FAMILY SUPPORT FORUM

The Official Newsletter of the Illinois Family Support Enforcement Association

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Support Veteran Madalyn Maxwell Retires; Tom Vaught Named AG Bureau Chief

After more than 45 years of service to the citizens of the State of Illinois, Madalyn Maxwell retired from her position as head of the Illinois Attorney General's Public Aid Bureau, effective December 31, 2001.

In February Attorney General Jim Ryan named veteran Assistant Attorney General Tom Vaught to succeed Madalyn as Chief of the Public Aid Bureau.

After receiving her law degree from the University of Illinois, Madalyn joined the office of the Attorney General in 1953. Before concentrating her efforts on the Public Aid Collections Bureau and its child support enforcement program, Madalyn had represented at various times the Dept. of Mental Health, Veterans Affairs, the Dept. of Public Health, the Dept. of Children and Family Services and the Dept. of Public Aid. She has been Chief of the Public Aid Bureau since its creation in 1965, directing a staff now including 32 attorneys and an equal number of support personnel. The Bureau is responsible for legal representation of the Department of Public Aid for child support enforcement in all but 13 of Illinois' 102 counties and for other collections throughout the state.

Madalyn Maxwell celebrates her retirement at gathering of friends and co-workers. See more on page 15 *(Photo: Larry Nelson)*

Over the years Madalyn has been active in state-wide, national and international support enforcement initiatives. She has been active in and a regular participant in annual conferences of both the Eastern Regional

(Cont'd. on page 14)

- In This Issue -

FAMILY SUPPORT FORUM

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***<u>Depending on contributions</u>*, the *FORUM* <u>attempts</u> to publish four times a year - in March, June, August/September, and December. Items for publication are needed by the 8th of the month. News items and other articles of interest to Illinois family support practitioners are eagerly sought. Contact the Editor for details.**

Please Contribute - <u>its YOUR Newsletter</u>!

From the Statehouse . . .

. . . LEGISLATIVE UPDATE

2002 Illinois Support-Related Legislation

The following is a summary of bills relevant to family support enforcement introduced in the Illinois Legislature during the Spring, 2002 term as of February 15.

Summaries of bills and their status, including direct links to the text of each bill and to Public Acts following their approval by the Governor, are now available on IFSEA's web site, www.illinioisfamilysupport.org.

by Thomas P. Sweeney

S.B. 1620 Council on Responsible Fatherhood

Creates the Council on Responsible Fatherhood Act. Creates the Council on Responsible Fatherhood. Provides for the appointment of members to the Council. Sets the duties of the Council. Requires the Council on Fatherhood to establish a responsible fatherhood initiative. Sets the goals and components of the fatherhood initiative. Provides that the Act is repealed on July 1, 2004. Amends the State Finance Act to create the Responsible Fatherhood Fund.

S.B. 1659 QILDRO; Percentage Orders

Amends the Pension Code; provides a QILDRO may specify a percentage of the member's benefit or apply a formula to determine the amount of the benefit to be paid to an alternate payee; provides that, if specified, a QILDRO shall take effect at a date other than at the time a pension benefit becomes payable.

S.B. 1935 Service of Process

Amends the Code of Civil Procedure; permits process to be served in all counties (rather than just counties with population under 1,000,000), without special appointment, by a person licensed or registered as a private detective or by a registered employee of a certified private detective agency.

S.B. 1959 Farm Equipment Depreciation

Amends § 505 of IMDMA; provides that amounts properly deducted for federal income tax purposes for depreciation of farm machinery and equipment shall be deducted from net income for purposes of determining child support obligations.

S.B. 1966 Support Extension to Age 19

Amends various acts in sections concerning the obligation of a parent to pay child support; provides that, unless the child becomes emancipated, this obligation is extended for a child under age 19 who is still attending high school until graduation or age 19, whichever is earlier.

S.B. 1991 Administrative Hearing Office

Amends the Illinois Administrative Procedure Act to create the Office of Administrative Hearings to conduct administrative hearings for agencies under the jurisdiction of the Governor, with certain exceptions. Provides for the appointment of a Chief Administrative Law Judge by the Governor; sets the powers and duties of the Chief Administrative Law Judge, and qualifications for administrative law judges employed by the Office. Sets out procedures for the conduct of administrative hearings by the Office. Provides for the transfer of personnel and property to the Office from State agencies.

S.B. 2128 Parentage, Removal

Amends the Parentage Act of 1984; provides that in determination or modification of custody or visitation in a parentage action the Court may enjoin removal of the child until the issues of custody or visitation are decided; provides the Court shall apply the relevant standards of the IMDMA in determining or modifying orders relating to custody, visitation and removal.

S.B. 2224 IDPA a Party Upon Notice; National Medical Support Notice

Amends the Illinois Public Aid Code and various other acts; Provides that IDPA is a party in a child support proceeding after it notifies a circuit clerk that a person who is receiving child support payments is receiving child support enforcement services from the Department. Replaces provisions concerning the Department's notice to obligors and payors concerning the payment of support to the State Disbursement Unit. Adds provisions concerning a National Medical Sup-

(Cont'd. on page 4)

("Legislative Update," cont'd. from page 3)

port Notice for the purpose of enforcing an obligation to provide child support in the form of health insurance coverage. Provides that when withholding income for the payment of support, a payor must give priority to withholding for cash support and then to withholding of premiums for health insurance coverage. Makes other changes. To be effective on July 1, 2002.

H.B. 4211 Disclosure; Public Aid, Unemployment Insurance Information

Amends the Illinois Public Aid Code to provide that the contents of case files pertaining to certain recipients shall be made available upon request to a law enforcement agency for the purpose of determining the current address of a victim of a crime or a witness to a crime. Amends the Unemployment Insurance Act to provide that the Dept. of Employment Security shall make available to a State's Attorney or a State's Attorney's investigator, upon request, information in the possession of the Department that may be necessary or useful in locating a crime victim or a witness. To be effective January 1, 2003.

H.B. 4280 "Child Support Act"

(At this time, the bill reported on the General Assembly web site only contains the title of a "Child Support Act," without any other summary or content.)

H.B. 4409 Banks; Interstate Lien or Levy

Amends the Illinois Banking Act; provides that banks shall encumber or surrender accounts or assets held by the bank on behalf of any responsible relative who is subject to a child support lien upon notice of an "interstate lien or levy" (instead of just "interstate lien") from any other state's agency that is responsible for implementing the child support enforcement program.

H.R. 4442 "Unified Child Support Program Act"

Under the new act contemplated by this bill the operations of the IV-D child support enforcement system in Cook and Du Page Counties would be turned over to the State's Attorneys in those respective counties.

(At this time, the bill reported on the General Assembly web site only contains the title of a "Unified Child Support Program Act," without any other summary or content. But H.B. 5140 now appears to address this proposal. See end note below.)

H.B. 4977 Limits on Educational Expense Award

Amends IMDMA; in provisions authorizing a court to make an award for a child's post-secondary education expenses, provides that unless the parties agree to a higher amount, the court may not award an amount greater than the total cost of tuition and fees and room and board at the Champaign-Urbana campus of the University of Illinois for a comparable period of time and a comparable course of instruction.

H.B. 4994 Payments Extended for Arrearage; Remove Notice of New Employment, One-time Collection Fee; Private Process Servers

Amends several acts to provide that if there is an unpaid child support arrearage or delinquency equal to at least one month's support obligation on the support order's termination date, then the periodic amount required to be paid for current support immediately before that date shall automatically continue to be an obligation, not as current support but as periodic payments toward satisfaction of the unpaid arrearage or delinquency. Provides that these periodic payments shall be in addition to any periodic payment previously required for satisfaction of the arrearage or delinquency. Also amends the Illinois Public Aid Code to add provisions concerning the termination date of an order for support and to remove provisions concerning (i) an obligor's report of new employment or the termination of employment and (ii) a one-time charge on the amount of past-due child support owed on July 1, 1988. Amends the Income Withholding for Support Act to add provisions concerning income withholding for an unpaid child support arrearage or delinquency after the current support obligation terminates. Amends the Code of Civil Procedure to authorize private process servers in counties of 1,000,000 or more in cases in which a party is receiving child support enforcement services from the Department of Public Aid. Changes to the Code of Civil Procedure are effective July 1, 2002; remaining changes are effective January 1, 2003.

H.B. 5632 UIFSA Revisions

Amends the Uniform Interstate Family Support Act; makes numerous changes recommended by the National Conference of Commissioners on Uniform State Laws. The changes include those concerning the following: personal jurisdiction over an individual; jurisdiction to modify or enforce a child support order; duties of a child support enforcement agency; nondisclosure of information; issuance of a temporary child support order; registration of orders for enforcement; modification of a child support order of another state; and jurisdiction to modify a child support order of a foreign country or political subdivision.

H.B. 5695 Support Extension to Age 19

Amends various acts concerning the obligation of a parent to pay child support; provides that this obligation is extended to include a child under age 19 who is still attending high school.

Besides the "title only" bills noted above, no fewer than twenty "shell bills" have already been introduced purporting to deal with changes in statutes affecting support enforcement issues. One such bill, H.B. 5140, now appears likely to address the "Unified Child Support Program Act" contemplated by H.B. 4442. Stay tuned.

Directors Elected, By-Laws Amended at IFSEA's 13th Annual Members' Meeting

by Thomas P. Sweeney

Members of the Illinois Family Support Enforcement Association elected Directors and amended the association's By-Laws at IFSEA's Annual Members' Meeting. The Annual Meeting was held in Collinsville October 16 and 17, 2001, in conjunction with IFSEA's 13th Annual Conference on Support Enforcement.

The primary business conducted was election of Directors for the 2001-2003 term. At the first session on Monday morning nominations were announced and ballots were cast for the ten positions. Including nominations from the floor there were four eligible candidates for the two positions from Region 1 (Cook County), five eligible candidates for the four positions from Region 2, and six eligible candidates for the four positions in Region 3.

Election Results

Results of the election were announced at the second session held at the conclusion of the conference on Tuesday morning. Elected to two-year terms ending in 2003 were:

- From Region 1: Incumbent Jim Ryan, Attorney from Hillside; and Norris A. Stevenson, Manager of the Non-Custodial Parent Service Unit of IDPA DCSE, Chicago;
- From Region 2: Incumbents Jeffrey McKinley, Asst. Attorney General from Rock Island; Larry Nelson, Asst. Attorney General from Rockford; and Yvette Perez-Trevino, Judicial-Legal Liaison, IDPA, DCSE from Aurora; and newcomer Daun Perino, Asst. State's Attorney from Wheaton.
- From Region 3: Incumbents Cheryl Drda, Asst. State's Attorney from Springfield; Christine Kovach, Asst. State's Attorney from Edwardsville; Tom Sweeney, Attorney from Tolono; and Tom Vaught, Asst. Attorney General – from Springfield.

Appointments

IFSEA President Jeanne Fitzpatrick announced the appointment of Christa Fuller, Project Manager for MAXIMUS, Inc. in Chicago to fill the year remaining on the term of Anne Jeskey (Region 1) who had resigned her position. Appointed to one-year terms as "at large" directors were Scott Michalec, Asst. Attorney General from Peoria and Isa-Lee Wolf, Attorney for the Legal Aid Bureau of Metropolitan Family Service of Chicago.

By-Laws Amended

By voice vote the members approved two amendments to the association's By-Laws. The first added the Family Law Section of the Illinois State Bar Association and the Child Support Enforcement Committee of the Illinois House of Representatives as organizations entitled to appoint representatives as Directors of the association, removed the Administrative Office of the Illinois Courts from that list, and changed the designation of the Child Support Advisory Committee entitled to appoint a Director. A second amendment, proposed from the floor, extended regular membership privileges to former as well as current employees of the Department of Public Aid's Division of Child Support Enforcement.

Recognitions, Other Business

In other business, IFSEA President Fitzpatrick presented an award to Tom Sweeney in recognition of his many contributions to the association over the years. Madalyn Maxwell was presented a plaque honoring her many years of motivational leadership in child support enforcement. Madalyn was also given a round of applause for her efforts as Chair of this year's conference.

To close things out more than 30 participants carried away beautiful "door prizes" provided from contributions by MAXIMUS, Inc. and other participating sponsors.

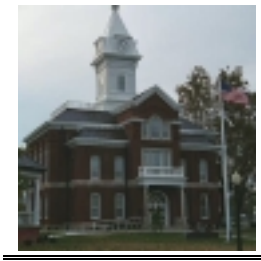
Officers Elected; Other Business

At the Board of Directors Meeting held October 17, 2001, the following officers were elected for 2001-2002: President, Madalny Maxwell; First Vice-President, Yvette Perez-Trevino; Second Vice-President, Scott Michalec; Secretary, Tom Sweeney; and Treasurer, Jim Ryan.

In other business:

Bill Henry agreed to take over the duties as Editor of the *Family Support FORUM*. Jim Ryan and Jeff McKinley agreed to join Bill and Tom Sweeney as the Publications Committee.

The Board adopted a policy not to allow videotaping of conference sessions without prior approval of the Executive Committee, and established the Madalyn Maxwell Lifetime Achievement Award, granting lifetime free membership, to be presented at each annual conference.



From the Courthouse . . .

. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Any one who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

Direct links to slip opinions of these and other recent decisions are maintained on IFSEA's web site, www.illinoisfamilysupport.org, soon after they are released.

by Thomas P. Sweeney

Interest on Child Support Arrearages Is Mandatory, Not Discretionary

Burwell v. Burwell, 324 Ill. App. 3d 206, 753 N.E. 2d 1259 (4th Dist., 8/3/01), reversed a denial of interest on accrued child support arrearages.

Dad had been ordered to pay $100 per month in child support beginning April 1, 1977. In 1999 mom sought judgment for arrearages accrued prior to when the child attained majority in 1994, plus interest on arrearages and attorney's fees. Judgment was entered for $15,100 in support arrearages and for attorney's fees, but the trial court denied the request for pre-judgment interest. The trial court concluded that recent revisions to § 505 (d) of the IMDMA, making mandatory interest on unpaid child support, were not in effect when the arrearages accrued, and that the court was compelled to follow the decision in *In Re Marriage of Kaufman* (1st Dist., 1998) to hold that assessment of interest was discretionary during the period involved. Mom appeals.

With J. Cook dissenting, reversed and remanded. Effective May 1, 1987, what is now § 505 (d) of the IMDMA was amended to provide that each judgment for child support *shall* have the full force, effect and attribute of any other judgment, and § 12-109 of the Code of Civil Procedure was amended to provide that every judgment arising by operation of law from a child support order *shall* bear interest as provided in § 2-1303 of the Code, commencing 30 days from the effective date of each such judgment. *Kaufman* dealt with maintenance, not child support, so its analysis of § 505 (d) was dicta. And neither *Kaufman* nor another 1998 First District case discussed § 12-109, "which unequivocally states that judgments of child support *shall* bear interest as provided in section 2-1303 of the Code." Thus, mom was entitled to interest on the unpaid child support that accrued after June 1, 1987.

In his dissent Justice Cook relied on the Supreme Court decision in *Finley v. Finley*, decided prior to the amendments relied upon by the majority, holding that interest on child support was discretionary.

Income for Child Support Determination Includes Military Allowances

In Re Marriage of Baylor, 324 Ill. App. 3d 213, 753 N.E. 2d 1264 (4th Dist., 8/3/01), reversed and remanded a child support determination that failed to include the obligor's military allowances in her income.

Five years after their divorce, dad sought changes in the parties' joint custody orders, including an award of child support from mom. Mom had gross, taxable income of $21,960 as a noncommissioned officer in the Air Force and $2,678 from part-time, non-military work. She also received non-taxed military allowances of $9,877 for off-base housing and other expenses. The trial court set child support at $350 per month, "based on [mom's] net income of $20,000 per year from military pay and outside employment" – i.e., ignoring the military allowances. In addressing dad's argument to include the military allowances as income the trial court conceded he "raised a very good point," but concluded: "I just don't believe it's a point that requires me to get into the type of calculations that I think are far beyond my abilities insofar as making those determinations of net income and things of that nature." Dad appeals.

Again with J. Cook dissenting, reversed and remanded, with directions. The majority agreed with the only Illinois decision on the subject, which makes clear that military allowances are to be included as income for purposes of setting support. The Court spelled out the steps the trial court should take on remand to determine the correct child support amount, then chastised the trial court for not following the existing precedent. "[W]e note that the trial court erred by failing to follow *McGowan*. . . . [T]he only Illinois court to rule upon the issue of whether military allowances should be included in the calculation of net income for child support purposes was the First District Appellate Court in *McGowan*. . . . [T]he trial court should not have disregarded the law of the state as set forth in *McGowan*."

(Cont'd. on page 7)

("Cases & Commentary," cont'd. from page 6)

Under Parentage Act Court Lacks Authority To Enjoin Removal of Child -- Even in Joint Custody Cases

In Re Adams, 324 Ill. App. 3d 177, ___ N.E. 2d ____ (3rd Dist., 8/3/01), affirmed dismissal of mom's "petition to relocate" a child subject to a joint custody order under the Parentage Act as moot.

Steffanie and Ricardo entered into an agreed joint custody order under the Parentage Act, giving Steffanie primary physical custody of their child and giving Ricardo specified visitation. Steffanie petitioned the court to relocate with her new husband to California. Ricardo moved to dismiss and sought leave to seek modification of the custody order. Following the First District decision in *In Re Parentage of Melton*, the trial court dismissed Steffanie's petition to relocate as moot, ruling she had "an absolute right to relocate." Steffanie's petition for modification of the visitation schedule was referred to mediation, but the parties entered into an agreed, new visitation schedule. Ricardo appeals.

Affirmed. "We find the reasoning in *Melton* persuasive. . . . The court has no inherent powers in parentage cases, and the court's authority to hear parentage cases is limited to the exercise of those powers that are expressly given to it by the statute. . . . Because the Parentage Act does not expressly give the courts the power to enjoin a parent, *even with joint custody*, from removing the child from the state, we affirm."

But Steffanie's right to relocate was not entirely "absolute." She had to seek modification of the visitation schedule, which she did. Since Ricardo entered into an agreement on that issue, he could not appeal it.

Obtaining GED Equivalent to High School Graduation for Termination of Support

In Re Marriage of Hahn, 324 Ill. App. 3d 44, 754 N.E. 2d 461 (2nd Dist., 8/10/01), affirmed an order terminating child support.

In the parties' judgment of dissolution dad was ordered to pay "unallocated family support" until the parties' one minor child "reaches age *** 21 *** or graduates from high school, whichever occurs first." The son quit school without graduating at age 17, but then obtained his GED. Dad petitioned to terminate child support, arguing obtaining the GED was equivalent to graduating from high school. The trial court agreed and terminated support. Mom appeals.

Affirmed. Since the term "graduates from high school" is susceptible to two different, yet plausible, interpretations, the court must follow the interpretation that establishes a rational and probable agreement. Webster's defines high school in a way to include a school where adults prepare for the GED. And other states addressing the issue have held that obtaining a GED is equivalent to graduation from high school.

All Attorney's Fees May be Recovered For Enforcement of Paternity Fee Award

In Re Parentage of M.C.B., 324 Ill. App. 3d 1, 754 N.E. 2d 480 (2nd Dist., 8/17/01), vacated a judgment for part of attorney's fees incurred to enforce fees awarded under the Parentage Act and entered its own judgment for all fees and costs reasonably incurred.

Respondent was assessed $1,200 in attorney's fees incurred by Petitioner in conjunction with a parentage action. Respondent was ordered to pay $100 per month toward those fees. Within the first six months Petitioner had filed two petitions for rule to show cause based on failure to pay the attorney's fee installments. With the second petition Petitioner also sought more than $2,000 in attorney's fees incurred in connection with the enforcement petitions. The trial court awarded her $700 of the fees, to be paid within four months, finding that was all Respondent was able to pay. Petitioner appeals.

Judgment vacated. The Respondent having been found in contempt for failure to pay, § 508 (b) requires assessment of reasonable attorney's fees and costs incurred in enforcing the order. Respondent's ability to pay was an improper factor to consider in awarding fees under § 508 (b). Rather than remanding, the Appellate Court evaluated the reasonableness of fees sought, disallowing $100 incurred for an unrelated name change and $201 estimated for future services. The Appellate Court entered judgment for $1,711.22.

Petitioner had also appealed the trial court's allowing the Respondent to pay the fees in installments. The Appellate Court found it "unnecessary" to address this issue, yet failed to include any payment terms on its judgment.

Supplemental Security Income (SSI) Is Exempt from Child Support Obligation

Dept. of Public Aid ex rel. Lozada v. Rivera, 324 Ill. App. 3d 476, 753 N.E. 2d 548 (2nd Dist., 8/31/01), vacated a judgment for child support based solely on obligor's Supplemental Security Income (SSI).

Following a paternity determination mom was given custody and dad was ordered to pay support. When custody changed to dad his support order was terminated and later a petition was filed seeking support from mom. At that time mom's only source of income was Supplemental Security Income (SSI) of $512 per month. The Court ordered her to pay $90 per month as child support. Mom appeals, claiming SSI is exempt from child support obligations.

Appellate Court agrees. Sect. 407 (a) of the Social Security Act governing SSI benefits (as distinguished from SSD benefits) states that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process . . ." This provision preempts state child support laws. And unlike military

(Cont'd. on page 8)

("Cases & Commentary," cont'd. from page 7)

retirement benefits that have been held not to be exempt from child support claims despite similar statutory language, SSI benefits are intended to provide subsistence income for individuals and not their dependents. Sect. 407 (a) does more than bar income withholding from SSI benefits, it bars state courts from burdening SSI payments with child support obligations."

However, specifically not resolved is "the related issue of whether a court may include SSI benefits in the noncustodial parent's net income for child support purposes. . . . Of course, to the extend such 'factoring in' actually requires the transfer of SSI benefits, it is impermissible." Here mom had no other income, so the order could not stand. Order vacated.

New Spouse's Income Relevant In Allocating College Expenses

Street v. Street, 325 Ill. App. 3d 108, 756 N.E. 2d 887 (3rd Dist., 9/6/01), reversed refusal to consider the income of the petitioner's current spouse in determining her ex-husband's obligation to pay college expenses for their child.

Allocation of children's post majority college expenses was specifically reserved in the parties' 1992 divorce. In March, 2000, Linda sought educational expenses from Daniel for their son Austin to attend Bradley University. School costs were estimated to be $14,100, with an additional $250 per month living expenses for Austin to commute to school. Daniel's 1999 gross income was $80,844, though he claimed net monthly income of $2,165 after payment of child support, monthly expenses of $2,840, assets of $156,500 and debts of $35,000. Linda's financial affidavit gave her net monthly income as $1,746, plus child support of $860, and living expenses of $4,877 per month, without any reference to mortgage or rent obligations or interests or income from other assets. In discovery Linda refused to disclose information about the income and assets of her hew husband, Carl, but at trial revealed they shared a new home valued at $420,000 with a mortgage of $370,000, had joint savings and checking accounts, and had a mutual fund worth $25,000.

Daniel was ordered to pay $9,000 of Austin's tuition costs, plus $235 per month in living expenses. Daniel appeals the failure to include Carl's assets and income in allocation of the costs and his being required to pay 75% of the private school costs.

Basing cost allocation on private school costs was affirmed as not being an abuse of discretion. But ordering living expenses based on what appeared to be an increased standard of living was vacated and remanded. And the cost allocation which ignored the income and assets of Linda's new husband was also reversed and remanded.

> "[T]he traditional rule had been that the financial assets of the current spouse are not relevant in making a support determination. Given the traditional rule and the lack of controlling case law to the contrary, it is difficult to say that the trial court really abused its discretion in refusing to allow inquiry into Carl's assets in this case. However, there is clearly a current trend in the case law moving away from the traditional rule of law on this issue."

Citing a series of cases finding relevant the income of a payor's spouse, the Court found the same principle should apply to the current spouse of the payee.

> "To the extent that the current spouse of the payee has income or assets which are or can be used to contribute to the living expenses of the payee, his or her income and assets should be considered by the court in making its determination regarding the amount the payee is able to contribute to the child's education. Certainly, we are not saying that the new spouse of a parent is obligated to pay for the child's education, but only that to the extent the new spouse contributes to the expenses which would otherwise be paid by the parent, the new spouse's income and assets are relevant."

Reversed and remanded for further discovery regarding Carl's income and assets, and further hearing on the cost allocation.

Judicial Paternity Admission May Be Challenged With DNA Results Under Sect. 7 (b-5) of Parentage Act

Jackson v. Newsome, ___ Ill. App. 3d ___, 758 N.E. 2d 342 (1st Dist., No. 1-00-2890, 9/25/01), reversed and remanded dismissal of a petition to establish non-existence of a parent-child relationship.

In 1992, Anthony entered into an agreed court order establishing his parentage of Elma's daughter, Alecia, and providing for her custody and support. In May, 1997, Anthony filed a motion for blood tests, claiming Elma had told him he was not Alecia's father, and in December, 1997, he apparently filed a petition under § 2-1401 to vacate the 1992 paternity determination. In April, 1998, the trial court denied Anthony's petition, finding that fraudulent concealment had not been proven and the two-year limitation barred the relief.

Though his request for blood testing was denied, Anthony somehow obtained DNA results in December, 1998, showing that he is not Alecia's father. In February, 2000, Anthony filed a petition to establish non-existence of the parent-child relationship under § 7 (b-5) of the Parentage Act, incorporating the DNA results. In July, 2000, the trial court granted Elma's motion to dismiss, finding that Anthony was not a presumed father under § 5 of the Parentage Act and therefore lacked standing to bring a § 7 (b-5) complaint. The court also ruled that the 1992 parentage determination and support order remained in full force and effect. Anthony appeals.

Reversed. Under § 7 (b-5) a man adjudicated to be the father of a child may challenge that judgment if he

(Cont'd. on page 16)

News From Washington

FEDERAL IV-D UPDATE

Dr. Sherri Z. Heller Named to Head OCSE

Sherri Z. Heller has been named to head the Federal Office of Child Support Enforcement. For the previous six years, as Deputy Secretary for Pennsylvania's Department of Public Welfare Office of Income Maintenance, Dr. Heller carried responsibility for child support enforcement, Temporary Assistance to Needy Families, and child care, as well as food stamp, job training, and cash assistance programs.

Under her direction, Pennsylvania was a leader in child support enforcement, collecting more than $9.3 billion and automating its system of collection, enforcement, and disbursement of child support.

Pennsylvania Governor Tom Ridge said, "Sherri Heller's goals have been to inspire people to succeed-not to use mandates and regulations to solve their problems. Her talents and expertise will be missed here."

Reflecting on the change, Dr. Heller, who grew up in the Washington, D.C. area and knows it well, says, "I think I bring a record of results: a recognition that government isn't a system of funding streams and programs but something people expect to work. I like the idea that I have something to work on that makes a difference to people."

Her previous experience includes a tour as County Administrator in Lancaster, Pennsylvania; Assistant to the President Pro Tem, Pennsylvania Senate; Executive Director of Lancaster County Mental Health/Mental Retardation and Drug and Alcohol Abuse Programs; and Chief, Division of Fiscal Administration of Pennsylvania's Department of Education.

She graduated from Franklin and Marshall College in Lancaster, Pennsylvania and holds a doctorate in education from Harvard.

Dr. Heller enjoys music and drama and performs frequently in community theatre productions. Asked to compare theatre to government, she pauses only briefly. "Success in both," she says, "means connecting with people."

State Plans Now on OCSE Web

A "read only" electronic version of states' child support state plans is now on the OCSE Website at www.acf.dhhs.gov/programs/cse (click on policy link).

The electronic state plans project is a follow-up effort to the electronic "Interstate Referral Guide" and provides access to important child support public information.

As always, OCSE makes every effort to ensure that the policy documents we make available are accurate, complete, and represent current OCSE policy; however, before relying on any policy document, users are advised to confirm its accuracy by contacting the appropriate Federal Regional Office.

If you would like more information about the electronic state plans project, contact Joe Gloystein, OCSE's Web Master at (202) 401-6741 e-mail Jgloystein@acf.dhhs.gov; or Gail Griffin at (202) 401-4594 e-mail Ggriffin@acf.dhhs.gov.

(Reprinted, by permission, from the December, 2001, issue of Child Support Reports, published by the U.S. Dept. of Health & Human Services, Administration for Children and Families, OCSE, Washington, D.C.)

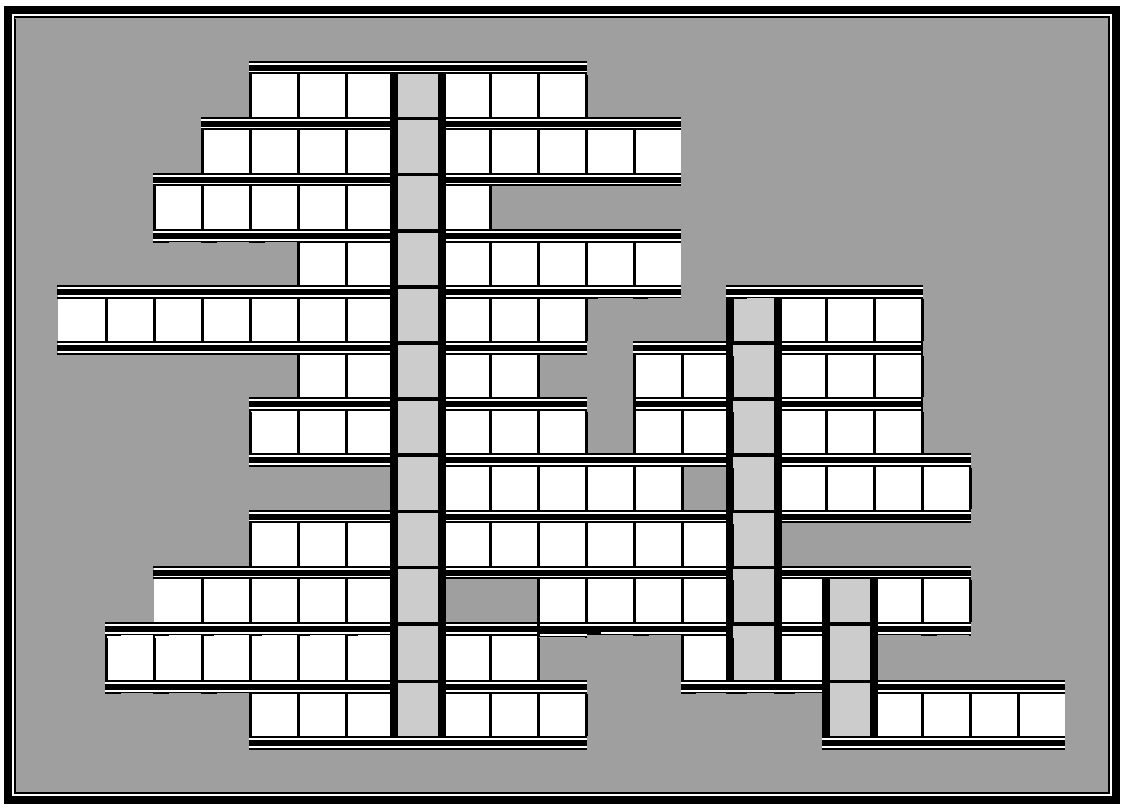
More information about Dr. Heller's goals for the Child Support Enforcement Program will be featured in Child Support Report over the next several months.

(Reprinted, by permission, from the October, 2001, issue of Child Support Reports, published by the U.S. Dept. of Health & Human Services, Administration for Children and Families, OCSE, Washington, D.C.)

IFSEA – Then and Now – Again!

This puzzle first appeared in the May-June, 2001 issue of the FORUM. Since the solution was not provided at the conference as promised, and although no one noticed, here it is again. The solution is on page 13.

Test your knowledge of the people and places that have played significant roles in the history of IFSEA. Answer the questions below, then place your answers where they fit in the horizontal blanks in the grid. If your answers and placements are correct, the highlighted vertical columns will spell out where IFSEA's 2001 conference was held. (Only the highlighted vertical columns have meaning.) Good luck!



A city that has hosted two IFSEA conferences (11 letters): _ _ _ _ _ _ _ _ _ _ _
Former Kane County Asst. State's Attorney; 1995-96 IFSEA President (11 letters) _ _ _ _ _ _ _ _ _ _ _
Site of IFSEA's 4th (1992) conference (remember the "Buffalo Tro?") (10 letters): _ _ _ _ _ _ _ _ _ _
First IFSEA Secretary and 4th IFSEA President (1991-92) (9 letters): _ _ _ _ _ _ _ _ _
Suburban site of IFSEA's 7th conference (1995) (2 words; 9 letters): _ _ _ _ _ _ _ _ _
The state IFSEA focuses on (if you get this wrong, there's no hope!) (8 letters): _ _ _ _ _ _ _ _
The site of two IFSEA conferences, including the first (7 letters): _ _ _ _ _ _ _
Current IFSEA officer, with more than 40 years support enforcement service (7 letters): _ _ _ _ _ _ _
Veteran Cook County Asst. State's Attorney, host of first IFSEA conference (7 letters): _ _ _ _ _ _ _
IFSEA founder, first President, and long-time IFSEA Director (7 letters): _ _ _ _ _ _ _
Veteran Asst. Attorney General, hosted 9th conference (1997) (6 letters): _ _ _ _ _ _
Site of IFSEA's 1996 conference, adjacent to "below Normal" college town (6 letters): _ _ _ _ _ _
Site of IFSEA's 1993 conference, just west of "Paradise" (6 letters): _ _ _ _ _ _
IFSEA co-founder and 3rd President, hosted IFSEA's 2nd conference (1990) (6 letters): _ _ _ _ _ _
Springfield Asst. Attorney General, 11th IFSEA President (1998-99) (5 letters): _ _ _ _ _
9th IFSEA President, first IDPA executive to head IFSEA (1996-97) (5 letters): _ _ _ _ _
The acronym for this organization (another freebee!) (5 letters): _ _ _ _ _
Peoria Asst. Attorney General, 6th IFSEA President (1993-94) (4 letters): _ _ _ _
We now have two of these veteran attorneys on IFSEA's current Board of Directors (4 letters): _ _ _ _

From the I D P A . . .
. . . ILLINOIS IV-D UPDATE

(From the Office of the Administrator, Illinois Dept. of Public Aid, Division of Child Support Enforcement)

DCSE Receives Grant to Help Incarcerated Fathers Connect with Their Children

In September 2001, the Illinois Department of Public Aid (IDPA) was awarded a grant from the Federal Department of Health and Human Services to conduct a seventeen-month project to develop demonstration models of collaboration between child support agencies and other human service programs in the community to increase family self-sufficiency. The Division of Child Support Enforcement (DCSE) will conduct the project in collaboration with the Illinois Department of Corrections (IDOC), Safer Foundation, and a broad array of community organizations. The collaboration was announced on October 18 during a meeting of representatives from 50 community-based organizations in Chicago. Many of these organizations will provide support services to ease the ex-offender's transition back into the community.

Studies show that family ties, along with stable employment, help ex-offenders get and stay on the right track toward productive lives. Under the grant, inmates in designated Illinois state prison facilities or residents in an IDOC Adult Transition Center (ATC) in Chicago with child support orders will receive job training and placement, case management and support services. DCSE will work in collaboration with staff at the transition centers in Chicago to provide information on child support services and will help with established orders and make payment arrangements that reflect their current situation. Partnering agencies' case management will receive education on the importance of paternity establishment and child support for children. Similar training will be made available to the dads.

In November 1996, Child Support and Corrections began working together on a six-month pilot, called Paternity Establishment Prison Project (PEPP), to help incarcerated fathers in six prisons establish paternity for their children who are involved in Child Support cases. Currently, 27 prisons are in the program. Acknowledging paternity helps create a relationship between father and child and can have the added benefit of enhancing the child's future emotional and financial well being. Paternity has been established for more than 2,500 children through this program.

(Cont'd. on page 12)

Bridging the Digital Divide: Illinois Child Support Enforcement Program Helps Head Start Parents Access the Internet

To help bridge the "digital divide," the Illinois Department of Public Aid, Division of Child Support Enforcement (DCSE), provided funds from their Head Start/Child Care/Child Support collaboration grant to teach Head Start parents how to use the Internet. DCSE contracted with staff at the University of Illinois at Chicago Family Start Learning Center (FAST) to create an Internet training course for Head Start parents.

FAST provides computer literacy courses for low-income adults. Working part-time for almost a year, FAST staff created and refined their training package, "Exploring the Internet with Net Notes." In the course, students are taught how to use the Internet and find free access to computers at their neighborhood libraries.

FAST staff trained 35 Head Start parents to teach other parents how to access the Internet. Meeting for eight weeks in local libraries, 60 parents completed the course, which is taught in English and Spanish.

Parents learned basic computer terms, signed up for free e-mail, and learned how to use search engines to find information. They practiced navigating the Internet by visiting the Illinois Collaboration Web site at www.regionvqnet.org/2gether4kids. The Web-site, which was created as part of the Illinois collaboration grant activities, features information on each of the three programs, plus helpful links.

For more information on the Head Start/Child Care/Child Support collaboration project, contact Lois Rakov, who manages the grant, at (312) 793-4568. For more information on the Illinois Collaboration Website, contact Karen Newton-Matza at (312) 793-8213, or visit the Website. For more information on the course, "Exploring the Internet with Net Notes," or the Family Start Learning Centers, contact Shelly Maxwell at (312) 746-5416.

(More on the Collaboration Web site on page 12)

("DCSE Grant. . .," cont'd. from page 11)

PEPP works from a computer match, conducted by Child Support staff, of cases and a monthly listing of state inmates provided by Corrections. When matches are found, Child Support informs inmates that they have been named as an alleged father of a child and that a Child Support Paternity Establishment Liaison will visit the prison to conduct interviews regarding paternity. Referrals are also made when the mother states that the alleged father is in prison. If an inmate agrees he is the father, he may sign a Voluntary Acknowledgment of Paternity form. After the form is signed by both parents and witnessed, the inmate becomes the child's legal father, and his name is added to the child's birth certificate.

If an inmate is unsure that he is the father, he may request genetic (DNA) testing. The inmate must sign a form agreeing to be bound by the results of the test. DNA sampling from the inmate is done in the prison. If an inmate believes he is not the father, he may contest the claim of paternity and have a hearing at the prison before a Child Support Administrative Law Judge. The mother can participate via video conference. The hearing request also involves an order for a genetic test. An inmate's failure to cooperate can result in paternity being established by default.

Child Support staff also interviews men at work release centers to establish support orders and begin income withholding. If an inmate is paroled, staff contacts the parole agent for the parolee's new address in order to contact him.

The collaboration between the Illinois Departments of Public Aid and Corrections, Safer Foundation, and community organizations is working to improve the relationships between Illinois children and their fathers, giving them the love and support they deserve.

For more information about PEPP or the collaboration, call the Division of Child Support Enforcement at 312-793-8213.

The Illinois Collaboration Website "2gether4kids"

For almost three years, the Illinois Collaboration Website has brought together a diverse group of people working to improve the lives of Illinois' children. Initially conceived as a training site to help parents learn how to use the Internet, "2gether4kids" has grown into a free-standing site where people can go to find information about Head Start, child care, and child support enforcement programs.

The site, which is available in Spanish and English, also features links of interest to mothers, fathers, and grandparents, as well as a link to information on child development.

("Bridging the Digital Gap" and this article reprinted, by permission, from the December, 2001, issue of Child Support Reports, published by the U.S. Dept. of Health & Human Services, Administration for Children and Families, OCSE, Washington, D.C.)

2000-01 IFSEA Officers pose together at the 13th Annual Conference. (Left to right): 1st Vice President Madalyn Maxwell; President Jeanne Fitzpatrick; Treasurer Jim Ryan; and Secretary Tom Sweeney. (Not pictured: 2nd Vice-President Yvette Perez Trevino.)

(Photo included at the special request of Larry Nelson)

IFSEA Then and Now Puzzle Solution

(Since I forgot to provide the solution to the "IFSEA – Then and Now" puzzle that appeared in the May-June, 2001 issue of the *Forum* at the conference as promised, and no one asked, here for those who might have cared is the solution. You will recall (well, maybe some will), proper placement in the grid of the correct answers to the questions below resulted in the location of the 2001 conference appearing in the three highlighted vertical columns.)

A city that has hosted two IFSEA conferences (11 letters): S P R I N G F I E L D
Former Kane County Asst. State's Attorney; 1995-96 IFSEA President (11 letters) B E R G B R E I T E R
Site of IFSEA's 4th (1992) conference (remember the "Buffalo Tro?") (10 letters): C A R B O N D A L E
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The state IFSEA focuses on (if you get this wrong, there's no hope!) (8 letters): I L L I N O I S
The site of two IFSEA conferences, including the first (7 letters): C H I C A G O
Current IFSEA officer, with more than 40 years support enforcement service (7 letters): M A X W E L L
Veteran Cook County Asst. State's Attorney, host of first IFSEA conference (7 letters): R I S S M A N
IFSEA founder, first President, and long-time IFSEA Director (7 letters): S W E E N E Y
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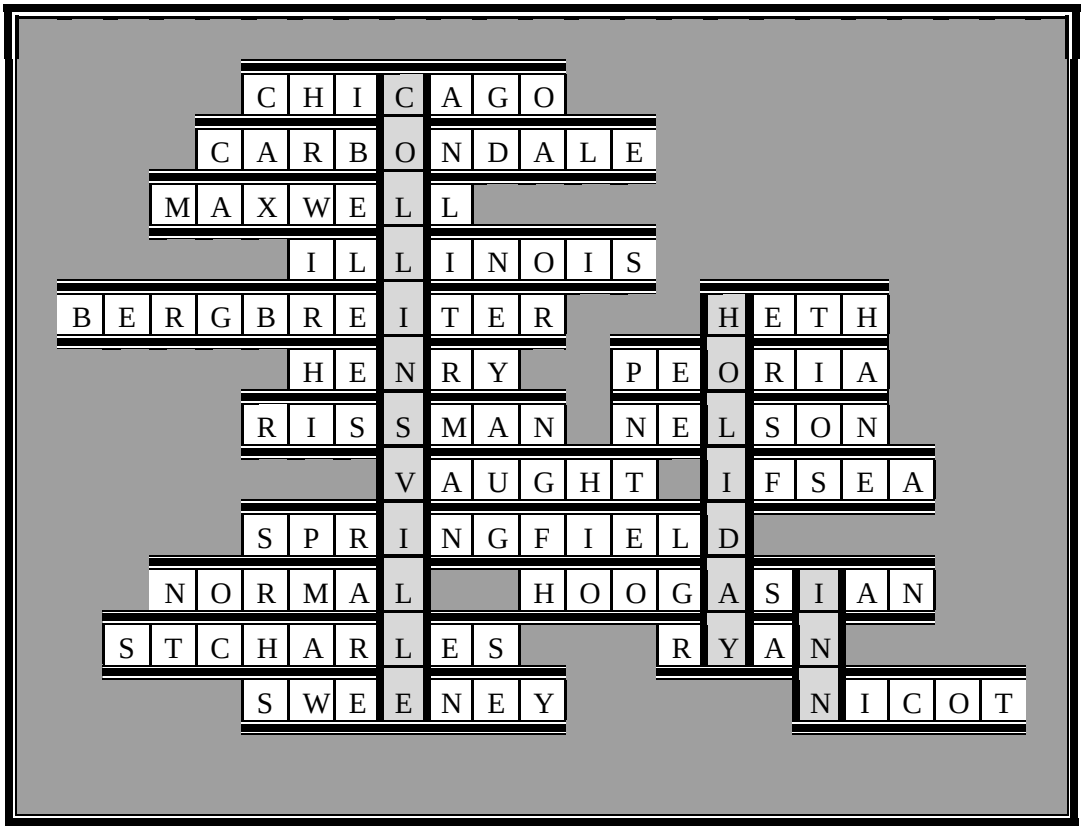
Site of IFSEA's 1996 conference, adjacent to "below Normal" college town (6 letters): N O R M A L
Site of IFSEA's 1993 conference, just west of "Paradise" (6 letters): P E O R I A
IFSEA co-founder and 3rd President, hosted IFSEA's 2nd conference (1990) (6 letters): V A U G H T
Springfield Asst. Attorney General, 11th IFSEA President (1998-99) (5 letters): H E N R Y
9th IFSEA President, first IDPA executive to head IFSEA (1996-97) (5 letters): N I C O T
The acronym for this organization (another freebee!) (5 letters): I F S E A
Peoria Asst. Attorney General, 6th IFSEA President (1993-94) (4 letters): H E T H
We now have two of these veteran attorneys on IFSEA's current Board of Directors (4 letters): R Y A N



("Madalyn Maxwell Retires . . .," cont'd. from page 1)

Child Support Enforcement Association (ERICSA) and the National Child Support Enforcement Association (NCSEA). She served as member of a four-person committee of the American Bar Association and National Reciprocal and Family Support Enforcement Association (NRFSEA – predecessor of NCSEA) engaged in negotiations with several foreign jurisdictions on reciprocal handling of child support, custody and visitation matters. She has been a member of a delegation of Women Lawyers and Judges traveling to China on a People to People mission at the invitation of the Chinese Ministry of Justice, and a member of the Governor's Task Force on Judicial Merit Selection.

Madalyn was a charter member of the Illinois Family Support Enforcement Association (IFSEA), and has served on its Board of Directors as designated representative of the Attorney General's office since the organization's formation in 1987. She served as IFSEA's Second Vice President in 1999-2000, and as First Vice-President in 2000-01 chaired and hosted the most recent annual conference in Collinsville. In October, 2001, Madalyn was elected IFSEA President for 2001-02. Madalyn was recognized at IFSEA's First Annual Conference in 1989 for what was then already a distinguished career in child support enforcement, and again at the 2001 conference for her continued inspirational leadership.

Vaught New Bureau Chief

Tom Vaught comes to his new position as Bureau Chief with his own impressive credentials. Tom has been an Assistant Attorney General in the Public Aid Bureau since 1984, serving as Supervisor of the Central Region since 1987. Prior to joining the Attorney General's office he was a staff attorney for Land of Lincoln Legal Assistance Foundation and an Assistant State's Attorney in Macon County. Tom received his undergraduate degree from Southern Illinois University, and his law degree from Seton Hall University.

Tom is certainly no stranger to IFSEA membership. A co-founder of the organization, Tom has served continuously since then as one of its elected Directors. He is a past-President of the association and organized and hosted its Second Annual Conference in Springfield in 1990. He has been a speaker or panelist at virtually every IFSEA conference and is a regular contributor to the *Family Support FORUM*. Well known for his research, knowledge and experience in child support enforcement, Tom has frequently been invited to testify before legislative and other panels addressing child support issues.

Thanks go out to Madalyn for her many years of service to the cause of child support enforcement with our best wishes on her retirement. And congratulations and best wishes go out to Tom on his new position.

Check out IFSEA on the Web!

www.illinoisfamilysupport.org

Continually updated to include –

- *Direct links to the most recent court decisions,*
- *Summaries of proposed legislation, with direct links to bills and legislative activity as it develops,*
- *Extensive list of links to agencies, organizations, research sources and other useful information,*
- *News on upcoming Conferences,*
- *And more to come.*

IFSEA's web site is a work in progress. Your input and suggestions are both welcomed and encouraged.

Friends, Co-workers Celebrate Maxwell Retirement

On January 29, 2002, more than 50 of her friends and past and present co-workers gathered at the Illini Country Club in Springfield to celebrate Madalyn Maxwell's retirement.

In addition to receiving best wishes and parting gifts from those present, Madalyn was presented with letters of commendation for her many years of service to the citizens of Illinois from Attorney General Jim Ryan and Illinois Senator Richard Durbin.

By all reports, a good time was had by all.

Support Enforcement Veterans. Madalyn is flanked by two other veterans of Illinois' child support enforcement program: Rick Saavedra (left), former Asst. Attorney General and current IDPA Asst. General Counsel, and S. Benton "Ben" Kainz, former long-

(Left) **Two Chiefs**. Madalyn takes time out to chat with Tom Vaught, later named to succeed her as Chief of the Public Aid Bureau.

(Below) **Madalyn surrounded by supervisory staff, friends and co-workers**. (Front row, left to right: Southern Region Supervisor Jeanne Teter; Madalyn; Northern Region Supervisor Larry Nelson; Deputy Bureau Chief Matt Ryan; and then-Central Region Supervisor Tom Vaught

("Cases & Commentary," cont'd. from page 8)

was adjudicated to be the father "pursuant to the presumptions of § 5" of the Parentage Act. Under the only pertinent paragraph of § 5, a man is presumed to be the father if "he and the child's natural mother have signed an acknowledgment of parentage . . . in accordance with Section 12 of the Vital Records Act." Subsection 12 (4) of the Vital Records Act requires that the acknowledgment of paternity be in accordance with subsection 5, which in turn provides for specific formats to be followed to obtain and process the acknowledgment. Elma contends these forms and processes were not involved, Anthony was not a "presumed father" under § 5 of the Parentage Act, so lacks standing under § 7 (b-5).

The Appellate Court concludes that a distinction between presumptions based on acknowledgments denoted in Subsection 12 (5) of the Vital Records Act and an acknowledgment "which omits the minute technical formats and procedures outlined in subsection 12 (5)" would "be wholly arbitrary."

> "It would be far more cogent to construe the relevant provision in subsection 7 (b-5) which refers to the presumptions in section 5 of the Parentage Act as drawing a distinction between adjudications based on presumptions of paternity, which may be challenged with DNA evidence, and other adjudications such as those based on a blood test, where such a challenge would be inappropriate. Under this approach, subsection 7(b-5) would be applicable to an adjudication of parentage resulting from circumstantial inferences raising a presumption, but would not be applicable to a judicial determination predicated on scientific evidence." * * * "Under this analysis, we would conclude that subsection 7(b-5)'s reference to the presumptions in section 5 of the Parentage Act is not meant to incorporate the minute and ministerial technical requirements of section 12 of the Records Act, which are twice removed from the original 7(b-5) reference and which are not relevant to its purpose in differentiating between adjudications based on presumptions and those based on more solid scientific evidence such as a blood test."

The agreed parentage order was not a "settlement approved by the court" which might exclude it from challenge under § 7(d). Nor is the challenge barred by *res judicata*. But the action would be barred if brought more than two years after Anthony obtained "actual knowledge of relevant facts," excluding times when the mother or child refused to submit to DNA tests. While rejecting Anthony's argument that the two-years did not begin to run until he had the DNA results, the record did not disclose when or whether Elma had refused to submit to DNA tests so as to exclude time after Anthony first obtained "actual knowledge of relevant facts" to question his paternity. Remanded for that determination.

Social Security Disability Dependent Benefits May Not Be Credited to Support Arrearages Accrued Prior to Disability

Public Aid ex rel. Pinkston v. Pinkston, 325 Ill. App. 3d 212, 757 N.E. 2d 977 (2nd Dist., 10/15/01), reversed an order crediting Social Security Disability payments received by the dependent child to arrearages accrued prior to the parent becoming disabled.

In a 1986 divorce William was ordered to pay support for his son Andrew. In February, 1996, he was injured at work. In 1999 he applied for Social Security Disability benefits. His claim was approved retroactive to March, 1996, and he received a lump sum. As his dependent, Andrew received Social Security Disability dependent benefits, including a lump sum of $5,392, the majority of which was credited to satisfy support arrearages accrued since March, 1996.

In February, 2000, Andrew received another lump sum of $1,908 to cover support payments due during a period (not specified in the opinion) when William was disabled. This payment exceeded the support due during that period. William sought to have this sum credited toward the $2,863.27 arrearages still due from prior to his becoming disabled. The trial court found it had the discretion, "as a matter of equity," to do so, and credited $990 toward that arrearage. It further ordered that the portion of the continuing monthly dependent benefit that exceeds the current support obligation be applied to further reduce the arrearage. IDPA appeals.

Reversed and remanded. In Illinois, as in other states that had ruled on this issue, an amount paid in excess of a parent's current child support obligation is a gratuity. Furthermore Social Security disability dependent benefits are intended to meet the dependent's current maintenance needs. So any amounts received in excess of the current support obligation are a gratuity and cannot be applied toward arrearages accrued from a prior time.

Non-Spouse Who Encouraged Artificial Insemination Not Liable for Child Support

In Re Parentage of M.J. and N.J., ___ Ill. App. 3d ___, 759 N.E. 2d 121 (1st Dist., no. 1-00-0590, 10/29/01), affirmed dismissal of a complaint seeking a paternity determination and child support from a man who, while not married to the plaintiff, had encouraged her to have children through artificial insemination.

Alexis had an affair with the defendant, Raymond, whom she believed to be unmarried. They discussed marriage but Raymond said they would have to wait until they could move to a community that would accept their inter-racial relationship. They supposedly tried to have children, but Raymond was apparently unable. So he encouraged Alexis to become pregnant through artificial insemination, accompanied her to the doctor, paid the costs and assisted with injections to enhance fertility, and participated in selection of a do-

(Cont'd. on page 17)

("Cases & Commentary," cont'd. from page 16)

nor. Following the birth of twins he acknowledged them as his own and contributed financial support. But when plaintiff found out he was married, their relationship ended and he stopped providing support.

Alexis filed a complaint to establish a support obligation on the basis of breach of oral contract and promissory estoppel, and seeking an order of paternity. The trial court dismissed the complaint. Alexis appeals.

The Illinois Parentage Act, 750 ILCS 40/1 et seq. (not the Parentage Act of 1984, 750 ILCS 45/1 et seq.), governs the treatment of a child born of artificial insemination. That act requires that a husband's written consent to the procedure is required to hold him responsible for support of children born to a wife through artificial insemination. The trial court had found it would not be rational for unmarried parties to have less of a safeguard against responsibility in such a serious matter. The Appellate Court agreed, holding that, "as a minimum," a written consent was required to hold an unmarried man liable for support under the circumstances. There is no basis for holding the defendant liable for the paternity of the children.

Supreme Court Confirms: DNA Results Are Prerequisites to Paternity Challenge Under Sect. 7 (b-5) of Parentage Act

In Re Marriage of Kates, 198 Ill. 2d 156, ___ N.E. 2d ____ (No. 90732, 11/21/01), affirmed reversal of orders finding non-parentage and vacating prior orders for custody, visitation and support.

Mark and Ann Kates were married in 1990. In August, 1992, Ann gave birth to M.K.. Mark had had a vasectomy in 1984, and was told by Ann when they first learned she was pregnant that he was not M.K.'s father, but he signed the birth certificate as M.K.'s father. When Mark filed for dissolution of marriage in 1993 he alleged that M.K. was not his son, but agreed to a judgment finding that M.K. was "born to the parties," granting him visitation and requiring him to pay child support of $20 per week.

In 1994 Ann began receiving public assistance, and in 1996 IDPA petitioned to increase child support. Mark then filed a petition "to modify or correct" the paternity determination in the dissolution judgment. Ann testified that she had told Mark he was not M.K.'s father but he wanted to continue to be his father. Mark's petition was dismissed and support was increased to $65 per week.

In May, 1997, Mark filed a motion to abate child support, alleging loss of employment and again claiming not to be M.k.'s father. Ann filed a petition for rule to show cause. They again testified that they each knew at the time of the divorce that Mark was not M.K.'s father. The court denied both petitions, and held both parties in contempt for misrepresenting the fact of M.K.'s paternity to the court during the divorce.

In August, 1998, § 7 (b-5) was added to the Parentage Act, allowing a man adjudicated to be a father pursuant to the presumptions in § 5 of the Act to challenge that adjudication if DNA results show his non-paternity. In January, 1999, Mark filed a petition under that section, asking that Ann and M.K. be ordered to submit to DNA testing. The trial court denied the State's motion to dismiss and ordered DNA tests which confirmed Mark's non-paternity. The trial court then declared that Mark was not M.K.'s father and vacated all orders for custody, visitation and support after the date of Mark's § 7 (b-5) petition. Ann appealed.

In an unpublished order the Appellate Court reversed, finding that under the plain language of § 7 (b-5) the inclusion of DNA results was a prerequisite to filing a petition under that section, and that even with DNA results Mark's petition was barred by either of the limitations applicable to such actions. Mark appeals.

The Supreme Court affirms the Appellate Court. In a detailed analysis of the grammatical structure of § 7 (b-5), the Court agreed that DNA tests showing non-parentage are a prerequisite to *filing* under that section. – not just a requirement for a *finding* of non-paternity under that section. Sect. 11 (a) of the Act, authorizing the court to order DNA tests, does not apply, since that section applies only where there is an *alleged* father, and in § 7 (b-5) there is an *adjudicated* father. The fact that it may be difficult to obtain DNA results prior to filing the petition does not make the requirement unreasonable.

The Appellate Court had held that Mark had knowledge of his non-paternity more than two years before § 7 (b-5) became effective, so that his cause of action was already barred by the two year statute of limitations when the section became effective; it could not be revived under the six-month "window of opportunity" granted by the new section. Having found his petition was insufficient due to lack of prior DNA results, the Supreme Court found it unnecessary to rule on this issue.

In light of the decision in ***Jackson v. Newsome*** (see above), it is unfortunate the Court did not further analyze the language of § 7 (b-5) applying it only to adjudications "pursuant to the presumptions in § 5 of this Act" as opposed to judicial adjudications.

Mother's Positive Assertion of Paternity May Permit Paternity Challenge Under Sect. 2-1401 Ten Years After Admission

Lipscomb v. Wells, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (1st Dist., No. 1-00-3793, 11/27/01), affirmed a judgment vacating a 10-year-old judicial adjudication of paternity pursuant to a petition under § 2-1401 of the Code of Civil Procedure.

In June, 1988, Beatryce filed a verified petition seeking an adjudication of paternity, alleging that Tyree was the natural father of her child, V.L.. In July an

(Cont'd. on page 18)

("Cases & Commentary," cont'd. from page 17)

agreed order of paternity and support was entered In February, 2000, Tyree filed a verified petition under § 2-1401 of the Code of Civil Procedure and § 7 (b-5) of the Parentage Act seeking DNA tests and in the event of a negative result, that the 1988 parentage judgment and all subsequent orders be vacated. In his petition Tyree alleged that he had agreed to entry of the 1988 judgment without benefit of DNA testing based on the plaintiff's representations that he was the child's father and that she had relations with no other men at the time of conception. He further alleged that during an argument in December, 1998, plaintiff had first told him he was not the child's father and that "she had been seeing another man at the time of conception."

Beatryce moved to strike Tyree's petition as time barred under the two-year limit applicable to § 2-1401. Tyree responded that the time period was tolled by plaintiff's fraudulent concealment of the child's actual parentage. The court denied Beatryce's motion to strike and directed her to respond to Tyree's petition. Her response challenged Tyree's position as a matter of law but failed to contest his allegations of the representations made in 1988 and the contrary representations in December, 1998.

The court ruled that Tyree had not complied with § 7 (b-5) in that he had not included DNA results showing non-parentage. At the hearing on Tyree's § 2-1401 petition (not attended by the plaintiff) the court found that from the time the 1988 judgment was entered until December, 1998, Beatryce had concealed from Tyree the material fact "that he was not the child's father," and that Tyree was deprived of the opportunity to request a DNA test by her concealment of that material fact. The court then vacated the paternity judgment and ordered DNA tests. Beatryce appeals.

On appeal Beatryce argued that merely because she had relations with another man during the period of conception does not indicate she then knew Tyree was not the child's father. Thus, since she could not herself know with certainty who was the father she had no duty to inform Tyree of the possibility he was not the father. And her statement in 1998 that he was not the father could only be an opinion. Thus there was no fraudulent concealment to toll the two year limit barring Tyree's § 2-1401 petition.

The Appellate Court disagreed. Here Beatryce was not merely silent on the issue of the child's paternity, but "asserted with certainty in her initial *verified* complaint" that Tyree was the child's father. "We thus hold that the trial court did not abuse its discretion in finding that plaintiff fraudulently concealed the true paternity of her child." The Court found support for its ruling in decisions from several other states. And it found particularly "cogent" the dissent in *Ptaszek v. Michalik*, 238 Ill. App. 72, 606 N.E. 2d 115 (1st Dist., 1992), that when a party claims to know a material fact with certainty, yet knows that she does not have that certainty, the assertion constitutes a fraudulent misrepresentation. If the plaintiff was having a sexual relationship with more than one man during the time of conception, but asserted that she was certain that the defendant was the father, that assertion constituted a fraudulent misrepresentation. And the defendant had a right to rely upon the categorical representation of the mother that he was the father in not seeking blood tests to confirm it.

Separate § 2-1401 Motion Required To Challenge Paternity Acknowledgment Beyond 60-day Limit

Illinois Dept. of Public Aid ex rel. Howard v. Graham, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (3rd Dist., No. 3-01-0229, 3/5/02), affirmed summary judgment denying attempted rescission of paternity acknowledgment first raised in support proceedings.

Connie gave birth to Jonathan on December 4, 1996. Todd Graham signed a Voluntary Acknowledgment of Paternity the next day. In May, 2000, IDPA filed a complaint for entry of a support order. Todd answered the complaint, alleging the acknowledgment was based on fraud and material mistake of fact, and subsequently requested DNA tests. Todd submitted affidavits from three people stating that Connie had told them Todd was not the father. IDPA moved for summary judgment. In response Todd submitted further affidavits that he had a disease which made it improbable that he could father a child and a transcript of another court proceeding in which Connie testified that another man was the father of Jonathan and her other two children. The trial court found "no genuine issue of material fact as to the issue of paternity of the child," granted summary judgment and ordered support. Todd appealed.

With one dissent, affirmed. "[W]e conclude that a presumed father who signed a voluntary acknowledgment of paternity but failed to rescind the acknowledgment within the statutory period cannot challenge paternity in a subsequent child support action. If the father wishes to challenge his acknowledgment of paternity on the limited grounds of fraud, duress, or material mistake of fact, the father must file a motion under section 2-1401 of the Civil Code *in a separate proceeding*." (emphasis added)

In dissent, J. Holdridge contends that the Parentage Act permits a challenge "*in court* only on the basis of fraud, duress or material mistake of fact," but does not require that challenge must be brought only under § 2-1401. Most persuasively he points out a "practical matter that renders the majority's analysis highly problematic."

> "[F]iling [a §2-1401] motion would have been impossible for the respondent in this matter and for any other respondent similarly situated. Section 2-1401 (b) of the Civil Code provides that a petition for relief from judgment under that section '*must*

(Cont'd. on page 19)

("Cases & Commentary," cont'd. from page 18)

> be filed in the *proceeding* in which the order or judgment was *entered* * * *.' (Emphasis added [in the decision]) . . . Here, there was no prior proceeding, nor had a prior order or judgment ever been *entered*. Simply put, Graham would not have [been] able to file a motion for relief from judgment under section 2-1401 because no judgment existed from which to seek relief."

The dissent concludes that the "procedural methods" for challenging voluntary acknowledgments of paternity "are to be found exclusively within the Parentage Act," but doesn't suggest where.

Federal Child Support Recovery Act Held Constitutional; Earlier Decision Reversed

United States v. Faasse, 265 F.3d 475 (6th Cir., 9/14/01), upon reconsideration of an earlier contrary decision (227 F. 3d 660), affirmed a conviction and order of restitution under the federal Child Support Recovery Act, and found the Act to be a constitutional exercise of Congress' power under the Commerce Clause.

Defendant pled guilty to violation of the 1994 version of the federal Child Support Recovery Act of 1992 (CSRA), willful failure to pay past due child support. He was sentenced to six months imprisonment and ordered to make restitution of $28,438.35 in delinquent support. He appealed, challenging the constitutionality of the Act.

In its earlier ruling the Sixth Circuit Court of Appeals reversed the conviction and held the CSRA was unconstitutional as exceeding the authority granted under the Commerce Clause. In December, 2000, that decision was withdrawn and vacated, however, and rehearing was granted. Following new oral arguments in March, 2001, the Court ruled.

> "All ten of our sister circuits that have considered the constitutionality of the CSRA in Commerce Clause challenges after *United States v. Lopez*, 514 U.S. 549 (1995) have upheld the statute. We now join them in concluding that the CSRA is an appropriate exercise of Congress's power under the Commerce Clause."

In its 8-4 decision the Court identified 'three broad categories of activity that Congress may regulate under its commerce power:" use of the channels of interstate commerce, the instrumentalities of interstate commerce or persons or things in interstate commerce, and "activities having a substantial relation to interstate commerce." "[A]t the very least, the CSRA falls within Congress's power to regulate a 'thing' in interstate commerce. . . . The money payment, or its absence, which would travel through interstate commerce, is the 'thing' which Congress may validly regulate. . . . Congress may freely regulate the interstate court-ordered child support payment, provided we find that the statute's means are rationally related to its ends, which we do."

The Court also concluded the CSRA was valid under the other two categories of permissible commerce clause regulation. The trial court's requirement of full restitution was also upheld as not an abuse of discretion due to the defendant's failure to disclose his finances.

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(3/02)

Help Wanted: Editor

The *Family Support FORUM* is desperately in need of an Editor.

Duties include overall responsibility for the gathering, writing and editing of news items relevant to child support enforcement practitioners in Illinois, and for the timely production and distribution of a newsletter to an association membership hopefully in excess of 200.

Essential qualification: a commitment to deliver a newsletter to the association's membership on a timely basis.

Desirable qualifications include experience in child support enforcement, familiarity with the many and varied roles and players in the child support environment on the statewide and national scene and a sense of what may be of interest to members of each constituency, an ability to network with and obtain contributions from persons knowledgable in events affecting child support enforcement, competence with word processing programs, and some journalistic writing ability.

Minimum qualifications: an ability to breathe and a willingness to take responsibility for this newsletter.

Interested candidates: contact IFSEA Secretary Tom Sweeney as 217 485 5302 or by e-mail at tsweeney@pdnt.com, or contact any other member of the IFSEA Board of Directors.

THE END (?)

Due to an apparent lack of interest, or at least a lack of commitment from anyone other than the one person who has been almost totally responsible for producing the *FORUM* for the last 13 years, this may be the last issue of the *Family Support FORUM*. Its future depends on what, if any, response there is to the foregoing.

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