

FAMILY LAW UPDATE

Boone County Bar Association

January 14, 2009

2009 Proposed Legislation

House Bills and Senate Bills

HB 125

- if decree provides for member to have sole retention of all rights in retirement account,
- even if member chose joint and survivor option prior to retirement,
- an eligible former spouse will lose all rights which immediately revert back to the member

HB 141

- increases from 15 days to 60 day in which father can establish paternity before an adoption can proceed without his consent
- currently, the law only allows 15 days for the putative fathers to either file a paternity petition or register with the putative father registry in order for the adoptive couple to obtain father's consent

HB 183

- Creates a civil contempt procedure for obligors who fail to pay child support
- Provides that obligor who fails to appear can be arrested and detained until sufficient bond posted.
- If bond posted, hearing must be set within 30 days.
- Proposed bill further creates a presumption, absent evidence to the contrary, that the obligor has the financial resources to pay 4 weeks of support.
- Sets out what the court can do upon finding the obligor in contempt – sets out incarceration terms and limits.

HB 186

prohibits any person who commits crime of nonsupport of ex-spouse or child from being admitted to excursion gambling boat or casino until arrearage satisfied

HB 187

UCCJEA bill sponsored by Family Law
Section of the Missouri Bar

HB 194

- changes the relocation statute so that judgments would also include language advising the parties of their obligations in the event one party desires to relocate.
- Tells them that person who is not relocating has 30 days to file motion opposing relocation

SB 52

- proposes changes to adult abuse statute – changes definitions.
- Provides that law enforcement may remove any firearms when responding to a call of domestic disturbance if the officer has probable cause to believe domestic assault occurred and firearm is plainly visible.

SB 54 - standby guardianship bill.

- custodial parents (typically mothers) who become diagnosed with terminal illnesses can appoint a standby guardian who will take care of the child.
- Used in situations where one parent completely absent and custodial parent has no other means by which to provide for her/his child while battling illness.

SB 62

- Authorizes courts to appoint parenting coordinators in high-conflict cases.
- Parenting coordinators help parties implement court's parenting plan.
- Can make findings and recommendations to court, as court does not lose exclusive jurisdiction over judgment.
- Parties must be able to pay fees of parenting coordinator unless parenting coordinator agrees to volunteer time.
- Parenting coordinators not competent to testify about process and cannot be required to produce documentation at trial other than findings and recommendations.
- Immune from liability, except for wanton and willful acts.
- Appointment must be for specified term and can be disqualified or can withdraw at any time during term.
- Individuals who can be appointed must have completed mediation training.

SB 140

- allows for criminal nonsupport divisions to be established within the family courts as alternative to criminal justice system.
- Authorizes family court to refer obligors to substance abuse programs, educational and vocational programs, GED programs and work programs and can set up payment plans.

SB 141

- person against whom a judgment of paternity was issued may file petition requesting circuit court with jurisdiction over child to set aside the judgment.
- Person must file an affidavit setting out the evidence that was not considered by court before entering the judgment, such as a DNA genetic test.
- Court can then order the parties and child to submit to genetic testing AND if the test results show that the male is not the father, the judgment can be set aside.
- Petition can be filed at any time.

Proposed Local Rule 68 changes

- Initial notice will still be sent
- Next notice will be 60 days from date of service – review of compliance
- If no compliance will be placed on an uncontested dissolution docket for “dismissal or default”
- Will not get second notice of dismissal for failure to comply

Case Law Update

Enforcement

- Trial court did not err in dismissing wife's motion to compel compliance with application for income withholding against husband's MOLAGERS
- Pursuant to Section 70.695, benefits can only be levied upon to satisfy child support obligations

Smith v. Missouri LOGARS

235 SW3d 578 (WD 2007)

As opposed to Teacher Retirement

- Public School Retirement benefits are not exempt from garnishment for unpaid maintenance
- Section 452.140

Rusk v. Rusk, 859 SW2d 751 (ED1993)

Enforcement

- Wife's award of past due maintenance was offset by trial court by the \$12,000 property division judgment and \$1,300 owed for attorney's fees on contempt action
- Held: no error because obligations are mutual and subsisting between same parties and due to same capacity or right
James v James, 242 SW3d 744 (WD2007)

Joint Physical Custody

- Trial court awarded equal parenting even though mother had been primary caregiver for children during the marriage
- Appellate court found: trial court must be mindful of, but is not bound by the division of labor when family was intact

Krepps v Krepps, 234 SW3d 605 (WD2007)

Set aside/Reopen evidence

- Facts: on third day of trial, parents announced had resolved custody matter and trial court heard evidence on agreed to parenting plan and **approved** agreed to parenting plan and entered **interlocutory order**
- Mother moves to reopen evidence on custody before conclusion of property issues
- NO ERR in denying Motion to reopen

*Hernandez v. Hernandez, 249 SW3d 885
(WD2008)*

Relocation

- Non-relocating parents waives any objection to relocation by failing to object in a timely manner, giving the relocating parent an absolute right to relocate with the child

Dent v. Dent, 248 SW3d 646 (ED 2008)

Jurisdiction

- Father moves to modify requesting sole legal and sole physical custody
- Father is arrears in child support of \$12,918
- Father did not post bond
- Appellate Court found: posting of bond required by 452.455 is condition precedent and not waivable –NO JURISDICTION
- *JCW and TDW v. Wyciskalla #89632 (ED2008)*

**NOTE: SUPREME COURT DID TAKE
TRANSFER AND WAS ARGUED 11/12/08**

Child Support

- Must use custodial time adjustment visitation percentages in calculating child support based upon awarded periods of overnight visitation

Gray v. Gray, 239 SW3d 639 (ED2007)

Exemptions

- Trial court lacks authority to merely order the non-custodial parent to receive a child as a dependent for income tax purposes
- MUST order that the custodial parent execute required declaration in favor of the non-custodial parent

*Williams v. Williams, 239 SW3d 717
(SD2007)*

Enforcement of Property division

- Nevada Judgment March 1991 awarding wife \$7500 as her share of sale of marital restaurant
- November 2005, wife moved to register judgment in Missouri
- Trial Court did not err in deeming judgment satisfied – more than ten years had passed since entered

Leung v. Fu, 241 SW3d 838 (WD2007)

Third party custody and child support

- When trial court rejected parties' form 14 and father rebutted presumed child support, trial court abused discretion in awarding support that exceed **demonstrable financial needs of child**
- *Milone v. Duncan WD67463 (WD2008)*

Child Support Credits

- Father claimed ex-wife agreed to allow him to subtract expenses he paid for children from his child support obligation
- HELD: Missouri Law does not allow parties to make such a contract, hence, denial of father's counterclaim for breach of contract affirmed

Sieg v. Seig, WD68137 (WD 2008)

Child support – College aged child

- Child provided non-custodial parent with transcript printed from on-line site
- Father contended on certified so child support terminated
- HELD: Liberal construction of 452.340 to be consistent with public policy to promote post-secondary education – CHILD SUPPORT CONTINUES

Waddington v. Waddington #88992 (ED2008)

Finality of Judgment

- Trial court failed to address distribution of significant credit card debt
- HELD: judgment no final and appeal dismissed

Rogers v. Rogers WD68175 (WD2008)

Child Custody and Hague Convention

- Father brought federal action for return of his children to Israel from Missouri under the Hague Convention
- District court abstained due to parties not having issue addressed in state court
- HELD: Trial court erred – Federal Court is uniquely situated to determine whether Missouri or Israel is habitual residence and whether wrongfully removed

Barzila v. Barzila Case No. 08-1160 (8th Circuit)

Child support-disability payments

- Father received disability payments but also had another source of income
- HELD: benefits paid to child were still derived from funds “earned” by non-custodial parent and father entitled to same credit as if had no other sources of income

Wallace v. Wallace #90431 (ED2008)