NORTH SUBURBAN BAR ASSOCIATION

N S B A N E W S

FALL 2012

In This Issue:

PRESIDENT'S MESSAGE - November, 2012

By Anna Krolikowska, President

Dear North Suburban Bar Association Members:

As we embark on our 2012-2013 year, I want to express my deep appreciation for the time, effort and energy each and every one of you brings to this wonderful organization. Through our participation, expertise and willingness to share that expertise with our fellow NSBA members, all of us contribute to the uniqueness and camaraderie that are the hallmarks of the North Suburban Bar Association. It is my distinct pleasure and privilege to serve as your 45th president. Moreover, I hope that through our combined efforts, we will be able to lead the NSBA through a difficult transitional period, when bar associations, in general, are experiencing a decline in membership. I look forward to working with each of you in the coming year and welcome your comments and suggestions for making NSBA a vibrant organization contributing significantly to the legal as well as our civic community.

My goals for next year are straightforward: I want to ensure that you not only enjoy the time you devote to the NSBA, but also that you receive a measurable benefit from your involvement in our association. To further those goals, I intend to devote this year to re-building NSBA membership and increasing benefits stemming from active NSBA membership.

We began this year with a successful Installation and Awards Dinner on September 11, 2012, at the North Shore Country Club. The Honorable Grace Dickler graciously accepted our Sanford Blustin Award, bestowed in recognition of her significant contribution to the legal community. My sincere thanks to all of our NSBA Officers, Directors, Members, as well as family and friends who worked so hard to make it a memorable evening. A special thank you goes to our Past President, David Pasulka, for hosting and emceeing, performed with his usual panache. The event was very well attended and resulted in a number of new NSBA membership applications as well as renewals.

To continue our membership enhancement efforts, please reach out to your friends and colleagues to encourage them to renew their membership in the association. The 2012/2013 membership application is online at our website: http://www.ilnsba.org. You will be happy to note that our membership fee remains at the same affordable price of $100.00, a fee we have not increased in several years.

Speaking of our website, special thanks to Ray Ricordati, who has undertaken the unenviable task of updating it, a step long overdue. In the present technology- driven climate, it is crucial, in order to remain competitive, that we not only maintain the services we have provided to our members previously, but also that we embrace new ways of promoting ourselves. Still a work in progress, the website now includes the current Calendar of Events and contact info of the Officers and Board. Next we will update members' names and contact data so that it will be readily accessible to the public. If you are interested in taking advantage of this opportunity, please contact Anna Morrison-Ricordati , anna@amrlawgroup.com, and, by all means, take a look!

During the Installation and Awards Dinner, we were thrilled to award four law student scholarships in honor of our former president, Gerald Schur, who received a JD from John Marshall in 1963, and an LLM in 1968. The scholarships were earmarked for student veterans at The John Marshall Law School and students working in the Veterans Legal Support Center & Clinic. The scholarships will be awarded annually. Contributions to the scholarship fund are welcome throughout the year. Please make them payable to NSBA with "NSBA Scholarship" noted in the memo line. In this season of giving thanks for our blessings, I encourage you to contribute to this worthwhile cause.

Finally, please join your fellow NSBA members for our annual Holiday Celebration on December 11, 2012, at 6:00 p.m. This event is also open to spouses and significant others. We will meet at the Happ Inn, 305 Happ Road, Northfield, IL 60093. I look forward to seeing all of you there!

Anna

From the Editor's Desk:

Another opening, another show! We're off to an auspicious beginning & I predict great things for NSBA in the coming year.
Angela Peters, our intrepid case note editor, also contributed an article which is a dramatic tale of lust, adultery, procreation, abandonment and denial. Spoiler alert: The Court got it right.
Thanks in advance for your anticipated contributions of news, articles & events.

Jan Weinstein

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MEET YOUR 2012-2013 OFFICERS AND DIRECTORS

Anna Krolikowska, *President*
Jan S. Weinstein, *1st Vice President*
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Anna Morrison-Ricordati, *3rd Vice President*
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Directors (2 year term):

Brian Clauss
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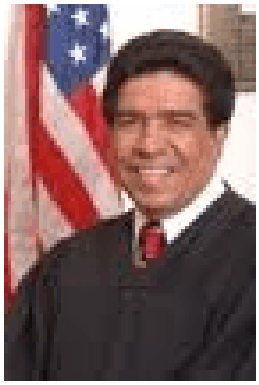
Keith Goldberg
Burton Grant
Hon. Jesse G. Reyes

Continuing Directors (1 yr term):

Hon. Steven J. Bernstein
Paul Plotnick
Robert Romanoff
John Stimson
Phil Witt

New NSBA Members

Judge Anthony Kyriakopoulos. Judge "Tony" sits in chancery at the Daley Center.
Keith B. Baker, 5750 Old Orchard Road, Suite 100, Skokie, IL 60077 Estate planning
John T. Kennedy, 1601 Sherman Ave., # 200, Evanston, IL 60201 Criminal, DUI/DWI, Employment
Gregory P. Turza, 350 S. Northwest Hwy, #104, Park Ridge, IL 60068 Estate planning



Judge Jesse G. Reyes, soon to be Justice Reyes, kicked off the 2012 - 2013 NSBA CLE season with his now annual presentation: Mortgage Foreclosure Review/Update.

The program at the Happ Inn was well attended, including new members and a contingent from the Association of Foreclosure Defense Attorneys.

Judge Reyes detailed how we arrived at this crisis and the exponential growth of foreclosure filings in Cook County, which peaked in 2010 and has now slightly declined. He gave out helpful practice pointers regarding affidavits under SCR 191(a) and SCR 236 and informed us of certain important cases, such as MERS v Barnes, (MERS has standing as plaintiff, but defendant waives standing challenge if not raised prior to plaintiff's motion for order approving sale) and Metrobank v Cannatello, holding that substitute service confers *in personam* jurisdiction for purpose of deficiency judgment.

Grant & Grant talk collection

In our 2nd CLE, the dynamic duo of Burton & Joan Grant walked us through the labyrinthine process of collecting attorney fees in family law cases pursuant to overlapping, sometimes redundant statutes. Burt explained the three retainer arrangements and difference between filing for fees in the divorce case vs. a separate suit. Joan filled us in on the back story behind the statutes' enactment as well as pointed out important hidden tidbits in the statutory language. Thanks for spending the extra time.

New NSBA partnership

In cooperation with PNC Bank, the country's fifth largest financial institution, NSBA will present free public seminars at PNC branch banks by our members concentrating in estate planning, taxation, elder law and asset protection. Participating members are William Ensing and new members Greg Turza and Keith Baker. We have scheduled the panels on Wed., Nov. 28, 2012, 5:30 pm. 1633 Church St., Evanston; Sat., Dec., 1, 2012, 1:30 pm, 5033 Dempster, Skokie, and Wed., Dec. 5, 2012, 5:30 pm, location TBA. The information will be timely in the current uncertain tax environment. Thanks to PNC VP and NSBA member, Bruce Schulte, for spearheading this concept. Please come out and support our members.

SPERM DONOR CAN KEEP IT IN HIS POCKET *By Angela Peters*

SHE and HE had an affair while they were each married to someone else. SHE was living apart from HER husband, and HE went home every night to HIS wife. SHE wanted to have a baby and HE wanted his love child, too, but it wasn't happening. THEY tried everything--forget the contraceptives--numerous acts of sexual intercourse, artificial insemination, and more sexual intercourse. It would be THEIR secret, except that the OTHER SHE found out and HE pulled out...too late...SHE was pregnant. SHE hires a lawyer, files HER Complaint for Parentage, and LITTLE SHE is born. SHE and HE enter into an Agreed Order of Parentage and all is quiet for a while, actually for five years, during which time he pays child support. Then, HE files his Motion to Terminate the Parent/Child Relationship based on his having donated HIS sperm to HER.

ANALYSIS OF THE LAW

HE relies on 750 ILCS 40/3(b) in support of HIS argument that a known donor under the Illinois Parentage Act (IPA) does not have any rights or duties to a child born as a result of artificial insemination from his semen.

750 ILCS 40/1-3, does not have significant legislative history. Nonetheless, this case can be analyzed and disposed of without resort to legislative history analysis. The legislative intent is apparent for the purposes of our case. Simply, HE is barred from its protections.

750 ILCS 40/1-3 in toto provides that:

1. This Act may be cited as the Illinois Parentage Act. i. Historical and Statutory Notes. Title of Act: An Act to define the legal relationships of a child born to a wife and husband requesting and consenting to heterologous artificial insemination. P.A. 83-1026, certified and eff. Jan 5, 1984.

2. Any child or children born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived legitimate child of the husband and wife so requesting and consenting to the use of such technique.

3(a). If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband shall be treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing executed and acknowledged by both the husband and wife. The physician who is to perform the technique shall certify their signatures and the date of the insemination, and file the husband's consent in the medical record where it shall be kept confidential and kept by the patient's physician. However, the physician's failure to do so shall not affect the legal relationship between father and child.

3(b). The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife shall be treated in law as if he were not the natural father of a child thereby conceived.

The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. People v. Blair, 215 Ill.2d 427, 442 (2005). The best indication of the legislature's intent is the language of the statute, given its plain and ordinary meaning. *Id.* at 442-43. The construction of a statute, too, is a legal question that is also appropriate for *de novo* review. State Building Venture v. O'Donnell, 239 Ill.2d 151, 160 (2010).

The Author's notes to §§40/2 and 40/3 provide that the primary purpose of the IPA is to provide a legal mechanism for a husband and wife to obtain donor sperm for use in artificial insemination and to ensure that a child is considered the legitimate child of the husband and wife requesting and consenting to the artificial technique. In re Parentage of M.J., 203 Ill.2d 526, 534, 787 N.E.2d 144, 149 (2003). But, the written consent requirement is mandatory. See In Re Marriage of Adams, 174 Ill.App.3d 595, 528 N.E.2d 1075 (2nd Dist., 1988), judgment reversed on other grounds, 133 Ill.2d 437, 551 N.E.2d 635 (1990); In re Marriage of Witbeck-Wildhagen, 281 Ill.App.3d 502, N.E.2d 122 (4th Dist., 1996).

The Illinois Supreme Court in M.J. pointed out that the scant provisions of the Illinois Parentage Act, enacted more than twenty years ago, "fail to address the full spectrum of legal problems born as a result of artificial insemination and other modern methods of assisted reproduction," due in part to the rapid evolution of assisted reproduction technology. Id.

In M.J., the parties were involved in a ten-year intimate relationship, but were never married. They attempted to conceive a child, but they failed. They together went through the process of artificial insemination; with the respondent 'father' paying for the procedure, accompanying the mother to the doctor, injecting her with fertility medication, and even selecting the race of the sperm donor to reflect the parties' biracial relationship. After the twin boys were born, he acknowledged the children as his own and he paid for their support. Only after this, the mother discovered that he had misrepresented that he was divorced, when in fact he was married and he had given the mother a false name. When the mother terminated their relationship, he stopped paying support for the two children, and he filed a motion to dismiss the mother's support and paternity petition because he was not a 'husband' under §3(a). The First District released the man from any obligation to the children and held that the Act only applied to married persons, not as in the instant case, where the 'parents' had not married.

The Illinois Supreme Court agreed that the appellate court had correctly dismissed the M.J. mother's petition under the Act, but the Supreme Court held that the mother had a common law action for child support because the IPA did not prohibit common law actions to establish parental responsibility, and the public policy of protecting children supported such actions. The Court noted: "…if an unmarried man who biologically causes conception through sexual relations without premeditated intent of birth is legally obligated to support a child, then the equivalent resulting birth of a child caused by deliberate conduct of artificial insemination should receive the same treatment in the eyes of the law. Regardless of the method of conception, a child is born in need of support…[T]o hold otherwise would deprive children of financial support." *Id.* At 152.

Artificial insemination pursuant to 750 ILCS 40/1-3 is excluded as a basis for a finding of paternity and parental responsibility for either the donor or the husband under the limited purview of the Act. If a child is conceived by other than artificial insemination, or is not conceived under the

allowed set of cirumstances as described in 750 ILCS 40/1-3, then the court must follow the determination of paternity as set forth in the Illinois Paternity Act of 1984, 750 ILCS 45/1 et seq.

Our court need only refer to the IPA of 1984 for basic policy underlying the parent-child relationship:

§45/1.1 states that Illinois recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents under 'parent and child relationship' means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

§45/3 states that "The parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents."

HE has the burden of proof for a number of basic issues: 1) That LITTLE SHE was born as the result of the artificial insemination of the mother, SHE; 2) that OTHER HE consented to the artificial insemination of his then-estranged wife, SHE with HIS sperm; 3) that the adulterous/sexual relationship between HER and HIM does not take HIM out of the protections of the statutes that HE seeks protection from so that the IPA of 1984 does not find him to be the father of LITTLE SHE, and 4) that HE is not otherwise estopped from even seeking to disestablish his paternity based on his failure to file a Motion to Vacate, Motion to Dismiss, or other protective measure from the Agreed Order of Paternity, in which HE admits to being the father of LITTLE SHE.

HE believes that, where there is a putative father (OTHER HE), it is first necessary for OTHER HE to disestablish his own presumed father's parentage before a parentage action can be pursued by SHE against HIM. However, nothing in either the plain language of the Illinois statutes, or case law in or out of the State of Illinois, supports this.

HE simply cannot prove that LITTLE SHE was born as the result of the artificial insemination of SHE. Even if we assume momentarily that HE could prove that LITTLE SHE had been conceived by artificial insemination and we ignore the fact that HE and SHE had intercourse multiple times over a year, we then do not have a donor who did not want any responsibilities for the child. Therefore, we return to the original policy of our courts that "It is in a child's best interests to have two parents whenever possible." If OTHER HE did not give his consent to the artificial insemination, and if HE believes that HE is protected by the donor statute, then we do not have a father for LITTLE SHE. By operation of HIS interpretation of the donor statute, LITTLE SHE is a bastard. Obviously, the legislature did not intend this result.

The language in the IPA was largely adopted from the Uniform Parentage Act (UPA) Section 5 (1973). The functions of the Act were to legitimize a child conceived through the AID procedure as long as the husband consented; it relieved the third-party donor of any parental responsiblity; and it permitted discovery of records upon "good cause shown." (Vote, The Legal Incubation of Artificial Insemination: A Proposal to Amend the Illinois Parentage Act. 18 J. Marshall L.Rev. 797 (1985)). The article goes on to point out that the then-current Act failed to define the rights and obligations of the parties where the husband did not consent to the procedure. One view is to regard such a child as

illegitimate where no consent has been obtained since the child was born against the will of the husband, and therefore, the law should not force the husband to support the child. Another view is expressed as follows:

"Some commentators, however, have espoused an alternative theory which avoids the stigma of labeling an AID child as illegitimate. If an AID child is conceived without the husband's consent, but nevertheless is subsequently supported by the husband, then the child should be regarded as the legitimate and natural child of the married couple. Thus, if the couple is later divorced, the husband would be estopped from avoiding child support payments."

In the case of R.S. v. R.S. (1983), 9 Kan.App.2d 39, 670 P.2d 923, the Kansas court had occasion to construe a statute quite similar to the IPA in a similar factual setting as the Adams case above. The doctor failed to get the husband's written consent in the first AID to which the husband orally consented. That AID procedure failed to impregnate the wife, after which the wife resumed AID treatment. Wife was impregnated and husband was found to be the father, based on his consent to the first treatment (although husband had not given actual consent to the second treatment). In K.S. v. G.S., 182 N.J.Super 102, 440 A.2d 64 (1981), the court held that once given, the consent of the husband was effective at the time the pregnancy occurs, unless the husband establishes by clear and convincing evidence that the consent has been revoked or rescinded.

But, consider that a husband who consents for his wife to conceive a child through heterologous artificial insemination need not consent in writing in order for that consent to be effective. Rather, the husband's consent to the wife's impregnation by artificial insemination may be implied from conduct which evidences knowledge of the procedure and a failure to object. The husband's knowledge of and assistance in his wife's efforts to conceive through artificial insemination constituted his 'consent to the procedure,' in the case of In Re Baby Doe, 353 S.E.2d 877, 291 S.C. 389 (S.C. 1986); M.J., supra.

OTHER HE cannot be held to have given his consent under any scenario, as he also had no knowledge. There are no facts to support HIS proposition that OTHER HE consented, either expressly or impliedly, to HER artificial insemination, with HIS sperm. There are no facts to support a finding of consent to the AID in our case by OTHER HE. We do not, therefore, reach the issue of whether that consent was express or implied.

The voluntary, unconditional acceptance of the role of parent is as legally binding on the man as a judicial determination based on evidence. In re Parentage of G.E.M., 382 Ill.App.3d 1102, 1109, 890 N.E.2d 944, 954 (2008). The Agreed Order that SHE and HE signed should be treated as an acknowledgment of paternity and as an adjudication of paternity. An acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenging party. He would have to meet the standards of 735 ILCS 5/2-1401. G.E.M., 382 Ill.App.3d at 1109, 890 N.E.2d at 954 (citing Smith, 212 Ill.2d at 399, 405, 818 N.E.2d 1204; Illinois Department of Public Aid ex re. Howard v. Graham, 328 Ill.App.3d 433, 435-36, 766 N.E.2d 272 (2002); 735 ILCS 5/2-1401 (2008). See also 410 ILCS 535/12(7) (2008). Under the Act, "fatherhood is not always created by pure genetics." (G.E.M. supra). Under this framework, HE is the father as he has no §2-1401 grounds, and he did not raise it in a timely manner.

The Illinois legislature provided for instances in which a man would wish to seek a declaration that he is not a child's father. Section 7(b) of the Act provides, "An action to declare the non-existence of the parent and child relationship may be brought subsequent to an adjudication of paternity in any judgment by the man adjudicated to be the father pursuant to the presumptions in Section 5 of this Act if, as a result of DNA tests, it is discovered that the man adjudicated to be the father is not the natural father of the child. Botello v. Roman, 09 D 79068, Sixth Div., June 30, 2011; In Re Marriage of Kates, 198 Ill.2d 156, 165, 761 N.E.2d 153, 158 (2001). HE cannot now request DNA testing, five years later, in an effort to even try to avoid being named as LITTLE SHE's father.

CONCLUSION

Based on the Illinois Parentage Act, the Illinois Parentage Act of 1984, and voluminous Illinois and other state caselaw on the issues discussed herein, HE is the natural and legal father of LITTLE SHE. Public policy and the best interest of LITTLE SHE would allow no other result.

Effective January 1, 2013, Supreme Court Rules 11 and 201 are amended and 138 adopted

SCR 11 has been amended to allow for service of pleadings, except for summons and complaint, by email. New paragraph (d) requires a party or attorney to include an e-mail address for service of documents on the appearance and on all pleadings filed in court.

New **SCR 138** prohibits the inclusion of personal identification information in court filings, specifically: Social Security numbers; birth dates; mother's maiden names; drivers license, bank account and debit/credit card numbers.
The court and clerk are not required to review filings for compliance. If such information is required by the court, it shall be filed under seal. A party may move the court for redaction of a document containing this information, which motion shall be under seal and shall include the redacted version. A party wilfully filing such prohibited information may be subject to sanctions including attorney fees and costs.

SCR 201 requires a party serving discovery to file a certificate of service of the discovery document. The discovery document itself is not to be filed.

Watch your form!
Be sure to check **SCR 6** for proper case citation formatting post July 1, 2011.

We were there!

Special thanks to *DEIDRE BAUMANN* for coordinating the judicial screening of retention judges for the Suburban Bar Coalition, as well as NSBA members, who participated, together with the four other suburban bar associations, in researching their assigned judges and conducting interviews of the judges after hours and into the night. Results of these screenings can be found at: http://www.nwsba.org/associations/10957/files/2012%20Sub%20Bar%20Coalition%20Results.pdf.

NEWS FROM THE COURTS

LIGHTS, CAMERAS, ORDER IN THE COURT!

Effective January 24, 2012, IL Supreme Court Chief Justice Thomas Kilbride authorized extended media coverage in the circuit courts on an experimental, circuit by circuit basis pursuant to the "Policy for Extended Media Coverage in the Circuit Courts of Illinois." http://state.il.us/court/SupremeCourt/Announce/2012/012412.pdf

As reported by CBS News, Chief Justice Kilbride said he has heard few, if any, complaints about cameras and microphones in the courtrooms. Joseph Tybor, Supreme Court Director of Communications, has had extensive discussions with Cook County Chief Judge Timothy Evans, who is expected to apply for and receive permission for live broadcasts by year's end. DuPage County was recently approved and Kane is expected soon.

The 14th Circuit, bordering on Iowa, which has allowed cameras for years, was the first to participate in the pilot project. Two murder trials and the woman who faked cancer to defraud donors to her cancer fund have been among the first to allow in-court videotaping.

Permission must first be granted by the trial judge, who has broad discretion regarding coverage, including filming of witnesses and technical matters, such as placement of cameras. The chief judge has ultimate discretion to deny extended media coverage.

A party or a witness can file a written objection to the taped coverage, which is ruled on prior to trial. Extended media coverage is prohibited in any court proceeding required under Illinois law to be private, e.g. juvenile, dissolution, adoption, child custody, evidence suppression, trade secret or sexual abuse cases (except if victim consents). Extended media coverage of jury selection is prohibited. There are also prohibitions against coverage of informants, undercover agents and the like.

The video camera must be fixed and unobtrusive. It sends feed to equipment outside the courtroom where media outlets can access it. In addition, two photographers are allowed inside the courtroom.

Stay tuned, literally!

e-filing is here!

Effective January 12, 2012, the IL Supreme Court authorized e-filing of court documents. For further information, see: http://state.il.us/court/EBusiness/Sup_Ct_Efiling/SCt_efiling_user_manual.pdf
In Cook County, e-filing is presently limited to commercial litigation cases in the Law Division, including motion spindling during court business hours. Users must update their passwords by Nov. 25, 2012. Starting in January 2013, additional divisions will come on-line. DuPage County allows e-filing for all cases.
You can also find the following at the Cook County Clerk of Court website: sign up for email reminders of court dates, on-line CBR, mortgage foreclosure surplus funds, document imaging for filed pleadings.

ON THE TIP OF YOUR TONGUE
by Angela Peters, Esq.

Casenote editor Angela Peters is in general practice with offices at 3325 North Arlington Heights Road, Arlington Heights, IL 60004, Phone: (847) 222-9429 Fax: (847) 253-1904, email: angela@aepbuffalo.com

FAMILY LAW

No abuse of discretion in business valuation and maintenance award to lawyer wife

IRMO D'Attomo, 2012 IL App (1st) 111670 (9/26/12) Cook Co., 3d Div. (STEELE) Aff'd. Court's ruling that home equity loan funds were an investment, rather than a loan to the business, was not against manifest weight of evidence. Court within its discretion in business valuation and in awarding wife maintenance in gross, without requiring that she seek gainful employment commensurate with her legal education, previous law firm and accounting firm experience and training. (SALONE and NEVILLE, conc.)

§501(c-1)(3) finding required in attorney fee award

IRMO Nash, 2012 IL App (1st) 113724-B (10/1/12) Cook Co., 1st Div. (ROCHFORD) Vacated and rem'd. (Ct opinion corrected 10/4/12) In absence of clear §501(c-1)(3) finding that both parties lacked financial ability or access to assets or income for reasonable attorney fees and costs, court without statutory authority to order Resp.'s former attorney to disgorge funds for interim attorney fees to petitioner's former attorney or to child representative for her fees. (HALL and KARNEZIS, conc.)

Custody of disabled child reverted to DCFS after finding that adoptive mother unable to provide care

In re Rico L. , 2012 IL App (1st) 113028-B (9/14/12) Cook Co., 6th Div. (GARCIA) Aff'd. (Ct opinion corrected 9/18/12.) Court properly found adoptive mother "unable" to provide for disabled minor, after she refused to pick him up after his medical clearance for discharge from psychiatric hospital. Court entered order of protective supervision and properly reverted custody of child to DCFS, as court properly ruled that minor's best interests warranted the court's action. (PALMER, conc.; GORDON, diss.)

Common law duty to support children born of artificial insemination where evidence of contract

In re T.P.S., 2012 IL App (5th) 120176 (10/9/12) Williamson Co. (STEWART) Aff'd in part and rev'd in part; rem'd. Parties, two women in long-term romantic relationship, agreed that Resp. would conceive 2 children by artificial insemination (AI), whom they would raise together as equal co-parents. As to children born of AI, IL does not bar CL contract and promissory estoppel for custody and visitation brought by non-biological parent. Children are entitled to physical, mental, emotional, and monetary support of both their "parents." As Pet. participated in the decision and process of children's birth, she has a common law duty to provide them with financial, physical, mental and emotional

support. Parental rights may be asserted based on conduct evincing actual consent to AI by unmarried couple along with active participation by non-biological partner as a co-parent. (SPOMER and WEXSTTEN, conc.)

CIVIL MISCELLANEOUS LAW

Evidence of collection firm accepting less than billed amount inadmissable re MD customary charge

Collection Professionals v. Schlosser, 2012 IL App (3d) 110519 (9/28/12) La Salle Co. (WRIGHT) Aff'd. Court properly restricted cross-examination disallowing Def.'s evidence that Plaintiff collection service routinely accepted less than the entire billed amount, to show that billed amount was not medical provider's customary charge; evidence re amounts paid by collateral sources of other patients was not relevant. Court properly found that medical provider complied with Fair Patient Billing Act. (HOLDRIDGE and O'BRIEN, conc.)

Spoliation of evidence requirements may be satisfied by special circumstances

Combs v. Schmidt, 2012 IL App (2d) 110517 (9/12/12) Winnebago Co. (HUDSON) Rev'd and rem'd. Although there was no per se request to preserve evidence in case involving 3 deaths in fire of rental house, there was functional equivalent of same sufficient to put Def. landlords on notice that they were potential litigants, given ample evidence of complaints to them re faulty electrical system, though unclear as to Def. insurer. The house stood for less than 2 months post fire, and Pl. tenant not given notice of its impending demolition; genuine issues of material fact preclude entry of summary judgment on spoliation of evidence counts. (ZENOFF, conc.; BURKE, specially conc.)

Defendant, attorney, liable for sanctions under SCR 219 for refusal to comply with deposition

Dolan v. O'Callaghan, 2012 IL App (1st) 111505 (9/28/12) Cook Co., 5th Div. (PALMER) Aff'd. Attorney filed breach of contract suit against Def. attorney, for whom she had worked as an associate. Court had authority to sanction Def. under SCR 219(a) or (c), as Def. was a "deponent," regardless of capacity in which he was deposed. Court has inherent authority to control its docket. Def. unreasonably refused to answer deposition questions and caused other undue delays, forcing Pl. to file motions to compel, for sanctions and attorney's fees. (GARCIA and GORDON, conc.)

Wife deemed surviving spouse where bifurcated divorce case dismissed after intestate husband's death

In re: the Estate of Doman, 2012 IL App (4th) 120123 (10/11/12) Champaign Co. (McCULLOUGH) Rev'd and rem'd with directions. (Court opinion corrected 10/15/12.) Wife filed petition for dissolution of marriage, and after June 2011 hearing, court entered written dissolution judgment on grounds only, reserving ruling on ancillary issues. Husband died intestate on July 4, 2011, and on July 5, 2011, court docket entry noted that wife's counsel called and advised of husband's death, and cause is dismissed. As court acknowledged death and dismissed cause, July 5, 2011 order is a dismissal of divorce proceeding in its entirety, thus restoring wife to same position as if she had never filed for divorce. Wife is thus decedent's surviving spouse within meaning of Probate Act and entitled to surviving spouse's share of estate. (APPLETON and POPE, conc.)

Mental Health Code requires that patient be given written notice re alternative treatment

In re Tiffany W., 2012 IL App (1st) 102492-B (9/21/12) Cook Co.,6th Div. (HALL) Rev'd. (Ct. opinion corrected 10/2/12.) Failure to provide Resp. with written information re alternative treatment requires reversal of order for involuntary administration of psychotropic medication. Procedural safeguards of Mental Health Code are not mere technicalities,

but essential tools to protect people's liberty. Absent compliance with §2-102(a-5), State failed to prove by clear and convincing evidence that Resp. lacked capacity to make a reasoned decision about proposed treatment. (HOFFMAN and ROCHFORD, conc.)

Company borrowing employees from another company not required to duplicate Workers Comp coverage

Illinois Insurance Guaranty Fund v. Virginia Surety Company, Inc., 2012 IL App (1st) 113758 (10/12/12) Cook Co., 5th Div. (McBRIDE) Rev'd. §§ 1(a)(4) and 4(a)(3) of Workers Compensation Act do not require a borrowing employer to duplicate the coverage that a company lending employees is contractually obligated to obtain, or to pay duplicate premiums, or to increase its self-insured retention to cover borrowing employees. An employer and its insurer cannot selectively omit an employee from coverage of a workers compensation policy. (PALMER and TAYLOR, conc.)

Minimum contacts not established for personal jurisdiction

Madison Miracle Productions v. MGM Distribution Company , 2012 IL App (1st) 112334 (9/28/12) Cook Co.,1st Div. (ROCHFORD) Rev'd and rem'd. Pls. film distribution and production companies filed breach of contract suit against studio, alleging that it failed to properly distribute their movie, which they had agreed would be marketed and distributed in Illinois. There was no evidence that studio sought to have Illinois specifically targeted as part of initial theatrical release, and independent third parties, not studio, conducted marketing and distribution activities in Illinois. As no evidence of agency relationship, activities of those third parties are not imputed to Def. Def. lacked sufficient contacts with Illinois for personal jurisdiction to comport with due process. (HOFFMAN and KARNEZIS, conc.)

CRIMINAL LAW

Common shoplifting was not burglary, as entry into store was authorized and Defendant did not "remain within" store after theft

People v. McDaniel, 2012 IL App (5th) 100575 (10/12/12) St. Clair Co. (GOLDENHERSH) Rev'd. Def. was charged with burglary and retail theft. Def. entered store with authority, did not exceed the physical scope of his authority and left immediately after stealing fishing reels; thus, he was properly convicted of theft. However, as he did not "remain within" the store to commit a theft, his burglary conviction is reversed, as the "remaining within" language in the burglary statute should not be de facto amended, to be read so broadly that common shoplifting becomes burglary. (WELCH and WEXSTTEN, conc.)

Testimony of fingerprint and DNA experts admissible in burglary case

People v. Negron, 2012 IL App (1st) 101194 (10/4/12) Cook Co., 4th Div. (PUCINSKI) Aff'd. In residential burglary conviction, Court properly admitted testimony of fingerprint expert, who, in detailing the analysis process he used for this case, laid a sufficient foundation that prints recovered from scene matched Def.'s palm prints. There is no requirement for a minimum number of points of similarity for fingerprint expert testimony to be admissible. Court properly allowed DNA expert to testify re report analyzing Def.'s DNA, even though he did not perform the analysis, as report is not testimonial in nature. Thus no violation of confrontation clause. (LAVIN, conc.; EPSTEIN, specially conc.)

Confession suppressable after prolonged questioning re murder during custody on probation violation

People v. Harris, 2012 IL App (1st) 100678 (8/30/12) Cook Co., 4th Div. (LAVIN) Rev'd and rem'd. Def. was convicted of felony murder predicated on armed robbery. Police held Def. in continued custody on probation violation and used

this custody to mask their intention to question Def. solely about murder of victim, with whom Def. reportedly had history of violence. Given manner of police interrogation (5 interviews over 24 hours, in confrontational mode), a reasonable person would not have felt free to terminate the encounter. Thus, statement cannot be presumed voluntary rather than result of inherently coercive atmosphere of custodial interrogation. Def.'s confessions after she invoked her right to counsel are presumptively involuntary and thus should be suppressed. (FITZGERALD SMITH and STERBA, conc.)

Concurrent sentences where no finding that consecutive sentences required for public safety

People v. Cameron, 2012 IL App (3d) 110020 (10/12/12) Knox Co. (CARTER) Aff'd in part, modif'd in part, and vac'd in part; rem'd. Def. was convicted, after bench trial, of unlawful possession of ammunition by a felon and theft of driver's license. Court erred in restitution amount for the theft; rem'd for hearing on damages only. Court made no finding that consecutive sentences were required to protect public from Def's further criminal acts; thus, sentences should be served concurrently. (LYTTON and WRIGHT, conc.)

Where no evidence that gun not real, proper finding by court of armed robbery and enhanced sentencing

People v. Malone , 2012 IL App (1st) 110517 (9/28/12) Cook Co., 1st Div. (ROCHFORD) Aff'd. Def. was convicted, after bench trial, of armed robbery with a firearm. Store cashier testified that she saw Def. holding what appeared to be a gun and that he then told her to open the cash drawer. Video and still photo showed Def. holding what appeared to be a real gun. No evidence was presented that the gun was anything other than a real gun. Rational trier of fact could have found that Def. was armed with a gun that met statutory definition of firearm. Court properly applied 15-year sentencing enhancement, which did not violate proportionate penalties clause. (HOFFMAN and KARNEZIS, conc.)

Firearm enhanced sentencing properly added to higher sentencing range

People v. Smith , 2012 IL App (1st) 102354 (9/28/12) Cook Co.,6th Div. (LAMPKIN) Aff'd; mittimus corrected. Def. was convicted by jury of two counts each of attempted first degree murder of a peace officer and aggravated discharge of a firearm, and sentenced to 55 years in prison. Given statutory language, court properly applied firearm sentencing enhancements, which must be added to the higher 20- to 80-year sentencing range, to Def.'s sentence. (PALMER, conc.; R.E. GORDON, diss.)

Theft based upon intent to deprive evidenced by actions intended or performed

People v. Haissig , 2012 IL App (2d) 110726 (9/12/12) Lake Co. (BIRKETT) Aff'd. Defs. were convicted of two counts of theft of over $100,000 from their employer; common allegation in counts was that Defs. intended to permanently deprive their employer of the use or benefit of funds it paid for the elevator work, from a company which Defs. had formed, without disclosure to employer. Whether a Def. has that intent is determined only by the Def.'s actions, intended or performed, toward the owner's property and not upon value or ultimate pecuniary loss intended to be given to owner. (McLAREN and ZENOFF, conc.)

Thank you to ISBA eclips for this month's contributions. (Head notes by Jan Weinstein)

CALENDAR OF EVENTS

Nov. 13, 2012
6:00-8:00 p.m.
***CLE - Burton & Joan Grant: Collecting Attorney Fees in Family Law Cases.**

Dec. 11, 2012
6:00-8:30 p.m.
Holiday Party - Happ Inn. Spouses & friends welcome

Jan. 8, 2013
6:00-8:00 p.m.
***CLE - Hon. Martin Moltz: Practice Pointers in Municipal, Forcible and Branch Criminal Courts**

Feb. 12, 2013
6:00-8:00 p.m.
***CLE - Brian Clauss: Update on Veterans' Legal Issues**

March 12, 2013
6:00-8:30 p.m.
Gary Wild Dinner: Honoree: Veterans Legal Support Center & Clinic, Glenview Park Center, 2400 Chestnut Ave., Glenview, Illinois 60026

April 16, 2013
Ethics CLE (6 hours), Skokie Courthouse, 5600 Old Orchard Road, Skokie, Illinois 60077.

May 14, 2013
6:00-8:30 p.m.
Judges Night, North Shore Country Club, 1340 Glenview Rd., Glenview, Illinois 60025

June 11, 2013
6:00-8:00 p.m.
***CLE TBA - Annual Meeting/Elections**

***NSBA CLEs** are held at the Happ Inn, 305 Happ Road, Northfield, Illinois 60093. Cost: $31.00 for dinner and 1 hour CLE credit. Food choices include (1) Vegan/Vegetarian, (2) Fish or (3) Chicken/Beef. RSVP to Anna Krolikowska: akrolik06@gmail.com
NOTE!!! $25.00 cancellation fee will be charged for no-shows, unless you substitute someone else in your place.

NORTH SUBURBAN BAR ASSOCIATION

P.O. Box 731
Glenview, IL 60025
Website: www.ilnsba.org
NSBA Lawyer Referral Service: 847/564-4800

ANNA KROLIKOWSKA, Esq., President

JAN S. WEINSTEIN, Esq., Editor
ANNA MORRISON-RICORDATI, Esq., Contributor
ANGELA PETERS, Esq., Staff columnist
ANGELA PETERS, Esq., Caselaw contributor

Please send news, announcements and articles to:
Jan, jan@jsweinsteinatty.com and/or Anna, anna@amrlawgroup.com

HAPPY THANKSGIVING TO ALL!!