

FAMILY LAW FOCUS

Dad Tries to Unload Teenaged Son

Is this man the father? Or isn't he? That's the issue before the trial court in this case — some 14 years after the child in question was born.

On June 1, 1995, T.M. was born to unmarried parents. The next day, Dad executed a paternity affidavit, claiming to be the boy's natural father. He refused to take a DNA test.

Three months later, Mom and Dad filed a joint paternity petition for support and related matters. Soon after, the court entered an order settling their parental status.

Dad Told to Pay Child Support

In addition, the court gave custody of T.M. to Mom and visitation to Dad. It also ordered Dad to pay health insurance and child support.

For the first 14 years of T.M.'s life, Dad held himself out to be the boy's father. He paid child support,



Dad attempts to rescind paternity after finding he is not natural father.

provided health insurance at times and often exercised primary physical custody and parenting time.

In February 2009, as T.M. was finishing eighth grade, he began to live with Dad and his wife.

According to her, the boy did not share any traits with her husband, so she bought a DNA kit from a drug store in September 2009.

Test Required Swabs from Mouth

It required that Dad and T.M. take mouth swabs and mail them to a laboratory in Salt Lake City, Utah.

In December, the lab "issued its results by email, informing Dad he was not T.M.'s biological father."

On February 12, 2010, Dad moved to set aside his paternity affidavit, claiming he had signed under "fraud, duress or material mistake of fact." Ind.Code §16-37-2-2.1(i).

At the hearing, the court excluded the DNA results after Mom

objected they were not properly certified. She also testified to an exclusive sexual relationship with Dad when T.M. was conceived.

The court refused to set aside Dad's paternity affidavit. But he appealed, urging the DNA results should have been admitted.

The Court of Appeals, though, was unpersuaded by his arguments.

The admissibility of evidence is a matter within the trial court's discretion, observed the Court, and will be reversed only upon a showing of abuse of discretion.

DNA Test Was Mail-in Kit

Here, the DNA test came from a mail-in kit. "[T]here was no information from the purported laboratory where the tests were conducted, or the persons conducting those tests, establishing a foundation to support the reliability of their results," it concluded.

Mom's "testimony specifically did not support a finding of fraud or mistake of fact," the Court continued, "and the trial court's judgment was based on its inclination to credit [the mother's] testimony."

Affirmed.

See *In Re Paternity of T.M.*, 953 N.E.2d 96 (Ind.App. 2011). ♦

SPOTLIGHT ON:

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REALITY CHECKS:

While most of us have heard of cyber-bullying, few of us know how dangerous it can be.

✓ A form of violence, cyber-bullying uses technology, like cell phones and the Internet, to bully or harass another person. It is a serious problem among teenagers.

✓ It can be sending threats to someone's email account or cell phone, spreading rumors through texts, pretending to be someone else online to hurt another person or posting threatening messages on social networking sites.

✓ Over half of all adolescents have been bullied online, and about the same number of teens have engaged in cyber-bullying.

✓ Only one in ten teenagers tells a parent if they have been a cyber-bully victim.

✓ Fewer than one in five cyber-bullying incidents are ever reported to law enforcement.

✓ About one in five teenagers have posted sexually suggestive pictures of themselves to others.

✓ Girls are somewhat more likely than boys to be involved.

✓ Cyber-bullying victims are more likely to have low self-esteem and to consider suicide.

See www.bullyingstatistics.org for suggestions as to ways to reduce cyber-bullying. ♦

Therapists Move Cautiously with Online “Telepractices”

For a family raising an autistic child in the country, for an impaired person limited to home, for an older adult confined to a nursing home ... the use of “telehealth” services is on the increase.

Defined as the provision of psychological services remotely — via telephone, email or videoconferencing — it can improve access to care for those in far-flung areas or those who, due to illness or mobility issues, cannot leave home.

Today's Technology Can Treat

Despite the legal, ethical and licensing concerns it can pose, practitioners using today's technology say it helps serve the nearly 80 million Americans living in mental health professional shortage areas.

Psychologists with the Department of Veterans Affairs, in fact, report seeing patients in rural areas via teleconferencing for 20 years.

Medicare, Medicaid and other third-party reimbursement is avail-



Traditional psychotherapy involves face-to-face patient interaction.

able for psychologists who deliver such services and who follow specific guidelines.

But is “telehealth” effective?

A comprehensive analysis of 92 studies, done in 2008, found the differences between Internet-based therapy and face-to-face treatment were not statistically significant.

Review Shows Positive Outcomes

Similarly, a 2009 review of 148 peer-review publications examining the use of videoconferencing to deliver patient interventions showed high patient satisfaction and positive clinical outcomes.

Given the explosive growth of the Internet, interacting with a therapist online may become a convenience that is expected ... once questions about it are settled.

See the *Monitor on Psychology* article: “A New Emphasis on Telehealth/How Can Psychologists Stay Ahead of the Curve — and Keep Patients Safe?” in June 2011, Vol. 42, No. 6. ♦



Is the delivery of “telehealth” via Internet the face of the future?

Man Vandalizes Ex-Wife's House

When the subject of a protective order comes up, most people think about harming a specific person — not damage done to things.

But, here, the things indirectly provided the basis for its issuance.

Dennis and Teresa divorced in February 2010, and she was given physical custody of their two kids.

On May 10-11, she had to go out of town on business, so the children stayed with their father.

During her trip, Teresa was notified by her housekeeper that there was water in her basement.

No Evidence of Forced Entry

When she got home, she found no evidence of a forced entry and nothing seemed to be missing, including \$2,000 in her bedroom.

That evening, Teresa saw a slit in one cushion of her leather sofa.

The next day, a plumber discovered the leak was due to a hole that been drilled in the PVC drain pipe to her bathtub.

Later, Teresa reexamined her sofa and found more damage to the

cushions. It looked as if “someone had [taken] a utility knife and just slashed [the sofa] up,” she testified.

Shortly thereafter, the ex-wife noticed her home was without heat.

She went to the basement to find the inside of her furnace was burnt and its wires looked as though they had been cut with wire cutters.

Clothes Sprayed with Bleach

Upon further investigation, she located bleach spots on her carpet and spots on clothes in her closet.

On May 18, Teresa filed for an order for protection from Dennis.

In granting the order, the court noted her ex-spouse was a mechanical engineer with the “knowledge and ability to perform these acts.”

Dennis appealed to the Court of Appeals, claiming there was no evidence in the record to show he had committed domestic violence.

But the Court was unimpressed.

What Is Domestic Violence?

“Domestic violence,” it stated, “is the occurrence of an act by the respondent [trying] to cause, threatening to cause, or causing physical harm to the petitioner, or placing the petitioner in fear of physical harm.” Ind.Code §34-6-2-34.5.

In this case, Teresa asked for a protective order, explaining her ex-husband’s actions put her in fear.

In her petition, she referenced there was already a protective order

in place because, in 2008, Dennis had threatened to kill her.

It is clear her ex-husband is a threat to her, observed the Court.

The person who vandalized her home had access with a key gotten from their kids. Nothing was stolen which indicated someone “wanted to send [her] a message.”

The perpetrator, in addition, had a specialized knowledge of electrical circuitry that enabled the manipulation of the circuit board in her furnace, it continued.

Hole Was Drilled in Drain Pipe

This person also drilled a hole in her drain pipe, slashed her sofa and sprayed her clothes as well as her carpeting with bleach — all of which scared Teresa.

In sum, the Court found there was sufficient evidence to support granting the protective order.

Affirmed.

(Ex-husband’s potential civil liability and his criminal problems were not part of this case.)

See *Mysliwy v. Mysliwy*, 953 N.E.2d 1072 (Ind.App. 2011).♦



Ex-husband took key from children and broke into his former wife's house.



With ex-wife gone from the house, ex-husband smashes and slashes.

Pair Fights over Health Care Plan



Couple fights about health benefits after mediating rest of their divorce.

Complicated and technical? No doubt. Full of words that require a M.D. degree behind your name to understand it. Almost certainly.

But make no mistake. If you are heading into a divorce, do not forget to take a look at your partner's health care plan. Very often, it will be considered an asset that can be divided between you.

Married in 1978, the wife filed a petition for dissolution of marriage during the spring of 2010.

Couple Mediated Settlement

During the proceedings, the couple mediated a settlement but for whether his employer's contri-

butions to his health care plan were a vested, divisible asset.

At the final hearing, the trial court concluded it was a divisible marital asset that should be divided equally between the parties.

Husband Argued Plan Not Asset

The Ex-husband appealed, claiming the court had erred in deciding his "Dollar Bank Account" was a divisible marital asset.

But the Court of Appeals was not persuaded.

"[W]hether a right to a present or future benefit constitutes an asset that should be included in marital property depends mainly on whether it has 'vested' by the time of dissolution," it explained.

There are two ways in which a right to a benefit can vest: (1) in interest or (2) in possession.

"[V]esting in interest," noted the Court, "implies a presently fixed right to future enjoyment"

while "[v]esting in possession connotes an immediate[ly] existing right of present enjoyment."

Here, the Ex-husband was not vested in interest, the Court stated, because his Account benefits could be reduced, frozen or eliminated.

But he was vested in possession to the right to use them. Not only could he use the funds in this Account to purchase his benefits, but he could even get reimbursement for such out-of-pocket medical costs as deductibles and co-pays.

Ex-husband Was Vested in Plan

Because of this "immediately-existing right of present enjoyment with regard to the Dollar Bank Account," observed the Court, the Ex-husband was vested in possession.

Affirmed in part, reversed in part, and remanded to trial court to determine the value of the Account.

See *Ford v. Ford*, 953 N.E.2d 1137 (Ind.App. 2011).♦

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