NORTHWEST SUBURBAN BAR ASSOCIATION
MATRIMONIAL LAW COMMITTEE

RECENT DECISIONS

By Howard Bernstein

December 12, 2010

U.S. v. DAVID M. LARSEN, **2008 WL 5781437 U.S. Court of Appeals (7th Circuit, 8-24-10)**

The Defendant in this case raised the constitutionality of the Interstate Domestic Violence Act, alleging Congress overstepped the bounds set by the commerce clause by *"regulating what was purportedly purely local non-economic conduct that does not have a substantial effect on interstate commerce."* A review of the facts does not tend to lean towards a sympathetic ruling for Mr. Larsen. Mr. Larsen's ex-wife took him to court in Wisconsin for failing to pay child support. Mr. Larsen lured his ex-wife to his home where he beat her with a baseball bat, strangled her, tied her up with duct tape and stuffed her into a garbage can. He took the garbage can and drove from Wisconsin to a self-storage facility in Illinois. He placed the garbage can in a cold storage locker and blocked it in a space with boxes so his former wife could not climb out of the can. The ex-wife made cell phone calls to her husband and 911. Larsen was arrested when he appeared at work but denied any knowledge about his ex-wife's whereabouts. The police found the storage receipt and discovered the ex-wife in the storage locker when they heard moaning coming from the garbage can. The victim survived but lost all of her toes to frostbite and she suffered a miscarriage. The trial court found the defendant guilty and sentenced him to life in prison. The Court of Appeals affirmed the trial court holding that the Interstate Domestic Violence Act is constitutional. The crime is committed when a person causes a spouse, former spouse or intimate partner to travel in interstate or foreign commerce and commit a violent crime. *"It is the victim's movement in interstate commerce - not the intrastate crime of violence - that implicates the Interstate Domestic Violence Act."* A side issue was Mr. Larsen's claim that the life sentence constituted an abuse of discretion. This fell on deaf ears because of the *"cold-blooded brutality of the crime and the extreme pain and anguish inflicted on his ex-wife and her family."*

PEOPLE v. SUCIC, **No. 1-08-0371 (1st Dist. 5-19-10)**

Defendant met a woman through an online dating service. The parties lived together and Defendant paid rent to his female companion and also hired her to do clerical work for his business. After a short time, Defendant couldn't pay his companion for her work or for his share of the rent for their apartment. Defendant moved out of the apartment but emailed his former girlfriend that he was going to commit suicide and take her with him. He also threatened to report her to State Farm for alleged insurance fraud. The second

email also threatened to report the ex-girlfriend for insurance fraud unless she agreed to marry him, and made threats to hill himself and take her with him. Defendant was also charged with stalking for going to the girlfriend's apartment and attempting to force entry. Defendant was unable to gain entry but screamed vulgar names at the former girlfriend. Defendant was charged with cyberstalking, 720 ILCS 5/2-7.5(a)(1) and harassment through electronic communication, 720 ILCS 135/1-2(a)(4). Defendant alleged that the statute was unconstitutionally too vague and his speech was entitled to constitutional protection. Trial court found Defendant guilty and sentenced him to three (3) years in jail. On appeal, the charge of harassment through electronic communication was vacated on the basis of one act, one crime rule. *"Multiple convictions are improper if they are based on precisely the same physical act."* Also, *"where speech is an integral part of the unlawful conduct, it has no constitutional protection."*

METROPOLITAN LIFE INS. CO. v. CLINE, **No. 07-36031 (9th Cir. 7-20-10)**

This decision cam down from the Ninth Circuit Court of Appeals but is important because the result would be the same in every court. Husband was divorced from his first Wife in 2002. The judgment awarded the wife fifty (50%) percent of Husband's 40l(k) plan and one hundred (100%) percent of his life insurance policy. Husband remarried one year after the divorce. He did not change the beneficiary on his life insurance but did change the beneficiary on his 40l(k) plan. One year later, Husband died. The insurance company paid the first Wife the proceeds of the life insurance policy valued at the time of the divorce and paid the increase in value to the second Wife. The plan administrator paid the 40l(k) plan proceeds to the second wife. First Wife filed suit to impose a constructive trust of the 40l(k) plan proceeds. The district court awarded the first wife one Hundred (100%) percent of the life insurance policy and imposed a constructive trust on fifty (50%) percent of the 40l(k) plan. On appeal, the trial court was affirmed as to the proceeds of the of the life insurance policy but reversed the imposition of a constructive trust on the 40l(k) plan because ERISA did not preempt the creation of the constructive trust. *"The imposition of a constructive trust cannot be used to circumvent ERISA preemption except in limited circumstances where a valid QDRO exists."* If the Husband had not died, a late QDRO would have given Wife No. 1 what she was entitled to receive pursuant to the divorce judgment. Once the funds have been paid to a beneficiary, the plan is no longer involved. This is a wake-up call to be diligent un entering QDRO's at the same time as entry of the judgment or as soon after as possible.

GALVEZ v. RENTAS, **No. 1-09-2231 (1st. Dist., 8-10-10)**

In a divorce proceeding, mother alleged two (2) children were born of the marriage. Mother later amended her petitio alleging that only one child was born as a result of the marriage and Defendant was the biological father of the second child. At the prove up, Mother testified that Defendant was the father of one of her children and presented DNA test results confirming that fact. The judgment provided fo the Husband to pay support for the eldest child born to the marriage but not for the second child because he was not the father. A year later, Mother filed a parentage case alleging that Defendant was the

biological father of the Second child and that she and Defendant were living together and raising that child and that Defendant admitted paternity of that child. Defendant appeared in court and did not contest the testimony and an agreed order was entered declaring Defendant the father of that child and ordered the last name of the child to be changed to Defendant's last name. A year later, the Department of Healthcare and Family Services filed a motion to intervene on behalf of the Mother and against Defendant because Mother had received financial assistance from the State. The issue of child support was reserved because Mother and Defendant were living together and as a custodial parent Defendant did not have a duty to pay child support. A year later, Mother and Defendant were separated and the Department filed a petition seeking modification of the reserved child support retroactive to the date the last order was entered reserving child support. Defendant filed a motion to have DNA testing which was denied. Defendant appealed and Defendant appealed stating that there are three (3) ways to establish paternity, none of which was present in this case (1. by presumption; 2. by consent and 3. judicial determination). However, there was a judicial determination when the court entered the order finding Defendant to be the Father and changed the child's last name to that of Defendant. Defendant then alleged that establishing paternity is not final fi it does not dispose of all matters in dispute. Since no order of support was entered Defendant alleged the order was not final and he was entitled to new DNA testing. This claim was denied because the Mother did not seek child support because she and Defendant were living together when paternity was established. In addition, when child support was reserved, this was a finding of child support and Defendant did not appeal this order within thirty (30) days.