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FAMILY LAW FOCUS

State Legislators Tackle Family Law Issues

As surely as the daffodils herald the coming of spring, so too does the flurry of activity that spills over into the hallways of the Indiana Statehouse in Indianapolis.

There legislators are grappling with a variety of issues—knowing that the regular session of the General Assembly must end on April 29.

Among the bills being considered in this year's legislature are:

Arbitration in Family Law (SB 8)

Senate Bill 8 would specify the procedures to be utilized in cases that deal with the use of binding arbitration in family law matters.

Applicable only to domestic law issues, it could be used in an action for divorce, or to establish child support, custody or parenting time.

Legislators craft family law bills.

It would also be available to modify a decree, judgment or order entered under IC 31. Unless both parties agreed in writing to repudiate their agreement, it would be valid, irrevocable and enforceable.

Child Abuse and Neglect & Adoption Proceedings (SB 340)

Senate Bill 0340 would require a court to determine whether a person, a licensed child-placing agency or a county Office of Family and Children placing a child for adoption has given required documents to the prospective adoptive parents before granting the adoption.

Under this bill, if a person on behalf of the state files a Motion to Dismiss a Child in Need of Services (CHINS) petition, that person must provide a statement that sets out the reasons for requesting the dismissal.

In this situation, the court must, not later than ten days after the Motion to Dismiss is filed, either grant the motion or set a date for a hearing on the motion.

According to this bill, the per-

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SPOTLIGHT ON:

Fifth Attorney Joins Our Lakeside Office

With a "tip of the hat" to that classic tune, *June Is Busting Out All Over*, we are pleased to say that Newton Becker Bouwkamp is, too.

Not only are we picking up additional office space in our current location, but we are delighted to introduce a new face in our midst.

Lana L. Lennington, formerly with a large Indianapolis law firm, brings eight years of experience practicing law in both Indiana and Tennessee. She also brings with her great warmth and a galvanizing wit.

Raised in Muncie, Indiana, Lana has a strong interest in working with the often emotionally-charged issues inherent in domestic relations law—in addition to the nuances of estate planning and probate.

A *cum laude* graduate of Ball State University as well as Valparaiso University School of Law, she is single and the proud owner of Murphy, a fawn-colored pug. ♦

General Assembly Session Slated to Adjourn April 29

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Bills are amended frequently before being signed into law.

son, agency or institution placing a child for adoption must give the adoptive parents a report containing non-identifying information concerning the birth parents.

This report must be provided at the time the home study or evaluation concerning the suitability of the proposed home for the child is commenced.

Procedural Requirements for Adoption (SB 422)

This Senate Bill would establish requirements for pre-birth waivers of paternity and waivers of notice of adoption proceedings. It would also specify that a waiver is irrevocable.

Under this proposed piece of legislation, a mother would be prohibited from executing a pre-birth consent to adoption.

And if a father had executed a pre-birth consent to adoption, this bill would require it 1) be in writing, 2) be notarized, and 3) contain an advisement that the waiver is irrevocable.

SB 422 would also provide arrearages in support owed to a child would not be extinguished when that child is adopted.

Release of Person's History in Adoptions (HB 1217)

According to this proposal, a person, a licensed child-placing agency or a county Office of Family and Children would be required to release—to an adult adoptee—certain social, medical, psychological and educational records about that adoptee.

This would include adoption information for those adoptions granted before July 1, 1993.

* * *

While the final disposition of these measures was unavailable when **FAMILY LAW FOCUS** *was sent to the printer, you can check on their status by consulting the web-site maintained by our state.*

Visit www.IN.gov and go to the General Assembly link for the latest action taken on these bills. There you can not only learn the history of a bill and its various amendments but whether, in fact, it was ever signed into law. ♦

REALITY CHECKS:

√ More than 479,000 same-sex couples in the United States share a household, according to the U.S. Census of 2000.

√ Over sixty percent (60%) of the nation's adoption agencies—public as well as private—accept applications from homosexuals.

√ Forty percent (40%) of these adoption agencies have placed children with gay or lesbian parents.

√ More than 7,300 employers in the United States offer health care benefits to same-sex partners of their employees.

√ In seven states, cases involving same-sex partnerships are being considered by their respective state supreme courts.

√ Constitutional amendments to ban same-sex marriage have been put on the ballots of 13 states.

√ Thirty-eight states already have Defense of Marriage (DOMA) laws on their books. ♦

SOURCE: *LJN: Law Journal Newsletters*

Issues related to same-sex marriage are before legislatures and courts.

Ignoring "Pre-nups" Can Be Risky Business

Love them or loathe them—but, definitely, do not ignore them.

Prenuptial agreements are to be taken into account in calculating the distribution of marital property during a divorce proceeding.

The Husband and Wife in this case signed a Prenuptial Agreement at the end of September, 2001, before marrying in October.

Marital Assets Were Divided

A few years later, though, the "bloom was off the rose," and the Wife petitioned for dissolution of the marriage. The couple's property was divided in circuit court.

Although the lower court said "it entered this award in order '[t]o achieve a fair and equitable division,'" the Husband disagreed.

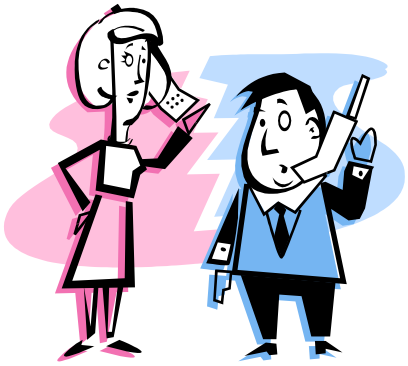
On appeal, he noted that the judgment—in favor of the Wife—was "directly contrary to the parties' Prenuptial Agreement."

Agreement Served as Waiver

"By signing the Agreement," he argued, "the parties specifically agreed that it would operate as a waiver to their right to a 'just and equitable division' of their separate and community property."

On appeal, the Court of Appeals agreed with him and reversed the circuit court's order.

According to the Prenuptial Agreement, the parties wanted "to preserve the character of their separate property, whether owned



"Pre-nups" can help avoid fighting.

at the time the Agreement was signed or acquired later."

Protecting Separate Property

They also sought "to avoid combining or commingling of the property, and to protect their separate property . . . from the debts and obligations of the other party."

In addition to the clear evidence in the Agreement of the parties' intentions to keep their property separate, testimony taken also indicated this desire.

In its opinion, the Court noted that the lower court "should not re-write the contract of the parties."

Construing Intent of Parties

"[R]ather we must liberally construe the prenuptial agreement to effectuate the intent of the parties when they signed it."

As is apparent from the Agreement, the Court continued, "the parties . . . intended and desired for their property to remain separate.

"Merely because one party now prefers a different outcome, we will not re-write the agreement."

For more information, see *Daugherty v. Daugherty*, 816 N.E.2d 1180 (Ind.App. 2004). ♦

Parents Quarrel over Last Name

Names. Whose name?

It was not about support, visitation or even custody—this case arose because Mom and Dad quarreled about whose last name their nonmarital child should bear.

Initially, they agreed that the youngster would take the maiden name of Mom. But when she married, Dad asked the trial court to change the child's surname to his.

His request was granted, but, on appeal, the Court differed.

"Best Interest of the Child"

In Indiana, "a biological father seeking to obtain the name change of his nonmarital child bears the burden" of showing the change "is in the best interest of the child."

The trial court, though, never reached this question. Instead, it granted Dad's petition because it was "unable to find any agreement by the father to the child retaining [Mom's] last name."

Concluding this was not "the proper standard to be applied in deciding this question," the Court reversed and remanded the case.

See *In Re Paternity of J.C.*, 819 N.E.2d 525 (Ind.App. 2004). ♦

Court Alters Spousal Monthly Maintenance

Observing our Supreme Court's admonition "to review settlement agreements with 'great restraint,'" the Court of Appeals recently tiptoed onto this tricky terrain.

In this case, a trial court granted the Husband's petition for divorce and approved the parties' negotiated "Summary Dissolution Decree."

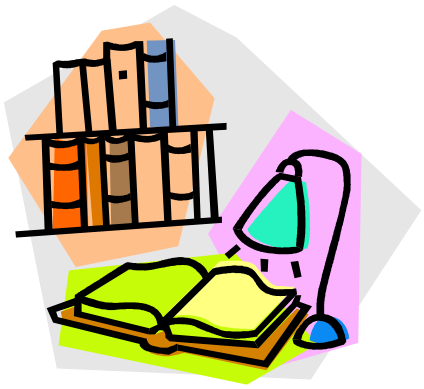
Part of that agreement specified ex-Husband would pay his former Wife "rehabilitative maintenance" of $800 per month for three years.

Ex-Wife Needed Educational Help

This provision was conditioned on the fact that she had not worked continuously throughout their marriage and needed help in getting an education to find a suitable job.

In February of 2004, ex-Husband moved to modify the agreement because his former Wife had made "no substantial effort to enroll in and complete any formal education."

The court granted his request,



Ex-Wife refused to enroll in and finish any educational programs.

and the ex-Wife appealed—arguing the court had no authority to modify their agreement because it could not have ordered maintenance payments without the parties' consent.

(Spousal maintenance payments may be court-imposed only in limited situations, but they may be provided for in negotiated settlements.)

Court of Appeals Disagreed

The Court of Appeals disagreed. "[I]t is our view that the trial court may modify the Agreement under these circumstances," it noted.

"To hold otherwise may circumvent the parties' ability or desire to bargain independently without court intervention.

"Put another way," the Court continued, "a party may be loathe to enter into an agreement such as the one here, knowing that a court could not intervene in the event of changed circumstances."

$18,000 in Payments Were Given

Evidence that the former Wife had collected more than $18,000 in spousal maintenance payments—not for education but, instead, apparently used for her support—was more than enough for the Court.

"In our view, such was not the intent and spirit of the Agreement," it observed. "[U]nder these circumstances, the trial court properly modified [ex-Husband's] maintenance obligation."

See *Zan v. Zan,* 820 N.E.2d 1284 (Ind.App. 2005). ♦

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