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FAMILY LAW CASE UPDATES
MEGA MEETING ---JANUARY 22, 2011

Case Law Summaries
January through December 2010

FAMILY LAW CASE UPDATES
MEGA MEETING JANUARY 22, 2011

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CHILD SUPPORT

In re the Marriage of Heady v. The Dept. of Healthcare and Family Services (intervenor), 924 N.E.2d 1187, 2010 WL 738258 (Ill. App. 2 Dist.) March 1, 2010.

Ex-Husband, Michael Heady, filed a motion to reduce child support based upon two of the three children having reached the age of majority. The court entered an order reducing support and terminating support on June 1, 2008, upon the youngest child reaching the age of majority. Further, the court entered a judgment for $16,400 in past-due support, payable at $108.59 per week, and paragraph 9 of that order also provided that the Department was barred from engaging in other collection activities so long as Michael was current in his payments on this arrearage. The Department filed an appeal arguing that the placing a restriction on Department collection activities was improper.

The Appellate court looks to section 505(d) of the IMDMA where it states, "Each such judgment shall have the full force, effect, and attributes of any other judgment of this State, including the ability to be enforced." Absent an agreement between the parties proven by clear and unequivocal evidence, or the doctrine of equitable estoppel, a judgment may be enforced. Evidence did not present an unequivocal agreement or any basis for estopping the Department. The trial court erred in restraining the Department from engaging in enforcement and collection actions. The Appellate Court held that the judgment should be modified by striking paragraph 9 from the order.

In re the Marriage of Vailas, -- N.E.2d ---, 2010 WL 4643634 (Ill. App. 1 Dist.) November 16, 2010.

Husband and Wife were divorced in September 2007 in Texas. As part of the divorce decree, the Texas court included a child support order obligating Husband to pay $1,200 per month. Wife and child moved to Illinois and in 2009, Wife filed a petition to register the Texas child support order and ultimately to modify that order. The petition did not state a statutory basis for the registration, nor did it indicate whether Wife sought to register the judgment for the purpose of enforcement or modification.

Husband argues Illinois has neither personal nor subject matter jurisdiction. As Wife intended to modify an order already in existence, the Family Support Act requires that (per section 201(b)) "the basis of jurisdiction set forth in 750 ILCS 22/201(a) may not be used unless the requirements of section 611 are met." Under section 611, after "notice and hearing" the (child support) order may be modified if "(a) neither the child, nor the petitioner who is an individual, nor the respondent resides in the issuing state; (b) the petitioner who is a nonresident of this State seeks modification; and (c) the respondent is subject to the personal jurisdiction of the tribunal of this State."

The record in this matter does not indicate that the requirements of section 611 were met. Further Illinois, has chosen to limit its jurisdiction over petitioners for modification of child-support orders, thus personal service does not render personal jurisdiction in this matter.

The appellate court instructed the lower to court to conduct a hearing on findings pursuant to section 611 of the Uniform Interstate Family Support Act.

In re the Marriage of Anderson, -- N.E.2d ---, 2010 WL 4705177 (Ill. App. 3 Dist.) November 15, 2010.

Wife appeals from a post-judgment order resolving all pending issues and dissolving her marriage to Husband. On appeal, Wife argues that the trial court erred in (1) calculating net income for purposes of child support, (2) terminating maintenance, (3) awarding attorneys fees, (4) altering the percentage of responsibility for children's medical expenses, (5) denying her motion to return personal property, (6) relieving Husband of his duty to file amended tax returns, and (7) modifying Husband's previously imposed financial reporting requirements.

With regard to child support, Wife contends the court should add in three sources of income: (1) proceeds from the sale of stock, (2) bonus/commission income from his employer and (3) gifts and loans Husband receives from his parents. The stock sale was essentially forced by Husband's past employer. It resulted in a capital loss and the stock itself was Husband's premarital asset. Thus, the court was proper in not including this as income for child support. With regard to bonuses and gifts/loans, the appellate court reversed and held that the gifts and loans should be included as income as they represent a continuing source of income that Husband has received over the course of his adult life. Similarly, bonuses/commissions are income for purposes for determining child support and should be included.

The appellate court held that although Husband's income had gone down, the trial court did not properly consider Husband's non-marital property and, as such, the termination of maintenance was improper.

With regard to medical expenses for the children, the appellate court held that the trial court did not abuse its discretion by equally apportioning the children's uncovered medical expenses between the parties in light of Husband's change in circumstances; despite the fact that Wife contends it was a "bargained for" provision of the settlement agreement.

The appellate court affirmed the decision not to force Husband to return certain personal property of the children as Husband purchased most of the belongings for the girls and, because the children were not exercising visitation with their father, he donated their belongings to Goodwill.

The trial court erred in awarding only $25,000 in attorney's fees to Wife, as Section 508(b) requires fees from one party towards the prevailing party when a party fails to comply with a court order. Here, Husband violated several court orders and was held in contempt on several occasions. A hearing should have been conducted to determine the amount of fees Wife incurred in pursuing petitions to enforce court orders. The court remanded the issue to the trial court for a hearing on the issue.

To resolve the fact that Husband had improperly claimed one of the children as his dependent on his tax return, despite the fact that he was not paying child support, the court ordered Wife to claim both children until they were 18. However, the appellate court held this decision was not proper as it failed to account for any tax advantage to Husband, the future fluctuation in the parties' incomes, or Wife's ability to claim the children as dependents for all four subsequent tax years.

Lastly, the appellate court found that the trial court erred in reducing Husband's income reporting obligation and held that he should continue to provide his tax return with all supporting schedules, W-2 forms and 1099 forms.

DCFS – UNREASONABLE CLOSE CONFINEMENT

Walk and Hammack v. IL Dept. of Children and Family Services, 926 N.E.2d 773, 2010 WL 867161 (Ill. App. 4 Dist.) March 9, 2010.

Two brothers, Anthony M., age 9, and Douglas M., age 7, were placed in foster care with Dee Ann Walk, a licensed Foster Parent. Michael Hammack also resided at the residence. DCFS made findings of child abuse or neglect against Dee and Michael. After an evidentiary hearing, a DCFS administrative law judge found Dee and Michael abused or neglected the two children by forcing the children to remain in a "closely confined area restricting physical movement". The DCFS Director thereafter adopted these findings. Plaintiffs requested to expunge these findings, and their request was denied. Plaintiffs filed a complaint for administrative review of the DCFS decision. The trial court affirmed the decision. Plaintiffs appealed.

Anthony M. and Douglas M. both suffered from serious mental and behavioral problems. The children had caused harm to each other and the property in upwards of $60,000 in damage, including mutilating and killing various farm animals on the property. The Plaintiffs from time to time would put the children into an outside enclosure when they were doing household chores or working with the animals. The enclosure was made of wire fencing, approximately 6 feet tall, and had a top made of the same chain-link fencing. The enclosure's size was not specifically determined, but it was larger than the children's bedroom, and contained a sandbox, toys, and room for the children to run. The Plaintiffs put the children in this enclosure to keep them safe from harm.

The Appellate court reversed and remanded the trial court's decision. The Court held that the enclosure in this particular case did not fall under the DCFS promulgated regulation that details various child-abuse and neglect allegations. Specifically, while this regulation includes "putting a child in a cage" as an example of the unreasonable restriction of a child's mobility, this Court held that putting a child into a cage is not *per se* a violation of this regulation. The real question is whether the circumstances of the case render the confinement unreasonable. Enclosures of limited movement may fall under this regulation as a closely confined structure, but size alone cannot be the determinative factor. Duration and nature of or reasoning for the confinement must be considered.

In the case at hand, the enclosure was larger than the children's bedroom, contained toys and a sandbox, and as the court noted, had room to run as evidenced by the matted down grass within. Further, the Plaintiffs used this enclosure to protect the children, the children were not in the area for long, extended periods of time, nor was it evidenced that the Plaintiffs were ever too far from the area to hear the children call if the children needed them. In addition, DCFS upheld the administrative law judge's finding that the Plaintiffs adequately supervised the children. Therefore, the Court held that the confinement was not unreasonable, and therefore reversed the trial court's decision and the agency's decision and remanded as to an issue of attorney's fees.

INTERVENOR ATTORNEY'S FEES AND COSTS

In re the Marriage of Pal v. Gudgel (intervenor), 924 N.E.2d 30, 2010 WL 338821 (Ill. App. 4 Dist.) January 27, 2010.

Within a dissolution proceeding, Husband filed a petition for temporary custody, asking for temporary custody of the children alleging that Wife's boyfriend, Michael Gudgel, who has been convicted of both murder and home invasion, was a danger to the children. Gudgel had not been convicted of murder and home invasion, but had been convicted of manslaughter after hitting his ex-wife on the back of her neck with a baseball bat, and her subsequent death. The court entered a temporary order awarding temporary custody to Wife, but restricting any contact with Gudgel. The court would re-evaluate this restriction after there was an evaluation of Gudgel by the court-appointed evaluator, Dr. French.

Gudgel filed a Petition to Intervene pursuant to 735 ILCS 5/2-408 stating that he had a real interest in the outcome of litigation because the court's order could restrict his ability to interact with Wife's children; also because he was unable to defend himself against Husband's assertions; and further because he would be unable to see the children unless he submitted himself and his medical records for an evaluation. Gudgel also filed a Motion for Sanctions and a Motion to Strike regarding the allegations made in Husband's pleading. The court allowed Gudgel to intervene, but denied the Motion for Sanctions and the Motion to Strike finding that there had been sufficient evidence that he had been convicted of a serious crime.

Dr. French completed his evaluation and recommended that the restriction on contact with the children be lifted immediately. The court thereafter lifted the restrictions.

Gudgel then filed a Motion for Attorney's Fees and Costs seeking a reimbursement for the fees paid to Dr. French, as well as reasonable attorney's fees and costs. Gudgel asserted that this motion was filed under the Dissolution Act, although he did not state this within his Motion. Under Supreme Court Rule 137, an intervenor can try to collect attorney's fees. However, they would not have this right absent some other statutory right. While the Dissolution Act does not expressly forbid attorney's fees being awarded to an intervenor, the court looked to section 508(b) stating that the language does not limit it to factors for division of property. The court continued with the question of whether the previously imposed restriction was for an improper purpose or designed to harass, create unnecessary delay or to needlessly increase the cost of litigation. Quoting its previous ruling on the Petition for Temporary Custody, the court found that Husband's petition raised legitimate concerns. The court denied Gudgel's petition, assuming that a trial court could even award attorney's fees to an intervenor under section 508(b). Gudgel renewed his request eight months later; it was again denied.

Gudgel appealed the denial of attorney's fees. The appellate court held that section 508(a) was intended by the General Assembly to apply to spouses only, and not intervenors, to achieve substantial parity in the spouses' access to funds for litigation. In addition, section 508(a) clearly refers to only two parties, "opposing parties", specifically, the spouses. Further, section 503(j), clarifies that there are only two parties, the spouses involved, when there is an award of attorney's fees. The trial court correctly denied Gudgel's Motion for Fees as an intervenor under the Dissolution Act, section 508.
The Appellate Court affirmed the ruling of the trial court.
(Concurrence filed)

QILDRO/PENSION

In re the Marriage of Culp, 936 N.E.2d 1040, 2010 WL 1206674 (Ill. App. 4 Dist.) March 26, 2010.

As part of the parties' Judgment for Dissolution of Marriage, Wife was to receive one half of Husband's pension pursuant to a QILDRO. Wife filed a Motion for entry of QILDRO and in the QILDRO followed a formula for calculating the marital portion of the pension: (A/B) x C x D, where each letter represented a date, number of months, gross amount of pension, and percentage. Husband objected to the entry of the QILDRO, arguing that Wife had agreed to receive $42,000-half of the pension's value when he filed his dissolution petition.

On appeal, Husband argues that the parties never agreed to use the QILDRO calculation. The court held that the settlement agreement never specifically stated that Wife would receive $42,000. Instead, the agreement lists the dissolution date for purposes of ascertaining the duration of the marriage. The approximate value of the pension and end date of the marriage are set forth to assist in the later assessment and division of the pension's marital portion. Further, the MSA specifically provides that a separate QILDRO will be entered to divide the marital portion of the pension. The court was within its discretion to use the Hunt formula for allocation of pension benefits.

ADOPTION

In re Adoption of S.G., 929 N.E.2d 78, 401 Ill. App. 3d 775 (Ill. App. 4 Dist.) May 3, 2010.

Child's parents' parental rights were terminated. Paternal Grandparents filed a petition to adopt Child. Foster parents also filed a petition to adopt Child in a separate action. The two cases were consolidated. On appeal, the court found that the trial court's order striking the Grandparents' response to the Foster Parents' adoption petition was not an abuse of discretion. The Grandparents did not have custody of Child; therefore, the question was whether the Grandparents had any rights regarding Child after their son's parental rights were terminated. The appellate court held that when a natural parent's parental rights are completely terminated, any rights and interests of that parent's relatives are also completely severed. Therefore, Grandparents did not meet statutory criteria for intervention.

COLLEGE EXPENSES/EMANCIPATION

Petersen v. Petersen, 932 N.E.2d 1184, 2010 WL 3000237 (Ill. App. 1 Dist.) July 30, 2010.

Wife filed a petition requesting an allocation of college expenses for the three children of the parties. The trial court ordered Husband to pay 75% of all past, present and future college expenses, including 75% of the education expenses for the oldest son who had already graduated from college before the petition was filed.

Husband appealed. The court held that the trial court erred when it ordered payment of college expenses that predated the notice of filing of Wife's petition. Because the petition is a modification of child support under section 510, any ordered expenses cannot predate the filing of the petition.

Husband also appealed the reasonableness of the court ordering Husband to pay 75% of all present and future college expenses. The appellate court held that order was not unreasonable and affirmed the lower court's ruling.

Baumgartner v. Baumgartner, 237 Ill. 2d 468, 930 N.E. 2d 1024, May 20, 2010.

Husband filed motion to amend judgment for dissolution of marriage, seeking to terminate any future obligation to pay for son's college expenses. Trial court in Cook County entered judgment terminating Husband's obligation stating that son's incarceration of six years for two class 4 felonies during his first semester of community college is a self emancipating event. Wife appealed. The appellate court reversed the order of the circuit court. The Illinois Supreme Court allowed Husband's petition for leave to appeal and affirmed the judgment of the appellate court.

The appellate court reversed the trial court and concluded that there is no authority to support the argument that Illinois would recognize incarceration as a self-emancipating event. Husband appeals. The Supreme Court of Illinois reverses the order of the trial court. The Supreme Court holds that the trial courts should consider the following factors in determining whether a minor is self-emancipated: whether the minor has voluntarily left the protection and influence of the parental home or whether the minor has otherwise moved beyond the care and control of the custodial parent; whether the minor has assumed responsibility for his or her own care or whether the minor continues to need support; whether the minor is self-emancipated but has become dependent on his or her parents again, thereby reverting to being unemancipated.

The Supreme Court directed that on remand the trial court should consider the extent to which the parties' son's incarceration constitutes a change in circumstances, warranting a modification of the dissolution judgment for both parents.

CUSTODY/UCCJEA

Akula v. Akula, 935 N.E.2d 1070, 2010 WL 3359660 2010 (Ill.App. 1 Dist) August 25, 2010.

Parties were married in Illinois, had a child in Illinois and subsequently divorced in 2002. In December 2008, Wife filed a Motion to Modify child support in Illinois, which was not resolved. In June 2009, Wife, Husband and Child entered into an agreed order for all three to travel to India. After spending time in India, Wife and Husband engaged in extensive negotiations contemplating Wife and Child staying in Hyderabad, India. In August 2009, the minor Child entered into school in India. At the same time, Wife entered into a four-year lease on a home in India from Husband's parent. In September 2009, Wife obtained a residential permit from Indian government good through April 2013. Wife returned to Illinois in September 2009 to market the home in Hoffman Estates because she said Husband was going to purchase a home in Schaumburg for her and their son. In October 2009, Wife returned to Chicago for back surgery and continuing legal education. The Child remained in India at this time. In October, Wife sent several emails to Husband stating that she wanted the Child to return to Illinois and that she considered Hoffman Estates to be her and the Child's permanent residence. On October 12, 2009, Husband filed two petitions in family court in Hyderabad, India: one seeking sole custody and the other seeking injunctive relief.

Numerous motions followed by both parties. The Hyderabad court conducted an *in camera* review of the Child and entered an agreed order concerning child visitation. Wife filed a motion for summary judgment indicating that the Illinois Circuit Court had exclusive jurisdiction over custody of the minor Child under the UCCJEA. The following day, the Indian family court

entered an order finding that the parties and their Child were now ordinarily residing in Hyderabad. The Indian court converted the interim order into an injunction and enjoined Wife or anyone else from "disturbing" custody of the Child and prohibiting the Child from being removed from school in Hyderabad until he completed fifth grade.

Under the UCCJEA, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and endorsed, unless the child custody law of the foreign county violates the fundamental principles of human rights. The issue is whether the Indian family court's order substantially conforms to the UCCJEA. The appellate court reversed the ruling of the circuit court and found that the Indian family court acted in substantial conformity with the jurisdictional requirements of the UCCJEA and the circuit court did not have exclusive jurisdiction over child custody in this case.

MAINTENANCE

In re Marriage of Nord, 932 N.E.2d 543, 2010 WL 2673076 (Ill. App. 4 Dist.) June 28, 2010.

Husband appealed trial court's award of permanent maintenance to Wife in the amount of $17,000 per month. Appellate court found that the trial court did not abuse its discretion in making the maintenance award. Husband argued, in part, that because he assumed the bulk of the parties' marital debt, and therefore could not afford to pay the monthly maintenance award. The appellate court noted that the trial court found Husband would be debt-free in three years, as he had created the aggressive debt repayment schedule, for which Wife should not be penalized.

Husband also argued that the trial court should not have awarded permanent maintenance but rather rehabilitative maintenance to Wife. The appellate court observed that permanent maintenance is not limited to spouses who are wholly unemployable but also spouses who are employable at a lower income than that spouse's previous standard of living. Further, permanent awards are considered for wives who have raised and supported the family rather than worked during the marriage. In this case, Wife was a high school graduate who had not been employed outside the home for almost 30 years but rather cared for the parties' children, and at the time of divorce was 58 years of age.

MALPRACTICE

Mauer v. Rubin, 926 N.E. 2d 947, 401 Ill.App.3d 630, March 26, 2010.

Client brought a legal malpractice action against attorney and law firm, alleging that attorney negligently drafted a marital settlement agreement by omitting certain obligations that were attached to divided marital properties, thus leaving client responsible for more than his proper share of the obligations. Client alleges that despite his attorneys' assurances that all aspects of the settlement had been properly documented in the Agreement, his attorneys failed to properly allocate responsibility for debts attached to various properties awarded to either client or his Wife. As a result of this omission, client was left with a greater share of the debts.

Client also alleged that attorney negligently delayed the filing of a petition for relief from the judgment and later withdrew that petition without client's knowledge or consent on the date it was set for hearing. He argued that his attorneys were under a continuous course of

representation until the defendants withdrew their "Motion to Correct" (the above mistake) in 2005.

The trial court dismissed the petition and client appealed.

The appellate court held that client's action was barred by the six-year statute of repose, since the action was filed more than six years after the judgment of dissolution. The firm did not have a continuing representation duty. The actions of the firm, an alleged defect in the Agreement, did not exacerbate the client's injury. Instead, the harm to his interests was done once the judgment of dissolution was entered.

The appellate court also held that the doctrines of fraudulent concealment and equitable estoppel are not applicable because the client had over a year and eight months once he discovered the petition had been dismissed.

MARITAL SETTLEMENT AGREEMENTS

In re Marriage of Hall, 935 N.E.2d 522, 2010 WL 3449261 (Ill. App. 2 Dist.) August 25, 2010.

At time of divorce, Husband had retirement assets consisting of four retirement plans: a Thrift Plan; a Deferred Income Stock Purchase and Savings Plan; and two Pension Plans. The parties entered into a Marital Settlement Agreement that detailed the division of some but not all of Husband's retirement assets. After Wife noticed she had not received benefits from either of Husband's pensions, she filed a petition to modify or reform the judgment, alleging the pension plans had been omitted from the Marital Settlement Agreement due to mutual mistake of fact. Husband argued that the pensions' omission was intentional. The trial court denied Wife's petition, finding that it could only modify or reform the judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006). Wife had not shown a defect in the judgment that was a result of duress, disability or fraudulent concealment.

On appeal, the court found that the trial court had jurisdiction to enforce the Marital Settlement Agreement without considering section 2-1401 of the Code, in that Wife was not seeking to impose new or different obligations on the parties but rather was attempting to enforce the terms of the judgment and Marital Settlement Agreement. The language of the Marital Settlement Agreement clearly and unambiguously reflected the parties' intent to divide all of Husband's retirement plans, including the pension plans not specified.

Karafotas v. Karafotas, 2010 WL 2486715 (Ill. App. 1 Dist) June 18, 2010.

Former Wife petitioned to enforce the judgment for dissolution of marriage that incorporated the parties' Marital Settlement Agreement entered into by the parties on January 10, 2000. At the time of the parties' Agreement, Husband was a member, or seat holder, of CME and owned an International Monetary Market Exchange membership (IMM Membership). The parties' Marital Settlement Agreement stated that Husband was to pay Wife 45% of the combined gross rental income derived by Husband from his IMM Membership and CME Membership until either 72 months elapsed from the date of their dissolution or until the death of either party and that Husband retain his two seats (CME & IMM) as his sole property free and clear of any interest by Wife. However, if Husband dies before Wife, then upon his death his IMM membership will be transferred to Wife. If Wife dies before Husband, Wife's estate shall have no claim on the membership. Said article further if if Husband sells his IMM membership during his lifetime,

Husband will transfer to Wife one-half of the net sales proceeds after taxes and customary sales expenses within 30 days of the receipt of the proceeds.

In December of 2001, CME was transformed from a privately held entity to a for-profit public holdings company through a series of complex transactions. Between June 2004 and March 2006, Husband sold 28,000 shares of his CME Holdings Class A common stock and received approximately $5.4 million dollars in total proceeds. Forty percent of these shares were derived from the sale of stock converted from his IMM Membership in the old CME.

The issue is whether, pursuant to the Agreement, Wife was entitled to 50% of the net sale proceeds of Husband's Class A common stock in CME Holdings where that stock derived from Husband's IMM Membership.

Wife petitioned to enforce her right under the Judgment to receive one-half of the proceeds from the sale of Husband's IMM Membership interest, claiming that the Class A stock Husband sold represented a part of his original IMM Membership interest to which she was entitled. Husband countered that he still retained his membership through his Class B-2 share and there was no sale of the membership.

Wife motioned for Summary Judgment. The trial court ruled as a matter of law that no sale had occurred regarding Husband's IMM membership. Wife appealed.

In her appeal, Wife argues that it is undeniable that Husband's original IMM Membership was exchanged for Stock, and the Class A stock which Husband sold represented a substantial portion of the original IMM in question. Husband responds that because he still owns IMM Membership No. 602 and its trading rights, Wife has no right to share in the proceeds from the sale of the stock. Wife argues that the trial court's interpretation of the Agreement is unduly strict and arbitrary, in light of the fact that Husband sold all 1,800 shares of Class A stock which he received as a result of this ownership of the IMM seat. The Appellate Court agrees, reverses the trial court and awards Wife 50% of the net-after-tax proceeds Husband received from the sale of the Class A stock he received in exchange for his IMM Membership.

ORDERS OF WITHHOLDING/EMPLOYERS

In re Marriage of Vaughn, 935 N.E.2d 123, 2010 WL 3218878 (Ill. App. 1 Dist.) August 12, 2010.

Husband, a chiropractor who business is a sole proprietorship, is a Blue Cross preferred provider. Blue Cross pays a portion of medical expenses incurred by its insureds to Husband. Wife attempted to serve Blue Cross with an income withholding notice. Blue Cross responded that it was not allowed to set up automatic withholding for Husband. Wife filed a motion to enforce statutory penalties against Blue Cross for its failure to comply with the Withholding Act (750 ILCS 28/1 *et. seq.* (West 2006). Blue Cross filed a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2006)). Trial court granted the motion to dismiss, and Wife appealed.

The appellate court found that Blue Cross was subject to the Withholding Act. First, the court determined that Blue Cross is a "payor" under the Act because it pays Husband "income," which includes a sole proprietorship.

With regard to the trial court's dismissal of Wife's action for penalties pursuant to Blue Cross's involuntary dismissal motion, the appellate court found that the trial court should have not

granted a 2-619 motion if there was a factual dispute and no evidentiary hearing was held to resolve the dispute. Blue Cross's alleged unknowing violation of the Withholding Act could not be the basis of a 2-619 motion to dismiss, nor is it a valid defense to Wife's action. The Withholding Act's use of "knowingly" does not refer to whether Blue Cross knew it was a payor. Therefore, the case was remanded back to the trial court.

Stockton v. Stockton, 937 N.E.2d 657, 2010 WL 2222803 (Ill.App. 2 Dist), May 28, 2010.

Parties divorced in 1994. At the time of the dissolution, Husband was working at Rockwell Trucking, Inc. An Income Withholding Order was entered mandating Rockwell to withhold $60 per week. In June 1995, Husband left Rockwell. At the time he left, nine outstanding payments remained under the 1994 withholding order. In December 1997, Husband returned to Rockwell and remained employed there until March 2000. In January 1998, the court entered the withholding order at issue in this appeal. In January 2007, Wife filed a complaint against Rockwell under the 1998 order alleging that Rockwell failed to withhold and submit payments in a timely manner.

The trial court found that the record did not show that an outstanding payment remained under the 1998 withholding order (and implicitly found that penalties therefore did not continue to accrue beyond the term of Husband's employment), found that the last payment was made April 2000, found that either a two-year or five-year statute of limitations applied, and found that, therefore, Wife's action was time barred. Wife appealed. The appellate court affirmed and found that Wife's action was time barred by the two year statute of limitations.

PATERNITY CHALLENGE

Galvez v. Rentas, 934 N.E.2d 557, 2010 WL 3184212 (Ill.App. 1 Dist.) August 10, 2010.

After Mother and Rentas, the putative Father of a child born out of wedlock, signed a Joint Parenting Agreement, the Department of Healthcare and Family Services intervened to petition for reimbursement, from Father, of child support Mother had obtained from the Department. Father then moved for genetic testing to establish paternity. The trial court denied this request and Father appealed.

Father and Mother had signed an agreed order in March 2006 declaring that Rentas was the biological and legal Father of the child. Accordingly, the child's name was changed and joint legal custody was given to both parents.

The appellate court ruled that the child's paternity was already resolved as the trial court made a judicial determination resolving the child's paternity when it entered its order declaring Rentas the Father. The Father did not move to amend or vacate that order within 30 days nor did he timely file a section 2-1401 petition. Instead, he filed a request for a DNA test three years after the entry of the judgment.

PATERNITY/ESTATE

In re Estate of Renchen, -- N.E.2d ---, 2010 WL 4923957 (Ill. App. 3 Dist.) November 30, 2010.

Petitioner, Son, was adopted by his mother's husband (Adoptive Father) as a young child. Upon the death of Son's Adoptive Father's brother (Uncle), Son filed pleadings in the probate court alleging that decedent Uncle, was in fact his natural Father. Son filed a motion for

summary judgment attaching a DNA test report in support of his motion. Appellants who are various siblings of Uncle, including Son's Adoptive Father, filed a motion for involuntary dismissal of Son's petition.

Per the Probate Act (755 ILCS 5/2-4(d)(1), if Son can prove that Uncle was his Natural Father, he may inherit from both his Natural Father and adoptive parents. Therefore, the finding of paternity in a decree of adoption is not dispositive of the paternity of the adopted child even when no motion to vacate was timely filed in the adoption case.

PRO SE LITIGANT'S RIGHTS

Illinois Department of Healthcare and Family Services ex rel. Jorgenson v. Jorgenson, 934 N.E.2d 1062, 2010 WL 3398812 (Ill.App. 3 Dist.) August 24, 2010.

Wife filed a complaint for child support against Husband for current support but also retroactive support for daughter who was born on September 22, 1990. Wife was granted current and retroactive support and Husband appealed, arguing that the court violated his due process rights when it did not allow him to present evidence at the hearing on the retroactive support issue.

The appellate court found that the proceeding was very informal and improperly abbreviated. The court erroneously did not afford Husband an opportunity to present any evidence or his own sworn testimony regarding his past income, current income and any prior contributions to the child's support. The appellate court held that the cursory proceeding was insufficient to protect Husband's due process rights.

CHILD SUPPORT

In re in the Marriage of Truhlar, 935 N.E.2d 1199, 2010 WL 3667117 (Ill. App. 2 Dist.) September 17, 2010.

Wife appealed an order vacating a prior order requiring Husband to contribute to the college expenses of one of their minor children with his Social Security income.

The trial court originally ordered Husband to contribute towards his daughter's college expenses with his sole source of income, his Social Security benefits. Husband moved to vacate that order arguing that under federal law, his Social Security benefits are beyond the reach of creditors, thus he could not be forced to use them for college expenses. The trial court concluded that contribution to an emancipated child's college education was not child support

After Wife's appeal, the appellate court reversed finding that child support includes an education. Thus, contribution to daughter's college education qualified as support and the court has the authority to collect Husband's Social Security benefits in order to satisfy his obligation.

COUNSEL FOR MINOR

In re in the Marriage of Macknin, 937 N.E.2d 270, 2010 WL 3836916 (Ill. App. 2 Dist.) September 23, 2010.

Husband and Wife were divorced in September 2009 and entered into a Joint Parenting Agreement regarding their daughter, now age seven. Wife also had a daughter from a prior marriage, Step-Daughter, age 16. There were no provisions regarding Step-Daughter in the parties' Judgment for Dissolution of Marriage or Joint Parenting Agreement. Approximately one month following the dissolution, Wife filed a verified petition for emergency order of protection alleging that Husband raped and sexually abused Step-Daughter and was "grooming" Daughter for similar sexual abuse. The emergency order of protection was entered with Step-Daughter named as a protected person.

Husband issued a deposition subpoena to Step-Daughter. Father, the natural father of Step-Daughter, hired an attorney to represent Step-Daughter at the deposition. Husband filed a motion to disqualify the attorney alleging a conflict of interest due to the attorney's relationship with Wife. Husband further alleged that pursuant to section 506 of the Illinois Marriage and Dissolution of Marriage Act and Article IX of the Illinois Supreme Court Rules, Step-Daughter may be represented only by independent counsel appointed by the court. The trial court disqualified the attorney on the second ground alleged, stating that Series 900 together with section 506 had been violated because, pursuant to Illinois Supreme Court Rule 907, a Child representative must be appointed by the court, and the attorney for the minor must adhere to all ethical rules. The trial court then appointed an attorney to represent Step-Daughter.

Attorney then filed an interlocutory appeal on behalf of Father, as next friend of Step-Daughter and a "Subpoena-Respondent's" petition for leave to appeal pursuant to Supreme Court Rule 306(a)(5) and (a)(7) on behalf of Father.

Based upon Husband's response to Father's motion, the appellate court first considered the issue of Step-Daughter's jurisdiction to bring the appeal. The appellate court held that Step-Daughter did have jurisdiction to file since being named as a protected person in the Order of Protection made her a party to the proceeding. Further, Step-Daughter was a party to the motion filed by Husband to disqualify her attorney. Step-Daughter has jurisdiction under Supreme Court Rule 306(a)(7).

Regarding the issue of whether Husband lacks standing to complain of Step-Daughter's choice of counsel, Step-Daughter contends that Husband is a legal stranger to her and therefore has no say in any choices she may make. The appellate court found that Husband does have standing due to the alleged conflict of interest that could prejudice him by allowing Wife to control Step-Daughter's participation in the litigation.

Regarding the issue of whether Father had standing, as he never filed an entry of appearance in the matter, the court found that Father has standing as next friend of Step-Daughter and further, that a remand for Father to file an appearance would serve no purpose.

Regarding the issue of whether the trial court erred by granting Husband's motion to remove Attorney for Step-Daughter from representing her in the Order of Protection, the appellate court held that the trial court abused its discretion and exceeded its authority by disqualifying Attorney for Step-Daughter pursuant to section 506 of the Dissolution of Marriage Act and Article IX of

the Supreme Court Rules. In light of the fact that Husband did not have custody of Step-Daughter and Step-Daughter is not involved in any custody or visitation matter, Article IX is in applicable and therefore Attorney for Step-Daughter should not have been disqualified for not being appointed by the court.

DISCOVERY SANCTIONS

In re in the Marriage of Daebel, 935 N.E.2d 1131, 2010 WL 3623608 (Ill. App. 2 Dist.) September 15, 2010.

Husband moved for discovery sanctions against Wife, alleged that Wife failed to abide by a court order to prevent foreclosure on the marital home, alleged that Wife caused dissipation of marital assets, and sought to admit evidence of Wife's assets and Husband's medical records.

The trial court denied Husband's motion to admit evidence regarding dissipation because it was not stated in his own "Notice of Dissipation." The court did allow evidence of Wife's assets and disallowed entry of an evidence deposition transcript of Husband's physician. Essentially, the court found only that Wife had violated discovery requests and awarded Husband attorney's fees as a sanction for such willful conduct.

The Husband raised the same issues on appeal and the appellate court held that (1) requiring Wife to pay attorney's fees for willful failure to sit for deposition was too lenient a sanction, and Husband was also entitled to have Wife's testimony at trial barred; (2) the trial court acted outside its discretion when it declined to find that Wife had dissipated marital assets; and (3) Husband was entitled to a full opportunity to present his physician's deposition testimony as substantive evidence of his medical condition.

SUBSTITUTION OF JUDGE

In re Estate of Wilson, -- N.E.2d ---, 2010 WL 4126255 (Ill. App. 3 Dist.) October 10, 2010.

In this guardianship case, the trial court appointed a Guardian Ad Litem to investigate whether a woman who claimed to have powers of attorney over an 86-year old woman's estate and health care had financially exploited her. On the eve of a series of hearings, the accused woman filed a Motion for Substitution for Cause and asked that a hearing on a specific motion be transferred for hearing to a different judge on the grounds that that the trial judge had indicated that she had not believed the accused woman after questioning her at a prior hearing. The motion was not verified by affidavit or otherwise.

The Supreme Court heard the matter and addressed the issue of whether a trial court judge who is the subject of a petition for substitution for cause under section 2-1001(a)(3) of the Code of Civil Procedure must refer the petition to another judge for hearing automatically, even when the petition fails to comply with threshold procedural and substantive requirements.

The Supreme Court held that in order to trigger the right to a hearing before another judge on the question of whether substitution for cause is warranted, three requirements must be met: (1) the request must be made by petition; (2) the petition must set forth the specific cause for substitution; (3) the petition must be verified by affidavit. In this case, the petition was not verified and did not adequately allege cause for substitution. Furthermore, a judge's previous ruling almost never constitutes a valid basis for a claim of judicial bias. Therefore, the court was not required to refer the petition to another judge for hearing.

REQUESTS TO ADMIT

Supreme Court Rule 216 regarding Requests to Admit has been amended such that effective January 1, 2011, attorneys will now have to place a warning on the first page of Requests for Admission of Facts reminding the recipient of the 28-day deadline to respond. The Request must state, "*WARNING. If you fail to serve the response required by Rule 216 within 28 days after you are served with this paper, all the facts set forth in the requests will be deemed true and all of the documents described in the requests will be admitted.*" The number of requests will now also be limited to 30.

GUARDIANSHIP

In re in the Guardianship of K.R.J., a Minor, -- N.E.2d ---, 2010 WL 4721355 (Ill. App. 4 Dist.) November 15, 2010.

Maternal Grandparents brought a Petition for Guardianship of Grandmother's daughter's daughter who was in the child's father's custody. Both Mother and Father opposed the guardianship.

Grandparents called Father's other two sons, as well as Mother's older daughter to testify at the Guardianship hearings. Father had a relative testify on his behalf. The court found that Grandparents' witnesses (the two sons and daughter) were not credible.

The court held that Petitioner Grandparents did not rebut the presumption that Father is able to make and carry out day-to-day decisions concerning the minor child, as required by the statute. Grandparents appealed and the decision was affirmed.