



FAMILY LAW SECTION NEWSLETTER

October 2014

In this edition:
Practice tips from the Hon. Boyd Dunn

EDITOR'S COMMENTS

The MCBA Family Law Section welcomes the submission of any articles, news or announcements that would be of interest to those practicing family law. We also welcome any suggestions you may have for improving this newsletter.

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The views in this newsletter are those of the contributors and editors and do not reflect the official policy of either the Maricopa County Bar Association or the Maricopa County Superior Court.

ANNOUNCEMENTS



SUPREME COURT INVITES PUBLIC COMMENT ON PROPOSED CHILD SUPPORT SCHEDULE

QUADRENNIAL REVIEW REPORTS: State and federal laws require states to review their child support guidelines every four years. Reviewing the guidelines involves a third-party expert to analyze the randomly selected case files and to update the schedule that is the backbone of the support calculator. Arizona has completed the initial steps of the mandatory review. The expert's analysis and review has resulted in the development of two reports:

- [2014 - Economic Review of the Arizona Child Support Schedule](#)
- [2014 - Arizona Findings from Case File Data](#)

2015 PROPOSED CALCULATOR: In order for users to have a better understanding of how the proposed changes in the Schedule of Basic Support Obligations may impact real-life situations, a proposed 2015 child support calculator (based on the updated BR4 schedule) has been developed to assist users to make comparisons between the current and proposed child support schedules. *Please note: Although users may print the worksheets for comparison purposes, they are not intended for use in current or pending child support cases, and will not be accepted in a family court matter. To differentiate between the current worksheet and the 2015 proposed calculator worksheet, a visible watermark is embedded on each page and the upper left-hand corner of the worksheet includes language indicating that the worksheet calculation is based on the proposed 2015 BR4 schedule.*

PUBLIC COMMENTS: The public and system stakeholders are encouraged to provide constructive comments regarding the new proposed child support calculations and the expert's report information in the ["Public Comments"](#) link. Public comments will be used to compile proposed guidelines that will be reviewed by the [Committee on Superior Court](#) and the [Arizona Judicial Council](#).

For more information please visit: <http://www.azcourts.gov/familylaw/Home.aspx>



New Beginnings Program

Support for separating and divorcing/divorced parents

In collaboration with the Superior Court of Arizona, Southwest Human Development offers a nationally recognized parenting program for separating and divorcing parents - the New Beginnings Program.

Developed at Arizona State University, research about the New Beginnings Program has demonstrated that parental participation in the program results in improved children's long-term adjustment following divorce.

Separation and divorce are very stressful times for parents and children and it can be challenging to provide effective parenting during this time. The New Beginnings Program works by helping parents learn and practice skills to increase positive interactions in the family, strengthen their listening skills and learn more effective discipline strategies. They also learn skills to keep their children out of the middle of conflicts they have with the child's other parent.

Who can participate?

- Divorced or separating parents, including those who were never married.
- Participants must have a Maricopa County Family Court case number to enroll.
- Parents may be voluntary, court-mandated, or referred by their attorney or a Judge.
- Parents must have some ongoing, regular contact with their child/ren.

What is the program like?

- Parents learn skills from a highly trained, Master's level group leader and meet with other parents going through similar experiences.
- The program consists of 10 weekly group meetings; each meeting lasts two hours.
- Mothers and fathers are in separate groups.
- Child care is available.
- The program is provided at no cost via a grant from the AZ Superior Court.



Parental participation in the New Beginnings Program has led to children having fewer mental health and substance use problems, better grades and higher self-esteem six years after participation as compared to children whose parents did not participate in this program.

Youths who were experiencing more problems when their parents entered the program showed the greatest benefit. Fifteen years later, when the youths had become young adults, those whose parents

attended the New Beginnings Program showed benefits in terms of fewer problems such as depression and substance use and less negative attitudes about the divorce than those who parents participated in a self-study comparison condition.

Benefits to Children and Adolescents

- Fewer behavioral problems
- Higher grades
- Higher self-esteem
- Less early sexual activity
- Less drug and alcohol use

Benefits to Parents

- Better relationships with their children
- More effective discipline
- Less depression
- More fun being a parent

**REFERRAL LINE for the New Beginnings Program Parenting Classes
(602) 633-8819**

For more information on the latest research and new developments with the New Beginnings Program, please go to www.familytransitions-ptw.com



New Federal Law requires states to update UIFSA

On September 29, 2014, President Obama signed HR 4980, “An Act to prevent and address sex trafficking of children in foster care, to extend and improve adoption incentives, and to improve international child support recovery” which implements the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Among other things, Public Law 113-183 requires that states update to the most recent version of UIFSA (2008) on or before September 30, 2018.

For more information visit:

<https://www.congress.gov/bill/113th-congress/house-bill/4980/all-actions>

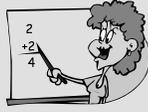


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PRESENTATIONS & CLE



Wed-Locked: DOMA and the Ever-Changing Laws of Relationships

Sponsored by the Estate Planning, Probate and Trust and Family Law Sections

October 9, 2014
7:30 - 9:00 a.m.
Light Breakfast Included

Join our panel as they discuss how the demise of DOMA is affecting the legal landscape in Arizona. The panel will give an update on the Connolly case, the pending Arizona case seeking to overturn the ban on same-sex marriage. You will learn how to navigate the estate planning issues that may arise with same sex couples. Panel members will also discuss the family law implications of same sex relationships.



Parenting Coordinators - How to Use them Effectively & Scope of Authority

October 22, 2014, 9:00 a.m. to 11:30 am

MCBA
303 E. Palm Ln.
Phoenix, Arizona 85004

The Effective Use of Parenting Coordinators will be an interactive presentation that will provide the opportunity to address specifically your practice needs and help you get the most out of these Court ordered services for families in conflict. As time allows, the program will include other methods of alternative dispute resolution such as Parenting Conferences and using focused three hour ADR's to develop Parenting Plans. The focus of the presentation will be on methods of helping parents avoid litigation and ways in which attorneys and mental health professionals can work together with this goal in mind.

Presenters: **D. J. Gaughan**, Ph. D., Licensed Psychologist

XXXXXXXXXXXX **Donna Heller**, Heller Law Office, PLC
Mediation Instead, LLC



**Collaborative Divorce
November 2, 2014
11:30 a.m. to 1:30 p.m.**

Collaborative Law with a capital “C” and a small “c”

A discussion regarding the benefits of and the potential downsides to a collaborative approach to family law related issues, as well as tips to help you make the most out of your collaborative experience.



News from the clerk of the Maricopa County Superior Court

Michael K. Jeanes, Clerk of the Superior Court for Maricopa County



THE BRIEF

An electronic update for the legal community providing a brief look at news in the Clerk of the Superior Court's Office

September 2014

Updates to Court Forms

Various court forms are available from the Clerk's Office and from the Court's Self Service Center. The Court converted many of its documents to fillable forms online and translated those forms into Spanish. The Clerk's Office primarily maintains cover sheets and documents related to financial processes.

The Clerk and Court will be updating the layout of their websites and including the latest version of these court forms. If you have bookmarks or links directly to individual forms you will want to periodically go to the Clerk and Court's main forms pages to check your version against the most recent forms. Clerk of Court forms are available at <http://www.clerkofcourt.maricopa.gov/CATALOG.htm>. Forms from the Court's Self Service Center are available at <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/index.asp>. Check both websites often, as form updates occur throughout the year.

National Adoption Day

Maricopa County will participate in the 15th Annual National Adoption Day event on Saturday, Nov. 22, 2014 at the Durango Juvenile Court Center in Phoenix. The public is welcome to attend this free event. In addition to the smiling families finalizing their adoptions, the events are regularly attended by sports team mascots, local officials, and offer a festive, family spirit for all.

Judges, clerks, and court staff work with many volunteers to prepare for and carry out the event each year, which has been the largest of its kind in the country for several years. The deadline for filing an adoption petition to take part in the event is Friday, Oct. 10, 2014. The deadline for all other filings is Friday, Oct. 31, 2014 to participate in the National Adoption Day events in November.

The Superior Court recently began a special adoptions unit to handle the increased adoption petitions in Maricopa County and to streamline the adoption process. For questions regarding this year's adoption event, call the Maricopa County National Adoption Day Foundation at 480-359-4623 or visit www.maricopanad.org.

October 2014

Forms of Payment Update

Due to substantial improvements in compliance, the Clerk's Office is suspending its plans to phase-out the acceptance of business checks for payment of court fees from law firms, attorneys, process servers, runner services, and document preparers. These customers may continue paying with checks drawn on their entity's business account. The office thanks those who attended stakeholder meetings and provided input on this topic. Thanks also to those who use or transitioned to restricted procurement cards for fee payments.

As a reminder, the Clerk's Office does not accept personal checks or any third-party form of payment, whether presented by the account holder or given to a business and made payable to the Clerk's Office. Acceptable forms of payment for bonds differ from other court fees and are detailed on the Clerk's website at <http://www.clerkofcourt.maricopa.gov/moneymatters.asp>.

E-filing Now Accepts .docx Format

E-filers can now upload proposed orders in either MS Word .doc or .docx formats. Until now, parties had to "save-back" to the earlier-generation .doc format. Programming improvements now allow customers to choose. Related Administrative Orders and the eFiling Guidelines online will be updated to reflect this new ability.

Child Support Guidelines Update

The Administrative Office of the Courts (AOC) has completed its mandatory review of the child support guidelines. The AOC posted the proposed 2015 child support calculator online, as well as the final reports that accompanied the review. The public can comment on the guidelines until Oct. 9, 2014. For more information, go to <http://www.azcourts.gov/familylaw/Home.aspx>.



LAW PRACTICE TIPS



PRACTICE TIPS FROM THE HON. BOYD DUNN

It has been my pleasure serving on the family law bench for the last 2½ years. Some of the most experienced legal counsel has appeared before my Court and I appreciate their efforts in resolving difficult disputes and presenting them well at trial. In order to be of assistance, please allow me to suggest a few practice tips for your consideration:

1. **Emergency Orders.** In filing a request for an emergency order without notice, provide as much detail as possible to establish the required standard as required under A.R.S. 25-315(D) and Rule 48 (A)(1). A.R.F.L.P. Be sure to include with the motion and the underlying foundational petition, a petition for temporary orders with notice in the event the Court feels the circumstances warrant the setting of an accelerated hearing.
2. **Resolution Management Conferences.** Make the most out of any pre-trial appearance before the Court by meeting with the other side and narrowing the issues on the record, agreeing to disclosure deadlines if necessary and availing your client of any other available services, including mediation, to resolve the issues sooner and without the need for trial.
3. **Pre-Trial Statements.** Joint pre-trial statements are expected between legal counsel and can serve to aid settlement discussions and help the Court to understand the issues and the parties' positions. The statement can serve as an excellent opening statement and is reviewed by the Court prior to trial. Even if a self-represented party is on the other side, an effort to complete a joint pre-trial statement is always appreciated.

4. Exhibits. Please do your best in delivering your exhibits to the Court properly organized and by the stated deadline. It is so critical for staff and to prevent time being taken away at the time of trial. If you need more time please call the Court and additional time may be given depending on the workload and number of documents.
5. Time Management. The time available for trial is often limited especially for hearings for temporary orders. The key is to manage time as well as possible in being able to present the necessary evidence. And yes, include a pretrial statement to summarize the issues if you feel it will be an aid. And remember, limit the cross examination to make sure sufficient direct examination of your client and witnesses occur.

Always feel free to call my Judicial Assistant if you have any procedural questions. I will try to be available, if necessary, to schedule a quick telephonic status conference to deal with any pre-trial issues or discovery dispute. I practiced for decades in family law and I know the challenges you face. We want to be of assistance to you and I hope these tips are helpful reminders.

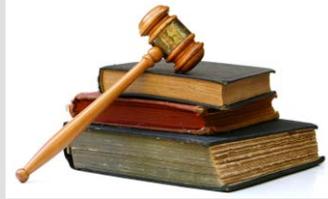
If you have a law practice tip you would be willing to share, please send it to the Family Law Section newsletter, c/o Laurie Williams (MCBA Representative) at:

lwilliams@maricopabar.org

When submitting a law practice tip, please let us know if you would like your name included or not.



ARTICLES & CONTRIBUTIONS



When Disputes Continue: Are Parenting Coordinators the Answer? By Leah Pallin-Hill

You just completed 16 months of litigation in dissolution proceeding. The financial issues paled in comparison to the emotional disputes about the minor children. The parents were evaluated. The children interviewed and evaluated. The evaluator issued a report. The clients went to Conciliation Services and then private mediation. They refused to settle and remained steadfast in their opinion that each was the better parent, should be awarded sole legal decision-making about education issues and needed to have the majority of time with the minor children.

After a half day trial, the judge orders joint legal decision making and equal time. Neither parent has final decision-making authority about any issue. Your client has paid you \$30,000 and incurred additional expert fees. Your staff is exasperated because the client has called and continues to call with questions or complaints, and you know the calls will continue because the client does not believe the child's other parent will abide by the court-ordered plan, show up on time for exchanges of the children or support the children at school. What to do now? You need a respite from dealing with these high conflict parents.

Considering caseloads for Family Court judges in Maricopa County are daunting and the time it took for you to get a trial setting in the first place, it is unlikely the Court will be able to make timely decisions about decision-making and parenting time enforcement issues. You know that timely resolution of disputes will keep your client on an even keel and will minimize calls to your staff. If the Court did not include the appointment of a Parenting Coordinator ("PC") in the Order, now may be the time to discuss that option with your client and opposing counsel.

Rule 74, Rules of Family Law Procedure controls this appointment and states:

Determination of Need for Parenting Coordinator and Appointment.

Prior to, simultaneously with, or after entry of a decree, judgment, or custody or parenting time order, at the request of either party or on the court's own motion, the court may appoint a Parenting Coordinator in any proceeding under Title 25, A.R.S., involving children if it finds any of the following:

1. the parents are persistently in conflict with one another;
2. there is a history of substance abuse by either parent or family violence;
3. there are serious concerns about the mental health or behavior of either parent;
4. a child has special needs; or
5. it would otherwise be in the children's best interests to do so.

Parents may agree to use a Parenting Coordinator and agree to a specific person, subject to approval by the court, or the court may make the choice of the person to serve as the Parenting Coordinator.

In this article, I will discuss the use of a PC in the first category listed: parents persistently in conflict with one another. Subsequent articles will explore the PC's role in the other enumerated categories.

Who Are High Conflict Parents?

In the Court's lexicon, parents in persistent conflict are known as High Conflict parents. These parents are individuals who have chronic difficulty co-parenting and communicating. They are not capable of focusing on their children's needs as distinct from their own. Although they may seem unbalanced, usually they are not diagnosed as having a psychiatric disorder. Indeed, separation and divorce creates enormous stress that can affect even the most well balanced individual. The adversarial process, ongoing litigation and its concomitant cost, and repeated Court appearances have only exacerbated the situation. By enlisting the services of a PC – a third party neutral – an attorney can assist these parents in taking control of their lives and their children's futures, and can help to minimize their stress with fewer court appearances and less expense.

Who Chooses the PC?

If you and your client have been in Court about parenting issues frequently prior to the final disposition, the judge may sua sponte include the appointment of a PC in his or her final order. The judge may or may not seek input from the attorneys about who should serve. Rather, the judge may turn to the Superior Court's Behavioral Health Provider Roster and pick the next available practitioner from the list. The choices include licensed psychologists, social workers and attorneys all of whom have completed required training pursuant to A.R.S. § 406 (C). Pursuant to Section C, before a PC can serve, the PC must have attended six initial hours of training on domestic violence and six hours of child abuse training. Thereafter, every two years the PCs must attend four hours of such training. This training provides insight about imbalance of power and control issues that may exist in high conflict cases where domestic violence is emotional and not physical (criminal) battering.

If the judge permits the attorneys to choose the PC, hopefully the attorneys can agree on who to select. If they cannot agree, the judge typically will select the practitioner from the two blind lists.

When the practice of utilizing out-of-court resources to assist parents started, those practitioners who acted as "Family Court Advisors," were psychologists. In the last ten years, along with the name change to Parenting Coordinators, increasing numbers of family law attorneys and former judges have been added to the Roster. PCs do not offer therapy to the parents so attorneys and former judges familiar with Family Court are well-suited to the role.

Initially, the PC assists by helping the parents avoid round trip Court appearances. The long term goal for PCs is to help the parents work through issues in a constructive, straightforward, unemotional manner so they do not need the intervention of a third party.

The providers on the Court Roster have different retainer requirements and varying degrees of experience. Some require joint, in person conferences. Others use email which may be combined with in person conferences, Skype, Facetime or videoconferencing. Discuss with your clients which approach suits their situation.

Before selecting the PC, the attorneys should contact the proposed individual so the PC can do a conflicts check and let the attorneys know if the PC's schedule will permit the PC to take on the case. In addition, the attorneys should determine if their clients can afford the PC's fee and how the PC bills. The PC's hourly rate and retainer requirements are posted on the Behavioral Health Provider Roster; but, those rates may not tell the whole story. Does the hourly rate include a conference and the issuance of a report all within an hour? Does the PC charge per email or is there a different system? These inquiries may be made ex parte, because they are procedural; however, attorneys should be aware that the standard PC Order of Appointment forbids ex parte contact by an attorney except for scheduling issues.

Who Pays the PC?

The Court allocates the division of PC costs between the parties. Some judges order that each parent is 50% responsible. Others order that the parents pay pro rata according to their relative child support percentages. PCs may recommend reallocation of fees if they believe one parent has not acted in good faith and/or is using the PC unnecessarily.

When Can PCs Start?

PCs may not begin working with the parents until the Court issues the Order of Appointment even if a signed stipulation has been filed or the agreement to appoint a specific PC is included in the final decree or judgment. Even if the Order has been signed and issued, PCs cannot tackle an urgent issue unless they have been retained by both parties and have had time to become familiar with the case.

Upon retention, the PC usually reviews the current legal decision-making and parenting time orders, Conciliation Services reports, parenting evaluations and reports issued by prior PCs. The parties should provide those documents to a PC, if the PC is a psychologist. A PC attorney has access to the Court's ECR system so the PC can see pleadings and other relevant documents once appointed as the PC. Such access is not automatic. The PC attorney must provide the Clerk's office with the Order of Appointment to gain ECR access to the case.

Unless you advise your clients of these restrictions, they will be disappointed when they contact the assigned PC a week before school starts because the other parents will not agree on the choice of school or if a long vacation is about to commence and one parent does not believe the other parent will administer necessary medication while the child is with other parent. Moreover, one parent may wish to enlist the services of the PC and the other may not think the PC will be able to assist and resolve the dispute. Some parents do not wish to incur the cost of a PC, even though it is a Court-order that they must pay the required PC retainer in advance.

Parents must understand that if a PC is appointed, unless the issue is a true emergency, that parent's attorney cannot seek relief with the Court because the standard PC Order includes a prohibition against either party seeking Court intervention without first consulting with the PC. If one parent refuses to pay the retainer or meet with the assigned PC, and time is not of the essence, the other parent's attorney may seek relief in Court to compel compliance. In my experience, the judge will compel the non-compliant parent to pay the retainer, participate and award attorney's fees.

If time is of the essence, the PC may go forward nonetheless. The standard Order states, in Section 5, Procedure, subsection c, that if either party fails to participate as requested by the PC, then in addition to all other remedies available under law, the PC may proceed and resolve the issue. Most PCs will seek input from the non-compliant parent because the PC is appointed to safeguard the children's best interests and hearing both sides of the story before resolving disputes provides that protection. Timely resolution is in the children's best interests as well. Once the issue is resolved, the PC will report to the Court and recommend a resolution, and, if appropriate, recommend that the Court hold a non-compliance hearing.

To avoid a dispute about retention when a parenting issue is ripe, attorneys should advise their clients to retain the PC immediately after appointment if they anticipate the other parent will not cooperate or follow Court orders.

What Kind of Disputes Can the PC Resolve?

The standard Order of Appointment is eight pages and sets out the PC's authority in detail. Advise your client to read it carefully and to ask you to explain the PC's role if they have questions. Make them aware that the PC is appointed to put the children's needs above the parents' needs and that the PC is charged to act in the children's best interests at all times.

PCs can act on almost any disputed issue affecting the minor children's daily lives, whether or not the area was covered in the Court-ordered parenting plan. They can make recommendations to clarify a Court order that is vague and fill in the gaps when the Order does not address issues like exchange time or location. PCs have access to professionals who have interacted with the family. They are also authorized to interview the children. Many PCs refrain from meeting with the children and instead seek assistance from a child psychologist who has appropriate training.

Judges often turn to PCs when the parents cannot agree on a school for the child. The PCs do the research, including but not limited to school standing in the community, programs available, whether the child should be enrolled in a special program, as well as location relative to the two parents' households.

PCs' powers are not unlimited. PCs cannot recommend a change in legal decision-making or make a substantial change to the parenting time schedule that will affect child support. PCs may not deal with financial issues. Of course, if the judge supplements the standard PC appointment order to direct the PC to work with the parents about financial issues, the PC may proceed. If one parent seeks an increase in his time, the PC may not make a recommendation. PCs, even psychologist PCs are not appointed to be evaluators and cannot, according to their own Board ethical guidelines, act in a dual role as evaluator and PC. If the PC determines the parenting time schedule is not in the children's best interests, she must refer the matter to the judge for a hearing.

Most PCs consider themselves "super mediators," because their role goes beyond facilitating discussion or guiding the parents to a resolution. If a PC is not successful in closing the disputed issue by agreement, s/he will issue a report that they send to the judge with recommendations as to resolution.

Attorneys are not involved in the PC process until the recommendation is sent to the Court. Judges do not rubber stamp PC recommendations and will hold a hearing if either side files an objection timely.

When Does it End?

The standard Order of Appointment is for 12 months but that term can be extended. The goal of most PCs is "to get fired" which means both parents agree the PC has given them a system for

productive decision-making. Once the parents have the tools to resolve disputes in a professional, unemotional way, they can agree the PC should be terminated.

The parents must both agree to terminate the PC. If one parent is not happy with the PC or the recommendations s/he has made, that parent can petition the Court to have the PC removed. The judge then makes an independent assessment and may replace the PC or not.

The parties can also agree to terminate the PC and use online systems like the tone meter on My Family Wizard and ProperComm. Both programs regulate emails exchanges and help parents communicate in a healthy, constructive manner. Your clients can get information about these programs at www.ourfamilywizard.com and www.propercomm.com.

Admonition for Family Lawyers

Assisting parents by providing alternatives to traditional litigation, like retaining a PC, is in keeping with the highest aspirational goal for Family lawyers.

*AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
BOUNDS OF ADVOCACY, RULES 1.3, 1.5, 6.1 and, 6.2*

November 2000

Goals for Family Lawyers

1. "An attorney should refuse to assist in vindictive conduct and should strive to lower the emotional level of a family dispute by treating all other participants with respect."
2. "An attorney should attempt to resolve matrimonial disputes by agreement and should consider alternative means of achieving resolution," such as negotiation, mediation and arbitration.
3. "An attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children."
4. "An attorney should not permit a client to contest child custody, contact or access for either financial leverage or vindictiveness."

An added benefit is alleviating you and your staff of the burden of dealing with high conflict parents.

Leah Pallin-Hill was a Maricopa County Family Law Commissioner/judge pro tem from 1997 to 2002. Her practice is devoted to providing alternatives to litigation in civil and Family Law cases. She can be reached for questions about the PC process at leahpallinhill@aol.com



A LONG AND WINDING ROAD
“Untangling the Knots In Business Valuation And Apportionment Issues”
By William D. Bishop

Bill Bishop has drafted a very detailed 22 page article regarding business valuation and business apportionment issues (sole and separate versus community interests in the increased value of a sole and separate business). Bill’s article explores numerous issues stemming from four years of litigation in a case that he had with Mervyn Braude. The experts included Frank Pankow and Lynton Kotzin. Bill’s article is a must read for anybody who is involved in a *Rueschenberg* type of case, and is very helpful in explaining some of the most important business valuation concepts in lay-person’s terminology, the various methodologies used in apportionment cases, and some of the ambiguities and issues which remain unresolved following the *Rueschenberg* opinion. Bill’s article can be viewed at <http://www.bishoplawoffice.com/Articles/LONG-WINDING-ROAD.shtml>. You can also contact Bill at 480-893-6270 and he will be happy to email a copy of the article to you.



NEW ARIZONA CASES



Abbreviations (that might be) Used

Please note the following abbreviations commonly used in the analysis of the cases that follow:

C/A	Court of Appeal	H	Husband	P/T	Parenting Time
T/CT	Trial Court	W	Wife	ARS	AZ Revised Statutes
S/C	Supreme Court	S/M	Spousal Maintenance	C/P	Community Property
F	Father	C/S	Child Support	S/P	Separate Property
M	Mother	C/C	Child Custody		

**Case reviews are provided by members of the
Board of Directors of the Family Law Section.**



Basic Information

Case/Cite Kent v. Kent 1 CA-CV 13-0067

Procedural History

After a 2-day trial, a post-trial minute entry order was entered. W's Rule 83(A) motion was granted. Another evidentiary hearing was held. A Decree was entered and then an Amended Decree was entered. W waited several months to bring a new claim. H's Motion to Dismiss was granted and W's Motion for New Trial was denied. W appeals from the denial of the motion for new trial.

Ruling

The parties disagreed on the value of the community's interest in H's law firm and in a settlement obtained by the law firm. W's expert, Lynton Kotzin, valued the parties' interest in the firm at \$920,350 while H's expert, Frank Pankow, valued it at \$701,000. The original Order awarded H his interest in the firm but did not allocate the settlement proceeds. W's motion for new trial was granted and the settlement proceeds were then equally divided between the parties. Both parties were awarded 25% of the net proceeds recovered by the firm. The Decree gave Wife a \$460,000 offset for her interest in the firm and it characterized the settlement proceeds as an asset of the firm and reserved jurisdiction to determine the community's interest in the proceeds.

W argued that the community interest in the firm's value should be considered separately from the settlement proceeds of the firm. H argued that the equitable offset to W should be adjusted to account for the settlement proceeds. The T/C accepted W's argument. At W's request, the \$460,000 offset for the law firm valuation was reduced to a judgment. W then moved several months later to resolve the outstanding issue of the division of the settlement proceeds. H again argued that the settlement proceeds were addressed in the original offset number as the proceeds belonged to the firm. The T/C agreed with H and dismissed W's. W's motion for new trial was denied.

The Amended Decree awarded Wife, at her insistence, at \$460,000 judgment for her interest in the firm and purported to reserve jurisdiction to determine the extent of the community's interest in the settlement proceeds. The provision attempting to reserve jurisdiction, however, was premised on the assumption that the family court would revisit the valuation of the firm when appropriate. W's insistence on obtaining a judgment changed the equitable offset in the Decree into adjudication on the firm's value. With a final judgment, W is judicially estopped from seeking further compensation for the value of the settlement proceeds, a firm asset. No procedural rule could authorize a partial judgment as there was no separate claim. W's motion for new trial was denied as she attempted to use it as a vehicle for revaluation of the law firm though that remedy was not at issue in the underlying order.

Affirmed.



Basic Information

Case/Cite Department of Child Safety v. Beene, 332 P.3d 47, 692 Ariz.Adv.Rep. 47 (Div. 1, 2014)

Procedural History

Issue: Whether parents, at trial to determine whether parental rights should be terminated, have a due process right to call their children as witnesses and cross-examine them as to hearsay statements the children made and were admitted into evidence. Special action appeal.

DCS initiated dependency action after minor children parents were indicted on various felony child abuse charges, which ultimately resulted in Mother's conviction of felony child abuse. At dependency trial, T/CT did not allow F to call minor child as witness. At permanency planning hearing, T/CT changed plan to severance and adoption. In anticipation of severance trial, DCS moved for protective order to not allow parents to call children as witnesses, noting that the children's therapists and psychologist opined such testimony would not be in the children's best interest. Father objected, arguing that such preclusion of evidence and witness testimony violated his due process right and that the T/CT could not preclude such testimony on a best interest standard. F also sought to have children testify in the presence of all lawyers and parties and argued that if the children were not allowed to testify, that all evidence regarding the children's alleged statements also be precluded.

T/CT found that preclusion of parent's right to call children as witnesses violated the parent's due process rights, but that the court also needed to protect the children's emotional interests and therefore the parents were not to be present during the children's testimony and that the court may implement further orders to protect the children. DCS filed a petition for special action.

Ruling

C/A went through extensive analysis of due process considerations and ultimately vacated the order denying DCS' motion for protective order and remanded with orders that DCS has the burden to show good cause for the protective order precluded the children from being called as witnesses. DCS will then have to make an offer of proof describing the statements the children made and demonstrate a reasonable likelihood that the evidence will be admitted at trial. The burden then shifts to the parents to demonstrate that they will be denied due process if not allowed to call the children as witnesses and cross-examine them. The analysis is to also include whether it is in the children's best interest to be called as witnesses, as well as: (1) the nature of the proceedings, (2) private interests at stake, (3) interests of the state, and (4) risk that the procedures used will lead to erroneous decisions. If the parents meet their burden, then TC may consider alternatives to testimony in open court.



Basic Information

Case/Cite Balazic v. Balazic (Ariz. App., 2014)

Procedural History

Appeal from Cause No:FC2009-090377, heard by the Honorable Boyd W. Dunn,

Appellant appealed T/CT's order rejecting Father's argument that the deficiencies in registration under the Uniform Interstate Family Support Act (UIFSA) deprived the Court of the ability to enforce a foreign child support order.

Case Summary

Facts: Mother and Father divorced in 2000 in the state of North Carolina. Mother was awarded primary legal custody of the parties' four children and Father was ordered to pay child support. After that, Mother moved to Arizona while Father moved to Pennsylvania. In 2009, Mother filed a certified copy of the consent order along with a notice of filing and affidavit regarding the foreign order. Mother filed a Petition to Enforce Father's child support obligations in 2011 alleging he was in arrears. Father was personally served with the Petition and an Order to Appear. Father requested the hearing be rescheduled, and then failed to appear. The Court proceeded with the hearing in Father's absence and entered judgment for arrears totaling \$128,681.26 inclusive of interest. More than 18-months later, Father moved to set aside the judgment as void arguing that the Superior Court lacked SMJ to enforce the NC Order. Father argued she failed to properly follow UIFSA as she did not include a letter of transmittal and a sworn statement of the amount owed. T/Ct denied Father's motion after briefing.

C/A outlined that Father failed to object and in fact made at least 18 months of payments after the T/Ct entered judgment. Father's failure to object therefore precludes relief unless Mother's failure to register properly the order was not a procedural defect but a jurisdictional one. Balazic (citing to Health for Life Brands, Inc. v. Powley, 203 Ariz. 536, 538 57 P.3d 726, 728 (App. 2002)). Father argued that enforcement and modification are not significantly different for jurisdictional purposes. C/A disagreed stating that the key feature of UIFSA is that only one child support order is in effect at a given time. A proceeding intended only to an enforce an out of state child support order does not present the same issues for the "one-order system" or the rights of the parties.

Holding: C/A held that "unobjected to deficiencies in registration do not deprive Arizona courts of jurisdiction to enforce a child support order issued by a court in another state."



Basic Information

Case name/Cite Volk v. Brame CA-SA 14-0079 (August 2014)

Procedural History

This case came before the court on Father's simplified petition to modify child support. Due to the court's heavy calendar, the parties were only allowed to submit documentation and were not given the opportunity to testify.

The court denied Father an opportunity to clarify the evidence, and indicated that it would assess the parties' credibility based solely on the disputed documents already submitted without taking any sworn testimony or additional evidence.

Father filed a special action seeking relief from the Superior Court's order modifying his child support obligation.

Ruling

The Court of Appeals found that the trial court had denied Father a meaningful opportunity to be heard and to confront adverse evidence during the hearing from which the order was issued.

CONTESTED ISSUES OF CREDIBILITY MUST BE DECIDED WITH THE AID OF SWORN WITNESS TESTIMONY

When the resolution of an issue before the court requires an assessment of credibility, due process requires the court afford the parties an opportunity to present sworn verbal testimony. In this case credibility was central to the issue before the court but the court expressly rejected the parties' efforts to testify, choosing instead to rely on a "paper view" to decide the petition. The trial court's approach categorically violated Father's due process rights.

TIME LIMITS VIOLATE DUE PROCESS WHEN THEY PREVENT A MEANINGFUL OPPORTUNITY TO BE HEARD AND TO CONFRONT ADVERSE EVIDENCE

Although the family court has broad discretion to impose reasonable time limits on all proceedings or portions thereof and to limit the time to scheduled time, if during the proceeding, it becomes apparent that there isn't sufficient time to receive adequate testimony, then the trial court must allow reasonable additional time or continue the hearing until a date and time when it can take adequate testimony.

A trial court abuses its discretion when it adheres to rigid time limits that do not permit adequate opportunity for efficient direct testimony and cross-examination.