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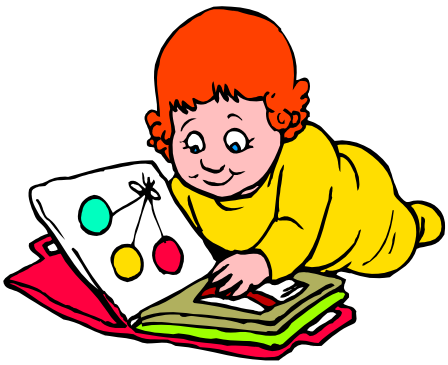
FAMILY LAW FOCUS

May Religious Beliefs Be Used As Evidence?



Custody battle involved testimony about religious practices.

Usually the tension between one's religion and his or her legal responsibilities flies below the public's radar.

But with the deaths of two children, whose parents sought little or no medical care in keeping with their religious beliefs, the issue is again news.

In this case, Mom and Dad wed in the spring of 2002, and a baby girl was born nine months later. By the summer of 2004, the marriage was over.

Parties Alternated Custody of Girl

Between the dates of separation and dissolution, the two shared custody, alternating weeks between them.

When the baby was with Dad, she stayed at his parents where he was living, and the Grandmother—a Jehovah's Witness—provided child care.

In issuing the divorce decree, the court awarded custody to Mom, and Dad was given reasonable parenting time . . . but he wanted more.

Religious Testimony Allowed

On appeal, he claims the lower court erred in allowing testimony about his mother's religious beliefs and practices. But the Court of Appeals disagreed.

At the heart of this case is an evidentiary rule (Rule 610) precluding the use of beliefs or opinions on religious matters in court if the intent is to impair or enhance the credibility of a witness.

This was not the situation here, noted the Court. Rather the Mom's lawyer "sought to illuminate for the court what sort of a factor" the Grandmother would be in regard to the little girl's religious training—if Dad obtained physical custody.

Custodian Decides Upbringing

According to Indiana Code §31-17-2-17, "the custodian may determine the child's upbringing, including the child's education, health care and religious training."

It "would make no sense," said the Court, "to confer that right upon a custodial parent (through the) custody decision, but forbid the court from exploring factors that might come to bear upon the parties' respective exercise of the right."

Here, it observed, the Dad was living with his parents at the time of the final hearing and had done so for a period of eight months.

Dad Does Nothing about Housing

Although Dad testified that he hoped to get his own housing, he had done nothing about it. Meanwhile, his mother had "assumed considerable responsibility in taking care of (the baby) on a daily basis."

With this holding, the Court clarified that Rule 610 is not an absolute bar to evidence about the religious beliefs of parties seeking custody. There "are practical, value-neutral reasons" for such consideration that do not violate anyone's constitutional rights, it concluded.

See *Pawlik v. Pawlik*, 823 N.E.2d 328 (Ind.App. 2005).♦

SPOTLIGHT ON:

REALITY CHECKS:

√ In the United States, more than 4,500,000 children under 18 are being raised in households headed by a grandparent.

√ The number of children being "grandparented" has increased nearly 30% in the last ten years.

√ Of the children under 18 in the U.S.—some 72 million—over 6% live with at least one grandparent.

√ In Indiana, 5.2%—more than 81,500 children under 18—are in grandparent-headed households.

√ The percentage of Hoosier children being tended by a grandparent has increased nearly 22% since the 1990 census.

√ Of these grandparents living in Indiana, 20% report that they are African-American; 4% say they are Hispanic/Latino; and 74% of them are White.

√ The children's parents are not present in 39% of such homes.♦

SOURCES: *U.S. Census of 1990 and 2000, and AARP Grandparent Information Center.*

The number of children being raised by grandparents has increased.

Court Delves into Changing Payments for "Incapacity"

Using a difficult fact situation, our Indiana Supreme Court recently stepped into the legal minefield of spousal maintenance.

The parties' marriage was dissolved in late 1997. And by the time their divorce was final, the Wife was wheelchair-bound with Multiple Sclerosis.

Both parties agreed that she was permanently disabled and, accordingly, had fashioned their own settlement agreement.

Maintenance Paid "for Life"

In part, it stated that the ex-Husband would pay maintenance "for the remainder of her life."

Each released the other from "all claims and rights which either ever had, now has or might hereafter have against the other."

These provisions were also "binding upon the heirs, executors (and) administrators."

Over time, ex-Wife's condition worsened, and she asked that her maintenance be increased. But neither the trial court nor the Court of Appeals could do this.

Supreme Court Is Consulted

Now she has taken her plea to Indiana's highest court.

Her claim is based on law that allows a court to "find that maintenance for the spouse is necessary during the period of incapacity, subject to further order."

Parties drafted agreement providing for ex-Wife's permanent disability.

Here, though, their agreement was based on ex-Wife's lifetime (instead of "period of incapacity"), and it barred any future claims.

Modification of Maintenance

Because Indiana Code §31-15-7-3 provides "spousal maintenance authorized by statute may be modified," the Court concluded, "the trial court lacked the authority to order maintenance payments that were *not* subject to modification.

"Thus lacking the power on its own to order non-modifiable spousal maintenance, the trial court lacked the authority to thereafter modify the maintenance obligation created by the previously approved settlement agreement." Hence, the maintenance went unmodified.

See *Haville v. Haville*, 825 N.E.2d 375 (Ind. 2005). The Court of Appeals ruling—vacated by this holding—was discussed in ***FAMILY LAW FOCUS*** (Fall, 2003).♦

Parenthood Is Forever — Despite Break-up

For those parents who might be tempted to relocate without giving their teen-aged children a forwarding address, this recent ruling serves as a gentle reminder.

In the case at hand, the Court of Appeals eloquently examines the nature of parenthood.

"Whether a parent is a man or a woman, homosexual or heterosexual, or adoptive or biological, in assuming that role, a person also assumes certain responsibilities, obligations, and duties," it noted.

Shedding "Parental Mantle"

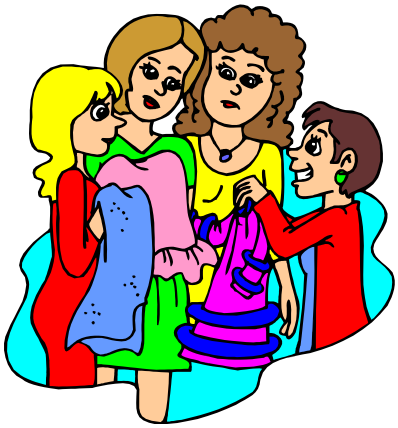
"That person may not simply choose to shed the parental mantle because it becomes inconvenient, seems ill-advised in retrospect, or becomes burdensome because of a deterioration in the relationship with the children's other parent.

"To the contrary, of key importance is the relationship between parent and children, not between parent and parent.

"Duties Do Not Evaporate"

"What we must focus on is the duties owed by a parent to her children, and those duties do not evaporate along with the relationship between the parents—indeed, those duties do not evaporate even if the relationship between parent and children deteriorates."

In July of 1997, two teen-aged children (who had been conceived during a marriage ending in divorce) were adopted by the lesbian partner of Biological Mom, pursuant to Indiana's stepparent adoption statute, Indiana Code §31-19-15-2.



Parenting responsibilities don't end with break-up of same-sex couple.

The adoption was made possible by their Father's agreement to terminate his parental rights without terminating the Biological Mom's parental rights.

Women Ended Relationship

Within sixteen months of the adoption, the two women ended their relationship, and both children stayed with their Biological Mom.

Seven months later, she wed a man and soon had a third child. The family then moved to Georgia.

Before the move, the Adoptive Mom visited regularly with the children and paid child support. But after the move, she stopped payments and only sporadically communicated with the kids.

Biological Mom Divorced

In October 2003, the Biological Mom and her second husband divorced—and she came back to Indiana with her three children.

Her filing of a petition, seeking support for the teen-agers, triggered a flurry of motions between her and the Adoptive Mom.

In the end, the Adoptive Mom asked the lower court to invalidate her adoption of the children . . . as well as vacate its order for her to pay child support.

Court of Appeals Refuses

That is something it—and the Court of Appeals—refused to do.

Regardless of the circumstances between the women, the Adoptive Mom "is their *parent*," observed the Court.

"She petitioned the Circuit Court to adopt them, and her petition was granted. As their parent, she has a responsibility to remain in their lives—even if her only contribution is financial."

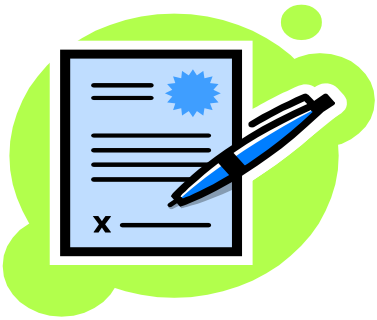
No Evidence of Fraud

Despite Adoptive Mom's claim that the adoption was based on fraud, the Court found "no evidence that the (Biological Mom) made any knowing or reckless material misrepresentations of a past or existing fact" to her.

The overarching concern is with the best interests of children, the Court wrote, in rebuffing the arguments of the Adoptive Mom.

See *Mariga v. Flint,* 822 N.E.2d 620 (Ind.App. 2005).♦

"Get It in Writing" Rings True For Mediation



Court says appraisal is matter of opinion and not fact.

That familiar refrain — "get it in writing"— was never truer than with this mediation in a divorce action.

Husband and Wife were married three years before filing for dissolution and being court-ordered to mediate "as soon as discovery allowed."

Despite the Wife's discovery requests to Husband seeking information about the identity and value of his assets, he did not respond.

Asset List Given at Mediation

At their mediation, though, he presented her with a list of the parties' assets and their corresponding valuations that he had put together.

For the value of his interest in a company co-owned with his brother, he had hired his own appraiser.

Written Report Not Produced

The Husband stated the figure on the list was from the appraisal, but he failed to produce anything in writing.

Never did the Wife request an independent valuation of the company, nor did she contest his amount.

Both signed the agreement at the end of mediation, and Husband's lawyer was told to prepare the rest of the documents for Wife's signature.

Papers Sent But No Response

The papers were sent to Wife's attorney—but there was no response.

Two months later, Wife hired a new lawyer who related she would not sign the papers because she "did not feel comfortable with the settlement reached." Wife also wanted to do more financial fact-finding.

Claiming that the agreement was based on fraud, she fought its enforcement in a series of motions.

But the Court of Appeals found little merit in her arguments.

Fraud requires a misrepresentation of a material fact (and) "an appraisal is a matter of opinion, and is not, therefore, actionable under a theory of fraud," it noted.

No "Superior Knowledge"

The Court also refused her claim about relying on Husband's valuation because of his "superior knowledge of the company."

Indeed, the evidence showed Wife was familiar with the company's assets as she had been one of its employees for fifteen years.

The Court agreed with the trial court. "[T]his is more of a case of (Wife's) changing her mind about the agreement after she signed it than anything else," it observed.

See *Wheatcraft v. Wheatcraft*, 825 N.E.2d 23 (Ind.App. 2005).♦

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