

# FAMILY LAW FOCUS

## Court Okays Post-Nup Agreement

Question: Why would a Husband argue a post-nuptial agreement he executed is not enforceable?

Answer: Because he wants to ignore the terms he put in place.

In this case, Husband and Wife wed in 1964 and, at the time of their divorce, had three adult children.

He was a 67-year-old full-time college professor, earning \$118,000 annually, plus \$5,000 to \$15,000 in textbook royalties each year.

### Wife Had Social Security Income

The Wife was 65 years old, and her sole income was \$959 per month in social security retirement benefits. (She left a teaching job to stay home and raise their children.)

In 2000, Wife filed for divorce. The trial court entered a provisional order, giving her maintenance and possession of their house.



*Post-nuptial agreements can help in promoting amicable settlements.*

They then sold that house and got another, deeding a 99% interest to Wife and 1% to him. The profit from the sale went into an account.

In October, 2001, Husband executed a written Agreement, whereby he would give Wife \$2000 monthly as well as pay half the property tax.

The parties soon reconciled and stipulated to a continuance without date. Their case was "dismissed for want of prosecution" by the court.

### Husband Made Erratic Payments

Husband paid maintenance for a time before stopping and telling Wife to take money from the house account instead. When it was gone, she filed for divorce in mid-2006.

In its dissolution order, the trial court found the Agreement executed in October of 2001 was a separation agreement that controlled the disposition of their assets.

Husband appealed, contending the court had erred by enforcing it.

But the Court of Appeals disagreed. Indiana Code §31-15-2-17 governs post-nuptial agreements, it noted, and public policy favors settling, by written agreement, the property rights of those divorcing.

As such, "the terms of the agreement, if approved by the court, shall be incorporated and merged onto the decree and the parties shall be ordered to perform the terms." IC §31-15-2-17(b)(1).

### Was Fraud or Duress Involved?

This type of agreement is valid and binding, stated the Court, "so long as [it is] entered into freely and without fraud, duress, or misrepresentation and [is] not, under the particular circumstances of the case, unconscionable."

Even the Husband's claim that the Agreement was not one of reconciliation was disputed by facts.

The evidence showed each had agreed to the terms of the document and, eight days after both had signed, the divorce was dismissed. Furthermore, the Husband had initially adhered to this Agreement.

Judgment affirmed, with a separate dissenting opinion.

See case of *Gaskell v. Gaskell*, 900 N.E.2d 13 (Ind.App. 2009).♦

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# Jailed Dad Asks to Reduce His Child Support Payment



**Dad argues he is unable to pay court-ordered child support.**

The wisdom of that old cliché — “you can’t squeeze blood out of a turnip” — was never more apparent than with the facts of this case.

Mom and Dad were in jail during the hearing. Their daughter was being raised by Guardians, and each parent had been ordered to pay \$15 weekly in support.

While Mom was unable or unwilling to care for the child, Dad exercised his visitation rights when his mother took the girl to visit.

The Guardians moved to modify support, arguing Child Support Guidelines require an obligation to be based on an assumed federal minimum wage of \$134 per week.

## Each Parent to Pay \$67 Weekly

The trial court was persuaded and ordered each of the parents to pay support in the amount of \$67.

Dad appealed *pro se* (without a lawyer), claiming the support order was inconsistent with Indiana law. He was correct, and the Court of Appeals agreed.

Indiana Code §31-14-11-8(1) states a child support obligation may be modified only upon a showing of “a substantial change in circumstances that makes the terms unreasonable.”

## New Indiana Law on Support

Here, that substantial change was found in Indiana’s new child support case law. Under *Lambert v. Lambert*, 861 N.E.2d 1176 (Ind. 2007), the terms of Dad’s support order were unreasonable.

Regardless of any imputation of at least minimum wage earnings, the problem with the trial court’s child support calculation was that it was not based on evidence of actual income or assets.

## Dad Testified as to \$6 Monthly

In fact, Dad testified he was making only \$6 per month working in the prison kitchen.

Because *Lambert* instructs support computations must be based on the actual income and assets available to the parents, the trial court abused its discretion in denying Dad’s petition for child support modification.

Reversed and remanded to the trial court.

See case of *In Re Guardianship of R.M.M.*, 901 N.E.2d 586 (Ind.App. 2009).♦

## REALITY CHECKS:

Growing old in the United States isn’t for sissies, admitted an 89-year-old. A disturbing look at the facts about elder abuse serves to punctuate her point:

- ✓ A U.S. Senate committee has estimated the number of elder abuse victims at 5 million yearly.
  - ✓ Caseworkers report one in 14 instances of abuse is ever known.
  - ✓ Eighty-nine percent (89%) of the elder abuse incidents take place in domestic settings.
  - ✓ These numbers are expected to soar as the 78 million Boomers pass the age of 60.
  - ✓ Criminals regard older people as particularly inviting targets.
  - ✓ The abuse of vulnerable adults can be physical or sexual abuse, psychological or emotional abuse, neglect, or financial exploitation.
  - ✓ Older people who have been abused often keep silent, feeling humiliated and fearing retaliation.
  - ✓ Call 911 or the local police if an elder abuse situation is serious, threatening or dangerous.
  - ✓ If an elder lives in another state, report suspected abuse and get the facts, free, at **1-800-677-1116**.
  - ✓ For those in Indiana, the toll-free number is **1-800-992-6978**.♦
- SOURCE: AARP Bulletin, July-August 2007; [www.ncea.aoa.gov](http://www.ncea.aoa.gov).

# Domestic Violence Terrifies Mom

After a perilous on-again, off again relationship of eleven years with Dad, the Mom herein could easily have composed a couple of verses for “You Done Me Wrong.”

Somewhere along the line, she and he got married, and they had a child who is now eight years old.

During that period, Dad physically abused Mom. More recently, she had became the victim of his emotional and mental abuse.

## Dad's Mental Abuse "Is Worse"

"[T]hat made it worse for me because now the mental abuse is just — is worse as [sic] the physical abuse," she explained. "[Y]ou know, the mind games."

Both the mental/emotional and physical abuse were generally set off by Dad's drinking, Mom noted.

She decided to seek a divorce — and he found her legal paperwork. Concurrently, he had been suspended from work because of a disciplinary matter.

## He's "Acting a Little Strange"

According to Mom's testimony, Dad started "acting a little strange and he started drinking, which is something he knows I'm not okay with at all, because he changes when he drinks."

As a result, she filed a petition for an order of protection.

In it, she asked that he be prohibited from: committing or threat-

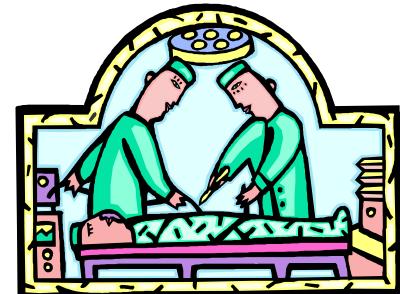
ening to commit acts of domestic violence; contacting her; visiting her house, job and school; and living in her residence any longer.

## Court Issued Protection Order

At an emergency hearing, the trial court issued an order for protection as well as an eviction order.

The matter was set for hearing on the 30th at which both parties were present. Dad did not contradict Mom's testimony as to his abuse, his difficulties with the divorce and his suspension from work.

She, though, vacillated during the court's questioning about the protection she sought. She ended up



*Many victims of domestic violence never show up in the hospitals.*

with a "no violent contact order" whereby contacts between the parties had to remain peaceable.

## Protective Order Was Limited

Upon finding the order to be inadequate, she appealed; and the Court of Appeals agreed with her.

In its analysis, the Court relied upon the Indiana Civil Protection Order Act (CPOA), Indiana Code chapter 24-26-5, in concluding the order for protection was defective.

"The trial court's order of protection [was] erroneous," the Court observed, "in that it [did] not provide the protection necessary to bring about a cessation of the violence or threat of violence."

The order also "fail[ed] to address the issue of parenting time, and it fail[ed] to implement the Brady (gun) law's prohibition on the purchase, receipt or possession of a firearm" by Dad.

Remanded to the trial court for further proceedings.

See case of *Moore v. Moore* 904 N.E.2d 353 (Ind.App. 2009).♦

## Helpful Contacts

If you or a loved one are in a life-threatening situation, **CALL 911 NOW**. Additional help is at:

- The free 24-Hour **Indiana Coalition Against Domestic Violence Hotline** is 1-800-332-7385, or [www.violenceresource.org](http://www.violenceresource.org).
- A free Hotline for **National Suicide Prevention** is 1-800-784-2433, [www.hopeline.com](http://www.hopeline.com).
- The **24-Hour Addiction Helpline** is 1-800-396-9389 or at [www.24houraddictionhelp.org](http://www.24houraddictionhelp.org).
- The **National Child Abuse Hotline** (Childhelp) is at 1-800-422-4453 or [www.childhelp.org](http://www.childhelp.org).

# Parents Battle over Child's Name

"What's in a name?" wondered Juliet of *Romeo and Juliet* fame. "That which we call a rose by any other name would smell as sweet."

The Mom and Dad in this case would disagree with the heroine's conclusion . . . they took a squabble over their child's name to court.

M.S. was born out of wedlock to them in 1998, and they lived together with the girl for seven years.

## Paternity Established by Dad

The couple separated, and paternity was legally determined in Dad. Since the separation, the child has stayed with Mom, and Dad has exercised visitation.

In 2007, Mom filed a petition to change M.S.'s last name to "Daisy-Sharp" to also reflect her last name. Dad objected.

A hearing was held in March of 2008, and, at its conclusion, the trial court denied her petition. Mom then initiated this appeal.



***Mom fights Dad to change name of their child to match her name.***

She urged the court had abused its discretion in deciding Dad had established the statutory presumption in Indiana Code §34-28-2-4(d).

While "[a] father and mother enjoy equal rights with regard to naming their child," noted the Court of Appeals, the court is guided by the best interest of the child.

## Check Statutory Presumption

A presumption does exist in IC §34-28-2-4 in favor of a parent who objects and who "has been making support payments and fulfilling other duties" in accordance with a dissolution decree, support order or custody and parenting time order.

"The noncustodial parent may invoke the presumption by proving that he or she is paying support and is fulfilling other court-ordered parental duties," stated the Court.

This Dad failed to do.

## No Decree Evidence Is Introduced

While he testified that he was paying support and that his paternity had been established, Dad provided no evidence as to the contents of the paternity decree, his obligations thereunder and whether he was in compliance with its terms.

As such, he was unable to invoke the statutory presumption.

Reversed and remanded to the trial court to reconsider the evidence from the March hearing to decide whether Mom has proven, without regard to the statutory presumption, that the proposed change is in the child's best interest.

See *Daisy v. Sharp*, 901 N.E.2d 627 (Ind.App. 2009).♦

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