

FAMILY LAW FOCUS

Did Wife Waste Marital Property?



Wife refused to file joint income taxes with Husband because of "spite."

In a new twist on an old argument, the Wife herein claimed her refusal to file joint tax returns with her soon-to-be ex-Husband was not a dissipation of their marital assets.

But the trial court and the Court of Appeals decided otherwise.

Husband Was Main Wage-earner

Husband and Wife were wed over 40 years, and he was the primary wage-earner. She handled all their finances during that time, having "very little income of her own."

Then, two years prior to their divorce, he began cashing his own paycheck — taking some money for his expenses and depositing the rest into the couple's joint account.

Wife Refused to File Jointly

According to the trial court, the Wife resented this change, thereby refusing to file joint tax returns with him for 2006 and 2007.

On appeal, the Court was asked whether this was dissipation.

The answer to such a question, it noted, "must be determined from a review of the facts and circumstances in each case."

Was the expenditure excessive? Did it benefit the marriage? When was it made? And was the dissipating party trying to hide, deplete or divert the marital asset?

What Constitutes Dissipation?

"Dissipation generally involves the use or diminution of the marital estate for a purpose unrelated to the marriage and does not include the use of marital property to meet routine financial obligations," it said.

In this case, her refusal to file jointly cost Husband over \$8,600 in state and federal income taxes.

He and she, as well as her disabled daughter from a prior rela-

tionship, all benefitted from his income during the two-year period.

But only he paid the resultant taxes without having the benefit of claiming them as his dependents.

This resulted in a dissipation of the parties' assets in their marital estate, the Court concluded.

The wife acted "out of spite," it observed. And "[g]iven the apparent value of the . . . estate, (the) additional tax obligation of \$8,600 was a significant waste."

Wife Ignored Negative Impact

The Wife did this "without regard to the negative impact this unnecessary expenditure would have on the marital estate."

Furthermore, the Court continued, the Wife did "not suggest, nor would the record support, she filed her tax returns separately in order to protect herself based upon a reasonable belief that Husband's joint returns were fraudulent or otherwise subject to challenge."

Thus, her argument the trial court abused its discretion in finding she had dissipated their marital assets must fail.

Affirmed, with dissent in part.

See *Hardebeck v. Hardebeck*, 917 N.E.2d 694 (Ind.App. 2009). ♦

SPOTLIGHT ON:

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REALITY CHECKS:

In the face of unemployment, bankruptcies and vanishing health care in today's economic climate, domestic violence is increasing.

✓ Almost 100,000 people called crisis phone lines in Indiana to report domestic abuse between July 2008 and June 2009.

✓ Most of them were women.

✓ Domestic violence and abuse can be physical or emotional, economic, religious or sexual.

✓ Usually, a victim stays in an abusive situation because of being in love, then the hope that things will improve, and, finally, fear.

✓ Domestic violence is not about anger — it's power and control.

✓ One in four people is impacted by domestic violence. That means you know a person, are that person or were that person caught in an abusive situation.

✓ If that person is you, LEAVE.

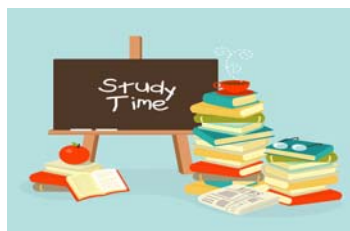
✓ If children go with you, advise school systems and welfare not to give out any information.

✓ Inside Indiana, the Coalition Against Domestic Violence Hotline is **1-800-332-7385**.

✓ Outside Indiana, the National Domestic Violence Hotline is **1-800-799-SAFE (799-7233)**. ♦

SOURCES: *Indianapolis Star*, 8 Nov. 2009; Indiana Coalition Against Domestic Violence.

Court Gives Custody of Kids To Father's Aunt and Uncle



The Uncle was devoted to helping great-nephew with his homework.

When your three Children are “pretty much” living with the father’s Aunt and Uncle, it’s hard to argue they’re “merely babysitters.” But that’s what this mother did.

According to the record, Mom and Dad had a child in 1997, 1998 and 2002. Then, a month after the third birth, they got married.

Over the next four years, Aunt and Uncle helped the couple by providing childcare for their kids.

Without legal counsel in 2006, Dad filed for divorce, *pro se*. During that year, the kids lived with Aunt and Uncle half the time. The next year, it was 70 percent.

Aunt and Uncle Sought Custody

In May, 2008, Aunt and Uncle filed a Petition to Intervene, asking that they be given custody. Found to be “*de facto* custodians” of the kids, they were awarded custody.

On appeal, Mom argued Aunt and Uncle failed to rebut the presumption that favors awarding custody of children to the natural par-

ent. But the Court of Appeals was not persuaded.

Evidence indicated Mom and Dad had “a history of abusing illegal drugs.” She also had been unable to keep a stable job or residence, the Court continued. And Mom was not in possession of a valid driver’s license.

Mom Left Her Three Children

She “left the Children in the care and control of Aunt and Uncle for long periods of time,” it noted, and “the Children (had) bonded with Aunt and Uncle.”

During those periods, the Court observed, they provided for the Children’s food, clothing and medical expenses — without financial help from Mom.

They also saw to their educational needs. The Aunt met with one of the Children’s teachers some 25 times after the boy had problems changing schools.

For his part, Uncle regularly helped him with homework to address the boy’s failing grades.

Thus, the Court concluded, “Aunt and Uncle (had) rebutted the parental presumption by clear and convincing evidence.”

Affirmed.

See *A.J.L. v. D.A.L.*, 912 N.E.2d 866 (Ind.App. 2009). ♦

Child Support Guidelines Change



Changes to Child Support Rules impact wage-earners of all incomes.

If you're in the midst of battling your soon-to-be ex-spouse over child support issues, you need to be aware of the recent changes made in Indiana's Child Support Rules & Guidelines.

Effective January 1, 2010, the revisions significantly impact a variety of fact situations.

Education and Activity Expenses

Such "extraordinary expenses" as private schooling, college and extracurricular activities now have their own rule — Guideline 8.

A trial court has the discretion to order support for private elementary and secondary education, but it is instructed to consider several variables set forth in the rule.

Likewise, a court may order support for the payment of college expenses. But note: Guideline 8(b) also encourages the child to make a financial contribution as well.

"[T]he court should consider post-secondary education to be a group effort . . . (and) should apportion the expenses between the parents and the child."

Guideline 8(c) focuses on those "other extraordinary expenses" such as camps and sports leagues.

And, again under this Rule, the court is told to consider the variables as set forth in the Guideline.

New Result for High Incomes

The new Guidelines keep the same "Schedules Table" for figuring the Basic Child Support Obligation appropriate for the parties.

Functionally, those figures are still based on the Combined Weekly Adjusted Income of the parents and the number of children.

Under the old guidelines, however, the Schedules would top out at a Combined Weekly Adjusted Income of \$4,000 each week — or \$208,000 per year.

For income levels in excess of \$4,000 per week, these guidelines then applied a complicated formula.

Under the new Guidelines, the Schedules max out at \$10,000 per week — or \$520,000 per year.

Any income in excess of that is subject to incremental increases at a fixed percentage of the income above \$10,000 per week, depending on the number of children.

Scales Balanced for Low Incomes

In balancing the scales for the low-income earners as well as the unemployed or underemployed, the new Guidelines expressly provides for a \$12 per week minimum.

According to the old guidelines, those parents whose combined income was \$100 weekly would pay \$25 per week for one child, or \$50 per week for two.

Obviously, the support ordered was disproportionate to the parties' income, thus leading to the change.

"Negative" Child Support Order

Guideline 3(F) provides that when a child support calculation results in a "negative" support amount for the non-custodial parent, there is now a rebuttable presumption that the custodial parent shall pay an amount equal to the "negative" support figure to the noncustodial parent.

This overrules the prior interpretation that, in the event of a negative support calculation, there is a rebuttable presumption that no support is due between parents.

See *Res Gestae*, Nov. 2009; *A Survey of the New Amendments to the Indiana Child Support Rules & Guidelines*. ♦



Court may order support for payment of various educational expenses.

Dad Is Absent during His Divorce

While the idea of never having to see the person you're divorcing might sound appealing, it was not what this father had envisioned.

Nonetheless, he ended up owing \$47.34 weekly in child support without knowing he was divorced.

The record showed that he and Mom wed in 2002 and separated ten months later. Their only child was born after they had separated.

Dad Stopped Visiting Daughter

Dad visited the baby in early infancy but stopped within weeks.

In May 2004, Mom filed for divorce and, two months later, she was deployed to Kosovo. The baby was cared for by her mother.

While Mom was overseas, her lawyers repeatedly tried to locate Dad. They unsuccessfully tried to serve the divorce petition by certified mail and then published notice of the pending action three times in the community newspaper.



Dad vanished and Mom shipped out, but their divorce was granted.

But Dad could never be found. Concluding he had been served by publication, the trial court granted the divorce while Mom was gone.

Four years later, Dad showed up and petitioned to set aside the decree. He claimed he had not received adequate notice and, therefore, the decree was void for lack of personal jurisdiction.

Both Courts Were Unconvinced

Neither the court nor the Court of Appeals bought his argument.

At the outset, the Court noted, "we observe that Father's argument . . . is premised upon the incorrect assumption that a trial court

may not dissolve a marriage without acquiring personal jurisdiction over an absent party."

In order to divide any property of the parties, the Court continued, *in personam* jurisdiction is needed. But here there was no marital property or debts for division.

What about Child Support?

And the support owed by Dad? The Court looked for "an adequate showing of due diligence, such that we can conclude that the trial court obtained personal jurisdiction (over Dad) in a manner consistent with the Due Process Clause."

Given Dad's absence from his baby's life and the efforts of Mom's lawyers to find him, the Court concluded the trial court had obtained personal jurisdiction. Therefore, he was responsible for child support.

Affirmed.

See *D.L.D. v. L.D.*, 911 N.E.2d 675 (Ind.App. 2009).♦

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