NORTHWEST SUBURBAN BAR ASSOCIATION
MATRIMONIAL LAW COMMITTEE

RECENT DECISIONS

By Howard Bernstein

November 8, 2010

***IRMO TRUHLAR,* No. 2-09-0536 (2nd Dist. 9-17-10)**

Judgment provided for both parents to contribute to the college expenses of their soon to be adult daughter and if they could not agree on an amount the court would decide the issue. Father was collecting Social Security of $1,825.00 per month when Mother filed a petition for contribution towards their daughter's college expenses. The trial court ordered Father to pay $351.00 for his daughter's education expenses. Father appealed alleging that his Social Security benefits could not be reached because a contribution towards an adult child's college expenses is not child support. The trial court vacated the order stating that Social Security disability benefits could be reached for child support but a contribution to an emancipated child's college expenses is not child support. On appeal the court stated that the issue is whether a contribution for college expenses for an adult child is like child support. The Appellate Court held that the payment of these funds for college of an adult daughter constituted funds that were to provide an education for an adult child which is but one of the necessities of a child pursuant to Section 513 of the IMDMA. Therefore, it constitutes child support and Social Security disability benefits can be reached for this purpose.

***ABBOTT v. ABBOTT,* No. 08-645, May 17, 2010**

Another case involving a judgment dissolving a marriage issued in a foreign country and the custodial parent removes the child from the issuing country without the consent of the non-custodial parent. In this case, the divorce was finalized in Chile, where the non-custodial parent has a right of *ne exeat*, or the right of custody. If the child is removed from Chile without the non-custodial parent's consent Article 12 of the Hague Convention controls where the child should live (assuming the issuing country and the receiving country are both signatories of the Hague Convention. When the mother took the child from Chile and moved to Texas, the trial court agreed with the mother that Article 12 should not apply because Article 13(b) makes exception in these cases where a return of the child to the issuing country *"would expose the child to grave physical or psychological harm or would otherwise place the child in an intolerable situation."* The trial court agreed with the Mother and Father appealed. The Court of Appeals affirmed the trial court and the U.S. Supreme Court agreed to hear the case. The U.S. Supreme Court reversed the trial court and Court of Appeals because the Mother did not prove there should be an exception to the right of *ne exeat*, or the right of the non-custodial parent to the right of custody. On remand, the Mother will have an opportunity to prove that a return of the child to Chile

would put her or the child's safety at grave risk and whether grave risk to the Mother would show that the child would suffer psychological harm.

***DEPT. OF HEALTHCARE AND FAMILY SERVICES, ex rel JENNIFER JORGENSON* - 1751 (No. 3-09-0009) Released 10-1-10**

In July, 2008, Petitioner filed a petition alleging Respondent was the biological father of a child born in 1990, requesting current child as of the date of filing the petition *"or earlier as law and equity will allow."* A temporary order for support was entered for $75.00 per week that was reduced to $50.00 per week because Respondent's income had diminished. A few months after reducing the child support amount, Petitioner came in for an increase back up to $75.00 per week in addition to $61,125.00 for retroactive child support, all without any opportunity for Respondent to present evidence to refute the award of retroactive support. The retroactive support for seventeen (17) years came to $61,125.00. Respondent appealed because he was not given an opportunity to present evidence as to his prior income when the retroactive amount was set. The Appellate Court reversed because the hearing during which retroactive support was ordered was very informal and refused to allow Respondent to Present evidence as to his income over the past eighteen (18) years prior to setting a retroactive award violated Respondent's due process rights. (The hearing prior to setting the retroactive sum was very short and informal.)

***IRMO KARAFOTAS,* No. 1-09-2514 (1st. Dist., 6-18-10)**

Parties' Marital Settlement Agreement provided for the husband to receive the memberships in two trading exchanges. These two memberships would be Husband's assets if former Wife predeceased him. If Husband predeceased the Wife she would receive the membership in one of the exchanges. If Husband sold the one exchange that the Wife would receive if he predeceased her, the Wife would receive 50% of the net proceeds from the sale. Over a period of time, the membership in the two trading exchanges were converted to 28,000 shares of Class A common stock and one share of Class B-2 stock of a new trading company. The one share of Class B-2 stock contained the trading rights in the new company. Husband sold the 28,000 shares of Class A common stock for nearly $2 million but did not give any part of it to the former Wife. Wife filed a petition to get her share of the proceeds from the sale of the Class A shares. The trial court held that there was no issue of material fact because the trading rights of the new company were contained in the one share of the Class B-2 share. Since that share had not been sold the Husband maintained his trading rights and Wife was not entitled to the proceeds from the sale of the Class A stock. On appeal, the trial court was reversed because to allow the Husband to receive the proceeds from the sale of the portion of the stock that had the most value diluted the value of the membership without any compensation to the Wife. One dissenting opinion stated that Wife was not entitled to anything because the trading rights had not been sold. The majority recognized that since the two original memberships were consolidated into a single new membership with a single share having the trading rights and the Class A shares consisting of the real value of the membership, having been sold, the value was tailored so that the Husband received

the bulk of the value with nothing going to the Wife. This was not the intention of the parties.

PEOPLE v. HINTON, No. 3-08-0583 (3rd Dist. 6-22-10)

An Order of Protection was entered against Respondent on October 24, 2007, directing Respondent to stay away from the protected person's residence. Respondent was served with the OP on October 24, 2007, while he was in the county jail. The emergency order was to remain in effect until November 14, 2007 (21 days). On November 14, 2007, the order was extended until November 13, 2009. In February, 2008, Respondent was found to be at the protected residence. A jury found Respondent guilty of violating the OP. Respondent appealed stating that the State did not prove he had actual notice of the terms of the OP. The Appellate Court reversed the trial court because 720 ILCS 5/12-36(a)(2) provides for punishment when a defendant violates an OP when he or she has *"actual notice of the terms of the order of protection."* The State could not prove they had served Defendant with the plenary order good to November 13, 2009. Therefore, Defendant did not have actual notice of the terms of the OP (It is not sufficient that Respondent may have had knowledge of the terms.)

IRMO NORD, No. 4-09-0726 (4th Dist. 6-28-10)

Parties were married for 34 years. Wife had only a high school education and no employment history. Husband was a physician earning a gross income of over $1 million per year over the previous four years. Wife was awarded approximately 80% of the marital estate, almost $2 million, plus 25.5% of Husband's gross income for permanent maintenance. Husband appealed stating that the Wife should be ordered to seek employment and maintenance should have been rehabilitative and not permanent. Appellate Court affirmed the trial court stating that the recipient of permanent maintenance does not have to be unemployable but is appropriate where the spouse is only employable at a lower income as compared to the spouse's previous standard of living. Note: When assessing the Husband's income he will be in a much better financial position than the Wife in less than ten years. The Wife will also be well off during the same period.