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Summer 2003
Volume 2 / Issue 1

FAMILY LAW FOCUS

Changes in Child Support Guidelines Are Offered

Proposed revisions in child support guidelines have been offered.

Readers of **FAMILY LAW FOCUS** may recall that NEWTON BECKER REICHERT expressed concern about the recent decision by the Indiana Court of Appeals in *Sanjari v. Sanjari*.

The *Sanjari* panel of the Court applied the method used in setting child support in cases where parents have split custody (each parent has custody of at least one child) to situations in which parents share joint custody (children spend approximately equal time with each parent).

Proposed Revisions

Many of the state's legal professionals were confused by the Court's ruling, and the Domestic Relations Committee of the Indiana Judicial Conference heard questions from family law lawyers and judges around Indiana. Perhaps as a response, this group has drafted proposed revisions to the current Indiana Child Support Guidelines.

While the proposed Guidelines contain many revisions, the treatment of parenting time and shared parenting is the most significant.

Eliminating 10% Credit

The proposed Guidelines eliminate the standard (and minimal) 10% credit to a non-custodial parent who exercises regular parenting time. Similarly, the 50% abatement of support during extended parenting time would also be eliminated.

In its place, child support would be calculated, including a credit based on the actual number of overnights a parent would spend with each child, pursuant to the custody and parenting time provisions of their dissolution or paternity decree.

Number of Overnights

For example, a parent who exercises his or her parenting time, pursuant to the letter of the Indiana Parenting Time Guidelines, has approximately 98 overnights per year.

The proposed Guidelines use the number of overnights to evaluate the "transferred" costs of parenting time. "Transferred costs" are those which follow the children, such as food and transportation, as opposed to

Birthdays may be part of calculating number of overnights.

"duplicated" expenses—those fixed costs incurred by both parents for the benefit of the children.

Calculating Parenting Time Credit

To calculate an appropriate parenting time credit under the proposed Guidelines, the number of overnights would be placed on to a separate worksheet that evaluates the transferred and duplicated expenses.

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SPOTLIGHT ON:

Proposals might impact child support paid by parent.

Proposed Revisions in Figuring Support

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As more and more judges order parenting plans that call for shared custody and parenting time in excess of the Indiana Guidelines, the proposed changes to the calculation of child support will avoid financial windfalls to custodial parents.

Clarification for Lawyers

It will also provide clarification for judges and practitioners who often are faced with "non-traditional" parenting time arrangements.

The Domestic Relations Committee will accept comments regarding the proposed guidelines until August 16, 2003.

To review the proposed guidelines, to suggest changes, or to research the guidelines further, you are invited to access the Indiana Judicial Conference website at http://www.in.gov/judiciary/center/committees/dom_rel/index.html. ♦

Attempting "Do-It-Yourself" Divorce Is Like Doing Your Own Root Canal

Nearly every week, NEWTON BECKER REICHERT receives desperate telephone calls from people recently divorced who just learned their dissolution decrees were incomplete, inaccurate, or simply didn't mean what they had thought.

These callers say they wanted to avoid a costly divorce—so they either did the paperwork themselves or hired a lawyer to finish a "non-contested" divorce for a small fee.

Frantic "Do-It-Yourselfers"

Now they are frantic and want to know what we can do to fix the situation. Our response is often the same. Absolutely nothing.

So imagine the horror of an NBR attorney who heard a local disc jockey promoting a "do-it-yourself-divorce" site on the Internet.

Regardless of any directions on the Internet, few would undertake a "do-it-yourself" root canal. Despite detailed instructions provided on *This Old House,* not many would try to build their own home.

Handling Own Divorce

So why are people so quick to think they can handle their own divorces?

While the frustration of paying fees to a lawyer is understandable, the issues that must be handled in a divorce are far too important to be left to a few clicks of the mouse.

Most commonly, "quickie" divorces have resulted in one spouse forfeiting the rights to significant assets to which they would otherwise have been entitled. Vague child custody and support provisions can also result in countless disagreements between parents and emotional harm to children.

Modifying a Decree

Pursuant to the relevant laws and rules of court, a dissolution agreement that has been approved by a court is difficult to modify. Similarly, one will incur far more in attorney fees—to say nothing of the emotional costs—in an effort to correct a bad decree than he or she would have incurred to work with counsel during the divorce.

If your spouse approaches you with a proposed agreement, please contact competent counsel of your choice prior to signing it. ♦

REALITY CHECKS:

√ If paternity is not established, unwed fathers have no rights to custody or parenting time.

√ If paternity is not established, unwed fathers don't have any legal obligation to pay child support.

√ Be wary of any documents signed at the hospital.

√ Don't agree unless you're sure.

Court Offers Cautionary Tale for Cohabiting Couple

The course of love was far from smooth for an unmarried couple who had lived and worked together in northern Indiana for eleven years.

Soon after the end of their relationship, the two drew up a "Settlement Agreement" in which they spelled out their rights and responsibilities as to their property.

The Agreement required the male cohabitant to pay his girlfriend the sum of $40,000 over a period of six years. He also agreed to pay her health insurance and car payments for a year as well as pay off three charge accounts that were in her name.

Working without Paycheck

During their time together, the girlfriend had worked in his jewelry store, three to five days a week over four to five years—without receiving any paycheck. She had also incurred credit card debt in the form of cash advances that had been used to increase the cash flow to his business.

The lovebirds had freely comingled their funds. In addition, they had exerted joint efforts in making his store a success and had incurred various liabilities during the course of running his business.

As a result, the male cohabitant made the promised payments . . . until he was told that this Agreement was essentially a "palimony" agreement and, as such, was unenforceable as being contrary to public policy.

Not "Palimony" Agreement

Dissolution of Marriage Act doesn't give rights in cohabitation cases.

In this decision, the Indiana Court of Appeals in *Putz v. Allie*, 785 N.E.2d 577 (Ind.App. 2003) concluded that the agreement in question was not a contract for the payment of "palimony."

The Court decided that the Agreement was not one where sexual services had served as consideration, thereby rendering it unenforceable and void as against public policy. Instead, the Court found the Agreement was grounded in contract law.

Delineating Property

"Just as married partners are free to delineate in ante– or post-nuptial agreements the nature of their ownership in property, so should unmarried persons be free to do the same," the Court noted.

(We offer a word of caution here: a post-nuptial agreement, especially, is the subject of more complex and specific legal requirements.)

The opinion noted that "recovery would be based only upon legally viable contractual and/or equitable grounds which the parties could establish according to their own particular circumstances."

Because there are few Indiana cases that deal with palimony, this case takes on added importance.♦

"Prenup" Articulates Romantic Whispers

I take thee as my spouse, for better, for worse—and pursuant to the terms we negotiated in our pre-nuptial agreement.

As unromantic as these contracts might appear, "prenups" are being used evermore increasingly today . . . especially in the case of second and third marriages.

Is "Prenup" Enforceable?

Most lawyers will suggest them in cases of children from a prior marriage, a family-owned business, significant assets held by one party, and an inheritance that one person might want to protect.

If you and your intended decide to draft and execute a pre-nuptial agreement, make sure that it will be enforceable in a court of law.

Each Person Needs Lawyer

To that end, each person will need his or her own lawyer as their interests may be at odds. Ideally, too, this agreement should be signed well before the wedding so each party might focus on the more joyful aspects of the event. ♦

Beware of Disclosing Information To Third Party

Third parties may have access to mental health records kept by a therapist in limited circumstances.

If you are a therapist or counselor, an Indiana Court of Appeals' holding may be of special interest to you. In a case that looked at the disclosure of patient information by a therapist to a third party, the Court addressed itself to the situations in which a mental health professional may—or may not—maintain patient confidentiality.

In this particular circumstance, an employee (at the direction and request of his employer) met with several therapists for counseling at the employer's expense.

During the course of treatment, one of the various counselors made contact with the employer to inform him that the employee "had a serious behavior problem, was unstable, and presented a suicide risk." In response, the employer "called the local police and requested that they confirm [the employee's] safety."

Patient Signed Release of Information Forms

Several times, the patient had signed release of information forms—once for a therapist to talk with the employer to explain why the patient required a leave of absence and, then later, for another therapist to indicate that the patient was willing to return to work.

Despite the care with which these counselors handled the confidential information of the employee (and the limited situations in which they disclosed any privileged material), the employee, nonetheless, brought multiple causes of action against them. The employee claimed that the mental health professionals had engaged in medical malpractice, the intentional infliction of emotional distress, fraud, negligence and the invasion of privacy.

No Intent to Harm Employee

In refusing to decide for the employee, the Court said that "there is no evidence that any of these conversations were motivated by an intent to harm [the employee] or even with reckless disregard to the harm that could result. Rather, the defendants' conversations with [the employer] were motivated by their efforts to obtain counseling for [the employee], to intercede on his behalf and at his request with his employer, and by their concern for [the employee's] well-being at an apparent time of crisis."

A therapist, nonetheless, is well advised to obtain a proper release before disclosing any patient information. ♦

NBR Welcomes Our New Readers

If you are one of the new readers of **FAMILY LAW FOCUS**, we welcome you. In our quarterly newsletter, we offer commentaries about issues of family law that may be of concern to you in your profession. For the therapists among you, we provide updates on legal situations that may impact you or your patients.

Soon you will be able to access any of NEWTON BECKER REICHERT'S newsletters on-line. They may be found, along with information about family law and our firm, on our website at http://www.nbrlaw.com. ♦

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