCS 405/2-31(2) or 2-28(4) when it did not take into consideration all of the statutory factors. Further, the proceedings on June 26, 2007 did not discharge wardship nor did it discharge the underlying DCFS guardianship and further, the evidence presented before the court did not support the court's findings. The trial court's judgment was reversed and remanded for further proceedings.

In re A.W., -- N.E.2d ---, 2010 WL 184084 (Ill. App. 3 Dist.) January 13, 2010

Mother's due process rights were not violated by the trial court's denial of her request to call A.W. to testify in the trial as to termination of her parental rights pursuant to section 1(D)(m)(ii) of the Adoption Act, 750 ILCS 50/1 *et seq.* (West 2008). Procedures attendant to termination of parental rights must comply with procedural due process, and the factors to be balanced in determining whether a deprivation of a parent's due process rights has occurred are: 1) the private interests affected by the state's action; 2) risk of an erroneous deprivation of that interest through the proceedings used, and the probable value of additional safeguards; and 3) the state's interest, including function involved and fiscal and administrative burdens that additional safeguards would entail. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The appellate court found that the risk that mother's risk of being erroneously deprived of her fundamental right to her child was minimal when balanced against the state's interest in preserving A.W.'s best interest.

In re Brandon A., -- N.E.2d ---, No. 5-08-0657 (Ill. App. 5 Dist.) October 15, 2009, corrected October 27, 2009

Court held that anytime after the entry of a dispositional order, the State is not limited as to when they can commence a termination proceeding. DCFS is mandated to request the State to commence these proceedings under particular circumstances as identified under 705 ILCs 405/2-13(4.5)(a). Brandon's mother was deceased, and his father had been incarcerated for over one half off Brandon's life. For the majority of his life, Brandon had been in his maternal grandmother's care. Grandmother sought to formally adopt Brandon. Father's parental rights would have to be terminated, and Father protested. When a parent is incarcerated and has been incarcerated for over one half of the child's life, that parent may be found to have been unable to provide that child with the "necessary emotional and financial support and stability required by a parent." Further, when that parent is not scheduled to be released until the child is 23 years of age, and the child has been in the consistent and dependable care of another where the child is flourishing emotionally, socially and academically under that person's care, it is in the best interest of the child to terminate the parental rights and to appoint DCFS as the guardian with consent to adoption.

With regard to hearsay, DCFS service plans were held to fall within an exception to the hearsay rule, specifically, it is a variation of the common-law "business records" exception. Further, testimony by social service counselors regarding statements made by the minor child were not introduced to prove the truth of the matter asserted, but rather they were introduced in order to show the child's state of mind. Therefore, the court ruled said statements to be "evidence of the child's 'state of mind and emotional state'" used by the expert for the purpose of explaining the bases of their opinions and therefore the hearsay rule was not implicated.

In re D.M., -- N.E.2d ---, No. 3-08-0976 (Ill. App. 3 Dist.) November 9, 2009

Parents appealed trial court's decision (1) to deny Respondent's motion for substitution of judge; (2) ordering Respondent to cooperate with any recommendations made as a result of a sex offender assessment; and (3) alleging court violated Respondent's equal protection rights by ordering them to obtain employment. The appellate court affirmed the three rulings made by the trial court.

In re I.B., -- N.E.2d ---, 2009 WL 5195952 (Ill. App.1 Dist.) September 30, 2009

It was not error for father to be found to be unfit pursuant to the Adoption Act, 750 ILCS 50/1 *et. seq.* (West 2008), despite his minority (father was 15 years old). Further, parent need not be allowed an opportunity to correct conditions that led to the removal of a minor pursuant to section 1(D)(e) of the Adoption Act, as that section lists statutory grounds which support a finding of unfitness; it does not list parental rights.

In re Jay. H., -- N.E.2d ---, No. 04-09-0460 (Ill. App. 4 Dist.) November 9, 2009

The State filed a Petition to terminate Mother's rights. Mother appealed arguing that the trial court erred by taking judicial notice of various documents at the best-interest hearing and that the court's findings were against the manifest weight of the evidence.

The court held that formal rules of evidence do not apply at best-interest hearings. The Adoption Act is structural equivalent of Juvenile Court Act; and a dispositional hearing under Juvenile Court Act and best-interest hearing under Adoption Act are functional equivalents, both subject to same relaxed standard for admission of evidence. There was no error to take judicial notice of documents including social-history report and positive drug-screen results as helpful for best-interest hearing.

In re J.C., -- N.E.2d ---, 2009 WL 5195950 (Ill. App. 3 Dist.) December 29, 2009

Previous findings of mother's unfitness may be relevant to mother's finding of unfitness as to child at issue, pursuant to the Juvenile Court Act, 705 ILCS 405/1-1 *et seq.* (West 2008). While it may not be evidence of *per se* neglect of another child, in this case, mother's status as unfit in prior cases supported a finding of anticipatory neglect. Per the unique facts of this case, the court found that it need not wait for child to be neglected in same manner as mother's other children before finding him to be neglected.

In re S.D., 917 N.E.2d 1044 (1st Dist. 2009)

On May 24, 1992, the court found that S.D. had been abused and neglected as a result of physical abuse by his mother's boyfriend. S.D. was placed in the foster care of a nonrelative, Emily Neely, and guardianship of DCFS. In 2000, S.D. was place in private guardianship of Ms. Neeley. In June 2007, S.D. was placed in the care of several relatives of Ms. Neeley due to his behavior problems and family problems. In October

2007, S.D. was staying with his mother. A modified dispositional order was entered with the court finding his mother to be fit, able and willing to parent S.D. In 2008, S.D. was charged with aggravated robbery and his mother could not handle his behavioral problems once he was released. The court found the independent basis to return S.D. to the custody of DCFS in the previous finding of neglect in 1992 and later modification of this order did not somehow erase the previous finding of neglect. Therefore, the trial court was within its statutory authority to place S.D. in the custody of DCFS where S.D.'s delinquency was independent from the basis of the court's custody decision.

GUARDIANSHIP/GUARDIANS AD LITEM

In re Estate of Pellico, 916 N.E.2d 45 (2d Dist. 2009)

Circuit courts are courts of general jurisdiction and their jurisdictional authority is not restricted by the Probate Act. Thus, courts have subject matter over trusts and over payment of fees for a temporary guardian and for a GAL. As the statutes requiring "special and limited appearance" has been replaced by a waiver provision, the party who filed the responsive pleading and represented himself as trustee has waived his objection to personal jurisdiction. The validity of an order awarding fees to a temporary guardian and GAL is not affected by a ward's death.

IMPUTED INCOME FOR CHILD SUPPORT

In re Marriage of Gosney, -- N.E.2d ---, No. 03-08-0718 (Ill. App. 3 Dist.) October 13, 2009

In this matter the trial court abused its discretion is imputing income to husband where at least one of three requisite conditions did not exist. In deciding whether to impute income to a payor of child support, the court must find at least one of three requisite conditions exist: (1) the payor is voluntarily unemployed; (2) he/she is attempting to evade a support obligation; or (3) he/she has unreasonably failed to take advantage of employment opportunity.

INCARCERATION NOT AN EMANCIPATION EVENT

In re Marriage of Baumgartner, --- N.E.2d. ---, 2009 WL 2169050 (Ill. App.1 Dist.) July 20, 2009

The marriage of the parties was dissolved in 1998. They had one child, who was 10 years old at that time. The Judgment for Dissolution stated that the parties would be responsible for post-high school education expenses for the child, conditioned on the parties' abilities and the child's desire and ability for higher education. Ex-husband filed a motion to amend the Judgment asserting that the child, who is now 20 years old, did not have the ability for higher education, stating that the child had been at the bottom of his high school, and had only attended one or two semesters at the community college since high school graduation. Further, the ex-husband stated the child did not have the

ability to attend an institution for higher education because the child was incarcerated with a projected release date of April 2009, and a release from parole in April 2010. Also, the child would be required to register as a sex offender and would be prohibited from being near any public park or public or private school. The trial court found the child's incarceration to be a full emancipation event.

The appellate court found no authority that would support the argument that incarceration is an emancipation event; therefore the trial court was reversed.

JURISDICTION/CHILD SUPPORT

Department of Healthcare and Family Service v. Heard, -- N.E.2d ---, 2009 WL 3017780 (Ill. App. 3 Dist.) September 15, 2009

Germany did not have personal jurisdiction over an Illinois resident because his contacts with Germany were insufficient for due process. He did not purposely avail himself of the benefits or protections of German law. He and his wife lived in Germany as a married couple for 9 months. The marital home when his wife and children left for Germany was in Illinois. His act of failing to support the child while the child was living in Germany did not grant Germany jurisdiction over him. Thus, registration for enforcement in Illinois of a German child support order was improper.

LEGAL MALPRACTICE/DISMISSAL

Lane v. Kalcheim, -- N.E.2d ---, 2009 WL 2581698 (Ill. App. 1 Dist.) August 19, 2009, *corrected* Sept. 15, 2009
When the three requirements of res judicata are met, a legal malpractice claim should be dismissed. Accordingly, a prior malpractice suit by the same plaintiff against the same defendant attorney involving the same divorce case that was dismissed precludes the refiling of a malpractice action against the same attorney when there is an identity of causes of action. In this matter, the plaintiff's claims for legal malpractice against his former attorney in two causes of action arose out of the same set of operative facts (the attorney's representation of the plaintiff in his divorce) and were barred by res judicata even though the underlying events occurred at different times in the divorce proceedings. It made no difference in *Lane* that in the first malpractice action only one of three counts was involuntarily dismissed and two were voluntarily dismissed; the principle of res judicata still applied.

MARITAL PROPERTY/BUSINESSES

In re Marriage of Lundahl, -- N.E.2d ---, No. 1-08-3541 (Ill. App. 5 Dist.) November 25, 2009

Husband's company's retained earnings was properly classified as marital property, because husband was sole owner and shareholder, and company's income during marriage was attributable to husband. Trial court erred in making determination of amount of retained earnings, as it was based on reliance on a single cursory reference

to the value of the company, and without any evidentiary basis. Award of wife's attorney fees on interim basis was without court's discretion, as it was based on statutory factors, and work was reasonable and necessary.

In re Marriage of Sanfratello, *--- N.E.2d.* ---, 2009 WL 2357093 (Ill. App. 1 Dist.) July 27, 2009

Husband had ownership interest in, and was employed by, three businesses. The first business was determined to be non-marital, and the other two were determined marital. Husband claimed that the two businesses were gifts from his parents and therefore non-marital. The appellate court held that the trial judge's assessment of the credibility of the witnesses and their testimony should not be disturbed and further, these businesses were the means of supporting the family throughout the marriage. Therefore, the trial court was free to determine whether the businesses were marital or non-marital, and their decision shall be upheld. Further, husband withheld information necessary for the determination of the worth of the business. The appellate court held that where one party fails to disclose financial information for a business, therefore making it difficult to assess its value, the trial court must act within its discretion in assessing the value of the business.

Also, the appellate court addressed gifts in contemplation of marriage and transmutation, in that the husband asserted that the parties' marital home was a gift in contemplation of marriage by his parents and therefore it should not be included in the marital estate. The court identified that a gift in contemplation of marriage should be from one spouse to the other, and not from a third party and therefore this was not, in fact, a gift in contemplation of marriage. The court went further to discuss that even if this had been a "gift in contemplation of marriage", the home was transmuted into marital property when the family resided there throughout the marriage, used marital funds for the upkeep of the home, and where the parties took joint equity loans on the home.

PATERNITY/RESCISSION OF VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY

People ex rel. Jackson v. Mannie, -- N.E.2d ---, 2009 WL 2461774 (Ill. App. 1 Dist.) August 11, 2009

Father signed acknowledged paternity of infant in 1979, and a child support order was entered that same year. Parties and the Illinois Department of Public Aid litigated issue of arrearages several times over next 28 years. In 2007, Father filed motion to reduce monthly child support payments and requested DNA testing. In 2008, DNA testing revealed Father was not biological father of child for which he was paying child support arrearages. The trial court vacated 1979 parentage and support order and cancelled child support arrearage.

On appeal, the court agreed with the Illinois Department of Public Aid that the trial court's order vacating the 1979 parentage and support judgment was void for lack of subject matter jurisdiction. Once the 60-day rescission time for rescinding a voluntary acknowledgment of paternity had passed pursuant to the Illinois Parentage Act of 1984 (750 ILCS 45/5 (West 2006)), Father could only proceed under the Code of Civil Procedure, section 2-1401, by alleging fraud, duress or material mistake of fact. Father cannot contest presumption of paternity by presenting contrary evidence. Further, trial court could not vacate the child support arrearage because it had already vested in the Illinois Department of Public Aid.

QDRO/QILDRO

Rafferty-Plunkett v. Plunkett, 910 N.E.2d 670 (Ill. App. 3d Dist. 2009)

Husband and wife entered into an oral settlement agreement that was incorporated into their Judgment for Dissolution of Marriage in 1998. As a part of this settlement, wife was awarded 50% of husband's pension plan benefits acquired during the marriage. The dissolution order improperly called for a QDRO, rather than a QILDRO, when the Husband's pension was a government plan. In 2006, wife brought a rule to show cause for husband's failure to pay pension benefits to wife as per the oral settlement agreement. The court entered a judgment in favor of wife and further ordered husband to execute a consent to the issuance of a QILDRO. Husband did not execute a consent.

Appellate court held that husband's consent in the agreed settlement in 1998 can be read together with the QILDRO forms to give effect to the parties' intention, and the trial court retained the authority to enforce the parties' settlement agreement.

REMOVAL

In re Marriage of Bhati and Singh, -- N.E.2d ----, 2009 WL 4893300 (Ill. App. 1 Dist.) December 15, 2009

Mother filed removal petition, seeking to relocate with minor child to North Carolina so that mother could marry North Carolina physician. Trial court denied mother's request for removal after analyzing each of the *Eckert* factors, 518 N.E.2d 1041 (1988).

The appellate court found the trial court's denial of the removal petition to be against the manifest weight of the evidence. In so ruling, the appellate court reconsidered each of the *Eckert* factors and ultimately found that if removal would result in an enhanced quality of life for mother and child, then the fact that father's visitation with child would be diminished should not overcome the numerous benefits to the child in moving out of state.

In re Marriage of Guthrie, -- N.E.2d. ----, 2009 WL 1847620 (Ill. App. 5 Dist.) June 25, 2009

Mother filed petition for dissolution of marriage and petition for removal, seeking to relocate with minor child to her home state of Arizona. Judgment was entered for dissolution of marriage and granted the petition for removal. Father appealed.

The trial court considered the proposed move in terms of the possibility of an improved quality of life for the custodial parent and the child, evaluated the motives of the custodial parent in seeking the removal to determine whether the custodial parent was attempting to frustrate visitation, evaluated the motives of the noncustodial parent for resisting the removal, examined the potential harm to the child, the child's relationship with the noncustodial parent, and the rights of the noncustodial parent, and assessed whether a reasonable and realistic visitation schedule could be developed.

The appellate court affirmed the circuit court's findings that it was in the best interest of the child to allow mother to relocate to Phoenix. The court noted that mother was the primary caregiver since the time of child's birth. Specifically, the court found that mother had more realistic employment opportunities in Arizona and that her family would be able to provide both support and assistance upon a removal. These findings, along with the testimony of mother and grandmother at the hearing, suggested proper motives for seeking the removal and not an intent to frustrate visitation.

In re Parentage of R.P.P. III., -- N.E.2d ---, 2009 WL 2525501 (Ill. App. 3 Dist.) August 18, 2009

In a parentage case, when the parents were never married and no proceedings existed prior to the custodial parent's leaving Illinois with the child, §13.5 of the Illinois Parentage Act, 750 ILCS 45/13, is the only vehicle by which an Illinois court may order the child be returned to Illinois. Section 13.5 provides that in any action for initial custody or visitation under the Parentage Act, the court may enjoin the party having possession of the child from removing the child from Illinois after considering a number of specified factors. Accordingly, the trial court erred in applying §609 of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/609, in issuing an injunction ordering the mother to return the child to Illinois from Arizona without first holding a hearing under §13.5 of the Illinois Parentage Act.

REVIEWABLE MAINTENANCE, BIFURCATED PROCEEDINGS AND VALUATION OF MARITAL ESTATE AND DISSIPATION

In re Marriage of Awan, -- N.E.2d ---, 2009 WL 454608 (Ill. App. 3 Dist.) February 17, 2009

In 2001, husband, Awan, filed a petition for dissolution of marriage, and the parties separated in 2002. The trial court found the wife, Parveen, to be more credible and found that Awan dissipated $76,000 in marital assets, awarding half of that amount to

Parveen. Further, Awan was ordered to pay $1,750 per month in maintenance, reviewable in five years, and Parveen was ordered to file a yearly summary of her efforts to obtain employment.

Awan challenged the award of any maintenance award and Parveen appealed the non-permanent nature of the maintenance. Parveen had a university degree from Pakistan and did not suffer from a medical condition preventing her from working. Therefore, the appellate court held that while the award of maintenance was proper, the trial court did not abuse its discretion in making its maintenance award subject to periodic review.

Parveen also argued that in a bifurcated proceeding, the trial court must determine the value of the marital estate on the date of final judgment rather than on the date the dissolution judgment was entered. The appellate court held that the reservation of issues in a bifurcated proceeding does not render the judgment for dissolution non-final and marital property should be valued as of the date of the dissolution judgment.

Awan next argued that the trial court unfairly awarded a larger portion of the marital estate to Parveen when the court ordered him to pay all marital debts, including loans from Parveen's brothers to Parveen, and some of her attorney's fees. In assigning this debt to Awan, the trial court considered Awan's failure to comply with court orders regarding maintenance and other financial obligations. The appellate court held that the record did not demonstrate that no reasonable person would take the trial court's view and the court did not abuse its discretion in awarding attorney's fees.

Lastly, Awan argued that the trial court erroneously found that he dissipated marital assets because Parveen failed to prove at what point the irretrievable breakdown of the marriage occurred, and further, the amount allegedly dissipated. The appellate court held that once Parveen presented her evidence to the court, the burden switched to Awan to prove how the funds were spent, and Awan failed to meet his burden. Therefore, the trial court's order was affirmed.

RIGHT TO NOTICE IN JUVENILE PROCEEDINGS

In re C.L. – N.E.2d ---, 2009 WL 2144180 (Ill. App. 3 Dist.) July 14, 2009

On August 25, 2004, the State filed delinquency petitions against the minor, Christopher L., alleging the minor committed the offenses of residential burglary and armed robbery in Nos. 04-JD-372 and 04-JD-373, respectively. The State did not name the minor's natural mother as a party in either juvenile petition and did not provide the natural mother with service of the original or subsequent petitions filed in the juvenile court. Subsequently, the trial court found the minor violated the terms of his juvenile probation and ordered him to be committed to an indeterminate sentence in the Illinois Department of Juvenile Justice not to exceed his 21st birthday. The minor filed a timely notice of appeal in each case challenging the validity of that order based on the omission of his natural mother as a party to the proceeding.

The Appellate Court held the trial court obtained subject matter jurisdiction over the minor when the State filed a juvenile delinquency petition against him pursuant to the Juvenile Court Act of 1987 and personal jurisdiction when the minor appeared in court. Accordingly, the lack of notice and service upon mother did not deny the trial court subject matter jurisdiction and personal jurisdiction over the minor to enter the adjudicatory and dispositional orders against the minor. Further, the minor has forfeited any right to challenge the lack of notice or service upon mother as the minor failed to raise this issue before the trial court.

SUBSTITUTION OF JUDGE WITH CAUSE

In re Marriage of O'Brien, -- N.E.2d--- 2009 WL 2139366 (Ill. App. 2 Dist.) July 14, 2009

On November 1, 2006, the trial court entered judgment dissolving the marriage between petitioner, John O'Brien, and respondent, Lisa O'Brien. On February 6, 2007, the court denied petitioner's post-trial motion. Petitioner appealed, arguing that the trial court erred in denying his motion for a substitution of judge.

In November of 2003, the petitioner was charged with domestic battery charge, and Judge Waldeck heard and ruled on an evidentiary issue in that matter. Petitioner filed for dissolution shortly thereafter, and in 2005, the dissolution case was reassigned to Judge Waldeck. Judge Waldeck noted that the parties had been before him previously in the domestic violence courtroom, and neither party objected to his hearing case at that time.

On January 3, 2006, petitioner moved for a substitution of judge for cause pursuant to 735 ILCS 5/2-1001(a)(3). A hearing on the motion was held before Judge Christopher C. Starck who denied the motion for substitution of judge. In doing so, the court noted that the motion was for substitution for cause and that "there really is no proof that Judge Waldeck in any way is prejudiced against [petitioner]."

The appellate court affirmed, finding that petitioner did not establish that an objective, reasonable person would question Judge Waldeck's ability to rule impartially. The court also considered the issue under Judicial Code of Conduct Rule 63(C)(1), as well due process considerations contemplated in the recent US Supreme Court decision in *Caperton*, 77 U.S.L.W. at 4462.

There was a special concurrence filed by Justice O'Malley which raises multiple significant questions regarding applicable standards. The special concurrence addresses issues relating to differing of standards for vacating a judgment for improper denial of a motion to substitute for cause versus vacating a judgment for improper failure to recuse.

TIMING OF CONTRIBUTION PETITION/MAINTENANCE

Blum v. Koster, -- N.E.2d ---, No. 1-05-795 (Ill. App.1 Dist.) October 8, 2009

In a post-decree matter, the Illinois Supreme Court affirmed the Appellate Court decision which held that a court cannot make a maintenance award non-reviewable or non-modifiable absent an agreement of the parties.

The Court also held that the 30-day time limit of Section 503(j) is inapplicable to a party's filing of a petition for contribution to attorney fees in post-decree proceedings. In pre-decree cases, contribution petitions still must be filed no later than 30 days after the closing of proofs in the final hearing or within such other period as the court orders.

VISITATION

In re Marriage of Chehaiber, -- N.E.2d ---, 2009 WL 3048435 (Ill. App. 3 Dist.) September 18, 2009

The purpose of change in parental visitation determines whether change is a restriction or modification of visitation. Modification looks to child's best interests directly, and restriction looks at suitability of parent whose visitation would be curtailed. Order of changed visitation, when not based on any problem with parent, is modification rather than restriction. Here the Court considered sources extrinsic to statutory language because statute is ambiguous.

In re A.S., -- N.E.2d ---, 2009 WL 3030401 (Ill. App. 5 Dist.) September 21, 2009

Two never-married parents of a minor child had a temporary agreement for the child to reside in Clinton County for one year while mother returned to complete her degree at SIU. Father's failure to be forthright about the agreement, to mother and to the circuit court at a hearing on his Motion to Transfer Venue, and his failure to speak with mother for weeks at a time, indicate that the child's best chance that both parents will be active in his life will be when primary custody is with the mother, rather than with the father who had violated the temporary agreement.