NEWTON BECKER BOUWKAMP PENDOSKI, PC
ATTORNEYS AT LAW
3755 E. 82nd Street, Suite 220
Indianapolis, Indiana 46240
317 • 598 • 4529
317 • 598 • 4530 (fax)
http://www.nbbplaw.com

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FAMILY LAW FOCUS

College Costs Were Not in Decree

The parties' two children graduated despite Dad's failure to pay costs.

As reliable as the ringing of the school bells each year, so too are the cases filed by ex-spouses who want the other to pay school costs.

But before heading to the nearest lawyer, wanting your dissolution decree enforced, you need to know of the latest twist in family law.

In this particular case, Mom and Dad's marriage was dissolved in December of 1988, and their settlement agreement was incorporated into the divorce decree.

SPOTLIGHT ON:

In this decree, the parties agreed to joint legal custody with the Mom having primary physical custody of their children, ages six and nine.

Parties Agreed to Split Expenses

They also established that they would evenly split the educational expenses of the children, including the costs of their (son's) kindergarten and pre-school between them.

From 1988 through 1995, Dad made intermittent child support payments. Their children, though, were able to attend and graduate from college, and Dad did pay some of their daughter's costs.

After both were emancipated in 2006, Mom filed for back support owed by Dad. It was granted, and she was awarded about $152,000.

Decree Failed to Mention College

Dad appealed, urging in part the decree did not envision, nor did it specifically include, college costs. The Court of Appeals agreed.

In formulating its decision, the Court relied on *Brodt v. Lewis*, 824 N.E. 2d 1288 (Ind.App. 2005).

There, the parties negotiated a settlement when their child was six months old, agreeing the dad would pay support and "one-half of the child's school supplies, book rental and child care center expenses."

When their girl started college and after she had turned 21, her mother filed to modify support.

But a trial court, then the Court of Appeals, said the decree did not require the dad to pay for college.

Like *Brodt*, "we find the reference in this agreement to educational expenses to be of such a different type and magnitude from college expenses that college expenses could not reasonably have been contemplated by the parties as part of the agreement," it stated.

Responsibilities Are Not Specific

"The parties' settlement agreement did not specify that [Dad] would be responsible for half of the children's college fees and expenses, and [Mom] never filed a petition to modify the agreement."

As such, the Court said, the "court erred when it ordered [Dad] to pay half of the (kids') college fees and expenses after the fact."

(There is also a line of cases indicating courts do not have the power to order college costs, for the first time, after emancipation.)

Reversed and remanded.

See *Bean v. Bean*, 902 N.E.2d 256 (Ind.App. 2009).♦

REALITY CHECKS:

Not surprisingly, in the uncertain economic times of today, many folks are focused on keeping what they have for their kids. For them, estate planning is key.

√ Not having a Will is a mistake. It means that the state will decide what happens to your property.

√ Not updating your Will can backfire. Your family and assets grow and shrink, and new tax rules are enacted each year.

√ Ask the right person to be Personal Representative of your Will. Given that he or she must distribute your assets, they need to be calm, honest and organized.

√ If you name a Guardian for a minor or disabled child, think twice about appointing a couple. If something happens to one person, is the other suited to be a parent to your child?

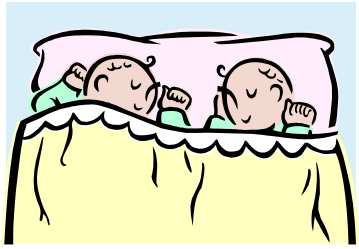
√ Asking the same person to be both your Guardian and Trustee could guarantee problems. Is the person whom you trust with your money good at raising a child?

√ As hard as it can be, consider worst-case scenarios. What if the people who are your Beneficiaries die shortly after you? What then?

√ Be sure to coordinate your Will with other estate documents.

SITE: http://articles.moneycentral.msn.com/RetirementandWills/PlanYourEstate.

Interstate Adoption of Girls Omitted Crucial Safeguard



Single man living in New Jersey tries to adopt twins born in Indianapolis.

In a case grabbing widespread media attention, the state Supreme Court intervened to protect twin girls who were being adopted by a single man in New Jersey.

Days after their birth in Indianapolis, the Petitioner (while staying in a local hotel) filed for adoption.

After a flurry of procedural moves by the Marion County Department of Child Services (DCS) and the Petitioner, the trial court placed the twins with him. It also ordered a six-month period of supervision over the placement.

Child Services Takes Appeal

The DCS appealed: first to the Court of Appeals, which affirmed, and then the Supreme Court.

Among the issues raised, the DCS urged the court had erred in waiving the requirement of "prior written approval" by the DCS or a child-placing agency licensed by the DCS. (Ind.Code §31-19-7-1).

The Supreme Court agreed. The evidence revealed that the Petitioner's oral request was the only basis for the waiver.

And ignoring this statutory requirement solely on his request was error, noted the Court.

So, too, was the failure of the lower court to follow the Interstate Compact on the Placement of Children (Compact).

Interstate Compact Controls

Because the states of Indiana and New Jersey are parties to the Compact, they are charged with exchanging "complete and accurate information" about the children and the "potential adoptive parents." (Ind.Code §31-28-4-1).

This never happened.

Persisting to claim he was an Indiana resident (despite teaching in New Jersey), the Petitioner refused to cooperate with the Compact office in New Jersey.

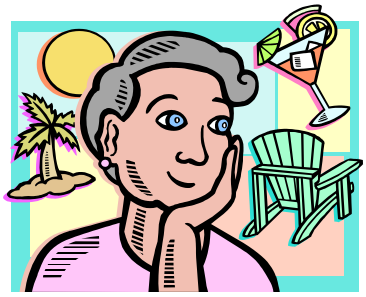
The court, therefore, named a guardian *ad litem* to protect the interests of the twins.

The woman did provide a home study from New Jersey but "never expressed an opinion on whether the adoption was in the best interests" of the kids.

Reversed and remanded to comply with the Compact.

In re Adoption of Infants H., 904 N.E.2d 203 (Ind. 2009).♦

Husband Raids Retirement Fund



Wife counted on retirement fund until husband took it from her.

Just because the Husband in this case ignored two orders from the trial court doesn't mean he prevailed in doing what he wanted.

His Wife filed a Petition for Dissolution of their marriage in February of 2006, and 17 months later, a divorce decree was issued.

In the court's findings, it detailed evidence as to the parties' education and employment history.

In addition, it noted the Wife's "financial position (was) vastly inferior to [H]usband's at the time of the division of marital assets."

Wife Was Stay-at-Home Mother

Because of his travels for business and pleasure, the court stated, "her contribution . . . as a homemaker and mother was greater than normal considering the special needs of the parties' minor son."

As such, the Wife was given 60% of their marital assets, among them was her Husband's 401(k) retirement fund of over $102,000.

In August of 2007, he was told by the court to submit a Qualified Domestic Relations Order (QDRO) — to divide his 401(k) — within seven days. This he failed to do.

Instead, he filed a Motion to Correct Errors, claiming the court had erred in dividing this asset.

Three months later, the court heard arguments and amended the percentage of the 401(k) awarded to each party. It again ordered the Husband to submit a QDRO.

Instead, he decided to roll "over the 401-K to an IRA" in his own name . . . without his Wife's knowledge or consent.

Husband Ignored Court Twice

He ignored the court a second time, and it found him "in contempt for transferring the marital assets."

The Husband appealed, arguing there had been no specific order forbidding him to transfer the funds.

But the Court Appeals was not persuaded by this claim.

"[T]he original August 31st order and the amended November 28th order had personally awarded to Wife funds in the 401(k)," it said.

And both the orders had directed the Husband to prepare and submit a QDRO for the division.

A QDRO, explained the Court, is an order creating or recognizing the existence of an alternate payee's right to receive all or a portion of the benefits payable with respect to a pension-pay participant.

As such, after the August order, the Wife had a personal interest in his 401(k). But the Husband had failed to provide a QDRO.

401(k) Funds Shifted to IRA

Moreover, at the end of October, he "unilaterally acted to transfer the 401(k) from his employer, where he admitted that it could have remained, to an IRA in his name alone," the Court continued.

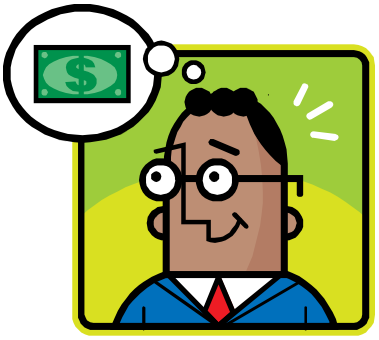
The Wife's claim to the 401(k) was thereby "injured."

According to the Court, contempt is for the party who has been damaged by another's failure to follow a court order issued for the private benefit of the aggrieved.

And whether a party is "in contempt" is left to the discretion of the trial court, reversible only upon evidence or inferences drawn therefrom to support it. Such was not the case here.

Affirmed.

See *Inman v. Inman*, 898 N.E.2d 1281 (Ind.App. 2009).♦



Husband raided retirement fund without knowledge of Wife.

Custody Is Changed from Granny

Usually the Supreme Court of Indiana takes the sidelines in family law matters, granting "latitude and deference" to the state's trial courts.

But when an incorrect statute is applied wrongfully, though, it will step into this legal minefield.

In late-2001, K.I. was born out-of-wedlock to Mom who had dated Dad briefly. When they broke up, he was unaware of the pregnancy.

Mom Left Infant with Grandma

Weeks after the birth, Mom left the infant with her mother who was named Guardian — and given legal custody — of the girl a year later.

About the same time, Mom ran into Dad, and she showed him a picture of K.I. After being informed he might be the father, he filed a Petition to Establish Paternity.

Genetic testing showed him to be the biological father, and a trial court declared him so in the fall of 2004. It also ordered custody was to remain with the Grandma, while providing visitation for the parents.

Little girl was caught in battle between Dad and Grandmother.

Over the next two years, Dad routinely visited K.I. In 2006, he filed for custody, and in 2007, he was awarded it. Grandma was given visitation consistent with the Parenting Time Guidelines.

Grandma Appealed Change

Grandma appealed the change, and the case ended in the Supreme Court. Affirming the decision of the lower court, it stated she had failed to overcome the presumption in favor of the natural parent.

Dad had filed a cross-appeal, arguing the court had abused its discretion in entering Grandma's visitation order "because it interfere[d] with his parental rights."

The Supreme Court agreed. The Guidelines' title, noted the Court, says it all. It "applies to parents, not other family members."

Grandparents' Legal Rights

"Although grandparents do not have the legal rights . . . of parents and do not possess a constitutional liberty interest with their grandchildren," a statute does apply to them.

Indiana Code §31-17-5-1 (Grandparent Visitation Act) allows "occasional, temporary visitation."

Because Grandma's visitation was calculated under the Parenting Time Guidelines, the wrong statute had been used, continued the Court.

Reversing on this point, it remanded to the trial court with instructions to refigure her visitation.

See *K.I. Ex Rel. J.I. v. J.H.*, 903 N.E.2d 453 (Ind. 2009).♦

NEWTON BECKER BOUWKAMP PENDOSKI, PC

ATTORNEYS AT LAW

317 • 598 • 4529 http://www.nbbplaw.com 317 • 598 • 4530 (fax)

M. Kent Newton	knewton@nbbplaw.com
Carl J. Becker	cbecker@nbbplaw.com
Alan A. Bouwkamp	abouwkamp@nbbplaw.com
Lana Pendoski	lpendoski@nbbplaw.com
Judith Vale Newton	jnewton@nbbplaw.com
Leah Brownfield, Paralegal	lbrownfield@nbbplaw.com
Courtney Haines, Paralegal	chaines@nbbplaw.com
Jane Callahan, Administrator	jcallahan@nbbplaw.com