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

FALL 2010
VOLUME 9/ ISSUE 2

FAMILY LAW FOCUS

Wife Dumps Hubby Who's on Duty

With the return of many of our combat troops comes the recognition that very often military considerations can play into a divorce.

Such was the case here. In the U.S. military since 1990, Husband married his wife in New York during 1995. They are the parents of one child who was born in 1996.

After living in New York, the family was stationed in Georgia, Kansas and, finally, in Germany.

Husband Divorced While on Duty

In 2005, Wife moved to Indiana and, three years later, filed for divorce. Stating her Husband was in Germany on duty, Wife sought primary custody of their daughter and distribution of their property.

At the final hearing in 2009, the trial court dissolved the marriage and awarded custody to the Wife.

SPOTLIGHT ON:

Husband was stationed in Germany when Wife filed divorce petition.

Husband was ordered to make child support payments, pay Wife a spousal allowance and give her 32% of his military retirement benefits.

Among other things on appeal, Husband argued "that the trial court lacked jurisdiction to do anything except simply to dissolve the parties' marriage." He was correct.

Divorce Was *In Rem* Proceeding

According to the Court of Appeals, "[t]he changing of the parties' status from married to unmarried (is) an *in rem* proceeding, and the trial court may, upon *ex parte* request of a resident party, dissolve a marriage without obtaining personal jurisdiction over the other party."

But, "*in personam* jurisdiction over both parties is required to adjudicate the parties' property rights."

In examining whether the court had personal jurisdiction to divide the property, the Court looked at Indiana Trial Rule 4.4(A)(7).

It says anyone who has lived in Indiana in a marital relationship and then left the state, leaving behind a spouse who stays in Indiana, submits to the state's jurisdiction.

Here, Husband swore by affidavit he had never lived in Indiana at any time he was wed to Wife.

Basis for Personal Jurisdiction?

Then the Court checked to see if personal jurisdiction was obtained on any other basis "not inconsistent with the Constitutions of this state or the United States."

In essence, it asked if the Husband had any minimum contacts with Indiana so that this lawsuit did not offend traditional notions of fair play and substantial justice.

The evidence indicates the answer to that question was no. The only contact he had was paying an allotment to Wife by check or by depositing it into an account.

The order, therefore, as to support, spousal allowance and retirement benefits is void for lack of personal jurisdiction.

Affirmed in part, reversed in part, and remanded.

See case of *Harris v. Harris*, 922 N.E.2d 626 (Ind.App. 2010).♦

REALITY CHECKS:

If you're contemplating or in the midst of a divorce, you'll probably agree: the whole process can be very difficult sometimes.

But don't make it harder on yourself or your children by doing things to make matters worse.

√ Don't use your child or children as pawns. It will likely cause them long-term damage.

√ Skip all the details of your spouse's misdeeds with your kids. If you trash your soon-to-be ex, you're trashing a part of them.

√ Think about mediating with your ex. Even if you can't agree on all of the issues, eliminating some will save time and money.

√ Don't spend thousands to get Dad's tools or Aunt Milly's dishes. Fighting over each little thing is really about power — and only the lawyers get rich.

√ Your attorney is not trained to be a health care professional. When you complain about your spouse to him or her, remember: you're paying for legal expertise — and not therapeutic time.

√ Don't check out of your legal case. Stay on top of the details, and hold your attorney accountable for the hourly billing.

SEE: "The Seven Deadly Sins of Divorce," *http://glo.msn.com/relationships.*♦

Father Can't Get Advantage In Court by Snatching Child

Every once in a while there are cases that belong in the "you-have-to-be-kidding" category, and this is certainly one of them.

In early 2003, K.C. was born out-of-wedlock in Indiana, and Mother had sole legal custody by virtue of Ind.Code §31-14-13-1.

This statute provides "[a] biological mother of a child born out of wedlock has sole legal custody of the child, unless a statute or court order provides otherwise[.]"

Father Took K.C. to Mississippi

Absent any adjudication of custody, Father took K.C. from Indiana to Alabama and later to Mississippi where they lived.

After several years, Mother located Father; and she filed a Petition for Writ of Habeas Corpus in Indiana for the return of her child.

But Father claimed Mississippi was K.C.'s home state. It was, he said, where custody under the Uniform Child Custody Jurisdiction Act (UCCJA) should be decided.

The trial court agreed and dismissed Mother's petition.

On appeal, Mother argued the court had erred in deciding the state of Indiana lacked the jurisdiction to enforce her custodial rights.

The Court of Appeals concluded she was correct.

Father snatched child and moved to another state to get custody.

At the hearing, Mother testified Father had taken K.C. after she refused to live with him. He, by affidavit, claimed she had abandoned the child.

According to the Court of Appeals, though, Mother did not ask that custody be adjudicated.

Rather, she sought to enforce her rights as the legal custodial parent and asked that K.C. be returned to her. As such, her Petition for Writ did not implicate the provisions of the UCCJA.

Cannot Change Home State

In defiance of legal custody, Father cannot change the child's home state, the Court observed.

Here, his "behavior was at worst criminal and at best self-help that ignored the relevant law. His unilateral actions did not deprive (Indiana) of jurisdiction to enforce custody rights."

Reversed and remanded.

See *In Re K.C.*, 922 N.E.2d 738 (Ind.App. 2010).♦

Grandparents Battle Dad for Child

Don't underestimate the love grandparents have for a grandchild — especially when that child has been left behind by their daughter.

In this case, L.J.S. was born out-of-wedlock when Mom lived with her parents in early 2006.

Nine months later, she filed a Petition to Establish Paternity and Child Support. And, that same day, she signed an Agreed Judgment of Paternity with Dad.

Dad Granted Visitation with Son

That order gave Mom custody with visitation to Dad "as agreed by the parties." The trial court also established a $192 weekly child support obligation on the part of Dad.

For two years, L.J.S. primarily stayed at the Grandparents while Mom worked and dated. She moved to Kentucky in early 2008, leaving the child behind with her folks.

In August 2008, they petitioned to be named custodians and granted legal custody of L.J.S. (Mom did not object to the change in custody.)

At this point, Dad filed for custody. All the while, he had kept in contact with the child, despite being sometimes out-of-state for work.

Grandparents Given Custody

At the hearing in January, 2009, the trial court changed the custody from Mom to Grandparents, giving reasonable visitation to Parents.

Grandma petitioned the trial court for custody of her grandchild.

Dad appealed, urging the court had erred in awarding them custody, given he had not abandoned L.J.S., acquiesced to their having custody or acted as an unfit parent.

This was not a custody dispute between two parents, the Court of Appeals initially observed.

Mom's "abandonment of custody of L.J.S. changes the custody analysis from one between parents to one between a natural parent and a third party," it noted.

When this occurs, the constitutional right for parents to decide about the care, custody and control of their children is called into play.

Parent Has "Superior Right"

A nonparent who seeks to displace a parent bears the burden of overcoming the parent's presumptively superior right to custody.

Never did Grandparents show Dad was unfit as a parent. Nor did they suggest Dad abandoned L.J.S, relinquished his rights or otherwise abdicated his parental authority.

Hence, the record was inadequate to "clearly and convincingly overcome the important and strong constitutional presumption that L.J.S. should be placed in Father's custody," concluded the Court.

Reversed and remanded.

See *In Re Paternity of L.J.S.*, 923 N.E.2d 458 (Ind.App. 2010).♦

New HIPAA Fines

For those who must deal with the Health Insurance Portability and Accountability Act (HIPAA), be aware of its new penalties.

Effective 30 November 2009, there is a tiered system for assessing the level of each HIPAA privacy violation — and its penalty.

Tier A carries a fine of $100 for each violation, and it is for those who didn't realize they were in violation of the Act.

Tier B ($1,000 each violation) is for violations due to reasonable cause, but not willful neglect.

Tier C ($10,000 each violation) is for willful neglect that the organization ultimately corrected.

Tier D ($50,000 each violation) is for willful neglect that the organization did not correct.

See *Health Information Technology for Economic and Clinical Health (HITECH) Act.*♦

Filing Date Tied to Support Order

Trial court ordered Dad to pay retroactive support prior to filing.

After examining the dissolution statutes of Illinois and Indiana as well as common law doctrines and case law precedents, the Court of Appeals refused to extend the reach of Indiana's domestic law.

In this case, Mom and Dad wed in 1998; and they had a child C.B.

In late 2002, they separated, and Dad voluntarily sent money to Mom for C.B. every other week.

Illinois Dismissed Petition in 2006

In 2006, he stopped making payments and filed for divorce in Illinois. But this action was dismissed for lack of jurisdiction because Mom lived in Indiana.

The next year, Dad filed a petition for dissolution in Indiana.

At the final hearing in 2008, Mom asked the trial court to impose a child support obligation that was retroactive to June 2006 when Dad stopped informal payments.

Even though her request predated the filing of the divorce petition by 17 months, it was granted.

Dad Hit with Support Arrearage

As such, Dad was immediately subject to a retroactive child support order — back to June 2006 — in the amount of $14,574.

He appealed, arguing the court had erred in awarding child support retroactive to a time before the filing date of the divorce petition.

The Court of Appeals agreed. While parents have a common law duty to support their kids, it said, that was not the dispositive issue.

Rather, the Court pondered if a lower court "has authority to reach into an intact marriage — for that is what occurred here when the support order covered a time before the filing of the dissolution decree — and order . . . child support."

Divorce Petition Engages Court

The machinery of the courts engages when the dissolution petition is filed, the Court explained.

Before that, a court has no jurisdiction to issue orders as to the children of the marriage except in situations involving criminal neglect or abuse. Such was not alleged here.

With the filing of the petition, though, the parties give authority to the court to make decisions previously reserved for the parents.

"In our view, that rule and the bright line it represents should remain inviolate," the Court declared.

Reversed and remanded with written dissent.

See the case of *Boone v. Boone*, 924 N.E.2d 649 (Ind.App. 2010).♦

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