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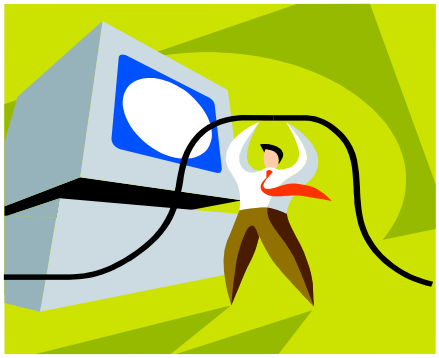
FAMILY LAW FOCUS



Check us out at www.nbrlaw.com.

"Hey, Look Us Over" & Visit Our Website

With apologies to the song title *Hey, Look Me Over*, we're borrowing a word or two from its lyrics to announce the launch of our new website.

Look for us at www.nbrlaw.com. Not only will you learn about our practice areas, but you can find out about the people who make up the legal team at NEWTON BECKER REICHERT.

Lots of Helpful Information

We are particularly pleased about all the information that is available on our website to help you. Learn about the basics of estate planning or find suggestions about how to talk with your child about divorce.

If consumer credit questions concern you, check our website. Or if you're considering mediation but don't really understand it, find out about how the process might work for you.

Come visit us! ♦

Evaluations, Assessments . . . the Medical Malpractice Act — Oh My!

In a Hendricks County, Indiana, case, the mother of a 12-year-old boy sued a mental health provider group, alleging negligence and defamation that led to her emotional distress.

In preparing an assessment on her son, the group, she claimed, had "negligently failed to conduct a proper investigation before including within its report information of her alleged unfitness as a parent."

Defamatory Statement

(The health provider had taken this data from a statement found in a prior evaluation of the boy, when he had been removed from her custody.)

The woman also charged that the inclusion of this "false and defamatory statement" as to her parenting had caused her emotional distress.

Medical Malpractice Act

At the trial court level, the mental health organization argued that the Mother's claim came within the purview of the Medical Malpractice Act. As such, the court lacked the subject matter jurisdiction to hear this case.

The group contended the case should have been submitted to a medical review panel for review and the rendition of an opinion—as required by Indiana Code Section 34-18-8-4 for malpractice claims against a health care provider.

Mother claimed emotional distress in case involving son's assessment.

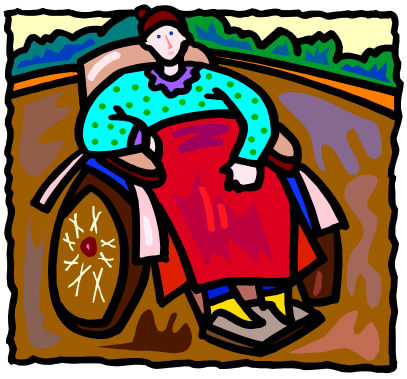
The lower court ruled in favor of the health provider group, but the Court of Appeals disagreed.

Act Not "All-Inclusive"

"The Act is not all-inclusive as to claims against medical providers," it said. There are exceptions,

Continued on Page 2

SPOTLIGHT ON:



Settlement Agreement failed to cover deteriorating health.

Claims Not Covered by Malpractice Act

Continued from Page 1

it pointed out in the decision, that fall outside the parameters of the Act.

The Mother's "claims for negligence and for intentional infliction of emotional distress lie outside the purview of the Act," the Court of Appeals found.

Subject Matter Jurisdiction

"Accordingly, the trial court erred in determining that it lacked subject matter jurisdiction because the complaint had not been submitted to a medical review panel.

There is a lesson to be learned here: carefully check your source material and background information before including any potentially damaging information in an assessment you are preparing.

To learn more about such claims, see Peters v. Cummins Mental Health, Inc., 790 N.E.2d 572 (Ind.App. 2003). We will be glad to provide you with a copy.♦

Settlement Agreement Fashioned without Counsel Can Be Minefield

In a difficult fact situation from Tippecanoe County, Indiana, the Court of Appeals sounded a word of warning to those trying to fashion their own settlement agreements without the benefit of legal counsel.

Prior to their marriage, Former Wife had been diagnosed with multiple sclerosis, and Former Husband was aware of this diagnosis throughout their relationship.

By the time the two ended their marriage, Former Wife's health had deteriorated, and she was confined to a wheelchair. Both parties agreed that she was permanently disabled.

Parties Negotiate Agreement

When the divorce was finalized, Former Wife was awarded—pursuant to a Settlement Agreement negotiated by them without legal counsel—$400 per month, as spousal maintenance, for the rest of her life.

With time, her financial needs changed as her medical condition worsened, and she petitioned the court to modify this maintenance.

But the trial court and the Court of Appeals refused to hear her case.

Agreement Exceeded State Statutes

Because their Settlement Agreement was one "that the Court could not have ordered in the absence of an agreement and . . . it was an agreement which the parties intended to be permanent and not modifiable," the Court's hands were tied. There was also no provision in the Settlement Agreement for review of maintenance upon changed circumstances. If you wish, contact us for a copy of Haville v. Haville, 787 N.E. 2d 410 (Ind.App. 2003).♦

REALITY CHECKS:

√ Cohabitants do not share the same legal rights in property as do married individuals.

√ Without a cohabitation agreement, you will probably not receive an equitable division of the assets accumulated during the time you lived together.

√ Cohabitants do not have the legal rights to inherit from one another as spouses do.

√ Only with a cohabitation agreement and estate planning may you ensure that your partner will receive assets after your death.

√ Do not rely on family—who may not have liked your relationship—to provide for your partner.

√ Cohabitants are not obliged to pay a part of partners' sole debts.

√ If you assume a liability, thinking your partner will help with the debt, a cohabitation agreement is necessary to provide a legal basis from which to collect—should he or she fail to pay.♦

Indiana Court Okays Adoption by Same-Sex Partner

Concluding that two is better than one, the Court of Appeals recently validated same-sex, second-parent adoptions in a case arising from Lake County, Indiana.

A woman living in a lesbian relationship adopted two children from Ethiopia and one from China in 1999. She adopted all three children in their respective countries through the international adoption process as a single parent.

Because she needed to "domesticate" the foreign adoptions in the state of Indiana, she filed Petitions Requesting Comity and Full Faith and Credit in the Adoption of all three children on March 29, 2001.

Adopting Three Children

The next day, her domestic partner of eight years filed petitions to adopt the three as a second parent.

Although the Lake County Division of Family and Children Services conducted home studies and submitted a report that supported the partner's adoption petitions, the trial court denied all three petitions.

The judge found that to approve the adoptions, the two women would be required to be related. She further noted that since they were not blood relatives, marriage would be the only means of securing the necessary legal relationship.

Same-Sex Marriage

As same-sex marriage is prohibited in Indiana, the court concluded that the women could never secure the legal relationship necessary to allow the partner to adopt the children.

Indiana Appellate Court validates same-sex, two-parent adoptions.

The judge further concluded that granting the partner's petitions to adopt the children would result in a termination of the adoptive mother's parental rights.

The Indiana Court of Appeals disagreed upon appeal. It found no statutory support for the contention that a party petitioning to adopt a child must be a legal relative to the child's adoptive parent.

No Termination of Rights

The Court further held that granting the partner's petitions to adopt would not result in a termination of the adoptive mother's parenting rights based upon Indiana's adoption laws.

Finding no statutory support for denying the partner's petitions to adopt the three children, the Court turned to public policy and "the best interests of the children."

"A two-parent adoption enables a child to be raised in a stable, supportive, and nurturing environment and precludes the possibility of state wardship in the event of one parent's death," the Court wrote.

Benefiting from Two Parents

It further found the children would benefit from having two parents from whom they could receive insurance benefits, education, housing and nutrition help as well as social security benefits.

Concluding that two loving and supportive parents are better than one, the Court found the partner's adoption of the children to be in the youngsters' best interests.

The Court stated in a footnote that it was not addressing issues raised when an unmarried petitioner seeks to adopt his or her partner's biological child.

Limited Scope of Review

Nor was the Court looking at when two unmarried persons seek to adopt a child in a joint petition.

However, applying the policy arguments used by the Court, lawyers may well use this case as support for clients' petitions to adopt their partner's biological children or to support joint petitions to adopt filed by same-sex couples.

If you would like a copy of In re the Adoption of M.M.G.C., H.H.C., and K.E.A.C., 785 N.E. 2d 267 (Ind.App. 2003), contact NEWTON BECKER REICHERT or the legal counsel of your choice.♦

Hearing-impaired Toddler Alleged Sexual Abuse

A guaranteed, "red flag" fact situation that draws the concern of lawyers and lay readers alike is one which involves sexual abuse charges relating to a child.

When that child is young, the evidentiary matters of proof can be difficult. And when that toddler is hearing-impaired and born with speech difficulties, issues are even more difficult for the party carrying the burden of proof.

Court of Appeals acknowledges tension between protecting children from sexual abuse and protecting rights of innocent parents.

Protecting Child from Sexual Abuse

The Indiana Court of Appeals recently used such a case to illustrate "the tension between protecting children from heinous sexual abuse and protecting innocent parents from the interruption and loss of parental rights, which almost inevitably accompanies a charge of sexual abuse—no matter how loosely those charges are grounded in fact."

In the matter at hand, the unwed Mother and Father are the parents of a girl born on May 20, 1997. After paternity was established by a court order, Mother was awarded custody, and Father was granted visitation.

Communicated through Sign Language

Hearing impaired with speech difficulties, the child communicated through sign language. She alerted her care provider—who "understood about eight to ten percent of (the girl's) signs"—that Father had molested her in August 2000 and, then again, a year later.

The same Indiana State Police detective investigated both incidents. No charges were filed, but Mother—after the second allegation—barred Father's visitation.

Specific Finding Necessary by Law

According to Indiana law, a noncustodial parent is entitled to reasonable visitation rights, unless a court makes a specific finding "of physical endangerment or emotional impairment prior to placing a restriction on the noncustodial parent's visitation."

It was undisputed that the juvenile court did not make a specific finding that visitation would endanger the toddler's physical health or well-being or significantly impair the youngster's emotional development.

Such an error, though, did not automatically result in a reversal. (In other cases, such matters would be sent back to the lower court for the necessary findings.)

Record Reflected "Admitted Uncertainty"

In this case, however, the Court failed "to see how remanding the cause would help resolve the juvenile court's doubts. . . . [A]s the court's order shows here, it was the evidence in the record that produced such admitted uncertainty" in the first place.

"In short," the Court concluded, "the record would not have permitted a finding that the (Father's) visitation would endanger (the girl's) physical health or well-being or significantly impair (her) emotional development."

If you would like a copy of Farrell v. Littell, 790 N.E.2d 612 (Ind.App. 2003), please let us know.♦

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