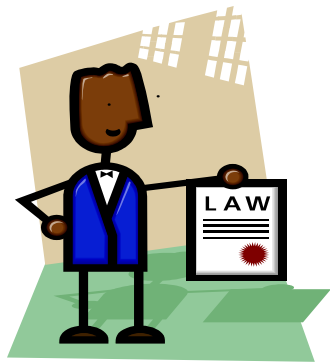


# FAMILY LAW FOCUS

## Legislators Enact Few Family Laws



*Legislators spent most of the time working on property tax reform.*

In a legislative session dominated by concerns about property tax reform, members of the Indiana General Assembly still managed to enact several bills relating to family law.

### **Child in Need of Services (HB1259)**

The state's Department of Child Services must now give notice to certain individuals at least seven (7) days

before a periodic case review involving a child in need of services. (This law became effective upon passage.)

Not only has notice been reduced from ten (10) days, but an additional party — the foster parent or long-term foster parent — must also be given notice.

### **Arrests for Domestic Violence (SB0027)**

A facility having custody of a person arrested on domestic violence charges must “keep the person in custody for at least eight (8) hours from the time of arrest.”

Effective July 1, the law — with this “cooling-off period for domestic battery”— will give victims time to get help from their families or relatives, or to seek a shelter where they'll be safe.

### **School Attendance Enforcement (HB1234)**

In addition to attendance officers and school officials, security police officers, as well as school corporation police officers, may inspect the attendance records of a public school, starting July 1.

Furthermore, when an affidavit against a parent is filed to en-

force compulsory school attendance, it must be in a court with jurisdiction in the county where the affected child resides.

The prosecuting attorney is mandated to “file and prosecute actions under this section as (he or she would) in other criminal cases.”

### **Lactation Support in Workplace (SB0219)**

Starting July 1, employers who “employ 25 or more individuals,” will be required to provide support to nursing mothers in the workplace.

“[T]o the extent reasonably possible,” they must provide 1) “a private location for an employee to express the employee's breast milk during any period away from the employee's assigned duties;” and 2) “a refrigerator or other cold storage space . . . for keeping the expressed milk until the end of employee's work day.”♦



*With the gavel pounding, new bills headed to the Governor to be signed.*

### **SPOTLIGHT ON:**

- **Legislators Focus on Tax Reform Instead of Family Law Issues.....1**
- **Ex-Wife Says Military Pension Includes Disability Benefits.....2**
- **Reality Checks: LGBT Students...2**
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# Ex-Wife Argues Pension \$\$ Includes Disability Benefits



*U.S. Air Force retiree challenges pension payments to his ex-Wife.*

As if the threat of being called up for another tour wasn't alarming enough, this veteran was faced with living on a reduced pension.

Married for 21 years, he and his Wife divorced in early 2006.

## Settlement Agreement Drafted

Together, they wrote a property settlement agreement in which Husband — recently retired from the Air Force — agreed to pay his Wife half of his military pension.

Upon learning he was eligible for veteran disability benefits, ex-Husband waived a portion of his retirement pension. He was required to do so by law, "[i]n order to prevent double-dipping."

## Ex-Wife Files Contempt Petition

In May 2006, ex-Wife filed a petition for contempt, alleging ex-Husband had failed to make the required pension payments to her.

The trial court agreed. It found the language of their Agreement

required him to pay her 50% of his retirement income, including his disability payments.

But the Court of Appeals disagreed, relying on a decision rendered by the United States Supreme Court in *Mansell v. Mansell*, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed2d 675 (1989).

## Court Looks at Protection Act

There the Court looked at the Former Spouses' Protection Act which authorized courts to treat "disposable retired or retainer pay" as community property.

But, it observed, any amount waived in order to receive disability benefits must be deducted from the total pay.

As such, Indiana's Appellate Court concluded "state courts do not have the authority to treat military retirement pay that has been waived to receive veterans' disability benefits as property divisible upon divorce."

## Order Is "Clearly Erroneous"

Hence, the order that ex-Husband pay ex-Wife "50% of his retirement income . . . including his disability payments, is clearly erroneous."

Reversed and remanded.

See *Griffin v. Griffin*, 872 N.E.2d 653 (Ind.App. 2007).♦

## REALITY CHECKS:

✓ Schools are responsible for providing all students with a safe environment in which to learn.

✓ For many students, especially the children who are lesbian, gay, bisexual or transgender (LGBT), school is not a safe place.

✓ In 2005, nearly a fifth (17.6%) of LGBT students reported being physically assaulted at school due to their sexual orientation.

✓ Nearly two-thirds (64.3%) of them explained that they feel unsafe in school because of their sexual orientation.

✓ Only 10 states and the District of Columbia protect students from bullying and harassment based on sexual orientation, and only five and the District of Columbia protect students based on gender identity and expression.

✓ School-based clubs addressing LGBT issues (known as Gay-Straight Alliances or GSAs) can positively affect school climate.

✓ Research shows these student-led clubs — open to all members of the student body regardless of sexual orientation — can help make schools safer by sending a message that biased language and harassment will not be tolerated.

SOURCE: *Indy PFLAG News*, March 2008; <http://www.glsen.org>. ♦

# Grandma Wins Visitation of Baby



*Baby boy was a handful for Grandma who was appointed as his guardian.*

If ever there were a case that turned family relationships upside-down, this appeal is it.

Here, Mom filed a petition to end the maternal Grandma's court-ordered visitation with her son.

What?

And why?

According to Mom, who was 22 years old when she was adopted by her out-of-state second cousins, the Grandma "was no longer (the boy's) grandmother by virtue of (Mom's) adoption."

Born out of wedlock in November 2001, the infant boy was turned over to Mom's mother to provide care. She was appointed as his guardian in June 2002.

## **Baby Lived with Grandmother**

The boy lived with his maternal Grandma until February 2005, when the trial court ordered that her guardianship be terminated.

She was granted visitation with the child one weekend per month.

In April 2005, Mom was adopted, and 17 months later, she

filed a "Verified Motion for Termination of Grandparent Visitation."

Following a hearing, consisting of legal argument and no presentation of evidence as to the child's best interests, the trial court terminated Grandma's visitation rights.

Grandma appealed. And even though she claimed this case was not governed by the Grandparent Visitation Act (the GVA), the Court of Appeals concluded otherwise.

"To the extent (Grandma) has any right to visitation . . . , it is provided by the GVA (Indiana Code Chapter 31-17-5)," the Court said.

## **Adoption of Adult Parent**

"The GVA is silent, however, on the question of the effect of an adult *parent's* adoption on the ability of a biological grandparent to seek visitation with his or her grandchild," the Court continued.

"This is a question of first impression in Indiana, . . . and it also appears to be an issue that seldom has arisen anywhere in the country."

The Court of Appeal of Florida, though, did address this issue in *Worley v. Worley*, 534 So.2d 862 (Fla.Dist.Ct.App. 1988).

There, the Court held "the adoption of an adult who has children in being at the entry of the judgment of adoption does not operate to sever the relationship of those children with their natural relatives."

*Worley* is consistent with the GVA and Indiana's adoption law, noted the Court of Appeals.

But the GVA "is silent with respect to the effect of an adult parent's adoption on any already-established relationships between a natural grandparent and his or her grandchild."

## **No Automatic Adoption Found**

Even though Mom urged the Court to "view her adoption . . . as an automatic adoption of (her son) by (the cousins) as well," there is no such evidence in the record.

The Court, therefore, found Mom's "decision to legally sever ties with her biological mother . . . does not automatically and for purposes of the GVA sever all of (Grandma's) ties with her biological grandson, . . . who himself has not been adopted by any third party."

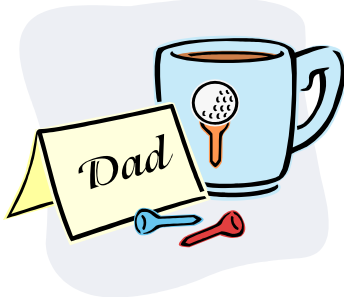
Reversed and remanded.

*In Re Guardianship of J.E.M.*, 870 N.E.2d 517 (Ind.App. 2007).♦



*Grandma battled child's Mom for monthly visitation rights.*

# Dad Fails to End His Child Support



*Despite efforts to disavow paternity, Court declares Dad is still Dad.*

Even though a trial court said Dad could stop paying support for two children, after testing showed he was not the father of either, the Court of Appeals found otherwise.

Two children were born out of wedlock during 1989 and 1990. After the birth of each, Mom and Dad jointly filed a petition to establish paternity.

## Dad Signed Each of the Petitions

Dad signed both of these petitions, along with forms in which he waived any right to request testing to establish his paternity.

He was ordered thereby to pay

child support, and, within a year, he and Mom had parted ways.

Dad was jailed in 1996. Upon his release in 2002, he took these two kids to live with his wife and their three children for a time.

During that period, the youngsters were overheard talking about not “look[ing] like dad.”

Upon learning of this conversation, Dad sought DNA confirmation of his paternity and found there was no probability he was their father.

## Motions to Vacate Were Filed

He filed a motion to vacate both paternity petitions as well as the two support orders, and it was granted by the trial court in March 2007.

The State appealed.

The few cases on this issue turn on whether a party “stumbles upon” the genetic evidence “inadvertently” or whether he “actively” seeks it out to disprove his paternity.

They also examine the equitable

discretion of a trial court and whether it is called into play because of a “justice” issue.

## External Medical Proof Is Needed

Indiana law holds that one who “challenge[s] a support order on the basis of non-paternity without externally obtained clear medical proof should be rejected.”

“Externally obtained” proof, the Court noted, means evidence of non-paternity that “*was not actively sought* by the putative father, *but was discovered almost inadvertently* in a manner that was unrelated to child support proceedings.”

Here Dad not only sought tests to disapprove his paternity, but his request was also “outside the equitable discretion” of the trial court.

As such, the trial court erred in vacating Dad’s paternity, and the Court of Appeals reversed.

See *In Re Paternity of M.M.B.*, 877 N.E.2d 1239 (Ind.App. 2007).♦

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