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FAMILY LAW FOCUS

Dad Dodges Trip to the Poorhouse

As reliable as the autumn leaves piling up each year are the bills that come with sending a child to college.

Tuition, books, lab fees, housing, supplies, clothing, student activity fees, transportation and, of course, "spending money" — all are necessary, and all need to be paid.

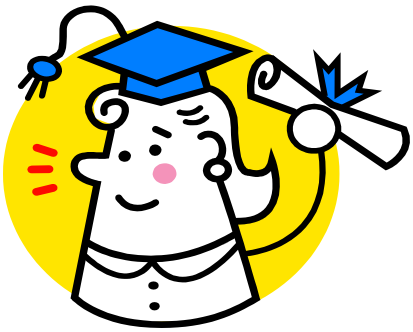
But what's a parent to do?

In the case at hand, Dad and Mom were married and had one daughter three years before divorcing.

College Expenses Not Included

After the dissolution hearing, Dad was ordered to pay child support, keep life insurance in place and handle part of the health care expenses. But the court never addressed college costs.

For the first three years of their daughter's college, Mom borrowed $50,000 so that the academically talented girl could go to an out-of-state private school that offered training in her area of interest.



Expenses of finishing up college are staggering for body shop employee.

During this period, Dad did not help with educational expenses.

Mom Seeks Help with Costs

When the girl's senior year was starting, Mom filed a petition asking the court to hold Dad "responsible for his proportionate share of (the) higher education expenses."

Basing its order on the proportionate shares of Dad's and Mom's combined annual incomes, the court told Dad to pay 59% of the costs.

And Dad — who was making $41,700 a year working as an estimator at a body shop — appealed.

Dad Says His Share Is Too Great

Stating his income was not high enough to pay 59% of his daughter's expenses, he argued that his contribution should have been capped at a level consistent with the tuition and costs of a state-supported university or college in Indiana.

The Court of Appeals agreed.

Although there was no evidence of Dad's expenses, "it is apparent that this is a significant burden for someone who earns approximately $41,700 per year," the Court noted.

Dad Is Left with Very Little

"After deducting from (his) income for federal and state taxes, the order leaves (him) with approximately $18,757 during the 2003-2004 school year with which he can support himself."

Because the order also included helping with his daughter's graduate training, his plight only worsened.

Costs Take 79% of His Wages

That year, Dad's contribution to her costs would take "approximately 79% of his gross wages . . . leaving him with a mere $7,070 on which he can live," the Court observed.

"This is well below the 2004 poverty level for a one-person household of $9,827 per year."

On this issue, the Court reversed and remanded to the lower court for a recalculation of Dad's obligation.

See *Snow v. Rincker*, 823 N.E.2d 1234 (Ind.App. 2005).♦

SPOTLIGHT ON:

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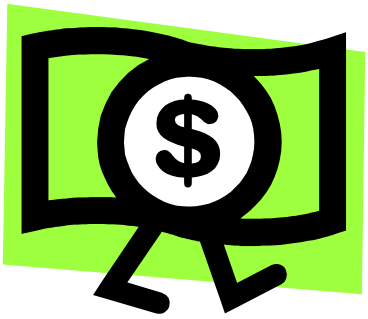
Supreme Court Speaks Out on Modifying Child Support



Wife's new job prompts modification of child support obligation.

Even though the Indiana Supreme Court rarely steps into the murky waters of family law, it decided to do so with this case.

Mom and Dad divorced in 1995, and she was awarded physical custody of their two children.

Ongoing Arguments in Court

Often in court with child support and parenting time disputes, the two most recently had argued about modifying child support.

The latest order had reduced Dad's support obligation as Mom had gotten full-time employment.

She appealed, but the Court of Appeals affirmed—and Mom turned to the state Supreme Court.

Law Dictates Review of Support

According to the high Court, "[o]ur review of the support modification order at issue here is controlled by IC §31-16-8-1."

Per this statute, Dad had the burden of showing "changed circumstances so substantial and continuing as to make the terms (of the order) unreasonable."

Despite Dad's charge that Mom's appeal was a "thinly veiled attempt" for the Court to reweigh the evidence, it said no.

Appellate Courts Will Step In

While appellate courts give "considerable deference" to the findings of the trial court, especially in family law matters, they will step in, when needed.

"[T]o the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible," the Court observed.

Here, with Mom's new full-time job, her income had gone up to $36,868 each year.

Dad Is Making More Money

But Dad's income had also increased, the Court noted, and he was making an annual income of $125,164 — without bonuses.

Even then, her "income was quite modest," it declared. The "change alleged here was not so substantial as to render the terms of the prior order unreasonable."

Vacating the Court of Appeals' opinion and reversing the trial court, it restored an earlier intervening support order.

See *MacLafferty v. MacLafferty*, 829 N.E.2d 938 (Ind. 2005).♦

REALITY CHECKS:

√ For the past decade, one child in Indiana dies — or has died — each week from abuse or neglect.

√ In this state, 57 children were killed by abuse or neglect in the fiscal year of 2004.

√ That number represents the third highest annual figure since Indiana started keeping records of these deaths in the 1970s.

√ 28% of our children are living in single-parent households.

√ In 2003, 30% of our kids were from families where no parent had a full-time, permanent job.

√ Nationally, Indiana was ranked 16th in 2003 — with 14% of its children living in poverty.

SOURCE: *Kids Count 2005* by Annie E. Casey Foundation; *Indianapolis Star*, 7/31/05.

Our Site Packed with Helpful Info

Check out our redesigned and super-easy-to-navigate website. We are at www.nbblaw.com.

With lots of links to helpful legal info, explanations of puzzling "legalese" and copies of present and past **FAMILY LAW FOCUS** newsletters, it's the place to visit.

In addition, you can learn more about various aspects of our legal work and discover all kinds of things about our professional team of lawyers and key personnel.

Our welcome mat is out! ♦

Beware Perils of Unreturned Ring

*M*ost of us assume when an engagement to marry falls apart, the girlfriend gets to keep the ring. It's only fair, we say, because he gave her the ring as a present.

Well . . . think again.

For the first time, the Indiana Court of Appeals has ruled on this issue, focusing its decision on whether the ring was intended as an "absolute" or "conditional" gift.

Girlfriend Is Given Ring

In this case, Boyfriend and Girlfriend lived together and had a son. She received an engagement ring from him in the fall of 1999.

Eighteen months later, Girlfriend told him "they should stop 'seeing each other for a while.'"

Subsequently, she "attempted to pawn her . . . ring because (he) had not requested it back and she no longer had a use for it."

Ring Stolen While Pawning It

While she was taking the ring from shop to shop, it was stolen from her car. As a result, she got $5,000 in insurance proceeds.

Months later, the Ex-Boyfriend took his Ex-Girlfriend to court, seeking, in part, the value of the stolen engagement ring.

The trial court found in her favor, but the Appellate Court disagreed and reversed.

The Court first looked to see if an engagement ring is an "absolute gift," where once given and accepted, it belongs to the donee.

A "no-fault" approach was adopted by Court for engagement rings.

Or is the gift "conditional," whereby a marriage must take place before ownership of the ring absolutely vests in the donee?

Ring Is "Conditional Gift"

Because an engagement ring is the symbol of an agreement to wed, the Court decided, "(it) is a conditional gift given in contemplation of marriage, and not an *inter vivos* transfer of personal property."

Many courts use a "fault-based" approach, wherein the donor can get a ring back "only if the engagement was broken by mutual agreement or unjustifiably by the donee."

Others adopt a "no-fault" analysis, holding once an engagement is over, the ring should be returned to the donor — regardless of fault.

"No-Fault" Is Approach Taken

With this case, our Court decided that "the 'no-fault' approach is consistent with our 'no-fault' system of divorce."

Refusing to make the courts responsible for unraveling the demise of a relationship, it opted for "no-fault" reasoning instead.

When a ring is bought for a wedding that is canceled, "the person who purchased (it) is entitled to its return or, if return . . . is impossible, to the monetary amount contributed toward the purchase of the ring," the Court concluded.

See *Fowler v. Perry*, 830 N.E.2d 97 (Ind.App. 2005).♦

Bride Insists on Two Certain DJs

*M*oral to this story: Do not try to change a bride's wedding plans.

After booking her reception at a special events Facility, Bride learned her chosen disc jockeys—who once had an "exclusive license" with the place—were no longer allowed to work there.

Even though she had picked the Facility because of these DJs, it refused to refund her deposit. The Bride went to court and lost.

On appeal, she argued that the Facility breached its contract with her and should refund her money.

The Court agreed. The use of these particular DJs "went to the basis of the bargain . . . and (Facility) breached its agreement when it refused to allow (the DJs) to provide those services."

See *Breeding v. Kye's Inc.*, 831 N.E.2d 188 (Ind.App. 2005).♦

Splitting Marital Property Is Tricky

A bit of advice for those thinking about getting a divorce: Don't forget to keep your calculator handy.

Using a case that, at its core, involved an improper computation in dividing the marital estate, the Court of Appeals outlined the proper manner in which to handle the matter.

Husband and Wife were wed in 1985, and the Wife filed for divorce in 2002. The couple had one child.

Husband Was in Debt $96,000

According to the dissolution decree entered by the trial court, the Husband was in debt nearly $96,000 at the time of their marriage.

In figuring the amounts to which each party was due from the marital property, the lower court subtracted the premarital debt from the Husband's net worth, resulting in a marital estate valued at some $289,000.

Then, because Wife's physical condition kept her from maintaining employment, the court awarded her 65% of the marital estate.

Debts prior to marriage create issues in splitting marital property upon couple's divorce.

In her motion to correct errors, Wife urged the court should have added the debt—rather than deducting it—for the total estate. It agreed and adjusted the calculations, but she then got 60% and he received 40%.

Disregard Premarital Debts?

The Husband appealed, contending the lower court "should have disregarded his premarital debts (and the marital assets used to satisfy those debts)" in its computations.

Enough wrangling, the Court said, as it articulated the way calculations are to be made.

A court must "divide the assets and liabilities of the parties . . . *in which they have a vested present interest,"* it noted.

Cannot Split Non-existing Assets

It cannot *"divide assets which do not exist just as it may not divide liabilities which do not exist."*

The Husband's debts became marital property upon his marriage, and those debts were satisfied prior to the divorce with marital assets.

"In other words, Husband's premarital liabilities and the marital assets used to satisfy those liabilities did not exist when Wife petitioned for dissolution."

As such, the Court noted, the trial court erred "in includ[ing] these liabilities and assets in the marital estate" in its calculations.

Accordingly, it reversed and remanded to the lower court with instructions to revise the decree.

See *Gard v. Gard*, 825 N.E.2d 907 (Ind.App. 2005).♦

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