NEWTON BECKER BOUWKAMP PENDOSKI, PC
ATTORNEYS AT LAW
3755 E. 82nd Street, Suite 220
Indianapolis, Indiana 46240
317 • 598 • 4529
317 • 598 • 4530 (fax)
http://www.nbbplaw.com

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FAMILY LAW FOCUS

Disabled Vet Goes into Psych Unit

Female veteran of Iraqi Freedom involuntarily committed by doctor.

In a case pitting a female veteran against a hospital acting to commit her involuntarily, another of the tragedies of war surfaces.

S.T., a 23-year-old soldier who participated in Operation Iraqi Freedom, is confined to a wheelchair.

Upon her return from the field, she was diagnosed with Post Traumatic Stress Disorder (PTSD) and a non-specific mood disorder.

She also engaged in behavior consistent with pica, an eating disorder characterized by the ingestion of non-food items.

During the fall of 2009, S.T. attempted suicide by swallowing a large number of painkillers.

Woke Up in Intensive Care Unit

Waking up in the Intensive Care Unit of the hospital in question, she voluntarily admitted herself to its Psychiatric Care Unit.

Four days later, she tried to leave. But the psychiatrist would not release her and filed a Petition for Emergency Detention instead.

A hearing was held within five days. The evidence indicated, while in the hospital, S.T. was verbally abusive and threatening to its staff.

In addition, a procedure to remove earrings she had swallowed was stopped after she ripped out her IVs and became too upset to go on.

Hospital Involuntarily Held Vet

The record shows the trial court felt S.T. was "still a danger to herself and that there remains a substantial risk that she would harm herself." It ordered her involuntarily held for no more than 90 days.

On appeal, S.T. urged the Court of Appeals to rethink the standard used to review such commitments.

This, the Court refused to do.

Under Ind.Code §12-26-2-5(e), it noted, a petitioner must show the person is mentally ill and dangerous; and that detention or commitment of the person is appropriate.

"Dangerous," the Court wrote, is "a condition in which an individual, as a result of mental illness, presents a substantial risk that the individual will harm the individual or others." Ind.Code § 12-7-2-53.

Was Veteran Dangerous to Self?

S.T. claimed that the evidence was insufficient as to whether she was "dangerous." But the record indicates otherwise.

Besides the risky implications of her behavior related to the pica disorder, she related to physicians and patients with "extreme anger."

She hurled threats at them and had to be secluded after "yelling, destructive behavior . . . and an altercation with a peer."

Based on the totality of the circumstances, a reasonable person could have come to the same conclusion as the lower court: the evidence was sufficient to commit.

Affirmed.

See the case of *Commitment of S.T. v. Community Hospital North*, 930 N.E.2d 684 (Ind.App. 2010).♦

SPOTLIGHT ON:

REALITY CHECKS:

Even though folks shudder at the "legalese" in a divorce, talking to your lawyer can demystify the process. Using common sense in these conversations will help.

√ It's a waste of breath to ask friends or co-workers about their legal cases because you think they are similar to yours. Given your unique facts and a different judge, your outcome will be different.

√ Don't think you're "bothering" your lawyer by asking a question. Every client's understanding of his or her case is different.

√ If you are concerned about keeping costs low, save all your questions and fax, e-mail or write them to your attorney at one time.

√ Unless you're interested in paying your lawyer a whole lot of money, don't fight about every single thing in your case.

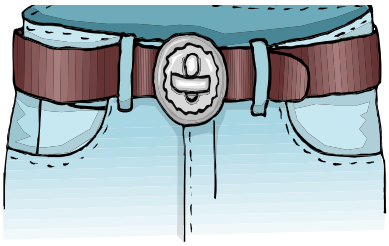
√ If the judge fails to give you everything you want at a hearing, don't think he or she is biased and don't blame your lawyer.

√ The attorney gives you his or her best effort, but the judge is the final decision-maker in your case.

√ Don't lie to the judge, the other side and, above all, your lawyer. In reality, that's lying to yourself.

SOURCE: "What a Client Should Not Do in a Case," *Family Matters*, Indianapolis State Bar Association, September 2007.♦

Blame It All on the Belt . . . or Strategic Lack Thereof



If he had worn a belt, this case would not have happened.

For those who itch to pull up the sagging pants of a passerby — and for those teens who relish this style — this case is for you.

During the fall of 2009, an Indianapolis policeman was called to the North District Headquarters to process a runaway juvenile.

When he arrived, A.C. was sitting with his mother in the lobby. The officer questioned him, but the boy was unresponsive.

Officer Grabbed Teen by Arm

After the teenager "refused to stand up" upon request, the policeman "grabbed him by his . . . right arm, lifted him up and placed him into handcuffs."

Upon noticing A.C.'s pants were "sagging down below his waist, almost to his knees," the officer uncuffed him and asked that he pull them up.

The teen stood motionless. The officer grabbed a belt loop on one side and tried to lift up the pants, but A.C. leaned away from him.

After telling the officer to "get off of me," he was cuffed and lead to his mom to pull up his pants.

The next day, the State alleged A.C. had "committed what would be . . . resisting law enforcement if committed by an adult."

Found to be a delinquent at his hearing, A.C. appealed, arguing there was insufficient evidence to support such an adjudication.

The Court of Appeals agreed.

Evidence of Forcible Resistance?

At the heart of its decision was a concern about the evidence of "forcible resistance" on the part of A.C. There was none.

According to the Court, the State had to prove beyond a reasonable doubt that he "did knowingly or intentionally [f]orcibly resist, obstruct, or interfere with (an officer) . . . while the officer [was] engaged in the execution of his duties." Ind.Code §35-44-3-3.

While A.C.'s conduct may have justified a physical response from the officer, it noted, that does not equate to criminal conduct under the current definition of forcibly resisting law enforcement by "strong, powerful, violent means."

Reversed.

See *A.C. v. State*, 929 N.E.2d 907 (Ind.App. 2010).♦

Splitting Health Benefits Is Tricky

Valuation of health care benefits in divorce can be very difficult.

If you think the health care issues swirling around nationally are complicated, just wait until this Indiana Supreme Court case hits the state's legal system.

In this decision, Husband filed for divorce after a 37-year marriage. A 75-year-old corporate retiree, he was being paid a monthly stipend as part of his pension plan.

Insurance Premium Guaranteed

Under this plan, his corporation also paid a health insurance company nearly $850 per month in premiums for him. It had promised to do so for the rest of his life.

According to the plan, the Husband's right to these health insurance benefits was not subject to divestiture, division or transfer.

At the final divorce hearing, Wife urged these benefits should be defined as property and thereby become subject to the division of the marital property.

The trial court and the Court of Appeals held otherwise, though. They felt Husband's receipt of the benefits was not a marital asset.

But the highest court disagreed. It decided that "employer-provided health insurance benefits do constitute an asset once they have vested in a party to the marriage."

Court Must Divide Marital Estate

In its analysis, the Court noted that, by statute, a trial court is instructed to divide the property of the parties between them in a divorce.

Such property, it said, means all assets of both parties, including a present right to withdraw pension or retirement benefits.

Whether a right to a present or future benefit constitutes an asset that should be included in marital property depends on whether it has vested (as defined in §411 of the IRS Code) by the time of dissolution. See Ind.Code §31-9-2-98(b).

"In other words," explained the Court, "vesting is both a necessary and sufficient condition for a right to a benefit to constitute an asset."

The record indicated that the Husband has a right to the medical services his health insurance will cover for the rest of his life.

Benefits Like Future Pension

In view of the fact that his corporation had assumed a monthly liability he would otherwise have had to bear, his health insurance benefits were more like a right to future pension payments.

Such payments were described by the Court in *In re Marriage of Preston* as an intangible asset. See *In re Marriage of Preston,* 704 N.E.2d 1093 (Ind.App. 1999).

But his benefits were not an asset, the Husband claimed, because he could not transfer them.

As a result, he argued, he could not dispose of his benefits to get money to pay Wife for a just and proper property distribution.

The Court, however, was not convinced. "This illiquidity is relevant to the value a trial court may assign to an asset," it stated, "but not to whether benefits constitute an asset in the first place."

New Issue for Supreme Court

Because the Court had never addressed the ways whereby health insurance benefits in a divorce may be valued, it offered various methods of accomplishing this.

Regardless of how the valuation occurs, the "question will always be how to divide the assets."

Although Husband claimed his benefits were illiquid, that did not shield them from being an asset, the Court said. It might be enough, though, to readjust the property distribution between the parties.

Reversed on property division and remanded for valuing benefits.

See *Bingley v. Bingley,* 935 N.E.2d 152 (Ind. 2010).♦

Dad Tries to Stop Paying Support

The care and feeding of a teen-aged girl can be trying, even on a good day. But when the Dad herein urged she was emancipated — thus freeing him from paying support — his argument fell on deaf ears.

Dad was divorced in 2003. And for six years, custody of their daughter had switched back and forth between him and his ex-wife.

With the final change in custody, communication between the 18-year-old girl and Dad decreased.

Was Teenager Emancipated?

In 2009, he filed a petition seeking to stop paying child support for her. Among other things, he claimed she was emancipated.

The trial court refused to relieve him of his child support obligation, however, and the Court of Appeals agreed.

In its analysis, the Court looked at Ind.Code §31-16-6-6 as to what constituted "emancipation."

Girl is enrolled in college classes while working part-time job.

According to this statute, the duty to support a child stops when that child is 21 years of age unless certain "conditions" occur.

One such condition is when the child is at least 18 years old, is not attending or enrolled in school for the prior four months, and is capable of supporting herself. Ind.Code §31-16-6-6(a)(3).

Dad's Educational Claim Failed

Despite Dad's argument that this section applied to his daughter, the Court found sufficient evidence to support the trial court's finding as to her educational status.

Next, he contended she was emancipated because she was "not under the care and control of either parent." Ind.Code §31-16-6-6(b)(3).

But the record reveals although the girl lived with her boyfriend, she relied on her mom for support.

She was going to a community college and working part-time to pay for half of the utilities as well as her clothing and other needs.

Girl Not Outside Mom's Reach

Instead of being "outside the reach of (her) Mother's control," the teen counted on her to pay for her share of the rent, her car insurance, school supplies and medications.

Because emancipation requires the child (1) initiate the action putting itself outside of the parents' control and (2) be self-supporting, the evidence was sufficient to support the court's finding therein.

Affirmed.

See *Tew v. Tew,* 924 N.E.2d 1262 (Ind.App. 2010).♦

NEWTON BECKER BOUWKAMP PENDOSKI, PC

ATTORNEYS AT LAW

317 • 598 • 4529 http://www.nbbplaw.com 317 • 598 • 4530 (fax)

M. Kent Newton	knewton@nbbplaw.com
Carl J. Becker	cbecker@nbbplaw.com
Alan A. Bouwkamp	abouwkamp@nbbplaw.com
Lana Pendoski	lpendoski@nbbplaw.com
Judith Vale Newton	jnewton@nbbplaw.com
Leah Brownfield, Paralegal	lbrownfield@nbbplaw.com
Courtney Haines, Paralegal	chaines@nbbplaw.com
Jane Callahan, Administrator	jcallahan@nbbplaw.com