NORTHWEST SUBURBAN BAR ASSOCIATION
MATRIMONIAL LAW COMMITTEE

RECENT DECISIONS

By Howard Bernstein

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IRMO AKULA, **No. 1-10-1084 (1st. Dist. 8-25-10)**

This is a very interesting decision involving the issue of a decree state's continuing jurisdiction to hear a custody issue and the right of another state to exercise jurisdiction when neither parent and the child reside in the decree state. Six years after entry of a judgment in Cook County, Illinois, awarding Petitioner sole custody of their child, petitioner filed a petition to have Respondent held in indirect civil contempt for not providing her with copies of his federal income tax returns each year. While this case was pending, Petitioner, Respondent and their child traveled to India. Petitioner rented a residence from Respondent's family for a four year period and the child was enrolled in a school in India. Within three months of arriving in India, petitioner returned to Cook County, Illinois, and filed a petition in Cook County to have Respondent return their son to her. The court in India interpreted Section 202 of the UCCJEA to mean that at the time the Petitioner petitioned for a return of the child, both parents and the child were residents of India and, therefore, India had jurisdiction to decide where their son should reside. The Cook County trial judge interpreted Section 202(a) of the UCCJEA to mean residence was synonymous with domicile and Petitioner was domiciled in Cook County, Illinois. The trial certified the issue for immediate appeal. Petitioner argued that Illinois never lost jurisdiction because: there was a pending petition for an increase in child support and she was domiciled in Illinois. The Appellate Court reversed the trial court holding that residence is not synonymous with domicile. It is possible to have more than one residence but you can have only one domicile. When Petitioner rented an apartment for four years and was in India with her former husband and son, the exclusive continuing jurisdiction of the Illinois Court ceased. Petitioner had two residences and this gave India jurisdiction to hear the custody dispute. The fact there was a pending petition for child support did not involve custody.

IRMO VAILAS, **No. 1-10-0730 (1st Dist. 11-16-10)**

The parties were married in Illinois in 1986. They had a son and moved to Texas. The parties were divorced in Texas in 2007. The MSA gave Mother the right to move anywhere in the country and set child support at $1,200.00 per month. Mother and son moved back to Illinois. Two years later, Mother registered the Texas judgment and filed a petition for an increase in child support in Cook County and had the Father personally served with the petition when he came to Illinois to visit his son. Father filed

a motion to dismiss the petition for lack of personal and subject matter jurisdiction. The trial court held that Illinois had jurisdiction to modify the child support provision of the Texas judgment and Father appealed. The Family Support Act specifically provides for enforcement of a child support order of another state if the obligor is personally served with notice in Illinois. Does this also allow Illinois to modify a child support order of another state? Section 611 of the Family Support Act provides for a modification of a previously issued child support order if one of the following two conditions exists. One, modification is allowed if neither the child, the petitioner and respondent no longer reside in issuing state. Second, the petitioner is a non-resident of this state and respondent is subject to the personal jurisdiction of this state. The case was remanded to determine if jurisdiction was proper. The petition to register the Texas judgment did not set forth the reason for registering it in Illinois. If Mother was a resident of Illinois, the Illinois court would not have subject matter jurisdiction to modify the Texas child support order.

IRMO DAEBEL, **No. 2-09-1248 (2nd Dist., 9-15-10)**

What is the proper sanction for refusing to appear for a deposition and refusal to respond to a notice to admit facts? In a case where the husband alleged his wife had dissipated assets the wife refused to cooperate in discovery. At the trial, the court allowed wife to testify regarding matters to which the husband had no prior notice. Husband presented a motion for discovery sanctions seeking to bar the wife from testifying and from presenting evidence to her defense against a claim for dissipation. The trial judge assessed reasonable fees against the wife and husband appealed. Appellate Court vacated the judgment and remanded it back to the trial court with instructions not to allow any testimony from the wife, *"must consider dissipation to have been judicially admitted and must consider husband's medical evidence deposition."*

MACKNIN v. MACKNIN, No. 2-10-0221 (2nd Dist. 9-23-10)

Wife and husband No. 1 had a daughter as a result of their marriage. Soon after they were divorced. Wife married husband No. 2 and had a daughter as a result of this second marriage. Marriage No. 2 ended in divorce and wife and husband No. 2 were granted joint custody of their seven year old daughter. Less than a month after entry of that judgment, wife filed an emergency order of protection alleging that husband No. 2 had raped and sexually abused the 16 year old daughter from marriage No. 1 and was *"grooming"* the seven year old daughter from marriage No. 2 for the same abuse. The O.P. was entered and three weeks later, wife filed a petition to restrict husband No. 2 from having visitation with the seven year old girl unless visitation was supervised. Husband No. 2 filed a petition to strike the O.P. Wife filed an amended petition for the O.P. attaching an affidavit signed by the 16 year old daughter from the first marriage stating that husband No. 2 had raped and sexually abused her. Husband No. 2 served the 16 year old daughter from wife's first marriage with a subpoena for deposition. Husband No. 1 retained an attorney to represent the minor (16 year old) daughter from the first marriage. Husband No. 2 filed a motion to disqualify the attorney who was

representing the 16 year old daughter because there was a conflict of interest between the wife and the 16 year old daughter, alleging that the wife really hired the attorney. The trial court granted the motion to disqualify the attorney stating that Section 506 had been violated because only the court can appoint a child representative for the 16 year old daughter and then appointed another attorney to represent the 16 year old. The disqualified attorney filed an appeal and husband No. 2 filed a motion to dismiss the appeal because only a *"party"* can file an appeal of the order and the 16 year old daughter of the first marriage was not a *"party"* that would vest the Appellate Court with jurisdiction. The Appellate Court reversed the trial court stating that it is not necessary that a party be a plaintiff or defendant. The 16 year old daughter from wife's first marriage was a protected party in the O.P. and was a *"party"* to the O.P. proceeding. Further, the trial court abused its discretion by disqualifying the attorney. *"An abuse of discretion standard does not mean a mistake of law is beyond appellate correction."* Section 506 does not mandate that the court to select the attorney. There was no real conflict between the wife and her daughter from the first marriage because it did not involve custody or visitation. It involved an O.P. restricting contact between the 16 year old daughter of a prior marriage. Husband No. 2 was not the 16 year old's father.

***IRMO Selinger*, No. 4-03-0262 (4th Dist. Oct. 2004)**

This is an excellent case wherein the Appellate Court reversed a trial court's decision to give the wife $400.00 per month in maintenance that terminated in four years. The Appellate Court increased the sum to $600.00 per month and made the term permanent. This was a 25-year marriage, the parties had enjoyed a certain lifestyle, and while the wife went to college and was earning $36,000.00 per year, her income would always be less than half of what her former husband earned.

***IRMO Roe*, No. 2-03-0713 (2nd Dist. 09/30/04)**

Judgment provided for sale of marital residence and a division of assets at 52% for the wife and 48% for the husband. Wife was allowed to take the child and move to Kansas where wife was going to attend the University of Kansas to finish her degree. Husband agreed provided the wife posted security to guarantee that she would return to Illinois with the child when she graduated. The amount of the security was 75% of her portion of the net proceeds from the sale of the home and it would be paid to the husband if she did not return by 9/1/02. Wife filed a petition to remain in Kansas because she had become engaged. Husband filed a petition for a rule to show cause and asked that the court award him the liquidated damages provided in the Judgment. The trial court granted the wife's petition to remain in Kansas and dismissed the husband's rule but awarded him the liquidated damages. On appeal, the right to remove the child to Kansas permanently was affirmed. The liquidated damages to the husband was reversed. The reversal of the liquidated damages award was based upon a technicality. The IMDA provides for reasonable security for the return of a child but the statute does not give the court authority to impose security to guarantee the return of a parent to Illinois.